

**42 USC Ch. 55: NATIONAL ENVIRONMENTAL POLICY**  
**From Title 42—THE PUBLIC HEALTH AND WELFARE**

**CHAPTER 55—NATIONAL ENVIRONMENTAL POLICY**

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### **§4321. Congressional declaration of purpose**

The purposes of this chapter 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.

(Pub. L. 91–190, §2, Jan. 1, 1970, 83 Stat. 852.)

#### **SHORT TITLE**

Section 1 Pub. L. 91–190 provided: "That this Act [enacting this chapter] may be cited as the 'National Environmental Policy Act of 1969'."

#### **TRANSFER OF FUNCTIONS**

Enforcement functions of Secretary or other official in Department of the Interior related to compliance with system activities requiring coordination and approval under this chapter, and enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with

this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

#### **EMERGENCY PREPAREDNESS FUNCTIONS**

For assignment of certain emergency preparedness functions to Administrator of Environmental Protection Agency, see Parts 1, 2, and 16 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of this title.

#### **ENVIRONMENTAL PROTECTION AGENCY HEADQUARTERS**

Pub. L. 112-237, §2, Dec. 28, 2012, 126 Stat. 1628, provided that:

"(a) *Redesignation*.—The Environmental Protection Agency Headquarters located at 1200 Pennsylvania Avenue N.W. in Washington, D.C., known as the Ariel Rios Building, shall be known and redesignated as the 'William Jefferson Clinton Federal Building'.

"(b) *References*.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Environmental Protection Agency Headquarters referred to in subsection (a) shall be deemed to be a reference to the 'William Jefferson Clinton Federal Building'."

#### **MODIFICATION OR REPLACEMENT OF EXECUTIVE ORDER NO. 13423**

Pub. L. 111-117, div. C, title VII, §742(b), Dec. 16, 2009, 123 Stat. 3216, provided that: "Hereafter, the President may modify or replace Executive Order No. 13423 [formerly set out below] if the President determines that a revised or new executive order will achieve equal or better environmental or energy efficiency results."

[Pursuant to section 742(b) of Pub. L. 111-117, set out above, Ex. Ord. No. 13423 was replaced by Ex. Ord. No. 13693, Mar. 19, 2015, 80 F.R. 15871, set out below.]

Pub. L. 111-8, div. D, title VII, §748, Mar. 11, 2009, 123 Stat. 693, which provided that Ex. Ord. No. 13423 (formerly set out below) would remain in effect on and after Mar. 11, 2009, except as otherwise provided by law after Mar. 11, 2009, was repealed by Pub. L. 111-117, div. C, title VII, §742(a), Dec. 16, 2009, 123 Stat. 3216.

#### **NECESSITY OF MILITARY LOW-LEVEL FLIGHT TRAINING TO PROTECT NATIONAL SECURITY AND ENHANCE MILITARY READINESS**

Pub. L. 106-398, §1 [[div. A], title III, §317], Oct. 30, 2000, 114 Stat. 1654, 1654A-57, provided that: "Nothing in the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or the regulations implementing such law shall require the Secretary of Defense or the Secretary of a military department to prepare a programmatic, nation-wide environmental impact statement for low-level flight training as a precondition to the use by the Armed Forces of an airspace for the performance of low-level training flights."

## POLLUTION PROSECUTION

Pub. L. 101-593, title II, Nov. 16, 1990, 104 Stat. 2962, provided that:

### "SEC. 201. SHORT TITLE.

"This title may be cited as the 'Pollution Prosecution Act of 1990'.

### "SEC. 202. EPA OFFICE OF CRIMINAL INVESTIGATION.

"(a) The Administrator of the Environmental Protection Agency (hereinafter referred to as the 'Administrator') shall increase the number of criminal investigators assigned to the Office of Criminal Investigations by such numbers as may be necessary to assure that the number of criminal investigators assigned to the office—

"(1) for the period October 1, 1991, through September 30, 1992, is not less than 72;

"(2) for the period October 1, 1992, through September 30, 1993, is not less than 110;

"(3) for the period October 1, 1993, through September 30, 1994, is not less than 123;

"(4) for the period October 1, 1994, through September 30, 1995, is not less than 160;

"(5) beginning October 1, 1995, is not less than 200.

"(b) For fiscal year 1991 and in each of the following 4 fiscal years, the Administrator shall, during each such fiscal year, provide increasing numbers of additional support staff to the Office of Criminal Investigations.

"(c) The head of the Office of Criminal Investigations shall be a position in the competitive service as defined in 2102 of title 5 U.S.C. or a career reserve [reserved] position as defined in 3132(A) [3132(a)] of title 5 U.S.C. and the head of such office shall report directly, without intervening review or approval, to the Assistant Administrator for Enforcement.

### "SEC. 203. CIVIL INVESTIGATORS.

"The Administrator, as soon as practicable following the date of the enactment of this Act [Nov. 16, 1990], but no later than September 30, 1991, shall increase by fifty the number of civil investigators assigned to assist the Office of Enforcement in developing and prosecuting civil and administrative actions and carrying out its other functions.

### "SEC. 204. NATIONAL TRAINING INSTITUTE.

"The Administrator shall, as soon as practicable but no later than September 30, 1991 establish within the Office of Enforcement the National Enforcement Training Institute. It shall be the function of the Institute, among others, to train Federal, State, and local lawyers, inspectors, civil and criminal investigators, and technical experts in the enforcement of the Nation's environmental laws.

### "SEC. 205. AUTHORIZATION.

"For the purposes of carrying out the provisions of this Act [probably should be "this title"], there is authorized to be appropriated to the Environmental Protection Agency \$13,000,000 for fiscal year 1991, \$18,000,000 for fiscal year 1992, \$20,000,000 for fiscal year 1993, \$26,000,000 for fiscal year 1994, and \$33,000,000 for fiscal year 1995."

## **REORGANIZATION PLAN NO. 3 OF 1970**

EFF. DEC. 2, 1970, 35 F.R. 15623, 84 STAT. 2086, AS AMENDED PUB. L. 98-80, §2(A)(2), (B)(2), (C)(2)(C), AUG. 23, 1983, 97 STAT. 485, 486

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, July 9, 1970, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

### **ENVIRONMENTAL PROTECTION AGENCY**

#### **SECTION 1. ESTABLISHMENT OF AGENCY**

(a) There is hereby established the Environmental Protection Agency, hereinafter referred to as the "Agency."

(b) There shall be at the head of the Agency the Administrator of the Environmental Protection Agency, hereinafter referred to as the "Administrator." The Administrator shall be appointed by the President, by and with the advice and consent of the Senate.

(c) There shall be in the Agency a Deputy Administrator of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(d) There shall be in the Agency not to exceed five Assistant Administrators of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate. Each Assistant Administrator shall perform such functions as the Administrator shall from time to time assign or delegate. [As amended Pub. L. 98-80, §2(a)(2), (b)(2), (c)(2)(C), Aug. 23, 1983, 97 Stat. 485, 486.]

#### **SEC. 2. TRANSFERS TO ENVIRONMENTAL PROTECTION AGENCY**

(a) There are hereby transferred to the Administrator:

(1) All functions vested by law in the Secretary of the Interior and the Department of the Interior which are administered through the Federal Water Quality Administration, all functions which were transferred to the Secretary of the Interior by Reorganization Plan No. 2 of 1966 (80 Stat. 1608), and all functions vested in the Secretary of the Interior or the Department of the Interior by the Federal Water Pollution Control Act or by provisions of law amendatory or supplementary thereof [see 33 U.S.C. 1251 et seq.].

(2)(i) The functions vested in the Secretary of the Interior by the Act of August 1, 1958, 72 Stat. 479, 16 U.S.C. 742d-1 (being an Act relating to studies on the effects of insecticides, herbicides, fungicides, and pesticides upon the fish and wildlife resources of the United States), and (ii) the functions vested by law in the Secretary of the Interior and the Department of the Interior which are administered by the Gulf Breeze Biological Laboratory of the Bureau of Commercial Fisheries at Gulf Breeze, Florida.

(3) The functions vested by law in the Secretary of Health, Education, and Welfare or in the Department of Health, Education, and Welfare which are administered through the Environmental Health Service, including the functions exercised by the following components thereof:

(i) The National Air Pollution Control Administration,

(ii) The Environmental Control Administration:

(A) Bureau of Solid Waste Management,

(B) Bureau of Water Hygiene,

(C) Bureau of Radiological Health,

except that functions carried out by the following components of the Environmental Control Administration of the Environmental Health Service are not transferred: (i) Bureau of Community Environmental Management, (ii) Bureau of Occupational Safety and Health, and (iii) Bureau of Radiological Health, insofar as the functions carried out by the latter Bureau pertain to (A) regulation of radiation from consumer products, including electronic product radiation, (B) radiation as used in the healing arts, (C) occupational exposures to radiation, and (D) research, technical assistance, and training related to clauses (A), (B), and (C).

(4) The functions vested in the Secretary of Health, Education, and Welfare of establishing tolerances for pesticide chemicals under the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. 346, 346a, and 348, together with authority, in connection with the functions transferred, (i) to monitor compliance with the tolerances and the effectiveness of surveillance and enforcement, and (ii) to provide technical assistance to the States and conduct research under the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 301 et seq.], and the Public Health Service Act, as amended [42 U.S.C. 201 et seq.].

(5) So much of the functions of the Council on Environmental Quality under section 204(5) of the National Environmental Policy Act of 1969 (Public Law 91-190, approved January 1, 1970, 83 Stat. 855) [42 U.S.C. 4344(5)], as pertains to ecological systems.

(6) The functions of the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], administered through its Division of Radiation Protection Standards, to the extent that such functions of the Commission consist of establishing generally applicable environmental standards for the protection of the general environment from radioactive material. As used herein, standards mean limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radio-active material.

(7) All functions of the Federal Radiation Council (42 U.S.C. 2021(h)).

(8)(i) The functions of the Secretary of Agriculture and the Department of Agriculture under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135-135k) [7 U.S.C. 136 et seq.], (ii) the functions of the Secretary of Agriculture and the Department of Agriculture under section 408(l) of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 346a(l)), and (iii) the functions vested by law in the Secretary of Agriculture and the Department of Agriculture which are administered through the Environmental Quality Branch of the Plant Protection Division of the Agricultural Research Service.

(9) So much of the functions of the transferor officers and agencies referred to in or affected by the foregoing provisions of this section as is incidental to or necessary for the performance by or under the Administrator of the functions transferred by those provisions or relates primarily to those functions. The transfers to the Administrator made by this section shall be deemed to include the transfer of (1) authority, provided by law, to prescribe regulations relating primarily to the transferred functions, and (2) the functions vested in the Secretary of the Interior and the Secretary of Health, Education, and Welfare by section 169(d)(1)(B) and (3) of the Internal Revenue Code of 1954 (as enacted by section 704 of the Tax Reform Act of 1969, 83 Stat.

668); but shall be deemed to exclude the transfer of the functions of the Bureau of Reclamation under section 3(b)(1) of the Water Pollution Control Act (33 U.S.C. [former] 466a(b)(1)).

(b) There are hereby transferred to the Agency:

(1) From the Department of the Interior, (i) the Water Pollution Control Advisory Board (33 U.S.C. [former] 466f) [see 33 U.S.C. 1363], together with its functions, and (ii) the hearing boards provided for in sections 10(c)(4) and 10(f) of the Federal Water Pollution Control Act, as amended (33 U.S.C. [former] 466g(c)(4); 466g(f)). The functions of the Secretary of the Interior with respect to being or designating the Chairman of the Water Pollution Control Advisory Board are hereby transferred to the Administrator.

(2) From the Department of Health, Education, and Welfare, the Air Quality Advisory Board (42 U.S.C. 1857e) [42 U.S.C. 7417], together with its functions. The functions of the Secretary of Health, Education, and Welfare with respect to being a member and the Chairman of that Board are hereby transferred to the Administrator.

### **SEC. 3. PERFORMANCE OF TRANSFERRED FUNCTIONS**

The Administrator may from time to time make such provisions as he shall deem appropriate authorizing the performance of any of the functions transferred to him by the provisions of this reorganization plan by any other officer, or by any organizational entity or employee, of the Agency.

### **SEC. 4. INCIDENTAL TRANSFERS**

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available or to be made available in connection with the functions transferred to the Administrator or the Agency by this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred to the Agency at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of Office of Management and Budget shall deem to be necessary in order to effectuate the transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

### **SEC. 5. INTERIM OFFICERS**

(a) The President may authorize any person who immediately prior to the effective date of this reorganization plan held a position in the executive branch of the Government to act as Administrator until the office of Administrator is for the first time filled pursuant to the provisions of this reorganization plan or by recess appointment, as the case may be.

(b) The President may similarly authorize any such person to act as Deputy Administrator, authorize any such person to act as Assistant Administrator, and authorize any such person to act as the head of any principal constituent organizational entity of the Administration.

(c) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect of which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

### **SEC. 6. ABOLITIONS**

(a) Subject to the provisions of this reorganization plan, the following, exclusive of any functions, are hereby abolished:



(1) The Federal Water Quality Administration in the Department of the Interior (33 U.S.C. [former] 466-1).

(2) The Federal Radiation Council (73 Stat. 690; 42 U.S.C. 2021(h)).

(b) Such provisions as may be necessary with respect to terminating any outstanding affairs shall be made by the Secretary of the Interior in the case of the Federal Water Quality Administration and by the Administrator of General Services in the case of the Federal Radiation Council.

#### **SEC. 7. EFFECTIVE DATE**

The provisions of this reorganization plan shall take effect sixty days after the date they would take effect under 5 U.S.C. 906(a) in the absence of this section.

#### **MESSAGE OF THE PRESIDENT**

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 3 of 1970, prepared in accordance with chapter 9 of title 5 of the United States Code and providing for an Environmental Protection Agency. My reasons for transmitting this plan are stated in a more extended accompanying message.

After investigation, I have found and hereby declare that each reorganization included in Reorganization Plan No. 3 of 1970 is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code. In particular, the plan is responsive to section 901(a)(1), "to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;" and section 901(a)(3), "to increase the efficiency of the operations of the Government to the fullest extent practicable."

The reorganizations provided for in the plan make necessary the appointment and compensation of new officers as specified in section 1 of the plan. The rates of compensation fixed for these officers are comparable to those fixed for other officers in the executive branch who have similar responsibilities.

Section 907 of title 5 of the United States Code will operate to preserve administrative proceedings, including any public hearing proceedings, related to the transferred functions, which are pending immediately prior to the taking effect of the reorganization plan.

The reorganization plan should result in more efficient operation of the Government. It is not practical, however, to itemize or aggregate the exact expenditure reductions which will result from this action.

RICHARD NIXON.

The White House, July 9, 1970.

#### **MESSAGE OF THE PRESIDENT**

To the Congress of the United States:

As concern with the condition of our physical environment has intensified, it has become increasingly clear that we need to know more about the total environment—land, water and air. It also has become increasingly clear that only by reorganizing our Federal efforts can we develop that knowledge, and effectively ensure the protection, development and enhancement of the total environment itself.

The Government's environmentally-related activities have grown up piecemeal over the years. The time has come to organize them rationally and systematically. As a major step in this direction, I am transmitting today two reorganization plans: one to establish an Environmental Protection Agency, and one to establish, within the Department of Commerce, a National Oceanic and Atmospheric Administration.

### **ENVIRONMENTAL PROTECTION AGENCY (EPA)**

Our national government today is not structured to make a coordinated attack on the pollutants which debase the air we breathe, the water we drink, and the land that grows our food. Indeed, the present governmental structure for dealing with environmental pollution often defies effective and concerted action.

Despite its complexity, for pollution control purposes the environment must be perceived as a single, interrelated system. Present assignments of departmental responsibilities do not reflect this interrelatedness.

Many agency missions, for example, are designed primarily along media lines—air, water, and land. Yet the sources of air, water, and land pollution are interrelated and often interchangeable. A single source may pollute the air with smoke and chemicals, the land with solid wastes, and a river or lake with chemical and other wastes. Control of the air pollution may produce more solid wastes, which then pollute the land or water. Control of the water-polluting effluent may convert it into solid wastes, which must be disposed of on land.

Similarly, some pollutants—chemicals, radiation, pesticides—appear in all media. Successful control of them at present requires the coordinated efforts of a variety of separate agencies and departments. The results are not always successful.

A far more effective approach to pollution control would:

- identify pollutants.
- trace them through the entire ecological chain, observing and recording changes in form as they occur.
- Determine the total exposure of man his environment.
- Examine interactions among forms of pollution.
- Identify where in the ecological chain interdiction would be most appropriate.

In organizational terms, this requires pulling together into one agency a variety of research, monitoring, standard-setting and enforcement activities now scattered through several departments and agencies. It also requires that the new agency include sufficient support elements—in research and in aids to State and local anti-pollution programs, for example—to give it the needed strength and potential for carrying out its mission. The new agency would also, of course, draw upon the results of research conducted by other agencies.

### **COMPONENTS OF THE EPA**

Under the terms of Reorganization Plan No. 3, the following would be moved to the new Environmental Protection Agency:

- The functions carried out by the Federal Water Quality Administration (from the Department of the Interior).
- Functions with respect to pesticides studies now vested in the Department of the Interior.
- The functions carried out by the National Air Pollution Control Administration (from the Department of Health, Education, and Welfare).
- The functions carried out by the Bureau of Solid Waste Management and the Bureau of Water Hygiene, and portions of the functions carried out by the Bureau of Radiological Health of

the Environmental Control Administration (from the Department of Health, Education, and Welfare).

—Certain functions with respect to pesticides carried out by the Food and Drug Administration (from the Department of Health, Education, and Welfare).

—Authority to perform studies relating to ecological systems now vested in the Council on Environmental Quality.

—Certain functions respecting radiation criteria and standards now vested in the Atomic Energy Commission and the Federal Radiation Council.

—Functions respecting pesticides registration and related activities now carried out by the Agricultural Research Service (from the Department of Agriculture).

With its broad mandate, EPA would also develop competence in areas of environmental protection that have not previously been given enough attention, such, for example, as the problem of noise, and it would provide an organization to which new programs in these areas could be added.

In brief, these are the principal functions to be transferred:

Federal Water Quality Administration.—Charged with the control of pollutants which impair water quality, it is broadly concerned with the impact of degraded water quality. It performs a wide variety of functions, including research, standard-setting and enforcement, and provides construction grants and technical assistance.

Certain pesticides research authority from the Department of the Interior.—Authority for research on the effects of pesticides on fish and wildlife would be provided to the EPA through transfer of the specialized research authority of the pesticides act enacted in 1958. Interior would retain its responsibility to do research on all factors affecting fish and wildlife. Under this provision, only one laboratory would be transferred to the EPA—the Gulf Breeze Biological Laboratory of the Bureau of Commercial Fisheries. The EPA would work closely with the fish and wildlife laboratories remaining with the Bureau of Sport Fisheries and Wildlife.

National Air Pollution Control Administration.—As the principal Federal agency concerned with air pollution, it conducts research on the effects of air pollution, operates a monitoring network, and promulgates criteria which serve as the basis for setting air quality standards. Its regulatory functions are similar to those of the Federal Water Quality Administration. NAPCA is responsible for administering the Clean Air Act, which involves designating air quality regions, approving State standards and providing financial and technical assistance to State Control agencies to enable them to comply with the Act's provisions. It also sets and enforces Federal automotive emission standards.

Elements of the Environmental Control Administration.—ECA is the focal point within HEW for evaluation and control of a broad range of environmental health problems, including water quality, solid wastes, and radiation. Programs in the ECA involve research, development of criteria and standards, and the administration of planning and demonstration grants. From the ECA, the activities of the Bureaus of Water Hygiene and Solid Waste Management and portions of the activities of the Bureau of Radiological Health would be transferred. Other functions of the ECA including those related to the regulation of radiation from consumer products and occupational safety and health would remain in HEW.

Pesticides research and standard-setting programs of the Food and Drug Administration.—FDA's pesticides program consists of setting and enforcing standards which limit pesticide residues in food. EPA would have the authority to set pesticide standards and to monitor compliance with them, as well as to conduct related research. However, as an integral part of its

food protection activities, FDA would retain its authority to remove from the market food with excess pesticide residues.

General ecological research from the Council on Environmental Quality.—This authority to perform studies and research relating to ecological systems would be in addition to EPA's other specific research authorities, and it would help EPA to measure the impact of pollutants. The Council on Environmental Quality would retain its authority to conduct studies and research relating to environmental quality.

Environmental radiation standards programs.—The Atomic Energy Commission is now responsible for establishing environmental radiation standards and emission limits for radioactivity. Those standards have been based largely on broad guidelines recommended by the Federal Radiation Council. The Atomic Energy Commission's authority to set standards for the protection of the general environment from radioactive material would be transferred to the Environmental Protection Agency. The functions of the Federal Radiation Council would also be transferred. AEC would retain responsibility for the implementation and enforcement of radiation standards through its licensing authority.

Pesticides registration program of the Agricultural Research Service.—The Department of Agriculture is currently responsible for several distinct functions related to pesticides use. It conducts research on the efficacy of various pesticides as related to other pest control methods and on the effects of pesticides on non-target plants, livestock, and poultry. It registers pesticides, monitors their persistence and carries out an educational program on pesticide use through the extension service. It conducts extensive pest control programs which utilize pesticides.

By transferring the Department of Agriculture's pesticides registration and monitoring function to the EPA and merging it with the pesticides programs being transferred from HEW and Interior, the new agency would be given a broad capability for control over the introduction of pesticides into the environment.

The Department of Agriculture would continue to conduct research on the effectiveness of pesticides. The Department would furnish this information to the EPA, which would have the responsibility for actually licensing pesticides for use after considering environmental and health effects. Thus the new agency would be able to make use of the expertise of the Department.

#### **ADVANTAGES OF REORGANIZATION**

This reorganization would permit response to environmental problems in a manner beyond the previous capability of our pollution control programs. The EPA would have the capacity to do research on important pollutants irrespective of the media in which they appear, and on the impact of these pollutants on the total environment. Both by itself and together with other agencies, the EPA would monitor the condition of the environment—biological as well as physical. With these data, the EPA would be able to establish quantitative "environmental baselines"—critical if we are to measure adequately the success or failure of our pollution abatement efforts.

As no disjointed array of separate programs can, the EPA would be able—in concert with the States—to set and enforce standards for air and water quality and for individual pollutants. This consolidation of pollution control authorities would help assure that we do not create new environmental problems in the process of controlling existing ones. Industries seeking to minimize the adverse impact of their activities on the environment would be assured of consistent standards covering the full range of their waste disposal problems. As the States

develop and expand their own pollution control programs, they would be able to look to one agency to support their efforts with financial and technical assistance and training.

In proposing that the Environmental Protection Agency be set up as a separate new agency, I am making an exception to one of my own principles: that, as a matter of effective and orderly administration, additional new independent agencies normally should not be created. In this case, however, the arguments against placing environmental protection activities under the jurisdiction of one or another of the existing departments and agencies are compelling.

In the first place, almost every part of government is concerned with the environment in some way, and affects it in some way. Yet each department also has its own primary mission—such as resource development, transportation, health, defense, urban growth or agriculture—which necessarily affects its own view of environmental questions.

In the second place, if the critical standard-setting functions were centralized within any one existing department, it would require that department constantly to make decisions affecting other departments—in which, whether fairly or unfairly, its own objectivity as an impartial arbiter could be called into question.

Because environmental protection cuts across so many jurisdictions, and because arresting environmental deterioration is of great importance to the quality of life in our country and the world, I believe that in this case a strong, independent agency is needed. That agency would, of course, work closely with and draw upon the expertise and assistance of other agencies having experience in the environmental area.

#### **ROLES AND FUNCTIONS OF EPA**

The principal roles and functions of the EPA would include:

—The establishment and enforcement of environmental protection standards consistent with national environmental goals.

—The conduct of research on the adverse effects of pollution and on methods and equipment for controlling it, the gathering of information on pollution, and the use of this information in strengthening environmental protection programs and recommending policy changes.

—Assisting others, through grants, technical assistance and other means in arresting pollution of the environment.

—Assisting the Council on Environmental Quality in developing and recommending to the President new policies for the protection of the environment.

One natural question concerns the relationship between the EPA and the Council on Environmental Quality, recently established by Act of Congress.

It is my intention and expectation that the two will work in close harmony, reinforcing each other's mission. Essentially, the Council is a top-level advisory group (which might be compared with the Council of Economic Advisers), while the EPA would be an operating, "line" organization. The Council will continue to be a part of the Executive Office of the President and will perform its overall coordinating and advisory roles with respect to all Federal programs related to environmental quality.

The Council, then, is concerned with all aspects of environmental quality—wildlife preservation, parklands, land use, and population growth, as well as pollution. The EPA would be charged with protecting the environment by abating pollution. In short, the Council focuses on what our broad policies in the environment field should be; the EPA would focus on setting and enforcing pollution control standards. The two are not competing, but complementary—and

taken together, they should give us, for the first time, the means to mount an effectively coordinated campaign against environmental degradation in all of its many forms.

### **NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

The oceans and the atmosphere are interacting parts of the total environmental system upon which we depend not only for the quality of our lives, but for life itself.

We face immediate and compelling needs for better protection of life and property from natural hazards, and for a better understanding of the total environment—and understanding which will enable us more effectively to monitor and predict its actions, and ultimately, perhaps to exercise some degree of control over them.

We also face a compelling need for exploration and development leading to the intelligent use of our marine resources. The global oceans, which constitute nearly three-fourths of the surface of our planet, are today the least-understood, the least-developed, and the least-protected part of our earth. Food from the oceans will increasingly be a key element in the world's fight against hunger. The mineral resources of the ocean beds and of the oceans themselves, are being increasingly tapped to meet the growing world demand. We must understand the nature of these resources, and assure their development without either contaminating the marine environment or upsetting its balance.

Establishment of the National Oceanic and Atmospheric Administration—NOAA—within the Department of Commerce would enable us to approach these tasks in a coordinated way. By employing a unified approach to the problems of the oceans and atmosphere, we can increase our knowledge and expand our opportunities not only in those areas, but in the third major component of our environment, the solid earth, as well.

Scattered through various Federal departments and agencies, we already have the scientific, technological, and administrative resources to make an effective, unified approach possible. What we need is to bring them together. Establishment of NOAA would do so.

By far the largest of the components being merged would be the Commerce Department's Environmental Science Services Administration (ESSA), with some 10,000 employees (70 percent of NOAA's total personnel strength) and estimated Fiscal 1970 expenditures of almost \$200 million. Placing NOAA within the Department of Commerce therefore entails the least dislocation, while also placing it within a Department which has traditionally been a center for service activities in the scientific and technological area.

### **COMPONENTS OF NOAA**

Under terms of Reorganization Plan No. 4, the programs of the following organizations would be moved into NOAA:

- The Environmental Science Services Administration (from within the Department of Commerce).
- Elements of the Bureau of Commercial Fisheries (from the Department of the Interior).
- The marine sport fish program of the Bureau of Sport Fisheries and Wildlife (from the Department of the Interior).
- The Marine Minerals Technology Center of the Bureau of Mines (from the Department of the Interior).
- The Office of Sea Grant Programs (from the National Science Foundation).
- Elements of the United States Lake Survey (from the Department of the Army).

In addition, by executive action, the programs of the following organizations would be transferred to NOAA:

- The National Oceanographic Data Center (from the Department of the Navy).
  - The National Oceanographic Instrumentation Center (from the Department of the Navy).
  - The National Data Buoy Project (from the Department of Transportation).
- In brief, these are the principal functions of the programs and agencies to be combined:

### **THE ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION**

(ESSA) comprises the following components:

- The Weather Bureau (weather, marine, river and flood forecasting and warning).
- The Coast and Geodetic Survey (earth and marine description, mapping and charting).
- The Environmental Data Service (storage and retrieval of environmental data).
- The National Environmental Satellite Center (observation of the global environment from earth-orbiting satellites).
- The ESSA Research Laboratories (research on physical environmental problems).

ESSA's activities include observing and predicting the state of the oceans, the state of the lower and upper atmosphere, and the size and shape of the earth. It maintains the nation's warning systems for such natural hazards as hurricanes, tornadoes, floods, earthquakes and seismic sea waves. It provides information for national defense, agriculture, transportation and industry.

ESSA monitors atmospheric, oceanic and geophysical phenomena on a global basis, through an unparalleled complex of air, ocean, earth and space facilities. It also prepares aeronautical and marine maps and charts.

Bureau of Commercial Fisheries and marine sport fish activities.—Those fishery activities of the Department of the Interior's U.S. Fish and Wildlife Service which are ocean related and those which are directed toward commercial fishing would be transferred. The Fish and Wildlife Service's Bureau of Commercial Fisheries has the dual function of strengthening the fishing industry and promoting conservation of fishery stocks. It conducts research on important marine species and on fundamental oceanography, and operates a fleet of oceanographic vessels and a number of laboratories. Most of its activities would be transferred. From the Fish and Wildlife Service's Bureau of Sport Fisheries and Wildlife, the marine sport fishing program would be transferred. This involves five supporting laboratories and three ships engaged in activities to enhance marine sport fishing opportunities.

The Marine Minerals Technology Center is concerned with the development of marine mining technology.

Office of Sea Grant Programs.—The Sea Grant Program was authorized in 1966 to permit the Federal Government to assist the academic and industrial communities in developing marine resources and technology. It aims at strengthening education and training of marine specialists, supporting applied research in the recovery and use of marine resources, and developing extension and advisory services. The Office carries out these objectives by making grants to selected academic institutions.

The U.S. Lake Survey has two primary missions. It prepares and publishes navigation charts of the Great Lakes and tributary waters and conducts research on a variety of hydraulic and hydrologic phenomena of the Great Lakes' waters. Its activities are very similar to those conducted along the Atlantic and Pacific coasts by ESSA's Coast and Geodetic Survey.

The National Oceanographic Data Center is responsible for the collection and dissemination of oceanographic data accumulated by all Federal agencies.

The National Oceanographic Instrumentation Center provides a central Federal service for the calibration and testing of oceanographic instruments.

The National Data Buoy Development Project was established to determine the feasibility of deploying a system of automatic ocean buoys to obtain oceanic and atmospheric data.

#### **ROLE OF NOAA**

Drawing these activities together into a single agency would make possible a balanced Federal program to improve our understanding of the resources of the sea, and permit their development and use while guarding against the sort of thoughtless exploitation that in the past laid waste to so many of our precious natural assets. It would make possible a consolidated program for achieving a more comprehensive understanding of oceanic and atmospheric phenomena, which so greatly affect our lives and activities. It would facilitate the cooperation between public and private interests that can best serve the interests of all.

I expect that NOAA would exercise leadership in developing a national oceanic and atmospheric program of research and development. It would coordinate its own scientific and technical resources with the technical and operational capabilities of other government agencies and private institutions. As important, NOAA would continue to provide those services to other agencies of government, industry and private individuals which have become essential to the efficient operation of our transportation systems, our agriculture and our national security. I expect it to maintain continuing and close liaison with the new Environmental Protection Agency and the Council on Environmental Quality as part of an effort to ensure that environmental questions are dealt with in their totality and they benefit from the full range of the government's technical and human resources.

Authorities who have studied this matter, including the Commission on Marine Science, Engineering and Resources, strongly recommended the creation of a National Advisory Committee for the Oceans. I agree. Consequently, I will request, upon approval of the plan, that the Secretary of Commerce establish a National Advisory Committee for the Oceans and the Atmosphere to advise him on the progress of governmental and private programs in achieving the nation's oceanic and atmospheric objectives.

#### **AN ON-GOING PROCESS**

The reorganizations which I am here proposing afford both the Congress and the Executive Branch an opportunity to re-evaluate the adequacy of existing program authorities involved in these consolidations. As these two new organizations come into being, we may well find that supplementary legislation to perfect their authorities will be necessary. I look forward to working with the Congress in this task.

In formulating these reorganization plans, I have been greatly aided by the work of the President's Advisory Council on Executive Organization (the Ash Council), the Commission on Marine Science, Engineering and Resources (the Stratton Commission, appointed by President Johnson), my special task force on oceanography headed by Dr. James Wakelin, and by the information developed during both House and Senate hearings on proposed NOAA legislation.

Many of those who have advised me have proposed additional reorganizations, and it may well be that in the future I shall recommend further changes. For the present, however, I think the two reorganizations transmitted today represent a sound and significant beginning. I also think that in practical terms, in this sensitive and rapidly developing area, it is better to proceed a step at a time—and thus to be sure that we are not caught up in a form of organizational indigestion from trying to rearrange too much at once. As we see how these changes work out,



we will gain a better understanding of what further changes—in addition to these—might be desirable.

Ultimately, our objective should be to insure that the nation's environmental and resource protection activities are so organized as to maximize both the effective coordination of all and the effective functioning of each.

The Congress, the Administration and the public all share a profound commitment to the rescue of our natural environment, and the preservation of the Earth as a place both habitable by and hospitable to man. With its acceptance of these reorganization plans, the Congress will help us fulfill that commitment.

RICHARD NIXON.

The White House, July 9, 1970.

**EX. ORD. NO. 11472. CABINET COMMITTEE ON THE ENVIRONMENT AND CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY**

Ex. Ord. No. 11472, May 29, 1969, 34 F.R. 8693, as amended by Ex. Ord. No. 11514, Mar. 5, 1970, 35 F.R. 4247; Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, provided:

By virtue of the authority vested in me as President of the United States, it is ordered as follows:

**PART I—CABINET COMMITTEE ON THE ENVIRONMENT**

Section 101. *Establishment of the Cabinet Committee.* (a) There is hereby established the Cabinet Committee on the Environment (hereinafter referred to as "the Cabinet Committee").

(b) The President of the United States shall preside over meetings of the Cabinet Committee. The Vice President shall preside in the absence of the President.

(c) The Cabinet Committee shall be composed of the following members:

The Vice President of the United States  
Secretary of Agriculture  
Secretary of Commerce  
Secretary of Health, Education, and Welfare  
Secretary of Housing and Urban Development  
Secretary of the Interior  
Secretary of Transportation

and such other heads of departments and agencies and others as the President may from time to time direct.

