

# **Selected Laws Affecting Forest Service Activities**

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# **Selected Laws Affecting Forest Service Activities**

**By Amie M Brown**

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## Preface

The *Selected Laws Affecting Forest Service Activities* is the fourth in a series of reference guides published by the United States Department of Agriculture Forest Service. It was created to assist agency staff, and members of the public, as a ready reference document and to understand the legal authorities and limitations of the agency. The first principal laws publication was published in 1978, the second in 1983, and the third in 1993. Although it was originally intended to be a portable reference, the continuous addition of new laws greatly increased the size of the guide. During the development of this document, scoping revealed that many users believed the guide had become too cumbersome to be useful as anything other than a desk reference. The guide's content, use, and format were evaluated, and it was determined that an abridged version should be prepared.

This abridged version does not contain all of the laws relating to the USDA Forest Service. This version does contain the current major laws that apply to USDA Forest Service activities. USDA Forest Service program areas may want to consider assembling a more focused publication of laws and polices that relate to their specific program area.

The compilations contained in this publication were put together using the *United States Code Annotated Tables* for 2003, the United States House of Representatives Committee on Resources Compilation of Selected Laws Concerning National Forests and Related Matters, February 2004, and the Office of the Law Revision Counsel of the U.S. House of Representatives U.S. Code web database.

Special thanks to the USDA Law Library staff for their time and assistance.

## Introduction

Greetings and welcome to the *Selected Laws Affecting Forest Service Activities*. If this is your first time using this guide, then you may have some questions about how to use it. During our review of previous guides, we found that most users of the guide needed help with some sort of problem related to the legal issues applicable to a particular project. Their concerns were often focused on the specific powers granted and restricted by legislation. Others were engaged in issues of a very wide scope that required knowledge in multiple areas of legislation. Whether it is a problem of planning, compliance, or understanding, you should be able to find quick overview answers to most of your United States forest related questions.

The laws referenced in this book are all [public laws](#). [Private laws](#), those laws involving specific entities or private individuals, are not listed in this guide. Private laws were not included because they are primarily concerned only with specific cases. Readers in need of information pertaining to private laws should reference the *United States Statutes at Large*.

The laws in this guidebook are arranged by [category](#), such as Forest System Land Management Planning and Forest Service International Forestry. The [preface](#) explains why this guidebook was published, and the introduction provides background for the development of the guidebook. The following sections explain some basic terms and how to [understand the legal citations](#) provided. A more complete [glossary](#) of terms is located in the back of the book. The index provides a quick reference to specific sections of law. The [list of National Forests](#) and the means by which the land was set aside can be found in the appendix A. There is also a [list of National Grasslands](#) in appendix B. All the [laws in this book by chronological order](#) are found in the appendix C. Lastly, [other helpful resources](#) are list in appendix D.

The United States Department of Agriculture Forest Service (USDA Forest Service) was created by the Transfer Act of February 1, 1905, which transferred the management responsibilities for the Federal forest reserves from the Department of the Interior to the Department of Agriculture. Since 1905, hundreds of laws affecting the USDA Forest Service's responsibilities, powers, and limitations have been enacted and amended. The *Selected Laws Affecting Forest Service Activities* is a reference tool for those interested in contemporary USDA Forest Service policy and contains each law as it appears today.

The law guidebooks were developed by, and for, the USDA Forest Service legislative staff. However, the guidebooks are referenced agency-wide as well as by numerous organizations and individuals interested in the USDA Forest Service.

Scoping was conducted to evaluate the content, use, and format of previous editions of the guidebook. From this information, it was determined that an abridged version would be most useful. This fourth edition does not contain all of the laws relating to the USDA Forest Service. Rather, it includes only laws that apply to national USDA Forest Service activities and are now or are anticipated to become part of the contemporary policy dialogue.

Please remember this is a guide designed primarily to offer portable information for the legislative affairs staff. It is a tool for reference. Anyone needing complete legislative information should seek it in the additional sources mentioned in the back of the guide.

# A Summary of the Legislative and Rulemaking Processes

## The Legislative Process

A member of the United States House of Representatives, or the United States Senate, begins the legislative process by introducing a **bill**. There are two types of bills, public and private. **Public bills** apply to the general public while **private bills** apply only to an individual or a private entity. An example of Forest Service public law is the Multiple Use Sustained Yield Act. It is applied nationally to all National Forests. An example of a Forest Service private law would be one that adjusts a survey error modifying the boundary between specific National Forest System land and specific private landowner.

Congressional bills are given a number when they are introduced. In the **United States House of Representatives** (House) a typical bill is called a House bill and assigned a number. The House of Representatives bill is abbreviated as H.R. ##. In the **United States Senate** (Senate), a typical bill is referred to as a Senate bill and also assigned a number. It is abbreviated as S. ##.

Once a number has been designated, the bill is assigned to the committee of jurisdiction. Both the House and Senate have a parliamentarian. Based on formal agreements and past precedent, the Senate majority leader and the House majority leader with assistance from the parliamentarian of their respective chambers determine to which committee(s) the bill will be referred. For example, a simple bill authorizing a western National Forest boundary adjustment will be referred to the Senate Committee on Energy and Natural Resources since this is the established precedent of jurisdiction over such issues.

This same bill introduced in the House may be referred to either the House Committee on Agriculture or the House Committee on Resources. In the House, bill referral is dependent on whether the National Forest lands effected by the legislation were established from the public domain or purchased. Additionally, laws may apply to all national forest lands, to those lands from the public domain, or to those acquired through the Weeks law. See appendix A for a list of National Forests and their origin.

If a committee chairman determines a bill to be favorable, a hearing is held on the bill. During the hearing, witnesses are asked to testify about the bill. Testimony usually includes a statement of support or opposition, supporting evidence for the position, and possible improvements to the bill. (See Forest Service manual 1510 for information about positions on bills.) If after a hearing the committee chairman again

determines the bill to be favorable, the committee will be asked to vote on the bill. The meeting where the vote takes place is called a **markup**. **Amendments** to the bill may also be offered at the markup. After a bill is passed by the committee, it is then ready for consideration by the full House or Senate.

When a bill passes one body of the Congress and is sent to the other it is then called an **Act**, signifying that it is the act of one body of the Congress. The House and the Senate must agree to an identical form of a bill. Then the President must grant approval and sign the bill. A President may not grant approval and choose to veto a bill or simply hold it until Congress adjourns. Congress then has the option to override a veto if they can get a two-thirds majority to vote favorably for a bill again. However, if a bill does not make it through before the Congress adjourns, then the whole process must begin again with a new Congress.

### **The Rulemaking Process**

Once a new law is enacted, the President's administration begins to interpret the law and how it will be implemented by the agency it affects. These directions from the Administration are called regulations or rules. The terms rules and regulations are used interchangeably. Some laws will require that multiple agencies prepare regulations independently or in cooperation with one another.

It is important to understand the difference between laws and regulations. Laws can be enacted only by Congress. Federal executive departments and administrative agencies write regulations to implement the law. Regulations (as well as **Executive Orders** and **Proclamations**) are secondary to laws. Both laws and regulations are enforceable. The *United States Code* is the official source of codified laws by subject. The *United States Statutes-at-Large* is the official chronological collection of all laws. And, the **Code of Federal Regulations** is the official compilation of regulations.

Congress delegates rulemaking authority directly to the agencies through the enactment of a law. Using the law as its guide, the agency drafts a proposed rule. The **Office of Management and Budget** (OMB) reviews the proposed rule. It is the Office of Management and Budget that assists the President in overseeing the preparation of the federal budget and the management of the budget of the executive branch agencies. It is also OMB's responsibility to ensure that agency reports, rules, testimony, and proposed legislation are consistent with the President's budget and policies.

Once approved by the OMB, the proposed rule is published in the Federal Register for public comment. The **Federal Register** is an official daily legal

publication used to inform citizens of their:

- (1) rights and obligations;
- (2) opportunities for funding and Federal benefits; and
- (3) the actions by Federal agencies.

Agencies collect, analyze, and respond to the public comments received. After considering this information, the agency prepares a Final Rule. The OMB reviews and approves the Final Rule. The agency then publishes the Final Rule in the Federal Register. At the end of this process, the Final Rule is added to and amends the Code of Federal Regulation.

It is not unusual for more than a year to pass between the publication of proposed rules and final rules. In some cases, the law itself may direct the agency to finalize its regulations by a date certain.

The rulemaking process is complex. This is a general overview. If you would like to know more about the process additional sources are provided in appendix D.

## Understanding the Legal Citation

### The Chapter and Public Law Number

Laws are each given a specific citation to identify them. There are two types of citations used for the identification of the laws of the United States. All laws enacted prior to 1956 are cited by chapter, in reference to the order that Congress passed them. In 1957 Congress began to use a new system to cite laws. All laws enacted after 1956 are assigned a public law number.

Two examples are shown below. The first law was enacted prior to the end of 1956, the second enacted after 1957. The difference between these two citations is that the first refers to a chapter (Ch.) and the second to a public law number (Pub. L.).

Law Citation format before 1957	Law Citation beginning in 1957
Smokey Bear Act May 23, 1952 ( <b>Ch. 327</b> , 66 Stat. 92; 18 U.S.C. 711, 16 U.S.C. 580p-2)	Multiple-Use Sustained-Yield Act June 12, 1960 ( <b>Pub. L. 86-517</b> , 74 State. 215; 16 U.S.C. 528-531, 528 note)

The Smokey Bear Act became law on May 23, 1952. It was the 327th Act enacted into law in 1952 and is referred to as Chapter 327.

The Multiple-Use Sustained-Yield Act of 1960 is Public Law 86-517. This indicates the session of Congress (the 86th) that the Act was passed and the order of its enactment. It was the 517th Act enacted into law during the 86th Congress.

A “new” Congress convenes every two years in the January following a November congressional election. It is new because the entire House of Representatives is elected every two years. Only about one-third of the Senate is elected biennially. Congress typically meets in two annual “sessions.” One session is held in the first calendar year and the other in the second calendar year. The 86th Congress met from January 1959 to December 1960.

Laws cited using the chapter or public law number systems both present the text of laws in the original form as passed by the Congress and approved by the President.

## The United States Statutes at Large

The *United States Statutes at Large* (Statutes at Large) is the official source for laws and resolutions passed by Congress. Each law is published in the Statutes at Large in the order of the date of its passage. The *Statutes at Large* presents each law in the original text. It does not provide any of the amended language. Each volume contains a complete index and a table of contents. A legislative history appears at the end of each law. There are also extensive notes referring to laws in preceding volumes and to prior and later matters in the same volume.

The Smokey Bear Act can be found in the Statutes at Large volume 66, page 92. The Multiple-Use Sustained-Yield Act can be found in volume 74, page 215.

<p>Smokey Bear Act          May 23, 1952 (Ch. 327, <b>66 Stat. 92</b>;          18 U.S.C. 711, 16 U.S.C. 580p-2)</p>	<p>Multiple-Use Sustained-Yield Act          June 12, 1960 (Pub. L. 86-517, <b>74 State. 215</b>; 16 U.S.C. 528-531, 528 note)</p>
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## The United States Code

The Office of the Law Revision Counsel of the United States House of Representatives prepares and publishes the *United States Code* (*Code*). The *Code* is a consolidation and codification by subject matter of the general and permanent laws of the United States. Each statute is analyzed by the Office of the Law Revision Counsel, dissected, and arranged into subject areas.

The *Code* does not include the regulations issued by executive branch agencies, the decisions of the Federal courts, treaties, or the laws enacted by state or local governments.

The *Code* contains laws, and parts of laws, arranged into 50 subject categories. These categories are each assigned a title number. Titles are divided into chapters, subchapters, sections, and subsections. The *Code* is revised and reprinted every 6 years. Periodic supplements are also printed. The advantage of using the *Code* is that all of the information on a particular subject is found in one place, with cross references to related material.

The Smokey Bear Act can be found in title 18 of the *Code* in section 711 and in title 16 of the *Code* in section 580p-2. If you turn to page 651 you can see the text of the Smokey Bear Act as it reads today.

The text of the Multiple-Use Sustained-Yield Act can be pieced together from title 16 of the *Code*, sections 528 through 531. Turn to page 51 to see the text as it reads today.

Smokey Bear Act May 23, 1952 (Ch. 327, 66 Stat. 92; <b>18 U.S.C. 711, 16 U.S.C. 580p-2)</b>	Multiple-Use Sustained-Yield Act June 12, 1960 (Pub. L. 86-517, 74 State. 215; <b>16 U.S.C. 528-531, 528          note)</b>
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The *Code* can be accessed via the World Wide Web and found in hard copy at many public libraries. Use the following links to look up sections of the *Code*.

United States House of Representatives <http://uscode.house.gov/usc.htm>

General Printing Office <http://www.gpoaccess.gov/uscode/index.html>

### **A Compilation of Laws**

Since Congress does not list its laws with all the amended language attached, it is necessary for others to gather this information and present it. A compilation is the term used to describe a law, and any amendments to that law, with its current language. When this is done the reference law, which is not listed by Congress as an official law, is then called a compilation. It has combined the original law with whatever current changes are applied to it. Hence, the term used is compilation.



## Organic Administration Act

**June 4, 1897 (Ch. 2, 30 Stat. 11; 16 U.S.C. 473 to 475, 477, 551, 473, 478 to 482, 424, 430g)**

### **Revocation, modification, or vacation of orders or proclamations establishing national forests**

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

### **Surveys; plats and field notes; maps; effect under Act June 4, 1897**

Surveys, field notes, and plats returned from the survey of public lands designated as national forests undertaken under the supervision of the Director of the United States Geological Survey in accordance with provisions of Act June 4, 1897, chapter 2, section 1. Thirtieth Statutes, page 34, shall have the same legal force and effect as surveys, field notes, and plats returned through the Field Surveying Service; and such surveys, which include subdivision surveys under the rectangular system, approved by the Secretary of the Interior or such officer as he may designate as in other cases, and properly certified copies thereof shall be filed in the respective land offices of the districts in which such lands are

situated, as in other cases. All laws inconsistent with the provisions hereof are declared inoperative as respects such survey. A copy of every topographic map and other maps showing the distribution of the forests, together with such field notes as may be taken relating thereto, shall be certified thereto by the Director of the Survey and filed in the Bureau of Land Management. (16 U.S.C. 474)

### **Purposes for which national forests may be established and administered**

All public lands designated and reserved prior to June 4, 1897, by the President of the United States under the provisions of section 471 (Section 471 has been omitted.) of this title, the orders for which shall be and remain in full force and effect, unsuspending and unrevoked, and all public lands that may hereafter be set aside and reserved as national forests under said section, shall be as far as practicable controlled and administered in accordance with the following provisions. No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is not the purpose or intent of these provisions, or of said section, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural pur-

poses, than for forest purposes. (16 U.S.C. 475)

### **Use of timber and stone by settlers**

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

### **Protection of national forests; rules and regulations**

The Secretary of Agriculture shall make provisions for the protection against destruction by fire and depredations upon the public forests and national forests which may have been set aside or which may be hereafter set aside under the provisions of section 471 (Section 471 has been omitted.) of this title, and which may be continued; and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction; and any violation of the provisions of this section, sections 473 to 478 and 479 to 482 of this title or such rules and regulations shall be punished by a fine of not more than \$500 or imprisonment for not more than six months, or both. Any person charged with

the violation of such rules and regulations may be tried and sentenced by any United States magistrate judge specially designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401(b) to (e) of title 18. (16 U.S.C. 551 )

### **Egress or ingress of actual settlers; prospecting**

Nothing in sections 473 to 478, 479 to 482 and 551 of this title shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of national forests, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property under such rules and regulations as may be prescribed by the Secretary of Agriculture. Nor shall anything in such sections prohibit any person from entering upon such national forests for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof. Such persons must comply with the rules and regulations covering such national forests. (16 U.S.C. 478)

### **Sites for schools and churches**

The settlers residing within the exterior boundaries of national forests, or in the vicinity thereof, may maintain schools and churches within such national forest, and for that purpose may occupy any part of

the said national forest, not exceeding two acres for each schoolhouse and one acre for a church. (16 U.S.C. 479)

### **Civil and criminal jurisdiction**

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

### **Use of waters**

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

### **Mineral lands; restoration to public domain; location and entry**

Upon the recommendation of the Secretary of the Interior, with the approval of the President, after sixty days' notice thereof, published in two papers of general circulation in the State or Territory wherein any national forest is situated, and near the said national forest, any public lands embraced within the

limits of any such forest which, after due examination by personal inspection of a competent person appointed for that purpose by the Secretary of the Interior, shall be found better adapted for mining or for agricultural purposes than for forest usage, may be restored to the public domain. And any mineral lands in any national forest which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry, notwithstanding any provisions contained in sections 473 to 478, 479 to 482 and 551 of this title. (16 U.S.C. 482)

\*\*\*

## Transfer Act

**February 1, 1905 (Ch. 288, 33 Stat. 628; 16 U.S.C. 472, 478, 495, 551, 554a, 615b, 554, 524)**

### **Laws affecting national forest lands**

**Sec. 1** The Secretary of the Department of Agriculture shall execute or cause to be executed all laws affecting public lands reserved under the provisions of section 471 (repealed) of this title, or sections supplemental to and amendatory thereof, after such lands have been so reserved, excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any of such lands. (16 U.S.C. 472)

### **Egress or ingress of actual settlers; prospecting**

Nothing in sections 473 to 478, 479 to 482 and 551 of this title shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of national forests, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property under such rules and regulations as may be prescribed by the Secretary of Agriculture. Nor shall anything in such sections prohibit any person from entering upon such national forests for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof. Such persons must comply with the rules and regula-

tions covering such national forests. (16 U.S.C. 478)

### **Leases of lands for sanitariums or hotels**

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

### **Protection of national forests; rules and regulations**

The Secretary of Agriculture shall make provisions for the protection against destruction by fire and depredations upon the public forests and national forests which may have been set aside or which may be hereafter set aside under the provisions of section 471 (repealed) of this title, and which may be continued; and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction; and any violation of the provisions of this section, sections 473 to 478 and 479 to 482 of this title or such rules and regulations shall be punished by a fine of not more than \$500 or imprisonment for not more than six months, or both. Any person charged with the violation of such rules and regulations may be tried and sentenced by any United States magistrate judge specially designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401(b) to (e) of title 18. (16 U.S.C. 551)

#### **Employees to be appointed without regard to political affiliations**

Forest inspectors, superintendents, supervisors, surveyors, rangers, and fire patrol are to be hereafter appointed by the Secretary of Agriculture wholly with reference to their fitness and without regard for their political affiliations. (16 U.S.C. 554a)

#### **Exportation of timber pulp wood and wood pulp from Alaska**

**Sec. 2** Birch timber and pulp wood or wood pulp manufactured from timber in Alaska may be exported therefrom. (16 U.S.C. 615b)

#### **Forest supervisors and rangers**

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

#### **Rights-of-way for dams, reservoirs, or water plants for municipal, mining, and milling purposes**

**Sec. 4** Rights-of-way for the construction and maintenance of dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals, within and across the national forests of the United States, are granted to citizens and corporations of the United States for municipal or mining purposes, and for the purposes of the milling and reduction of ores, during the period of their beneficial use, under such rules and regulations as may be prescribed by the Secretary of the Interior, and subject to the laws of the State or Territory in which said forests are respectively situated. (16 U.S.C. 524)

## Bankhead-Jones Farm Tenant Act

July 22, 1937 (Ch. 517, 50 Stat. 522; 7 U.S.C. 1000, 12 U.S.C. 84, 371, 7 U.S.C. 1010 to 1012, 1013a)

### Subchapter III - Land Conservation and Land Utilization

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#### Land conservation and land utilization

**Sec. 31** The Secretary is authorized and directed to develop a program of land conservation and land utilization, in order thereby to correct maladjustments in land use, and thus assist in controlling soil erosion, reforestation, preserving natural resources, protecting fish and wildlife, developing and protecting recreational facilities, mitigating floods, preventing impairment of dams and reservoirs, developing energy resources, conserving surface and subsurface moisture, protecting the watersheds of navigable streams, and protecting the public lands, health, safety, and welfare, but not to build industrial parks or establish private industrial or commercial enterprises. (7 U.S.C. 1010)

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#### Powers of Secretary of Agriculture

**Sec. 32** To effectuate the program provided for in section 1010 of this title, the Secretary is authorized –

(a) Repealed

(b) To protect, improve, develop, and administer any property so acquired and

to construct such structures thereon as may be necessary to adapt it to its most beneficial use.

(c) To sell, exchange, lease, or otherwise dispose of, with or without a consideration, any property so acquired, under such terms and conditions as he deems will best accomplish the purposes of this subchapter, but any sale, exchange, or grant shall be made only to public authorities and agencies and only on condition that the property is used for public purposes: Provided, however, That an exchange may be made with private owners and with subdivisions or agencies of State governments in any case where the Secretary of Agriculture finds that such exchange would not conflict with the purposes of the Act, and that the value of the property received in exchange is substantially equal to that of the property conveyed. The Secretary may recommend to the President other Federal, State, or Territorial agencies to administer such property, together with the conditions of use and administration which will best serve the purposes of a land-conservation and land-utilization program, and the President is authorized to transfer such property to such agencies.

(d) With respect to any land, or any interest therein, acquired by, or transferred to, the Secretary for the purposes of this subchapter, to make dedications or grants, in his discretion, for any public

purpose, and to grant licenses and easements upon such terms as he deems reasonable.

(e) To cooperate with Federal, State, territorial, and other public agencies and local nonprofit organizations in developing plans for a program of land conservation and land utilization or plans for the conservation, development and utilization of water for aquacultural purposes, to assist in carrying out such plans by means of loans to State and local public agencies and local nonprofit organizations designated by the State legislature or the Governor, to conduct surveys and investigations relating to conditions and factors affecting, and the methods of accomplishing most effectively the purposes of this subchapter, and to disseminate information concerning these activities. As used in this subsection, the term "aquaculture" means the culture or husbandry of aquatic animals or plants. Loans to State and local public agencies and to local nonprofit organizations shall be made only if such plans have been submitted to, and not disapproved within 45 days by, the State agency having supervisory responsibility over such plans, or by the Governor if there is no such State agency. No appropriation shall be made for any single loan under this subsection in excess of \$500,000 unless such loan has been approved by resolutions adopted by the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives. A loan under this subsection shall be made under a contract that provides, under such terms and conditions as the Secretary considers appropriate, for the

repayment of the loan in not more than 30 years, with interest at a rate not to exceed the current market yield for outstanding municipal obligations with remaining periods to maturity comparable to the average maturity for the loan, adjusted to the nearest 1/8 of 1 percent. Repayment of principal and interest on such loans shall begin within 5 years. In providing assistance for carrying out plans developed under this subchapter, the Secretary shall be authorized to bear such proportionate share of the costs of installing any works of improvement applicable to public water-based fish and wildlife or recreational development as is determined by him to be equitable in consideration of national needs and assistance authorized for similar purposes under other Federal programs: Provided, That all engineering and other technical assistance costs relating to such development may be borne by the Secretary: Provided further, That when a State or other public agency or local nonprofit organization participating in a plan developed under this subchapter agrees to operate and maintain any reservoir or other area included in a plan for public waterbased fish and wildlife or recreational development, the Secretary shall be authorized to bear not to exceed one-half of the costs of (a) the land, easements, or rights-of-way acquired or to be acquired by the State or other public agency or local nonprofit organization for such reservoir or other area, and (b) minimum basic facilities needed for public health and safety, access to, and use of such reservoir or other area for such purposes: Provided further, That in no

event shall the Secretary share any portion of the cost of installing more than one such work of improvement for each seventy-five thousand acres in any project; and that any such public waterbased fish and wildlife or recreational development shall be consistent with any existing comprehensive statewide outdoor recreation plan found adequate for purposes of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) (16 U.S.C. 4601-4 et seq.); and that such cost-sharing assistance for any such development shall be authorized only if the Secretary determines that it cannot be provided under other existing authority.

The Secretary shall also be authorized in providing assistance for carrying out plans developed under this subchapter:

(1) To provide technical and other assistance, and to pay for any storage of water for present or anticipated future demands or needs for rural community water supply included in any reservoir structure constructed or modified pursuant to such plans: Provided, That the cost of water storage to meet future demands may not exceed 30 per centum of the total estimated cost of such reservoir structure and the public agency or local nonprofit organization shall give reasonable assurances, and there is evidence, that such demands for the use of such storage will be made within a period of time which will permit repayment of the cost of such water supply storage within the life of the reservoir structure: Provided further, That the public agency or local nonprofit organization prior to initiation

or construction or modification of any reservoir structure including water supply storage, make provision satisfactory to the Secretary to pay for not less than 50 per centum of the cost of storage for present water supply demands, and all of the cost of storage for anticipated future demands: And provided further, That the cost to be borne by the public agency or local nonprofit organization for anticipated future demands may be repaid within the life of the reservoir structure but in no event to exceed fifty years after the reservoir structure is first used for the storage of water for anticipated future water supply demands except that (1) no payment on account of such cost need be made until such supply is first used, and (2) no interest shall be charged on such cost until such supply is first used, but in no case shall the interest-free period exceed ten years. The interest rate used for purposes of computing the interest on the unpaid balance shall be the average rate, as determined by the Secretary of the Treasury, payable by the Treasury upon its marketable public obligations outstanding at the beginning of the fiscal year in which the advancement for such water supply is first made, which are neither due nor callable for redemption for fifteen years from date of issue;

(2) To provide, for the benefit of rural communities, technical and other assistance and such proportionate share of the costs of installing measures and facilities for water quality management, for the control and abatement of

agriculture-related pollution, for the disposal of solid wastes, and for the storage of water in reservoirs, farm ponds, or other impoundments, together with necessary water withdrawal appurtenances, for rural fire protection, as is determined by the Secretary to be equitable in consideration of national needs and assistance authorized for similar purposes under other Federal programs.