(d) Each member of the Cabinet Committee may designate an alternate, who shall serve as a member of the Cabinet Committee whenever the regular member is unable to attend any meeting of the Cabinet Committee.

(e) When matters which affect the interest of Federal agencies the heads of which are not members of the Cabinet Committee are to be considered by the Cabinet Committee, the

President or his representative may invite such agency heads or their alternates to participate in the deliberations of the Cabinet Committee.

(f) The Director of the Bureau of the Budget [now the Director of the Office of Management and Budget], the Director of the Office of Science and Technology, the Chairman of the Council of Economic Advisers, and the Executive Secretary of the Council for Urban Affairs or their representatives may participate in the deliberations of the Cabinet Committee on the Environment as observers.

(g) The Chairman of the Council on Environmental Quality (established by Public Law 91–190) [this chapter] shall assist the President in directing the affairs of the Cabinet Committee.

Sec. 102. *Functions of the Cabinet Committee.* (a) The Cabinet Committee shall advise and assist the President with respect to environmental quality matters and shall perform such other related duties as the President may from time to time prescribe. In addition thereto, the Cabinet Committee is directed to:

(1) Recommend measures to ensure that Federal policies and programs, including those for development and conservation of natural resources, take adequate account of environmental effects.

(2) Review the adequacy of existing systems for monitoring and predicting environmental changes so as to achieve effective coverage and efficient use of facilities and other resources.

(3) Foster cooperation between the Federal Government, State and local governments, and private organizations in environmental programs.

(4) Seek advancement of scientific knowledge of changes in the environment and encourage the development of technology to prevent or minimize adverse effects that endanger man's health and well-being.

(5) Stimulate public and private participation in programs and activities to protect against pollution of the Nation's air, water, and land and its living resources.

(6) Encourage timely public disclosure by all levels of government and by private parties of plans that would affect the quality of environment.

(7) Assure assessment of new and changing technologies for their potential effects on the environment.

(8) Facilitate coordination among departments and agencies of the Federal Government in protecting and improving the environment.

(b) The Cabinet Committee shall review plans and actions of Federal agencies affecting outdoor recreation and natural beauty. The Cabinet Committee may conduct studies and make recommendations to the President on matters of policy in the fields of outdoor recreation and natural beauty. In carrying out the foregoing provisions of this subsection, the Cabinet Committee shall, as far as may be practical, advise Federal agencies with respect to the effect of their respective plans and programs on recreation and natural beauty, and may suggest to such agencies ways to accomplish the purposes of this order. For the purposes of this order, plans and programs may include, but are not limited to, those for or affecting: (1) Development, restoration, and preservation of the beauty of the countryside, urban and suburban areas, water resources, wild rivers, scenic roads, parkways and highways, (2) the protection and appropriate management of scenic or primitive areas, natural wonders, historic sites, and recreation areas, (3) the management of Federal land and water resources, including fish and wildlife, to enhance

natural beauty and recreational opportunities consistent with other essential uses, (4) cooperation with the States and their local subdivisions and private organizations and individuals in areas of mutual interest, (5) interstate arrangements, including Federal participation where authorized and necessary, and (6) leadership in a nationwide recreation and beautification effort.

Sec. 103. *Coordination.* The Secretary of the Interior may make available to the Cabinet Committee for coordination of outdoor recreation the authorities and resources available to him under the Act of May 28, 1963, 77 Stat. 49 [see 54 U.S.C. 200101], to the extent permitted by law, he may make such authorities and resources available to the Cabinet Committee also for promoting such coordination of other matters assigned to the Cabinet Committee by this order.

Sec. 104. *Assistance for the Cabinet Committee.* In compliance with provisions of applicable law, and as necessary to serve the purposes of this order, (1) the Council on Environmental Quality (established by Public Law 91-190) [this chapter] shall provide or arrange for necessary administrative and staff services, support, and facilities for the Cabinet Committee, and (2) each department and agency which has membership on the Cabinet Committee under Section 101(c) hereof shall furnish the Cabinet Committee such information and other assistance as may be available.

## **PART II—CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY**

[Revoked. Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839.]

## **PART III—GENERAL PROVISIONS**

Sec. 301. *Construction.* Nothing in this order shall be construed as subjecting any department, establishment, or other instrumentality of the executive branch of the Federal Government or the head thereof, or any function vested by law in or assigned pursuant to law to any such agency or head, to the authority of any other such agency or head or as abrogating, modifying, or restricting any such function in any manner.

Sec. 302. *Prior bodies and orders.* The President's Council on Recreation and Natural Beauty and the Citizens' Advisory Committee on Recreation and Natural Beauty are hereby terminated and the following are revoked:

- (1) Executive Order No. 11278 of May 4, 1966.
- (2) Executive Order No. 11359A of June 29, 1967.
- (3) Executive Order No. 11402 of March 29, 1968.

## **TERMINATION OF CABINET COMMITTEE ON THE ENVIRONMENT**

The Cabinet Committee on the Environment was terminated and its functions transferred to the Domestic Council, see section 2(b) of Ex. Ord. No. 11541, eff. July 1, 1970, 35 F.R. 10737, set out as a note under section 501 of Title 31, Money and Finance.

The Domestic Council was abolished by Reorg. Plan No. 1 of 1977, §3, 42 F.R. 56101, 91 Stat. 1633, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President. Section 5D of Reorg. Plan No. 1 of 1977 transferred all functions vested in the Domestic Council to the President with power to delegate the performance of such transferred functions within the Executive Office of the President.

## **TERMINATION OF CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY**

For provisions relating to termination of Citizens' Advisory Committee on Environmental Quality see Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

**EX. ORD. NO. 11514. PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY**

Ex. Ord. No. 11514, Mar. 5, 1970, 35 F.R. 4247, as amended by Ex. Ord. No. 11991, May 24, 1977, 42 F.R. 26967, provided:

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law No. 91-190, approved January 1, 1970) [this chapter], it is ordered as follows:

Section 1. *Policy.* The Federal Government shall provide leadership in protecting and enhancing the quality of the Nation's environment to sustain and enrich human life. Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals. The Council on Environmental Quality, through the Chairman, shall advise and assist the President in leading this national effort.

Sec. 2. *Responsibilities of Federal agencies.* Consonant with Title I of the National Environmental Policy Act of 1969 [42 U.S.C. 4331 et seq.], hereafter referred to as the "Act", the heads of Federal agencies shall:

(a) Monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities. Heads of agencies shall consult with appropriate Federal, State and local agencies in carrying out their activities as they affect the quality of the environment.

(b) Develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Federal agencies shall also encourage State and local agencies to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment.

(c) Insure that information regarding existing or potential environmental problems and control methods developed as part of research, development, demonstration, test, or evaluation activities is made available to Federal agencies, States, counties, municipalities, institutions, and other entities, as appropriate.

(d) Review their agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the purposes and provisions of the Act. A report on this review and the corrective actions taken or planned, including such measures to be proposed to the President as may be necessary to bring their authority and policies into conformance with the intent, purposes, and procedures of the Act, shall be provided to the Council on Environmental Quality not later than September 1, 1970.

(e) Engage in exchange of data and research results, and cooperate with agencies of other governments to foster the purposes of the Act.

(f) Proceed, in coordination with other agencies, with actions required by section 102 of the Act [42 U.S.C. 4332].

(g) In carrying out their responsibilities under the Act and this Order, comply with the regulations issued by the Council except where such compliance would be inconsistent with statutory requirements.

*Sec. 3. Responsibilities of Council on Environmental Quality.* The Council on Environmental Quality shall:

(a) Evaluate existing and proposed policies and activities of the Federal Government directed to the control of pollution and the enhancement of the environment and to the accomplishment of other objectives which affect the quality of the environment. This shall include continuing review of procedures employed in the development and enforcement of Federal standards affecting environmental quality. Based upon such evaluations the Council shall, where appropriate, recommend to the President policies and programs to achieve more effective protection and enhancement of environmental quality and shall, where appropriate, seek resolution of significant environmental issues.

(b) Recommend to the President and to the agencies priorities among programs designed for the control of pollution and for enhancement of the environment.

(c) Determine the need for new policies and programs for dealing with environmental problems not being adequately addressed.

(d) Conduct, as it determines to be appropriate, public hearings or conferences on issues of environmental significance.

(e) Promote the development and use of indices and monitoring systems (1) to assess environmental conditions and trends, (2) to predict the environmental impact of proposed public and private actions, and (3) to determine the effectiveness of programs for protecting and enhancing environmental quality.

(f) Coordinate Federal programs related to environmental quality.

(g) Advise and assist the President and the agencies in achieving international cooperation for dealing with environmental problems, under the foreign policy guidance of the Secretary of State.

(h) Issue regulations to Federal agencies for the implementation of the procedural provisions of the Act (42 U.S.C. 4332(2)). Such regulations shall be developed after consultation with affected agencies and after such public hearings as may be appropriate. They will be designed to make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses. The Council shall include in its regulations procedures (1) for the early preparation of environmental impact statements, and (2) for the referral to the Council of conflicts between agencies concerning the implementation of the National Environmental Policy Act of 1969, as amended [this chapter], and Section 309 of

the Clean Air Act, as amended [42 U.S.C. 7609], for the Council's recommendation as to their prompt resolution.

(i) Issue such other instructions to agencies, and request such reports and other information from them, as may be required to carry out the Council's responsibilities under the Act.

(j) Assist the President in preparing the annual Environmental Quality Report provided for in section 201 of the Act [42 U.S.C. 4341].

(k) Foster investigations, studies, surveys, research, and analyses relating to (i) ecological systems and environmental quality, (ii) the impact of new and changing technologies thereon, and (iii) means of preventing or reducing adverse effects from such technologies.

Sec. 4. *Amendments of E.O. 11472.* Executive Order No. 11472 of May 29, 1969, including the heading thereof, is hereby amended:

(1) By substituting for the term "the Environmental Quality Council", wherever it occurs, the following: "the Cabinet Committee on the Environment".

(2) By substituting for the term "the Council", wherever it occurs, the following: "the Cabinet Committee".

(3) By inserting in subsection (f) of section 101, after "Budget,", the following: "the Director of the Office of Science and Technology,".

(4) By substituting for subsection (g) of section 101 the following:

"(g) The Chairman of the Council on Environmental Quality (established by Public Law 91–190) [this chapter] shall assist the President in directing the affairs of the Cabinet Committee."

(5) By deleting subsection (c) of section 102.

(6) By substituting for "the Office of Science and Technology", in section 104, the following: "the Council on Environmental Quality (established by Public Law 91–190) [this chapter]".

(7) By substituting for "(hereinafter referred to as the 'Committee')", in section 201, the following: "(hereinafter referred to as the 'Citizens' Committee')".

(8) By substituting for the term "the Committee", wherever it occurs, the following: "the Citizens' Committee".

#### **EX. ORD. NO. 11523. NATIONAL INDUSTRIAL POLLUTION CONTROL COUNCIL**

Ex. Ord. No. 11523, eff. Apr. 9, 1970, 35 F.R. 5993, provided:

By virtue of the authority vested in me as President of the United States, and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law 91–190, approved January 1, 1970) [this chapter], it is ordered as follows:

Section 1. *Establishment of the Council.* (a) There is hereby established the National Industrial Pollution Control Council (hereinafter referred to as "the Industrial Council") which shall be composed of a Chairman, a Vice-chairman, and other representatives of business and industry appointed by the Secretary of Commerce (hereinafter referred to as "the Secretary").

(b) The Secretary, with the concurrence of the Chairman, shall appoint an Executive Director of the Industrial Council.

*Sec. 2. Functions of the Industrial Council.* The Industrial Council shall advise the President and the Chairman of the Council on Environmental Quality, through the Secretary, on programs of industry relating to the quality of the environment. In particular, the Industrial Council may—

(1) Survey and evaluate the plans and actions of industry in the field of environmental quality.

(2) Identify and examine problems of the effects on the environment of industrial practices and the needs of industry for improvements in the quality of the environment, and recommend solutions to those problems.

(3) Provide liaison among members of the business and industrial community on environmental quality matters.

(4) Encourage the business and industrial community to improve the quality of the environment.

(5) Advise on plans and actions of Federal, State, and local agencies involving environmental quality policies affecting industry which are referred to it by the Secretary, or by the Chairman of the Council on Environmental Quality through the Secretary.

*Sec. 3. Subordinate Committees.* The Industrial Council may establish, with the concurrence of the Secretary, such subordinate committees as it may deem appropriate to assist in the performance of its functions. Each subordinate committee shall be headed by a chairman appointed by the Chairman of the Industrial Council with the concurrence of the Secretary.

*Sec. 4. Assistance for the Industrial Council.* In compliance with applicable law, and as necessary to serve the purposes of this order, the Secretary shall provide or arrange for administrative and staff services, support, and facilities for the Industrial Council and any of its subordinate committees.

*Sec. 5. Expenses.* Members of the Industrial Council or any of its subordinate committees shall receive no compensation from the United States by reason of their services hereunder, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently.

*Sec. 6. Regulations.* The provisions of Executive Order No. 11007 of February 26, 1962 (3 CFR 573) [see 5 U.S.C. 901 note] prescribing regulations for the formation and use of advisory committees, are hereby made applicable to the Industrial Council and each of its subordinate committees. The Secretary may exercise the discretionary powers set forth in that order.

*Sec. 7. Construction.* Nothing in this order shall be construed as subjecting any Federal agency, or any function vested by law in, or assigned pursuant to law to, any Federal agency to the authority of any other Federal agency or of the Industrial Council or of any of its subordinate committees, or as abrogating or restricting any such function in any manner.

RICHARD NIXON.

#### **EXECUTIVE ORDER NO. 11643**

Ex. Ord. No. 11643, eff. Feb. 8, 1972, 37 F.R. 2875, as amended by Ex. Ord. No. 11870, eff. July 18, 1975, 40 F.R. 30611; Ex. Ord. No. 11917, eff. May 28, 1976, 41 F.R. 22239, which related to environmental safeguards on activities for animal damage control on Federal lands, was revoked by Ex. Ord. No. 12342, Jan. 27, 1982, 47 F.R. 4223.

#### **EX. ORD. NO. 11644. USE OF OFF-ROAD VEHICLES ON PUBLIC LANDS**

Ex. Ord. No. 11644, Feb. 8, 1972, 37 F.R. 2877, as amended by Ex. Ord. No. 11989, May 24, 1977, 42 F.R. 26959; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

An estimated 5 million off-road recreational vehicles—motorcycles, minibikes, trail bikes, snowmobiles, dunebuggies, all-terrain vehicles, and others—are in use in the United States today, and their popularity continues to increase rapidly. The widespread use of such vehicles on the public lands—often for legitimate purposes but also in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity—has demonstrated the need for a unified Federal policy toward the use of such vehicles on the public lands.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), it is hereby ordered as follows:

Section 1. *Purpose.* It is the purpose of this order to establish policies and provide for procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.

Sec. 2. *Definitions.* As used in this order, the term:

(1) "public lands" means (A) all lands under the custody and control of the Secretary of the Interior and the Secretary of Agriculture, except Indian lands, (B) lands under the custody and control of the Tennessee Valley Authority that are situated in western Kentucky and Tennessee and are designated as "Land Between the Lakes," and (C) lands under the custody and control of the Secretary of Defense;

(2) "respective agency head" means the Secretary of the Interior, the Secretary of Defense, the Secretary of Agriculture, and the Board of Directors of the Tennessee Valley Authority, with respect to public lands under the custody and control of each;

(3) "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; except that such term excludes (A) any registered motorboat, (B) any fire, military, emergency or law enforcement vehicle when used for emergency purposes, and any combat or combat support vehicle when used for national defense purposes, and (C) any vehicle whose use is expressly authorized by the respective agency head under a permit, lease, license, or contract; and

(4) "official use" means use by an employee, agent, or designated representative of the Federal Government or one of its contractors in the course of his employment, agency, or representation.

Sec. 3. *Zones of Use.* (a) Each respective agency head shall develop and issue regulations and administrative instructions, within six months of the date of this order, to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted, and set a date by which such designation of all public lands shall be completed. Those regulations shall direct that the designation of such areas and trails will be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands. The regulations shall further require that the designation of such areas and trails shall be in accordance with the following—



(1) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.

(2) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats.

(3) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

(4) Areas and trails shall not be located in officially designated Wilderness Areas or Primitive Areas. Areas and trails shall be located in areas of the National Park system, Natural Areas, or National Wildlife Refuges and Game Ranges only if the respective agency head determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values.

(b) The respective agency head shall ensure adequate opportunity for public participation in the promulgation of such regulations and in the designation of areas and trails under this section.

(c) The limitations on off-road vehicle use imposed under this section shall not apply to official use.

*Sec. 4. Operating Conditions.* Each respective agency head shall develop and publish, within one year of the date of this order, regulations prescribing operating conditions for off-road vehicles on the public lands. These regulations shall be directed at protecting resource values, preserving public health, safety, and welfare, and minimizing use conflicts.

*Sec. 5. Public Information.* The respective agency head shall ensure that areas and trails where off-road vehicle use is permitted are well marked and shall provide for the publication and distribution of information, including maps, describing such areas and trails and explaining the conditions on vehicle use. He shall seek cooperation of relevant State agencies in the dissemination of this information.

*Sec. 6. Enforcement.* The respective agency head shall, where authorized by law, prescribe appropriate penalties for violation of regulations adopted pursuant to this order, and shall establish procedures for the enforcement of those regulations. To the extent permitted by law, he may enter into agreements with State or local governmental agencies for cooperative enforcement of laws and regulations relating to off-road vehicle use.

*Sec. 7. Consultation.* Before issuing the regulations or administrative instructions required by this order or designating areas or trails are required by this order and those regulations and administrative instructions, the Secretary of the Interior shall, as appropriate, consult with the Secretary of Energy and the Nuclear Regulatory Commission.

*Sec. 8. Monitoring of Effects and Review.* (a) The respective agency head shall monitor the effects of the use of off-road vehicles on lands under their jurisdictions. On the basis of the information gathered, they shall from time to time amend or rescind designation of areas or other actions taken pursuant to this order as necessary to further the policy of this order.

(b) The Council on Environmental Quality shall maintain a continuing review of the implementation of this order.

Sec. 9. *Special Protection of the Public Lands.* (a) Notwithstanding the provisions of Section 3 of this Order, the respective agency head shall, whenever he determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails of the public lands, immediately close such areas or trails to the type of off-road vehicle causing such effects, until such time as he determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrence.

(b) Each respective agency head is authorized to adopt the policy that portions of the public lands within his jurisdiction shall be closed to use by off-road vehicles except those areas or trails which are suitable and specifically designated as open to such use pursuant to Section 3 of this Order.

#### **EXECUTIVE ORDER No. 11987**

Ex. Ord. No. 11987, May 24, 1977, 42 F.R. 26949, which directed executive agencies, and encouraged States, local governments, and private citizens, to restrict the introduction of exotic species into the natural ecosystems on lands and waters under their control, and which directed executive agencies to restrict the exportation of native species for introduction of such species into ecosystems outside the United States where they do not naturally occur, unless such introduction or exportation was found not to have an adverse effect on natural ecosystems, was revoked by Ex. Ord. No. 13112, §6(b), Feb. 3, 1999, 64 F.R. 6186, set out below.

#### **EX. ORD. NO. 11988. FLOODPLAIN MANAGEMENT**

Ex. Ord. No. 11988, May 24, 1977, 42 F.R. 26951, as amended by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 13690, §2, Jan. 30, 2015, 80 F.R. 6425, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), and the Flood Disaster Protection Act of 1973 (Public Law 93–234, 87 Stat. 975) [see Short Title of 1973 Amendment note set out under 42 U.S.C. 4001], in order to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, it is hereby ordered as follows:

Section 1. Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

Sec. 2. In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of this Order, as follows, to the extent permitted by law:

(a)(1) Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain—for major Federal actions significantly affecting the quality of the human environment, the evaluation required below will be included in any statement prepared under

Section 102(2)(C) of the National Environmental Policy Act [42 U.S.C. 4332(2)(C)]. To determine whether the action is located in a floodplain, the agency shall use one of the approaches in Section 6(c) of this Order based on the best-available information and the Federal Emergency Management Agency's effective Flood Insurance Rate Map.

(2) If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. Where possible, an agency shall use natural systems, ecosystem processes, and nature-based approaches when developing alternatives for consideration. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires siting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

(3) For programs subject to the Office of Management and Budget Circular A-95, the agency shall send the notice, not to exceed three pages in length including a location map, to the state and areawide A-95 clearinghouses for the geographic areas affected. The notice shall include: (i) the reasons why the action is proposed to be located in a floodplain; (ii) a statement indicating whether the action conforms to applicable state or local floodplain protection standards and (iii) a list of the alternatives considered. Agencies shall endeavor to allow a brief comment period prior to taking any action.

(4) Each agency shall also provide opportunity for early public review of any plans or proposals for actions in floodplains, in accordance with Section 2(b) of Executive Order No. 11514, as amended [set out above], including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended [42 U.S.C. 4332(2)(C)].

(b) Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in a floodplain, whether the proposed action is in accord with this Order.

(c) Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Agencies shall include adequate provision for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits, loan or grants-in-aid programs that they administer. Agencies shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans or grants.

(d) As allowed by law, each agency shall issue or amend existing regulations and procedures within one year to comply with this Order. These procedures shall incorporate the Unified National Program for Floodplain Management of the Water Resources Council, and shall explain the means that the agency will employ to pursue the nonhazardous use of riverine, coastal and other floodplains in connection with the activities under its authority. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order. Agencies shall prepare their procedures in consultation with the Water Resources Council, the

Administrator of the Federal Emergency Management Agency, and the Council on Environmental Quality, and shall update such procedures as necessary.

Sec. 3. In addition to the requirements of Section 2, agencies with responsibilities for Federal real property and facilities shall take the following measures:

(a) The regulations and procedures established under Section 2(d) of this Order shall, at a minimum, require the construction of Federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program. The regulations and procedures must also be consistent with the Federal Flood Risk Management Standard (FFRMS). They shall deviate only to the extent that the standards of the Flood Insurance Program and FFRMS are demonstrably inappropriate for a given type of structure or facility.

(b) If, after compliance with the requirements of this Order, new construction of structures or facilities are to be located in a floodplain, accepted floodproofing and other flood protection measures shall be applied to new construction or rehabilitation. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the elevation of the floodplain as defined in Section 6(c) of this Order rather than filling in land.

(c) If property used by the general public has suffered flood damage or is located in an identified flood hazard area, the responsible agency shall provide on structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of and knowledge about flood hazards.

(d) When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the Federal agency shall (1) reference in the conveyance those uses that are restricted under identified Federal, State or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance.

Sec. 4. In addition to any responsibilities under this Order and Sections 102, 202, and 205 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a, 4106, and 4128), agencies which guarantee, approve, regulate, or insure any financial transaction which is related to an area located in an area subject to the base flood shall, prior to completing action on such transaction, inform any private parties participating in the transaction of the hazards of locating structures in the area subject to the base flood.

Sec. 5. The head of each agency shall submit a report to the Council on Environmental Quality and to the Water Resources Council on June 30, 1978, regarding the status of their procedures and the impact of this Order on the agency's operations. Thereafter, the Water Resources Council shall periodically evaluate agency procedures and their effectiveness.

Sec. 6. As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting floodplains.

(b) The term "base flood" shall mean that flood which has a one percent or greater chance of occurrence in any given year.

(c) The term "floodplain" shall mean the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands. The floodplain shall be established using one of the following approaches:

(1) Unless an exception is made under paragraph (2), the floodplain shall be:

(i) the elevation and flood hazard area that result from using a climate-informed science approach that uses the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science. This approach will also include an emphasis on whether the action is a critical action as one of the factors to be considered when conducting the analysis;

(ii) the elevation and flood hazard area that result from using the freeboard value, reached by adding an additional 2 feet to the base flood elevation for non-critical actions and by adding an additional 3 feet to the base flood elevation for critical actions;

(iii) the area subject to flooding by the 0.2 percent annual chance flood; or

(iv) the elevation and flood hazard area that result from using any other method identified in an update to the FFRMS.

(2) The head of an agency may except an agency action from paragraph (1) where it is in the interest of national security, where the agency action is an emergency action, where application to a Federal facility or structure is demonstrably inappropriate, or where the agency action is a mission-critical requirement related to a national security interest or an emergency action. When an agency action is excepted from paragraph (1) because it is in the interest of national security, it is an emergency action, or it is a mission-critical requirement related to a national security interest or an emergency action, the agency head shall rely on the area of land subject to the base flood.

(d) The term "critical action" shall mean any activity for which even a slight chance of flooding would be too great.

Sec. 7. Executive Order No. 11296 of August 10, 1966, is hereby revoked. All actions, procedures, and issuances taken under that Order and still in effect shall remain in effect until modified by appropriate authority under the terms of this Order.

Sec. 8. Nothing in this Order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 403 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 (42 U.S.C. 5170b and 5192).

Sec. 9. To the extent the provisions of Section 2(a) of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended [42 U.S.C. 4321].

#### **EX. ORD. NO. 11990. PROTECTION OF WETLANDS**

Ex. Ord. No. 11990, May 24, 1977, 42 F.R. 26961, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National

Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), in order to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative, it is hereby ordered as follows:

Section 1. (a) Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

(b) This Order does not apply to the issuance by Federal agencies of permits, licenses, or allocations to private parties for activities involving wetlands on non-Federal property.

Sec. 2. (a) In furtherance of Section 101(b)(3) of the National Environmental Policy Act of 1969 (42 U.S.C. 4331(b)(3)) to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may attain the widest range of beneficial uses of the environment without degradation and risk to health or safety, each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

(b) Each agency shall also provide opportunity for early public review of any plans or proposals for new construction in wetlands, in accordance with Section 2(b) of Executive Order No. 11514, as amended [set out above], including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended [42 U.S.C. 4332(2)(C)].

Sec. 3. Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in wetlands, whether the proposed action is in accord with this Order.

Sec. 4. When Federally-owned wetlands or portions of wetlands are proposed for lease, easement, right-of-way or disposal to non-Federal public or private parties, the Federal agency shall (a) reference in the conveyance those uses that are restricted under identified Federal, State or local wetlands regulations; and (b) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (c) withhold such properties from disposal.

Sec. 5. In carrying out the activities described in Section 1 of this Order, each agency shall consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are:

(a) public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion;

(b) maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and

(c) other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

Sec. 6. As allowed by law, agencies shall issue or amend their existing procedures in order to comply with this Order. To the extent possible, existing processes, such as those of the Council on Environmental Quality, shall be utilized to fulfill the requirements of this Order.

Sec. 7. As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting wetlands.

(b) The term "new construction" shall include draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after the effective date of this Order.

(c) The term "wetlands" means those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

Sec. 8. This Order does not apply to projects presently under construction, or to projects for which all of the funds have been appropriated through Fiscal Year 1977, or to projects and programs for which a draft or final environmental impact statement will be filed prior to October 1, 1977. The provisions of Section 2 of this Order shall be implemented by each agency not later than October 1, 1977.

Sec. 9. Nothing in this Order shall apply to assistance provided for emergency work, essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

Sec. 10. To the extent the provisions of Sections 2 and 5 of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended [42 U.S.C. 4321 et seq.].

#### **EX. ORD. NO. 12088. FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS**

Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, as amended by Ex. Ord. No. 12580, Jan. 23, 1987, 52 F.R. 2928; Ex. Ord. No. 13148, §901, Apr. 21, 2000, 65 F.R. 24604, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 22 of the Toxic Substances Control Act (15 U.S.C. 2621), Section 313 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1323), Section 1447 of the Public Health Service Act, as amended by the Safe Drinking Water Act [now Safe Drinking Water Act of 1974] (42 U.S.C. 300j-6), Section 118 of the Clean Air Act, as amended (42 U.S.C. 7418(b)), Section 4 of the Noise Control Act of 1972 (42 U.S.C. 4903), Section 6001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6961), and Section 301 of Title 3 of the

United States Code, and to ensure Federal compliance with applicable pollution control standards, it is hereby ordered as follows:

### **1-1. APPLICABILITY OF POLLUTION CONTROL STANDARDS**

1-101. The head of each Executive agency is responsible for ensuring that all necessary actions are taken for the prevention, control, and abatement of environmental pollution with respect to Federal facilities and activities under the control of the agency.

1-102. The head of each Executive agency is responsible for compliance with applicable pollution control standards, including those established pursuant to, but not limited to, the following:

- (a) Toxic Substances Control Act (15 U.S.C. 2601 et seq.).
- (b) Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.).
- (c) Public Health Service Act, as amended by the Safe Drinking Water Act [now Safe Drinking Water Act of 1974] (42 U.S.C. 300f et seq.).
- (d) Clean Air Act, as amended (42 U.S.C. 7401 et seq.).
- (e) Noise Control Act of 1972 (42 U.S.C. 4901 et seq.).
- (f) Solid Waste Disposal Act, as amended (42 U.S.C. 6901 et seq.).
- (g) Radiation guidance pursuant to Section 274(h) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(h); see also, the Radiation Protection Guidance to Federal Agencies for Diagnostic X Rays approved by the President on January 26, 1978 and published at page 4377 of the Federal Register on February 1, 1978).
- (h) Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401, 1402, 1411-1421, 1441-1444 and 16 U.S.C. 1431-1434) [16 U.S.C. 1431 et seq., 1447 et seq.; 33 U.S.C. 1401 et seq., 2801 et seq.].
- (i) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 et seq.).

1-103. "Applicable pollution control standards" means the same substantive, procedural, and other requirements that would apply to a private person.

### **1-2. AGENCY COORDINATION**

1-201. Each Executive agency shall cooperate with the Administrator of the Environmental Protection Agency, hereinafter referred to as the Administrator, and State, interstate, and local agencies in the prevention, control, and abatement of environmental pollution.

1-202. Each Executive agency shall consult with the Administrator and with State, interstate, and local agencies concerning the best techniques and methods available for the prevention, control, and abatement of environmental pollution.

### **1-3. TECHNICAL ADVICE AND OVERSIGHT**

1-301. The Administrator shall provide technical advice and assistance to Executive agencies in order to ensure their cost effective and timely compliance with applicable pollution control standards.

1-302. The administrator shall conduct such reviews and inspections as may be necessary to monitor compliance with applicable pollution control standards by Federal facilities and activities.



#### **1-4. POLLUTION CONTROL PLAN**

[Revoked by Ex. Ord. No. 13148, §901, Apr. 21, 2000, 65 F.R. 24604.]

#### **1-5. FUNDING**

1-501. The head of each Executive agency shall ensure that sufficient funds for compliance with applicable pollution control standards are requested in the agency budget.

1-502. The head of each Executive agency shall ensure that funds appropriated and apportioned for the prevention, control and abatement of environmental pollution are not used for any other purpose unless permitted by law and specifically approved by the Office of Management and Budget.

#### **1-6. COMPLIANCE WITH POLLUTION CONTROLS**

1-601. Whenever the Administrator or the appropriate State, interstate, or local agency notifies an Executive agency that it is in violation of an applicable pollution control standard (see Section 1-102 of this Order), the Executive agency shall promptly consult with the notifying agency and provide for its approval a plan to achieve and maintain compliance with the applicable pollution control standard. This plan shall include an implementation schedule for coming into compliance as soon as practicable.

1-602. The Administrator shall make every effort to resolve conflicts regarding such violation between Executive agencies and, on request of any party, such conflicts between an Executive agency and a State, interstate, or a local agency. If the Administrator cannot resolve a conflict, the Administrator shall request the Director of the Office of Management and Budget to resolve the conflict.

1-603. The Director of the Office of Management and Budget shall consider unresolved conflicts at the request of the Administrator. The Director shall seek the Administrator's technological judgment and determination with regard to the applicability of statutes and regulations.

1-604. These conflict resolution procedures are in addition to, not in lieu of, other procedures, including sanctions, for the enforcement of applicable pollution control standards.

1-605. Except as expressly provided by a Presidential exemption under this Order, nothing in this Order, nor any action or inaction under this Order, shall be construed to revise or modify any applicable pollution control standard.

#### **1-7. LIMITATION ON EXEMPTIONS**

1-701. Exemptions from applicable pollution control standards may only be granted under statutes cited in Section 1-102(a) through 1-102(f) if the President makes the required appropriate statutory determination: that such exemption is necessary (a) in the interest of national security, or (b) in the paramount interest of the United States.

1-702. The head of an Executive agency may, from time to time, recommend to the President through the Director of the Office of Management and Budget, that an activity or facility, or uses thereof, be exempt from an applicable pollution control standard.

1-703. The Administrator shall advise the President, through the Director of the Office of Management and Budget, whether he agrees or disagrees with a recommendation for exemption and his reasons therefor.

1-704. The Director of the Office of Management and Budget must advise the President within sixty days of receipt of the Administrator's views.

## **1-8. GENERAL PROVISIONS**

1-801. The head of each Executive agency that is responsible for the construction or operation of Federal facilities outside the United States shall ensure that such construction or operation complies with the environmental pollution control standards of general applicability in the host country or jurisdiction.

1-802. Nothing in this Order shall create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

1-803. Executive Order No. 11752 of December 17, 1973, is revoked.

### **EX. ORD. NO. 12114. ENVIRONMENTAL EFFECTS ABROAD OF MAJOR FEDERAL ACTIONS**

Ex. Ord. No. 12114, Jan. 4, 1979, 44 F.R. 1957, provided:

By virtue of the authority vested in me by the Constitution and the laws of the United States, and as President of the United States, in order to further environmental objectives consistent with the foreign policy and national security policy of the United States, it is ordered as follows:

#### **SECTION 1**

1-1. *Purpose and Scope.* The purpose of this Executive Order is to enable responsible officials of Federal agencies having ultimate responsibility for authorizing and approving actions encompassed by this Order to be informed of pertinent environmental considerations and to take such considerations into account, with other pertinent considerations of national policy, in making decisions regarding such actions. While based on independent authority, this Order furthers the purpose of the National Environmental Policy Act [42 U.S.C. 4321 et seq.] and the Marine Protection Research and Sanctuaries Act [16 U.S.C. 1431 et seq. and 33 U.S.C. 1401 et seq.] and the Deepwater Port Act [33 U.S.C. 1501 et seq.] consistent with the foreign policy and national security policy of the United States, and represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions.