(f) To make such rules and regulations as he deems necessary to prevent trespasses and otherwise regulate the use and occupancy of property acquired by, or transferred to, the Secretary for the purposes of this subchapter, in order to conserve and utilize it or advance the purposes of this subchapter. Any violation of such rules and regulations shall be punished by a fine of not more than \$500 or imprisonment for not more than six months, or both. Any person charged with the violation of such rules and regulations may be tried and sentenced by any United States magistrate judge specially designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401(b) to (e) of title 18. (7 U.S.C. 1011)

### **Payments to counties**

**Sec. 33** As soon as practicable after the end of each calendar year, the Secretary shall pay to the county in which any land is held by the Secretary under this subchapter, 25 per centum of the net revenues received by the Secretary from the use of the land during such year. In

case the land is situated in more than one county, the amount to be paid shall be divided equitably among the respective counties. Payments to counties under this section shall be made on the condition that they are used for school or road purposes, or both. This section shall not be construed to apply to amounts received from the sale of land. (7 U.S.C. 1012)

### **Benefits extended to Puerto Rico and Virgin Islands; “county” defined; payments to Governor or fiscal agent of county**

**Sec. 35** The provisions of this title shall extend to Puerto Rico and the Virgin Islands. In the case of Alaska, Puerto Rico, and the Virgin Islands, the term “county” as used in this title may be the entire area, or any subdivision thereof as may be determined by the Secretary, and payments under section 33 of this title shall be made to the Governor or to the fiscal agent of such subdivision. (7 U.S.C. 1013a)

## Land and Water Conservation Fund Act

**September 3, 1964 (Pub. L. 88-578, 78 Stat. 897; 16 U.S.C. 4601-4 note, 4601-4, 4601-5, 460d, 4601-6, 4601-6a, 4601-7 to 4601-10, 4601-10a to 4601-10d, 4601-11, 23 U.S.C. 120 note)**

### Effective date

**Sec. 1(a)** This Act shall become effective on January 1, 1965. (16 U.S.C. 4601-4 notes)

### Land and water conservation provisions; statement of purposes

**Sec. 1(b)** The purposes of this part are to assist in preserving, developing, and assuring accessibility to all citizens of the United States of America of present and future generations and visitors who are lawfully present within the boundaries of the United States of America such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable for individual active participation in such recreation and to strengthen the health and vitality of the citizens of the United States by (1) providing funds for and authorizing Federal assistance to the States in planning, acquisition, and development of needed land and water areas and facilities and (2) providing funds for the Federal acquisition and development of certain lands and other areas. (16 U.S.C. 4601-4)

### Land and water conservation fund; establishment; covering certain revenues and collections into fund

**Sec. 2** During the period ending September 30, 2015, there shall be covered into

the land and water conservation fund in the Treasury of the United States, which fund is hereby established and is hereinafter referred to as the “fund”, the following revenues and collections:

#### (a) Surplus property sales

All proceeds (except so much thereof as may be otherwise obligated, credited, or paid under authority of those provisions of law set forth in section 485(b)(e),<sup>1</sup> title 40, or the Independent Offices Appropriation Act, 1963 (76 Stat. 725) or in any later appropriation Act) hereafter received from any disposal of surplus real property and related personal property under the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Nothing in this part shall affect existing laws or regulations concerning disposal of real or personal surplus property to schools, hospitals, and States and their political subdivisions.

#### (b) Motorboat fuels tax

The amounts provided for in section 4601-11 of this title.

#### (c) Other revenues

(1) In addition to the sum of the revenues and collections estimated by the Secre-

tary of the Interior to be covered into the fund pursuant to this section, as amended, there are authorized to be appropriated annually to the fund out of any money in the Treasury not otherwise appropriated such amounts as are necessary to make the income of the fund not less than \$300,000,000 for fiscal year 1977, and \$900,000,000 for fiscal year 1978 and for each fiscal year thereafter through September 30, 2015.

(2) To the extent that any such sums so appropriated are not sufficient to make the total annual income of the fund equivalent to the amounts provided in clause (1), an amount sufficient to cover the remainder thereof shall be credited to the fund from revenues due and payable to the United States for deposit in the Treasury as miscellaneous receipts under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.): Provided, That notwithstanding the provisions of section 4601-6 of this title, moneys covered into the fund under this paragraph shall remain in the fund until appropriated by the Congress to carry out the purpose of this part. (16 U.S.C. 4601-5)

<sup>1</sup> So in original. Probably should be section "485(b)-(e)".

**Construction and operation of public parks and recreational facilities in water resource development projects; lease of lands; preference for use; penalty; application of section 3401 of title 18; citations and arrests with and without process; limitations; disposition of receipts**

**Sec. 2(a)** The Chief of Engineers, under the supervision of the Secretary of the Army, is authorized to construct, maintain, and operate public park and recreational facilities at water resource development projects under the control of the Department of the Army, to permit the construction of such facilities by local interests (particularly those to be operated and maintained by such interests), and to permit the maintenance and operation of such facilities by local interests. The Secretary of the Army is also authorized to grant leases of lands, including structures or facilities thereon, at water resource development projects for such periods, and upon such terms and for such purposes as he may deem reasonable in the public interest: Provided, That leases to nonprofit organizations for park or recreational purposes may be granted at reduced or nominal considerations in recognition of the public service to be rendered in utilizing the leased premises: Provided further, That preference shall be given to Federal, State, or local governmental agencies, and licenses or leases where appropriate, may be granted without monetary considerations, to such agencies for the use of all or any portion of a project area for any public purpose, when the Secretary of the Army determines such action to be in the public interest, and for such periods of time and upon such conditions as he may find advisable: And provided further, That in any such lease or license to a Federal, State, or local governmental agency which involves lands to be utilized for the development and conservation of fish and wildlife, forests, and other natural re-

sources, the licensee or lessee may be authorized to cut timber and harvest crops as may be necessary to further such beneficial uses and to collect and utilize the proceeds of any sales of timber and crops in the development, conservation, maintenance, and utilization of such lands. Any balance of proceeds not so utilized shall be paid to the United States at such time or times as the Secretary of the Army may determine appropriate. The water areas of all such projects shall be open to public use generally for boating, swimming, bathing, fishing, and other recreational purposes, and ready access to and exit from such areas along the shores of such projects shall be maintained for general public use, when such use is determined by the Secretary of the Army not to be contrary to the public interest, all under such rules and regulations as the Secretary of the Army may deem necessary, including but not limited to prohibitions of dumping and unauthorized disposal in any manner of refuse, garbage, rubbish, trash, debris, or litter of any kind at such water resource development projects, either into the waters of such projects or onto any land federally owned and administered by the Chief of Engineers. Any violation of such rules and regulations shall be punished by a fine of not more than \$500 or imprisonment for not more than six months, or both. Any persons charged with the violation of such rules and regulations may be tried and sentenced in accordance with the provisions of section 3401 of title 18. All persons designated by the Chief of Engineers for that purpose shall have the authority to issue a citation for violation of

the regulations adopted by the Secretary of the Army, requiring the appearance of any person charged with violation to appear before the United States magistrate judge, within whose jurisdiction the water resource development project is located, for trial; and upon sworn information of any competent person any United States magistrate judge in the proper jurisdiction shall issue process for the arrest of any person charged with the violation of said regulations; but nothing herein contained shall be construed as preventing the arrest by any officer of the United States, without process, of any person taken in the act of violating said regulations. No use of any area to which this section applies shall be permitted which is inconsistent with the laws for the protection of fish and game of the State in which such area is situated. All moneys received by the United States for leases or privileges shall be deposited in the Treasury of the United States as miscellaneous receipts. (16 U.S.C. 460d)

**Appropriations for expenditure of land and water conservation fund moneys; transfers to miscellaneous receipts of Treasury**

**Sec. 3** Moneys covered into the fund shall be available for expenditure for the purposes of this part only when appropriated therefor. Such appropriations may be made without fiscal-year limitation. Moneys made available for obligation or expenditure from the fund or from the special account established under section 4601-6a(i)(1) of this title may be obligated or expended only as provided in this part.

(16 U.S.C. 4601-6)

### **Admission and special recreation use fees**

**Sec. 4** (a) Admission fees at designated areas; “Golden Eagle Passport” annual admission permit; single-visit fees; fee-free travel areas; “Golden Age Passport” annual entrance permit; lifetime admission permit

Entrance or admission fees shall be charged only at designated units of the National Park System or National Conservation Areas administered by the Department of the Interior and National Recreation Areas, National Monuments, National Volcanic Monuments, National Scenic Areas, and no more than 21 areas of concentrated public use administered by the Department of Agriculture. For purposes of this subsection, the term “area of concentrated public use” means an area that is managed primarily for outdoor recreation purposes, contains at least one major recreation attraction, where facilities and services necessary to accommodate heavy public use are provided, and public access to the area is provided in such a manner that admission fees can be efficiently collected at one or more centralized locations. No admission fees of any kind shall be charged or imposed for entrance into any other federally owned areas which are operated and maintained by a Federal agency and used for outdoor recreation purposes.

(1)(A)(i) For admission into any such designated area, an annual admission permit (to be known as the Golden Eagle Passport) shall be available, for a

fee of not more than \$25. The permittee and any person accompanying him in a single, private, noncommercial vehicle, or alternatively, the permittee and his spouse, children, and parents accompanying him where entry to the area is by any means other than private, noncommercial vehicle, shall be entitled to general admission into any area designated pursuant to this subsection. The annual permit shall be valid for a period of 12 months from the date the annual fee is paid. The annual permit shall not authorize any uses for which additional fees are charged pursuant to subsections (b) and (c) of this section. The annual permit shall be nontransferable and the unlawful use thereof shall be punishable in accordance with regulations established pursuant to subsection (e) of this section. The annual permit shall be available for purchase at any such designated area.

(ii) The Secretary of the Interior and the Secretary of Agriculture may authorize businesses, nonprofit entities, and other organizations to sell and collect fees for the Golden Eagle Passport subject to such terms and conditions as the Secretaries may jointly prescribe. The Secretaries shall develop detailed guidelines for promotional advertising of non-Federal Golden Eagle Passport sales and shall monitor compliance with such guidelines. The Secretaries may authorize the sellers to withhold amounts up to, but not exceeding 8 percent of the gross fees collected from the sale of such passports as

reimbursement for actual expenses of the sales. Receipts from such non-Federal sales of the Golden Eagle Passport shall be deposited into the special account established in subsection (i) of this section, to be allocated between the Secretary of the Interior and the Secretary of Agriculture in the same ratio as receipts from admission into Federal fee areas administered by the Secretary of Agriculture and the Secretary of the Interior pursuant to subsection (a) of this section.

(B) For admission into a specific designated unit of the National Park System, or into several specific units located in a particular geographic area, the Secretary is authorized to make available an annual admission permit for a reasonable fee. The fee shall not exceed \$15 regardless of how many units of the park system are covered. The permit shall convey the privileges of, and shall be subject to the same terms and conditions as, the Golden Eagle Passport, except that it shall be valid only for admission into the specific unit or units of the National Park System indicated at the time of purchase.

(2) Reasonable admission fees for a single visit at any designated area shall be established by the administering Secretary for persons who choose not to purchase the annual permit. A "single visit" means a more or less continuous stay within a designated area. Payment of a single visit admission fee shall authorize exits from and reentries to a

single designated area for a period of from one to fifteen days, such period to be defined for each designated area by the administering Secretary based upon a determination of the period of time reasonably and ordinarily necessary for such a single visit. The fee for a single-visit permit at any designated area applicable to those persons entering by private, noncommercial vehicle shall be no more than \$5 per vehicle. The single-visit permit shall admit the permittee and all persons accompanying him in a single vehicle. The fee for a single-visit permit at any designated area applicable to those persons entering by any means other than a private noncommercial vehicle shall be no more than \$3 per person. Except as otherwise provided in this subsection, the maximum fee amounts set forth in this paragraph shall apply to all designated areas.

(3) No admission fee shall be charged for travel by private, non-commercial vehicle over any national parkway or any road or highway established as a part of the National Federal Aid System, as defined in section 101 of title 23, which is commonly used by the public as a means of travel between two places either or both of which are outside the area. Nor shall any fee be charged for travel by private, noncommercial vehicle over any road or highway to any land in which such person has any property right if such land is within any such designated area. In the Smoky Mountains National Park, unless fees are charged for entrance into said park on main highways and

thoroughfares, fees shall not be charged for entrance on other routes into said park or any part thereof. Notwithstanding any other provision of this part, no admission fee may be charged at any unit of the National Park System which provides significant outdoor recreation opportunities in an urban environment and to which access is publicly available at multiple locations.

(4) The Secretary of the Interior and the Secretary of Agriculture shall establish procedures providing for the issuance of a lifetime admission permit (to be known as the "Golden Age Passport") to any citizen of, or person domiciled in, the United States sixty-two years of age or older applying for such permit. Such permit shall be nontransferable, shall be issued for a one-time charge of \$10, and shall entitle the permittee and any person accompanying him in a single, private, noncommercial vehicle, or alternatively, the permittee and his spouse and children accompanying him where entry to the area is by any means other than private, noncommercial vehicle, to general admission into any area designated pursuant to this subsection. No other free permits shall be issued to any person: Provided, That no fees of any kind shall be collected from any persons who have a right of access for hunting or fishing privileges under a specific provision of law or treaty or who are engaged in the conduct of official Federal, State, or local Government business and Provided further, That for no more than three years after the date of enactment

of this Act, visitors to the United States will be granted entrance, without charge, to any designated admission fee area upon presentation of a valid passport.

(5) The Secretary of the Interior and the Secretary of Agriculture shall establish procedures providing for the issuance of a lifetime admission permit to any citizen of, or person domiciled in, the United States, if such citizen or person applies for such permit, and is blind or permanently disabled. Such procedures shall assure that such permit shall be issued only to persons who have been medically determined to be blind or permanently disabled for purposes of receiving benefits under Federal law as a result of said blindness or permanent disability as determined by the Secretaries. Such permit shall be nontransferable, shall be issued without charge, and shall entitle the permittee and any person accompanying him in a single, private, noncommercial vehicle, or alternatively, the permittee and his spouse and children accompanying him where entry to the area is by any means other than private, noncommercial vehicle, to general admission into any area designated pursuant to this subsection.

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(b) Recreation use fees; collection; campgrounds at lakes or reservoirs under jurisdiction of Corps of Engineers; fees for Golden Age Passport permittees  
Each Federal agency developing, administering, providing or furnishing at Federal

expense, specialized outdoor recreation sites, facilities, equipment, or services shall, in accordance with this subsection and subsection (d) of this section, provide for the collection of daily recreation use fees at the place of use or any reasonably convenient location: Provided, That in no event shall there be a charge by any such agency for the use, either singly or in any combination, of drinking water, wayside exhibits, roads, overlook sites, visitors' centers, scenic drives, or toilet facilities, nor shall there be any such charge solely for the use of picnic tables: Provided, That in no event shall there be a charge for the use of any campground not having a majority of the following: tent or trailer spaces, picnic tables, drinking water, access road, refuse containers, toilet facilities, personal collection of the fee by an employee or agent of the Federal agency operating the facility, reasonable visitor protection, and simple devices for containing a campfire (where campfires are permitted). For the purposes of this subsection, the term "specialized outdoor recreation sites" includes, but is not limited to, campgrounds, swimming sites, boat launch facilities, and managed parking lots. Any Golden Age Passport permittee, or permittee under paragraph (5) of subsection (a) of this section, shall be entitled upon presentation of such permit to utilize such special recreation facilities at a rate of 50 per centum of the established use fee.

(c) Special recreation permits

Special recreation permits for uses such as group activities, recreation events, motorized recreation vehicles, and other

specialized recreation uses may be issued in accordance with procedures and at fees established by the agency involved.

(d) Criteria, posting and uniformity of fees

All fees established pursuant to this section shall be fair and equitable, taking into consideration the direct and indirect cost to the Government, the benefits to the recipient, the public policy or interest served, the comparable recreation fees charged by non-Federal public agencies, the economic and administrative feasibility of fee collection and other pertinent factors. Clear notice that a fee has been established pursuant to this section shall be prominently posted at each area and at appropriate locations therein and shall be included in publications distributed at such areas. It is the intent of this part that comparable fees should be charged by the several Federal agencies for comparable services and facilities.

(e) Rules and regulations; establishment; enforcement powers; penalty for violations

In accordance with the provisions of this section, the heads of appropriate departments and agencies may prescribe rules and regulations for areas under their administration for the collection of any fee established pursuant to this section. Persons authorized by the heads of such Federal agencies to enforce any such rules or regulations issued under this subsection may, within areas under the administration or authority of such agency head and with or, if the offense is committed in his presence, without a warrant, arrest any person who violates such rules

and regulations. Any person so arrested may be tried and sentenced by the United States magistrate judge specifically designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided in subsections (b), (c), (d), and (e) of section 3401 of title 18. Any violations of the rules and regulations issued under this subsection shall be punishable by a fine of not more than \$100.

(f) Contracts with public or private entities for visitor reservation services

The head of any Federal agency, under such terms and conditions as he deems appropriate, may contract with any public or private entity to provide visitor reservation services. Any such contract may provide that the contractor shall be permitted to deduct a commission to be fixed by the agency head from the amount charged the public for providing such services and to remit the net proceeds therefrom to the contracting agency.

(g) Federal and State laws unaffected

Nothing in this part shall authorize Federal hunting or fishing licenses or fees or charges for commercial or other activities not related to recreation, nor shall it affect any rights or authority of the States with respect to fish and wildlife, nor shall it repeal or modify any provision of law that permits States or political subdivisions to share in the revenues from Federal lands or any provision of law that provides that any fees or charges collected at particular Federal areas shall be used for or cred-

ited to specific purposes or special funds as authorized by that provision of law.

(h) Repealed

(i) Covering of fees collected into special account for agency established in Treasury; covered agencies; availability of funds; allocation of National Park Service funds

(1)(A) Except in the case of fees collected by the United States Fish and Wildlife Service or the Tennessee Valley Authority, all receipts from fees collected pursuant to this section by any Federal agency (or by any public or private entity under contract with a Federal agency) shall be covered into a special account for that agency established in the Treasury of the United States. Fees collected by the Secretary of Agriculture pursuant to this subsection shall continue to be available for the purposes of distribution to States and counties in accordance with applicable law.

(B) Notwithstanding subparagraph (A), in any fiscal year, the Secretary of Agriculture and the Secretary of the Interior may withhold from the special account established under subparagraph (A) such portion of all receipts collected from fees imposed under this section in such fiscal year as the Secretary of Agriculture or the Secretary of the Interior, as appropriate, determines to be equal to the fee collection costs for that fiscal year: Provided, That such costs shall not exceed 15 percent of all receipts collected from fees imposed under this

section in that fiscal year. The amounts so withheld shall be retained by the Secretary of Agriculture or the Secretary of the Interior, as appropriate, and shall be available, without further appropriation, for expenditure by the Secretary concerned to cover fee collection costs in that fiscal year. The Secretary concerned shall deposit into the special account established pursuant to subparagraph (A) any amounts so retained which remain unexpended and unobligated at the end of the fiscal year. For the purposes of this subparagraph, for any fiscal year, the term "fee collection costs" means those costs for personnel and infrastructure directly associated with the collection of fees imposed under this section.

(C) Units at which entrance fees or admissions fees cannot be collected. –

(i) Withholding of amounts. - Notwithstanding subparagraph (A), section 315(c) of section 101(c) of the Omnibus Consolidated Recessions and Appropriations Act of 1996 (16 U.S.C. 4601-6a note; Public Law 104-134), or section 107 of the Department of the Interior and Related Agencies Appropriations Act, 1998 (16 U.S.C. 4601-6a note; Public Law 105-83), the Secretary of the Interior shall withhold from the special account under subparagraph (A) 100 percent of the fees and charges collected in connection with any unit of the National Park System at which entrance fees or admission fees cannot be collected

by reason of deed restrictions.

(ii) Use of amounts. - Amounts withheld under clause (i) shall be retained by the Secretary and shall be available, without further Act of appropriation, for expenditure by the Secretary for the unit with respect to which the amounts were collected for the purposes of enhancing the quality of the visitor experience, protection of resources, repair and maintenance, interpretation, signage, habitat or facility enhancement, resource preservation, annual operation (including fee collection), maintenance, and law enforcement.

(2) Amounts covered into the special account for each agency during each fiscal year shall, after the end of such fiscal year, be available for appropriation solely for the purposes and in the manner provided in this subsection. No funds shall be transferred from fee receipts made available under this part to each unit of the national park system: <sup>2</sup> Provided, however, That in making appropriations, funds derived from such fees may be used for any purpose authorized therein. Funds credited to the special account shall remain available until expended.

(3) For agencies other than the National Park Service, such funds shall be made available for resource protection, research, interpretation, and maintenance activities related to resource protection in areas managed by that agency at which outdoor recreation is available. To the extent feasible, such

funds should be used for purposes (as provided for in this paragraph) which are directly related to the activities which generated the funds, including but not limited to water-based recreational activities and camping.

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(k) Selling of permits and collection of fees by volunteers at designated areas; collecting agency duties; surety bonds; selling of annual admission permits by public and private entities under arrangements with collecting agency head

When authorized by the head of the collecting agency, volunteers at designated areas may sell permits and collect fees authorized or established pursuant to this section. The head of such agency shall ensure that such volunteers have adequate training regarding -

- (1) the sale of permits and the collection of fees,
- (2) the purposes and resources of the areas in which they are assigned, and
- (3) the provision of assistance and information to visitors to the designated area. The Secretary shall require a surety bond for any such volunteer performing services under this subsection. Funds available to the collecting agency may be used to cover the cost of any such surety bond. The head of the collecting agency may enter into arrangements with qualified public or private entities pursuant to which such entities may sell (without cost to the United States) annual admission permits (including Golden Eagle Passports) at

any appropriate location. Such arrangements shall require each such entity to reimburse the United States for the full amount to be received from the sale of such permits at or before the agency delivers the permits to such entity for sale. (16 U.S.C. 4601-6a)

<sup>2</sup> So in original. Probably should be "National Park System:".

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### **Allocation of land and water conservation fund for State and Federal purposes**

**Sec. 5** There shall be submitted with the annual budget of the United States a comprehensive statement of estimated requirements during the ensuing fiscal year for appropriations from the fund. Not less than 40 per centum of such appropriations shall be available for Federal purposes. Those appropriations from the fund up to and including \$600,000,000 in fiscal year 1978 and up to and including \$750,000,000 in fiscal year 1979 shall continue to be allocated in accordance with this section. There shall be credited to a special account within the fund \$300,000,000 in fiscal year 1978 and \$150,000,000 in fiscal year 1979 from the amounts authorized by section 4601-5 of this title. Amounts credited to this account shall remain in the account until appropriated. Appropriations from the special account shall be available only with respect to areas existing and authorizations enacted prior to the convening of the Ninety-fifth Congress, for acquisition of lands, waters, or interests in lands or

waters within the exterior boundaries, as aforesaid, of -

- (1) the national park system;
- (2) national scenic trails;
- (3) the national wilderness preservation system;
- (4) federally administered components of the National Wild and Scenic Rivers System; and
- (5) national recreation areas administered by the Secretary of Agriculture. (16 U.S.C. 460l-7)

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**Allocation of land and water conservation fund moneys for Federal purposes**

**Sec. 7** (a) Allowable purposes and subpurposes; acquisition of land and waters and interests therein; offset for specified capital costs

Moneys appropriated from the fund for Federal purposes shall, unless otherwise allotted in the appropriation Act making them available, be allotted by the President to the following purposes and subpurposes:

- (1) For the acquisition of land, waters, or interests in land or waters as follows:

National Park System; recreation areas - Within the exterior boundaries of areas of the National Park System now or hereafter authorized or established and of areas now or hereafter authorized to be administered by the Secretary of the Interior for outdoor recreation purposes.

National Forest System - Inholdings within (a) wilderness areas of the National Forest System, and (b) other areas of national forests as the boundaries of those forests exist on the effective date of this Act, or purchase units approved by the National Forest Reservation Commission subsequent to the date of this Act, all of which other areas are primarily of value for outdoor recreation purposes: Provided, That lands outside of but adjacent to an existing national forest boundary, not to exceed three thousand acres in the case of any one forest, which would comprise an integral part of a forest recreational management area may also be acquired with moneys appropriated from this fund: Provided further, That except for areas specifically authorized by Act of Congress, not more than 15 per centum of the acreage added to the National Forest System pursuant to this section shall be west of the 100th meridian.

National Wildlife Refuge System - Acquisition for (a) endangered species and threatened species authorized under section 1534(a) of this title; (b) areas authorized by section 460k-1 of this title; (c) national wildlife refuge areas under section 742f(a)(4) of this title and wetlands acquired under section 3922 of this title; (d) any areas authorized for the National Wildlife Refuge System by specific Acts.

- (2) For payment into miscellaneous receipts of the Treasury as a partial offset for those capital costs, if any, of Federal water development projects

hereafter authorized to be constructed by or pursuant to an Act of Congress which are allocated to public recreation and the enhancement of fish and wildlife values and financed through appropriations to water resource agencies.

(3) Appropriations allotted for the acquisition of land, waters, or interests in land or waters as set forth under the headings "National Park System; Recreation Areas" and "National Forest System" in paragraph (1) of this subsection shall be available therefor notwithstanding any statutory ceiling on such appropriations contained in any other provision of law enacted prior to the convening of the Ninety-fifth Congress or, in the case of national recreation areas, prior to the convening of the Ninety-sixth Congress; except that for any such area expenditures may not exceed a statutory ceiling during any one fiscal year by 10 per centum of such ceiling or \$1,000,000, whichever is greater.

(b) Acquisition restrictions

Appropriations from the fund pursuant to this section shall not be used for acquisition unless such acquisition is otherwise authorized by law: Provided, however, That appropriations from the fund may be used for preacquisition work in instances where authorization is imminent and where substantial monetary savings could be realized. (16 U.S.C. 4601-9)

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**Availability of land and water**

**conservation fund for publicity purposes; standardized temporary signing; standards and guidelines**

**Sec. 8** Moneys derived from the sources listed in section 4601-5 of this title shall not be available for publicity purposes: Provided, however, That in each case where significant acquisition or development is initiated, appropriate standardized temporary signing shall be located on or near the affected site, to the extent feasible, so as to indicate the action taken is a product of funding made available through the Land and Water Conservation Fund. Such signing may indicate the per centum and dollar amounts financed by Federal and non-Federal funds, and that the source of the funding includes moneys derived from Outer Continental Shelf receipts. The Secretary shall prescribe standards and guidelines for the usage of such signing to assure consistency of design and application. (16 U.S.C. 4601-10)

**Contracts for acquisition of lands and waters**

**Sec. 9** Not to exceed \$30,000,000 of the money authorized to be appropriated from the fund by section 4601-6 of this title may be obligated by contract during each fiscal year for the acquisition of lands, waters, or interests therein within areas specified in section 4601-9(a)(1) of this title. Any such contract may be executed by the head of the department concerned, within limitations prescribed by the Secretary of the Interior. Any such contract so entered into shall be deemed a contractual obligation of the United

States and shall be liquidated with money appropriated from the fund specifically for liquidation of such contract obligation. No contract may be entered into for the acquisition of property pursuant to this section unless such acquisition is otherwise authorized by Federal law. (16 U.S.C. 460l-10a)

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### **Repeal of provisions prohibiting collection of recreation fees or user charges**

**Sec. 11** All provisions of law that prohibit the collection of entrance, admission, or other recreation user fees or charges authorized by this part or that restrict the expenditure of funds if such fees or charges are collected are hereby repealed: Provided, That no provision of any law or treaty which extends to any person or class of persons a right of free access to the shoreline of any reservoir or other body of water, or to hunting and fishing along or on such shoreline, shall be affected by this repealer. (16 U.S.C. 460l-10c)

### **Land and Water Conservation Fund**

**Sec. 12** Within one year of September 28, 1976, the Secretary is authorized and directed to submit to the Committees on Interior and Insular Affairs of the Senate and House of Representatives a comprehensive review and report on the needs, problems, and opportunities associated with urban recreation in highly populated regions, including the resources potentially available for meeting such needs. The report shall include site specific analyses

and alternatives, in a selection of geographic environments representative of the Nation as a whole, including, but not limited to, information on needs, local capabilities for action, major site opportunities, trends, and a full range of options and alternatives as to possible solutions and courses of action designed to preserve remaining open space, ameliorate recreational deficiency, and enhance recreational opportunity for urban populations, together with an analysis of the capability of the Federal Government to provide urban-oriented environmental education programs (including, but not limited to, cultural programs in the arts and crafts) within such options. The Secretary shall consult with, and request the views of, the affected cities, counties, and States on the alternatives and courses of action identified. (16 U.S.C. 460l-10d)

### **Transfers to and from land and water conservation fund**

**Sec. 201** (a) Motorboat fuel taxes from highway trust fund into conservation fund

There shall be set aside in the land and water conservation fund in the Treasury of the United States provided for in this part the amounts specified in section 9503(c)(4)(B) of title 26 (relating to special motor fuels and gasoline used in motorboats).