#### **SECTION 2**

2-1. *Agency Procedures.* Every Federal agency taking major Federal actions encompassed hereby and not exempted herefrom having significant effects on the environment outside the geographical borders of the United States and its territories and possessions shall within eight months after the effective date of this Order have in effect procedures to implement this Order. Agencies shall consult with the Department of State and the Council on Environmental Quality concerning such procedures prior to placing them in effect.

2-2. *Information Exchange.* To assist in effectuating the foregoing purpose, the Department of State and the Council on Environmental Quality in collaboration with other interested Federal agencies and other nations shall conduct a program for exchange on a continuing basis of information concerning the environment. The objectives of this program shall be to provide information for use by decisionmakers, to heighten awareness of and interest in environmental concerns and, as appropriate, to facilitate environmental cooperation with foreign nations.

2-3. *Actions Included.* Agencies in their procedures under Section 2-1 shall establish procedures by which their officers having ultimate responsibility for authorizing and approving actions in one of the following categories encompassed by this Order, take into consideration in making decisions concerning such actions, a document described in Section 2-4(a):

(a) major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica);

(b) major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action;

(c) major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

(1) a product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk; or

(2) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

(d) major Federal actions outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection under this subsection by the President, or, in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State. Recommendations to the President under this subsection shall be accompanied by the views of the Council on Environmental Quality and the Secretary of State.

2–4. *Applicable Procedures.* (a) There are the following types of documents to be used in connection with actions described in Section 2–3:

(i) environmental impact statements (including generic, program and specific statements);

(ii) bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one [or more] more foreign nations, or by an international body or organization in which the United States is a member or participant; or

(iii) concise reviews of the environmental issues involved, including environmental assessments, summary environmental analyses or other appropriate documents.

(b) Agencies shall in their procedures provide for preparation of documents described in Section 2–4(a), with respect to actions described in Section 2–3, as follows:

(i) for effects described in Section 2–3(a), an environmental impact statement described in Section 2–4(a)(i);

(ii) for effects described in Section 2–3(b), a document described in Section 2–4(a)(ii) or (iii), as determined by the agency;

(iii) for effects described in Section 2–3(c), a document described in Section 2–4(a)(ii) or (iii), as determined by the agency;

(iv) for effects described in Section 2–3(d), a document described in Section 2–4(a)(i), (ii) or (iii), as determined by the agency.

Such procedures may provide that an agency need not prepare a new document when a document described in Section 2–4(a) already exists.

(c) Nothing in this Order shall serve to invalidate any existing regulations of any agency which have been adopted pursuant to court order or pursuant to judicial settlement of any case or to prevent any agency from providing in its procedures for measures in addition to those provided

for herein to further the purpose of the National Environmental Policy Act [43 U.S.C. 4321 et seq.] and other environmental laws, including the Marine Protection Research and Sanctuaries Act [16 U.S.C. 1431 et seq. and 33 U.S.C. 1401 et seq.], and the Deepwater Port Act [33 U.S.C. 1501 et seq.], consistent with the foreign and national security policies of the United States.

(d) Except as provided in Section 2–5(b), agencies taking action encompassed by this Order shall, as soon as feasible, inform other Federal agencies with relevant expertise of the availability of environmental documents prepared under this Order.

Agencies in their procedures under Section 2–1 shall make appropriate provision for determining when an affected nation shall be informed in accordance with Section 3–2 of this Order of the availability of environmental documents prepared pursuant to those procedures.

In order to avoid duplication of resources, agencies in their procedures shall provide for appropriate utilization of the resources of other Federal agencies with relevant environmental jurisdiction or expertise.

*2–5. Exemptions and Considerations.* (a) Notwithstanding Section 2–3, the following actions are exempt from this Order:

(i) actions not having a significant effect on the environment outside the United States as determined by the agency;

(ii) actions taken by the President;

(iii) actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;

(iv) intelligence activities and arms transfers;

(v) export licenses or permits or export approvals, and actions relating to nuclear activities except actions providing to a foreign nation a nuclear production or utilization facility as defined in the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], as amended, or a nuclear waste management facility;

(vi) votes and other actions in international conferences and organizations;

(vii) disaster and emergency relief action.

(b) Agency procedures under Section 2–1 implementing Section 2–4 may provide for appropriate modifications in the contents, timing and availability of documents to other affected Federal agencies and affected nations, where necessary to:

(i) enable the agency to decide and act promptly as and when required;

(ii) avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations' sovereign responsibilities, or

(iii) ensure appropriate reflection of:

(1) diplomatic factors;

(2) international commercial, competitive and export promotion factors;

(3) needs for governmental or commercial confidentiality;

(4) national security considerations;

(5) difficulties of obtaining information and agency ability to analyze meaningfully environmental effects of a proposed action; and

(6) the degree to which the agency is involved in or able to affect a decision to be made.

(c) Agency procedure under Section 2-1 may provide for categorical exclusions and for such exemptions in addition to those specified in subsection (a) of this Section as may be necessary to meet emergency circumstances, situations involving exceptional foreign policy and national security sensitivities and other such special circumstances. In utilizing such additional exemptions agencies shall, as soon as feasible, consult with the Department of State and the Council on Environmental Quality.

(d) The provisions of Section 2-5 do not apply to actions described in Section 2-3(a) unless permitted by law.

### **SECTION 3**

3-1. *Rights of Action.* This Order is solely for the purpose of establishing internal procedures for Federal agencies to consider the significant effects of their actions on the environment outside the United States, its territories and possessions, and nothing in this Order shall be construed to create a cause of action.

3-2. *Foreign Relations.* The Department of State shall coordinate all communications by agencies with foreign governments concerning environmental agreements and other arrangements in implementation of this Order.

3-3. *Multi-Agency Actions.* Where more than one Federal agency is involved in an action or program, a lead agency, as determined by the agencies involved, shall have responsibility for implementation of this Order.

3-4. *Certain Terms.* For purposes of this Order, "environment" means the natural and physical environment and excludes social, economic and other environments; and an action significantly affects the environment if it does significant harm to the environment even though on balance the agency believes the action to be beneficial to the environment. The term "export approvals" in Section 2-5(a)(v) does not mean or include direct loans to finance exports.

3-5. *Multiple Impacts.* If a major Federal action having effects on the environment of the United States or the global commons requires preparation of an environmental impact statement, and if the action also has effects on the environment of a foreign nation, an environmental impact statement need not be prepared with respect to the effects on the environment of the foreign nation.

JIMMY CARTER.

### **EXECUTIVE ORDER No. 12194**

Ex. Ord. No. 12194, Feb. 21, 1980, 45 F.R. 12209, which established the Radiation Policy Council and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, §23, Aug. 17, 1982, 47 F.R. 36100, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

### **EXECUTIVE ORDER No. 12737**

Ex. Ord. No. 12737, Dec. 12, 1990, 55 F.R. 51681, which established President's Commission on Environmental Quality and provided for its functions and administration, was revoked by Ex. Ord. No. 12852, §4(c), June 29, 1993, 58 F.R. 35841, formerly set out below.

**EX. ORD. NO. 12761. ESTABLISHMENT OF PRESIDENT'S ENVIRONMENT AND CONSERVATION CHALLENGE AWARDS**

Ex. Ord. No. 12761, May 21, 1991, 56 F.R. 23645, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish, in accordance with the goals and purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), and the National Environmental Education Act, Public Law 101-619, 104 Stat. 3325 (1990) [20 U.S.C. 5501 *et seq.*], an awards program to raise environmental awareness and to recognize outstanding achievements in the United States and in its territories in the areas of conservation and environmental protection by both the public and private sectors, it is hereby ordered as follows:

Section 1. *Establishment.* The President's Environment and Conservation Challenge Awards program is established for the purposes of recognizing outstanding environmental achievements by U.S. citizens, enterprises, or programs; providing an incentive for environmental accomplishment; promoting cooperative partnerships between diverse groups working together to achieve common environmental goals; and identifying successful environmental programs that can be replicated.

Sec. 2. *Administration.* (a) The Council on Environmental Quality, with the assistance of the President's Commission on Environmental Quality, shall organize, manage, and administer the awards program, including the development of selection criteria, the nomination of eligible individuals to receive the award, and the selection of award recipients.

(b) Any expenses of the program shall be paid from funds available for the expenses of the Council on Environmental Quality.

Sec. 3. *Awards.* (a) Up to three awards in each of the following four categories shall be made annually to eligible individuals, organizations, groups, or entities:

(i) Quality Environmental Management Awards (incorporation of environmental concerns into management decisions and practices);

(ii) Partnership Awards (successful coalition building efforts);

(iii) Innovation Awards (innovative technology programs, products, or processes); and

(iv) Education and Communication Awards (education and information programs contributing to the development of an ethic fostering conservation and environmental protection).

(b) Presidential citations shall be given to eligible program finalists who demonstrate notable or unique achievements, but who are not selected to receive awards.

Sec. 4. *Eligibility.* Only residents of the United States and organizations, groups, or entities doing business in the United States are eligible to receive an award under this program. An award under this program shall be given only for achievements in the United States or its territories. Organizations, groups, or entities may be profit or nonprofit, public or private entities.

Sec. 5. *Information System.* The Council on Environmental Quality shall establish and maintain a data bank with information about award nominees to catalogue and publicize model conservation or environmental protection programs which could be replicated.

GEORGE BUSH.

#### **EXECUTIVE ORDER NO. 12852**

Ex. Ord. No. 12852, June 29, 1993, 58 F.R. 35841, as amended by Ex. Ord. No. 12855, July 19, 1993, 58 F.R. 39107; Ex. Ord. No. 12965, June 27, 1995, 60 F.R. 34087; Ex. Ord. No. 12980, Nov. 17, 1995, 60 F.R. 57819; Ex. Ord. No. 13053, June 30, 1997, 62 F.R. 39945 [35945]; Ex. Ord. No. 13114, Feb. 25, 1999, 64 F.R. 10099, which established the President's Council on Sustainable Development, was revoked by Ex. Ord. No. 13138, §3(f), Sept. 30, 1999, 64 F.R. 53880, formerly set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

#### **EX. ORD. NO. 12898. FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS**

Ex. Ord. No. 12898, Feb. 11, 1994, 59 F.R. 7629, as amended by Ex. Ord. No. 12948, Jan. 30, 1995, 60 F.R. 6381, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

##### **Section 1–1. IMPLEMENTATION.**

1–101. *Agency Responsibilities.* To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

1–102. *Creation of an Interagency Working Group on Environmental Justice.* (a) Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency ("Administrator") or the Administrator's designee shall convene an interagency Federal Working Group on Environmental Justice ("Working Group"). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees: (a) Department of Defense; (b) Department of Health and Human Services; (c) Department of Housing and Urban Development; (d) Department of Labor; (e) Department of Agriculture; (f) Department of Transportation; (g) Department of Justice; (h) Department of the Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (l) Office of Management and Budget; (m) Office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental Policy; (o) Office of the Assistant to the President for Domestic Policy; (p) National Economic Council; (q) Council of Economic Advisers; and (r) such other Government officials as the President may designate. The Working Group shall report to the President through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

(b) The Working Group shall: (1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(2) coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1–103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner;

(3) assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other agencies conducting research or other activities in accordance with section 3–3 of this order;

(4) assist in coordinating data collection, required by this order;

(5) examine existing data and studies on environmental justice;

(6) hold public meetings as required in section 5–502(d) of this order; and

(7) develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.

1–103. *Development of Agency Strategies.* (a) Except as provided in section 6–605 of this order, each Federal agency shall develop an agency-wide environmental justice strategy, as set forth in subsections (b)–(e) of this section that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. The environmental justice strategy shall list programs, policies, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to, at a minimum: (1) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (2) ensure greater public participation; (3) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (4) identify differential patterns of consumption of natural resources among minority populations and low-income populations. In addition, the environmental justice strategy shall include, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.

(b) Within 4 months of the date of this order, each Federal agency shall identify an internal administrative process for developing its environmental justice strategy, and shall inform the Working Group of the process.

(c) Within 6 months of the date of this order, each Federal agency shall provide the Working Group with an outline of its proposed environmental justice strategy.

(d) Within 10 months of the date of this order, each Federal agency shall provide the Working Group with its proposed environmental justice strategy.

(e) By March 24, 1995, each Federal agency shall finalize its environmental justice strategy and provide a copy and written description of its strategy to the Working Group. From the date of this order through March 24, 1995, each Federal agency, as part of its environmental justice strategy, shall identify several specific projects that can be promptly undertaken to address particular concerns identified during the development of the proposed environmental justice strategy, and a schedule for implementing those projects.

(f) Within 24 months of the date of this order, each Federal agency shall report to the Working Group on its progress in implementing its agency-wide environmental justice strategy.



(g) Federal agencies shall provide additional periodic reports to the Working Group as requested by the Working Group.

1–104. *Reports to the President.* Within 14 months of the date of this order, the Working Group shall submit to the President, through the Office of the Deputy Assistant to the President for Environmental Policy and the Office of the Assistant to the President for Domestic Policy, a report that describes the implementation of this order, and includes the final environmental justice strategies described in section 1–103(e) of this order.

Sec. 2–2. FEDERAL AGENCY RESPONSIBILITIES FOR FEDERAL PROGRAMS. Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

Sec. 3–3. RESEARCH, DATA COLLECTION, AND ANALYSIS.

3–301. *Human Health and Environmental Research and Analysis.* (a) Environmental human health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority populations, low-income populations and workers who may be exposed to substantial environmental hazards.

(b) Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures.

(c) Federal agencies shall provide minority populations and low-income populations the opportunity to comment on the development and design of research strategies undertaken pursuant to this order.

3–302. *Human Health and Environmental Data Collection and Analysis.* To the extent permitted by existing law, including the Privacy Act, as amended (5 U.S.C. section 552a): (a) each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies shall use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(b) In connection with the development and implementation of agency strategies in section 1–103 of this order, each Federal agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations, when such facilities or sites become the subject of a substantial Federal environmental administrative or judicial action. Such information shall be made available to the public, unless prohibited by law; and

(c) Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding Federal facilities that are: (1) subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act, 42

U.S.C. section 11001–11050 as mandated in Executive Order No. 12856 [former 42 U.S.C. 11001 note]; and (2) expected to have a substantial environmental, human health, or economic effect on surrounding populations. Such information shall be made available to the public, unless prohibited by law.

(d) In carrying out the responsibilities in this section, each Federal agency, whenever practicable and appropriate, shall share information and eliminate unnecessary duplication of efforts through the use of existing data systems and cooperative agreements among Federal agencies and with State, local, and tribal governments.

#### Sec. 4–4. SUBSISTENCE CONSUMPTION OF FISH AND WILDLIFE.

4–401. *Consumption Patterns.* In order to assist in identifying the need for ensuring protection of populations with differential patterns of subsistence consumption of fish and wildlife, Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. Federal agencies shall communicate to the public the risks of those consumption patterns.

4–402. *Guidance.* Federal agencies, whenever practicable and appropriate, shall work in a coordinated manner to publish guidance reflecting the latest scientific information available concerning methods for evaluating the human health risks associated with the consumption of pollutant-bearing fish or wildlife. Agencies shall consider such guidance in developing their policies and rules.

Sec. 5–5. PUBLIC PARTICIPATION AND ACCESS TO INFORMATION. (a) The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Working Group.

(b) Each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices, and hearings relating to human health or the environment for limited English speaking populations.

(c) Each Federal agency shall work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.

(d) The Working Group shall hold public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice. The Working Group shall prepare for public review a summary of the comments and recommendations discussed at the public meetings.

#### Sec. 6–6. GENERAL PROVISIONS.

6–601. *Responsibility for Agency Implementation.* The head of each Federal agency shall be responsible for ensuring compliance with this order. Each Federal agency shall conduct internal reviews and take such other steps as may be necessary to monitor compliance with this order.

6–602. *Executive Order No. 12250.* This Executive order is intended to supplement but not supersede Executive Order No. 12250 [42 U.S.C. 2000d–1 note], which requires consistent and effective implementation of various laws prohibiting discriminatory practices in programs receiving Federal financial assistance. Nothing herein shall limit the effect or mandate of Executive Order No. 12250.

6–603. *Executive Order No. 12875.* This Executive order is not intended to limit the effect or mandate of Executive Order No. 12875 [former 5 U.S.C. 601 note].

6–604. *Scope.* For purposes of this order, Federal agency means any agency on the Working Group, and such other agencies as may be designated by the President, that conducts any Federal program or activity that substantially affects human health or the environment. Independent agencies are requested to comply with the provisions of this order.

6–605. *Petitions for Exemptions.* The head of a Federal agency may petition the President for an exemption from the requirements of this order on the grounds that all or some of the petitioning agency's programs or activities should not be subject to the requirements of this order.

6–606. *Native American Programs.* Each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition, the Department of the Interior, in coordination with the Working Group, and, after consultation with tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally-recognized Indian Tribes.

6–607. *Costs.* Unless otherwise provided by law, Federal agencies shall assume the financial costs of complying with this order.

6–608. *General.* Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law.

6–609. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.

WILLIAM J. CLINTON.

#### **EX. ORD. NO. 13045. PROTECTION OF CHILDREN FROM ENVIRONMENTAL HEALTH RISKS AND SAFETY RISKS**

Ex. Ord. No. 13045, Apr. 21, 1997, 62 F.R. 19885, as amended by Ex. Ord. No. 13229, Oct. 9, 2001, 66 F.R. 52013; Ex. Ord. No. 13296, Apr. 18, 2003, 68 F.R. 19931, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

##### *Section 1. Policy.*

1–101. A growing body of scientific knowledge demonstrates that children may suffer disproportionately from environmental health risks and safety risks. These risks arise because: children's neurological, immunological, digestive, and other bodily systems are still developing; children eat more food, drink more fluids, and breathe more air in proportion to their body weight than adults; children's size and weight may diminish their protection from standard safety features; and children's behavior patterns may make them more susceptible to accidents because they are less able to protect themselves. Therefore, to the extent permitted by law and appropriate, and consistent with the agency's mission, each Federal agency:

(a) shall make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect children; and

(b) shall ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks.

1–102. Each independent regulatory agency is encouraged to participate in the implementation of this order and comply with its provisions.

*Sec. 2. Definitions.* The following definitions shall apply to this order.

2–201. "Federal agency" means any authority of the United States that is an agency under 44 U.S.C. 3502(1) other than those considered to be independent regulatory agencies under 44 U.S.C. 3502(5). For purposes of this order, "military departments," as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

2–202. "Covered regulatory action" means any substantive action in a rulemaking, initiated after the date of this order or for which a Notice of Proposed Rulemaking is published 1 year after the date of this order, that is likely to result in a rule that may:

(a) be "economically significant" under Executive Order 12866 [5 U.S.C. 601 note] (a rulemaking that has an annual effect on the economy of \$100 million or more or would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities); and

(b) concern an environmental health risk or safety risk that an agency has reason to believe may disproportionately affect children.

2–203. "Environmental health risks and safety risks" mean risks to health or to safety that are attributable to products or substances that the child is likely to come in contact with or ingest (such as the air we breath, the food we eat, the water we drink or use for recreation, the soil we live on, and the products we use or are exposed to).

*Sec. 3. Task Force on Environmental Health Risks and Safety Risks to Children.*

3–301. There is hereby established the Task Force on Environmental Health Risks and Safety Risks to Children ("Task Force").

3–302. The Task Force will report to the President in consultation with the Domestic Policy Council, the National Science and Technology Council, the Council on Environmental Quality, and the Office of Management and Budget (OMB).

3–303. *Membership.* The Task Force shall be composed of the:

- (a) Secretary of Health and Human Services, who shall serve as a Co-Chair of the Council;
- (b) Administrator of the Environmental Protection Agency, who shall serve as a Co-Chair of the Council;
- (c) Secretary of Education;
- (d) Secretary of Labor;
- (e) Attorney General;
- (f) Secretary of Energy;

- (g) Secretary of Housing and Urban Development;
- (h) Secretary of Agriculture;
- (i) Secretary of Transportation;
- (j) Director of the Office of Management and Budget;
- (k) Chair of the Council on Environmental Quality;
- (l) Chair of the Consumer Product Safety Commission;
- (m) Assistant to the President for Economic Policy;
- (n) Assistant to the President for Domestic Policy;
- (o) Director of the Office of Science and Technology Policy;
- (p) Chair of the Council of Economic Advisers; and
- (q) Such other officials of executive departments and agencies as the President may, from time to time, designate.

Members of the Task Force may delegate their responsibilities under this order to subordinates.

3–304. *Functions.* The Task Force shall recommend to the President Federal strategies for children's environmental health and safety, within the limits of the Administration's budget, to include the following elements:

- (a) statements of principles, general policy, and targeted annual priorities to guide the Federal approach to achieving the goals of this order;
- (b) a coordinated research agenda for the Federal Government, including steps to implement the review of research databases described in section 4 of this order;
- (c) recommendations for appropriate partnerships among Federal, State, local, and tribal governments and the private, academic, and nonprofit sectors;
- (d) proposals to enhance public outreach and communication to assist families in evaluating risks to children and in making informed consumer choices;
- (e) an identification of high-priority initiatives that the Federal Government has undertaken or will undertake in advancing protection of children's environmental health and safety; and
- (f) a statement regarding the desirability of new legislation to fulfill or promote the purposes of this order.

3–305. The Task Force shall prepare a biennial report on research, data, or other information that would enhance our ability to understand, analyze, and respond to environmental health risks and safety risks to children. For purposes of this report, executive departments, the Environmental Protection Agency, and other agencies identified by the Task Force shall identify and specifically describe for the Task Force key data needs related to environmental health risks and safety risks to children that have arisen in the course of the agency's programs and activities. Each report shall also detail the accomplishments of the Task Force from the date of the preceding report. The Task Force shall incorporate agency submissions into its report and ensure that this report is publicly available and widely disseminated. The Office of Science and

Technology Policy and the National Science and Technology Council shall ensure that this report is fully considered in establishing research priorities.

3–306. The Task Force shall exist for 8 years from the date of this order.

*Sec. 4. Research Coordination and Integration.*

4–401. Within 6 months of the date of this order, the Task Force shall develop or direct to be developed a review of existing and planned data resources and a proposed plan for ensuring that researchers and Federal research agencies have access to information on all research conducted or funded by the Federal Government that is related to adverse health risks in children resulting from exposure to environmental health risks or safety risks. The National Science and Technology Council shall review the plan.

4–402. The plan shall promote the sharing of information on academic and private research. It shall include recommendations to encourage that such data, to the extent permitted by law, is available to the public, the scientific and academic communities, and all Federal agencies.

*Sec. 5. Agency Environmental Health Risk or Safety Risk Regulations.*

5–501. For each covered regulatory action submitted to OMB's Office of Information and Regulatory Affairs (OIRA) for review pursuant to Executive Order 12866 [5 U.S.C. 601 note], the issuing agency shall provide to OIRA the following information developed as part of the agency's decisionmaking process, unless prohibited by law:

(a) an evaluation of the environmental health or safety effects of the planned regulation on children; and

(b) an explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

5–502. In emergency situations, or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall comply with the provisions of this section to the extent practicable. For those covered regulatory actions that are governed by a court-imposed or statutory deadline, the agency shall, to the extent practicable, schedule any rulemaking proceedings so as to permit sufficient time for completing the analysis required by this section.

5–503. The analysis required by this section may be included as part of any other required analysis, and shall be made part of the administrative record for the covered regulatory action or otherwise made available to the public, to the extent permitted by law.

*Sec. 6. Interagency Forum on Child and Family Statistics.*

6–601. The Director of the OMB ("Director") shall convene an Interagency Forum on Child and Family Statistics ("Forum"), which will include representatives from the appropriate Federal statistics and research agencies. The Forum shall produce a biennial compendium ("Report") of the most important indicators of the well-being of the Nation's children.

6–602. The Forum shall determine the indicators to be included in each Report and identify the sources of data to be used for each indicator. The Forum shall provide an ongoing review of Federal collection and dissemination of data on children and families, and shall make recommendations to improve the coverage and coordination of data collection and to reduce duplication and overlap.

6-603. The Report shall be published by the Forum in collaboration with the National Institute of Child Health and Human Development [now the Eunice Kennedy Shriver National Institute of Child Health and Human Development]. The Forum shall present the first annual Report to the President, through the Director, by July 31, 1997. The Report shall be published biennially thereafter, using the most recently available data.

*Sec. 7. General Provisions.*

7-701. This order is intended only for internal management of the executive branch. This order is not intended, and should not be construed to create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or its employees. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance with this order by the United States, its agencies, its officers, or any other person.

7-702. Executive Order 12606 of September 2, 1987 is revoked.

7-703. Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

**EX. ORD. NO. 13061. FEDERAL SUPPORT OF COMMUNITY EFFORTS ALONG AMERICAN HERITAGE RIVERS**

Ex. Ord. No. 13061, Sept. 11, 1997, 62 F.R. 48445, as amended by Ex. Ord. No. 13093, July 27, 1998, 63 F.R. 40357, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Environmental Policy Act of 1969 (Public Law 91-190) [42 U.S.C. 4321 et seq.], and in order to protect and restore rivers and their adjacent communities, it is hereby ordered as follows:

Section 1. *Policies.*

(a) The American Heritage Rivers initiative has three objectives: natural resource and environmental protection, economic revitalization, and historic and cultural preservation.

(b) Executive agencies ("agencies"), to the extent permitted by law and consistent with their missions and resources, shall coordinate Federal plans, functions, programs, and resources to preserve, protect, and restore rivers and their associated resources important to our history, culture, and natural heritage.

(c) Agencies shall develop plans to bring increased efficiencies to existing and authorized programs with goals that are supportive of protection and restoration of communities along rivers.

(d) In accordance with Executive Order 12630 [5 U.S.C. 601 note], agencies shall act with due regard for the protection of private property provided for by the Fifth Amendment to the United States Constitution. No new regulatory authority is created as a result of the American Heritage Rivers initiative. This initiative will not interfere with matters of State, local, and tribal government jurisdiction.

(e) In furtherance of these policies, the President will designate rivers that meet certain criteria as "American Heritage Rivers."

(f) It is the policy of the Federal Government that communities shall nominate rivers as American Heritage Rivers and the Federal role will be solely to support community-based efforts to preserve, protect, and restore these rivers and their communities.

(g) Agencies should, to the extent practicable, help identify resources in the private and nonprofit sectors to aid revitalization efforts.

(h) Agencies are encouraged, to the extent permitted by law, to develop partnerships with State, local, and tribal governments and community and nongovernmental organizations. Agencies will be responsive to the diverse needs of different kinds of communities from the core of our cities to remote rural areas and shall seek to ensure that the role played by the Federal Government is complementary to the plans and work being carried out by State, local, and tribal governments. To the extent possible, Federal resources will be strategically directed to complement resources being spent by these governments.

(i) Agencies shall establish a method for field offices to assess the success of the American Heritage River initiative and provide a means to recommend changes that will improve the delivery and accessibility of Federal services and programs. Agencies are directed, where appropriate, to reduce and make more flexible procedural requirements and paperwork related to providing assistance to communities along designated rivers.

(j) Agencies shall commit to a policy under which they will seek to ensure that their actions have a positive effect on the natural, historic, economic, and cultural resources of American Heritage River communities. The policy will require agencies to consult with American Heritage River communities early in the planning stages of Federal actions, take into account the communities' goals and objectives and ensure that actions are compatible with the overall character of these communities. Agencies shall seek to ensure that their help for one community does not adversely affect neighboring communities. Additionally, agencies are encouraged to develop formal and informal partnerships to assist communities. Local Federal facilities, to the extent permitted by law and consistent with the agencies' missions and resources, should provide public access, physical space, technical assistance, and other support for American Heritage River communities.

(k) In addition to providing support to designated rivers, agencies will work together to provide information and services to all communities seeking support.

## *Sec. 2. Process for Nominating an American Heritage River.*

(a) *Nomination.* Communities, in coordination with their State, local, or tribal governments, can nominate their river, river stretch, or river confluence for designation as an American Heritage River. When several communities are involved in the nomination of the same river, nominations will detail the coordination among the interested communities and the role each will play in the process. Individuals living outside the community may not nominate a river.

(b) *Selection Criteria.* Nominations will be judged based on the following:

(1) the characteristics of the natural, economic, agricultural, scenic, historic, cultural, or recreational resources of the river that render it distinctive or unique;

(2) the effectiveness with which the community has defined its plan of action and the extent to which the plan addresses, either through planned actions or past accomplishments, all three American Heritage Rivers objectives, which are set forth in section 1(a) of this order;



(3) the strength and diversity of community support for the nomination as evidenced by letters from elected officials; landowners; private citizens; businesses; and especially State, local, and tribal governments. Broad community support is essential to receiving the American Heritage River designation; and

(4) willingness and capability of the community to forge partnerships and agreements to implement their plan to meet their goals and objectives.

(c) *Recommendation Process.*

The Chair of the Council on Environmental Quality ("CEQ") shall develop a fair and objective procedure to obtain the views of a diverse group of experts for the purpose of making recommendations to the President as to which rivers shall be designated. These experts shall reflect a variety of viewpoints, such as those representing natural, cultural, and historic resources; scenic, environmental, and recreation interests; tourism, transportation, and economic development interests; and industries such as agriculture, hydropower, manufacturing, mining, and forest management. The Chair of the CEQ will ensure that the rivers recommended represent a variety of stream sizes, diverse geographical locations, and a wide range of settings from urban to rural and ensure that relatively pristine, successful revitalization efforts are considered as well as degraded rivers in need of restoration.

(d) *Designation.*

(1) The President will designate certain rivers as American Heritage Rivers. Based on the receipt of a sufficient number of qualified nominations, up to 20 rivers will be designated in the first phase of the initiative.

(2) The Interagency Committee provided for in section 3 of this order shall develop a process by which any community that nominates and has its river designated may have this designation terminated at its request.

(3) Upon a determination by the Chair of the CEQ that a community has failed to implement its plan, the Chair may recommend to the President that a designation be revoked. The Chair shall notify the community at least 30 days prior to making such a recommendation to the President. Based on that recommendation, the President may revoke the designation.

*Sec. 3. Establishment of an Interagency Committee.* There is hereby established the American Heritage Rivers Interagency Committee ("Committee"). The Committee shall have two co-chairs. The Chair of the CEQ shall be a permanent co-chair. The other co-chair will rotate among the heads of the agencies listed below.

(a) The Committee shall be composed of the following members or their designees at the Assistant Secretary level or equivalent:

- (1) The Secretary of Defense;
- (2) The Attorney General;
- (3) The Secretary of the Interior;
- (4) The Secretary of Agriculture;
- (5) The Secretary of Commerce;
- (6) The Secretary of Housing and Urban Development;

- (7) The Secretary of Transportation;
- (8) The Secretary of Energy;
- (9) The Administrator of the Environmental Protection Agency;
- (10) The Chair of the Advisory Council on Historic Preservation;
- (11) The Chairperson of the National Endowment for the Arts; and
- (12) The Chairperson of the National Endowment for the Humanities.

The Chair of the CEQ may invite to participate in meetings of the Committee, representatives of other agencies, as appropriate.

(b) The Committee shall:

- (1) establish formal guidelines for designation as an American Heritage River;
- (2) periodically review the actions of agencies in support of the American Heritage Rivers;
- (3) report to the President on the progress, accomplishments, and effectiveness of the American Heritage Rivers initiative; and
- (4) perform other duties as directed by the Chair of the CEQ.

*Sec. 4. Responsibilities of the Federal Agencies.* Consistent with Title I of the National Environmental Policy Act of 1969 [42 U.S.C. 4331 et seq.], agencies shall:

- (a) identify their existing programs and plans that give them the authority to offer assistance to communities involved in river conservation and community health and revitalization;
- (b) to the extent practicable and permitted by law and regulation, refocus programs, grants, and technical assistance to provide support for communities adjacent to American Heritage Rivers;
- (c) identify all technical tools, including those developed for purposes other than river conservation, that can be applied to river protection, restoration, and community revitalization;
- (d) provide access to existing scientific data and information to the extent permitted by law and consistent with the agencies mission and resources;
- (e) cooperate with State, local, and tribal governments and communities with respect to their activities that take place in, or affect the area around, an American Heritage River;
- (f) commit to a policy, as set forth in section 1(j) of this order, in making decisions affecting the quality of an American Heritage River;
- (g) select from among all the agencies a single individual called the "River Navigator," for each river that is designated an American Heritage River, with whom the communities can communicate goals and needs and who will facilitate community-agency interchange;
- (h) allow public access to the river, for agencies with facilities along American Heritage Rivers, to the extent practicable and consistent with their mission; and
- (i) cooperate, as appropriate, with communities on projects that protect or preserve stretches of the river that are on Federal property or adjacent to a Federal facility.

*Sec. 5. Responsibilities of the Committee and the Council on Environmental Quality.* The CEQ shall serve as Executive agent for the Committee, and the CEQ and the Committee shall ensure the implementation of the policies and purposes of this initiative.

*Sec. 6. Definition.* For the purposes of this order, Executive agency means any agency on the Committee and such other agency as may be designated by the President.

*Sec. 7. Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON.

#### **EXECUTIVE ORDER NO. 13080**

Ex. Ord. No. 13080, Apr. 7, 1998, 63 F.R. 17667, as amended by Ex. Ord. No. 13093, July 27, 1998, 63 F.R. 40357, which established the American Heritage Rivers Initiative Advisory Committee, was revoked by Ex. Ord. No. 13225, §3(b), Sept. 28, 2001, 66 F.R. 50292, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

#### **PROC. NO. 7112. DESIGNATION OF AMERICAN HERITAGE RIVERS**

Proc. No. 7112, July 30, 1998, 63 F.R. 41949, provided:

In celebration of America's rivers, and to recognize and reward grassroots efforts to restore them, last year I announced the American Heritage Rivers initiative. My goal was to help communities realize their visions for their rivers by making it easier for them to tap existing programs and resources of the Federal Government. From across the country, hundreds of communities answered my call for nominations, asking that their rivers be designated American Heritage Rivers. I applaud all of the communities that have drawn together and dedicated themselves to the goal of healthy rivers, now and forever.