(b) Refunds of gasoline taxes for certain nonhighway purposes or used by local transit systems and motorboat fuel taxes from conservation fund into general fund of Treasury

There shall be paid from time to time

from the land and water conservation fund into the general fund of the Treasury amounts estimated by the Secretary of the Treasury as equivalent to -

(1) the amounts paid before October 1, 2004, under section 6421 of title 26 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems) with respect to gasoline used after December 31, 1964, in motorboats, on the basis of claims filed for periods ending before October 1, 2003; and

(2) 80 percent of the floor stocks refunds made before October 1, 2004, under section 6412(a)(2) of title 26 with respect to gasoline to be used in motorboats. (16 U.S.C. 4601-11)

## Weeks Law

**March 1, 1911 (Ch. 186, 36 Stat. 961; 16 U.S.C. 552, 563, 515, 516, 517, 517a, 518, 519, 521, 480, 500)**

### **Consent to agreement by States for conservation of forests and water supply**

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

### **Cooperation with States for fire protection on private or State forest lands upon the watersheds of navigable rivers**

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

### **Examination, location, and purchase of forested, cut-over, or denuded lands; consent of State legislature to acquisition of land by the United States**

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

### **Exchange of lands in the public interest; equal value; cutting and removing timber; publication of contemplated exchange**

**Sec. 7** Agriculture is hereby authorized, in his discretion, to accept on behalf of the United States title to any lands within the exterior boundaries of national forests which, in his opinion, are chiefly valuable for the purposes of this Act, and in exchange therefor to convey by deed not to exceed an equal value of such national

forest land in the same State, or he may authorize the grantor to cut and remove an equal value of timber within such national forests in the same State, the values in each case to be determined by him: Provided, That before any such exchange is effected notice of the contemplated exchange reciting the lands involved shall be published once each week for four successive weeks in some newspaper of general circulation in the county or counties in which may be situated the lands to be accepted, and in some like newspaper published in any county in which may be situated any lands or timber to be given in such exchange. Timber given in such exchanges shall be cut and removed under the laws and regulations relating to such national forests, and under the direction and supervision and in accordance with the requirements of the Secretary of Agriculture. Lands so accepted by the Secretary of Agriculture shall, upon acceptance, become parts of the national forests within whose exterior boundaries they are located, and be subjected to all provisions of this Act. (16 U.S.C. 516)

#### **Title to lands to be acquired**

**Sec. 8** The Secretary of Agriculture may do all things necessary to secure the safe title in the United States to the lands to be acquired under this Act, but no payment shall be made for any such lands until the title shall be satisfactory to the Attorney General or his designee and shall be vested in the United States. (16 U.S.C. 517)

In condemnation proceedings, heretofore

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

#### **Acquisition of lands not defeated by rights-of-way, easements, and reservations**

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

#### **Agricultural lands included in tracts acquired; sale for homesteads**

**Sec. 10** Inasmuch as small areas of land chiefly valuable for agriculture may of necessity or by inadvertence be included in tracts acquired under this Act, the Secretary of Agriculture may, in his discretion, and he is authorized, upon application or otherwise, to examine and ascertain the location and extent of such areas as in his opinion may be occupied for agricultural purposes without injury to the forests or to stream flow and which are not needed for public purposes, and may list and describe the same by metes and bounds, or otherwise, and offer them for sale as homesteads at their true value, to be fixed by him, to actual settlers, in tracts not exceeding eighty acres, in area, under such rules and regulations as he may prescribe; and in case of such sale the jurisdiction over the lands sold shall, ipso facto, revert to the State in which the lands sold lie. And no right, title, interest, or claim in or to any lands acquired under this Act, or the waters thereon, or the products, resources, or use thereof after such lands shall have been so acquired, shall be initiated or perfected, except as in this section provided. (16 U.S.C. 519)

**Lands acquired to be reserved, held, and administered as national forest lands; designation**

**Sec. 11** Subject to the provisions of section 519 of this title the lands acquired under this Act shall be permanently reserved, held, and administered as national forest lands under the provisions of section 471 (repealed) of this title and acts supplemental to and amendatory thereof. And the Secretary of Agriculture may from time to time divide the lands

acquired under this Act into such specific national forests and so designate the same as he may deem best for administrative purposes. (16 U.S.C. 521)

**Civil and criminal jurisdiction**

**Sec. 12** The jurisdiction, both civil and criminal, over persons within national forests shall not be affected or changed by reason of their existence, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such national forest is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State. (16 U.S.C. 480)

**Payment and evaluation of receipts to State or Territory for schools and roads; moneys received; projections of revenues and estimated payments**

**Sec. 13** On and after May 23, 1908, twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State or Territory in which such national forest is situated, to be expended as the State or Territorial legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: Provided, That when any national forest is in more than one State or Territory or county the distributive share to each from the

proceeds of such forest shall be proportional to its area therein.

In sales of logs, ties, poles, posts, cordwood, pulpwood, and other forest products the amounts made available for schools and roads by this section shall be based upon the stumpage value of the timber.

Beginning October 1, 1976, the term "moneys received" shall include all collections under the Act of June 9, 1930, and all amounts earned or allowed any purchaser of national forest timber and other forest products within such State as purchaser credits, for the construction of roads on the National Forest Transportation System within such national forests or parts thereof in connection with any Forest Service timber sales contract. The Secretary of Agriculture shall, from time to time as he goes through his process of developing the budget revenue estimates, make available to the States his current projections of revenues and payments estimated to be made under the Act of May 23, 1908, as amended, or any other special Acts making payments in lieu of taxes, for their use for local budget planning purposes. (16 U.S.C. 500)

## Weeks Act Status of Certain Lands

**September 2, 1958 (Pub. L. 85-862, 72 Stat. 1571; 16 U.S.C. 521a)**

### **Administration, management, and consolidation of certain lands**

In order to facilitate the administration, management, and consolidation of the national forests, all lands of the United States within the exterior boundaries of national forests which were or hereafter are acquired for or in connection with the national forests or transferred to the Forest Service, Department of Agriculture, for administration and protection substantially in accordance with national forest regulations, policies, and procedures, excepting (a) lands reserved from the public domain or acquired pursuant to laws authorizing the exchange of land or timber reserved from or part of the public domain, and (b) lands within the official limits of towns or cities, notwithstanding the provisions of any other Act, are made subject to the Weeks Act of March 1, 1911 (36 Stat. 961), as amended, and to all laws, rules, and regulations applicable to national forest lands acquired thereunder: Provided, That nothing in this section shall be construed as (1) affecting the status of lands administered by the Secretary of Agriculture under the Act of June 24, 1954 (68 Stat. 270), and which are revested Oregon and California Railroad grant lands, administered as national forest lands, or (2) changing the disposition of revenues from or authorizing the exchange of the lands, or the timber thereon, described in the Act of

February 11, 1920 (Ch. 69, 41 Stat. 405), the Act of September 22, 1922 (Ch. 407, 42 Stat. 1019), and the Act of June 4, 1936 (Ch. 494, 49 Stat. 1460). (16 U.S.C. 521a)

## Interchange with Department of Defense

**July 26, 1956 (Ch. 736, 70 Stat. 656; 16 U.S.C. 505a, 505b)**

**Sec. 1** The Secretary of Agriculture with respect to National Forest System lands and the Secretary of a military department with respect to lands under the control of the military department which lie within or adjacent to the exterior boundaries of a unit of the National Forest System are authorized, subject to any applicable provisions of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), to interchange such lands, or any part thereof, without reimbursement or transfer of funds whenever they shall determine that such interchange will facilitate land management and will provide maximum use thereof for authorized purposes: Provided, That no such interchange of lands shall become effective until forty-five days (counting only days occurring during any regular or special session of the Congress) after the submission to the Congress by the respective Secretaries of notice of intention to make the interchange. (16 U.S.C. 505a)

**Sec. 2** Any National Forest System lands which are transferred to a military department in accordance with this section and section 505a of this title shall be thereafter subject only to the laws applicable to other lands within the military installation or other public works project for which such lands are required and any lands which are transferred to

the Department of Agriculture in accordance with this section and section 505a of this title shall become subject to the laws applicable to lands acquired under the Act of March 1, 1911 (36 Stat. 961), as amended. Lands interchanged under the authority of this section and section 505a of this title shall be deemed to include interests in lands. (16 U.S.C. 505b)

## Sisk Act

December 4, 1967 (Pub. L. 90-171, 81 Stat. 531; 16 U.S.C.

### 484a)

**Exchange of lands in national forests; public schools; deposit of funds by school authority with insufficient exchange land; limitations on use**

Whenever an exchange of land is proposed by a State, county, or municipal government or public school district or other public school authority under sections 485 and 486 of this title or other authority under which the Secretary of Agriculture is authorized to exchange national forest lands or other lands administered by the Forest Service, if the State, county, or municipal government or public school authority proposing the exchange has insufficient land to offer, the exchange may be completed upon deposit with the Secretary of Agriculture of a portion or all of the value of the selected land. Any amount so deposited shall be covered into a special fund in the Treasury which when appropriated shall be available until expended by the Secretary of Agriculture for the acquisition of lands in the same State as the selected lands and which are determined by him to be suitable for the same purposes as the selected lands. Lands so acquired shall have the same status and shall be subject to the same laws, regulations, and rules as the selected lands.

The provisions of this section shall not be applicable to the conveyance in exchange of more than eighty acres to any one State, county, or municipal government or public school district or other public school authority. Lands may be conveyed to any State, county, or municipal government pursuant to this section only if the lands were being utilized by such entities on January 12, 1983. Lands so conveyed may be used only for the purposes for which they were being used prior to conveyance. (16 U.S.C. 484a)

## General Exchange Act

March 20, 1922 (Ch. 105, 42 Stat. 465; 16 U.S.C. 485, 486)

### **Exchange of lands in national forests; cutting timber in national forests in exchange for lands therein**

**Sec. 1** When the public interests will be benefited thereby, the Secretary of Agriculture is authorized in his discretion to accept on behalf of the United States title to any lands within the exterior boundaries of the national forests which, in his opinion, are chiefly valuable for national-forest purposes, and in exchange therefor may patent not to exceed an equal value of such national-forest land, in the same State, surveyed and nonmineral in character, or he may authorize the grantor to cut and remove an equal value of timber within the national forests of the same State; the values in each case to be determined by him. Before any such exchange is effected notice of the contemplated exchange reciting the lands involved shall be published once each week for four successive weeks in some newspaper of general circulation in the county or counties in which may be situated the lands to be accepted, and in some like newspaper published in any county in which may be situated any lands or timber to be given in such exchange. Timber given in such exchanges shall be cut and removed under the laws and regulations relating to the national forests, and under the direction and supervision and in accordance with the requirements of the Secretary of

Agriculture. Lands conveyed to the United States under this section and section 486 of this title shall, upon acceptance of title, become parts of the national forest within whose exterior boundaries they are located. (16 U.S.C. 485)

### **Exchange of lands in national forests; reservations of timber, minerals, or easements**

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

section to be retained by or reserved to owners of lands conveyed to the United States shall be subject to the tax laws of the States where such lands are located. (16 U.S.C. 486)

## **Townsite Act**

**July 31, 1958 (Pub. L. 85-569, 72 Stat. 438; 16 U.S.C. 478a)**

### **Townsites**

When the Secretary of Agriculture determines that a tract of National Forest System land in Alaska or in the eleven contiguous Western States is located adjacent to or contiguous to an established community, and that transfer of such land would serve indigenous community objectives that outweigh the public objectives and values which would be served by maintaining such tract in Federal ownership, he may, upon application, set aside and designate as a townsite an area of not to exceed six hundred and forty acres of National Forest System land for any one application. After public notice, and satisfactory showing of need therefor by any county, city, or other local governmental subdivision, the Secretary may offer such area for sale to a governmental subdivision at a price not less than the fair market value thereof: Provided, however, That the Secretary may condition conveyances of townsites upon the enactment, maintenance, and enforcement of a valid ordinance which assures any land so conveyed will be controlled by the governmental subdivision so that use of the area will not interfere with the protection, management, and development of adjacent or contiguous National Forest System lands. (16 U.S.C. 478a)

## Forest and Rangeland Renewable Resources Planning Act of 1974

**October 22, 1976 (Pub. L. 93-378, 88 Stat. 476; 16 U.S.C. 1600 note, 1600 to 1614)**

**Sec. 1** That this Act may be cited as the 'Forest and Rangeland Renewable Resources Planning Act of 1974.

### **Congressional findings**

**Sec. 2** The Congress finds that -

(1) the management of the Nation's renewable resources is highly complex and the uses, demand for, and supply of the various resources are subject to change over time;

(2) the public interest is served by the Forest Service, Department of Agriculture, in cooperation with other agencies, assessing the Nation's renewable resources, and developing and preparing a national renewable resource program, which is periodically reviewed and updated;

(3) to serve the national interest, the renewable resource program must be based on a comprehensive assessment of present and anticipated uses, demand for, and supply of renewable resources from the Nation's public and private forests and rangelands, through analysis of environmental and economic impacts, coordination of multiple use and sustained yield opportunities as provided in

the Multiple-Use Sustained-Yield Act of 1960 (74 Stat. 215; 16 U.S.C. 528-531), and public participation in the development of the program;

(4) the new knowledge derived from coordinated public and private research programs will promote a sound technical and ecological base for effective management, use, and protection of the Nation's renewable resources;

(5) inasmuch as the majority of the Nation's forests and rangeland is under private, State, and local governmental management and the Nation's major capacity to produce goods and services is based on these nonfederally managed renewable resources, the Federal Government should be a catalyst to encourage and assist these owners in the efficient long-term use and improvement of these lands and their renewable resources consistent with the principles of sustained yield and multiple use;

(6) the Forest Service, by virtue of its statutory authority for management of the National Forest System, research and cooperative programs, and its role as an agency in the Department of Agriculture, has both a responsibility and an opportunity to be a leader in

assuring that the Nation maintains a natural resource conservation posture that will meet the requirements of our people in perpetuity; and

(7) recycled timber product materials are as much a part of our renewable forest resources as are the trees from which they originally came, and in order to extend our timber and timber fiber resources and reduce pressures for timber production from Federal lands, the Forest Service should expand its research in the use of recycled and waste timber product materials, develop techniques for the substitution of these secondary materials for primary materials, and promote and encourage the use of recycled timber product materials. (16 U.S.C. 1600)

### **Renewable Resource Assessment**

**Sec. 3** (a) Preparation by Secretary of Agriculture; time of preparation, updating and contents

In recognition of the vital importance of America's renewable resources of the forest, range, and other associated lands to the Nation's social and economic well-being, and of the necessity for a long term perspective in planning and undertaking related national renewable resource programs administered by the Forest Service, the Secretary of Agriculture shall prepare a Renewable Resource Assessment (hereinafter called the "Assessment"). The Assessment shall be prepared not later than December 31, 1975, and shall be updated during 1979 and each tenth year thereafter, and shall include but not be limited to -

(1) an analysis of present and anticipated uses, demand for, and supply of the renewable resources, with consideration of the international resource situation, and an emphasis of pertinent supply and demand and price relationship trends;

(2) an inventory, based on information developed by the Forest Service and other Federal agencies, of present and potential renewable resources, and an evaluation of opportunities for improving their yield of tangible and intangible goods and services, together with estimates of investment costs and direct and indirect returns to the Federal Government;

(3) a description of Forest Service programs and responsibilities in research, cooperative programs and management of the National Forest System, their interrelationships, and the relationship of these programs and responsibilities to public and private activities;

(4) a discussion of important policy considerations, laws, regulations, and other factors expected to influence and affect significantly the use, ownership, and management of forest, range, and other associated lands; and <sup>1</sup>

(5) an analysis of the potential effects of global climate change on the condition of renewable resources on the forests and rangelands of the United States; and

(6) an analysis of the rural and urban forestry opportunities to mitigate the buildup of atmospheric carbon dioxide

and reduce the risk of global climate change,<sup>2</sup>

(b) Omitted

(c) Contents of Assessments

The Secretary shall report in the 1979 and subsequent Assessments on:

(1) the additional fiber potential in the National Forest System including, but not restricted to, forest mortality, growth, salvage potential, potential increased forest products sales, economic constraints, alternate markets, contract considerations, and other multiple use considerations;

(2) the potential for increased utilization of forest and wood product wastes in the National Forest System and on other lands, and of urban wood wastes and wood product recycling, including recommendations to the Congress for actions which would lead to increased utilization of material now being wasted both in the forests and in manufactured products; and

(3) the milling and other wood fiber product fabrication facilities and their location in the United States, noting the public and private forested areas that supply such facilities, assessing the degree of utilization into product form of harvested trees by such facilities, and setting forth the technology appropriate to facilities to improve utilization either individually or in aggregate the units of harvested trees and to reduce wasted wood fibers. The Secretary shall set forth a program to encourage the adoption by these facilities of these

technologies for improving wood fiber utilization.

(d)<sup>3</sup> Public involvement; consultation with governmental departments and agencies

In developing the reports required under subsection (c) of this section, the Secretary shall provide opportunity for public involvement and shall consult with other interested governmental departments and agencies.

(d) Congressional policy of multiple use sustained yield management; examination and certification of lands; estimate of appropriations necessary for reforestation and other treatment; budget requirements; authorization of appropriations

(1) It is the policy of the Congress that all forested lands in the National Forest System shall be maintained in appropriate forest cover with species of trees, degree of stocking, rate of growth, and conditions of stand designed to secure the maximum benefits of multiple use sustained yield management in accordance with land management plans. Accordingly, the Secretary is directed to identify and report to the Congress annually at the time of submission of the President's budget together with the annual report provided for under section 1606(c) of this title, beginning with submission of the President's budget for fiscal year 1978, the amount and location by forests and States and by productivity class, where practicable, of all lands in the National Forest System where objectives of land management plans indicate the need to reforest areas that have been cut-over or otherwise

denuded or deforested, and all lands with stands of trees that are not growing at their best potential rate of growth. All national forest lands treated from year to year shall be examined after the first and third growing seasons and certified by the Secretary in the report provided for under this subsection as to stocking rate, growth rate in relation to potential and other pertinent measures. Any lands not certified as satisfactory shall be returned to the backlog and scheduled for prompt treatment. The level and types of treatment shall be those which secure the most effective mix of multiple use benefits.

(2) Notwithstanding the provisions of section 1607 of this title, the Secretary shall annually for eight years following October 22, 1976, transmit to the Congress in the manner provided in this subsection an estimate of the sums necessary to be appropriated, in addition to the funds available from other sources, to replant and otherwise treat an acreage equal to the acreage to be cut over that year, plus a sufficient portion of the backlog of lands found to be in need of treatment to eliminate the backlog within the eight-year period. After such eight-year period, the Secretary shall transmit annually to the Congress an estimate of the sums necessary to replant and otherwise treat all lands being cut over and maintain planned timber production on all other forested lands in the National Forest System so as to prevent the development of a backlog of needed work larger than the needed work at the

beginning of the fiscal year. The Secretary's estimate of sums necessary, in addition to the sums available under other authorities, for accomplishment of the reforestation and other treatment of National Forest System lands under this section shall be provided annually for inclusion in the President's budget and shall also be transmitted to the Speaker of the House and the President of the Senate together with the annual report provided for under section 1606(c) of this title at the time of submission of the President's budget to the Congress beginning with the budget for fiscal year 1978. The sums estimated as necessary for reforestation and other treatment shall include moneys needed to secure seed, grow seedlings, prepare sites, plant trees, thin, remove deleterious growth and underbrush, build fence to exclude livestock and adverse wildlife from regeneration areas and otherwise establish and improve growing forests to secure planned production of trees and other multiple use values.

(3) Effective for the fiscal year beginning October 1, 1977, and each fiscal year thereafter, there is hereby authorized to be appropriated for the purpose of reforesting and treating lands in the National Forest System \$200,000,000 annually to meet requirements of this subsection (d). All sums appropriated for the purposes of this subsection shall be available until expended.

(e) Report on herbicides and pesticides  
The Secretary shall submit an annual report to the Congress on the amounts,

types, and uses of herbicides and pesticides used in the National Forest System, including the beneficial or adverse effects of such uses. (16 U.S.C. 1601)

<sup>1</sup> So in original. The word “and” probably should not appear.

<sup>2</sup> So in original. The comma probably should be a period.

<sup>3</sup> So in original. Two subsecs. (d) have been enacted.

**Renewable Resource Program; preparation by Secretary of Agriculture and transmittal to President; purpose and development of program; time of preparation, updating and contents**

**Sec. 4** In order to provide for periodic review of programs for management and administration of the National Forest System, for research, for cooperative State and private Forest Service programs, and for conduct of other Forest Service activities in relation to the findings of the Assessment, the Secretary of Agriculture, utilizing information available to the Forest Service and other agencies within the Department of Agriculture, including data prepared pursuant to section 1010a of title 7, shall prepare and transmit to the President a recommended Renewable Resource Program (hereinafter called the “Program”). The Program transmitted to the President may include alternatives, and shall provide in appropriate detail for protection, management, and development of the National Forest System, including forest development roads and trails; for cooperative Forest

Service programs; and for research. The Program shall be developed in accordance with principles set forth in the Multiple-Use Sustained-Yield Act of June 12, 1960 (74 Stat. 215; 16 U.S.C. 528-531), and the National Environmental Policy Act of 1969 (83 Stat. 852) (42 U.S.C. 4321 et seq.). The Program shall be prepared not later than December 31, 1975, to cover the four-year period beginning October 1, 1976, and at least each of the four fiscal decades next following such period, and shall be updated no later than during the first half of the fiscal year ending September 30, 1980, and the first half of each fifth fiscal year thereafter to cover at least each of the four fiscal decades beginning next after such updating. The Program shall include, but not be limited to -

- (1) an inventory of specific needs and opportunities for both public and private program investments. The inventory shall differentiate between activities which are of a capital nature and those which are of an operational nature;
- (2) specific identification of Program outputs, results anticipated, and benefits associated with investments in such a manner that the anticipated costs can be directly compared with the total related benefits and direct and indirect returns to the Federal Government;
- (3) a discussion of priorities for accomplishment of inventoried Program opportunities, with specified costs, outputs, results, and benefits;
- (4) a detailed study of personnel requirements as needed to implement and

monitor existing and ongoing programs; and

(5) Program recommendations which -

(A) evaluate objectives for the major Forest Service programs in order that multiple-use and sustained-yield relationships among and within the renewable resources can be determined;

(B) explain the opportunities for owners of forests and rangeland to participate in programs to improve and enhance the condition of the land and the renewable resource products therefrom;

(C) recognize the fundamental need to protect and, where appropriate, improve the quality of soil, water, and air resources;

(D) state national goals that recognize the interrelationships between and interdependence within the renewable resources;

(E) evaluate the impact of the export and import of raw logs upon domestic timber supplies and prices; and

(F) account for the effects of global climate change on forest and rangeland conditions, including potential effects on the geographic ranges of species, and on forest and rangeland products. (16 U.S.C. 1602)

**National Forest System resource inventories; development, maintenance, and updating by Secretary of Agriculture as part of Assessment**

**Sec. 5** As a part of the Assessment, the Secretary of Agriculture shall develop and maintain on a continuing basis a comprehensive and appropriately detailed inventory of all National Forest System lands and renewable resources. This inventory shall be kept current so as to reflect changes in conditions and identify new and emerging resources and values. (16 U.S.C. 1603)

**National Forest System land and resource management plans**

**Sec. 6** (a) Development, maintenance, and revision by Secretary of Agriculture as part of program; coordination

As a part of the Program provided for by section 1602 of this title, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies.

(b) Criteria

In the development and maintenance of land management plans for use on units of the National Forest System, the Secretary shall use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences.

(c) Incorporation of standards and guidelines by Secretary; time of completion; progress reports; existing management plans

The Secretary shall begin to incorporate

the standards and guidelines required by this section in plans for units of the National Forest System as soon as practicable after October 22, 1976, and shall attempt to complete such incorporation for all such units by no later than September 30, 1985. The Secretary shall report to the Congress on the progress of such incorporation in the annual report required by section 1606(c) of this title. Until such time as a unit of the National Forest System is managed under plans developed in accordance with this subchapter, the management of such unit may continue under existing land and resource management plans.

(d) Public participation in management plans; availability of plans; public meetings

The Secretary shall provide for public participation in the development, review, and revision of land management plans including, but not limited to, making the plans or revisions available to the public at convenient locations in the vicinity of the affected unit for a period of at least three months before final adoption, during which period the Secretary shall publicize and hold public meetings or comparable processes at locations that foster public participation in the review of such plans or revisions.

(e) Required assurances

In developing, maintaining, and revising plans for units of the National Forest System pursuant to this section, the Secretary shall assure that such plans -  
(1) provide for multiple use and sustained yield of the products and services ob-

tained therefrom in accordance with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528-531), and, in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness; and (2) determine forest management systems, harvesting levels, and procedures in the light of all of the uses set forth in subsection (c)(1) of this section, the definition of the terms "multiple use" and "sustained yield" as provided in the Multiple-Use Sustained-Yield Act of 1960, and the availability of lands and their suitability for resource management.

(f) Required provisions

Plans developed in accordance with this section shall -

(1) form one integrated plan for each unit of the National Forest System, incorporating in one document or one set of documents, available to the public at convenient locations, all of the features required by this section;

(2) be embodied in appropriate written material, including maps and other descriptive documents, reflecting proposed and possible actions, including the planned timber sale program and the proportion of probable methods of timber harvest within the unit necessary to fulfill the plan;

(3) be prepared by an interdisciplinary team. Each team shall prepare its plan based on inventories of the applicable resources of the forest;

(4) be amended in any manner whatsoever after final adoption after public

notice, and, if such amendment would result in a significant change in such plan, in accordance with the provisions of subsections (e) and (f) of this section and public involvement comparable to that required by subsection (d) of this section; and

(5) be revised (A) from time to time when the Secretary finds conditions in a unit have significantly changed, but at least every fifteen years, and (B) in accordance with the provisions of subsections (e) and (f) of this section and public involvement comparable to that required by subsection (d) of this section.