Having reviewed the recommendations of the American Heritage Rivers Initiative Advisory Committee, I am pleased to be able to recognize a select group of rivers and communities that reflect the true diversity and splendor of America's natural endowment, and the tremendous energy and commitment of its citizenry.

Pursuant to Executive Orders 13061 [set out above], 13080, and 13093 [set out above], I hereby designate the following American Heritage Rivers:

- The Blackstone and Woonasquatucket Rivers, in the States of Massachusetts and Rhode Island;
- The Connecticut River, in the States of Connecticut, Massachusetts, New Hampshire, and Vermont;
- The Cuyahoga River, in the State of Ohio;
- The Detroit River, in the State of Michigan;
- The Hanalei River, in the State of Hawaii;
- The Hudson River, in the State of New York;
- The Upper Mississippi River, in the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin;

- The Lower Mississippi River, in the States of Louisiana and Tennessee;
- The New River, in the States of North Carolina, Virginia, and West Virginia;
- The Rio Grande, in the State of Texas;
- The Potomac River, in the District of Columbia and the States of Maryland, Pennsylvania, Virginia, and West Virginia;
- The St. Johns River, in the State of Florida;
- The Upper Susquehanna and Lackawanna Rivers, in the State of Pennsylvania;
- The Willamette River, in the State of Oregon.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of July, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

WILLIAM J. CLINTON.

**EX. ORD. NO. 13112. INVASIVE SPECIES**

Ex. Ord. No. 13112, Feb. 3, 1999, 64 F.R. 6183, as amended by Ex. Ord. No. 13286, §15, Feb. 28, 2003, 68 F.R. 10623, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended (16 U.S.C. 4701 *et seq.*), Lacey Act, as amended (18 U.S.C. 42), Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*), Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801 *et seq.*), Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and other pertinent statutes, to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause, it is ordered as follows:

Section 1. *Definitions.*

(a) "Alien species" means, with respect to a particular ecosystem, any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem.

(b) "Control" means, as appropriate, eradicating, suppressing, reducing, or managing invasive species populations, preventing spread of invasive species from areas where they are present, and taking steps such as restoration of native species and habitats to reduce the effects of invasive species and to prevent further invasions.

(c) "Ecosystem" means the complex of a community of organisms and its environment.

(d) "Federal agency" means an executive department or agency, but does not include independent establishments as defined by 5 U.S.C. 104.

(e) "Introduction" means the intentional or unintentional escape, release, dissemination, or placement of a species into an ecosystem as a result of human activity.

(f) "Invasive species" means an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.

(g) "Native species" means, with respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem.

(h) "Species" means a group of organisms all of which have a high degree of physical and genetic similarity, generally interbreed only among themselves, and show persistent differences from members of allied groups of organisms.

(i) "Stakeholders" means, but is not limited to, State, tribal, and local government agencies, academic institutions, the scientific community, nongovernmental entities including environmental, agricultural, and conservation organizations, trade groups, commercial interests, and private landowners.

(j) "United States" means the 50 States, the District of Columbia, Puerto Rico, Guam, and all possessions, territories, and the territorial sea of the United States.

*Sec. 2. Federal Agency Duties.* (a) Each Federal agency whose actions may affect the status of invasive species shall, to the extent practicable and permitted by law,

(1) identify such actions;

(2) subject to the availability of appropriations, and within Administration budgetary limits, use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them; and

(3) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.

(b) Federal agencies shall pursue the duties set forth in this section in consultation with the Invasive Species Council, consistent with the Invasive Species Management Plan and in cooperation with stakeholders, as appropriate, and, as approved by the Department of State, when Federal agencies are working with international organizations and foreign nations.

*Sec. 3. Invasive Species Council.* (a) An Invasive Species Council (Council) is hereby established whose members shall include the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Transportation, the Secretary of Homeland Security, and the Administrator of the Environmental Protection Agency. The Council shall be Co-Chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The Council may invite additional Federal agency representatives to be members, including representatives from subcabinet bureaus or offices with significant responsibilities concerning invasive species, and may prescribe special procedures for their participation. The Secretary of the Interior shall, with concurrence of the Co-Chairs, appoint an Executive Director of the Council and shall provide the staff and administrative support for the Council.

(b) The Secretary of the Interior shall establish an advisory committee under the Federal Advisory Committee Act, 5 U.S.C. App., to provide information and advice for consideration by the Council, and shall, after consultation with other members of the Council, appoint members of the advisory committee representing stakeholders. Among other things, the advisory committee shall recommend plans and actions at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order. The advisory committee shall act in cooperation with stakeholders and existing organizations addressing invasive species. The Department of the Interior shall provide the administrative and financial support for the advisory committee.

*Sec. 4. Duties of the Invasive Species Council.* The Invasive Species Council shall provide national leadership regarding invasive species, and shall:

(a) oversee the implementation of this order and see that the Federal agency activities concerning invasive species are coordinated, complementary, cost-efficient, and effective, relying to the extent feasible and appropriate on existing organizations addressing invasive species, such as the Aquatic Nuisance Species Task Force, the Federal Interagency Committee for the Management of Noxious and Exotic Weeds, and the Committee on Environment and Natural Resources;

(b) encourage planning and action at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order, in cooperation with stakeholders and existing organizations addressing invasive species;

(c) develop recommendations for international cooperation in addressing invasive species;

(d) develop, in consultation with the Council on Environmental Quality, guidance to Federal agencies pursuant to the National Environmental Policy Act on prevention and control of invasive species, including the procurement, use, and maintenance of native species as they affect invasive species;

(e) facilitate development of a coordinated network among Federal agencies to document, evaluate, and monitor impacts from invasive species on the economy, the environment, and human health;

(f) facilitate establishment of a coordinated, up-to-date information-sharing system that utilizes, to the greatest extent practicable, the Internet; this system shall facilitate access to and exchange of information concerning invasive species, including, but not limited to, information on distribution and abundance of invasive species; life histories of such species and invasive characteristics; economic, environmental, and human health impacts; management techniques, and laws and programs for management, research, and public education; and

(g) prepare and issue a national Invasive Species Management Plan as set forth in section 5 of this order.

*Sec. 5. Invasive Species Management Plan.* (a) Within 18 months after issuance of this order, the Council shall prepare and issue the first edition of a National Invasive Species Management Plan (Management Plan), which shall detail and recommend performance-oriented goals and objectives and specific measures of success for Federal agency efforts concerning invasive species. The Management Plan shall recommend specific objectives and measures for carrying out each of the Federal agency duties established in section 2(a) of this order and shall set forth steps to be taken by the Council to carry out the duties assigned to it under section 4 of this order. The Management Plan shall be developed through a public process and in consultation with Federal agencies and stakeholders.

(b) The first edition of the Management Plan shall include a review of existing and prospective approaches and authorities for preventing the introduction and spread of invasive species, including those for identifying pathways by which invasive species are introduced and for minimizing the risk of introductions via those pathways, and shall identify research needs and recommend measures to minimize the risk that introductions will occur. Such recommended measures shall provide for a science-based process to evaluate risks associated with introduction and spread of invasive species and a coordinated and systematic risk-based process to identify, monitor, and interdict pathways that may be involved in the introduction of invasive species. If recommended measures are not authorized by current law, the Council shall develop and recommend to the President through its Co-Chairs legislative proposals for necessary changes in authority.

(c) The Council shall update the Management Plan biennially and shall concurrently evaluate and report on success in achieving the goals and objectives set forth in the Management Plan. The Management Plan shall identify the personnel, other resources, and additional levels of coordination needed to achieve the Management Plan's identified goals and objectives, and the Council shall provide each edition of the Management Plan and each report on it to the Office of Management and Budget. Within 18 months after measures have been recommended by the Council in any edition of the Management Plan, each Federal agency whose action is required to implement such measures shall either take the action recommended or shall provide the Council with an explanation of why the action is not feasible. The Council shall assess the effectiveness of this order no less than once each 5 years after the order is issued and shall report to the Office of Management and Budget on whether the order should be revised.

*Sec. 6. Judicial Review and Administration.* (a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person.

(b) Executive Order 11987 of May 24, 1977, is hereby revoked.

(c) The requirements of this order do not affect the obligations of Federal agencies under 16 U.S.C. 4713 with respect to ballast water programs.

(d) The requirements of section 2(a)(3) of this order shall not apply to any action of the Department of State or Department of Defense if the Secretary of State or the Secretary of Defense finds that exemption from such requirements is necessary for foreign policy or national security reasons.

#### **EXTENSION OF TERM OF INVASIVE SPECIES ADVISORY COMMITTEE**

Term of Invasive Species Advisory Committee extended until Sept. 30, 2017, by Ex. Ord. No. 13708, Sept. 30, 2015, 80 F.R. 60271, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

#### **EXECUTIVE ORDER NO. 13148**

Ex. Ord. No. 13148, Apr. 21, 2000, 65 F.R. 24595, which directed Federal agencies to establish strategies that supported environmental leadership programs, policies, and procedures and to implement environmental compliance audit programs and policies that emphasized pollution prevention, was revoked by Ex. Ord. No. 13423, §11(a)(iv), Jan. 24, 2007, 72 F.R. 3923, formerly set out below.

#### **EXECUTIVE ORDER NO. 13423**

Ex. Ord. No. 13423, Jan. 24, 2007, 72 F.R. 3919, which set out various goals and duties for Federal Agencies to conduct their environmental, transportation, and energy-related activities under the law in support of their respective missions in an environmentally, economically and fiscally sound, integrated, continuously improving, efficient, and sustainable manner, was revoked by Ex. Ord. No. 13693, §16(a), Mar. 19, 2015, 80 F.R. 15880, set out below.

#### **EXECUTIVE ORDER NO. 13514**

Ex. Ord. No. 13514, Oct. 5, 2009, 74 F.R. 52117, which related to environmental sustainability in the Federal Government, was revoked by Ex. Ord. No. 13693, §16(b), Mar. 19, 2015, 80 F.R. 15880, set out below.

#### **EX. ORD. NO. 13653. PREPARING THE UNITED STATES FOR THE IMPACTS OF CLIMATE CHANGE**

Ex. Ord. No. 13653, Nov. 1, 2013, 78 F.R. 66819, as amended by Ex. Ord. No. 13683, §2, Dec. 11, 2014, 79 F.R. 75041; Ex. Ord. No. 13693, §16(f), Mar. 19, 2015, 80 F.R. 15881, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to prepare the Nation for the impacts of climate change by undertaking actions to enhance climate preparedness and resilience, it is hereby ordered as follows:

Section 1. *Policy.* The impacts of climate change—including an increase in prolonged periods of excessively high temperatures, more heavy downpours, an increase in wildfires, more severe droughts, permafrost thawing, ocean acidification, and sea-level rise—are already affecting communities, natural resources, ecosystems, economies, and public health across the Nation. These impacts are often most significant for communities that already face economic or health-related challenges, and for species and habitats that are already facing other pressures. Managing these risks requires deliberate preparation, close cooperation, and coordinated planning by the Federal Government, as well as by stakeholders, to facilitate Federal, State, local, tribal, private-sector, and nonprofit-sector efforts to improve climate preparedness and resilience; help safeguard our economy, infrastructure, environment, and natural resources; and provide for the continuity of executive department and agency (agency) operations, services, and programs.

A foundation for coordinated action on climate change preparedness and resilience across the Federal Government was established by [former] Executive Order 13514 of October 5, 2009 (Federal Leadership in Environmental, Energy, and Economic Performance), and the Interagency Climate Change Adaptation Task Force led by the Council on Environmental Quality (CEQ), the Office of Science and Technology Policy (OSTP), and the National Oceanic and Atmospheric Administration (NOAA). In addition, through the U.S. Global Change Research Program (USGCRP), established by section 103 of the Global Change Research Act of 1990 (15 U.S.C. 2933), and agency programs and activities, the Federal Government will continue to support scientific research, observational capabilities, and assessments necessary to improve our understanding of and response to climate change and its impacts on the Nation.

The Federal Government must build on recent progress and pursue new strategies to improve the Nation's preparedness and resilience. In doing so, agencies should promote: (1) engaged and strong partnerships and information sharing at all levels of government; (2) risk-informed decisionmaking and the tools to facilitate it; (3) adaptive learning, in which experiences serve as opportunities to inform and adjust future actions; and (4) preparedness planning.

*Sec. 2. Modernizing Federal Programs to Support Climate Resilient Investment.* (a) To support the efforts of regions, States, local communities, and tribes, all agencies, consistent with



their missions and in coordination with the Council on Climate Preparedness and Resilience (Council) established in section 6 of this order, shall:

(i) identify and seek to remove or reform barriers that discourage investments or other actions to increase the Nation's resilience to climate change while ensuring continued protection of public health and the environment;

(ii) reform policies and Federal funding programs that may, perhaps unintentionally, increase the vulnerability of natural or built systems, economic sectors, natural resources, or communities to climate change related risks;

(iii) identify opportunities to support and encourage smarter, more climate-resilient investments by States, local communities, and tribes, including by providing incentives through agency guidance, grants, technical assistance, performance measures, safety considerations, and other programs, including in the context of infrastructure development as reflected in Executive Order 12893 of January 26, 1994 (Principles for Federal Infrastructure Investments), my memorandum of August 31, 2011 (Speeding Infrastructure Development through More Efficient and Effective Permitting and Environmental Review), Executive Order 13604 of March 22, 2012 (Improving Performance of Federal Permitting and Review of Infrastructure Projects), and my memorandum of May 17, 2013 (Modernizing Federal Infrastructure Review and Permitting Regulations, Policies, and Procedures); and

(iv) report on their progress in achieving the requirements identified above, including accomplished and planned milestones, in the Agency Adaptation Plans developed pursuant to section 5 of this order.

(b) In carrying out this section, agencies should also consider the recommendations of the State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience (Task Force) established in section 7 of this order and the National Infrastructure Advisory Council established by Executive Order 13231 of October 16, 2001 (Critical Infrastructure Protection in the Information Age), and continued through Executive Order 13652 of September 30, 2013 (Continuance of Certain Federal Advisory Committees).

(c) Interagency groups charged with coordinating and modernizing Federal processes related to the development and integration of both man-made and natural infrastructure, evaluating public health and social equity issues, safeguarding natural resources, and other issues impacted by climate change—including the Steering Committee on Federal Infrastructure Permitting and Review Process Improvement established by Executive Order 13604, the Task Force on Ports established on July 19, 2012, the Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska established by Executive Order 13580 of July 12, 2011, and the Federal Interagency Working Group on Environmental Justice established by Executive Order 12898 of February 11, 1994—shall be responsible for ensuring that climate change related risks are accounted for in such processes and shall work with agencies in meeting the requirements set forth in subsections (a) and (b) of this section.

*Sec. 3. Managing Lands and Waters for Climate Preparedness and Resilience.* Within 9 months of the date of this order and in coordination with the efforts described in section 2 of this order, the heads of the Departments of Defense, the Interior, and Agriculture, the Environmental Protection Agency, NOAA, the Federal Emergency Management Agency, the Army Corps of Engineers, and other agencies as recommended by the Council established in section 6 of this order shall work with the Chair of CEQ and the Director of the Office of Management and Budget (OMB) to complete an inventory and assessment of proposed and completed changes to their land- and water-related policies, programs, and regulations necessary to make the

Nation's watersheds, natural resources, and ecosystems, and the communities and economies that depend on them, more resilient in the face of a changing climate. Further, recognizing the many benefits the Nation's natural infrastructure provides, agencies shall, where possible, focus on program and policy adjustments that promote the dual goals of greater climate resilience and carbon sequestration, or other reductions to the sources of climate change. The assessment shall include a timeline and plan for making changes to policies, programs, and regulations. Agencies shall build on efforts already completed or underway as outlined in agencies' Adaptation Plans, as discussed in section 5 of this order, as well as recent interagency climate adaptation strategies such as the National Action Plan: Priorities for Managing Freshwater Resources in a Changing Climate, released October 28, 2011; the National Fish, Wildlife and Plants Climate Adaptation Strategy, released March 26, 2013; and the National Ocean Policy Implementation Plan, released April 16, 2013.

*Sec. 4. Providing Information, Data, and Tools for Climate Change Preparedness and Resilience.* (a) In support of Federal, regional, State, local, tribal, private-sector and nonprofit-sector efforts to prepare for the impacts of climate change, the Departments of Defense, the Interior, Agriculture, Commerce, Health and Human Services, Housing and Urban Development, Transportation, Energy, and Homeland Security, the Environmental Protection Agency, the National Aeronautics and Space Administration, and any other agencies as recommended by the Council established in section 6 of this order, shall, supported by USGCRP, work together to develop and provide authoritative, easily accessible, usable, and timely data, information, and decision-support tools on climate preparedness and resilience.

(b) As part of the broader open data policy, CEQ and OSTP, in collaboration with OMB and consistent with Executive Order 13642 of May 9, 2013 (Making Open and Machine Readable the New Default for Government Information), shall oversee the establishment of a web-based portal on "Data.gov" and work with agencies on identifying, developing, and integrating data and tools relevant to climate issues and decisionmaking. Agencies shall coordinate their work on these data and tools with relevant interagency councils and committees such as the National Science and Technology Council and those that support the implementation of Presidential Policy Directive–21 of February 12, 2013 (Critical Infrastructure Security and Resilience).

*Sec. 5. Federal Agency Planning for Climate Change Related Risk.* (a) Consistent with other Executive Orders, agencies have developed Agency Adaptation Plans and provided them to CEQ and OMB. These plans evaluate the most significant climate change related risks to, and vulnerabilities in, agency operations and missions in both the short and long term, and outline actions that agencies will take to manage these risks and vulnerabilities. Building on these efforts, each agency shall develop or continue to develop, implement, and update comprehensive plans that integrate consideration of climate change into agency operations and overall mission objectives and submit those plans to CEQ and OMB for review. Each Agency Adaptation Plan shall include:

(i) identification and assessment of climate change related impacts on and risks to the agency's ability to accomplish its missions, operations, and programs;

(ii) a description of programs, policies, and plans the agency has already put in place, as well as additional actions the agency will take, to manage climate risks in the near term and build resilience in the short and long term;

(iii) a description of how any climate change related risk identified pursuant to paragraph (i) of this subsection that is deemed so significant that it impairs an agency's statutory mission or operation will be addressed, including through the agency's existing reporting requirements;

(iv) a description of how the agency will consider the need to improve climate adaptation and resilience, including the costs and benefits of such improvement, with respect to agency suppliers, supply chain, real property investments, and capital equipment purchases such as updating agency policies for leasing, building upgrades, relocation of existing facilities and equipment, and construction of new facilities; and

(v) a description of how the agency will contribute to coordinated interagency efforts to support climate preparedness and resilience at all levels of government, including collaborative work across agencies' regional offices and hubs, and through coordinated development of information, data, and tools, consistent with section 4 of this order.

(b) Agencies will report on progress made on their Adaptation Plans, as well as any updates made to the plans, through the annual Strategic Sustainability Performance Plan process. Agencies shall regularly update their Adaptation Plans, completing the first update within 120 days of the date of this order, with additional regular updates thereafter due not later than 1 year after the publication of each quadrennial National Climate Assessment report required by section 106 of the Global Change Research Act of 1990 (15 U.S.C. 2936).

*Sec. 6. Council on Climate Preparedness and Resilience.*

(a) *Establishment.* There is established an interagency Council on Climate Preparedness and Resilience (Council).

(b) *Membership.* The Council shall be co-chaired by the Chair of CEQ, the Director of OSTP, the Assistant to the President for Homeland Security and Counterterrorism, and the Director of OMB. In addition, the Council shall include senior officials (Deputy Secretary or equivalent officer) from:

- (i) the Department of State;
- (ii) the Department of the Treasury;
- (iii) the Department of Defense;
- (iv) the Department of Justice;
- (v) the Department of the Interior;
- (vi) the Department of Agriculture;
- (vii) the Department of Commerce;
- (viii) the Department of Labor;
- (ix) the Department of Health and Human Services;
- (x) the Department of Housing and Urban Development;
- (xi) the Department of Transportation;
- (xii) the Department of Energy;
- (xiii) the Department of Education;
- (xiv) the Department of Veterans Affairs;
- (xv) the Department of Homeland Security;

- (xvi) the United States Agency for International Development;
- (xvii) the Army Corps of Engineers;
- (xviii) the Environmental Protection Agency;
- (xix) the General Services Administration;
- (xx) the Millennium Challenge Corporation;
- (xxi) the National Aeronautics and Space Administration;
- (xxii) the U.S. Small Business Administration;
- (xxiii) the Corporation for National and Community Service;
- (xxiv) the Office of the Director of National Intelligence;
- (xxv) the Council of Economic Advisers;
- (xxvi) the National Economic Council;
- (xxvii) the Domestic Policy Council;
- (xxviii) the White House Office of Public Engagement and Intergovernmental Affairs;
- (xxix) the United States Trade Representative; and
- (xxx) such agencies or offices as the President or Co-Chairs shall designate.

(c) *Administration.* CEQ shall provide administrative support and additional resources, as appropriate, for the Council to the extent permitted by law and within existing appropriations. Agencies shall assist and provide information to the Council, consistent with applicable law, as may be necessary to carry out its functions. Each agency shall bear its own expenses for participating in the Council.

(d) *Council Structure.* The Co-Chairs may designate a subset of members of the Council to serve on a Steering Committee to help determine priorities and strategic direction for the Council. The Co-Chairs and Steering Committee may establish working groups as needed, and may recharter working groups of the Interagency Climate Change Adaptation Task Force, as appropriate.

(e) *Mission and Function of the Council.* The Council shall work across agencies and offices, and in partnership with State, local, and tribal governments (as well as the Task Force established in section 7 of this order), academic and research institutions, and the private and nonprofit sectors to:

(i) develop, recommend, coordinate interagency efforts on, and track implementation of priority Federal Government actions related to climate preparedness and resilience;

(ii) support regional, State, local, and tribal action to assess climate change related vulnerabilities and cost-effectively increase climate preparedness and resilience of communities, critical economic sectors, natural and built infrastructure, and natural resources, including through the activities as outlined in sections 2 and 3 of this order;

(iii) facilitate the integration of climate science in policies and planning of government agencies and the private sector, including by promoting the development of innovative,

actionable, and accessible Federal climate change related information, data, and tools at appropriate scales for decisionmakers and deployment of this information through a Government-wide web-based portal, as described in section 4 of this order; and

(iv) such other functions as may be decided by the Co-Chairs, including implementing, as appropriate, the recommendations of the Task Force established in section 7 of this order.

(f) *Termination of the Interagency Climate Change Adaptation Task Force.* The Interagency Climate Change Adaptation Task Force (Adaptation Task Force), established in 2009, created the framework for coordinated Federal action on climate preparedness and resilience, driving agency-level planning and action. The Adaptation Task Force shall terminate no later than 30 days after the first meeting of the Council, which shall continue and build upon the Adaptation Task Force's work.

*Sec. 7. State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience.*

(a) *Establishment.* To inform Federal efforts to support climate preparedness and resilience, there is established a State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience (Task Force).

(b) *Membership.* The Task Force shall be co-chaired by the Chair of CEQ and the Director of the White House Office of Intergovernmental Affairs. In addition, its members shall be such elected State, local, and tribal officials as may be invited by the Co-Chairs to participate. Members of the Task Force, acting in their official capacity, may designate employees with authority to act on their behalf.

(c) *Mission and Function.* Within 1 year of the date of this order, the Task Force shall provide, through its Co-Chairs, recommendations to the President and the Council for how the Federal Government can:

(i) remove barriers, create incentives, and otherwise modernize Federal programs to encourage investments, practices, and partnerships that facilitate increased resilience to climate impacts, including those associated with extreme weather;

(ii) provide useful climate preparedness tools and actionable information for States, local communities, and tribes, including through interagency collaboration as described in section 6 of this order; and

(iii) otherwise support State, local, and tribal preparedness for and resilience to climate change.

(d) *Sunset.* The Task Force shall terminate no later than 6 months after providing its recommendations.

*Sec. 8. Definitions.* As used in this order:

(a) "preparedness" means actions taken to plan, organize, equip, train, and exercise to build, apply, and sustain the capabilities necessary to prevent, protect against, ameliorate the effects of, respond to, and recover from climate change related damages to life, health, property, livelihoods, ecosystems, and national security;

(b) "adaptation" means adjustment in natural or human systems in anticipation of or response to a changing environment in a way that effectively uses beneficial opportunities or reduces negative effects; and

(c) "resilience" means the ability to anticipate, prepare for, and adapt to changing conditions and withstand, respond to, and recover rapidly from disruptions.

Sec. 9. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department, agency, or the head thereof; or
- (ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with U.S. obligations under international agreements and applicable U.S. law, and be subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

**EX. ORD. NO. 13690. ESTABLISHING A FEDERAL FLOOD RISK MANAGEMENT STANDARD AND A PROCESS FOR FURTHER SOLICITING AND CONSIDERING STAKEHOLDER INPUT**

Ex. Ord. No. 13690, Jan. 30, 2015, 80 F.R. 6425, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve the Nation's resilience to current and future flood risk, I hereby direct the following:

Section 1. *Policy.* It is the policy of the United States to improve the resilience of communities and Federal assets against the impacts of flooding. These impacts are anticipated to increase over time due to the effects of climate change and other threats. Losses caused by flooding affect the environment, our economic prosperity, and public health and safety, each of which affects our national security.

The Federal Government must take action, informed by the best-available and actionable science, to improve the Nation's preparedness and resilience against flooding. Executive Order 11988 of May 24, 1977 (Floodplain Management), requires executive departments and agencies (agencies) to avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative. The Federal Government has developed processes for evaluating the impacts of Federal actions in or affecting floodplains to implement Executive Order 11988.

As part of a national policy on resilience and risk reduction consistent with my Climate Action Plan, the National Security Council staff coordinated an interagency effort to create a new flood risk reduction standard for federally funded projects. The views of Governors, mayors, and other stakeholders were solicited and considered as efforts were made to establish a new flood risk reduction standard for federally funded projects. The result of these efforts is the Federal Flood Risk Management Standard (Standard), a flexible framework to increase resilience against flooding and help preserve the natural values of floodplains. Incorporating this Standard will ensure that agencies expand management from the current base flood level to a higher vertical elevation and corresponding horizontal floodplain to address current and future flood risk and ensure that projects funded with taxpayer dollars last as long as intended.

This order establishes the Standard and sets forth a process for further solicitation and consideration of public input, including from Governors, mayors, and other stakeholders, prior to implementation of the Standard.

Sec. 2. *Amendments to Executive Order 11988.* [Amended Ex. Ord. No. 11988, set out above.]

Sec. 3. *Agency Action.* (a) Prior to any action to implement the Standard, additional input from stakeholders shall be solicited and considered. To carry out this process:

(i) the Federal Emergency Management Agency, on behalf of the Mitigation Framework Leadership Group, shall publish for public comment draft amended Floodplain Management Guidelines for Implementing Executive Order 11988 (Guidelines) to provide guidance to agencies on the implementation of Executive Order 11988, as amended, consistent with the Standard;

(ii) during the comment period, the Mitigation Framework Leadership Group shall host public meetings with stakeholders to solicit input; and

(iii) after the comment period closes, and based on the comments received on the draft Guidelines during the comment period, in accordance with subsections (a)(i) and (ii) of this section, the Mitigation Framework Leadership Group shall provide recommendations to the Water Resources Council.

(b) After additional input from stakeholders has been solicited and considered as set forth in subsections (a)(i) and (ii) of this section and after consideration of the recommendations made by the Mitigation Framework Leadership Group pursuant to subsection (a)(iii) of this section, the Water Resources Council shall issue amended Guidelines to provide guidance to agencies on the implementation of Executive Order 11988, as amended, consistent with the Standard.

(c) To the extent permitted by law, each agency shall, in consultation with the Water Resources Council, Federal Interagency Floodplain Management Task Force, Federal Emergency Management Agency, and Council on Environmental Quality, issue or amend existing regulations and procedures to comply with this order, and update those regulations and procedures as warranted. Within 30 days of the closing of the public comment period for the draft amendments to the Guidelines as described in subsection (a) of this section, each agency shall submit an implementation plan to the National Security Council staff that contains milestones and a timeline for implementation of this order and the Standard, by the agency as it applies to the agency's processes and mission. Agencies shall not issue or amend existing regulations and procedures pursuant to this subsection until after the Water Resources Council has issued amended Guidelines pursuant to subsection (b) of this order [sic].

Sec. 4. *Reassessment.* (a) The Water Resources Council shall issue any further amendments to the Guidelines as warranted.

(b) The Mitigation Framework Leadership Group in consultation with the Federal Interagency Floodplain Management Task Force shall reassess the Standard annually, after seeking stakeholder input, and provide recommendations to the Water Resources Council to update the Standard if warranted based on accurate and actionable science that takes into account changes to climate and other changes in flood risk. The Water Resources Council shall issue an update to the Standard at least every 5 years.

Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department, agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Water Resources Council shall carry out its responsibilities under this order in consultation with the Mitigation Framework Leadership Group.

BARACK OBAMA.

**EX. ORD. NO. 13693. PLANNING FOR FEDERAL SUSTAINABILITY IN THE NEXT DECADE**

Ex. Ord. No. 13693, Mar. 19, 2015, 80 F.R. 15871, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to maintain Federal leadership in sustainability and greenhouse gas emission reductions, it is hereby ordered as follows:

Section 1. *Policy.* Executive departments and agencies (agencies) have been among our Nation's leaders as the United States works to build a clean energy economy that will sustain our prosperity and the health of our people and our environment for generations to come. Federal leadership in energy, environmental water, fleet, buildings, and acquisition management will continue to drive national greenhouse gas reductions and support preparations for the impacts of climate change. Through a combination of more efficient Federal operations such as those outlined in this Executive Order (order), we have the opportunity to reduce agency direct greenhouse gas emissions by at least 40 percent over the next decade while at the same time fostering innovation, reducing spending, and strengthening the communities in which our Federal facilities operate.

It therefore continues to be the policy of the United States that agencies shall increase efficiency and improve their environmental performance. Improved environmental performance will help us protect our planet for future generations and save taxpayer dollars through avoided energy costs and increased efficiency, while also making Federal facilities more resilient. To improve environmental performance and Federal sustainability, priority should first be placed on reducing energy use and cost, then on finding renewable or alternative energy solutions. Pursuing clean sources of energy will improve energy and water security, while ensuring that Federal facilities will continue to meet mission requirements and lead by example. Employing this strategy for the next decade calls for expanded and updated Federal environmental performance goals with a clear overarching objective of reducing greenhouse gas emissions across Federal operations and the Federal supply chain.

Sec. 2. *Agency Greenhouse Gas Emission Reductions.* In implementing the policy set forth in section 1 of this order, the head of each agency shall, within 90 days of the date of this order, propose to the Chair of the Council on Environmental Quality (CEQ) and the Director of the Office of Management and Budget (OMB) percentage reduction targets for agency-wide reductions of scope 1 and 2 and scope 3 greenhouse gas emissions in absolute terms by the end of fiscal year 2025 relative to a fiscal year 2008 baseline. Where appropriate, the target shall exclude direct emissions from excluded vehicles and equipment and from electric power



produced and sold commercially to other parties as the primary business of the agency. The proposed targets shall be subject to the review and approval of the Chair of CEQ in coordination with the Director of OMB under section 4(b) of this order.