(g) Promulgation of regulations for development and revision of plans; environmental considerations; resource management guidelines; guidelines for land management plans

As soon as practicable, but not later than two years after October 22, 1976, the Secretary shall in accordance with the procedures set forth in section 553 of title 5, promulgate regulations, under the principles of the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528-531) that set out the process for the development and revision of the land management plans, and the guidelines and standards prescribed by this subsection. The regulations shall include, but not be limited to -

(1) specifying procedures to insure that land management plans are prepared in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), including, but not limited

to, direction on when and for what plans an environmental impact statement required under section 102(2)(C) of that Act (42 U.S.C. 4332(2)(C)) shall be prepared;

(2) specifying guidelines which -

(A) require the identification of the suitability of lands for resource management;

(B) provide for obtaining inventory data on the various renewable resources, and soil and water, including pertinent maps, graphic material, and explanatory aids; and

(C) provide for methods to identify special conditions or situations involving hazards to the various resources and their relationship to alternative activities;

(3) specifying guidelines for land management plans developed to achieve the goals of the Program which -

(A) insure consideration of the economic and environmental aspects of various systems of renewable resource management, including the related systems of silviculture and protection of forest resources, to provide for outdoor recreation (including wilderness), range, timber, watershed, wildlife, and fish;

(B) provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives, and within the multiple-use objectives of a land management plan adopted pursuant to

this section, provide, where appropriate, to the degree practicable, for steps to be taken to preserve the diversity of tree species similar to that existing in the region controlled by the plan;

(C) insure research on and (based on continuous monitoring and assessment in the field) evaluation of the effects of each management system to the end that it will not produce substantial and permanent impairment of the productivity of the land;

(D) permit increases in harvest levels based on intensified management practices, such as reforestation, thinning, and tree improvement if (i) such practices justify increasing the harvests in accordance with the Multiple-Use Sustained-Yield Act of 1960, and (ii) such harvest levels are decreased at the end of each planning period if such practices cannot be successfully implemented or funds are not received to permit such practices to continue substantially as planned;

(E) insure that timber will be harvested from National Forest System lands only where -

(i) soil, slope, or other watershed conditions will not be irreversibly damaged;

(ii) there is assurance that such lands can be adequately restocked within five years after harvest;

(iii) protection is provided for streams, streambanks, shorelines, lakes, wetlands, and other bodies of

water from detrimental changes in water temperatures, blockages of water courses, and deposits of sediment, where harvests are likely to seriously and adversely affect water conditions or fish habitat; and

(iv) the harvesting system to be used is not selected primarily because it will give the greatest dollar return or the greatest unit output of timber; and

(F) insure that clearcutting, seed tree cutting, shelterwood cutting, and other cuts designed to regenerate an evenaged stand of timber will be used as a cutting method on National Forest System lands only where -

(i) for clearcutting, it is determined to be the optimum method, and for other such cuts it is determined to be appropriate, to meet the objectives and requirements of the relevant land management plan;

(ii) the interdisciplinary review as determined by the Secretary has been completed and the potential environmental, biological, esthetic, engineering, and economic impacts on each advertised sale area have been assessed, as well as the consistency of the sale with the multiple use of the general area;

(iii) cut blocks, patches, or strips are shaped and blended to the extent practicable with the natural terrain;

(iv) there are established according to geographic areas, forest types, or other suitable classifications the

maximum size limits for areas to be cut in one harvest operation, including provision to exceed the established limits after appropriate public notice and review by the responsible Forest Service officer one level above the Forest Service officer who normally would approve the harvest proposal: Provided, That such limits shall not apply to the size of areas harvested as a result of natural catastrophic conditions such as fire, insect and disease attack, or windstorm; and

(v) such cuts are carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and esthetic resources, and the regeneration of the timber resource.

(h) Scientific committee to aid in promulgation of regulations; termination; revision committees; clerical and technical assistance; compensation of committee members

(1) In carrying out the purposes of subsection (g) of this section, the Secretary of Agriculture shall appoint a committee of scientists who are not officers or employees of the Forest Service. The committee shall provide scientific and technical advice and counsel on proposed guidelines and procedures to assure that an effective interdisciplinary approach is proposed and adopted. The committee shall terminate upon promulgation of the regulations, but the Secretary may, from time to time, appoint similar committees

when considering revisions of the regulations. The views of the committees shall be included in the public information supplied when the regulations are proposed for adoption.

(2) Clerical and technical assistance, as may be necessary to discharge the duties of the committee, shall be provided from the personnel of the Department of Agriculture.

(3) While attending meetings of the committee, the members shall be entitled to receive compensation at a rate of \$100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, for persons in the Government service employed intermittently.

(i) Consistency of resource plans, permits, contracts, and other instruments with land management plans; revision

Resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans. Those resource plans and permits, contracts, and other such instruments currently in existence shall be revised as soon as practicable to be made consistent with such plans. When land management plans are revised, resource plans and permits, contracts, and other instruments, when necessary, shall be revised as soon as practicable. Any revision in present or future permits, contracts, and other instruments made

pursuant to this section shall be subject to valid existing rights.

(j) Effective date of land management plans and revisions

Land management plans and revisions shall become effective thirty days after completion of public participation and publication of notification by the Secretary as required under subsection (d) of this section.

(k) Development of land management plans

In developing land management plans pursuant to this subchapter, the Secretary shall identify lands within the management area which are not suited for timber production, considering physical, economic, and other pertinent factors to the extent feasible, as determined by the Secretary, and shall assure that, except for salvage sales or sales necessitated to protect other multiple-use values, no timber harvesting shall occur on such lands for a period of 10 years. Lands once identified as unsuitable for timber production shall continue to be treated for reforestation purposes, particularly with regard to the protection of other multiple-use values. The Secretary shall review his decision to classify these lands as not suited for timber production at least every 10 years and shall return these lands to timber production whenever he determines that conditions have changed so that they have become suitable for timber production.

(l) Program evaluation; process for estimating long-term costs and benefits; summary of data included in annual report

The Secretary shall -

(1) formulate and implement, as soon as practicable, a process for estimating long-term<sup>4</sup> costs and benefits to support the program evaluation requirements of this subchapter. This process shall include requirements to provide information on a representative sample basis of estimated expenditures associated with the reforestation, timber stand improvement, and sale of timber from the National Forest System, and shall provide a comparison of these expenditures to the return to the Government resulting from the sale of timber; and

(2) include a summary of data and findings resulting from these estimates as a part of the annual report required pursuant to section 1606(c) of this title, including an identification on a representative sample basis of those advertised timber sales made below the estimated expenditures for such timber as determined by the above cost process; and<sup>5</sup>

(m) Establishment of standards to ensure culmination of mean annual increment of growth; silvicultural practices; salvage harvesting; exceptions

The Secretary shall establish -

(1) standards to insure that, prior to harvest, stands of trees throughout the National Forest System shall generally have reached the culmination of mean annual increment of growth (calculated on the basis of cubic measurement or other methods of calculation at the discretion of the Secretary): Provided, That these standards shall not preclude the use of sound silvicultural practices,

such as thinning or other stand improvement measures: Provided further, That these standards shall not preclude the Secretary from salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow or other catastrophe, or which are in imminent danger from insect or disease attack; and

(2) exceptions to these standards for the harvest of particular species of trees in management units after consideration has been given to the multiple uses of the forest including, but not limited to, recreation, wildlife habitat, and range and after completion of public participation processes utilizing the procedures of subsection (d) of this section. (16 U.S.C. 1604)

<sup>4</sup> So in original. Probably should be “long-term”.

<sup>5</sup> So in original. The “; and” probably should be a period.

**Protection, use and management of renewable resources on non-Federal lands; utilization of Assessment, surveys and Program by Secretary of Agriculture to assist States, etc.**

**Sec. 7** The Secretary of Agriculture may utilize the Assessment, resource surveys, and Program prepared pursuant to this subchapter to assist States and other organizations in proposing the planning for the protection, use, and management of renewable resources on non-Federal land. (16 U.S.C. 1605)

**Budget requests by President for**

**Forest Service activities**

**Sec. 8** (a) Transmittal to Speaker of House and President of Senate of Assessment, Program and Statement of Policy used in framing requests; time for transmittal; implementation by President of programs established under Statement of Policy unless Statement subsequently disapproved by Congress; time for disapproval

On the date Congress first convenes in 1976 and thereafter following each updating of the Assessment and the Program, the President shall transmit to the Speaker of the House of Representatives and the President of the Senate, when Congress convenes, the Assessment as set forth in section 1601 of this title and the Program as set forth in section 1602 of this title, together with a detailed Statement of Policy intended to be used in framing budget requests by that Administration for Forest Service activities for the five- or ten-year program period beginning during the term of such Congress for such further action deemed appropriate by the Congress. Following the transmission of such Assessment, Program, and Statement of Policy, the President shall, subject to other actions of the Congress, carry out programs already established by law in accordance with such Statement of Policy or any subsequent amendment or modification thereof approved by the Congress, unless, before the end of the first period of ninety calendar days of continuous session of Congress after the date on which the President of the Senate and the Speaker of the House are recipi-

ents of the transmission of such Assessment, Program, and Statement of Policy, either House adopts a resolution reported by the appropriate committee of jurisdiction disapproving the Statement of Policy. For the purpose of this subsection, the continuity of a session shall be deemed to be broken only by an adjournment sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of the ninety-day period. Notwithstanding any other provision of this subchapter, Congress may revise or modify the Statement of Policy transmitted by the President, and the revised or modified Statement of Policy shall be used in framing budget requests.

(b) Contents of requests to show extent of compliance of projected programs and policies with policies approved by Congress; requests not conforming to approved policies; expenditure of appropriations

Commencing with the fiscal budget for the year ending September 30, 1977, requests presented by the President to the Congress governing Forest Service activities shall express in qualitative and quantitative terms the extent to which the programs and policies projected under the budget meet the policies approved by the Congress in accordance with subsection (a) of this section. In any case in which such budget so presented recommends a course which fails to meet the policies so established, the President shall specifically set forth the reason or reasons for requesting the Congress to approve the

lesser programs or policies presented. Amounts appropriated to carry out the policies approved in accordance with subsection (a) of this section shall be expended in accordance with the Congressional Budget and Impoundment Control Act of 1974.

(c) Annual evaluation report to Congress of Program components; time of submission; status of major research programs; application of findings; status, etc., of cooperative forestry assistance programs and activities

For the purpose of providing information that will aid Congress in its oversight responsibilities and improve the accountability of agency expenditures and activities, the Secretary of Agriculture shall prepare an annual report which evaluates the component elements of the Program required to be prepared by section 1602 of this title which shall be furnished to the Congress at the time of submission of the annual fiscal budget commencing with the third fiscal year after August 17, 1974. With regard to the research component of the program, the report shall include, but not be limited to, a description of the status of major research programs, significant findings, and how these findings will be applied in National Forest System management and in cooperative State and private Forest Service programs. With regard to the cooperative forestry assistance part of the Program, the report shall include, but not be limited to, a description of the status, accomplishments, needs, and work backlogs for the programs and activities conducted under the Cooperative For-

estry Assistance Act of 1978 (16 U.S.C. 2101 et seq.).

(d) Required contents of annual evaluation report

These annual evaluation reports shall set forth progress in implementing the Program required to be prepared by section 1602 of this title, together with accomplishments of the Program as they relate to the objectives of the Assessment. Objectives should be set forth in qualitative and quantitative terms and accomplishments should be reported accordingly. The report shall contain appropriate measurements of pertinent costs and benefits. The evaluation shall assess the balance between economic factors and environmental quality factors. Program benefits shall include, but not be limited to, environmental quality factors such as esthetics, public access, wildlife habitat, recreational and wilderness use, and economic factors such as the excess of cost savings over the value of foregoing benefits and the rate of return on renewable resources.

(e) Additional required contents of annual evaluation report

The reports shall indicate plans for implementing corrective action and recommendations for new legislation where warranted.

(f) Form of annual evaluation report

The reports shall be structured for Congress in concise summary form with necessary detailed data in appendices. (16 U.S.C. 1606)

### **National Forest System renewable**

### **resources; development and administration by Secretary of Agriculture in accordance with multiple use and sustained yield concepts for products and services; target year for operational posture of resources; budget requests**

**Sec. 9** The Secretary of Agriculture shall take such action as will assure that the development and administration of the renewable resources of the National Forest System are in full accord with the concepts for multiple use and sustained yield of products and services as set forth in the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528-531). To further these concepts, the Congress hereby sets the year 2000 as the target year when the renewable resources of the National Forest System shall be in an operating posture whereby all backlogs of needed treatment for their restoration shall be reduced to a current basis and the major portion of planned intensive multiple-use sustained-yield management procedures shall be installed and operating on an environmentally-sound basis. The annual budget shall contain requests for funds for an orderly program to eliminate such backlogs: Provided, That when the Secretary finds that (1) the backlog of areas that will benefit by such treatment has been eliminated, (2) the cost of treating the remainder of such area exceeds the economic and environmental benefits to be secured from their treatment, or (3) the total supplies of the renewable resources of the United States are adequate to meet the future needs of the American people, the budget request

for these elements of restoration may be adjusted accordingly. (16 U.S.C. 1607)

### **National Forest Transportation System**

**Sec. 10** (a) Congressional declaration of policy; time for development; method of financing; financing of forest development roads

The Congress declares that the installation of a proper system of transportation to service the National Forest System, as is provided for in sections 532 to 538 of this title, shall be carried forward in time to meet anticipated needs on an economical and environmentally sound basis, and the method chosen for financing the construction and maintenance of the transportation system should be such as to enhance local, regional, and national benefits: Provided, That limitations on the level of obligations for construction of forest roads by timber purchasers shall be established in annual appropriation Acts.

(b) Construction of temporary roadways in connection with timber contracts, and other permits or leases

Unless the necessity for a permanent road is set forth in the forest development road system plan, any road constructed on land of the National Forest System in connection with a timber contract or other permit or lease shall be designed with the goal of reestablishing vegetative cover on the roadway and areas where the vegetative cover has been disturbed by the construction of the road, within ten years after the termination of the contract, permit, or lease either through artificial or

natural means. Such action shall be taken unless it is later determined that the road is needed for use as a part of the National Forest Transportation System.

(c) Standards of roadway construction

Roads constructed on National Forest System lands shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources. (16 U.S.C. 1608)

### **National Forest System**

**Sec. 11** (a) Congressional declaration of constituent elements and purposes; lands etc., included within; return of lands to public domain

Congress declares that the National Forest System consists of units of federally owned forest, range, and related lands throughout the United States and its territories, united into a nationally significant system dedicated to the long-term benefit for present and future generations, and that it is the purpose of this section to include all such areas into one integral system. The "National Forest System" shall include all national forest lands reserved or withdrawn from the public domain of the United States, all national forest lands acquired through purchase, exchange, donation, or other means, the national grasslands and land utilization projects administered under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 et seq.), and other lands, waters, or interests therein which are administered by the Forest Service or are designated for administration through the

Forest Service as a part of the system. Notwithstanding the provisions of section 473 of this title, no land now or hereafter reserved or withdrawn from the public domain as national forests pursuant to section 471 (Section 471 was repealed.) of this title, or any act supplementary to and amendatory thereof, shall be returned to the public domain except by an act of Congress.

(b) Location of Forest Service offices

The on-the-ground field offices, field supervisory offices, and regional offices of the Forest Service shall be so situated as to provide the optimum level of convenient, useful services to the public, giving priority to the maintenance and location of facilities in rural areas and towns near the national forest and Forest Service program locations in accordance with the standards in section 2204b-1(b) of title 7. (16 U.S.C. 1609)

**Implementation of provisions by Secretary of Agriculture; utilization of information and data of other organizations; avoidance of duplication of planning, etc.; “renewable resources” defined**

**Sec. 12** In carrying out this subchapter, the Secretary of Agriculture shall utilize information and data available from other Federal, State, and private organizations and shall avoid duplication and overlap of resource assessment and program planning efforts of other Federal agencies. The term “renewable resources” shall be construed to involve those matters within the scope of responsibili-

ties and authorities of the Forest Service on August 17, 1974 and on the date of enactment of any legislation amendatory or supplementary thereto. (16 U.S.C. 1610)

**Timber**

**Sec. 13** (a) Limitations on removal; variations in allowable sale quantity; public participation

The Secretary of Agriculture shall limit the sale of timber from each national forest to a quantity equal to or less than a quantity which can be removed from such forest annually in perpetuity on a sustained-yield basis: Provided, That, in order to meet overall multiple-use objectives, the Secretary may establish an allowable sale quantity for any decade which departs from the projected long-term average sale quantity that would otherwise be established: Provided further, That any such planned departure must be consistent with the multiple-use management objectives of the land management plan. Plans for variations in the allowable sale quantity must be made with public participation as required by section 1604(d) of this title. In addition, within any decade, the Secretary may sell a quantity in excess of the annual allowable sale quantity established pursuant to this section in the case of any national forest so long as the average sale quantities of timber from such national forest over the decade covered by the plan do not exceed such quantity limitation. In those cases where a forest has less than two hundred thousand acres of commercial forest land, the Secretary may use two or

more forests for purposes of determining the sustained yield.

(b) Salvage harvesting

Nothing in subsection (a) of this section shall prohibit the Secretary from salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow, or other catastrophe, or which are in imminent danger from insect or disease attack. The Secretary may either substitute such timber for timber that would otherwise be sold under the plan or, if not feasible, sell such timber over and above the plan volume. (16 U.S.C. 1611)

**Public participation**

**Sec. 14** (a) Adequate notice and opportunity to comment

In exercising his authorities under this subchapter and other laws applicable to the Forest Service, the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs.

(b) Advisory boards

In providing for public participation in the planning for and management of the National Forest System, the Secretary, pursuant to the Federal Advisory Committee Act (86 Stat. 770) and other applicable law, shall establish and consult such advisory boards as he deems necessary to secure full information and advice on

the execution of his responsibilities. The membership of such boards shall be representative of a cross section of groups interested in the planning for and management of the National Forest System and the various types of use and enjoyment of the lands thereof. (16 U.S.C. 1612)

**Promulgation of regulations**

**Sec. 15** The Secretary of Agriculture shall prescribe such regulations as he determines necessary and desirable to carry out the provisions of this subchapter. (16 U.S.C. 1613)

**Severability**

**Sec. 16** If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, the validity of the remainder of this subchapter and of the application of such provision to other persons and circumstances shall not be affected thereby. (16 U.S.C. 1614)

## Multiple-Use Sustained-Yield Act of 1960

June 12, 1960 (Pub. L. 86-517, 74 Stat. 215; 16 U.S.C. 528 to 531, 528 note)

### **Development and administration of renewable surface resources for multiple use and sustained yield of products and services; Congressional declaration of policy and purpose**

**Sec. 1** It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The purposes of sections 528 to 531 of this title are declared to be supplemental to, but not in derogation of, the purposes for which the national forests were established as set forth in section 475 of this title. Nothing herein shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish on the national forests. Nothing herein shall be construed so as to affect the use or administration of the mineral resources of national forest lands or to affect the use or administration of Federal lands not within national forests. (16 U.S.C. 528)

### **Authorization of development and administration consideration to relative values of resources; areas of wilderness**

**Sec. 2** The Secretary of Agriculture is authorized and directed to develop and administer the renewable surface resources of the national forests for multiple

use and sustained yield of the several products and services obtained therefrom. In the administration of the national forests due consideration shall be given to the relative values of the various resources in particular areas. The establishment and maintenance of areas of wilderness are consistent with the purposes and provisions of sections 528 to 531 of this title. (16 U.S.C. 529)

### **Cooperation for purposes of development and administration with State and local governmental agencies and others**

**Sec. 3** In the effectuation of sections 528 to 531 of this title the Secretary of Agriculture is authorized to cooperate with interested State and local governmental agencies and others in the development and management of the national forests. (16 U.S.C. 530)

### **Definitions**

**Sec. 4** As used in sections 528 to 531 of this title the following terms shall have the following meanings:

(a) "Multiple use" means: The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas

large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

(b) “Sustained yield of the several products and services” means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land. (16 U.S.C. 531)

### **Short title**

**Sec. 5** This Act may be cited as the ‘Multiple-Use Sustained-Yield Act of 1960’. (16 U.S.C. 528 note)

## National Forest Management Policy Act of 1976

October 22, 1976 (Pub. L. 94-588, 90 Stat. 2949; 16 U.S.C. 472a)

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### Timber sales on National Forest System lands

**Sec. 14** Authorization; rules and regulations; appraised value as minimum sale price

For the purpose of achieving the policies set forth in the Multiple-Use Sustained-Yield Act of 1960 (74 Stat. 215; 16 U.S.C. 528-531) and the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476) (16 U.S.C. 1600 et seq.), the Secretary of Agriculture, under such rules and regulations as he may prescribe, may sell, at not less than appraised value, trees, portions of trees, or forest products located on National Forest System lands.

(b) Designation on map; prospectus

All advertised timber sales shall be designated on maps, and a prospectus shall be available to the public and interested potential bidders.

(c) Terms and conditions of contract

The length and other terms of the contract shall be designed to promote orderly harvesting consistent with the principles set out in section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (16 U.S.C. 1604). Unless there is a finding by the Secretary of Agriculture that better

utilization of the various forest resources (consistent with the provisions of the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528-531)) will result, sales contracts shall be for a period not to exceed ten years: Provided, That such period may be adjusted at the discretion of the Secretary to provide additional time due to time delays caused by an act of an agent of the United States or by other circumstances beyond the control of the purchaser. The Secretary shall require the purchaser to file as soon as practicable after execution of a contract for any advertised sale with a term of two years or more, a plan of operation, which shall be subject to concurrence by the Secretary. The Secretary shall not extend any contract period with an original term of two years or more unless he finds (A) that the purchaser has diligently performed in accordance with an approved plan of operation or (B) that the substantial overriding public interest justifies the extension.

(d) Advertisement of sales; exceptions

The Secretary of Agriculture shall advertise all sales unless he determines that extraordinary conditions exist, as defined by regulation, or that the appraised value of the sale is less than \$10,000. If, upon proper offering, no satisfactory bid is received for a sale, or the bidder fails to complete the purchase, the sale may be offered and sold without

further advertisement.

(e) Bidding methods; purposes; oral auction procedures; monitoring and enforcement for prevention of collusive practices

(1) In the sale of trees, portions of trees, or forest products from National Forest System lands (hereinafter referred to in this subsection as “national forest materials”), the Secretary of Agriculture shall select the bidding method or methods which -

(A) insure open and fair competition;

(B) insure that the Federal Government receive not less than the appraised value as required by subsection (a) of this section;

(C) consider the economic stability of communities whose economies are dependent on such national forest materials, or achieve such other objectives as the Secretary deems necessary; and

(D) are consistent with the objectives of this Act and other Federal statutes. The Secretary shall select or alter the bidding method or methods as he determines necessary to achieve the objectives stated in clauses

(A),(B),(C), and(D) of this paragraph.

(2) In those instances when the Secretary selects oral auction as the bidding method for the sale of any national forest materials, he shall require that all prospective purchasers submit written sealed qualifying bids. Only prospective purchasers whose written sealed qualifying bids are equal to or in excess

of the appraised value of such national forest materials may participate in the oral bidding process.

(3) The Secretary shall monitor bidding patterns involved in the sale of national forest materials. If the Secretary has a reasonable belief that collusive bidding practices may be occurring, then -

(A) he shall report any such instances of possible collusive bidding or suspected collusive bidding practices to the Attorney General of the United States with any and all supporting data;

(B) he may alter the bidding methods used within the affected area; and

(C) he shall take such other action as he deems necessary to eliminate such practices within the affected area.

(f) Research and demonstration projects

The Secretary of Agriculture, under such rules and regulations as he may prescribe, is authorized to dispose of, by sale or otherwise, trees, portions of trees, or other forest products related to research and demonstration projects.

(g) Designation, marking, and supervision of harvesting; personnel

Designation, marking when necessary, and supervision of harvesting of trees, portions of trees, or forest products shall be conducted by persons employed by the Secretary of Agriculture. Such persons shall have no personal interest in the purchase or harvest of such products and shall not be directly or indirectly in the employment of the purchaser thereof.

(h) Utilization standards, methods of measurement, and harvesting practices; monetary deposits by purchasers of salvage harvests; nature, purposes and availability of designated fund; return of surplus to Treasury

The Secretary of Agriculture shall develop utilization standards, methods of measurement, and harvesting practices for the removal of trees, portions of trees, or forest products to provide for the optimum practical use of the wood material. Such standards, methods, and practices shall reflect consideration of opportunities to promote more effective wood utilization, regional conditions, and species characteristics and shall be compatible with multiple use resource management objectives in the affected area. To accomplish the purpose of this subsection in situations involving salvage of insect-infested, dead, damaged, or down timber, and to remove associated trees for stand improvement, the Secretary is authorized to require the purchasers of such timber to make monetary deposits, as a part of the payment for the timber, to be deposited in a designated fund from which sums are to be used, to cover the cost to the United States for design, engineering, and supervision of the construction of needed roads and the cost for Forest Service sale preparation and supervision of the harvesting of such timber. Deposits of money pursuant to this subsection are to be available until expended to cover the cost to the United States of accomplishing the purposes for which deposited: Provided, That such deposits shall not be considered as

moneys received from the national forests within the meaning of sections 500 and 501 of this title: And provided further, That sums found to be in excess of the cost of accomplishing the purposes for which deposited on any national forest shall be transferred to miscellaneous receipts in the Treasury of the United States.

(i) Purchaser credit for permanent road construction; right of election of small business concerns; estimated cost; date of completion; use of funds for construction; effective date

(1) For sales of timber which include a provision for purchaser credit for construction of permanent roads with an estimated cost in excess of \$20,000, the Secretary of Agriculture shall promulgate regulations requiring that the notice of sale afford timber purchasers qualifying as "small business concerns" under the Small Business Act, as amended (15 U.S.C. 631 et seq.), and the regulations issued thereunder, an estimate of the cost and the right, when submitting a bid, to elect that the Secretary build the proposed road.

(2) If the purchaser makes such an election, the price subsequently paid for the timber shall include all of the estimated cost of the road. In the notice of sale, the Secretary of Agriculture shall set a date when such road shall be completed which shall be applicable to either construction by the purchaser or the Secretary, depending on the election. To accomplish requested work, the Secretary is authorized to use from any

receipts from the sale of timber a sum equal to the estimate for timber purchaser credits, and such additional sums as may be appropriated for the construction of roads, such funds to be available until expended, to construct a road that meets the standards specified in the notice of sale.

(3) The provisions of this subsection shall become effective on October 1, 1976. (16 U.S.C. 472a)

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# Forest and Rangeland Renewable Resources Planning Act Statement of Policy, Interior Department and Related Agencies Appropriations for Fiscal year 1981

December 12, 1980 (Pub. L. 96-514, 96 Stat. 2957; 16 U.S.C. 1606 note)

## Statement of policy

**Sec. 310** provided that: The Statement of Policy transmitted by the President to the Speaker of the House of Representatives and the President of the Senate on June 19, 1980, as required under section 8 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (this section), is revised and modified to read as follows:

### Statement of policy

#### Basic principles

#### It is the policy of the United States –

(1) forests and rangeland, in all ownerships, should be managed to maximize their net social and economic contributions to the Nation's well being, in an environmentally sound manner.

(2) the Nation's forested land, except such public land that is determined by law or policy to be maintained in its existing or natural state, should be managed at levels that realize its capabilities to satisfy the Nation's need for food, fiber, energy, water, soil stability, wildlife and fish, recreation, and esthetic values.

(3) the productivity of suitable forested land, in all ownerships, should be maintained and enhanced to minimize the inflationary impacts of wood product prices on the domestic economy and permit a net export of forest products by the year 2030.

(4) in order to achieve this goal, it is recognized that in the major timber growing regions most of the commercial timber lands will have to be brought to and maintained, where possible, at 90 percent of their potential level of growth, consistent with the provisions of the National Forest Management Act of 1976 (see Short Title of 1976 Amendment note set out under section 1600 of this title) on Federal lands, so that all resources are utilized in the combination that will best meet the needs of the American people.

(5) forest and rangeland protection programs should be improved to more adequately protect forest and rangeland resources from fire, erosion, insects, disease, and the introduction or spread of noxious weeds, insects, and animals.

(6) the Federal agencies carrying out the policies contained in this Statement

will cooperate and coordinate their efforts to accomplish the goals contained in this Statement and will consult, coordinate, and cooperate with the planning efforts of the States.

(7) in carrying out the Assessment and the Program under the Forest and Rangeland Renewable Resources Planning Act of 1974 (this subchapter) and the Appraisal and the Program under the Soil and Water Resources Conservation Act of 1977 (section 2001 et seq. of this title), the Secretary of Agriculture shall assure that resources and economic information and evaluation data will be continually improved so that the best possible information is always available for use by Federal agencies and the public.

### **Range land data base and its improvement**

The data on and understanding of the cover and condition of range lands is less refined than the data on and understanding of commercial forest land. Range lands have significant value in the production of water and protection of watersheds; the production of fish and wildlife food and habitat; recreation; and the production of livestock forage. An adequate data base on the cover and condition of range lands should be developed by the year 1990. Currently, cattle production from these lands is annually estimated at 213 million animal unit months of livestock forage. These lands should be maintained and enhanced, including their water and other resource values, so that they can annually provide

310 million animal units months of forage by the year 2030, along with other benefits.

### **General acceptance of high bound program**

Congress generally accepts the 'high-bound' program described on pages 7 through 18 of the 1980 Report to Congress on the Nation's Renewable Resources prepared by the Secretary of Agriculture. However, Congress finds that the 'high-bound' program may not be sufficient to accomplish the goals contained in this statement, particularly in the area of range and watershed resources, State and private forest cooperation and timber management.

### **State and private lands**

States and owners of private forest and rangelands will be encouraged, consistent with their individual objectives, to manage their land in support of this Statement of Policy. The State and private forestry and range programs of the Forest Service will be essential to the furtherance of this Statement of Policy.

### **Funding the goals**

In order to accomplish the policy goals contained in this statement by the year 2030, the Federal Government should adequately fund programs of research (including cooperative research), extension, cooperative forestry assistance and protection, and improved management of the forest and rangelands. The Secretary of Agriculture shall continue his efforts to evaluate the cost-effectiveness of the

renewable resource programs.

**Statement of purposes of  
amendment by Cooperative Forestry  
Assistance Act of 1978**

Section 15, formerly section 12 of Pub. L. 95-313, renumbered Sec. 15, Pub. L. 101-624, title XII, Sec. 1215(1), Nov. 28, 1990, 104 Stat. 3525, provided in part that the amendment of subsec. (c) of this section by Pub. L. 95-313 is to insure that Congress has adequate information to implement its oversight responsibilities and to provide accountability for expenditures and activities under the Cooperative Forestry Assistance Act of 1978. See Short Title note set out under section 2101 of this title for classification of the Cooperative Forestry Assistance Act of 1978 in the Code. (16 U.S.C. 1606. note)

## National Indian Forest Resources Management Act

November 28, 1990 (Pub. L. 101-630; 104 Stat. 4532; 25 U.S.C. 415, 3101 note, 3101 to 3120)

### Leases of restricted lands

**Sec. 201** (a) Authorized purposes; term; approval by Secretary

Any restricted Indian lands, whether tribally, or individually owned, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, residential, or business purposes, including the development or utilization of natural resources in connection with operations under such leases, for grazing purposes, and for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops as determined by said Secretary. All leases so granted shall be for a term of not to exceed twenty-five years, except leases of land located outside the boundaries of Indian reservations in the State of New Mexico, leases of land on the Agua Caliente (Palm Springs) Reservation, the Dania Reservation, the Pueblo of Santa Ana (with the exception of the lands known as the "Santa Ana Pueblo Spanish Grant"), the reservation of the Confederated Tribes of the Warm Springs Reservation of Oregon, the Moapa Indian reservation,<sup>1</sup> the Swinomish Indian Reservation, the Southern Ute Reservation, the Fort Mojave Reservation, the Burns Paiute Reservation, the Coeur

d'Alene Indian Reservation, the Kalispel Indian Reservation, the pueblo of Cochiti, the pueblo of Pojoaque, the pueblo of Tesuque, the pueblo of Zuni, the Hualapai Reservation, the Spokane Reservation, the San Carlos Apache Reservation, Yavapai-Prescott<sup>2</sup> Community Reservation, the Pyramid Lake Reservation, the Gila River Reservation, the Soboba Indian Reservation, the Viejas Indian Reservation, the Tulalip Indian Reservation, the Navajo Reservation, the Cabazon Indian Reservation, the Mille Lacs Indian Reservation with respect to a lease between an entity established by the Mille Lacs Band of Chippewa Indians and the Minnesota Historical Society, leases of the lands comprising the Moses Allotment Numbered 10, Chelan County, Washington,,<sup>3</sup> and lands held in trust for the Las Vegas Paiute Tribe of Indians, and lands held in trust for the Twenty-nine Palms Band of Luiseno Mission Indians, and lands held in trust for the Reno Sparks Indian Colony, lands held in trust for the Torres Martinez Desert Cahuilla Indians, lands held in trust for the Guidiville Band of Pomo Indians of the Guidiville Indian Rancheria, lands held in trust for the Confederated Tribes of the Umatilla Indian Reservation, lands held in trust for the Confederated Tribes of the Warm Springs Reservation of Oregon, lands held in trust for the Cherokee Nation of

Oklahoma, lands held in trust for the Pueblo of Santa Clara, lands held in trust for the Confederated Tribes of the Colville Reservation, lands held in trust for the Cahuilla Band of Indians of California, lands held in trust for the Confederated Tribes of the Grand Ronde Community of Oregon, and the lands held in trust for the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, and leases to the Devils Lake Sioux Tribe, or any organization of such tribe, of land on the Devils Lake Sioux Reservation, which may be for a term of not to exceed ninety-nine years, and except leases of land for grazing purposes which may be for a term of not to exceed ten years. Leases for public, religious, educational, recreational, residential, or business purposes (except leases the initial term of which extends for more than seventy-four years) with the consent of both parties may include provisions authorizing their renewal for one additional term of not to exceed twenty-five years, and all leases and renewals shall be made under such terms and regulations as may be prescribed by the Secretary of the Interior. Prior to approval of any lease or extension of an existing lease pursuant to this section, the Secretary of the Interior shall first satisfy himself that adequate consideration has been given to the relationship between the use of the leased lands and the use of neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed on such lands; the availability of police and fire protection and other services; the availability of judicial forums for all criminal and civil

causes arising on the leased lands; and the effect on the environment of the uses to which the leased lands will be subject.

(b) Leases involving Tulalip Tribes

Any lease by the Tulalip Tribes under subsection (a) of this section, except a lease for the exploitation of any natural resource, shall not require the approval of the Secretary of the Interior (1) if the term of the lease does not exceed fifteen years, with no option to renew, (2) if the term of the lease does not exceed thirty years, with no option to renew, and the lease is executed pursuant to tribal regulations previously approved by the Secretary of the Interior, or (3) if the term does not exceed seventy-five years (including options to renew), and the lease is executed under tribal regulations approved by the Secretary under this clause (3).

(c) Leases involving Hopi Tribe and Hopi Partitioned Lands Accommodation Agreement

Notwithstanding subsection (a) of this section, a lease of land by the Hopi Tribe to Navajo Indians on the Hopi Partitioned Lands may be for a term of 75 years, and may be extended at the conclusion of the term of the lease.

(d) Definitions

For purposes of this section -

- (1) the term "Hopi Partitioned Lands" means lands located in the Hopi Partitioned Area, as defined in section 168.1(g) of title 25, Code of Federal Regulations (as in effect on October 11, 1996);

(2) the term “Navajo Indians” means members of the Navajo Tribe;

(3) the term “individually owned Navajo Indian allotted land” means a single parcel of land that

(A) is located within the jurisdiction of the Navajo Nation;

(B) is held in trust or restricted status by the United States for the benefit of Navajo Indians or members of another Indian tribe; and

(C) was -

(i) allotted to a Navajo Indian; or

(ii) taken into trust or restricted status by the United States for an individual Indian;

(4) the term “interested party” means an Indian or non-Indian individual or corporation, or tribal or non-tribal government whose interests could be adversely affected by a tribal trust land leasing decision made by the Navajo Nation;

(5) the term “Navajo Nation” means the Navajo Nation government that is in existence on August 9, 1955, or its successor;

(6) the term “petition” means a written request submitted to the Secretary for the review of an action (or inaction) of the Navajo Nation that is claimed to be in violation of the approved tribal leasing regulations;

(7) the term “Secretary” means the Secretary of the Interior; and

(8) the term “tribal regulations” means

the Navajo Nation regulations enacted in accordance with Navajo Nation law and approved by the Secretary.

(e) Leases of restricted lands for the Navajo Nation

(1) Any leases by the Navajo Nation for purposes authorized under subsection (a) of this section, and any amendments thereto, except a lease for the exploration, development, or extraction of any mineral resources, shall not require the approval of the Secretary if the lease is executed under the tribal regulations approved by the Secretary under this subsection and the term of the lease does not exceed -

(A) in the case of a business or agricultural lease, 25 years, except that any such lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years; and

(B) in the case of a lease for public, religious, educational, recreational, or residential purposes, 75 years if such a term is provided for by the Navajo Nation through the promulgation of regulations.

(2) Paragraph (1) shall not apply to individually owned Navajo Indian allotted land.

(3) The Secretary shall have the authority to approve or disapprove tribal regulations referred to under paragraph (1). The Secretary shall approve such tribal regulations if such regulations are consistent with the regulations of the Secretary under subsection (a) of this

section, and any amendments thereto, and provide for an environmental review process. The Secretary shall review and approve or disapprove the regulations of the Navajo Nation within 120 days of the submission of such regulations to the Secretary. Any disapproval of such regulations by the Secretary shall be accompanied by written documentation that sets forth the basis for the disapproval. Such 120-day period may be extended by the Secretary after consultation with the Navajo Nation.

(4) If the Navajo Nation has executed a lease pursuant to tribal regulations under paragraph (1), the Navajo Nation shall provide the Secretary with

(A) a copy of the lease and all amendments and renewals thereto; and

(B) in the case of regulations or a lease that permits payment to be made directly to the Navajo Nation, documentation of the lease payments sufficient to enable the Secretary to discharge the trust responsibility of the United States under paragraph (5).

(5) The United States shall not be liable for losses sustained by any party to a lease executed pursuant to tribal regulations under paragraph (1), including the Navajo Nation. Nothing in this paragraph shall be construed to diminish the authority of the Secretary to take appropriate actions, including the cancellation of a lease, in furtherance of the trust obligation of the United States to the Navajo Nation.

(6)(A) An interested party may, after

exhaustion of tribal remedies, submit, in a timely manner, a petition to the Secretary to review the compliance of the Navajo Nation with any regulations approved under this subsection. If upon such review the Secretary determines that the regulations were violated, the Secretary may take such action as may be necessary to remedy the violation, including rescinding the approval of the tribal regulations and reassuming responsibility for the approval of leases for Navajo Nation tribal trust lands.

(B) If the Secretary seeks to remedy a violation described in subparagraph (A), the Secretary shall -

(i) make a written determination with respect to the regulations that have been violated;

(ii) provide the Navajo Nation with a written notice of the alleged violation together with such written determination; and

(iii) prior to the exercise of any remedy or the rescission of the approval of the regulation involved and the reassumption of the lease approval responsibility, provide the Navajo Nation with a hearing on the record and a reasonable opportunity to cure the alleged violation. (25 U.S.C. 415)

<sup>1 and 3</sup> So in original.

<sup>2</sup> So in original. Probably should be preceded by “the”.

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## Findings

**Sec. 302** The Congress finds and declares that -

- (1) the forest lands of Indians are among their most valuable resources and Indian forest lands -
  - (A) encompass more than 15,990,000 acres, including more than 5,700,000 acres of commercial forest land and 8,700,000 acres of woodland,
  - (B) are a perpetually renewable and manageable resource,
  - (C) provide economic benefits, including income, employment, and subsistence, and
  - (D) provide natural benefits, including ecological, cultural, and esthetic values;
- (2) the United States has a trust responsibility toward Indian forest lands;
- (3) existing Federal laws do not sufficiently assure the adequate and necessary trust management of Indian forest lands;
- (4) the Federal investment in, and the management of, Indian forest land is significantly below the level of investment in, and management of, National Forest Service forest land, Bureau of Land Management forest land, or private forest land;
- (5) tribal governments make substantial contributions to the overall management of Indian forest land; and
- (6) there is a serious threat to Indian forest lands arising from trespass and unauthorized harvesting of Indian forest land resources. (25 U.S.C. 3101)

## Purposes

**Sec. 303** The purposes of this chapter are to -

- (1) allow the Secretary of the Interior to take part in the management of Indian forest lands, with the participation of the lands' beneficial owners, in a manner consistent with the Secretary's trust responsibility and with the objectives of the beneficial owners;
- (2) clarify the authority of the Secretary to make deductions from the proceeds of sale of Indian forest products, assure the use of such deductions on the reservation from which they are derived solely for use in forest land management activities, and assure that no other deductions shall be collected;
- (3) increase the number of professional Indian foresters and related staff in forestry programs on Indian forest land; and
- (4) provide for the authorization of necessary appropriations to carry out this chapter for the protection, conservation, utilization, management, and enhancement of Indian forest lands. (25 U.S.C. 3102)

## Definitions

**Sec. 304** For the purposes of this chapter, the term -

- (1) "Alaska Native" means Native as defined in section 1602(b) of title 43;
- (2) "forest" means an ecosystem of at least one acre in size, including timberland and woodland, which -

(A) is characterized by a more or less dense and extensive tree cover,

(B) contains, or once contained, at least ten percent tree crown cover, and

(C) is not developed or planned for exclusive nonforest use;

(3) “Indian forest land” means Indian lands, including commercial and non-commercial timberland and woodland, that are considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover, regardless whether a formal inspection and land classification action has been taken;

(4) “forest land management activities” means all activities performed in the management of Indian forest lands, including -

(A) all aspects of program administration and executive direction such as -

(i) development and maintenance of policy and operational procedures, program oversight, and evaluation,

(ii) securing of legal assistance and handling of legal matters,

(iii) budget, finance, and personnel management, and

(iv) development and maintenance of necessary data bases and program reports;

(B) all aspects of the development, preparation and revision of forest inventory and management plans, including aerial photography, mapping, field management inventories and re-

inventories, inventory analysis, growth studies, allowable annual cut calculations, environmental assessment, and forest history, consistent with and reflective of tribal integrated resource management plans;

(C) forest land development, including forestation, thinning, tree improvement activities, and the use of silvicultural treatments to restore or increase growth and yield to the full productive capacity of the forest environment;

(D) protection against losses from wildfire, including acquisition and maintenance of fire fighting equipment and fire detection systems, construction of firebreaks, hazard reduction, prescribed burning, and the development of cooperative wildfire management agreements;

(E) protection against insects and disease, including -

(i) all aspects of detection and evaluation,

(ii) preparation of project proposals containing project description, environmental assessments and statements, and cost-benefit analyses necessary to secure funding,

(iii) field suppression operations, and

(iv) reporting;

(F) assessment of damage caused by forest trespass, infestation or fire, including field examination and survey, damage appraisal, investigation assistance, and report, demand letter, and testimony preparation;

(G) all aspects of the preparation, administration, and supervision of timber sale contracts, paid and free use permits, and other Indian forest product harvest sale documents including -

(i) cruising, product marking, silvicultural prescription, appraisal and harvest supervision,

(ii) forest product marketing assistance, including evaluation of marketing and development opportunities related to Indian forest products and consultation and advice to tribes, tribal and Indian enterprises on maximization of return on forest products,

(iii) archeological, historical, environmental and other land management reviews, clearances, and analyses,

(iv) advertising, executing, and supervising contracts,

(v) marking and scaling of timber, and

(vi) collecting, recording and distributing receipts from sales;

(H) provision of financial assistance for the education of Indians enrolled in accredited programs of postsecondary and postgraduate forestry and forestry-related fields of study, including the provision of scholarships, internships, relocation assistance, and other forms of assistance to cover educational expenses;

(I) participation in the development and implementation of tribal integrated

resource management plans, including activities to coordinate current and future multiple uses of Indian forest lands;

(J) improvement and maintenance of extended season primary and secondary Indian forest land road systems; and

(K) research activities to improve the basis for determining appropriate management measures to apply to Indian forest lands;

(5) “forest management plan” means the principal document, approved by the Secretary, reflecting and consistent with a tribal integrated resource management plan, which provides for the regulation of the detailed, multiple-use operation of Indian forest land by methods assuring that such lands remain in a continuously productive state while meeting the objectives of the tribe and which shall include -

(A) standards setting forth the funding and staffing requirements necessary to carry out each management plan, with a report of current forestry funding and staffing levels; and

(B) standards providing quantitative criteria to evaluate performance against the objectives set forth in the plan;

(6) “forest product” means -

(A) timber,

(B) a timber product, including lumber, lath, crating, ties, bolts, logs, pulpwood, fuelwood, posts, poles and split

products,

(C) bark,

(D) Christmas trees, stays, branches, firewood, berries, mosses, pinyon nuts, roots, acorns, syrups, wild rice, and herbs,

(E) other marketable material, and

(F) gravel which is extracted from, and utilized on, Indian forest lands;

(7) “forest resources” means all the benefits derived from Indian forest lands, including forest products, soil productivity, water, fisheries, wildlife, recreation, and aesthetic or other traditional values of Indian forest lands;

(8) “forest trespass” means the act of illegally removing forest products from, or illegally damaging forest products on, forest lands;

(9) “Indian” means a member of an Indian tribe;

(10) “Indian land” means land title to which is held by -

(A) the United States in trust for an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally-recognized Indian tribe, or an Indian tribe, or

(B) an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally recognized tribe, or an Indian tribe subject to a restriction by the United States against alienation;

(11) “Indian tribe” or “tribe” means any Indian tribe, band, nation, Pueblo or

other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and shall mean, where appropriate, the recognized tribal government of such tribe’s reservation;

(12) “reservation” includes Indian reservations established pursuant to treaties, Acts of Congress or Executive orders, public domain Indian allotments, and former Indian reservations in Oklahoma;

(13) “Secretary” means the Secretary of the Interior;

(14) “sustained yield” means the yield of forest products that a forest can produce continuously at a given intensity of management; and

(15) “tribal integrated resource management plan” means a document, approved by an Indian tribe and the Secretary, which provides coordination for the comprehensive management of such tribe’s natural resources.(25 U.S.C. 3103)

### Management of Indian forest land

#### Sec. 305 (a) Management activities

The Secretary shall undertake forest land management activities on Indian forest land, either directly or through contracts, cooperative agreements, or grants under the Indian Self-Determination Act (25 U.S.C. 450f et seq.).

(b) Management objectives Indian forest land management activities undertaken by

the Secretary shall be designed to achieve the following objectives -

(1) the development, maintenance, and enhancement of Indian forest land in a perpetually productive state in accordance with the principles of sustained yield and with the standards and objectives set forth in forest management plans by providing effective management and protection through the application of sound silvicultural and economic principles to -

- (A) the harvesting of forest products,
- (B) forestation,
- (C) timber stand improvement, and
- (D) other forestry practices;

(2) the regulation of Indian forest lands through the development and implementation, with the full and active consultation and participation of the appropriate Indian tribe, of forest management plans which are supported by written tribal objectives and forest marketing programs;

(3) the regulation of Indian forest lands in a manner that will ensure the use of good method and order in harvesting so as to make possible, on a sustained yield basis, continuous productivity and a perpetual forest business;

(4) the development of Indian forest lands and associated value-added industries by Indians and Indian tribes to promote self-sustaining communities, so that Indians may receive from their Indian forest land not only stumpage value, but also the benefit of all the

labor and profit that such Indian forest land is capable of yielding;

(5) the retention of Indian forest land in its natural state when an Indian tribe determines that the recreational, cultural, aesthetic, or traditional values of the Indian forest land represents the highest and best use of the land;

(6) the management and protection of forest resources to retain the beneficial effects to Indian forest lands of regulating water run-off and minimizing soil erosion; and

(7) the maintenance and improvement of timber productivity, grazing, wildlife, fisheries, recreation, aesthetic, cultural and other traditional values. (25 U.S.C. 3104)

### **Forest management deduction**

#### **Sec. 306 (a) Withholding of deduction**

Pursuant to the authority of section 413 of this title, the Secretary shall withhold a reasonable deduction from the gross proceeds of sales of forest products harvested from Indian forest land under a timber sale contract, permit, or other harvest sale document, which has been approved by the Secretary, to cover in whole or part the cost of managing and protecting such Indian forest land.

#### **(b) Amount of deduction**

Deductions made pursuant to subsection (a) of this section shall not exceed the lesser amount of - (1) 10 percent of gross proceeds, or (2) the percentage of gross proceeds collected on November 28, 1990, as forest management deductions

by the Secretary on such sales of Indian forest products, unless the appropriate Indian tribe consents to an increase in the deductions.

(c) Use of deduction

The full amount of any deduction collected by the Secretary shall be expended according to an approved expenditure plan, approved by the Secretary and the appropriate Indian tribe, for the performance of forest land management activities on the reservation from which such deductions are collected and shall be made available to the tribe, upon its request, by contract or agreement for the performance of such activities.

(d) Limitations

(1) Forest management deductions withheld pursuant to this section shall not be available to -

(A) cover the costs that are paid from funds appropriated specifically for fire suppression or pest control, or

(B) otherwise offset Federal appropriations for meeting the Federal trust responsibility for management of Indian forest lands.

(2) No other forest management deductions derived from Indian forest lands shall be collected to be covered into the general funds of the United States Treasury. (25 U.S.C. 3105)

### Forest trespass

**Sec. 307** (a) Civil penalties; regulations Not later than 18 months from November 28, 1990, the Secretary shall issue regula-

tions that -

(1) establish civil penalties for the commission of forest trespass which provide for -

(A) collection of the value of the products illegally removed plus a penalty of double their value,

(B) collection of the costs associated with damage to the Indian forest land caused by the act of trespass, and

(C) collection of the costs associated with enforcement of the regulations, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees;

(2) designate responsibility with the Department of the Interior for the detection and investigation of forest trespass; and

(3) set forth responsibilities and procedures for the assessment and collection of civil penalties.

(b) Treatment of proceeds

The proceeds of civil penalties collected under this section shall be treated as proceeds from the sale of forest products from the Indian forest lands upon which such trespass occurred.

(c) Concurrent jurisdiction

Indian tribes which adopt the regulations promulgated by the Secretary pursuant to subsection (a) of this section shall have concurrent civil jurisdiction to enforce the provisions of this section and the regulation promulgated thereunder. The Bureau

of Indian Affairs and other agencies of the Federal Government shall, at the request of the tribe, defer to tribal prosecutions of forest trespass cases. Tribal court judgments regarding forest trespass shall be entitled to full faith and credit in Federal and State courts to the same extent as a Federal court judgment obtained under this section. (25 U.S.C. 3106)

### **Direct payment of forest products receipts**

#### **Sec. 308** (a) Regulations

Notwithstanding any other law, the Secretary shall, within 1 year from November 28, 1990, promulgate regulations providing for the payment of the receipts from the sale of Indian forest products as provided in this section.

#### (b) Payment into a bank depository

Upon the request of an Indian tribe, the Secretary shall provide that the purchaser of the forest products of such tribe, which are harvested under a timber sale contract, permit or other harvest sale document which has been approved by the Secretary, shall make prompt direct payments of the gross proceeds of sales of such forest products, less any amounts segregated as forest management deductions pursuant to section 3105 of this title, into a bank depository account designated by such Indian tribe. (25 U.S.C. 3107)

### **Secretarial recognition of tribal laws**

**Sec. 309** Subject to the Secretary's responsibilities as reflected in sections 3101(2) and 3102(1) of this title and

unless otherwise prohibited by Federal statutory law, the Secretary shall comply with tribal laws pertaining to Indian forest lands, including laws regulating the environment or historic or cultural preservation, and shall cooperate with the enforcement of such laws on Indian forest lands. Such cooperation shall include -

- (1) assistance in the enforcement of such laws;
- (2) provision of notice of such laws to persons or entities undertaking activities on Indian forest lands; and
- (3) upon the request of an Indian tribe, the appearance in tribal forums. (25 U.S.C. 3108)

### **Indian forest land assistance account**

**Sec. 310** (a) Establishment At the request of an Indian tribe, the Secretary may establish a special Indian forest land assistance account within the tribe's trust fund account to fund the Indian forest land management activities of such tribe.

#### (b) Deposits and expenditures

- (1) The Secretary may deposit into the Indian forest land assistance account established pursuant to subsection (a) of this section any funds received by the Secretary or in the Secretary's possession from
  - (A) non-Federal sources, if such funds are related to activities on or for the Indian forest lands of such tribe's reservation,
  - (B) donations and contributions,

(C) unobligated forestry appropriations for the benefit of such Indian tribe, and

(D) user fees or other funds transferred under Federal interagency agreements if otherwise authorized by Federal law and, if such funds are related to activities on or for the Indian forest lands of such tribe's reservation. Funds deposited in such account shall be for the purpose of conducting forest land management activities on the Indian forest lands of such tribe.