*Sec. 3. Sustainability Goals for Agencies.* In implementing the policy set forth in section 1 of this order and to achieve the goals of section 2 of this order, the head of each agency shall, where life-cycle cost-effective, beginning in fiscal year 2016, unless otherwise specified:

(a) promote building energy conservation, efficiency, and management by:

(i) reducing agency building energy intensity measured in British thermal units per gross square foot by 2.5 percent annually through the end of fiscal year 2025, relative to the baseline of the agency's building energy use in fiscal year 2015 and taking into account agency progress to date, except where revised pursuant to section 9(f) of this order, by implementing efficiency measures based on and using practices such as:

(A) using remote building energy performance assessment auditing technology;

(B) participating in demand management programs;

(C) ensuring that monthly performance data is entered into the Environmental Protection Agency (EPA) ENERGY STAR Portfolio Manager for covered buildings;

(D) incorporating, where feasible, the consensus-based, industry standard Green Button data access system into reporting, data analytics, and automation processes;

(E) implementing space utilization and optimization practices and policies;

(F) identifying opportunities to transition test-bed technologies to achieve the goals of this section; and

(G) conforming, where feasible, to city energy performance benchmarking and reporting requirements; and

(ii) improving data center energy efficiency at agency facilities by:

(A) ensuring the agency chief information officer promotes data center energy optimization, efficiency, and performance;

(B) installing and monitoring advanced energy meters in all data centers by fiscal year 2018; and

(C) establishing a power usage effectiveness target of 1.2 to 1.4 for new data centers and less than 1.5 for existing data centers;

(b) ensure that at a minimum, the following percentage of the total amount of building electric energy and thermal energy shall be clean energy, accounted for by renewable electric energy and alternative energy:

(i) not less than 10 percent in fiscal years 2016 and 2017;

(ii) not less than 13 percent in fiscal years 2018 and 2019;

(iii) not less than 16 percent in fiscal years 2020 and 2021;

(iv) not less than 20 percent in fiscal years 2022 and 2023; and

(v) not less than 25 percent by fiscal year 2025 and each year thereafter;

(c) ensure that the percentage of the total amount of building electric energy consumed by the agency that is renewable electric energy is:

(i) not less than 10 percent in fiscal years 2016 and 2017;

(ii) not less than 15 percent in fiscal years 2018 and 2019;

(iii) not less than 20 percent in fiscal years 2020 and 2021;

(iv) not less than 25 percent in fiscal years 2022 and 2023; and

(v) not less than 30 percent by fiscal year 2025 and each year thereafter;

(d) include in the renewable electric energy portion of the clean energy target established in subsection (b) of this section renewable electric energy as defined in section 19(v) of this order and associated with the following actions, which are listed in order of priority:

(i) installing agency-funded renewable energy on site at Federal facilities and retaining corresponding renewable energy certificates (RECs) or obtaining equal value replacement RECs;

(ii) contracting for the purchase of energy that includes the installation of renewable energy on site at a Federal facility or off site from a Federal facility and the retention of corresponding RECs or obtaining equal value replacement RECs for the term of the contract;

(iii) purchasing electricity and corresponding RECs or obtaining equal value replacement RECs; and

(iv) purchasing RECs;

(e) include in the alternative energy portion of the clean energy target established in subsection (b) of this section alternative energy as defined in section 19(c) of this order and associated with the following actions, where feasible:

(i) installing thermal renewable energy on site at Federal facilities and retaining corresponding renewable attributes or obtaining equal value replacement RECs where applicable;

(ii) installing combined heat and power processes on site at Federal facilities;

(iii) installing fuel cell energy systems on site at Federal facilities;

(iv) utilizing energy from new small modular nuclear reactor technologies;

(v) utilizing energy from a new project that includes the active capture and storage of carbon dioxide emissions associated with energy generation;

(vi) implementing other alternative energy approaches that advance the policy set forth in section 1 and achieve the goals of section 2 of this order and are in accord with any sustainability, environmental performance, and other instructions or guidance established pursuant to sections 4(e) and 5(a) of this order; and

(vii) including in the Department of Defense (DOD) accounting for alternative energy for this subsection, fulfillment of the requirements for DOD goals established under section 2852 of the National Defense Authorization Act for Fiscal Year 2007 as amended by section 2842 of the National Defense Authorization Act for Fiscal Year 2010;

(f) improve agency water use efficiency and management, including stormwater management by:

(i) reducing agency potable water consumption intensity measured in gallons per gross square foot by 36 percent by fiscal year 2025 through reductions of 2 percent annually through fiscal year 2025 relative to a baseline of the agency's water consumption in fiscal year 2007;

(ii) installing water meters and collecting and utilizing building and facility water balance data to improve water conservation and management;

(iii) reducing agency industrial, landscaping, and agricultural (ILA) water consumption measured in gallons by 2 percent annually through fiscal year 2025 relative to a baseline of the agency's ILA water consumption in fiscal year 2010; and

(iv) installing appropriate green infrastructure features on federally owned property to help with stormwater and wastewater management;

(g) if the agency operates a fleet of at least 20 motor vehicles, improve agency fleet and vehicle efficiency and management by:

(i) determining, as part of the planning requirements of section 14 of this order, the optimum fleet inventory with emphasis placed on eliminating unnecessary or non-essential vehicles from the agency's fleet inventory;

(ii) taking actions that reduce fleet-wide per-mile greenhouse gas emissions from agency fleet vehicles, relative to a baseline of emissions in fiscal year 2014, to achieve the following percentage reductions:

(A) not less than 4 percent by the end of fiscal year 2017;

(B) not less than 15 percent by the end of fiscal year 2021; and

(C) not less than 30 percent by the end of fiscal year 2025;

(iii) collecting and utilizing as a fleet efficiency management tool, as soon as practicable but not later than 2 years after the date of this order, agency fleet operational data through deployment of vehicle telematics at a vehicle asset level for all new passenger and light duty vehicle acquisitions and for medium duty vehicles where appropriate;

(iv) ensuring that agency annual asset-level fleet data is properly and accurately accounted for in a formal agency Fleet Management System and any relevant data is submitted to the Federal Automotive Statistical Tool reporting database, the Federal Motor Vehicle Registration System, and the Fleet Sustainability Dashboard (FleetDASH) system;

(v) planning for agency fleet composition such that by December 31, 2020, zero emission vehicles or plug-in hybrid vehicles account for 20 percent of all new agency passenger vehicle acquisitions and by December 31, 2025, zero emission vehicles or plug-in hybrid vehicles account for 50 percent of all new agency passenger vehicles and including, where practicable, acquisition of such vehicles in other vehicle classes and counting double credit towards the targets in this section for such acquisitions; and

(vi) planning for appropriate charging or refueling infrastructure or other power storage technologies for zero emission vehicles or plug-in hybrid vehicles and opportunities for ancillary services to support vehicle-to-grid technology;

(h) improve building efficiency, performance, and management by:

(i) ensuring, beginning in fiscal year 2020 and thereafter, that all new construction of Federal buildings greater than 5,000 gross square feet that enters the planning process is designed to achieve energy net-zero and, where feasible, water or waste net-zero by fiscal year 2030;

(ii) identifying, beginning in June of 2016, as part of the planning requirements of section 14 of this order, a percentage of at least 15 percent, by number or total square footage, of the agency's existing buildings above 5,000 gross square feet that will, by fiscal year 2025, comply with the revised Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings (Guiding Principles), developed pursuant to section 4 of this order, and making annual progress toward 100 percent conformance with the Guiding Principles for its building inventory;

(iii) identifying, as part of the planning requirements of section 14 of this order, a percentage of the agency's existing buildings above 5,000 gross square feet intended to be energy, waste, or water net-zero buildings by fiscal year 2025 and implementing actions that will allow those buildings to meet that target;

(iv) including in all new agency lease solicitations over 10,000 rentable square feet:

(A) criteria for energy efficiency either as a required performance specification or as a source selection evaluation factor in best-value tradeoff procurements; and

(B) requirements for building lessor disclosure of carbon emission or energy consumption data for that portion of the building occupied by the agency that may be provided by the lessor through submetering or estimation from pro-rated occupancy data, whichever is more cost-effective;

(v) reporting building energy, beginning in fiscal year 2016 as part of the agency scope 3 greenhouse gas emissions for newly solicited leases over 10,000 rentable square feet;

(vi) including in the planning for new buildings or leases cost-effective strategies to optimize sustainable space usage and consideration of existing community transportation planning and infrastructure, including access to public transit;

(vii) ensuring that all new construction, major renovation, repair, and alteration of agency buildings includes appropriate design and deployment of fleet charging infrastructure; and

(viii) including the incorporation of climate-resilient design and management elements into the operation, repair, and renovation of existing agency buildings and the design of new agency buildings;

(i) promote sustainable acquisition and procurement by ensuring that each of the following environmental performance and sustainability factors are included to the maximum extent practicable for all applicable procurements in the planning, award, and execution phases of the acquisition by:

(i) meeting statutory mandates that require purchase preference for:

(A) recycled content products designated by EPA;

(B) energy and water efficient products and services, such as ENERGY STAR qualified and Federal Energy Management Program (FEMP)-designated products, identified by EPA and the Department of Energy (DOE); and

(C) BioPreferred and biobased designated products designated by the United States Department of Agriculture;

(ii) purchasing sustainable products and services identified by EPA programs including:

(A) Significant New Alternative Policy (SNAP) chemicals or other alternatives to ozone-depleting substances and high global warming potential hydrofluorocarbons, where feasible, as identified by SNAP;

(B) WaterSense certified products and services (water efficient products);

(C) Safer Choice labeled products (chemically intensive products that contain safer ingredients); and

(D) SmartWay Transport partners and SmartWay products (fuel efficient products and services);

(iii) purchasing environmentally preferable products or services that:

(A) meet or exceed specifications, standards, or labels recommended by EPA that have been determined to assist agencies in meeting their needs and further advance sustainable procurement goals of this order; or

(B) meet environmental performance criteria developed or adopted by voluntary consensus standards bodies consistent with section 12(d) of the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113) and OMB Circular A–119;

(iv) acting, as part of the implementation of planning requirements of section 14 of this order, until an agency achieves at least 95 percent compliance with the BioPreferred and biobased purchasing requirement in paragraph (i) of this subsection, to:

(A) establish an annual target for the number of contracts to be awarded with BioPreferred and biobased criteria and dollar value of BioPreferred and biobased products to be delivered and reported under those contracts in the following fiscal year. To establish this target, agencies shall consider the dollar value of designated BioPreferred and biobased products reported in previous years, the specifications reviewed and revised for inclusion of BioPreferred and biobased products, and the number of applicable product and service contracts to be awarded, including construction, operations and maintenance, food services, vehicle maintenance, and janitorial services; and

(B) ensure contractors submit timely annual reports of their BioPreferred and biobased purchases; and

(v) reducing copier and printing paper use and acquiring uncoated printing and writing paper containing at least 30 percent postconsumer recycled content or higher as designated by future instruction under section 4(e) of this order;

(j) advance waste prevention and pollution prevention by:

(i) reporting in accordance with the requirements of sections 301 through 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001 through 11023);

(ii) diverting at least 50 percent of non-hazardous solid waste, including food and compostable material but not construction and demolition materials and debris, annually, and pursuing opportunities for net-zero waste or additional diversion opportunities;

(iii) diverting at least 50 percent of non-hazardous construction and demolition materials and debris; and

(iv) reducing or minimizing the quantity of toxic and hazardous chemicals and materials acquired, used, or disposed of, particularly where such reduction will assist the agency in pursuing agency greenhouse gas emission reduction targets established in section 2 of this order;

(k) implement performance contracts for Federal buildings by:

(i) utilizing performance contracting as an important tool to help meet identified energy efficiency and management goals while deploying life-cycle cost-effective energy efficiency and clean energy technology and water conservation measures;

(ii) fulfilling existing agency performance contracting commitments towards the goal of \$4 billion in Federal performance-based contracts by the end of calendar year 2016; and

(iii) providing annual agency targets for performance contracting for energy savings to be implemented in fiscal year 2017 and annually thereafter as part of the planning requirements of section 14 of this order;

(l) promote electronics stewardship by establishing, measuring, and reporting by:

(i) ensuring procurement preference for environmentally sustainable electronic products as established in subsection (i) of this section;

(ii) establishing and implementing policies to enable power management, duplex printing, and other energy-efficient or environmentally sustainable features on all eligible agency electronic products; and

(iii) employing environmentally sound practices with respect to the agency's disposition of all agency excess or surplus electronic products.

*Sec. 4. Duties of the Chair of the Council on Environmental Quality.* In implementing the policy set forth in section 1 of this order, the Chair of CEQ shall:

(a) in coordination with the Director of OMB, establish a Federal Interagency Sustainability Steering Committee (Steering Committee) that shall advise the Director of OMB and the Chair of CEQ on the performance of agency responsibilities under sections 2 and 3 of this order and shall include the Federal Chief Sustainability Officer referenced in section 6 of this order and agency Chief Sustainability Officers designated under sections 7 and 8 of this order;

(b) in coordination with the Director of OMB review and approve agency-wide scope 1 and 2 and scope 3 greenhouse gas emissions reduction targets developed under section 2 of this order;

(c) in coordination with the Director of OMB, prepare streamlined reporting metrics to determine each agency's progress under sections 2 and 3 of this order;

(d) review and evaluate each agency's Plan prepared under section 14 of this order;

(e) within 45 days of the date of this order and thereafter as necessary, after consultation with the Director of OMB, issue implementing instructions or other guidance to direct agency implementation of this order, other than instructions within the authority of the Director of OMB to issue under section 5 of this order;

(f) within 150 days of the date of this order, prepare and issue revised Guiding Principles for both new and existing Federal buildings including consideration of climate change resilience and employee and visitor wellness;

(g) revise, as necessary and in coordination with the Director of OMB, existing CEQ guidance and implementing instructions on Sustainable Locations for Federal Facilities of September 15, 2011, Sustainable Practices for Designed Landscapes of October 31, 2011, as supplemented on October 22, 2014, Federal Greenhouse Gas Accounting and Reporting Guidance [Revision 1] of June 4, 2012, and Federal Agency Implementation of Water Efficiency and Management Provisions of [former] Executive Order 13514 of July 10, 2013 [Oct. 5, 2009];

(h) within 150 days of the date of this order, prepare and issue guidance to assist agencies in the implementation of section 13 of this order;

(i) identify annually, based on total contract spending in the previous fiscal year as reported in the Federal Procurement Data System, the seven largest Federal procuring agencies responsible for implementation of section 15(b) of this order;

(j) administer a Presidential leadership award program to recognize exceptional and outstanding performance and excellence in agency efforts to implement this order; and

(k) establish and disband, as appropriate, temporary interagency working groups to provide recommendations to the Chair of CEQ associated with the goals of this order, including: grid-based green power; data quality, collection, and reporting; greenhouse gas emissions associated with the transportation of Federal freight and cargo; sustainability considerations in resilience planning; agency supply chain climate vulnerability; recycled content paper; green infrastructure; and carbon uptake accounting and wood products.

*Sec. 5. Duties of the Director of the Office of Management and Budget.* In implementing the policy set forth in section 1 of this order, the Director of OMB shall:

(a) issue, after consultation with the Chair of CEQ, instructions to the heads of agencies concerning periodic performance evaluation of agency implementation of this order, including consideration of the results from section 4(c) of this order;

(b) prepare scorecards providing periodic evaluation of Principal Agency performance in implementing this order and publish scorecard results on a publicly available Web site; and

(c) review and approve each agency's Plan prepared under section 14 of this order.

*Sec. 6. Duties of the Federal Chief Sustainability Officer.* Henceforth, the Federal Environmental Executive is reestablished as the Federal Chief Sustainability Officer and the Office of the Federal Environmental Executive is reestablished as the Office of the Chief Sustainability Officer, for which the Environmental Protection Agency shall provide funding and administrative support and that shall be maintained at CEQ. In implementing the policy set forth in section 1 of this order, the Federal Chief Sustainability Officer shall:

(a) monitor progress and advise the Chair of CEQ on agency goals in sections 2 and 3 of this order;

(b) chair, convene, and preside at quarterly meetings; determine the agenda; and direct the work of the Steering Committee;

(c) lead the development of programs and policies to assist agencies in implementing the goals of this order in coordination with DOE, EPA, the General Services Administration (GSA), and other agencies as appropriate;

(d) coordinate and provide direction to relevant existing workgroups through quarterly meetings to ensure that opportunities for improvement in implementation of this order are identified and addressed; and

(e) advise the Chair of CEQ on the implementation of this order.

*Sec. 7. Duties of Principal Agencies.* To ensure successful implementation of the policy established in section 1 of this order, the head of each Principal Agency shall:

(a) designate, within 45 days of the date of this order, an agency Chief Sustainability Officer, who shall be a senior civilian officer of the United States, compensated annually in an amount at or above the amount payable at level IV of the Executive Schedule, and report such designation to the Director of OMB and the Chair of CEQ;

(b) assign the designated official the authority to represent the agency on the Steering Committee established under section 4 of this order and perform such other duties relating to the implementation of this order within the agency as the head of the agency deems appropriate;

(c) prepare and distribute internally, where appropriate, performance evaluations of agency implementation of this order that reflect the contribution of agency services, components, bureaus, and operating divisions to the goals of this order;

(d) ensure, as soon as practicable after the date of this order, that leases and contracts entered into after the date of this order for lessor or contractor operation of Government-owned buildings or vehicles facilitate the agency's compliance with this order;

(e) implement opportunities to improve agency fleet sustainability, including vehicle acquisitions as established in section 3(g) of this order, waiver authority, and fleet data management practices, by revising agency fleet management review and approval procedures to include the Chief Sustainability Officers designated under this section and section 8 of this order;

(f) consider the development of policies to promote sustainable commuting and work-related travel practices for Federal employees that foster workplace vehicle charging, encourage telecommuting, teleconferencing, and reward carpooling and the use of public transportation, where consistent with agency authority and Federal appropriations law;

(g) ensure regional agency actions consider and are consistent with, sustainability and climate preparedness priorities of States, local governments, and tribal communities where agency facilities are located;

(h) foster outstanding performance and excellence in agency efforts to implement this order through opportunities such as agency leadership award programs;

(i) continue implementation of formal Environmental Management Systems (EMS) where those systems have proven effective and deploy new EMSs where appropriate; and

(j) notwithstanding the limitations on implementation in section 17 of this order, apply, where feasible and appropriate, the strategies and plans to achieve the goals of this order in whole or in part with respect to fueling, operation, and management of tactical or emergency vehicles and to the activities and facilities of the agency that are not located within the United States.

*Sec. 8. Duties of Contributing Agencies.* Within 45 days of the date of this order, to ensure successful implementation of the policy established in section 1 of this order, the head of each



contributing agency shall designate an agency Chief Sustainability Officer, who shall be a senior civilian officer of the United States, compensated annually in an amount at or above the amount payable at level IV of the Executive Schedule, and report such designation to the Director of OMB and the Chair of CEQ.

*Sec. 9. Duties of the Agency Chief Sustainability Officers.* The Chief Sustainability Officers designated under sections 7 and 8 of this order shall be responsible for:

(a) ensuring agency policies, plans, and strategies implemented to achieve the goals of this order consider the role of agency regional facilities and personnel and are integrated into agency permitting and environmental review policies, programs, and planning;

(b) developing and implementing an agency-wide strategic process that coordinates appropriate agency functions and programs to ensure that those functions and programs consider and address the goals of this order;

(c) reporting annually to the Chair of CEQ and Director of OMB a comprehensive inventory of progress towards the greenhouse gas emissions goals established in section 2 of this order;

(d) representing the agency on the Steering Committee;

(e) convening quarterly meetings of agency bureaus, commands, or operating divisions that are responsible for the implementation of strategies necessary to meet the goals of this order;

(f) representing the agency in any requests to the Chair of CEQ and Director of OMB to amend or normalize a baseline for goals established in this order due to change of greater than 5 percent as a result of agency space consolidation, a change in mission tempo, or improved data quality;

(g) providing plans, including the Plan prepared under section 14 of this order, reports, information, and assistance necessary to implement this order, to the Director of OMB, the Chair of CEQ, and the Federal Chief Sustainability Officer; and

(h) performing such other duties relating to the implementation of this order as the head of the agency deems appropriate.

*Sec. 10. Regional Coordination.* Within 180 days of the date of this order, each EPA and GSA Regional office shall in coordination with Federal Executive Boards established by the Presidential Memorandum of November 10, 1961 (The Need for Greater Coordination of Regional and Field Activities of the Government), DOD and other agencies as appropriate, convene regional interagency workgroups to identify and address:

(a) sustainable operations of Federal fleet vehicles, including identification and implementation of opportunities to use and share fueling infrastructure and logistical resources to support the adoption and use of alternative fuel vehicles, including E-85 compatible vehicles, zero emission and plug-in hybrid vehicles, and compressed natural gas powered vehicles;

(b) water resource management and drought response opportunities;

(c) climate change preparedness and resilience planning in coordination with State, local, and tribal communities; and

(d) opportunities for collective procurement of clean energy to satisfy energy demand for multiple agency buildings.

*Sec. 11. Employee Education and Training.* Within 180 days of the date of this order, the Office of Personnel Management, in coordination with DOE, GSA, EPA, and other agencies as appropriate, shall:

(a) consider the establishment of a dedicated Federal occupational series for sustainability professionals and relevant positions that directly impact the achievement of Federal sustainability goals and if appropriate, prepare and issue such occupational series; and

(b) initiate the inclusion of environmental sustainability and climate preparedness and resilience into Federal leadership and educational programs in courses and training, delivered through electronic learning, in classroom settings, and residential centers, particularly developmental training for Senior Executive Service and GS-15 personnel.

*Sec. 12. Supporting the Federal Fleet.* (a) GSA shall ensure that vehicles available to agencies for either lease or sale, at or below market cost, through its vehicle program include adequate variety and volume of alternative fuel vehicles, including zero emission and plug-in hybrid vehicles, to meet the fleet management goals of this order.

(b) DOE shall assist the United States Postal Service (USPS) in evaluating the best alternative and advanced fuel technologies for the USPS fleet and report on such progress annually as part of the planning requirements of section 14 of this order.

*Sec. 13. Supporting Federal Facility Climate Preparedness and Resilience.* The head of each agency shall, consistent with Executive Order 13653 of November 1, 2013, ensure that agency operations and facilities prepare for impacts of climate change as part of the planning requirements of section 14 of this order and consistent with planning required under section 5 of Executive Order 13653 by:

(a) identifying and addressing projected impacts of climate change on mission critical water, energy, communication, and transportation demands and considering those climate impacts in operational preparedness planning for major agency facilities and operations; and

(b) calculating the potential cost and risk to mission associated with agency operations that do not take into account the information collected in subsection (a) of this section and considering that cost in agency decision-making.

*Sec. 14. Agency Strategic Sustainability Performance Plan.* Beginning in June 2015, and continuing through fiscal year 2025, the head of each Principal Agency shall develop, implement, and annually update an integrated Strategic Sustainability Performance Plan (Plan) based on guidance prepared by the Chair of CEQ under section 4 of this order. Contributing agencies are encouraged to prepare a Plan but may limit content of the Plan to a summary of agency actions to meet the requirements of this order. Each Principal Agency Plan and update shall be provided to the Chair of CEQ and Director of OMB, shall be subject to approval by the Director under section 5 of this order, and shall be made publicly available on an agency Web site once approved.

*Sec. 15. Supply Chain Greenhouse Gas Management.* In implementing the greenhouse gas management policies in section 1 of this order and to better understand and manage the implications of Federal supply chain greenhouse gas emissions:

(a) the Chair of CEQ shall, within 30 days of the date of this order and annually thereafter, identify and publicly release an inventory of major Federal suppliers using publicly available Federal procurement information, including information as to whether the supplier has accounted for and publicly disclosed, during the previous calendar year, annual scope 1 and 2

greenhouse gas emission data and publicly disclosed a greenhouse gas emission reductions target (or targets) for 2015 or beyond; and

(b) the seven largest Federal procuring agencies shall each submit for consideration, in conjunction with the planning requirements of section 14 of this order, a plan to implement at least five new procurements annually in which the agency may include, as appropriate, contract requirements for vendors or evaluation criteria that consider contractor emissions and greenhouse gas emissions management practices. The plans submitted for consideration may include identification of evaluation criteria, performance period criteria, and contract clauses that will encourage suppliers to manage and reduce greenhouse gas emissions, and shall be implemented as soon as practicable after any relevant administrative requirements have been met.

*Sec. 16. Revocations and Conforming Provisions.* (a) Pursuant to section 742(b) of Public Law 111–117, I have determined that this order will achieve equal or better environmental or energy efficiency results than Executive Order 13423. Therefore, Executive Order 13423 of January 24, 2007, is revoked.

(b) Executive Order 13514 of October 5, 2009; Presidential Memorandum of December 2, 2011 (Implementation of Energy Savings Projects and Performance-Based Contracting for Energy Savings); section 1 of Presidential Memorandum of February 21, 2012 (Driving Innovation and Creating Jobs in Rural America through Biobased and Sustainable Product Procurement); and Presidential Memorandum of December 5, 2013 (Federal Leadership on Energy Management), are revoked.

(c) Presidential Memorandum of May 24, 2011 (Federal Fleet Performance), is revoked as of October 1, 2015.

(d) [Amended Ex. Ord. No. 13327, set out as a note under section 121 of Title 40, Public Buildings, Property, and Works.]

(e) [Amended Ex. Ord. No. 13432, set out as a note under section 7521 of this title.]

(f) [Amended Ex. Ord. No. 13653, set out above.]

(g) [Amended Ex. Ord. No. 13677, set out as a note under section 2151 of Title 22, Foreign Relations and Intercourse.]

*Sec. 17. Limitations.* (a) This order shall apply to an agency with respect to the activities, personnel, resources, and facilities of the agency that are located within the United States. The head of an agency may provide that this order shall apply in whole or in part with respect to the activities, personnel, resources, and facilities of the agency that are not located within the United States, if the head of the agency determines that such application is in the interest of the United States.

(b) The head of an agency shall manage activities, personnel, resources, and facilities of the agency that are not located within the United States with respect to which the head of the agency has not made a determination under subsection (a) of this section in a manner consistent with the policy set forth in section 1 of this order to the extent the head of the agency determines practicable.

*Sec. 18. Exemption Authority.* (a) The Director of National Intelligence may exempt an intelligence activity of the United States, and related personnel, resources, and facilities, from

the provisions of this order other than this subsection to the extent the Director determines necessary to protect intelligence sources and methods from unauthorized disclosure.

(b) The head of an agency may exempt law enforcement activities of that agency, and related personnel, resources, and facilities, from the provisions of this order other than this subsection to the extent the head of an agency determines necessary to protect undercover operations from unauthorized disclosure.

(c) The head of an agency may exempt law enforcement, protective, emergency response, or military tactical vehicle fleets of that agency from the provisions of this order other than this subsection. Heads of agencies shall manage fleets to which this paragraph refers in a manner consistent with the policy set forth in section 1 of this order to the extent they determine practicable.

(d) The head of an agency may exempt particular agency activities and facilities from the provisions of this order other than this subsection where it is in the interest of national security. If the head of an agency issues an exemption under this section, the agency must notify the Chair of CEQ in writing within 30 days of issuance of the exemption under this subsection. To the maximum extent practicable, and without compromising national security, each agency shall strive to comply with the purposes, goals, and implementation steps in this order.

(e) The head of an agency may submit to the President, through the Chair of CEQ, a request for an exemption of an agency activity, and related personnel, resources, and facilities, from this order.

Sec. 19. *Definitions.* As used in this order:

(a) "absolute greenhouse gas emissions" means total greenhouse gas emissions without normalization for activity levels and includes any allowable consideration of sequestration;

(b) "agency" means an executive agency as defined in section 105 of title 5, United States Code, excluding the Government Accountability Office;

(c) "alternative energy" means energy generated from technologies and approaches that advance renewable heat sources, including biomass, solar thermal, geothermal, waste heat, and renewable combined heat and power processes; combined heat and power; small modular nuclear reactor technologies; fuel cell energy systems; and energy generation, where active capture and storage of carbon dioxide emissions associated with that energy generation is verified;

(d) "alternative fuel vehicle" means vehicles defined by section 301 of the Energy Policy Act of 1992, as amended (42 U.S.C. 13211), and otherwise includes electric vehicles, hybrid electric vehicles, plug-in hybrid electric vehicles, dedicated alternative fuel vehicles, dual fueled alternative fuel vehicles, qualified fuel cell motor vehicles, advanced lean burn technology motor vehicles, low greenhouse gas vehicles, compressed natural gas powered vehicles, self-propelled vehicles such as bicycles, and any other alternative fuel vehicles that are defined by statute;

(e) "clean energy" means renewable electric energy and alternative energy;

(f) "climate resilient design" means to design assets to prepare for, withstand, respond to, or quickly recover from disruptions due to severe weather events and climate change for the intended life of the asset;

(g) "construction and demolition materials and debris" means waste materials and debris generated during construction, renovation, demolition, or dismantling of all structures and buildings and associated infrastructure;

(h) "Contributing Agencies" are defined as executive agencies that are not subject to the Chief Financial Officers Act [of 1990] and include Federal Boards, Commissions, and Committees;

(i) "divert" or "diverting" means redirecting materials from disposal in landfills or incinerators to recycling or recovery, excluding diversion to waste-to-energy facilities;

(j) "environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, use, operation, maintenance, or disposal related to the product or service;

(k) "excluded vehicles and equipment" means any vehicle, vessel, aircraft, or non-road equipment owned or operated by an agency of the Federal Government that is used in combat support, combat service support, tactical or relief operations, or training for such operations or spaceflight vehicles (including associated ground-support equipment);

(l) "Federal facility" means any building or collection of buildings, grounds, or structures, as well as any fixture or part thereof, which is owned by the United States or any Federal agency or that is held by the United States or any Federal agency under a lease-acquisition agreement under which the United States or a Federal agency will receive fee simple title under the terms of such agreement without further negotiation;

(m) "greenhouse gases" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, nitrogen trifluoride [sic], and sulfur hexafluoride;

(n) "life-cycle cost-effective" means the life-cycle costs of a product, project, or measure are estimated to be equal to or less than the base case (i.e., current or standard practice or product);

(o) "net-zero energy building" means a building that is designed, constructed, or renovated and operated such that the actual annual source energy consumption is balanced by on-site renewable energy;

(p) "net-zero water building" means a building that is designed, constructed, or renovated and operated to greatly reduce total water consumption, use non-potable sources as much as possible, and recycle and reuse water in order to return the equivalent amount of water as was withdrawn from all sources, including municipal supply, without compromising groundwater and surface water quantity or quality;

(q) "net-zero waste building" means a building that is operated to reduce, reuse, recycle, compost, or recover solid waste streams (with the exception of hazardous and medical waste) thereby resulting in zero waste disposal;

(r) "passenger vehicle" means a sedan or station wagon designed primarily to transport people as defined in [section] 102–34.35 of the Federal Management Regulation;

(s) "power usage effectiveness" means the ratio obtained by dividing the total amount of electricity and other power consumed in running a data center by the power consumed by the information and communications technology in the data center;

(t) "Principal Agencies" mean agencies subject to the Chief Financial Officers Act [of 1990] and agencies subject to the OMB Scorecard process under section 5(b) of this order;

(u) "renewable energy certificate" means the technology and environmental (non-energy) attributes that represent proof that 1 megawatt-hour (MWh) of electricity was generated from an eligible renewable energy resource, that can be sold separately from the underlying generic electricity with which they are associated, and that, for the purposes of section 3(d)(iii) and (iv) of this order, were produced by sources of renewable energy placed into service within 10 years prior to the start of the fiscal year;

(v) "renewable electric energy" means energy produced by solar, wind, biomass, landfill gas, ocean (including tidal, wave, current, and thermal), geothermal, geothermal heat pumps, microturbines, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project;

(w) "resilience" means the ability to anticipate, prepare for, and adapt to changing conditions and withstand, respond to, and recover rapidly from disruptions;

(x) "scope 1, 2, and 3" mean:

(i) scope 1: direct greenhouse gas emissions from sources that are owned or controlled by the agency;

(ii) scope 2: direct greenhouse gas emissions resulting from the generation of electricity, heat, or steam purchased by an agency;

(iii) scope 3: greenhouse gas emissions from sources not owned or directly controlled by an agency but related to agency activities such as vendor supply chains, delivery and transportation services, and employee travel and commuting;

(y) "United States" means the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Northern Mariana Islands, and associated territorial waters and airspace;

(z) "water balance" means a comparison of the water supplied to a defined system to the water consumed by that system in order to identify the proportion of water consumed for specific end-uses and ensure potential water leaks in the system are addressed; and

(aa) "zero emission vehicle" means a vehicle that produces zero exhaust emissions of any criteria pollutant (or precursor pollutant) or greenhouse gas under any possible operational modes or conditions.

Sec. 20. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

## **SUBCHAPTER I—POLICIES AND GOALS**

### **§4331. Congressional declaration of national environmental policy**

(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 chapter, 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 esthetically 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.

(Pub. L. 91–190, title I, §101, Jan. 1, 1970, 83 Stat. 852.)

#### **COMMISSION ON POPULATION GROWTH AND THE AMERICAN FUTURE**

Pub. L. 91–213, §§1–9, Mar. 16, 1970, 84 Stat. 67–69, established the Commission on Population Growth and the American Future to conduct and sponsor such studies and research and make such recommendations as might be necessary to provide information and education to all levels of government in the United States, and to our people regarding a broad range of problems associated with population growth and their implications for America's future; prescribed the composition of the Commission; provided for the appointment of its members, and the designation of a Chairman and Vice Chairman; required a majority of the members of

the Commission to constitute a quorum, but allowed a lesser number to conduct hearings; prescribed the compensation of members of the Commission; required the Commission to conduct an inquiry into certain prescribed aspects of population growth in the United States and its foreseeable social consequences; provided for the appointment of an Executive Director and other personnel and prescribed their compensation; authorized the Commission to enter into contracts with public agencies, private firms, institutions, and individuals for the conduct of research and surveys, the preparation of reports, and other activities necessary to the discharge of its duties, and to request from any Federal department or agency any information and assistance it deems necessary to carry out its functions; required the General Services Administration to provide administrative services for the Commission on a reimbursable basis; required the Commission to submit an interim report to the President and the Congress one year after it was established and to submit its final report two years after Mar. 16, 1970; terminated the Commission sixty days after the date of the submission of its final report; and authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amounts as might be necessary to carry out the provisions of Pub. L. 91-213.

#### **EXECUTIVE ORDER No. 11507**

Ex. Ord. No. 11507, eff. Feb. 4, 1970, 35 F.R. 2573, which related to prevention, control, and abatement of air and water pollution at federal facilities was superseded by Ex. Ord. No. 11752, eff. Dec. 17, 1973, 38 F.R. 34793, formerly set out below.

#### **EXECUTIVE ORDER No. 11752**

Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, which related to the prevention, control, and abatement of environmental pollution at Federal facilities, was revoked by Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

### **§4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts**

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 chapter, 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 subchapter II of this chapter, 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, 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 chapter; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.<sup>1</sup>

(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 subchapter II of this chapter.

(Pub. L. 91–190, title I, §102, Jan. 1, 1970, 83 Stat. 853; Pub. L. 94–83, Aug. 9, 1975, 89 Stat. 424.)

#### AMENDMENTS

**1975**—Subpars. (D) to (I). Pub. L. 94–83 added subpar. (D) and redesignated former subpars. (D) to (H) as (E) to (I), respectively.

### **CERTAIN COMMERCIAL SPACE LAUNCH ACTIVITIES**

Pub. L. 104–88, title IV, §401, Dec. 29, 1995, 109 Stat. 955, provided that: "The licensing of a launch vehicle or launch site operator (including any amendment, extension, or renewal of the license) under [former] chapter 701 of title 49, United States Code [now chapter 509 (§50901 et seq.) of Title 51, National and Commercial Space Programs], shall not be considered a major Federal action for purposes of section 102(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)) if—

"(1) the Department of the Army has issued a permit for the activity; and

"(2) the Army Corps of Engineers has found that the activity has no significant impact."

### **EX. ORD. NO. 13352. FACILITATION OF COOPERATIVE CONSERVATION**

Ex. Ord. No. 13352, Aug. 26, 2004, 69 F.R. 52989, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Purpose.* The purpose of this order is to ensure that the Departments of the Interior, Agriculture, Commerce, and Defense and the Environmental Protection Agency implement laws relating to the environment and natural resources in a manner that promotes cooperative conservation, with an emphasis on appropriate inclusion of local participation in Federal decisionmaking, in accordance with their respective agency missions, policies, and regulations.