(2) Funds in the Indian forest land assistance account and any interest or other income earned thereon shall remain available until expended and shall not be available to otherwise offset Federal appropriations for meeting the Federal responsibility for management of Indian forest lands.

(c) Audits

At the request of an Indian tribe or upon the Secretary's own volition, the Secretary may conduct audits of the Indian forest land assistance account and shall publish the results of such audit. (25 U.S.C. 3109)

### **Tribal forestry programs**

**Sec. 311** (a) Establishment

The Secretary shall establish within the Bureau of Indian Affairs a program to provide financial support to forestry programs established by an Indian tribe.

(b) Support allocation formula; criteria

(1) The Secretary, with the participation of Indian tribes with Indian forest lands,

shall establish, and promulgate by regulations, a formula -

(A) for the determination of Indian tribes eligible for such support,

(B) for the provision of levels of assistance for the forestry programs of such tribes, and

(C) the allocation of base support funds to such tribes under the program established pursuant to subsection (a) of this section.

(2) The formula established pursuant to this subsection shall provide funding necessary to support -

(A) one professional forester, including fringe benefits and support costs, for each eligible tribe, and

(B) one additional professional forester or forest technician, including fringe benefits and support costs, for each level of assistance for which an eligible Indian tribe qualifies.

(3) In any fiscal year that appropriations are not sufficient to fully fund tribal forestry programs at each level of assistance under the formula required to be established in this section, available funds for each level of assistance shall be evenly divided among the tribes qualifying for that level of assistance. (25 U.S.C. 3110)

### **Assessment of Indian forest land and management programs**

**Sec. 312** (a) Initial assessment

(1) Within 1 year after November 28, 1990, the Secretary, in consultation with

affected Indian tribes, shall enter into a contract with a non-Federal entity knowledgeable in forest management practices on Federal and private lands to conduct an independent assessment of Indian forest lands and Indian forest land management practices.

(2) Such assessment shall be national in scope and shall include -

(A) an in-depth analysis of management practices on, and the level of funding for, specific Indian forest land compared with similar Federal and private forest lands,

(B) a survey of the condition of Indian forest lands, including health and productivity levels,

(C) an evaluation of the staffing patterns of forestry organizations of the Bureau of Indian Affairs and of Indian tribes,

(D) an evaluation of procedures employed in timber sales administration, including preparation, field supervision, and accountability for proceeds,

(E) an analysis of the potential for reducing or eliminating relevant administrative procedures, rules and policies of the Bureau of Indian Affairs consistent with the Federal trust responsibility,

(F) a comprehensive review of the adequacy of Indian forest land management plans, including their compatibility with applicable tribal integrated resource management plans and their ability to meet tribal needs and priori-

ties,

(G) an evaluation of the feasibility and desirability of establishing minimum standards against which the adequacy of the forestry programs of the Bureau of Indian Affairs in fulfilling its trust responsibility to Indian tribes can be measured, and

(H) a recommendation of any reforms and increased funding levels necessary to bring Indian forest land management programs to a state-of-the-art condition.

(3) Such assessment shall include specific examples and comparisons from each of the regions of the United States where Indian forest lands are located.

(4) The initial assessment required by this subsection shall be completed no later than 36 months following November 28, 1990. Upon completion, the assessment shall be submitted to the Committee on Natural Resources of the United States House of Representatives and the Committee on Indian Affairs of the United States Senate and shall be made available to Indian tribes.

(b) Periodic assessments

On each 10-year anniversary of November 28, 1990, the Secretary shall provide for an independent assessment of Indian forest lands and Indian forest land management practices under the criteria established in subsection (a) of this section which shall include analyses measured against findings in previous assessments.

## (c) Status report to Congress

The Secretary shall submit, within 1 year of the first full fiscal year after November 28, 1990, and within 6 months of the end of each succeeding fiscal year, a report to the Committee on Natural Resources of the United States House of Representatives, the Committee on Indian Affairs of the United States Senate, and to the affected Indian tribes a report on the status of Indian forest lands with respect to standards, goals and objectives set forth in approved forest management plans for each Indian tribe with Indian forest lands. The report shall identify the amount of Indian forest land in need of forestation or other silviculture treatment and the quantity of timber available for sale, offered for sale, and sold for each Indian tribe.

## (d) Assistance from Secretary of Agriculture

The Secretary of Agriculture, through the Forest Service, is authorized to provide, upon the request of the Secretary of the Interior, on a nonreimbursable basis, technical assistance in the conduct of such research and evaluation activities as may be necessary for the completion of any reports or assessments required by this chapter. (25 U.S.C. 3111)

**Alaska Native technical assistance program****Sec. 313** (a) Establishment

The Secretary, in consultation with the village and regional corporations established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et

seq.), shall establish a program of technical assistance for such corporations to promote the sustained yield management of their forest resources. Such technical assistance shall also be available to promote local processing and other value-added activities with such forest resources.

## (b) Indian Self-Determination Act

The technical assistance to be provided by the Secretary pursuant to subsection (a) of this section shall be made available through contracts, grants or agreements entered into in accordance with, and made available to entities eligible for, such contracts, grants, or agreements under the Indian Self-Determination Act (25 U.S.C. 450f et seq.). (25 U.S.C. 3112)

**Establishment of Indian and Alaska Native forestry education assistance****Sec. 314** (a) Forester intern program

(1) Notwithstanding the provisions of title 5 governing appointments in the competitive service, the Secretary shall establish and maintain in the Bureau of Indian Affairs at least 20 forester intern positions for Indian and Alaska Native students.

(2) For purposes of this subsection, the term "forester intern" means an Indian or Alaska Native who -

(A) is acquiring necessary academic qualifications to become a forester or a professional trained in forestry-related fields, and

(B) is appointed to one of the positions established under paragraph (1).

(3) The Secretary shall pay all costs for tuition, books, fees and living expenses incurred by a forester intern while attending an approved post-secondary or graduate school in a full-time forestry-related curriculum.

(4) A forester intern shall be required to enter into an obligated service agreement to serve as a professional forester or other forestry-related professional with the Bureau of Indian Affairs, an Indian tribe, or a tribal forest-related enterprise for 2 years for each year of education for which the Secretary pays the intern's educational costs under paragraph (3) of this subsection.

(5) A forester intern shall be required to report for service with the Bureau of Indian Affairs during any break in attendance at school of more than 3 weeks duration. Time spent in such service shall be counted toward satisfaction of the intern's obligated service agreement.

(b) Cooperative education program

(1) The Secretary shall maintain, through the Bureau of Indian Affairs, a cooperative education program for the purpose of recruiting promising Indian and Alaska Native students who are enrolled in secondary schools, tribally-controlled community colleges, and other post-secondary or graduate schools for employment as a professional forester or other forestry-related professional with the Bureau of Indian Affairs, an Indian tribe, or a tribal forest-related enterprise.

(2) The cooperative educational pro-

gram that is to be maintained under paragraph (1) shall be modeled on and shall have essentially the same features of the program operated on November 28, 1990, pursuant to chapter 308 of the Federal Personnel Manual of the Office of Personnel Management.

(3) Under the cooperative agreement program that is to be maintained under paragraph (1), the Secretary shall pay all costs for tuition, books, and fees of an Indian or Alaska Native student who -

(A) is enrolled in a course of study at an education institution with which the Secretary has entered into a cooperative agreement, and

(B) is interested in a career with the Bureau of Indian Affairs, an Indian tribe or a tribal enterprise in the management of Indian forest land.

(4) Financial need shall not be a requirement to receive assistance under the cooperative agreement program that is to be maintained under this subsection.

(5) A recipient of assistance under the cooperative education program that is to be maintained under this subsection shall be required to enter into an obligated service agreement to serve as a professional forester or other forestry-related professional with the Bureau of Indian Affairs, an Indian tribe, or a tribal forest-related enterprise for one year for each year for which the Secretary pays the recipient's educational costs

pursuant to paragraph (3).

(c) Scholarship program

(1) The Secretary is authorized to grant forestry scholarships to Indians and Alaska Natives enrolled in accredited programs for post-secondary and graduate forestry and forestry-related programs of study as full-time students.

(2) A recipient of a scholarship under paragraph (1) shall be required to enter into an obligated service agreement with the Secretary in which the recipient agrees to accept employment for one year for each year the recipient received a scholarship, following completion of the recipient's forestry or forestry-related course of study, with

- (A) the Bureau of Indian Affairs;
- (B) a forestry program conducted under a contract, grant, or cooperative agreement entered into under the Indian Self-Determination Act (25 U.S.C. 450f et seq.);
- (C) an Indian enterprise engaged in a forestry or forestry-related business; or
- (D) an Indian tribe's forestry-related program.

(3) The Secretary shall not deny scholarship assistance under this subsection solely on the basis of an applicant's scholastic achievement if the applicant has been admitted to and remains in good standing in an accredited postsecondary or graduate institution.

(d) Forestry education outreach

The Secretary shall conduct, through the Bureau of Indian Affairs, and in consultation with other appropriate local, State and Federal agencies, and in consultation and coordination with Indian tribes, a forestry education outreach program for Indian and Alaska Native youth to explain and stimulate interest in all aspects of Indian forest land management and careers in forestry.

(e) Adequacy of programs

The Secretary shall administer the programs described in this section until a sufficient number of Indians and Alaska Natives are trained to ensure that there is an adequate number of qualified, professional Indian foresters to manage the Bureau of Indian Affairs forestry programs and forestry programs maintained by or for Indian tribes. (25 U.S.C. 3113)

**Postgraduation recruitment, education and training programs**

**Sec. 315** (a) Postgraduation recruitment

The Secretary shall establish and maintain a program to attract Indian and Alaska Native professional foresters and forester technicians who have already graduated from their course of postsecondary or graduate education for employment in either the Bureau of Indian Affairs forestry programs or, subject to the approval of the tribe, in tribal forestry programs. According to such regulations as the Secretary may prescribe, such program shall provide for the employment of Indian and Alaska Native professional foresters or forestry technicians in exchange for the Secretary's assumption

of the employee's outstanding student loans. The period of employment shall be determined by the amount of the loan that is assumed.

(b) Postgraduate intergovernmental internships

For the purposes of training, skill development and orientation of Indian, Alaska native,<sup>4</sup> and Federal forestry personnel, and the enhancement of tribal and Bureau of Indian Affairs forestry programs, the Secretary shall establish and actively conduct a program for the cooperative internship of Federal, Indian, and Alaska Native forestry personnel. Such program shall -

(1) for agencies within the Department of the Interior -

(A) provide for the internship of Bureau of Indian Affairs, Alaska Native, and Indian forestry employees in the forestry-related programs of other agencies of the Department of the Interior, and

(B) provide for the internship of forestry personnel from other Department of the Interior agencies within the Bureau of Indian Affairs and, with the consent of the tribe, within tribal forestry programs;

(2) for agencies not within the Department of the Interior, provide, pursuant to an interagency agreement, internships within the Bureau of Indian Affairs and, with the consent of the tribe, within a tribal forestry program of other forestry personnel of such agencies who are above their sixth year of Federal

service;

(3) provide for the continuation of salary and benefits for participating Federal employees by their originating agency;

(4) provide for salaries and benefits of participating Indian and Alaska Native forestry employees by the host agency; and

(5) provide for a bonus pay incentive at the conclusion of the internship for any participant.

(c) Continuing education and training

The Secretary shall maintain a program within the Division of Forestry of the Bureau of Indian Affairs for the ongoing education and training of Bureau of Indian Affairs, Alaska Native, and Indian forestry personnel. Such program shall provide for -

(1) orientation training for Bureau of Indian Affairs forestry personnel in tribal-Federal relations and responsibilities;

(2) continuing technical forestry education for Bureau of Indian Affairs, Alaska Native, and tribal forestry personnel; and

(3) developmental training of Indian and Alaska Native personnel in forest land based enterprises and marketing. (25 U.S.C. 3114)

<sup>4</sup> So in original. Probably should be capitalized.

**Cooperative agreement between Department of the Interior and Indian tribes**

**Sec. 316 (a) Cooperative agreements**

(1) To facilitate the administration of the programs and activities of the Department of the Interior, the Secretary is authorized to negotiate and enter into cooperative agreements with Indian tribes to -

(A) engage in cooperative manpower and job training and development programs,

(B) to develop and publish cooperative environmental education and natural resource planning materials, and

(C) to perform land and facility improvements, including forestry and other natural resources protection, fire protection, reforestation, timber stand improvement, debris removal, and other activities related to land and natural resource management. The Secretary may enter into such agreements when the Secretary determines the public interest will be benefited.

(2) In such cooperative agreements, the Secretary is authorized to advance or reimburse funds to contractors from any appropriated funds available for similar kinds of work or by furnishing or sharing materials, supplies, facilities or equipment without regard to the provisions of section 3324, title 31, relating to the advance of public moneys.

**(b) Supervision**

In any agreement authorized by this section, Indian tribes and their employees may perform cooperative work under the supervision of the Department of the Interior in emergencies or otherwise as

mutually agreed to, but shall not be deemed to be Federal employees other than for purposes of section <sup>5</sup> 2671 through 2680 of title 28 and section <sup>6</sup> 8101 through 8193 of title 5.

**(c) Savings provision**

Nothing in this chapter shall be construed to limit the authority of the Secretary to enter into cooperative agreements otherwise authorized by law. (25 U.S.C. 3115)

<sup>5</sup> and <sup>6</sup> So in original. Probably should be “sections”.

**Obligated service; breach of contract****Sec. 317 (a) Obligated service**

Where an individual enters into an agreement for obligated service in return for financial assistance under any provision of this chapter, the Secretary shall adopt such regulations as are necessary to provide for the offer of employment to the recipient of such assistance as required by such provision. Where an offer of employment is not reasonably made, the regulations shall provide that such service shall no longer be required.

**(b) Breach of contract; repayment**

Where an individual fails to accept a reasonable offer of employment in fulfillment of such obligated service or unreasonably terminates or fails to perform the duties of such employment, the Secretary shall require a repayment of the financial assistance provided, prorated for the amount of time of obligated service performed, together with interest on such amount which would

be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States. (25 U.S.C. 3116)

U.S.C. 3120)

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### **Authorization of appropriations**

**Sec. 318** There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this chapter. (25 U.S.C. 3117)

### **Regulations**

**Sec. 319** Except as otherwise provided by this chapter, the Secretary is directed to promulgate final regulations for the implementation of the <sup>7</sup> chapter within eighteen months from November 28, 1990. All regulations promulgated pursuant to this chapter shall be developed by the Secretary with the participation of the affected Indian tribes. (25 U.S.C. 3118)

<sup>7</sup> So in original. Probably should be “this”.

### **Severability**

**Sec. 320** If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision or circumstance and the remainder of this chapter shall not be affected thereby. (25 U.S.C. 3119)

### **Trust responsibility**

**Sec. 321** Nothing in this chapter shall be construed to diminish or expand the trust responsibility of the United States toward Indian forest lands, or any legal obligation or remedy resulting therefrom. (25

## Department of the Interior and Related Agencies Appropriations Act of 1993, Forest Service Decisionmaking and Appeals Reform

Oct. 5, 1992 (Pub. L. 102-381, 106 Stat. 1419; 16 U.S.C. 1612 note)

### Title III

**Sec. 322** (a) In General. - In accordance with this section, the Secretary of Agriculture, acting through the Chief of the Forest Service, shall establish a notice and comment process for proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans developed under the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1601 (1600) et seq.) and shall modify the procedure for appeals of decisions concerning such projects.

(b) Notice and Comment. -

(1) Notice. - Prior to proposing an action referred to in subsection (a), the Secretary shall give notice of the proposed action, and the availability of the action for public comment by -

(A) promptly mailing notice about the proposed action to any person who has requested it in writing, and to persons who are known to have participated in the decisionmaking process; and,

(B)(i) in the case of an action taken by the Chief of the Forest Service, publishing notice of action in the Federal Register; or

(ii) in the case of any other action referred to in subsection (a), publishing notice of the action in a newspaper of general circulation that has previously been identified in the Federal Register as the newspaper in which notice under this paragraph may be published.

(2) Comment. - The Secretary shall accept comments on the proposed action within 30 days after publication of the notice in accordance with paragraph (1).

(c) Right to Appeal. - Not later than 45 days after the date of issuance of a decision of the Forest Service concerning actions referred to in subsection (a), a person who was involved in the public comment process under subsection (b) through submission of written or oral comments or by otherwise notifying the Forest Service of their interest in the proposed action may file an appeal.

(d) Disposition of an Appeal. -

(1) Informal disposition. -

(A) In general. - Subject to subparagraph (B), a designated employee of the Forest Service shall offer to meet with each individual who files an appeal in accordance with subsection

(c) and attempt to dispose of the appeal.

(B) Time and location of the meeting.

- Each meeting in accordance with subparagraph (A) shall take place -

(i) not later than 15 days after the closing date for filing an appeal; and

(ii) at a location designated by the Chief of the Forest Service that is in the vicinity of the lands affected by the decision.

(2) Formal review. - If the appeal is not disposed of in accordance with paragraph (1), an appeals review officer designated by the Chief of the Forest Service shall review the appeal and recommend in writing, to the official responsible for deciding the appeal, the appropriate disposition of the appeal. The official responsible for deciding the appeal shall then decide the appeal. The appeals review officer shall be a line officer at least at the level of the agency official who made the initial decision on the project or activity that is under appeal, who has not participated in the initial decision and will not be responsible for implementation of the initial decision after the appeal is decided.

(3) Time for disposition. - Disposition of appeals under this subsection shall be completed not later than 30 days after the closing date for filing of an appeal, provided that the Forest Service may extend the closing date by an additional 15 days.

(4) If the Secretary fails to decide the

appeal within the 45-day period, the decision on which the appeal is based shall be deemed to be a final agency action for the purpose of chapter 7 of title 5, United States Code.

(e) Stay. - Unless the Chief of the Forest Service determines that an emergency situation exists with respect to a decision of the Forest Service, implementation of the decision shall be stayed during the period beginning on the date of the decision -

(1) for 45 days, if an appeal is not filed, or

(2) for an additional 15 days after the date of the disposition of an appeal under this section, if the agency action is deemed final under subsection (d)(4). (16 U.S.C. 1612 note)

## Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Stewardship End Result Contracting Projects

October 21, 1998 (Pub. L. 105–277, 115 Stat. 471; 16 U.S.C. 2104 note)

### Stewardship End Result Contracting Projects

#### Sec. 347 (Endnote 1)

(a) In General.—Until September 30, 2013, the Forest Service and the Bureau of Land Management, via agreement or contract as appropriate, may enter into stewardship contracting projects with private persons or other public or private entities to perform services to achieve land management goals for the national forests and the public lands that meet local and rural community needs.

(b) Land Management Goals.—The land management goals of a project under subsection (a) may include, among other things—

- (1) road and trail maintenance or obliteration to restore or maintain water quality;
- (2) soil productivity, habitat for wildlife and fisheries, or other resource values;
- (3) setting of prescribed fires to improve the composition, structure, condition, and health of stands or to improve wildlife habitat;
- (4) removing vegetation or other activities to promote healthy forest stands, reduce fire hazards, or achieve other land management objectives;

(5) watershed restoration and maintenance;

(6) restoration and maintenance of wildlife and fish habitat; and

(7) control of noxious and exotic weeds and reestablishing native plant species.

(c) Agreements or Contracts.—

(1) Procurement Procedure.—A source for performance of an agreement or contract under subsection (a) shall be selected on a best-value basis, including consideration of source under other public and private agreements or contracts.

(2) Term.—A multiyear contract may be entered into under subsection (a) in accordance with section 304B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254c), except that the period of the contract may exceed 5 years but may not exceed 10 years.

(3) Offsets.—

(A) In General.—In connection with agreement or contracts under subsection (a), the Forest Service and the Bureau of Land Management may apply the value of timber or other forest products removed as an offset against the cost of services received.

(B) Methods of Appraisal.—The value of timber or other forest products used as offsets under subparagraph (A)—

(i) shall be determined using appropriate methods of appraisal commensurate with the quantity of products to be removed;

(ii) may be determined using a unit of measure appropriate to the agreement or contracts; and

(iii) may include valuing products on a per-acre basis.

(4) Relation to Other Laws.—The Forest Service may enter into agreement or contracts under subsection (a), notwithstanding subsections (d) and (g) of section 14 of the National Forest Management Act of 1976 (16 U.S.C. 472a).

(5) Contracting Officer.—Notwithstanding any other provision of law, the Secretary of Agriculture or the Secretary of the Interior may determine the appropriate contracting officer to enter into and administer an agreement or contract under subsection (a).

(d) Receipts.—

(1) In General.—The Forest Service and the Bureau of Land Management may collect monies from an agreement or contract under subsection (a) so long as such collection is a secondary objective of negotiating contracts that will best achieve the purposes of this section.

(2) Use.—Monies from an agreement or contract under subsection (a) may be retained by the Forest Service and the Bureau of Land Management and shall be available for expenditure without further appropriation at the project site from which the monies are collected or at another project site.

(3) Relation to Other Laws.—The value of services received by the Forest Service or the Bureau of Land Management under a stewardship contract project conducted under this section, and any payments made or resources provided by the contractor or the Forest Service or the Bureau of Land Management under such a project, shall not be considered to be monies received from the National Forest System or the public lands under any provision of law. The Act of June 9, 1930 (16 U.S.C. 576 et seq.; commonly known as the Knutson- Vandenberg Act), shall not apply to stewardship contracts entered into under this section.

(e) Costs of Removal.—The Forest Service may collect deposits from contractors covering the costs of removal of timber or other forest products pursuant to the Act of August 11, 1916 (39 Stat. 462, chapter 313; 16 U.S.C. 490); and the next to the last paragraph under the heading “Forest Service.” under the heading “Department of Agriculture” in the Act of June 30, 1914 (38 Stat. 430, chapter 131; 16 U.S.C. 498); notwithstanding the fact that the timber purchasers did not harvest the timber.

(f) Performance and Payment Guarantees.—

(1) In General.—The Forest Service and the Bureau of Land Management may require performance and payment bonds, in accordance with sections 103–2 and 103–2 of part 28 of the Federal Acquisition Regulation (48 C.F.R. 28.103–2, 28.103–3), in an amount that the contracting officer considers sufficient to protect the Government’s investment in receipts generated by the contractor from the estimated value of the forest products to be removed under contract under subsection (a).

(2) Excess Offset Value.—If the offset value of the forest products exceeds the value of the resource improvement treatments, the Forest Service and the Bureau of Land Management may—

(A) collect any residual receipts pursuant to the Act of June 9, 1930 (46 Stat. 527, chapter 416; 16 U.S.C. 576b); and

(B) apply the excess to other authorized stewardship projects.

(g) Monitoring, Evaluation and Reporting.—The Forest Service and the Bureau of Land Management shall establish a multiparty monitoring and evaluation process that accesses the stewardship contracting projects project conducted under this section. Besides the Forest Service and the Bureau of Land Management, participants in this process may include any cooperating governmental agencies, including tribal governments, and any interested groups or individuals.

The Forest Service and the Bureau of Land Management shall report annually to the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate on—

(1) the status of development, execution, and administration of agreements or contracts under subsection (a);

(2) the specific accomplishments that have resulted; and

(3) the role of local communities in development of agreements or contract plans. (16 U.S.C. 2104)

**(Endnote 1)** Section 338 of the Department of the Interior and Related Agencies Appropriations Act, 2001 (Public Law 106–291; 114 Stat. 998; 16 U.S.C. 2104 note), provides as follows:

Sec. 338 The authority to enter into stewardship and end result contracts provided to the Forest Service in accordance with section 347 of title III of section 101(e) of division A of Public Law 105–825 is hereby expanded to authorize the Forest Service to enter into an additional 28 contracts subject to the same terms and conditions as provided in that section: Provided, That of the additional contracts authorized by this section at least 9 shall be allocated to Region 1 and at least 3 to Region 6.

## Healthy Forests Restoration Act of 2003

December 3, 2003 (Pub. L. 108-148, 117 Stat. 1887)

The Healthy Forest Restoration Act was enacted just prior to the completion of this edition. The language you see below is taken from the Act because it has not yet been incorporated into the *Code*.

To improve the capacity of the Secretary of Agriculture and the Secretary of the Interior to conduct hazardous fuels reduction projects on National Forest System lands and Bureau of Land Management lands aimed at protecting communities, watersheds, and certain other at-risk lands from catastrophic wildfire, to enhance efforts to protect watersheds and address threats to forest and rangeland health, including catastrophic wildfire, across the landscape, and for other purposes. Dec. 3, 2003 - H.R. 1904

Be it enacted by the Senate and House of Representatives of the United States of America in Congress

### **Sec. 1** Short Title; Table of Contents.

(a) Short Title.—This (NOTE: 16 U.S.C. 6501 note.) Act may be cited as the “Healthy Forests Restoration Act of 2003”.

(b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Purposes.

Sec. 3. Definitions.

### **Title I—Hazardous Fuel Reduction on Federal Land**

Sec. 101. Definitions.

Sec. 102. Authorized hazardous fuel reduction projects.

Sec. 103. Prioritization.

Sec. 104. Environmental analysis.

Sec. 105. Special administrative review process.

Sec. 106. Judicial review in United States district courts.

Sec. 107. Effect of title.

Sec. 108. Authorization of appropriations.

### **Title II—Biomass**

Sec. 201. Improved biomass use research program.

Sec. 202. Rural revitalization through forestry.

Sec. 203. Biomass commercial utilization grant program.

### **Title III—Watershed Forestry Assistance**

Sec. 301. Findings and purposes.

Sec. 302. Watershed forestry assistance program.

Sec. 303. Tribal watershed forestry assistance.

#### **Title IV—Insect Infestations and Related Diseases**

Sec. 401. Findings and purpose.

Sec. 402. Definitions.

Sec. 403. Accelerated information gathering regarding forest-damaging insects.

Sec. 404. Applied silvicultural assessments.

Sec. 405. Relation to other laws.

Sec. 406. Authorization of appropriations.

#### **Title V—Healthy Forests Reserve Program**

Sec. 501. Establishment of healthy forests reserve program.

Sec. 502. Eligibility and enrollment of lands in program.

Sec. 503. Restoration plans.

Sec. 504. Financial assistance.

Sec. 505. Technical assistance.

Sec. 506. Protections and measures

Sec. 507. Involvement by other agencies and organizations.

Sec. 508. Authorization of appropriations.

#### **Title VI—Miscellaneous**

Sec. 601. Forest stands inventory and monitoring program to improve detection of and response to environmental threats.

**Sec. 2** (NOTE: 16 U.S.C. 6501.) Purposes. The purposes of this Act are—

(1) to reduce wildfire risk to communities, municipal water supplies, and other

at-risk Federal land through a collaborative process of planning, prioritizing, and implementing hazardous fuel reduction projects;

(2) to authorize grant programs to improve the commercial value of forest biomass (that otherwise contributes to the risk of catastrophic fire or insect or disease infestation) for producing electric energy, useful heat, transportation fuel, and petroleum-based product substitutes, and for other commercial purposes;

(3) to enhance efforts to protect watersheds and address threats to forest and rangeland health, including catastrophic wildfire, across the landscape;

(4) to promote systematic gathering of information to address the impact of insect and disease infestations and other damaging agents on forest and rangeland health;

(5) to improve the capacity to detect insect and disease infestations at an early stage, particularly with respect to hardwood forests; and

(6) to protect, restore, and enhance forest ecosystem components—

(A) to promote the recovery of threatened and endangered species;

(B) to improve biological diversity; and

(C) to enhance productivity and carbon sequestration.

**Sec. 3** (NOTE: 16 U.S.C. 6502.) Definitions. In this Act:

(1) Federal land.—The term “Federal land” means—

(A) land of the National Forest System (as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a))) administered by the Secretary of Agriculture, acting through the Chief of the Forest Service; and

(B) public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)), the surface of which is administered by the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

(2) Indian tribe.—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

## **Title I—Hazardous Fuel Reduction on Federal Land**

**Sec. 101** (NOTE: 16 U.S.C. 6511.)  
Definitions. In this title:

(1) At-risk community.—The term “at-risk community” means an area—

(A) that is comprised of—

(i) an interface community as defined in the notice entitled “Wildland Urban Interface Communities Within the Vicinity of Federal Lands That Are at High Risk From Wildfire” issued by the Secretary of Agriculture and the Secretary of the Interior in accordance with title IV

of the Department of the Interior and Related Agencies Appropriations Act, 2001 (114 Stat. 1009) (66 Fed. Reg. 753, January 4, 2001); or

(ii) a group of homes and other structures with basic infrastructure and services (such as utilities and collectively maintained transportation routes) within or adjacent to Federal land;

(B) in which conditions are conducive to a large-scale wildland fire disturbance event; and

(C) for which a significant threat to human life or property exists as a result of a wildland fire disturbance event.

(2) Authorized hazardous fuel reduction project.—The term “authorized hazardous fuel reduction project” means the measures and methods described in the definition of “appropriate tools” contained in the glossary of the Implementation Plan, on Federal land described in section 102(a) and conducted under sections 103 and 104.

(3) Community wildfire protection plan.—The term “community wildfire protection plan” means a plan for an at-risk community that—

(A) is developed within the context of the collaborative agreements and the guidance established by the Wildland Fire Leadership Council and agreed to by the applicable local government, local fire department, and State agency responsible for forest management, in consultation with interested

parties and the Federal land management agencies managing land in the vicinity of the at-risk community;

(B) identifies and prioritizes areas for hazardous fuel reduction treatments and recommends the types and methods of treatment on Federal and non-Federal land that will protect 1 or more at-risk communities and essential infrastructure; and

(C) recommends measures to reduce structural ignitability throughout the at-risk community.

(4) Condition class 2.—The term “condition class 2”, with respect to an area of Federal land, means the condition class description developed by the Forest Service Rocky Mountain Research Station in the general technical report entitled “Development of Coarse-Scale Spatial Data for Wildland Fire and Fuel Management” (RMRS-87), dated April 2000 (including any subsequent revision to the report), under which—

(A) fire regimes on the land have been moderately altered from historical ranges;

(B) there exists a moderate risk of losing key ecosystem components from fire;

(C) fire frequencies have increased or decreased from historical frequencies by 1 or more return intervals, resulting in moderate changes to—

(i) the size, frequency, intensity, or severity of fires; or

(ii) landscape patterns; and

(D) vegetation attributes have been moderately altered from the historical range of the attributes.

(5) Condition class 3.—The term “condition class 3”, with respect to an area of Federal land, means the condition class description developed by the Rocky Mountain Research Station in the general technical report referred to in paragraph (4) (including any subsequent revision to the report), under which—

(A) fire regimes on land have been significantly altered from historical ranges;

(B) there exists a high risk of losing key ecosystem components from fire;

(C) fire frequencies have departed from historical frequencies by multiple return intervals, resulting in dramatic changes to—

(i) the size, frequency, intensity, or severity of fires; or

(ii) landscape patterns; and

(D) vegetation attributes have been significantly altered from the historical range of the attributes.

(6) Day.—The term “day” means—

(A) a calendar day; or

(B) if a deadline imposed by this title would expire on a nonbusiness day, the end of the next business day.

(7) Decision document.—The term “decision document” means—

- (A) a decision notice (as that term is used in the Forest Service Handbook);
- (B) a decision record (as that term is used in the Bureau of Land Management Handbook); and
- (C) a record of decision (as that term is used in applicable regulations of the Council on Environmental Quality).
- (8) Fire regime i.—The term “fire regime I” means an area—
- (A) in which historically there have been low-severity fires with a frequency of 0 through 35 years; and
- (B) that is located primarily in low elevation forests of pine, oak, or pinyon juniper.
- (9) Fire regime ii.—The term “fire regime II” means an area—
- (A) in which historically there are stand replacement severity fires with a frequency of 0 through 35 years; and
- (B) that is located primarily in low- to mid-elevation rangeland, grassland, or shrubland.
- (10) Fire regime iii.—The term “fire regime III” means an area—
- (A) in which historically there are mixed severity fires with a frequency of 35 through 100 years; and
- (B) that is located primarily in forests of mixed conifer, dry Douglas fir, or wet Ponderosa pine.
- (11) Implementation plan.—The term “Implementation Plan” means the Implementation Plan for the Comprehensive Strategy for a Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment, dated May 2002, developed pursuant to the conference report to accompany the Department of the Interior and Related Agencies Appropriations Act, 2001 (House Report No. 106-64) (and subsequent revisions).
- (12) Municipal water supply system.—The term “municipal water supply system” means the reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, and other surface facilities and systems constructed or installed for the collection, impoundment, storage, transportation, or distribution of drinking water.
- (13) Resource management plan.—The term “resource management plan” means—
- (A) a land and resource management plan prepared for 1 or more units of land of the National Forest System described in section 3(1)(A) under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604); or
- (B) a land use plan prepared for 1 or more units of the public land described in section 3(1)(B) under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712).
- (14) Secretary.—The term “Secretary” means—
- (A) the Secretary of Agriculture, with respect to land of the National Forest

System described in section 3(1)(A);  
and

(B) the Secretary of the Interior, with respect to public lands described in section 3(1)(B).

(15) Threatened and endangered species habitat.—The term “threatened and endangered species habitat” means Federal land identified in—

(A) a determination that a species is an endangered species or a threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) a designation of critical habitat of the species under that Act; or

(C) a recovery plan prepared for the species under that Act.

(16) Wildland-urban interface.—The term “wildland-urban interface” means—

(A) an area within or adjacent to an at-risk community that is identified in recommendations to the Secretary in a community wildfire protection plan; or

(B) in the case of any area for which a community wildfire protection plan is not in effect—

(i) an area extending  $\frac{1}{2}$ -mile from the boundary of an at-risk community;

(ii) an area within  $1\frac{1}{2}$  miles of the boundary of an at-risk community, including any land that—

(I) has a sustained steep slope that creates the potential for wildfire

behavior endangering the at-risk community;

(II) has a geographic feature that aids in creating an effective fire break, such as a road or ridge top; or

(III) is in condition class 3, as documented by the Secretary in the project-specific environmental analysis; and

(iii) an area that is adjacent to an evacuation route for an at-risk community that the Secretary determines, in cooperation with the at-risk community, requires hazardous fuel reduction to provide safer evacuation from the at-risk community.

**Sec. 102.** (NOTE: 16 U.S.C. 6512.)  
Authorized Hazardous Fuel Reduction Projects.

(a) Authorized Projects.—As soon as practicable after the date of enactment of this Act, the Secretary shall implement authorized hazardous fuel reduction projects, consistent with the Implementation Plan, on—

(1) Federal land in wildland-urban interface areas;

(2) condition class 3 Federal land, in such proximity to a municipal water supply system or a stream feeding such a system within a municipal watershed that a significant risk exists that a fire disturbance event would have adverse effects on the water quality of the municipal water supply or the maintenance of the system, including a risk to

water quality posed by erosion following such a fire disturbance event;

(3) condition class 2 Federal land located within fire regime I, fire regime II, or fire regime III, in such proximity to a municipal water supply system or a stream feeding such a system within a municipal watershed that a significant risk exists that a fire disturbance event would have adverse effects on the water quality of the municipal water supply or the maintenance of the system, including a risk to water quality posed by erosion following such a fire disturbance event;

(4) Federal land on which windthrow or blowdown, ice storm damage, the existence of an epidemic of disease or insects, or the presence of such an epidemic on immediately adjacent land and the imminent risk it will spread, poses a significant threat to an ecosystem component, or forest or rangeland resource, on the Federal land or adjacent non-Federal land; and

(5) Federal land not covered by paragraphs (1) through (4) that contains threatened and endangered species habitat, if—

(A) natural fire regimes on that land are identified as being important for, or wildfire is identified as a threat to, an endangered species, a threatened species, or habitat of an endangered species or threatened species in a species recovery plan prepared under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533), or a notice published in the Federal Regis-

ter determining a species to be an endangered species or a threatened species or designating critical habitat;

(B) the authorized hazardous fuel reduction project will provide enhanced protection from catastrophic wildfire for the endangered species, threatened species, or habitat of the endangered species or threatened species; and

(C) the Secretary complies with any applicable guidelines specified in any management or recovery plan described in subparagraph (A).

(b) Relation to Agency Plans.—An authorized hazardous fuel reduction project shall be conducted consistent with the resource management plan and other relevant administrative policies or decisions applicable to the Federal land covered by the project.

(c) Acreage Limitation.—Not more than a total of 20,000,000 acres of Federal land may be treated under authorized hazardous fuel reduction projects.

(d) Exclusion of Certain Federal Land.—The Secretary may not conduct an authorized hazardous fuel reduction project that would occur on—

(1) a component of the National Wilderness Preservation System;

(2) Federal land on which the removal of vegetation is prohibited or restricted by Act of Congress or Presidential proclamation (including the applicable implementation plan); or

(3) a Wilderness Study Area.

## (e) Old Growth Stands.—

(1) Definitions.—In this subsection and subsection (f):

(A) Applicable period.—The term “applicable period” means—

- (i) the 2-year period beginning on the date of enactment of this Act; or
- (ii) in the case of a resource management plan that the Secretary is in the process of revising as of the date of enactment of this Act, the 3-year period beginning on the date of enactment of this Act.

(B) Covered project.—The term “covered project” means an authorized hazardous fuel reduction project carried out on land described in paragraph (1), (2), (3), or (5) of subsection (a).

(C) Management direction.—The term “management direction” means definitions, designations, standards, guidelines, goals, or objectives established for an old growth stand under a resource management plan developed in accordance with applicable law, including section 6(g)(3)(B) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(g)(3)(B)).

(D) Old growth stand.—The term “old growth stand” has the meaning given the term under management direction used pursuant to paragraphs (3) and (4), based on the structure and composition characteristic of the forest type, and in accordance with applicable law, including section

6(g)(3)(B) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(g)(3)(B)).

(2) Project requirements.—In carrying out a covered project, the Secretary shall fully maintain, or contribute toward the restoration of, the structure and composition of old growth stands according to the pre-fire suppression old growth conditions characteristic of the forest type, taking into account the contribution of the stand to landscape fire adaptation and watershed health, and retaining the large trees contributing to old growth structure.

(3) Newer management direction.—

(A) In general.—If the management direction for an old growth stand was established on or after December 15, 1993, the Secretary shall meet the requirements of paragraph (2) in carrying out a covered project by implementing the management direction.

(B) Amendments or revisions.—Any amendment or revision to management direction for which final administrative approval is granted after the date of enactment of this Act shall be consistent with paragraph (2) for the purpose of carrying out covered projects.

(4) Older management direction.—

(A) In general.—If the management direction for an old growth stand was established before December 15, 1993, the Secretary shall meet the

requirements of paragraph (2) in carrying out a covered project during the applicable period by implementing the management direction.

(B) Review required.—Subject to subparagraph (C), during the applicable period for management direction referred to in subparagraph (A), the Secretary shall—

(i) review the management direction for affected covered projects, taking into account any relevant scientific information made available since the adoption of the management direction; and

(ii) amend the management direction for affected covered projects to be consistent with paragraph (2), if necessary to reflect relevant scientific information the Secretary did not consider in formulating the management direction.

(C) Review not completed.—If the Secretary does not complete the review of the management direction in accordance with subparagraph (B) before the end of the applicable period, the Secretary shall not carry out any portion of affected covered projects in stands that are identified as old growth stands (based on substantial supporting evidence) by any person during scoping, within the period—

(i) beginning at the close of the applicable period for the management direction governing the affected covered projects; and

(ii) ending on the earlier of—

(I) the date the Secretary completes the action required by subparagraph (B) for the management direction applicable to the affected covered projects; or

(II) the date on which the acreage limitation specified in subsection (c) (as that limitation may be adjusted by a subsequent Act of Congress) is reached.

(5) Limitation to covered projects.—Nothing in this subsection requires the Secretary to revise or otherwise amend a resource management plan to make the project requirements of paragraph (2) apply to an activity other than a covered project

(f) Large Tree Retention.—

(1) In general.—Except in old growth stands where the management direction is consistent with subsection (e)(2), the Secretary shall carry out a covered project in a manner that—

(A) focuses largely on small diameter trees, thinning, strategic fuel breaks, and prescribed fire to modify fire behavior, as measured by the projected reduction of uncharacteristically severe wildfire effects for the forest type (such as adverse soil impacts, tree mortality or other impacts); and

(B) maximizes the retention of large trees, as appropriate for the forest type, to the extent that the trees promote fire-resilient stands.

(2) Wildfire risk.—Nothing in this subsection prevents achievement of the purposes described in section 2(1).

(g) Monitoring and Assessing Forest and Rangeland Health.—

(1) In general.—For each Forest Service administrative region and each Bureau of Land Management State Office, the Secretary shall—

(A) monitor the results of a representative sample of the projects authorized under this title for each management unit; and

(B) (NOTE: Deadline. Reports.) not later than 5 years after the date of enactment of this Act, and each 5 years thereafter, issue a report that includes—

(i) an evaluation of the progress towards project goals; and

(ii) recommendations for modifications to the projects and management treatments.

(2) Consistency of projects with recommendations.—An authorized hazardous fuel reduction project approved following the issuance of a monitoring report shall, to the maximum extent practicable, be consistent with any applicable recommendations in the report.

(3) Similar vegetation types.—The results of a monitoring report shall be made available for use (if appropriate) in an authorized hazardous fuels reduction project conducted in a similar vegetation type on land under the jurisdiction of the Secretary.

(4) Monitoring and assessments.—Monitoring and assessment shall include a description of the changes in condition

class, using the Fire Regime Condition Class Guidebook or successor guidance, specifically comparing end results to—

(A) pretreatment conditions;

(B) historical fire regimes; and

(C) any applicable watershed or landscape goals or objectives in the resource management plan or other relevant direction.

(5) Multiparty monitoring.—

(A) In general.—In an area where significant interest is expressed in multiparty monitoring, the Secretary shall establish a multiparty monitoring, evaluation, and accountability process in order to assess the positive or negative ecological and social effects of authorized hazardous fuel reduction projects and projects conducted pursuant to section 404.

(B) Diverse stakeholders.—The Secretary shall include diverse stakeholders (including interested citizens and Indian tribes) in the process required under subparagraph (A).

(C) Funding.—Funds to carry out this paragraph may be derived from operations funds for projects described in subparagraph (A).

(6) Collection of monitoring data.—The Secretary may collect monitoring data by entering into cooperative agreements or contracts with, or providing grants to, small or micro-businesses, cooperatives, nonprofit organizations, Youth Conservation Corps work crews, or

related State, local, and other non-Federal conservation corps.

(7) Tracking.—For each administrative unit, the Secretary shall track acres burned, by the degree of severity, by large wildfires (as defined by the Secretary).

(8) Monitoring and maintenance of treated areas.—The Secretary shall, to the maximum extent practicable, develop a process for monitoring the need for maintenance of treated areas, over time, in order to preserve the forest health benefits achieved.

**Sec. 103** (NOTE: 16 U.S.C. 6513.)  
Prioritization.

(a) In General.—In accordance with the Implementation Plan, the Secretary shall develop an annual program of work for Federal land that gives priority to authorized hazardous fuel reduction projects that provide for the protection of at-risk communities or watersheds or that implement community wildfire protection plans.

(b) Collaboration.—

(1) In general.—The Secretary shall consider recommendations under subsection (a) that are made by at-risk communities that have developed community wildfire protection plans.

(2) Exemption.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the planning process and recommendations concerning community wildfire protection plans.

(c) Administration.—

(1) In general.—Federal agency involvement in developing a community wildfire protection plan, or a recommendation made in a community wildfire protection plan, shall not be considered a Federal agency action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) Compliance.—In implementing authorized hazardous fuel reduction projects on Federal land, the Secretary shall, in accordance with section 104, comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(d) Funding Allocation.—

(1) Federal land.—

(A) In general.—Subject to subparagraph (B), the Secretary shall use not less than 50 percent of the funds allocated for authorized hazardous fuel reduction projects in the wildland-urban interface.

(B) Applicability and allocation.—The funding allocation in subparagraph (A) shall apply at the national level. The Secretary may allocate the proportion of funds differently than is required under subparagraph (A) within individual management units as appropriate, in particular to conduct authorized hazardous fuel reduction projects on land described in section 102 (a)(4).

(C) Wildland-urban interface.—In the case of an authorized hazardous fuel reduction project for which a decision

notice is issued during the 1-year period beginning on the date of enactment of this Act, the Secretary shall use existing definitions of the term “wildland-urban interface” rather than the definition of that term provided under section 101.

(2) Non-federal land.—

(A) In general.—In providing financial assistance under any provision of law for hazardous fuel reduction projects on non-Federal land, the Secretary shall consider recommendations made by at-risk communities that have developed community wildfire protection plans.

(B) Priority.—In allocating funding under this paragraph, the Secretary should, to the maximum extent practicable, give priority to communities that have adopted a community wildfire protection plan or have taken proactive measures to encourage willing property owners to reduce fire risk on private property.

**Sec. 104** (NOTE: 16 U.S.C. 6514.)  
Environmental Analysis.

(a) Authorized Hazardous Fuel Reduction Projects.—Except as otherwise provided in this title, the Secretary shall conduct authorized hazardous fuel reduction projects in accordance with—

- (1) the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.); and
- (2) other applicable laws.

(b) Environmental Assessment or Environmental Impact Statement.—The Secretary shall prepare an environmental assessment or an environmental impact statement pursuant to section 102 (2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332 (2)) for each authorized hazardous fuel reduction project.

(c) Consideration of Alternatives.—

(1) In general.—Except as provided in subsection (d), in the environmental assessment or environmental impact statement prepared under subsection (b), the Secretary shall study, develop, and describe—

- (A) the proposed agency action;
- (B) the alternative of no action; and
- (C) an additional action alternative, if the additional alternative—
  - (i) is proposed during scoping or the collaborative process under subsection (f); and
  - (ii) meets the purpose and need of the project, in accordance with regulations promulgated by the Council on Environmental Quality.

(2) Multiple additional alternatives.—If more than 1 additional alternative is proposed under paragraph (1)(C), the Secretary shall—

- (A) select which additional alternative to consider, which is a choice that is in the sole discretion of the Secretary; and
- (B) provide a written record describing the reasons for the selection.

(d) Alternative Analysis Process for Projects in Wildland-Urban Interface.—

(1) Proposed agency action and 1 action alternative.—For an authorized hazardous fuel reduction project that is proposed to be conducted in the wildland-urban interface, the Secretary is not required to study, develop, or describe more than the proposed agency action and 1 action alternative in the environmental assessment or environmental impact statement prepared pursuant to section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332 (2)).

(2) Proposed agency action.—Notwithstanding paragraph (1), but subject to paragraph

(3), if an authorized hazardous fuel reduction project proposed to be conducted in the wildland-urban interface is located no further than 1½ miles from the boundary of an at-risk community, the Secretary is not required to study, develop, or describe any alternative to the proposed agency action in the environmental assessment or environmental impact statement prepared pursuant to section 102 (2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332 (2)).

(3) Proposed agency action and community wildfire protection plan alternative.—In the case of an authorized hazardous fuel reduction project described in paragraph (2), if the at-risk community has adopted a community wildfire protection plan and the proposed agency action does not imple-

ment the recommendations in the plan regarding the general location and basic method of treatments, the Secretary shall evaluate the recommendations in the plan as an alternative to the proposed agency action in the environmental assessment or environmental impact statement prepared pursuant to section 102 (2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332 (2)).

(e) Public Notice and Meeting.—

(1) Public notice.—The Secretary shall provide notice of each authorized hazardous fuel reduction project in accordance with applicable regulations and administrative guidelines.

(2) Public meeting.—During the preparation stage of each authorized hazardous fuel reduction project, the Secretary shall—

(A) conduct a public meeting at an appropriate location proximate to the administrative unit of the Federal land on which the authorized hazardous fuel reduction project will be conducted; and

(B) provide advance notice of the location, date, and time of the meeting.

(f) Public Collaboration.—In order to encourage meaningful public participation during preparation of authorized hazardous fuel reduction projects, the Secretary shall facilitate collaboration among State and local governments and Indian tribes, and participation of interested persons, during the preparation of each authorized

fuel reduction project in a manner consistent with the Implementation Plan.

(g) Environmental Analysis and Public Comment.—In accordance with section 102 (2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)) and the applicable regulations and administrative guidelines, the Secretary shall provide an opportunity for public comment during the preparation of any environmental assessment or environmental impact statement for an authorized hazardous fuel reduction project.

(h) Decision Document.—The Secretary shall sign a decision document for authorized hazardous fuel reduction projects and provide notice of the final agency actions.

**Sec. 105** (NOTE: 16 U.S.C. 6515.)  
Special Administrative Review Process.

(a) Interim Final Regulations.—

(1) In general.—Not (NOTE: Deadline.) later than 30 days after the date of the enactment of this Act, the Secretary of Agriculture shall promulgate interim final regulations to establish a predecisional administrative review process for the period described in paragraph (2) that will serve as the sole means by which a person can seek administrative review regarding an authorized hazardous fuel reduction project on Forest Service land.

(2) Period.—The predecisional administrative review process required under paragraph (1) shall occur during the period—

(A) beginning after the completion of the environmental assessment or environmental impact statement; and

(B) ending not later than the date of the issuance of the final decision approving the project.

(3) Eligibility.—To be eligible to participate in the administrative review process for an authorized hazardous fuel reduction project under paragraph (1), a person shall submit to the Secretary, during scoping or the public comment period for the draft environmental analysis for the project, specific written comments that relate to the proposed action.

(4) Effective date.—The interim final regulations promulgated under paragraph (1) shall take effect on the date of promulgation of the regulations.

(b) Final Regulations.—The Secretary shall promulgate final regulations to establish the process described in subsection (a) (1) after the interim final regulations have been published and reasonable time has been provided for public comment.

(c) Administrative Review.—

(1) In general.—A person may bring a civil action challenging an authorized hazardous fuel reduction project in a Federal district court only if the person has challenged the authorized hazardous fuel reduction project by exhausting—

(A) the administrative review process established by the Secretary of Agriculture under this section; or

(B) the administrative hearings and appeals procedures established by the Department of the Interior.

(2) Issues.—An issue may be considered in the judicial review of an action under section 106 only if the issue was raised in an administrative review process described in paragraph (1).

(3) Exception.—

(A) In general.—An exception to the requirement of exhausting the administrative review process before seeking judicial review shall be available if a Federal court finds that the futility or inadequacy exception applies to a specific plaintiff or claim.

(B) Information.—If an agency fails or is unable to make information timely available during the administrative review process, a court should evaluate whether the administrative review process was inadequate for claims or issues to which the information is material.

**Sec. 106** (NOTE: 16 U.S.C. 6516.)  
Judicial Review in United States District Courts.

(a) Venue.—Notwithstanding section 1391 of title 28, United States Code, or other applicable law, an authorized hazardous fuels reduction project conducted under this title shall be subject to judicial review only in the United States district court for a district in which the Federal land to be treated under the authorized hazardous fuels reduction project is located.

(b) Expeditious Completion of Judicial Review.—In the judicial review of an action challenging an authorized hazardous fuel reduction project under subsection (a), Congress encourages a court of competent jurisdiction to expedite, to the maximum extent practicable, the proceedings in the action with the goal of rendering a final determination on jurisdiction, and (if jurisdiction exists) a final determination on the merits, as soon as practicable after the date on which a complaint or appeal is filed to initiate the action.

(c) Injunctions.—

(1) In general.—Subject to paragraph (2), the length of any preliminary injunctive relief and stays pending appeal covering an authorized hazardous fuel reduction project carried out under this title shall not exceed 60 days.

(2) Renewal.—

(A) In general.—A court of competent jurisdiction may issue 1 or more renewals of any preliminary injunction, or stay pending appeal, granted under paragraph (1).

(B) Updates.—In each renewal of an injunction in an action, the parties to the action shall present the court with updated information on the status of the authorized hazardous fuel reduction project.

(3) Balancing of short- and long-term effects.—As part of its weighing the equities while considering any request for an injunction that applies to an agency action under an authorized

hazardous fuel reduction project, the court reviewing the project shall balance the impact to the ecosystem likely affected by the project of—

(A) the short- and long-term effects of undertaking the agency action; against

(B) the short- and long-term effects of not undertaking the agency action.

**Sec. 107** (NOTE: 16 U.S.C. 6517.)

Effect of Title.

(a) Other Authority.—Nothing in this title affects, or otherwise biases, the use by the Secretary of other statutory or administrative authority (including categorical exclusions adopted to implement the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)) to conduct a hazardous fuel reduction project on Federal land (including Federal land identified in section 102 (d)) that is not conducted using the process authorized by section 104.

(b) National Forest System.—For projects and activities of the National Forest System other than authorized hazardous fuel reduction projects, nothing in this title affects, or otherwise biases, the notice, comment, and appeal procedures for projects and activities of the National Forest System contained in part 215 of title 36, Code of Federal Regulations, or the consideration or disposition of any legal action brought with respect to the procedures.

**Sec. 108** (NOTE: 16 U.S.C. 6518.)

Authorization of Appropriations. There is authorized to be appropriated

\$760,000,000 for each fiscal year to carry out—

(1) activities authorized by this title; and

(2) other hazardous fuel reduction activities of the Secretary, including making grants to States, local governments, Indian tribes, and other eligible recipients for activities authorized by law.