Sec. 2. *Definition.* As used in this order, the term "cooperative conservation" means actions that relate to use, enhancement, and enjoyment of natural resources, protection of the environment, or both, and that involve collaborative activity among Federal, State, local, and tribal governments, private for-profit and nonprofit institutions, other nongovernmental entities and individuals.

Sec. 3. *Federal Activities.* To carry out the purpose of this order, the Secretaries of the Interior, Agriculture, Commerce, and Defense and the Administrator of the Environmental Protection Agency shall, to the extent permitted by law and subject to the availability of appropriations and in coordination with each other as appropriate:

(a) carry out the programs, projects, and activities of the agency that they respectively head that implement laws relating to the environment and natural resources in a manner that:

(i) facilitates cooperative conservation;

(ii) takes appropriate account of and respects the interests of persons with ownership or other legally recognized interests in land and other natural resources;

(iii) properly accommodates local participation in Federal decisionmaking; and

(iv) provides that the programs, projects, and activities are consistent with protecting public health and safety;

(b) report annually to the Chairman of the Council on Environmental Quality on actions taken to implement this order; and

(c) provide funding to the Office of Environmental Quality Management Fund (42 U.S.C. 4375) for the Conference for which section 4 of this order provides.

Sec. 4. *White House Conference on Cooperative Conservation.* The Chairman of the Council on Environmental Quality shall, to the extent permitted by law and subject to the availability of appropriations:

(a) convene not later than 1 year after the date of this order, and thereafter at such times as the Chairman deems appropriate, a White House Conference on Cooperative Conservation (Conference) to facilitate the exchange of information and advice relating to (i) cooperative conservation and (ii) means for achievement of the purpose of this order; and

(b) ensure that the Conference obtains information in a manner that seeks from Conference participants their individual advice and does not involve collective judgment or consensus advice or deliberation.

Sec. 5. *General Provision.* This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

GEORGE W. BUSH.

<sup>1</sup> So in original. The period probably should be a semicolon.

#### **§4332a. Repealed. Pub. L. 114–94, div. A, title I, §1304(j)(2), Dec. 4, 2015, 129 Stat. 1386**

Section, Pub. L. 112–141, div. A, title I, §1319, July 6, 2012, 126 Stat. 551, related to accelerated decisionmaking in environmental reviews.

##### **EFFECTIVE DATE OF REPEAL**

Repeal effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as an Effective Date of 2015 Amendment note under section 5313 of Title 5, Government Organization and Employees.

#### **§4333. Conformity of administrative procedures to national environmental policy**

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 chapter 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 chapter.

(Pub. L. 91–190, title I, §103, Jan. 1, 1970, 83 Stat. 854.)

#### **§4334. Other statutory obligations of agencies**

Nothing in section 4332 or 4333 of this title 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.

(Pub. L. 91–190, title I, §104, Jan. 1, 1970, 83 Stat. 854.)

#### **§4335. Efforts supplemental to existing authorizations**

The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of Federal agencies.

(Pub. L. 91–190, title I, §105, Jan. 1, 1970, 83 Stat. 854.)

## **SUBCHAPTER II—COUNCIL ON ENVIRONMENTAL QUALITY**

### **§4341. Omitted**

#### **CODIFICATION**

Section, Pub. L. 91–190, title II, §201, Jan. 1, 1970, 83 Stat. 854, which required the President to transmit to Congress annually an Environmental Quality Report, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 1 on page 41 of House Document No. 103–7.

### **§4342. Establishment; membership; Chairman; appointments**

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 the light of the policy set forth in subchapter I of this chapter; to be conscious of and responsive to the scientific, economic, social, esthetic, 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.

(Pub. L. 91–190, title II, §202, Jan. 1, 1970, 83 Stat. 854.)

#### **COUNCIL ON ENVIRONMENTAL QUALITY; REDUCTION OF MEMBERS**

Provisions stating that notwithstanding this section, the Council was to consist of one member, appointed by the President, by and with the advice and consent of the Senate, serving as chairman and exercising all powers, functions, and duties of the Council, were contained in the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, Pub. L. 109–54, title III, Aug. 2, 2005, 119 Stat. 543, and were repeated in provisions of subsequent appropriations acts which are not set out in the Code. Similar provisions were also contained in the following prior appropriations acts:

Pub. L. 108–447, div. I, title III, Dec. 8, 2004, 118 Stat. 3332.

Pub. L. 108–199, div. G, title III, Jan. 23, 2004, 118 Stat. 408.

Pub. L. 108–7, div. K, title III, Feb. 20, 2003, 117 Stat. 514.

Pub. L. 107–73, title III, Nov. 26, 2001, 115 Stat. 686.

Pub. L. 106–377, §1(a)(1) [title III], Oct. 27, 2000, 114 Stat. 1441, 1441A-45.

Pub. L. 106–74, title III, Oct. 20, 1999, 113 Stat. 1084.

Pub. L. 105–276, title III, Oct. 21, 1998, 112 Stat. 2500.

Pub. L. 105–65, title III, Oct. 27, 1997, 111 Stat. 1375.

### **§4343. Employment of personnel, experts and consultants**

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this chapter. 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 chapter, in accordance with section 3109 of title 5 (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

(Pub. L. 91–190, title II, §203, Jan. 1, 1970, 83 Stat. 855; Pub. L. 94–52, §2, July 3, 1975, 89 Stat. 258.)

#### **REFERENCES IN TEXT**

The last sentence of section 3109 of title 5, referred to in subsec. (a), probably means the last sentence of section 3109(b) of title 5, which was the last sentence of that section when the reference was enacted. Since then, section 3109 of title 5 has been amended to add subsecs. (c) to (e) at the end.

#### **CODIFICATION**

In subsec. (b), "section 1342 of title 31" substituted for "section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

#### **AMENDMENTS**

**1975**—Pub. L. 94–52 designated existing provisions as subsec. (a) and added subsec. (b).

### **§4344. Duties and functions**

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 4341<sup>1</sup> of this title;

(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 subchapter I of this chapter, 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 the light of the policy set forth in subchapter I of this chapter 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.

(Pub. L. 91–190, title II, §204, Jan. 1, 1970, 83 Stat. 855.)

#### REFERENCES IN TEXT

Section 4341 of this title, referred to in par. (1), was omitted from the Code.

#### TRANSFER OF FUNCTIONS

So much of functions of Council on Environmental Quality under par. (5) of this section as pertains to ecological systems transferred to Administrator of Environmental Protection Agency by Reorg. Plan No. 3 of 1970, §2(a)(5), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, set out under section 4321 of this title.

<sup>1</sup> See References in Text note below.

### §4345. Consultation with Citizens' Advisory Committee on Environmental Quality and other representatives

In exercising its powers, functions, and duties under this chapter, the Council shall—

(1) consult with the Citizens' 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 unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

(Pub. L. 91–190, title II, §205, Jan. 1, 1970, 83 Stat. 855.)

#### REFERENCES IN TEXT

Executive Order numbered 11472, dated May 29, 1969, referred to in par. (1), is set out as a note under section 4321 of this title.

#### CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY

For provisions relating to termination of Citizens' Advisory Committee on Environmental Quality, see Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

### §4346. Tenure and compensation of members

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 or <sup>1</sup> the Executive Schedule Pay Rates (5 U.S.C. 5315).

(Pub. L. 91–190, title II, §206, Jan. 1, 1970, 83 Stat. 856.)

<sup>1</sup> So in original. Probably should be "of".

### **§4346a. Travel reimbursement by private organizations and Federal, State, and local governments**

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any 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.

(Pub. L. 91–190, title II, §207, as added Pub. L. 94–52, §3, July 3, 1975, 89 Stat. 258.)

### **§4346b. Expenditures in support of international activities**

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.

(Pub. L. 91–190, title II, §208, as added Pub. L. 94–52, §3, July 3, 1975, 89 Stat. 258.)

### **§4347. Authorization of appropriations**

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter.

(Pub. L. 91–190, title II, §209, formerly §207, Jan. 1, 1970, 83 Stat. 856, renumbered §209, Pub. L. 94–52, §3, July 3, 1975, 89 Stat. 258.)

## **SUBCHAPTER III—MISCELLANEOUS PROVISIONS**

### **§§4361, 4361a. Repealed. Pub. L. 104–66, title II, §2021(k)(1), (2), Dec. 21, 1995, 109 Stat. 728**

Section 4361, Pub. L. 94–475, §5, Oct. 11, 1976, 90 Stat. 2071, related to 5-year plan for research, development, and demonstration.

Section 4361a, Pub. L. 95–155, §4, Nov. 8, 1977, 91 Stat. 1258, related to budget projections in annual revisions of the plan for research, development, and demonstration.

### **§4361b. Implementation by Administrator of Environmental Protection Agency of recommendations of "CHESS" Investigative Report; waiver; inclusion of status of implementation requirements in annual revisions of plan for research, development, and demonstration**

The Administrator of the Environmental Protection Agency shall implement the recommendations of the report prepared for the House Committee on Science and Technology entitled "The Environmental Protection Agency Research Program with primary emphasis on the Community Health and Environmental Surveillance System (CHESS): An Investigative Report", unless for any specific recommendation he determines (1) that such recommendation has been implemented, (2) that implementation of such recommendation would not enhance the quality of the research, or (3) that implementation of such recommendation will require funding which is not available. Where such funding is not available, the Administrator shall request the required authorization or appropriation for such implementation. The Administrator shall report

the status of such implementation in each annual revision of the five-year plan transmitted to the Congress under section 4361 <sup>1</sup> of this title.

(Pub. L. 95–155, §10, Nov. 8, 1977, 91 Stat. 1262.)

#### REFERENCES IN TEXT

Section 4361 of this title, referred to in text, was repealed by Pub. L. 104–66, title II, §2021(k)(1), Dec. 21, 1995, 109 Stat. 728.

#### CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

#### CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

<sup>1</sup> See References in Text note below.

### §4361c. Staff management

#### (a) Appointments for educational programs

(1) The Administrator is authorized to select and appoint up to 75 full-time permanent staff members in the Office of Research and Development to pursue full-time educational programs for the purpose of (A) securing an advanced degree or (B) securing academic training, for the purpose of making a career change in order to better carry out the Agency's research mission.

(2) The Administrator shall select and appoint staff members for these assignments according to rules and criteria promulgated by him. The Agency may continue to pay the salary and benefits of the appointees as well as reasonable and appropriate relocation expenses and tuition.

(3) The term of each appointment shall be for up to one year, with a single renewal of up to one year in appropriate cases at the discretion of the Administrator.

(4) Staff members appointed to this program shall not count against any Agency personnel ceiling during the term of their appointment.

#### (b) Post-doctoral research fellows

(1) The Administrator is authorized to appoint up to 25 Post-doctoral Research Fellows in accordance with the provisions of section 213.3102(aa) of title 5 of the Code of Federal Regulations.

(2) Persons holding these appointments shall not count against any personnel ceiling of the Agency.

#### (c) Non-Government research associates

(1) The Administrator is authorized and encouraged to utilize research associates from outside the Federal Government in conducting the research, development, and demonstration programs of the Agency.

(2) These persons shall be selected and shall serve according to rules and criteria promulgated by the Administrator.

#### (d) Women and minority groups



For all programs in this section, the Administrator shall place special emphasis on providing opportunities for education and training of women and minority groups.

(Pub. L. 95-477, §6, Oct. 18, 1978, 92 Stat. 1510.)

#### **CODIFICATION**

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

#### **CONTRACTS BY OFFICE OF RESEARCH AND DEVELOPMENT OF THE ENVIRONMENTAL PROTECTION AGENCY**

Pub. L. 108-7, div. K, title III, Feb. 20, 2003, 117 Stat. 509, provided in part: "That the Office of Research and Development of the Environmental Protection Agency may hereafter contract directly with individuals or indirectly with institutions or nonprofit organizations, without regard to 41 U.S.C. 5 [see 41 U.S.C. 6101], for the temporary or intermittent personal services of students or recent graduates, who shall be considered employees for the purposes of chapters 57 and 81 of title 5, United States Code, relating to compensation for travel and work injuries, and chapter 171 of title 28, United States Code, relating to tort claims, but shall not be considered to be Federal employees for any other purposes."

### **§4362. Interagency cooperation on prevention of environmental cancer and heart and lung disease**

(a) Not later than three months after August 7, 1977, there shall be established a Task Force on Environmental Cancer and Heart and Lung Disease (hereinafter referred to as the "Task Force"). The Task Force shall include representatives of the Environmental Protection Agency, the National Cancer Institute, the National Heart, Lung, and Blood Institute, the National Institute of Occupational Safety and Health, and the National Institute on Environmental Health Sciences, and shall be chaired by the Administrator (or his delegate).

(b) The Task Force shall—

(1) recommend a comprehensive research program to determine and quantify the relationship between environmental pollution and human cancer and heart and lung disease;

(2) recommend comprehensive strategies to reduce or eliminate the risks of cancer or such other diseases associated with environmental pollution;

(3) recommend research and such other measures as may be appropriate to prevent or reduce the incidence of environmentally related cancer and heart and lung diseases;

(4) coordinate research by, and stimulate cooperation between, the Environmental Protection Agency, the Department of Health and Human Services, and such other agencies as may be appropriate to prevent environmentally related cancer and heart and lung diseases; and

(5) report to Congress, not later than one year after August 7, 1977, and annually thereafter, on the problems and progress in carrying out this section.

(Pub. L. 95-95, title IV, §402, Aug. 7, 1977, 91 Stat. 791; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

#### **CODIFICATION**

Section was enacted as part of the Clean Air Act Amendments of 1977, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

#### **CHANGE OF NAME**

"Department of Health and Human Services" substituted for "Department of Health, Education, and Welfare" in subsec. (b)(4) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

#### **EFFECTIVE DATE**

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

#### **TERMINATION OF REPORTING REQUIREMENTS**

For termination, effective May 15, 2000, of provisions in subsec. (b)(5) of this section relating to annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 18 on page 164 of House Document No. 103–7.

### **§4362a. Membership of Task Force on Environmental Cancer and Heart and Lung Disease**

The Director of the National Center for Health Statistics and the head of the Center for Disease Control (or the successor to such entity) shall each serve as members of the Task Force on Environmental Cancer and Heart and Lung Disease established under section 4362 of this title.

(Pub. L. 95–623, §9, Nov. 9, 1978, 92 Stat. 3455.)

#### **CODIFICATION**

Section was enacted as part of the Health Services Research, Health Statistics, and Health Care Technology Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

#### **CHANGE OF NAME**

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, §312, Oct. 27, 1992, 106 Stat. 3504.

### **§4363. Continuing and long-term environmental research and development**

The Administrator of the Environmental Protection Agency shall establish a separately identified program of continuing, long-term environmental research and development for each activity listed in section 2(a) of this Act. Unless otherwise specified by law, at least 15 per centum of funds appropriated to the Administrator for environmental research and development for each activity listed in section 2(a) of this Act shall be obligated and expended for such long-term environmental research and development under this section.

(Pub. L. 96–569, §2(f), Dec. 22, 1980, 94 Stat. 3337.)

#### **REFERENCES IN TEXT**

Section 2(a) of this Act, referred to in text, is section 2(a) of Pub. L. 96–569, Dec. 22, 1980, 94 Stat. 3335, which is not classified to the Code.

#### **CODIFICATION**

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1981, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

#### **PRIOR PROVISIONS**

Provisions similar to those in this section were contained in the following prior authorization acts:

**1980**—Pub. L. 96–229, §2(e), Apr. 7, 1980, 94 Stat. 327.

**1977**—Pub. L. 95–155, §6, Nov. 8, 1977, 91 Stat. 1259.

### **§4363a. Pollution control technologies demonstrations**

(1) The Administrator shall continue to be responsible for conducting and shall continue to conduct full-scale demonstrations of energy-related pollution control technologies as necessary in his judgment to fulfill the provisions of the Clean Air Act as amended [42 U.S.C. 7401 et seq.], the Federal Water Pollution Control Act as amended [33 U.S.C. 1251 et seq.], and other pertinent pollution control statutes.

(2) Energy-related environmental protection projects authorized to be administered by the Environmental Protection Agency under this Act shall not be transferred administratively to the Department of Energy or reduced through budget amendment. No action shall be taken through administrative or budgetary means to diminish the ability of the Environmental Protection Agency to initiate such projects.

(Pub. L. 96–229, §2(d), Apr. 7, 1980, 94 Stat. 327.)

#### **REFERENCES IN TEXT**

The Clean Air Act as amended, referred to in par. (1), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act as amended, referred to in par. (1), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

This Act, referred to in par. (2), is Pub. L. 96–229, Apr. 7, 1980, 94 Stat. 325, known as the Environmental, Research, Development, and Demonstration Authorization Act of 1980, which enacted sections 4363, 4363a, 4369a, and 4370 of this title. For complete classification of this Act to the Code, see Tables.

#### **CODIFICATION**

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1980, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

#### **PRIOR PROVISIONS**

Provisions similar to those in this section were contained in the following prior authorization act:

**1979**—Pub. L. 95–477, §2(d), Oct. 18, 1978, 92 Stat. 1508.

### **§4364. Expenditure of funds for research and development related to regulatory program activities**

#### **(a) Coordination, etc., with research needs and priorities of program offices and Environmental Protection Agency**

The Administrator of the Environmental Protection Agency shall assure that the expenditure of any funds appropriated pursuant to this Act or any other provision of law for environmental research and development related to regulatory program activities shall be coordinated with and reflect the research needs and priorities of the program offices, as well as the overall research needs and priorities of the Agency, including those defined in the five-year research plan.

**(b) Program offices subject to coverage**

For purposes of subsection (a) of this section, the appropriate program offices are—

- (1) the Office of Air and Waste Management, for air quality activities;
- (2) the Office of Water and Hazardous Materials, for water quality activities and water supply activities;
- (3) the Office of Pesticides, for environmental effects of pesticides;
- (4) the Office of Solid Waste, for solid waste activities;
- (5) the Office of Toxic Substances, for toxic substance activities;
- (6) the Office of Radiation Programs, for radiation activities; and
- (7) the Office of Noise Abatement and Control, for noise activities.

**(c) Report to Congress; contents**

The Administrator shall submit to the President and the Congress a report concerning the most appropriate means of assuring, on a continuing basis, that the research efforts of the Agency reflect the needs and priorities of the regulatory program offices, while maintaining a high level of scientific quality. Such report shall be submitted on or before March 31, 1978.

(Pub. L. 95–155, §7, Nov. 8, 1977, 91 Stat. 1259.)

**REFERENCES IN TEXT**

This Act, referred to in subsec. (a), is [Pub. L. 95–155, Nov. 8, 1977, 91 Stat. 1257](#), as amended, known as the Environmental Research, Development, and Demonstration Authorization Act of 1978, which to the extent classified to the Code enacted sections 300j–3a, 4361a, 4361b, and 4363 to 4367 of this title. For complete classification of this Act to the Code, see Tables.

**CODIFICATION**

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

**§4365. Science Advisory Board**

**(a) Establishment; requests for advice by Administrator of Environmental Protection Agency and Congressional committees**

The Administrator of the Environmental Protection Agency shall establish a Science Advisory Board which shall provide such scientific advice as may be requested by the Administrator, the Committee on Environment and Public Works of the United States Senate, or the Committee on Science, Space, and Technology, on Energy and Commerce, or on Public Works and Transportation of the House of Representatives.

**(b) Membership; Chairman; meetings; qualifications of members**

Such Board shall be composed of at least nine members, one of whom shall be designated Chairman, and shall meet at such times and places as may be designated by the Chairman of the Board in consultation with the Administrator. Each member of the Board shall be qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board under this section.

**(c) Proposed environmental criteria document, standard, limitation, or regulation; functions respecting in conjunction with Administrator**

(1) The Administrator, at the time any proposed criteria document, standard, limitation, or regulation under the Clean Air Act [42 U.S.C. 7401 et seq.], the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Resource Conservation and Recovery Act of 1976 [42 U.S.C. 6901 et seq.], the Noise Control Act [42 U.S.C. 4901 et seq.], the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], or the Safe Drinking Water Act [42 U.S.C. 300f et seq.], or under any other authority of the Administrator, is provided to any other Federal agency for formal review and comment, shall make available to the Board such proposed criteria document, standard, limitation, or regulation, together with relevant scientific and technical information in the possession of the Environmental Protection Agency on which the proposed action is based.

(2) The Board may make available to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis of the proposed criteria document, standard, limitation, or regulation, together with any pertinent information in the Board's possession.

**(d) Utilization of technical and scientific capabilities of Federal agencies and national environmental laboratories for determining adequacy of scientific and technical basis of proposed criteria document, etc.**

In preparing such advice and comments, the Board shall avail itself of the technical and scientific capabilities of any Federal agency, including the Environmental Protection Agency and any national environmental laboratories.

**(e) Committees**

**(1) Member committees**

**(A) In general**

The Board is authorized to establish such member committees and investigative panels as the Administrator and the Board determine to be necessary to carry out this section.

**(B) Chairmanship**

Each member committee or investigative panel established under this subsection shall be chaired by a member of the Board.

**(2) Agriculture-related committees**

**(A) In general**

The Administrator and the Board—

- (i) shall establish a standing agriculture-related committee; and
- (ii) may establish such additional agriculture-related committees and investigative panels as the Administrator and the Board determines to be necessary to carry out the duties under subparagraph (C).

**(B) Membership**

The standing committee and each agriculture-related committee or investigative panel established under subparagraph (A) shall be—

- (i) composed of—
  - (I) such quantity of members as the Administrator and the Board determines to be necessary; and
  - (II) individuals who are not members of the Board on the date of appointment to the committee or investigative panel; and

(ii) appointed by the Administrator and the Board, in consultation with the Secretary of Agriculture.

### **(C) Duties**

The agriculture-related standing committee and each additional committee and investigative panel established under subparagraph (A) shall provide scientific and technical advice to the Board relating to matters referred to the Board that the Administrator and the Board determines, in consultation with the Secretary of Agriculture, to have a significant direct impact on enterprises that are engaged in the business of the production of food and fiber, ranching and raising livestock, aquaculture, and all other farming- and agriculture-related industries.

### **(f) Appointment and compensation of secretary and other personnel; compensation of members**

(1) Upon the recommendation of the Board, the Administrator shall appoint a secretary, and such other employees as deemed necessary to exercise and fulfill the Board's powers and responsibilities. The compensation of all employees appointed under this paragraph shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(2) Members of the Board may be compensated at a rate to be fixed by the President but not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title 5.

### **(g) Consultation and coordination with Scientific Advisory Panel**

In carrying out the functions assigned by this section, the Board shall consult and coordinate its activities with the Scientific Advisory Panel established by the Administrator pursuant to section 136w(d) of title 7.

### **(h) Public participation and transparency**

The Board shall make every effort, consistent with applicable law, including section 552 of title 5 (commonly known as the "Freedom of Information Act") and section 552a of title 5 (commonly known as the "Privacy Act"), to maximize public participation and transparency, including making the scientific and technical advice of the Board and any committees or investigative panels of the Board publically available in electronic form on the website of the Environmental Protection Agency.

### **(i) Report to Congress**

The Administrator shall annually report to the Committees on Environment and Public Works and Agriculture of the Senate and the Committees on Transportation and Infrastructure, Energy and Commerce, and Agriculture of the House of Representatives regarding the membership and activities of the standing agriculture-related committee established pursuant to subsection (e)(2)(A)(i).

(Pub. L. 95-155, §8, Nov. 8, 1977, 91 Stat. 1260; Pub. L. 96-569, §3, Dec. 22, 1980, 94 Stat. 3337; Pub. L. 103-437, §15(o), Nov. 2, 1994, 108 Stat. 4593; Pub. L. 104-66, title II, §2021(k)(3), Dec. 21, 1995, 109 Stat. 728; Pub. L. 113-79, title XII, §12307, Feb. 7, 2014, 128 Stat. 989.)

### **REFERENCES IN TEXT**

The Clean Air Act, referred to in subsec. (c)(1), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (c)(1), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Resource Conservation and Recovery Act of 1976, referred to in subsec. (c)(1), is Pub. L. 94–580, Oct. 21, 1976, 90 Stat. 2796, as amended, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 6901 of this title and Tables.

The Noise Control Act, referred to in subsec. (c)(1), probably means the Noise Control Act of 1972, Pub. L. 92–574, Oct. 27, 1972, 86 Stat. 1234, as amended, which is classified principally to chapter 65 (§4901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4901 of this title and Tables.

The Toxic Substances Control Act, referred to in subsec. (c)(1), is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Safe Drinking Water Act, referred to in subsec. (c)(1), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

#### **CODIFICATION**

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

#### **AMENDMENTS**

**2014**—Subsec. (e). Pub. L. 113–79, §12307(1), added subsec. (e) and struck out former subsec. (e). Text read as follows: "The Board is authorized to constitute such member committees and investigative panels as the Administrator and the Board find necessary to carry out this section. Each such member committee or investigative panel shall be chaired by a member of the Board."

Subsecs. (h), (i). Pub. L. 113–79, §12307(2), added subsecs. (h) and (i).

**1995**—Subsecs. (c) to (i). Pub. L. 104–66 redesignated subsecs. (e) to (i) as (c) to (g), respectively, and struck out former subsec. (c) which read as follows: "In addition to providing scientific advice when requested by the Administrator under subsection (a) of this section, the Board shall review and comment on the Administration's five-year plan for environmental research, development, and demonstration provided for by section 4361 of this title and on each annual revision thereof. Such review and comment shall be transmitted to the Congress by the Administrator, together with his comments thereon, at the time of the transmission to the Congress of the annual revision involved."

**1994**—Subsec. (a). Pub. L. 103–437, §15(o)(1), substituted "Committee on Science, Space, and Technology, on Energy and Commerce, or on" for "Committees on Science and Technology, Interstate and Foreign Commerce, or".

Subsec. (d). Pub. L. 103–437, §15(o)(2), struck out subsec. (d) which related to review and report to Administrator, President, and Congress on health effects research.

**1980**—Subsec. (a). Pub. L. 96–569 inserted provisions relating to requests by the enumerated Congressional committees.

#### **CHANGE OF NAME**

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2.

#### **TERMINATION OF ADVISORY BOARDS**

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

#### **REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES**

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

### **§4366. Identification and coordination of research, development, and demonstration activities**

#### **(a) Consultation and cooperation of Administrator of Environmental Protection Agency with heads of Federal agencies; inclusion of activities in annual revisions of plan for research, etc.**

The Administrator of the Environmental Protection Agency, in consultation and cooperation with the heads of other Federal agencies, shall take such actions on a continuing basis as may be necessary or appropriate—

- (1) to identify environmental research, development, and demonstration activities, within and outside the Federal Government, which may need to be more effectively coordinated in order to minimize unnecessary duplication of programs, projects, and research facilities;
- (2) to determine the steps which might be taken under existing law, by him and by the heads of such other agencies, to accomplish or promote such coordination, and to provide for or encourage the taking of such steps; and
- (3) to determine the additional legislative actions which would be needed to assure such coordination to the maximum extent possible.



The Administrator shall include in each annual revision of the five-year plan provided for by section 4361 <sup>1</sup> of this title a full and complete report on the actions taken and determinations made during the preceding year under this subsection, and may submit interim reports on such actions and determinations at such other times as he deems appropriate.

**(b) Coordination of programs by Administrator**

The Administrator of the Environmental Protection Agency shall coordinate environmental research, development, and demonstration programs of such Agency with the heads of other Federal agencies in order to minimize unnecessary duplication of programs, projects, and research facilities.

**(c) Joint study by Council on Environmental Quality in consultation with Office of Science and Technology Policy for coordination of activities; report to President and Congress; report by President to Congress on implementation of joint study and report**

(1) In order to promote the coordination of environmental research and development activities, and to assure that the action taken and methods used (under subsection (a) of this section and otherwise) to bring about such coordination will be as effective as possible for that purpose, the Council on Environmental Quality in consultation with the Office of Science and Technology Policy shall promptly undertake and carry out a joint study of all aspects of the coordination of environmental research and development. The Chairman of the Council shall prepare a report on the results of such study, together with such recommendations (including legislative recommendations) as he deems appropriate, and shall submit such report to the President and the Congress not later than May 31, 1978.

(2) Not later than September 30, 1978, the President shall report to the Congress on steps he has taken to implement the recommendations included in the report under paragraph (1), including any recommendations he may have for legislation.

(Pub. L. 95–155, §9, Nov. 8, 1977, 91 Stat. 1261.)

**REFERENCES IN TEXT**

Section 4361 of this title, referred to in subsec. (a), was repealed by Pub. L. 104–66, title II, §2021(k)(1), Dec. 21, 1995, 109 Stat. 728.

**CODIFICATION**

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

**COORDINATION OF ENVIRONMENTAL RESEARCH, DEVELOPMENT, AND DEMONSTRATION EFFORTS; STUDY AND REPORT**

Pub. L. 95–477, §3(c), Oct. 18, 1978, 92 Stat. 1509, authorized to be appropriated to the Environmental Protection Agency for the fiscal year 1979, \$1,000,000, and for the fiscal year 1980, \$1,000,000, for a study and report, under a contract let by the Administrator, to be conducted outside the Federal Government, on coordination of the Federal Government's efforts in environmental research, development, and demonstration, and the application of the results of such efforts to environmental problems, with the report on the study submitted to the President, the Administrator, and the Congress within two years after Oct. 18, 1978, accompanied by recommendations for action by the President, the Administrator, other agencies, or the Congress, as may be appropriate.

<sup>1</sup> See References in Text note below.

## **§4366a. Omitted**

### **CODIFICATION**

Section, Pub. L. 101–617, §4, Nov. 16, 1990, 104 Stat. 3287, which related to development of data base of environmental research articles indexed by geographic location, expired 10 years after Nov. 16, 1990, pursuant to section 6 of Pub. L. 101–617, formerly set out as a Termination Date note under this section.

### **TERMINATION DATE**

Pub. L. 101–617, §6, Nov. 16, 1990, 104 Stat. 3287, provided that Pub. L. 101–617, which enacted this section and provisions formerly set out under this section, was to expire 10 years after Nov. 16, 1990.

### **SHORT TITLE; FINDINGS; PURPOSE; AUTHORIZATION**

Pub. L. 101–617, §§1–3, 5, Nov. 16, 1990, 104 Stat. 3287, which provided that Pub. L. 101–617, which enacted this section and provisions formerly set out under this section, could be cited as the "Environmental Research Geographic Location Information Act", and further provided for findings, purpose to develop data base of environmental research articles indexed by geographic location, and authorization of appropriations, expired 10 years after Nov. 16, 1990, pursuant to section 6 of Pub. L. 101–617, formerly set out as a note under this section.

## **§4367. Reporting requirements of financial interests of officers and employees of Environmental Protection Agency**

### **(a) Covered officers and employees**

Each officer or employee of the Environmental Protection Agency who—

- (1) performs any function or duty under this Act; and
- (2) has any known financial interest in any person who applies for or receives grants, contracts, or other forms of financial assistance under this Act,

shall, beginning on February 1, 1978, annually file with the Administrator a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

### **(b) Implementation of requirements by Administrator**

The Administrator shall—

- (1) act within ninety days after November 8, 1977—
  - (A) to define the term "known financial interest" for purposes of subsection (a) of this section; and
  - (B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provision for the filing by such officers and employees of such statements and the review by the Administrator of such statements; and

(2) Omitted.

### **(c) Exemption of positions by Administrator**

In the rules prescribed under subsection (b) of this section, the Administrator may identify specific positions of a nonpolicymaking nature within the Administration and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

#### **(d) Violations; penalties**

Any officer or employee who is subject to, and knowingly violates, this section, shall be fined not more than \$2,500 or imprisoned not more than one year, or both.

(Pub. L. 95–155, §12, Nov. 8, 1977, 91 Stat. 1263.)

#### **REFERENCES IN TEXT**

This Act, referred to in subsec. (a)(1), (2), is Pub. L. 95–155, Nov. 8, 1977, 91 Stat. 1257, as amended, known as the Environmental Research, Development, and Demonstration Authorization Act of 1978, which to the extent classified to the Code enacted sections 300j–3a, 4361a, 4361b, and 4363 to 4367 of this title. For complete classification of this Act to the Code, see Tables.

#### **CODIFICATION**

Subsec. (b)(2) of this section, which required the Administrator to report to Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 9 on page 164 of House Document No. 103–7.

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

### **§4368. Grants to qualified citizens groups**

(1) There is authorized to be appropriated to the Environmental Protection Agency, for grants to qualified citizens groups in States and regions, \$3,000,000.

(2) Grants under this section may be made for the purpose of supporting and encouraging participation by qualified citizens groups in determining how scientific, technological, and social trends and changes affect the future environment and quality of life of an area, and for setting goals and identifying measures for improvement.

(3) The term "qualified citizens group" shall mean a nonprofit organization of citizens having an area based focus, which is not single-issue oriented and which can demonstrate a prior record of interest and involvement in goal-setting and research concerned with improving the quality of life, including plans to identify, protect and enhance significant natural and cultural resources and the environment.

(4) A citizens group shall be eligible for assistance only if certified by the Governor in consultation with the State legislature as a bonafide organization entitled to receive Federal assistance to pursue the aims of this program. The group shall further demonstrate its capacity to employ usefully the funds for the purposes of this program and its broad-based representative nature.

(5) After an initial application for assistance under this section has been approved, the Administrator may make grants on an annual basis, on condition that the Governor recertify the group and that the applicant submits to the Administrator annually—

(A) an evaluation of the progress made during the previous year in meeting the objectives for which the grant was made;

(B) a description of any changes in the objectives of the activities; and

(C) a description of the proposed activities for the succeeding one year period.

(6) A grant made under this program shall not exceed 75 per centum of the estimated cost of the project or program for which the grant is made, and no group shall receive more than \$50,000 in any one year.

(7) No financial assistance provided under this section shall be used to support lobbying or litigation by any recipient group.

(Pub. L. 95–477, §3(d), Oct. 18, 1978, 92 Stat. 1509.)

#### REFERENCES IN TEXT

This section, referred to in par. (5), means section 3 of Pub. L. 95–477, in its entirety, subsec. (d) of which enacted this section, subsecs. (a) and (b) of which were not classified to the Code, and subsec. (c) of which is set out as a note under section 4366 of this title.

#### CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

### **§4368a. Utilization of talents of older Americans in projects of pollution prevention, abatement, and control**

#### **(a) Technical assistance to environmental agencies**

Notwithstanding any other provision of law relating to Federal grants and cooperative agreements, the Administrator of the Environmental Protection Agency is authorized to make grants to, or enter into cooperative agreements with, private nonprofit organizations designated by the Secretary of Labor under title V of the Older Americans Act of 1965 [42 U.S.C. 3056 et seq.] to utilize the talents of older Americans in programs authorized by other provisions of law administered by the Administrator (and consistent with such provisions of law) in providing technical assistance to Federal, State, and local environmental agencies for projects of pollution prevention, abatement, and control. Funding for such grants or agreements may be made available from such programs or through title V of the Older Americans Act of 1965 and subtitle D of title I of the Workforce Innovation and Opportunity Act [29 U.S.C. 3221 et seq.].

#### **(b) Pre-award certifications**

Prior to awarding any grant or agreement under subsection (a) of this section, the applicable Federal, State, or local environmental agency shall certify to the Administrator that such grants or agreements will not—

- (1) result in the displacement of individuals currently employed by the environmental agency concerned (including partial displacement through reduction of nonovertime hours, wages, or employment benefits);
- (2) result in the employment of any individual when any other person is in a layoff status from the same or substantially equivalent job within the jurisdiction of the environmental agency concerned; or
- (3) affect existing contracts for services.

#### **(c) Prior appropriation Acts**

Grants or agreements awarded under this section shall be subject to prior appropriation Acts. (Pub. L. 98–313, §2, June 12, 1984, 98 Stat. 235; Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(35), (f)(27)], Oct. 21, 1998, 112 Stat. 2681–337, 2681-426, 2681-434; Pub. L. 113–128, title V, §512(j), July 22, 2014, 128 Stat. 1709.)

#### REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsec. (a), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218. Title V of the Act, known as the "Community Service Senior Opportunities Act", is classified generally to subchapter IX (§3056 et seq.) of chapter 35 of this title. For complete

classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Workforce Innovation and Opportunity Act, referred to in subsec. (a), is Pub. L. 113–128, July 22, 2014, 128 Stat. 1425. Subsection D of title I of the Act is classified generally to part D (§3221 et seq.) of subchapter I of chapter 32 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 29 and Tables.

#### **CODIFICATION**

Section was enacted as part of the Environmental Programs Assistance Act of 1984, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

#### **AMENDMENTS**

**2014**—Subsec. (a). Pub. L. 113–128 substituted "Funding for such grants or agreements may be made available from such programs or through title V of the Older Americans Act of 1965 and subtitle D of title I of the Workforce Innovation and Opportunity Act" for "Funding for such grants or agreements may be made available from such programs or through title V of the Older Americans Act of 1965 and subtitle D of title I of the Workforce Investment Act of 1998".

**1998**—Subsec. (a). Pub. L. 105–277, §101(f) [title VIII, §405(f)(27)], struck out "title IV of the Job Training Partnership Act or" after "title V of the Older Americans Act of 1965 and" in last sentence.

Pub. L. 105–277, §101(f) [title VIII, §405(d)(35)], substituted "and title IV of the Job Training Partnership Act or subtitle D of title I of the Workforce Investment Act of 1998" for "and title IV of the Job Training Partnership Act" in second sentence.

#### **EFFECTIVE DATE OF 2014 AMENDMENT**

Amendment by Pub. L. 113–128 effective on the first day of the first full program year after July 22, 2014 (July 1, 2015), see section 506 of Pub. L. 113–128, set out as an Effective Date note under section 3101 of Title 29, Labor.

#### **EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by section 101(f) [title VIII, §405(d)(35)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(27)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

#### **SHORT TITLE**

Pub. L. 98–313, §1, June 12, 1984, 98 Stat. 235, provided that: "This Act [enacting this section] may be cited as the 'Environmental Programs Assistance Act of 1984'."

### **§4368b. General assistance program**

#### **(a) Short title**

This section may be cited as the "Indian Environmental General Assistance Program Act of 1992".

#### **(b) Purposes**

The purposes of this section are to—

- (1) provide general assistance grants to Indian tribal governments and intertribal consortia to build capacity to administer environmental regulatory programs that may be delegated by the Environmental Protection Agency on Indian lands; and

(2) provide technical assistance from the Environmental Protection Agency to Indian tribal governments and intertribal consortia in the development of multimedia programs to address environmental issues on Indian lands.

### **(c) Definitions**

For purposes of this section:

(1) The term "Indian tribal government" 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 (43 U.S.C.A. 1601, et seq.)), which is recognized as eligible for the special services provided by the United States to Indians because of their status as Indians.

(2) The term "intertribal consortia" or "intertribal consortium" means a partnership between two or more Indian tribal governments authorized by the governing bodies of those tribes to apply for and receive assistance pursuant to this section.

(3) The term "Administrator" means the Administrator of the Environmental Protection Agency.

### **(d) General assistance program**

(1) The Administrator of the Environmental Protection Agency shall establish an Indian Environmental General Assistance Program that provides grants to eligible Indian tribal governments or intertribal consortia to cover the costs of planning, developing, and establishing environmental protection programs consistent with other applicable provisions of law providing for enforcement of such laws by Indian tribes on Indian lands.

(2) Each grant awarded for general assistance under this subsection for a fiscal year shall be no less than \$75,000, and no single grant may be awarded to an Indian tribal government or intertribal consortium for more than 10 percent of the funds appropriated under subsection (h) of this section.

(3) The term of any general assistance award made under this subsection may exceed one year. Any awards made pursuant to this section shall remain available until expended. An Indian tribal government or intertribal consortium may receive a general assistance grant for a period of up to four years in each specific media area.

### **(e) No reduction in amounts**

In no case shall the award of a general assistance grant to an Indian tribal government or intertribal consortium under this section result in a reduction of Environmental Protection Agency grants for environmental programs to that tribal government or consortium. Nothing in this section shall preclude an Indian tribal government or intertribal consortium from receiving individual media grants or cooperative agreements. Funds provided by the Environmental Protection Agency through the general assistance program shall be used by an Indian tribal government or intertribal consortium to supplement other funds provided by the Environmental Protection Agency through individual media grants or cooperative agreements.

### **(f) Expenditure of general assistance**

Any general assistance under this section shall be expended for the purpose of planning, developing, and establishing the capability to implement programs administered by the Environmental Protection Agency and specified in the assistance agreement. Purposes and programs authorized under this section shall include the development and implementation of solid and hazardous waste programs for Indian lands. An Indian tribal government or intertribal consortium receiving general assistance pursuant to this section shall utilize such funds for programs and purposes to be carried out in accordance with the terms of the assistance agreement. Such programs and general assistance shall be carried out in accordance with the

purposes and requirements of applicable provisions of law, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

### **(g) Procedures**

(1) Within 12 months following October 24, 1992, the Administrator shall promulgate regulations establishing procedures under which an Indian tribal government or intertribal consortium may apply for general assistance grants under this section.

(2) The Administrator shall publish regulations issued pursuant to this section in the Federal Register.

(3) The Administrator shall establish procedures for accounting, auditing, evaluating, and reviewing any programs or activities funded in whole or in part for a general assistance grant under this section.

### **(h) Authorization**

There are authorized to be appropriated to carry out the provisions of this section, such sums as may be necessary for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

### **(i) Report to Congress**

The Administrator shall transmit an annual report to the appropriate Committees of the Congress with jurisdiction over the applicable environmental laws and Indian tribes describing which Indian tribes or intertribal consortia have been granted approval by the Administrator pursuant to law to enforce certain environmental laws and the effectiveness of any such enforcement.

(Pub. L. 95–134, title V, §502, as added Pub. L. 102–497, §11, Oct. 24, 1992, 106 Stat. 3258; amended Pub. L. 103–155, Nov. 24, 1993, 107 Stat. 1523; Pub. L. 104–233, §1, Oct. 2, 1996, 110 Stat. 3057.)

#### **REFERENCES IN TEXT**

The Alaska Native Claims Settlement Act, referred to in subsec. (c)(1), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

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

#### **CODIFICATION**

Section was enacted as the Indian Environmental General Assistance Program Act of 1992 and as part of the Omnibus Territories Act of 1977, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

#### **AMENDMENTS**

**1996**—Subsec. (h). Pub. L. 104–233 substituted "such sums as may be necessary" for "\$15,000,000".

**1993**—Subsec. (d)(1). Pub. L. 103–155, §3(a), inserted "consistent with other applicable provisions of law providing for enforcement of such laws by Indian tribes" after "programs".

Subsec. (f). Pub. L. 103–155, §3(b), inserted at end "Such programs and general assistance shall be carried out in accordance with the purposes and requirements of applicable provisions of law, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.)."

Subsec. (h). Pub. L. 103–155, §1, substituted ", 1994, 1995, 1996, 1997, and 1998" for "and 1994".

Subsec. (i). Pub. L. 103–155, §2, added subsec. (i).

## **§4369. Miscellaneous reports**

### **(a) Availability to Congressional committees**

All reports to or by the Administrator relevant to the Agency's program of research, development, and demonstration shall promptly be made available to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Environment and Public Works of the Senate, unless otherwise prohibited by law.

### **(b) Transmittal of jurisdictional information**

The Administrator shall keep the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Environment and Public Works of the Senate fully and currently informed with respect to matters falling within or related to the jurisdiction of the committees.

### **(c) Comment by Government agencies and the public**

The reports provided for in section 5910<sup>1</sup> of this title shall be made available to the public for comment, and to the heads of affected agencies for comment and, in the case of recommendations for action, for response.

### **(d) Transmittal of research information to the Department of Energy**

For the purpose of assisting the Department of Energy in planning and assigning priorities in research development and demonstration activities related to environmental control technologies, the Administrator shall actively make available to the Department all information on research activities and results of research programs of the Environmental Protection Agency. (Pub. L. 95–477, §5, Oct. 18, 1978, 92 Stat. 1510; Pub. L. 103–437, §15(c)(6), Nov. 2, 1994, 108 Stat. 4592.)

#### **REFERENCES IN TEXT**

Section 5910 of this title, referred to in subsec. (c), was repealed by Pub. L. 104–66, title II, §2021(i), Dec. 21, 1995, 109 Stat. 727.

#### **CODIFICATION**

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

#### **AMENDMENTS**

**1994**—Subsecs. (a), (b). Pub. L. 103–437 substituted "Science, Space, and Technology" for "Science and Technology".

<sup>1</sup> *See References in Text note below.*

## **§4369a. Reports on environmental research and development activities of Agency**

### **(a) Reports to keep Congressional committees fully and currently informed**



The Administrator shall keep the appropriate committees of the House and the Senate fully and currently informed about all aspects of the environmental research and development activities of the Environmental Protection Agency.

**(b) Omitted**

(Pub. L. 96–229, §4, Apr. 7, 1980, 94 Stat. 328.)

**CODIFICATION**

Subsec. (b) of this section, which required the Administrator to annually make available to the appropriate committees of Congress sufficient copies of a report fully describing funds requested and the environmental research and development activities to be carried out with these funds, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 24 on page 163 of House Document No. 103–7.

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1980, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

**§4370. Reimbursement for use of facilities**

**(a) Authority to allow outside groups or individuals to use research and test facilities; reimbursement**

The Administrator is authorized to allow appropriate use of special Environmental Protection Agency research and test facilities by outside groups or individuals and to receive reimbursement or fees for costs incurred thereby when he finds this to be in the public interest. Such reimbursement or fees are to be used by the Agency to defray the costs of use by outside groups or individuals.

**(b) Rules and regulations**

The Administrator may promulgate regulations to cover such use of Agency facilities in accordance with generally accepted accounting, safety, and laboratory practices.

**(c) Waiver of reimbursement by Administrator**

When he finds it is in the public interest the Administrator may waive reimbursement or fees for outside use of Agency facilities by nonprofit private or public entities.

(Pub. L. 96–229, §5, Apr. 7, 1980, 94 Stat. 328.)

**CODIFICATION**

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1980, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

**§4370a. Assistant Administrators of Environmental Protection Agency; appointment; duties**

(a) The President, by and with the advice and consent of the Senate, may appoint three Assistant Administrators of the Environmental Protection Agency in addition to—

- (1) the five Assistant Administrators provided for in section 1(d) of Reorganization Plan Numbered 3 of 1970 (5 U.S.C. Appendix);
- (2) the Assistant Administrator provided by section 2625(g) of title 15; and
- (3) the Assistant Administrator provided by section 6911a of this title.

(b) Each Assistant Administrator appointed under subsection (a) of this section shall perform such duties as the Administrator of the Environmental Protection Agency may prescribe.

(Pub. L. 98–80, §1, Aug. 23, 1983, 97 Stat. 485.)

#### REFERENCES IN TEXT

Reorganization Plan Numbered 3 of 1970, referred to in subsec. (a)(1), is set out under section 4321 of this title.

#### CODIFICATION

Section was not enacted as part of the National Environmental Policy Act of 1969 which comprises this chapter.

### **§4370b. Availability of fees and charges to carry out Agency programs**

Notwithstanding any other provision of law, after September 30, 1990, amounts deposited in the Licensing and Other Services Fund from fees and charges assessed and collected by the Administrator for services and activities carried out pursuant to the statutes administered by the Environmental Protection Agency shall thereafter be available to carry out the Agency's activities in the programs for which the fees or charges are made.

(Pub. L. 101–144, title III, Nov. 9, 1989, 103 Stat. 858.)

#### CODIFICATION

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

### **§4370c. Environmental Protection Agency fees**

#### **(a) Assessment and collection**

The Administrator of the Environmental Protection Agency shall, by regulation, assess and collect fees and charges for services and activities carried out pursuant to laws administered by the Environmental Protection Agency.

#### **(b) Amount of fees and charges**

Fees and charges assessed pursuant to this section shall be in such amounts as may be necessary to ensure that the aggregate amount of fees and charges collected pursuant to this section, in excess of the amount of fees and charges collected under current law—

(1) in fiscal year 1991, is not less than \$28,000,000; and

(2) in each of fiscal years 1992, 1993, 1994, and 1995, is not less than \$38,000,000.

#### **(c) Limitation on fees and charges**

(1) The maximum aggregate amount of fees and charges in excess of the amounts being collected under current law which may be assessed and collected pursuant to this section in a fiscal year—

(A) for services and activities carried out pursuant to <sup>1</sup> the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] is \$10,000,000; and

(B) for services and activities in programs within the jurisdiction of the House Committee on Energy and Commerce and administered by the Environmental Protection Agency through the Administrator, shall be limited to such sums collected as of November 5, 1990, pursuant to sections 2625(b) and 2665(e)(2) <sup>2</sup> of title 15, and such sums specifically authorized by the Clean Air Act Amendments of 1990.

(2) Any remaining amounts required to be collected under this section shall be collected from services and programs administered by the Environmental Protection Agency other than those specified in subparagraphs (A) and (B) of paragraph (1).

**(d) Rule of construction**

Nothing in this section increases or diminishes the authority of the Administrator to promulgate regulations pursuant to section 9701 of title 31.

**(e) Uses of fees**

Fees and charges collected pursuant to this section shall be deposited into a special account for environmental services in the Treasury of the United States. Subject to appropriation Acts, such funds shall be available to the Environmental Protection Agency to carry out the activities for which such fees and charges are collected. Such funds shall remain available until expended.

(Pub. L. 101–508, title VI, §6501, Nov. 5, 1990, 104 Stat. 1388–320.)

**REFERENCES IN TEXT**

The Federal Water Pollution Control Act, referred to in subsec. (c)(1)(A), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

Section 2665(e)(2) of title 15, referred to in subsec. (c)(1)(B), was redesignated section 2665(d)(2) of Title 15, Commerce and Trade, by Pub. L. 104–66, title II, §2021(l)(2), Dec. 21, 1995, 109 Stat. 728.

The Clean Air Act Amendments of 1990, referred to in subsec. (c)(1)(B), means Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 7401 of this title and Tables.

**CODIFICATION**

In subsec. (d), "section 9701 of title 31" was in the original "the Independent Office Appropriations Act (31 U.S.C. 9701)" and substitution was made as if it read for "title V of the Independent Offices Appropriation Act of 1952" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1990, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

**CHANGE OF NAME**

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

<sup>1</sup> *So in original. Probably should be "to".*

<sup>2</sup> *See References in Text note below.*

#### **§4370d. Percentage of Federal funding for organizations owned by socially and economically disadvantaged individuals**

The Administrator of the Environmental Protection Agency shall, on and after October 6, 1992, to the fullest extent possible, ensure that at least 8 per centum of Federal funding for prime and subcontracts awarded in support of authorized programs, including grants, loans, and contracts for wastewater treatment and leaking underground storage tanks grants, be made available to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of section 637(a)(5) and (6) of title 15), including historically black colleges and universities. For purposes of this section, economically and socially disadvantaged individuals shall be deemed to include women.

(Pub. L. 102–389, title III, Oct. 6, 1992, 106 Stat. 1602.)

#### **CODIFICATION**

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

#### **§4370e. Working capital fund in Treasury**

There is hereby established in the Treasury a "Working capital fund", to be available without fiscal year limitation for expenses and equipment necessary for the maintenance and operation of such administrative services as the Administrator determines may be performed more advantageously as central services: *Provided*, That any inventories, equipment, and other assets pertaining to the services to be provided by such fund, either on hand or on order, less the related liabilities or unpaid obligations, and any appropriations made hereafter for the purpose of providing capital, shall be used to capitalize such fund: *Provided further*, That such fund shall be paid in advance or reimbursed from funds available to the Agency and other Federal agencies for which such centralized services are performed, at rates which will return in full all expenses of operation, including accrued leave, depreciation of fund plant and equipment, amortization of automated data processing (ADP) software and systems (either acquired or donated), and an amount necessary to maintain a reasonable operating reserve, as determined by the Administrator: *Provided further*, That such fund shall provide services on a competitive basis: *Provided further*, That an amount not to exceed four percent of the total annual income to such fund may be retained in the fund for fiscal year 1997 and each fiscal year thereafter, to remain available until expended, to be used for the acquisition of capital equipment and for the improvement and implementation of Agency financial management, ADP, and other support systems: *Provided further*, That no later than thirty days after the end of each fiscal year amounts in excess of this reserve limitation shall be transferred to the Treasury.

(Pub. L. 104–204, title III, Sept. 26, 1996, 110 Stat. 2912; Pub. L. 105–65, title III, Oct. 27, 1997, 111 Stat. 1374; Pub. L. 105–276, title III, Oct. 21, 1998, 112 Stat. 2499.)

#### **CODIFICATION**

Section was formerly set out as a note under section 501 of Title 31, Money and Finance.

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

#### **AMENDMENTS**

**1998**—Pub. L. 105–276, which directed the insertion of "or reimbursed" after "that such fund shall be paid in advance", was executed by making the insertion after "That such fund shall be paid in advance", to reflect the probable intent of Congress.

**1997**—Pub. L. 105–65 substituted "a 'Working capital fund' to be available without fiscal year limitation for expenses and equipment" for "a franchise fund pilot to be known as the 'Working capital fund', as authorized by section 403 of Public Law 103–356, to be available as provided in such section for expenses and equipment" and struck out proviso at end which read ": *Provided further*, That such franchise fund pilot shall terminate pursuant to section 403(f) of Public Law 103–356".

#### **§4370f. Availability of funds after expiration of period for liquidating obligations**

For fiscal year 2001 and thereafter, the obligated balances of sums available in multiple-year appropriations accounts shall remain available through the seventh fiscal year after their period of availability has expired for liquidating obligations made during the period of availability.

(Pub. L. 106–377, §1(a)(1) [title III], Oct. 27, 2000, 114 Stat. 1441, 1441A-44.)

##### **CODIFICATION**

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

#### **§4370g. Availability of funds for uniforms and certain services**

For fiscal year 2009 and thereafter, the Science and Technology and Environmental Programs and Management Accounts are available for uniforms, or allowances therefore, <sup>1</sup> as authorized by sections 5901 and 5902 of title 5 and for services as authorized by section 3109 of title 5, but at rates for individuals not to exceed the daily equivalent of the rate paid for level IV of the Executive Schedule.

(Pub. L. 111–8, div. E, title II, Mar. 11, 2009, 123 Stat. 728.)

##### **REFERENCES IN TEXT**

Level IV of the Executive Schedule, referred to in text, is set out under section 5315 of Title 5, Government Organization and Employees.

##### **CODIFICATION**

Section was enacted as part of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2009, and also as part of the Omnibus Appropriations Act, 2009, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

<sup>1</sup> So in original. Probably should be "therefor."

#### **§4370h. Availability of funds for facilities**

For fiscal year 2009 and thereafter, the Science and Technology, Environmental Programs and Management, Office of Inspector General, Hazardous Substance Superfund, and Leaking Underground Storage Tank Trust Fund Program Accounts, are available for the construction, alteration, repair, rehabilitation, and renovation of facilities provided that the cost does not exceed \$85,000 per project.

(Pub. L. 111–8, div. E, title II, Mar. 11, 2009, 123 Stat. 729.)

## CODIFICATION

Section was enacted as part of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2009, and also as part of the Omnibus Appropriations Act, 2009, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

## SUBCHAPTER IV—FEDERAL PERMITTING IMPROVEMENT

### §4370m. Definitions

In this subchapter:

#### (1) Agency

The term "agency" has the meaning given the term in section 551 of title 5.

#### (2) Agency CERPO

The term "agency CERPO" means the chief environmental review and permitting officer of an agency, as designated by the head of the agency under section 4370m–1(b)(2)(A)(iii)(I) of this title.

#### (3) Authorization

The term "authorization" means any license, permit, approval, finding, determination, or other administrative decision issued by an agency that is required or authorized under Federal law in order to site, construct, reconstruct, or commence operations of a covered project administered by a Federal agency or, in the case of a State that chooses to participate in the environmental review and authorization process in accordance with section 4370m–2(c)(3)(A) of this title, a State agency.

#### (4) Cooperating agency

The term "cooperating agency" means any agency with—

(A) jurisdiction under Federal law; or

(B) special expertise as described in section 1501.6 of title 40, Code of Federal Regulations (as in effect on December 4, 2015).

#### (5) Council

The term "Council" means the Federal Infrastructure Permitting Improvement Steering Council<sup>1</sup> established under section 4370m–1(a) of this title.

#### (6) Covered project

##### (A) In general

The term "covered project" means any activity in the United States that requires authorization or environmental review by a Federal agency involving construction of infrastructure for renewable or conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, manufacturing, or any other sector as determined by a majority vote of the Council that—

(i)(I) is subject to NEPA;

(II) is likely to require a total investment of more than \$200,000,000; and

(III) does not qualify for abbreviated authorization or environmental review processes under any applicable law; or

(ii) is subject to NEPA and the size and complexity of which, in the opinion of the Council, make the project likely to benefit from enhanced oversight and coordination, including a project likely to require—

(I) authorization from or environmental review involving more than 2 Federal agencies; or

(II) the preparation of an environmental impact statement under NEPA.

**(B) Exclusion**

The term "covered project" does not include—

(i) any project subject to section 139 of title 23; or

(ii) any project subject to section 2348 of title 33.

**(7) Dashboard**

The term "Dashboard" means the Permitting Dashboard required under section 4370m–2(b) of this title.

**(8) Environmental assessment**

The term "environmental assessment" means a concise public document for which a Federal agency is responsible under section 1508.9 of title 40, Code of Federal Regulations (or successor regulations).

**(9) Environmental document**

**(A) In general**

The term "environmental document" means an environmental assessment, finding of no significant impact, notice of intent, environmental impact statement, or record of decision.

**(B) Inclusions**

The term "environmental document" includes—

(i) any document that is a supplement to a document described in subparagraph (A); and

(ii) a document prepared pursuant to a court order.

**(10) Environmental impact statement**

The term "environmental impact statement" means the detailed written statement required under section 102(2)(C) of NEPA [42 U.S.C. 4332(2)(C)].

**(11) Environmental review**

The term "environmental review" means the agency procedures and processes for applying a categorical exclusion or for preparing an environmental assessment, an environmental impact statement, or other document required under NEPA.

**(12) Executive Director**

The term "Executive Director" means the Executive Director appointed by the President under section 4370m–1(b)(1)(A) of this title.

**(13) Facilitating agency**

The term "facilitating agency" means the agency that receives the initial notification from the project sponsor required under section 4370m–2(a) of this title.

**(14) Inventory**

The term "inventory" means the inventory of covered projects established by the Executive Director under section 4370m–1(c)(1)(A) of this title.

**(15) Lead agency**

The term "lead agency" means the agency with principal responsibility for an environmental review of a covered project under NEPA and parts 1500 through 1508 of title 40, Code of Federal Regulations (or successor regulations).

**(16) NEPA**

The term "NEPA" means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

**(17) Participating agency**

The term "participating agency" means an agency participating in an environmental review or authorization for a covered project in accordance with section 4370m–2 of this title.

**(18) Project sponsor**

The term "project sponsor" means an entity, including any private, public, or public-private entity, seeking an authorization for a covered project.

(Pub. L. 114–94, div. D, title XLI, §41001, Dec. 4, 2015, 129 Stat. 1741.)

**REFERENCES IN TEXT**

The National Environmental Policy Act of 1969 or NEPA, referred to in pars. (6)(A), (11), and (15) and defined in (16), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

**CODIFICATION**

Section was enacted as part of the Fixing America's Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

**SAVINGS CLAUSE**

Pub. L. 114–94, div. A, title XI, §11503(b), Dec. 4, 2015, 129 Stat. 1692, provided that: "Except as expressly provided in section 41003(f) [42 U.S.C. 4370m–2(f)] and subsection (o) of section 139 of title 23, United States Code, the requirements and other provisions of title 41 of this Act [probably means title XLI of div. D of Pub. L. 114–94, 42 U.S.C. 4370m et seq.] shall not apply to—

"(1) programs administered now and in the future by the Department of Transportation or its operating administrations under title 23, 46, or 49, United States Code, including direct loan and loan guarantee programs, or other Federal statutes or programs or projects administered by an agency pursuant to their authority under title 49, United States Code; or

"(2) any project subject to section 2045 of the Water Resources Development Act of 2007 (33 U.S.C. 2348)."

**PLACEMENT IN UNITED STATES CODE**

Pub. L. 114–94, div. D, title XLI, §41014, Dec. 4, 2015, 129 Stat. 1762, provided that: "The Office of the Law Revision Counsel is directed to place sections 41001 through 41013 of this title in chapter 55 of title 42, United States Code, as subchapter IV."



<sup>1</sup> So in original. Probably should be "Federal Permitting Improvement Steering Council".

## **§4370m–1. Federal Permitting Improvement Council**

### **(a) Establishment**

There is established the Federal Permitting Improvement Steering Council.

### **(b) Composition**

#### **(1) Chair**

The Executive Director shall—

(A) be appointed by the President; and

(B) serve as Chair of the Council.

#### **(2) Council members**

##### **(A) In general**

##### **(i) Designation by head of agency**

Each individual listed in subparagraph (B) shall designate a member of the agency in which the individual serves to serve on the Council.

##### **(ii) Qualifications**

A councilmember<sup>1</sup> described in clause (i) shall hold a position in the agency of deputy secretary (or the equivalent) or higher.

##### **(iii) Support**

##### **(I) In general**

Consistent with guidance provided by the Director of the Office of Management and Budget, each individual listed in subparagraph (B) shall designate 1 or more appropriate members of the agency in which the individual serves to serve as an agency CERPO.

##### **(II) Reporting**

In carrying out the duties of the agency CERPO under this subchapter, an agency CERPO shall report directly to a deputy secretary (or the equivalent) or higher.

##### **(B) Heads of agencies**

The individuals that shall each designate a councilmember under this subparagraph are as follows:

- (i) The Secretary of Agriculture.
- (ii) The Secretary of the Army.
- (iii) The Secretary of Commerce.
- (iv) The Secretary of the Interior.
- (v) The Secretary of Energy.
- (vi) The Secretary of Transportation.
- (vii) The Secretary of Defense.
- (viii) The Administrator of the Environmental Protection Agency.
- (ix) The Chairman of the Federal Energy Regulatory Commission.
- (x) The Chairman of the Nuclear Regulatory Commission.
- (xi) The Secretary of Homeland Security.
- (xii) The Secretary of Housing and Urban Development.

- (xiii) The Chairman of the Advisory Council on Historic Preservation.
- (xiv) Any other head of a Federal agency that the Executive Director may invite to participate as a member of the Council.

### **(3) Additional members**

In addition to the members listed in paragraphs (1) and (2), the Chairman of the Council on Environmental Quality and the Director of the Office of Management and Budget shall also be members of the Council.

## **(c) Duties**

### **(1) Executive Director**

#### **(A) Inventory development**

The Executive Director, in consultation with the Council, shall—

- (i) not later than 180 days after December 4, 2015, establish an inventory of covered projects that are pending the environmental review or authorization of the head of any Federal agency;
- (ii)(I) categorize the projects in the inventory as appropriate, based on sector and project type; and
- (II) for each category, identify the types of environmental reviews and authorizations most commonly involved; and
- (iii) add a covered project to the inventory after receiving a notice described in section 4370m–2(a)(1) of this title.

#### **(B) Facilitating agency designation**

The Executive Director, in consultation with the Council, shall—

- (i) designate a facilitating agency for each category of covered projects described in subparagraph (A)(ii); and
- (ii) publish the list of designated facilitating agencies for each category of projects in the inventory on the Dashboard in an easily accessible format.

#### **(C) Performance schedules**

##### **(i) In general**

Not later than 1 year after December 4, 2015, the Executive Director, in consultation with the Council, shall develop recommended performance schedules, including intermediate and final completion dates, for environmental reviews and authorizations most commonly required for each category of covered projects described in subparagraph (A)(ii).

##### **(ii) Requirements**

###### **(I) In general**

The performance schedules shall reflect employment of the use of the most efficient applicable processes, including the alignment of Federal reviews of projects and reduction of permitting and project delivery time.

###### **(II) Limit**

###### **(aa) In general**

The final completion dates in any performance schedule for the completion of an environmental review or authorization under clause (i) shall not exceed the average time to complete an environmental review or authorization for a project within that category.

**(bb) Calculation of average time**

The average time referred to in item (aa) shall be calculated on the basis of data from the preceding 2 calendar years and shall run from the period beginning on the date on which the Executive Director must make a specific entry for the project on the Dashboard under section 4370m–2(b)(2) of this title (except that, for projects initiated before that duty takes effect, the period beginning on the date of filing of a completed application), and ending on the date of the issuance of a record of decision or other final agency action on the review or authorization.

**(cc) Completion date**

Each performance schedule shall specify that any decision by an agency on an environmental review or authorization must be issued not later than 180 days after the date on which all information needed to complete the review or authorization (including any hearing that an agency holds on the matter) is in the possession of the agency.

**(iii) Review and revision**

Not later than 2 years after the date on which the performance schedules are established under this subparagraph, and not less frequently than once every 2 years thereafter, the Executive Director, in consultation with the Council, shall review and revise the performance schedules.

**(D) Guidance**

The Executive Director, in consultation with the Council, may recommend to the Director of the Office of Management and Budget or to the Council on Environmental Quality, as appropriate, that guidance be issued as necessary for agencies—

- (i) to carry out responsibilities under this subchapter; and
- (ii) to effectuate the adoption by agencies of the best practices and recommendations of the Council described in paragraph (2).

**(2) Council**

**(A) Recommendations**

**(i) In general**

The Council shall make recommendations to the Executive Director with respect to the designations under paragraph (1)(B) and the performance schedules under paragraph (1)(C).

**(ii) Update**

The Council may update the recommendations described in clause (i).

**(B) Best practices**

Not later than 1 year after December 4, 2015, and not less frequently than annually thereafter, the Council shall issue recommendations on the best practices for—

- (i) enhancing early stakeholder engagement, including fully considering and, as appropriate, incorporating recommendations provided in public comments on any proposed covered project;
- (ii) ensuring timely decisions regarding environmental reviews and authorizations, including through the development of performance metrics;

- (iii) improving coordination between Federal and non-Federal governmental entities, including through the development of common data standards and terminology across agencies;
- (iv) increasing transparency;
- (v) reducing information collection requirements and other administrative burdens on agencies, project sponsors, and other interested parties;
- (vi) developing and making available to applicants appropriate geographic information systems and other tools;
- (vii) creating and distributing training materials useful to Federal, State, tribal, and local permitting officials; and
- (viii) addressing other aspects of infrastructure permitting, as determined by the Council.

### **(C) Meetings**

The Council shall meet not less frequently than annually with groups or individuals representing State, tribal, and local governments that are engaged in the infrastructure permitting process.

### **(3) Agency CERPOs**

An agency CERPO shall—

- (A) advise the respective agency councilmember on matters related to environmental reviews and authorizations;
- (B) provide technical support, when requested to facilitate efficient and timely processes for environmental reviews and authorizations for covered projects under the jurisdictional responsibility of the agency, including supporting timely identification and resolution of potential disputes within the agency or between the agency and other Federal agencies;
- (C) analyze agency environmental review and authorization processes, policies, and authorities and make recommendations to the respective agency councilmember for ways to standardize, simplify, and improve the efficiency of the processes, policies, and authorities, including by implementing guidance issued under paragraph (1)(D) and other best practices, including the use of information technology and geographic information system tools within the agency and across agencies, to the extent consistent with existing law; and
- (D) review and develop training programs for agency staff that support and conduct environmental reviews or authorizations.

### **(d) Administrative support**

The Director of the Office of Management and Budget shall designate a Federal agency, other than an agency that carries out or provides support only for projects that are not covered projects, to provide administrative support for the Executive Director, and the designated agency shall, as reasonably necessary, provide support and staff to enable the Executive Director to fulfill the duties of the Executive Director under this subchapter.

(Pub. L. 114–94, div. D, title XLI, §41002, Dec. 4, 2015, 129 Stat. 1743.)

#### **CODIFICATION**

Section was enacted as part of the Fixing America's Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

<sup>1</sup> *So in original.*

## **§4370m–2. Permitting process improvement**

### **(a) Project initiation and designation of participating agencies**

#### **(1) Notice**

##### **(A) In general**

A project sponsor of a covered project shall submit to the Executive Director and the facilitating agency notice of the initiation of a proposed covered project.

##### **(B) Default designation**

If, at the time of submission of the notice under subparagraph (A), the Executive Director has not designated a facilitating agency under section 4370m–1(c)(1)(B) of this title for the categories of projects noticed, the agency that receives the notice under subparagraph (A) shall be designated as the facilitating agency.

##### **(C) Contents**

Each notice described in subparagraph (A) shall include—

- (i) a statement of the purposes and objectives of the proposed project;
- (ii) a concise description, including the general location of the proposed project and a summary of geospatial information, if available, illustrating the project area and the locations, if any, of environmental, cultural, and historic resources;
- (iii) a statement regarding the technical and financial ability of the project sponsor to construct the proposed project;
- (iv) a statement of any Federal financing, environmental reviews, and authorizations anticipated to be required to complete the proposed project; and
- (v) an assessment that the proposed project meets the definition of a covered project under section 4370m of this title and a statement of reasons supporting the assessment.

#### **(2) Invitation**

##### **(A) In general**

Not later than 45 days after the date on which the Executive Director must make a specific entry for the project on the Dashboard under subsection (b)(2)(A), the facilitating agency or lead agency, as applicable, shall—

- (i) identify all Federal and non-Federal agencies and governmental entities likely to have financing, environmental review, authorization, or other responsibilities with respect to the proposed project; and
- (ii) invite all Federal agencies identified under clause (i) to become a participating agency or a cooperating agency, as appropriate, in the environmental review and authorization management process described in section 4370m–4 of this title.

##### **(B) Deadlines**

Each invitation made under subparagraph (A) shall include a deadline for a response to be submitted to the facilitating or lead agency, as applicable.

#### **(3) Participating and cooperating agencies**

##### **(A) In general**

An agency invited under paragraph (2) shall be designated as a participating or cooperating agency for a covered project, unless the agency informs the facilitating

or lead agency, as applicable, in writing before the deadline under paragraph (2)(B) that the agency—

- (i) has no jurisdiction or authority with respect to the proposed project; or
- (ii) does not intend to exercise authority related to, or submit comments on, the proposed project.

**(B) Changed circumstances**

On request and a showing of changed circumstances, the Executive Director may designate an agency that has opted out under subparagraph (A)(ii) to be a participating or cooperating agency, as appropriate.

**(4) Effect of designation**

The designation described in paragraph (3) shall not—

- (A) give the participating agency authority or jurisdiction over the covered project; or
- (B) expand any jurisdiction or authority a cooperating agency may have over the proposed project.

**(5) Lead agency designation**

**(A) In general**

On establishment of the lead agency, the lead agency shall assume the responsibilities of the facilitating agency under this subchapter.

**(B) Redesignation of facilitating agency**

If the lead agency assumes the responsibilities of the facilitating agency under subparagraph (A), the facilitating agency may be designated as a cooperative or participating agency.

**(6) Change of facilitating or lead agency**

**(A) In general**

On the request of a participating agency or project sponsor, the Executive Director may designate a different agency as the facilitating or lead agency, as applicable, for a covered project, if the facilitating or lead agency or the Executive Director receives new information regarding the scope or nature of a covered project that indicates that the project should be placed in a different category under section 4370m–1(c)(1)(B) of this title.

**(B) Resolution of dispute**

The Chairman of the Council on Environmental Quality shall resolve any dispute over designation of a facilitating or lead agency for a particular covered project.

**(b) Permitting dashboard**

**(1) Requirement to maintain**

**(A) In general**

The Executive Director, in coordination with the Administrator of General Services, shall maintain an online database to be known as the "Permitting Dashboard" to track the status of Federal environmental reviews and authorizations for any covered project in the inventory described in section 4370m–1(c)(1)(A) of this title.

**(B) Specific and searchable entry**

The Dashboard shall include a specific and searchable entry for each covered project.

## **(2) Additions**

### **(A) In general**

#### **(i) Existing projects**

Not later than 14 days after the date on which the Executive Director adds a project to the inventory under section 4370m–1(c)(1)(A) of this title, the Executive Director shall create a specific entry on the Dashboard for the covered project.

#### **(ii) New projects**

Not later than 14 days after the date on which the Executive Director receives a notice under subsection (a)(1), the Executive Director shall create a specific entry on the Dashboard for the covered project, unless the Executive Director, facilitating agency, or lead agency, as applicable, determines that the project is not a covered project.

### **(B) Explanation**

If the facilitating agency or lead agency, as applicable, determines that the project is not a covered project, the project sponsor may submit a further explanation as to why the project is a covered project not later than 14 days after the date of the determination under subparagraph (A).

### **(C) Final determination**

Not later than 14 days after receiving an explanation described in subparagraph (B), the Executive Director shall—

- (i) make a final and conclusive determination as to whether the project is a covered project; and
- (ii) if the Executive Director determines that the project is a covered project, create a specific entry on the Dashboard for the covered project.

## **(3) Postings by agencies**

### **(A) In general**

For each covered project added to the Dashboard under paragraph (2), the facilitating or lead agency, as applicable, and each cooperating and participating agency shall post to the Dashboard—

(i) a hyperlink that directs to a website that contains, to the extent consistent with applicable law—

- (I) the notification submitted under subsection (a)(1);
- (II)(aa) where practicable, the application and supporting documents, if applicable, that have been submitted by a project sponsor for any required environmental review or authorization; or
- (bb) a notice explaining how the public may obtain access to such documents;
- (III) a description of any Federal agency action taken or decision made that materially affects the status of a covered project;
- (IV) any significant document that supports the action or decision described in subclause (III); and
- (V) a description of the status of any litigation to which the agency is a party that is directly related to the project, including, if practicable, any judicial

document made available on an electronic docket maintained by a Federal, State, or local court; and

(ii) any document described in clause (i) that is not available by hyperlink on another website.

**(B) Deadline**

The information described in subparagraph (A) shall be posted to the website made available by hyperlink on the Dashboard not later than 5 business days after the date on which the Federal agency receives the information.

**(4) Postings by the Executive Director**

The Executive Director shall publish to the Dashboard—

- (A) the permitting timetable established under subparagraph (A) or (C) of subsection (c)(2);
- (B) the status of the compliance of each agency with the permitting timetable;
- (C) any modifications of the permitting timetable;
- (D) an explanation of each modification described in subparagraph (C); and
- (E) any memorandum of understanding established under subsection (c)(3)(B).

**(c) Coordination and timetables**

**(1) Coordinated project plan**

**(A) In general**

Not later than 60 days after the date on which the Executive Director must make a specific entry for the project on the Dashboard under subsection (b)(2)(A), the facilitating or lead agency, as applicable, in consultation with each coordinating and participating agency, shall establish a concise plan for coordinating public and agency participation in, and completion of, any required Federal environmental review and authorization for the project.

**(B) Required information**

The Coordinated Project Plan shall include the following information and be updated by the facilitating or lead agency, as applicable, at least once per quarter:

- (i) A list of, and roles and responsibilities for, all entities with environmental review or authorization responsibility for the project.
- (ii) A permitting timetable, as described in paragraph (2), setting forth a comprehensive schedule of dates by which all environmental reviews and authorizations, and to the maximum extent practicable, State permits, reviews and approvals must be made.
- (iii) A discussion of potential avoidance, minimization, and mitigation strategies, if required by applicable law and known.
- (iv) Plans and a schedule for public and tribal outreach and coordination, to the extent required by applicable law.

**(C) Memorandum of understanding**

The coordinated project plan described in subparagraph (A) may be incorporated into a memorandum of understanding.

**(2) Permitting timetable**

**(A) Establishment**



As part of the coordination project plan under paragraph (1), the facilitating or lead agency, as applicable, in consultation with each cooperating and participating agency, the project sponsor, and any State in which the project is located, and, subject to subparagraph (C), with the concurrence of each cooperating agency, shall establish a permitting timetable that includes intermediate and final completion dates for action by each participating agency on any Federal environmental review or authorization required for the project.

## **(B) Factors for consideration**

In establishing the permitting timetable under subparagraph (A), the facilitating or lead agency shall follow the performance schedules established under section 4370m-1(c)(1)(C) of this title, but may vary the timetable based on relevant factors, including—

- (i) the size and complexity of the covered project;
- (ii) the resources available to each participating agency;
- (iii) the regional or national economic significance of the project;
- (iv) the sensitivity of the natural or historic resources that may be affected by the project;
- (v) the financing plan for the project; and
- (vi) the extent to which similar projects in geographic proximity to the project were recently subject to environmental review or similar procedures under State law.

## **(C) Dispute resolution**

### **(i) In general**

The Executive Director, in consultation with appropriate agency CERPOs and the project sponsor, shall, as necessary, mediate any disputes regarding the permitting timetable referred to under subparagraph (A).

### **(ii) Disputes**

If a dispute remains unresolved 30 days after the date on which the dispute was submitted to the Executive Director, the Director of the Office of Management and Budget, in consultation with the Chairman of the Council on Environmental Quality, shall facilitate a resolution of the dispute and direct the agencies party to the dispute to resolve the dispute by the end of the 60-day period beginning on the date of submission of the dispute to the Executive Director.

### **(iii) Final resolution**

Any action taken by the Director of the Office of Management and Budget in the resolution of a dispute under clause (ii) shall—

- (I) be final and conclusive; and
- (II) not be subject to judicial review.

## **(D) Modification after approval**

### **(i) In general**

The facilitating or lead agency, as applicable, may modify a permitting timetable established under subparagraph (A) only if—

- (I) the facilitating or lead agency, as applicable, and the affected cooperating agencies, after consultation with the participating agencies and the project sponsor, agree to a different completion date;

(II) the facilitating agency or lead agency, as applicable, or the affected cooperating agency provides a written justification for the modification; and

(III) in the case of a modification that would necessitate an extension of a final completion date under a permitting timetable established under subparagraph (A) to a date more than 30 days after the final completion date originally established under subparagraph (A), the facilitating or lead agency submits a request to modify the permitting timetable to the Executive Director, who shall consult with the project sponsor and make a determination on the record, based on consideration of the relevant factors described under subparagraph (B), whether to grant the facilitating or lead agency, as applicable, authority to make such modification.

**(ii) Completion date**

A completion date in the permitting timetable may not be modified within 30 days of the completion date.

**(iii) Limitation on length of modifications**

**(I) In general**

Except as provided in subclause (II), the total length of all modifications to a permitting timetable authorized or made under this subparagraph, other than for reasons outside the control of Federal, State, local, or tribal governments, may not extend the permitting timetable for a period of time greater than half of the amount of time from the establishment of the permitting timetable under subparagraph (A) to the last final completion date originally established under subparagraph (A).

**(II) Additional extensions**

The Director of the Office of Management and Budget, after consultation with the project sponsor, may permit the Executive Director to authorize additional extensions of a permitting timetable beyond the limit prescribed by subclause (I). In such a case, the Director of the Office of Management and Budget shall transmit, not later than 5 days after making a determination to permit an authorization of extension under this subclause, a report to Congress explaining why such modification is required. Such report shall explain to Congress with specificity why the original permitting timetable and the modifications authorized by the Executive Director failed to be adequate. The lead or facilitating agency, as applicable, shall transmit to Congress, the Director of the Office of Management and Budget, and the Executive Director a supplemental report on progress toward the final completion date each year thereafter, until the permit review is completed or the project sponsor withdraws its notice or application or other request to which this subchapter applies under section 4370m–9 of this title.

**(iv) Limitation on judicial review**

The following shall not be subject to judicial review:

(I) A determination by the Executive Director under clause (i)(III).

(II) A determination under clause (iii)(II) by the Director of the Office of Management and Budget to permit the Executive Director to authorize extensions of a permitting timetable.

**(E) Consistency with other time periods**

A permitting timetable established under subparagraph (A) shall be consistent with any other relevant time periods established under Federal law and shall not prevent any cooperating or participating agency from discharging any obligation under Federal law in connection with the project.

## **(F) Conforming to permitting timetables**

### **(i) In general**

Each Federal agency shall conform to the completion dates set forth in the permitting timetable established under subparagraph (A), or with any completion date modified under subparagraph (D).

### **(ii) Failure to conform**

If a Federal agency fails to conform with a completion date for agency action on a covered project or is at significant risk of failing to conform with such a completion date, the agency shall—

(I) promptly submit to the Executive Director for publication on the Dashboard an explanation of the specific reasons for failing or significantly risking failing to conform to the completion date and a proposal for an alternative completion date;

(II) in consultation with the facilitating or lead agency, as applicable, establish an alternative completion date; and

(III) each month thereafter until the agency has taken final action on the delayed authorization or review, submit to the Executive Director for posting on the Dashboard a status report describing any agency activity related to the project.

## **(G) Abandonment of covered project**

### **(i) In general**

If the facilitating or lead agency, as applicable, has a reasonable basis to doubt the continuing technical or financial ability of the project sponsor to construct the covered project, the facilitating or lead agency may request the project sponsor provide an updated statement regarding the ability of the project sponsor to complete the project.

### **(ii) Failure to respond**

If the project sponsor fails to respond to a request described in clause (i) by the date that is 30 days after receiving the request, the lead or facilitating agency, as applicable, shall notify the Executive Director, who shall publish an appropriate notice on the Dashboard.

### **(iii) Publication to Dashboard**

On publication of a notice under clause (ii), the completion dates in the permitting timetable shall be tolled and agencies shall be relieved of the obligation to comply with subparagraph (F) until such time as the project sponsor submits to the facilitating or lead agency, as applicable, an updated statement regarding the technical and financial ability of the project sponsor to construct the project.

## **(3) Cooperating State, local, or tribal governments**

### **(A) State authority**

If the Federal environmental review is being implemented within the boundaries of a State, the State, consistent with State law, may choose to participate in the environmental review and authorization process under this subsection and to make subject to the process all State agencies that—

- (i) have jurisdiction over the covered project;
- (ii) are required to conduct or issue a review, analysis, opinion, or statement for the covered project; or
- (iii) are required to make a determination on issuing a permit, license, or other approval or decision for the covered project.

### **(B) Coordination**

To the maximum extent practicable under applicable law, the facilitating or lead agency, as applicable, shall coordinate the Federal environmental review and authorization processes under this subsection with any State, local, or tribal agency responsible for conducting any separate review or authorization of the covered project to ensure timely and efficient completion of environmental reviews and authorizations.

### **(C) Memorandum of understanding**

#### **(i) In general**

Any coordination plan between the facilitating or lead agency, as applicable, and any State, local, or tribal agency shall, to the maximum extent practicable, be included in a memorandum of understanding.

#### **(ii) Submission to Executive Director**

The facilitating or lead agency, as applicable, shall submit to the Executive Director each memorandum of understanding described in clause (i).

### **(D) Applicability**

The requirements under this subchapter shall only apply to a State or an authorization issued by a State if the State has chosen to participate in the environmental review and authorization process pursuant to this paragraph.

### **(d) Early consultation**

The facilitating or lead agency, as applicable, shall provide an expeditious process for project sponsors to confer with each cooperating and participating agency involved and, not later than 60 days after the date on which the project sponsor submits a request under this subsection, to have each such agency provide to the project sponsor information concerning—

- (1) the availability of information and tools, including pre-application toolkits, to facilitate early planning efforts;
- (2) key issues of concern to each agency and to the public; and
- (3) issues that must be addressed before an environmental review or authorization can be completed.

### **(e) Cooperating agency**

#### **(1) In general**

A lead agency may designate a participating agency as a cooperating agency in accordance with part 1501 of title 40, Code of Federal Regulations (or successor regulations).

#### **(2) Effect on other designation**

The designation described in paragraph (1) shall not affect any designation under subsection (a)(3).

### **(3) Limitation on designation**

Any agency not designated as a participating agency under subsection (a)(3) shall not be designated as a cooperating agency under paragraph (1).

## **(f) Reporting status of other projects on Dashboard**

### **(1) In general**

On request of the Executive Director, the Secretary and the Secretary of the Army shall use best efforts to provide information for inclusion on the Dashboard on projects subject to section 139 of title 23 and section 2348 of title 33 likely to require—

- (A) a total investment of more than \$200,000,000; and
- (B) an environmental impact statement under NEPA.

### **(2) Effect of inclusion on Dashboard**

Inclusion on the Dashboard of information regarding projects subject to section 139 of title 23 or section 2348 of title 33 shall not subject those projects to any requirements of this subchapter.

(Pub. L. 114–94, div. D, title XLI, §41003, Dec. 4, 2015, 129 Stat. 1747.)

#### **REFERENCES IN TEXT**

NEPA, referred to in subsec. (f)(1)(B), means the National Environmental Policy Act of 1969, Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to this chapter. See section 4370m(16) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

#### **CODIFICATION**

Section was enacted as part of the Fixing America's Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

## **§4370m–3. Interstate compacts**

### **(a) In general**

The consent of Congress is given for 3 or more contiguous States to enter into an interstate compact establishing regional infrastructure development agencies to facilitate authorization and review of covered projects, under State law or in the exercise of delegated permitting authority described under section 4370m–5 of this title, that will advance infrastructure development, production, and generation within the States that are parties to the compact.

### **(b) Regional infrastructure**

For the purpose of this subchapter, a regional infrastructure development agency referred to in subsection (a) shall have the same authorities and responsibilities of a State agency.

(Pub. L. 114–94, div. D, title XLI, §41004, Dec. 4, 2015, 129 Stat. 1755.)

#### **CODIFICATION**

Section was enacted as part of the Fixing America's Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

## **§4370m–4. Coordination of required reviews**

## **(a) Concurrent reviews**

To integrate environmental reviews and authorizations, each agency shall, to the maximum extent practicable—

(1) carry out the obligations of the agency with respect to a covered project under any other applicable law concurrently, and in conjunction with, other environmental reviews and authorizations being conducted by other cooperating or participating agencies, including environmental reviews and authorizations required under NEPA, unless the agency determines that doing so would impair the ability of the agency to carry out the statutory obligations of the agency; and

(2) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.

## **(b) Adoption, incorporation by reference, and use of documents**

### **(1) <sup>1</sup> State environmental documents; supplemental documents**

#### **(A) Use of existing documents**

##### **(i) In general**

On the request of a project sponsor, a lead agency shall consider and, as appropriate, adopt or incorporate by reference, the analysis and documentation that has been prepared for a covered project under State laws and procedures as the documentation, or part of the documentation, required to complete an environmental review for the covered project, if the analysis and documentation were, as determined by the lead agency in consultation with the Council on Environmental Quality, prepared under circumstances that allowed for opportunities for public participation and consideration of alternatives, environmental consequences, and other required analyses that are substantially equivalent to what would have been available had the documents and analysis been prepared by a Federal agency pursuant to NEPA.

##### **(ii) Guidance by CEQ**

The Council on Environmental Quality may issue guidance to carry out this subsection.

#### **(B) NEPA obligations**

An environmental document adopted under subparagraph (A) or a document that includes documentation incorporated under subparagraph (A) may serve as the documentation required for an environmental review or a supplemental environmental review required to be prepared by a lead agency under NEPA.

#### **(C) Supplementation of State documents**

If the lead agency adopts or incorporates analysis and documentation described in subparagraph (A), the lead agency shall prepare and publish a supplemental document if the lead agency determines that during the period after preparation of the analysis and documentation and before the adoption or incorporation—

(i) a significant change has been made to the covered project that is relevant for purposes of environmental review of the project; or

(ii) there has been a significant circumstance or new information has emerged that is relevant to the environmental review for the covered project.

#### **(D) Comments**

If a lead agency prepares and publishes a supplemental document under subparagraph (C), the lead agency shall solicit comments from other agencies and the public on the supplemental document for a period of not more than 45 days, beginning on the date on which the supplemental document is published, unless—

- (i) the lead agency, the project sponsor, and any cooperating agency agree to a longer deadline; or
- (ii) the lead agency extends the deadline for good cause.

**(E) Notice of outcome of environmental review**

A lead agency shall issue a record of decision or finding of no significant impact, as appropriate, based on the document adopted under subparagraph (A) and any supplemental document prepared under subparagraph (C).

**(c) Alternatives analysis**

**(1) Participation**

**(A) In general**

As early as practicable during the environmental review, but not later than the commencement of scoping for a project requiring the preparation of an environmental impact statement, the lead agency shall engage the cooperating agencies and the public to determine the range of reasonable alternatives to be considered for a covered project.

**(B) Determination**

The determination under subparagraph (A) shall be completed not later than the completion of scoping.

**(2) Range of alternatives**

**(A) In general**

Following participation under paragraph (1) and subject to subparagraph (B), the lead agency shall determine the range of reasonable alternatives for consideration in any document that the lead agency is responsible for preparing for the covered project.

**(B) Alternatives required by law**

In determining the range of alternatives under subparagraph (A), the lead agency shall include all alternatives required to be considered by law.

**(3) Methodologies**

**(A) In general**

The lead agency shall determine, in collaboration with each cooperating agency at appropriate times during the environmental review, the methodologies to be used and the level of detail required in the analysis of each alternative for a covered project.

**(B) Environmental review**

A cooperating agency shall use the methodologies referred to in subparagraph (A) when conducting any required environmental review, to the extent consistent with existing law.

**(4) Preferred alternative**

With the concurrence of the cooperating agencies with jurisdiction under Federal law and at the discretion of the lead agency, the preferred alternative for a project, after being identified, may be developed to a higher level of detail than other alternatives to facilitate the development of mitigation measures or concurrent compliance with other applicable laws if the lead agency determines that the development of the higher level of detail will not prevent—

- (A) the lead agency from making an impartial decision as to whether to accept another alternative that is being considered in the environmental review; and
- (B) the public from commenting on the preferred and other alternatives.

#### **(d) Environmental review comments**

##### **(1) Comments on draft environmental impact statement**

For comments by an agency or the public on a draft environmental impact statement, the lead agency shall establish a comment period of not less than 45 days and not more than 60 days after the date on which a notice announcing availability of the environmental impact statement is published in the Federal Register, unless—

- (A) the lead agency, the project sponsor, and any cooperating agency agree to a longer deadline; or
- (B) the lead agency, in consultation with each cooperating agency, extends the deadline for good cause.

##### **(2) Other review and comment periods**

For all other review or comment periods in the environmental review process described in parts 1500 through 1508 of title 40, Code of Federal Regulations (or successor regulations), the lead agency shall establish a comment period of not more than 45 days after the date on which the materials on which comment is requested are made available, unless—

- (A) the lead agency, the project sponsor, and any cooperating agency agree to a longer deadline; or
- (B) the lead agency extends the deadline for good cause.

#### **(e) Issue identification and resolution**

##### **(1) Cooperation**

The lead agency and each cooperating and participating agency shall work cooperatively in accordance with this section to identify and resolve issues that could delay completion of an environmental review or an authorization required for the project under applicable law or result in the denial of any approval under applicable law.

##### **(2) Lead agency responsibilities**

###### **(A) In general**

The lead agency shall make information available to each cooperating and participating agency and project sponsor as early as practicable in the environmental review regarding the environmental, historic, and socioeconomic resources located within the project area and the general locations of the alternatives under consideration.

###### **(B) Sources of information**

The information described in subparagraph (A) may be based on existing data sources, including geographic information systems mapping.



### **(3) Cooperating and participating agency responsibilities**

Each cooperating and participating agency shall—

(A) identify, as early as practicable, any issues of concern regarding any potential environmental impacts of the covered project, including any issues that could substantially delay or prevent an agency from completing any environmental review or authorization required for the project; and

(B) communicate any issues described in subparagraph (A) to the project sponsor.

### **(f) Categories of projects**

The authorities granted under this section may be exercised for an individual covered project or a category of covered projects.

(Pub. L. 114–94, div. D, title XLI, §41005, Dec. 4, 2015, 129 Stat. 1755.)

#### **REFERENCES IN TEXT**

NEPA, referred to in subsecs. (a)(1) and (b)(1)(A)(i), (B), means the National Environmental Policy Act of 1969, Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to this chapter. See section 4370m(16) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

#### **CODIFICATION**

Section was enacted as part of the Fixing America's Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

*<sup>1</sup> So in original. No par. (2) has been enacted.*

## **§4370m–5. Delegated State permitting programs**

### **(a) In general**

If a Federal statute permits a Federal agency to delegate to or otherwise authorize a State to issue or otherwise administer a permit program in lieu of the Federal agency, the Federal agency with authority to carry out the statute shall—

(1) on publication by the Council of best practices under section 4370m–1(c)(2)(B) of this title, initiate a national process, with public participation, to determine whether and the extent to which any of the best practices are generally applicable on a delegation- or authorization-wide basis to permitting under the statute; and

(2) not later than 2 years after December 4, 2015, make model recommendations for State modifications of the applicable permit program to reflect the best practices described in section 4370m–1(c)(2)(B) of this title, as appropriate.

### **(b) Best practices**

Lead and cooperating agencies may share with State, tribal, and local authorities best practices involved in review of covered projects and invite input from State, tribal, and local authorities regarding best practices.

(Pub. L. 114–94, div. D, title XLI, §41006, Dec. 4, 2015, 129 Stat. 1758.)

#### **CODIFICATION**

Section was enacted as part of the Fixing America's Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

## **§4370m–6. Litigation, judicial review, and savings provision**

### **(a) Limitations on claims**

#### **(1) In general**

Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of any authorization issued by a Federal agency for a covered project shall be barred unless—

(A) the action is filed not later than 2 years after the date of publication in the Federal Register of the final record of decision or approval or denial of a permit, unless a shorter time is specified in the Federal law under which judicial review is allowed; and

(B) in the case of an action pertaining to an environmental review conducted under NEPA—

(i) the action is filed by a party that submitted a comment during the environmental review; and

(ii) any commenter filed a sufficiently detailed comment so as to put the lead agency on notice of the issue on which the party seeks judicial review, or the lead agency did not provide a reasonable opportunity for such a comment on that issue.

#### **(2) New information**

##### **(A) In general**

The head of a lead agency or participating agency shall consider new information received after the close of a comment period if the information satisfies the requirements under regulations implementing NEPA.

##### **(B) Separate action**

If Federal law requires the preparation of a supplemental environmental impact statement or other supplemental environmental document, the preparation of such document shall be considered a separate final agency action and the deadline for filing a claim for judicial review of the agency action shall be 2 years after the date on which a notice announcing the final agency action is published in the Federal Register, unless a shorter time is specified in the Federal law under which judicial review is allowed.

#### **(3) Rule of construction**

Nothing in this subsection creates a right to judicial review or places any limit on filing a claim that a person has violated the terms of an authorization.

### **(b) Preliminary injunctive relief**

In addition to considering any other applicable equitable factors, in any action seeking a temporary restraining order or preliminary injunction against an agency or a project sponsor in connection with review or authorization of a covered project, the court shall—

(1) consider the potential effects on public health, safety, and the environment, and the potential for significant negative effects on jobs resulting from an order or injunction; and

(2) not presume that the harms described in paragraph (1) are reparable.

### **(c) Judicial review**

Except as provided in subsection (a), nothing in this subchapter affects the reviewability of any final Federal agency action in a court of competent jurisdiction.

#### **(d) Savings clause**

Nothing in this subchapter—

- (1) supersedes, amends, or modifies any Federal statute or affects the responsibility of any Federal officer to comply with or enforce any statute; or
- (2) creates a presumption that a covered project will be approved or favorably reviewed by any agency.

#### **(e) Limitations**

Nothing in this section preempts, limits, or interferes with—

- (1) any practice of seeking, considering, or responding to public comment; or
- (2) any power, jurisdiction, responsibility, or authority that a Federal, State, or local governmental agency, metropolitan planning organization, Indian tribe, or project sponsor has with respect to carrying out a project or any other provisions of law applicable to any project, plan, or program.

(Pub. L. 114–94, div. D, title XLI, §41007, Dec. 4, 2015, 129 Stat. 1758.)

#### **REFERENCES IN TEXT**

NEPA, referred to in subsec. (a)(1)(B), (2)(A), means the National Environmental Policy Act of 1969, Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to this chapter. See section 4370m(16) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

#### **CODIFICATION**

Section was enacted as part of the Fixing America's Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

### **§4370m–7. Reports**

#### **(a) Report to Congress**

##### **(1) In general**

Not later than April 15 of each year for 10 years beginning on December 4, 2015, the Executive Director shall submit to Congress a report detailing the progress accomplished under this subchapter during the previous fiscal year.

##### **(2) Contents**

The report described in paragraph (1) shall assess the performance of each participating agency and lead agency based on the best practices described in section 4370m–1(c)(2)(B) of this title, including—

- (A) agency progress in making improvements consistent with those best practices; and
- (B) agency compliance with the performance schedules established under section 4370m–1(c)(1)(C) of this title.

##### **(3) Opportunity to include comments**

Each councilmember, with input from the respective agency CERPO, shall have the opportunity to include comments concerning the performance of the agency in the report described in paragraph (1).

#### **(b) Comptroller general report**

Not later than 3 years after December 4, 2015, the Comptroller General of the United States shall submit to Congress a report that describes—

- (1) agency progress in making improvements consistent with the best practices issued under section 4370m–1(c)(2)(B) of this title; and
- (2) agency compliance with the performance schedules established under section 4370m–1(c)(1)(C) of this title.

(Pub. L. 114–94, div. D, title XLI, §41008, Dec. 4, 2015, 129 Stat. 1760.)

#### **CODIFICATION**

Section was enacted as part of the Fixing America's Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

### **§4370m–8. Funding for governance, oversight, and processing of environmental reviews and permits**

#### **(a) In general**

The heads of agencies listed in section 4370m–1(b)(2)(B) of this title, with the guidance of the Director of the Office of Management and Budget and in consultation with the Executive Director, may, after public notice and opportunity for comment, issue regulations establishing a fee structure for project proponents to reimburse the United States for reasonable costs incurred in conducting environmental reviews and authorizations for covered projects.

#### **(b) Reasonable costs**

As used in this section, the term "reasonable costs" shall include costs to implement the requirements and authorities required under sections 4370m–1 and 4370m–2 of this title, including the costs to agencies and the costs of operating the Council.

#### **(c) Fee structure**

The fee structure established under subsection (a) shall—

- (1) be developed in consultation with affected project proponents, industries, and other stakeholders;
- (2) exclude parties for which the fee would impose an undue financial burden or is otherwise determined to be inappropriate; and
- (3) be established in a manner that ensures that the aggregate amount of fees collected for a fiscal year is estimated not to exceed 20 percent of the total estimated costs for the fiscal year for the resources allocated for the conduct of the environmental reviews and authorizations covered by this subchapter, as determined by the Director of the Office of Management and Budget.

#### **(d) Environmental Review and Permitting Improvement Fund**

##### **(1) In general**

All amounts collected pursuant to this section shall be deposited into a separate fund in the Treasury of the United States to be known as the "Environmental Review Improvement Fund" (referred to in this section as the "Fund").

##### **(2) Availability**

Amounts in the Fund shall be available to the Executive Director, without appropriation or fiscal year limitation, solely for the purposes of administering, implementing, and enforcing this subchapter, including the expenses of the Council.

##### **(3) Transfer**

The Executive Director, with the approval of the Director of the Office of Management and Budget, may transfer amounts in the Fund to other agencies to

facilitate timely and efficient environmental reviews and authorizations for proposed covered projects.

**(e) Effect on permitting**

The regulations adopted pursuant to subsection (a) shall ensure that the use of funds accepted under subsection (d) will not impact impartial decision-making with respect to environmental reviews or authorizations, either substantively or procedurally.

**(f) Transfer of appropriated funds**

**(1) In general**

The heads of agencies listed in section 4370m–1(b)(2)(B) of this title shall have the authority to transfer, in accordance with section 1535 of title 31, funds appropriated to those agencies and not otherwise obligated to other affected Federal agencies for the purpose of implementing the provisions of this subchapter.

**(2) Limitation**

Appropriations under title 23 and appropriations for the civil works program of the Army Corps of Engineers shall not be available for transfer under paragraph (1).

(Pub. L. 114–94, div. D, title XLI, §41009, Dec. 4, 2015, 129 Stat. 1760.)

**CODIFICATION**

Section was enacted as part of the Fixing America's Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

**§4370m–9. Application**

This subchapter applies to any covered project for which—

- (1) a notice is filed under section 4370m–2(a)(1) of this title; or
- (2) an application or other request for a Federal authorization is pending before a Federal agency 90 days after December 4, 2015.

(Pub. L. 114–94, div. D, title XLI, §41010, Dec. 4, 2015, 129 Stat. 1761.)

**CODIFICATION**

Section was enacted as part of the Fixing America's Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

**§4370m–10. GAO report**

Not later than 3 years after December 4, 2015, the Comptroller General of the United States shall submit to Congress a report that includes an analysis of whether the provisions of this subchapter could be adapted to streamline the Federal permitting process for smaller projects that are not covered projects.

(Pub. L. 114–94, div. D, title XLI, §41011, Dec. 4, 2015, 129 Stat. 1761.)

**CODIFICATION**

Section was enacted as part of the Fixing America's Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

**§4370m–11. Savings provision**

Nothing in this subchapter amends the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(Pub. L. 114–94, div. D, title XLI, §41012, Dec. 4, 2015, 129 Stat. 1761.)

#### **REFERENCES IN TEXT**

The National Environmental Policy Act of 1969, referred to in text, is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

#### **CODIFICATION**

Section was enacted as part of the Fixing America's Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

### **§4370m–12. Sunset**

This subchapter shall terminate 7 years after December 4, 2015.

(Pub. L. 114–94, div. D, title XLI, §41013, Dec. 4, 2015, 129 Stat. 1761.)

#### **CODIFICATION**

Section was enacted as part of the Fixing America's Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.