**Title II—Biomass**

**Sec. 201** Improved Biomass Use Research Program.

(a) Uses of Grants, Contracts, and Assistance.—Section 307 (d) of the Biomass Research and Development Act of 2000 (7 U.S.C. 7624 note; Public Law 106-224) (NOTE: 7 U.S.C. 8101 note.) is amended—

(1) in paragraph (3), by striking “or” at the end;

(2) in paragraph (4), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following: “(5) research to integrate silviculture, harvesting, product development, processing information, and economic evaluation to provide the science, technology, and tools to forest managers and community developers for use in evaluating forest treatment and production alternatives, including— “

(A) to develop tools that would enable land managers, locally or in a several-State region, to estimate— “

(i) the cost to deliver varying quantities of wood to a particular location; and “

(ii) the amount that could be paid for stumpage if delivered wood was used for a specific mix of products; “

(B) to conduct research focused on developing appropriate thinning systems and equipment designs that are— “

(i) capable of being used on land without significant adverse effects on the land; “

(ii) capable of handling large and varied landscapes; “

(iii) adaptable to handling a wide variety of tree sizes; “

(iv) inexpensive; and “

(v) adaptable to various terrains; and “

(C) to develop, test, and employ in the training of forestry managers and community developers curricula materials and training programs on matters described in subparagraphs (A) and (B).”.

(b) Funding.—Section 310 (b) of the Biomass Research and Development Act of 2000 (7 U.S.C. 7624 note; Public Law 106-224) (NOTE: 7 U.S.C. 8101 note.) is amended by striking “\$49,000,000” and inserting “\$54,000,000”.

**Sec. 202** Rural Revitalization Through Forestry. Section 2371 of the Food, Agriculture, Conservation, and Trade Act

of 1990 (7 U.S.C. 6601) is amended by adding at the end the following: “

(d) Rural Revitalization Technologies.— “

(1) In general.—The Secretary of Agriculture, acting through the Chief of the Forest Service, in consultation with the State and Private Forestry Technology Marketing Unit at the Forest Products Laboratory, and in collaboration with eligible institutions, may carry out a program— “

(A) to accelerate adoption of technologies using biomass and small-diameter materials; “

(B) to create community-based enterprises through marketing activities and demonstration projects; and “

(C) to establish small-scale business enterprises to make use of biomass and small-diameter materials. “

(2) Authorization of appropriations.— There is authorized to be appropriated to carry out this subsection \$5,000,000 for each of fiscal years 2004 through 2008.”.

**Sec. 203** (NOTE: 16 U.S.C. 6531.) Biomass Commercial Utilization Grant Program.

(a) In General.—In addition to any other authority of the Secretary of Agriculture to make grants to a person that owns or operates a facility that uses biomass as a raw material to produce electric energy, sensible heat, transportation fuel, or substitutes for petroleum-based products, the Secretary may make grants to a person that owns or operates a facility

that uses biomass for wood-based products or other commercial purposes to offset the costs incurred to purchase biomass.

(b) Authorization of Appropriations.— There is authorized to be appropriated to carry out this section \$5,000,000 for each of fiscal years 2004 through 2008.

### **Title III—Watershed Forestry Assistance**

**Sec. 301** (NOTE: 16 U.S.C. 6541.)  
Findings and Purposes.

(a) Findings.—Congress finds that—

- (1) there has been a dramatic shift in public attitudes and perceptions about forest management, particularly in the understanding and practice of sustainable forest management;
- (2) it is commonly recognized that the proper stewardship of forest land is essential to sustaining and restoring the health of watersheds;
- (3) forests can provide essential ecological services in filtering pollutants, buffering important rivers and estuaries, and minimizing flooding, which makes forest restoration worthy of special focus; and
- (4) strengthened education, technical assistance, and financial assistance for nonindustrial private forest landowners and communities, relating to the protection of watershed health, is needed to realize the expectations of the general public.

(b) Purposes.—The purposes of this title are—

- (1) to improve landowner and public understanding of the connection between forest management and watershed health;
- (2) to encourage landowners to maintain tree cover on property and to use tree plantings and vegetative treatments as creative solutions to watershed problems associated with varying land uses;
- (3) to enhance and complement forest management and buffer use for watersheds, with an emphasis on community watersheds;
- (4) to establish new partnerships and collaborative watershed approaches to forest management, stewardship, and conservation;
- (5) to provide technical and financial assistance to States to deliver a coordinated program that enhances State forestry best-management practices programs, and conserves and improves forested land and potentially forested land, through technical, financial, and educational assistance to qualifying individuals and entities; and
- (6) to maximize the proper management and conservation of wetland forests and to assist in the restoration of those forests.

**Sec. 302** Watershed Forestry Assistance Program. The Cooperative Forestry Assistance Act of 1978 is amended by inserting after section 5 (16 U.S.C. 2103a) the following: “Sec. 6. (NOTE: 16

U.S.C. 2103b.) Watershed Forestry Assistance Program. “

(a) Definition of Nonindustrial Private Forest Land.—In this section, the term ‘nonindustrial private forest land’ means rural land, as determined by the Secretary, that— “

(1) has existing tree cover or that is suitable for growing trees; and “

(2) is owned by any nonindustrial private individual, group, association, corporation, or other private legal entity, that has definitive decisionmaking authority over the land. “

(b) General Authority and Purpose.—The Secretary, acting through the Chief of the Forest Service and (where appropriate) through the Cooperative State Research, Education, and Extension Service, may provide technical, financial, and related assistance to State foresters, equivalent State officials, or Cooperative Extension officials at land grant colleges and universities and 1890 institutions for the purpose of expanding State forest stewardship capacities and activities through State forestry best-management practices and other means at the State level to address watershed issues on non-Federal forested land and potentially forested land. “

(c) Technical Assistance To Protect Water Quality.— “

(1) In general.—The Secretary, in cooperation with State foresters or equivalent State officials, shall engage interested members of the public, including nonprofit organizations and

local watershed councils, to develop a program of technical assistance to protect water quality described in paragraph (2). “

(2) Purpose of program.—The program under this subsection shall be designed— “

(A) to build and strengthen watershed partnerships that focus on forested landscapes at the State, regional, and local levels; “

(B) to provide State forestry best-management practices and water quality technical assistance directly to owners of nonindustrial private forest land

(C) to provide technical guidance to land managers and policymakers for water quality protection through forest management; “

(D) to complement State and local efforts to protect water quality and provide enhanced opportunities for consultation and cooperation among Federal and State agencies charged with responsibility for water and watershed management; and “

(E) to provide enhanced forest resource data and support for improved implementation and monitoring of State forestry best-management practices. “

(3) Implementation.—In the case of a participating State, the program of technical assistance shall be implemented by State foresters or equivalent State officials. “

(d) Watershed Forestry Cost-Share Program.— “

(1) In general.—The Secretary shall establish a watershed forestry cost-share program— “

(A) which shall be— “

- (i) administered by the Forest Service; and “
- (ii) implemented by State foresters or equivalent State officials in participating States; and “

(B) under which funds or other support provided to participating States shall be made available for State forestry best-management practices programs and watershed forestry projects. “

(2) Watershed forestry projects.—The State forester, an equivalent State official of a participating State, or a Cooperative Extension official at a land grant college or university or 1890 institution, in coordination with the State Forest Stewardship Coordinating Committee established under section 19 (b) (or an equivalent committee) for that State, shall make awards to communities, nonprofit groups, and owners of nonindustrial private forest land under the program for watershed forestry projects described in paragraph (3). “

(3) Project elements and objectives.—A watershed forestry project shall accomplish critical forest stewardship, watershed protection, and restoration needs within a State by demonstrating the value of trees and forests to water-

shed health and condition through—

“(A) the use of trees as solutions to water quality problems in urban and rural areas;

“(B) community-based planning, involvement, and action through State, local, and nonprofit partnerships;

“(C) application of and dissemination of monitoring information on forestry best-management practices relating to watershed forestry;

“(D) watershed-scale forest management activities and conservation planning; and

“(E)(i) the restoration of wetland (as defined by the States) and stream-side forests; and “

(ii) the establishment of riparian vegetative buffers. “

(4) Cost-sharing.— “

(A) Federal share.— “

(i) Funds under this subsection.—Funds provided under this subsection for a watershed forestry project may not exceed 75 percent of the cost of the project.

(ii) Other federal funds.—The percentage of the cost of a project described in clause (i) that is not covered by funds made available under this subsection may be paid using other Federal funding sources, except that the total Federal share of the costs of the project may not exceed 90 percent. “

(B) Form.—The non-Federal share of the costs of a project may be provided

in the form of cash, services, or other in-kind contributions. “

(5) **Prioritization.**—The State Forest Stewardship Coordinating Committee for a State, or equivalent State committee, shall prioritize watersheds in that State to target watershed forestry projects funded under this subsection. “

(6) **Watershed forester.**—Financial and technical assistance shall be made available to the State Forester or equivalent State official to create a State watershed or best- management practice forester position to— “

- (A) lead statewide programs; and “
- (B) coordinate watershed-level projects. “

(e) **Distribution.**— “

(1) **In general.**—Of the funds made available for a fiscal year under subsection

(g), the Secretary shall use— “

- (A) at least 75 percent of the funds to carry out the cost-share program under subsection (d); and “
- (B) the remainder of the funds to deliver technical assistance, education, and planning, at the local level, through the State Forester or equivalent State official. “

(2) **Special considerations.**—Distribution of funds by the Secretary among States under paragraph (1) shall be made only after giving appropriate consideration to— “

(A) the acres of agricultural land, nonindustrial private forest land, and highly erodible land in each State; “

(B) the miles of riparian buffer needed; “

(C) the miles of impaired stream segments and other impaired water bodies where forestry practices can be used to restore or protect water resources; “

(D) the number of owners of nonindustrial private forest land in each State; and “

(E) water quality cost savings that can be achieved through forest watershed management. “

(f) **Willing Owners.**— “

(1) **In general.**—Participation of an owner of nonindustrial private forest land in the watershed forestry assistance program under this section is voluntary. “

(2) **Written consent.**—The watershed forestry assistance program shall not be carried out on nonindustrial private forest land without the written consent of the owner of, or entity having definitive decisionmaking over, the nonindustrial private forest land. “

(g) **Authorization of Appropriations.**—There is authorized to be appropriated to carry out this section \$15,000,000 for each of fiscal years 2004 through 2008.”.

**Sec. 303** (NOTE: 16 U.S.C. 6542.)  
Tribal Watershed Forestry Assistance.

(a) **In General.**—The Secretary of Agriculture (referred to in this section as

the “Secretary”), acting through the Chief of the Forest Service, shall provide technical, financial, and related assistance to Indian tribes for the purpose of expanding tribal stewardship capacities and activities through tribal forestry best-management practices and other means at the tribal level to address watershed issues on land under the jurisdiction of or administered by the Indian tribes.

(b) Technical Assistance To Protect Water Quality.—

(1) In general.—The Secretary, in cooperation with Indian tribes, shall develop a program to provide technical assistance to protect water quality, as described in paragraph (2).

(2) Purpose of program.—The program under this subsection shall be designed—

(A) to build and strengthen watershed partnerships that focus on forested landscapes at the State, regional, tribal, and local levels;

(B) to provide tribal forestry best-management practices and water quality technical assistance directly to Indian tribes;

(C) to provide technical guidance to tribal land managers and policy makers for water quality protection through forest management;

(D) to complement tribal efforts to protect water quality and provide enhanced opportunities for consultation and cooperation among Federal agencies and tribal entities charged

with responsibility for water and watershed management; and

(E) to provide enhanced forest resource data and support for improved implementation and monitoring of tribal forestry best-management practices.

(c) Watershed Forestry Program.—

(1) In general.—The Secretary shall establish a watershed forestry program in cooperation with Indian tribes.

(2) Programs and projects.—Funds or other support provided under the program shall be made available for tribal forestry best-management practices programs and watershed forestry projects.

(3) Annual awards.—The Secretary shall annually make awards to Indian tribes to carry out this subsection.

(4) Project elements and objectives.—A watershed forestry project shall accomplish critical forest stewardship, watershed protection, and restoration needs within land under the jurisdiction of or administered by an Indian tribe by demonstrating the value of trees and forests to watershed health and condition through—

(A) the use of trees as solutions to water quality problems;

(B) application of and dissemination of monitoring information on forestry best-management practices relating to watershed forestry;

(C) watershed-scale forest management activities and conservation planning;

(D) the restoration of wetland and stream-side forests and the establishment of riparian vegetative buffers; and

(E) tribal-based planning, involvement, and action through State, tribal, local, and nonprofit partnerships.

(5) **Prioritization.**—An Indian tribe that participates in the program under this subsection shall prioritize watersheds in land under the jurisdiction of or administered by the Indian tribe to target watershed forestry projects funded under this subsection.

(6) **Watershed forester.**—The Secretary may provide to Indian tribes under this section financial and technical assistance to establish a position of tribal forester to lead tribal programs and coordinate small watershed-level projects.

(d) **Distribution.**—The Secretary shall devote—

(1) at least 75 percent of the funds made available for a fiscal year under subsection (e) to the program under subsection (c); and

(2) the remainder of the funds to deliver technical assistance, education, and planning in the field to Indian tribes.

(e) **Authorization of Appropriations.**—There is authorized to be appropriated to carry out this section \$2,500,000 for each of fiscal years 2004 through 2008.

## **Title IV—Insect Infestations and Related Diseases**

**Sec. 401** (NOTE: 16 U.S.C. 6551.)  
Findings and Purpose.

(a) **Findings.**—Congress finds that—

(1) high levels of tree mortality resulting from insect infestation (including the interaction between insects and diseases) may result in—

(A) increased fire risk;

(B) loss of old trees and old growth;

(C) loss of threatened and endangered species;

(D) loss of species diversity;

(E) degraded watershed conditions;

(F) increased potential for damage from other agents of disturbance, including exotic, invasive species; and

(G) decreased timber values;

(2) (A) forest-damaging insects destroy hundreds of thousands of acres of trees each year;

(B) in the West, more than 21,000,000 acres are at high risk of forest-damaging insect infestation, and in the South, more than 57,000,000 acres are at risk across all land ownerships; and

(C) severe drought conditions in many areas of the South and West will increase the risk of forest-damaging insect infestations;

(3) the hemlock woolly adelgid is—

- (A) destroying streamside forests throughout the mid-Atlantic and Appalachian regions;
- (B) threatening water quality and sensitive aquatic species; and
- (C) posing a potential threat to valuable commercial timber land in northern New England;
- (4) (A) the emerald ash borer is a nonnative, invasive pest that has quickly become a major threat to hardwood forests because an emerald ash borer infestation is almost always fatal to affected trees; and
- (B) the emerald ash borer pest threatens to destroy more than 692,000,000 ash trees in forests in Michigan and Ohio alone, and between 5 and 10 percent of urban street trees in the Upper Midwest;
- (5) (A) epidemic populations of Southern pine beetles are ravaging forests in Alabama, Arkansas, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia; and
- (B) in 2001, Florida and Kentucky experienced 146 percent and 111 percent increases, respectively, in Southern pine beetle populations;
- (6) those epidemic outbreaks of Southern pine beetles have forced private landowners to harvest dead and dying trees, in rural areas and increasingly urbanized settings;
- (7) according to the Forest Service, recent outbreaks of the red oak borer in Arkansas and Missouri have been unprecedented, with more than 1,000,000 acres infested at population levels never seen before;
- (8) much of the damage from the red oak borer has taken place in national forests, and the Federal response has been inadequate to protect forest ecosystems and other ecological and economic resources;
- (9) (A) previous silvicultural assessments, while useful and informative, have been limited in scale and scope of application; and
- (B) there have not been sufficient resources available to adequately test a full array of individual and combined applied silvicultural assessments;
- (10) only through the full funding, development, and assessment of potential applied silvicultural assessments over specific time frames across an array of environmental and climatic conditions can the most innovative and cost effective management applications be determined that will help reduce the susceptibility of forest ecosystems to attack by forest pests;
- (11)(A) often, there are significant interactions between insects and diseases;
- (B) many diseases (such as white pine blister rust, beech bark disease, and many other diseases) can weaken trees and forest stands and predispose trees and forest stands to insect attack; and

(C) certain diseases are spread using insects as vectors (including Dutch elm disease and pine pitch canker); and

(12) funding and implementation of an initiative to combat forest pest infestations and associated diseases should not come at the expense of supporting other programs and initiatives of the Secretary.

(b) Purposes.—The purposes of this title are—

(1) to require the Secretary to develop an accelerated basic and applied assessment program to combat infestations by forest-damaging insects and associated diseases;

(2) to enlist the assistance of colleges and universities (including forestry schools, land grant colleges and universities, and 1890 Institutions), State agencies, and private landowners to carry out the program; and

(3) to carry out applied silvicultural assessments.

**Sec. 402** (NOTE: 16 U.S.C. 6552.)

Definitions. In this title:

(1) Applied silvicultural assessment.—

(A) In general.—The term “applied silvicultural assessment” means any vegetative or other treatment carried out for information gathering and research purposes.

(B) Inclusions.—The term “applied silvicultural assessment” includes timber harvesting, thinning, prescribed

burning, pruning, and any combination of those activities.

(2) 1890 institution.—

(A) In general.—The term “1890 Institution” means a college or university that is eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321 et seq.).

(B) Inclusion.—The term “1890 Institution” includes Tuskegee University.

(3) Forest-damaging insect.—The term “forest-damaging insect” means—

(A) a Southern pine beetle;

(B) a mountain pine beetle;

(C) a spruce bark beetle;

(D) a gypsy moth;

(E) a hemlock woolly adelgid;

(F) an emerald ash borer;

(G) a red oak borer;

(H) a white oak borer; and

(I) such other insects as may be identified by the Secretary.

(4) Secretary.—The term “Secretary” means—

(A) the Secretary of Agriculture, acting through the Forest Service, with respect to National Forest System land; and

(B) the Secretary of the Interior, acting through appropriate offices of the United States Geological Survey, with respect to federally owned land administered by the Secretary of the Interior.

**Sec. 403** (NOTE: 16 U.S.C. 6553.)  
Accelerated Information Gathering  
Regarding Forest-Damaging Insects.

(a) Information Gathering.—The Secretary, acting through the Forest Service and United States Geological Survey, as appropriate, shall establish an accelerated program—

(1) to plan, conduct, and promote comprehensive and systematic information gathering on forest-damaging insects and associated diseases, including an evaluation of—

(A) infestation prevention and suppression methods;

(B) effects of infestations and associated disease interactions on forest ecosystems;

(C) restoration of forest ecosystem efforts;

(D) utilization options regarding infested trees; and

(E) models to predict the occurrence, distribution, and impact of outbreaks of forest-damaging insects and associated diseases;

(2) to assist land managers in the development of treatments and strategies to improve forest health and reduce the susceptibility of forest ecosystems to severe infestations of forest-damaging insects and associated diseases on Federal land and State and private land; and

(3) to disseminate the results of the information gathering, treatments, and strategies.

(b) Cooperation and Assistance.—The Secretary shall—

(1) establish and carry out the program in cooperation with—

(A) scientists from colleges and universities (including forestry schools, land grant colleges and universities, and 1890 Institutions);

(B) Federal, State, and local agencies; and

(C) private and industrial landowners; and

(2) designate such colleges and universities to assist in carrying out the program.

**Sec. 404** (NOTE: 16 U.S.C. 6554.)  
Applied Silvicultural Assessments.

(a) Assessment Efforts.—For information gathering and research purposes, the Secretary may conduct applied silvicultural assessments on Federal land that the Secretary determines is at risk of infestation by, or is infested with, forest-damaging insects.

(b) Limitations.—

(1) Exclusion of certain areas.— Subsection (a) does not apply to—

(A) a component of the National Wilderness Preservation System;

(B) any Federal land on which, by Act of Congress or Presidential proclamation, the removal of vegetation is restricted or prohibited;

(C) a congressionally-designated wilderness study area; or

(D) an area in which activities under subsection (a) would be inconsistent with the applicable land and resource management plan.

(2) Certain treatment prohibited.— Nothing in subsection (a) authorizes the application of insecticides in municipal watersheds or associated riparian areas.

(3) Peer review.—

(A) In general.—Before being carried out, each applied silvicultural assessment under this title shall be peer reviewed by scientific experts selected by the Secretary, which shall include non-Federal experts.

(B) Existing peer review processes.— The Secretary may use existing peer review processes to the extent the processes comply with subparagraph (A).

(c) Public Notice and Comment.—

(1) Public notice.—The Secretary shall provide notice of each applied silvicultural assessment proposed to be carried out under this section.

(2) Public comment.—The Secretary shall provide an opportunity for public comment before carrying out an applied silviculture assessment under this section.

(d) Categorical Exclusion.—

(1) In general.—Applied silvicultural assessment and research treatments carried out under this section on not more than 1,000 acres for an assessment or treatment may be categorically

excluded from documentation in an environmental impact statement and environmental assessment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) Administration.—Applied silvicultural assessments and research treatments categorically excluded under paragraph (1)—

(A) shall not be carried out in an area that is adjacent to another area that is categorically excluded under paragraph (1) that is being treated with similar methods; and

(B) shall be subject to the extraordinary circumstances procedures established by the Secretary pursuant to section 1508.4 of title 40, Code of Federal Regulations.

(3) Maximum categorical exclusion.— The total number of acres categorically excluded under paragraph (1) shall not exceed 250,000 acres.

(4) No additional findings required.—In accordance with paragraph (1), the Secretary shall not be required to make any findings as to whether an applied silvicultural assessment project, either individually or cumulatively, has a significant effect on the environment.

**Sec. 405** (NOTE: 16 U.S.C. 6555.)  
Relation To Other Laws. The authority provided to each Secretary under this title is supplemental to, and not in lieu of, any authority provided to the Secretaries under any other law.

**Sec. 406** (NOTE: 16 U.S.C. 6556.)  
Authorization of Appropriations. There

are authorized to be appropriated such sums as are necessary to carry out this title for each of fiscal years 2004 through 2008.

### **Title V—Healthy Forests Reserve Program**

**Sec. 501** (NOTE: 16 U.S.C. 6571.)  
Establishment of Healthy Forests Reserve Program.

(a) Establishment.—The Secretary of Agriculture shall establish the healthy forests reserve program for the purpose of restoring and enhancing forest ecosystems—

- (1) to promote the recovery of threatened and endangered species;
- (2) to improve biodiversity; and
- (3) to enhance carbon sequestration.

(b) Coordination.—The Secretary of Agriculture shall carry out the healthy forests reserve program in coordination with the Secretary of the Interior and the Secretary of Commerce.

**Sec. 502** (NOTE: 16 U.S.C. 6572.)  
Eligibility and Enrollment of Lands In Program.

(a) In General.—The Secretary of Agriculture, in coordination with the Secretary of the Interior and the Secretary of Commerce, shall describe and define forest ecosystems that are eligible for enrollment in the healthy forests reserve program.

(b) Eligibility.—To be eligible for enrollment in the healthy forests reserve program, land shall be—

(1) private land the enrollment of which will restore, enhance, or otherwise measurably increase the likelihood of recovery of a species listed as endangered or threatened under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533); and

(2) private land the enrollment of which will restore, enhance, or otherwise measurably improve the well-being of species that—

(A) are not listed as endangered or threatened under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533); but

(B) are candidates for such listing, State-listed species, or special concern species.

(c) Other Considerations.—In enrolling land that satisfies the criteria under subsection (b), the Secretary of Agriculture shall give additional consideration to land the enrollment of which will—

- (1) improve biological diversity; and
- (2) increase carbon sequestration.

(d) Enrollment by Willing Owners.—The Secretary of Agriculture shall enroll land in the healthy forests reserve program only with the consent of the owner of the land.

(e) Maximum Enrollment.—The total number of acres enrolled in the healthy forests reserve program shall not exceed 2,000,000 acres.

(f) Methods of Enrollment.—

(1) In general.—Land may be enrolled in the healthy forests reserve program

in accordance with—

- (A) a 10-year cost-share agreement;
- (B) a 30-year easement; or
- (C) an easement of not more than 99 years.

(2) Proportion.—The extent to which each enrollment method is used shall be based on the approximate proportion of owner interest expressed in that method in comparison to the other methods.

(g) Enrollment Priority.—

(1) Species.—The Secretary of Agriculture shall give priority to the enrollment of land that provides the greatest conservation benefit to—

- (A) primarily, species listed as endangered or threatened under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533); and
- (B) secondarily, species that—
  - (i) are not listed as endangered or threatened under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533); but
  - (ii) are candidates for such listing, State-listed species, or special concern species.

(2) Cost-effectiveness.—The Secretary of Agriculture shall also consider the cost-effectiveness of each agreement or easement, and associated restoration plans, so as to maximize the environmental benefits per dollar expended.

**Sec. 503** (NOTE: 16 U.S.C. 6573.)  
Restoration Plans.

(a) In General.—Land enrolled in the healthy forests reserve program shall be subject to a restoration plan, to be developed jointly by the landowner and the Secretary of Agriculture, in coordination with the Secretary of Interior.

(b) Practices.—The restoration plan shall require such restoration practices as are necessary to restore and enhance habitat for—

- (1) species listed as endangered or threatened under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533); and
- (2) animal or plant species before the species reach threatened or endangered status, such as candidate, State-listed species, and special concern species.

**Sec. 504** (NOTE: 16 U.S.C. 6574.)  
Financial Assistance.

(a) Easements of Not More Than 99 Years.—In the case of land enrolled in the healthy forests reserve program using an easement of not more than 99 years described in section 502 (f)(1)(C), the Secretary of Agriculture shall pay the owner of the land an amount equal to not less than 75 percent, nor more than 100 percent, of (as determined by the Secretary)—

- (1) the fair market value of the enrolled land during the period the land is subject to the easement, less the fair market value of the land encumbered by the easement; and
- (2) the actual costs of the approved conservation practices or the average cost of approved practices carried out

on the land during the period in which the land is subject to the easement.

(b) **Thirty-Year Easement.**—In the case of land enrolled in the healthy forests reserve program using a 30-year easement, the Secretary of Agriculture shall pay the owner of the land an amount equal to not more than (as determined by the Secretary)—

(1) 75 percent of the fair market value of the land, less the fair market value of the land encumbered by the easement; and

(2) 75 percent of the actual costs of the approved conservation practices or 75 percent of the average cost of approved practices.

(c) **Ten-Year Agreement.**—In the case of land enrolled in the healthy forests reserve program using a 10-year cost-share agreement, the Secretary of Agriculture shall pay the owner of the land an amount equal to not more than (as determined by the Secretary)—

(1) fifty percent of the actual costs of the approved conservation practices; or

(2) fifty percent of the average cost of approved practices.

(d) **Acceptance of Contributions.**—The Secretary of Agriculture may accept and use contributions of non-Federal funds to make payments under this section.

**Sec. 505** (NOTE: 16 U.S.C. 6575.)  
Technical Assistance.

(a) **In General.**—The Secretary of Agriculture shall provide landowners with technical assistance to assist the owners

in complying with the terms of plans (as included in agreements or easements) under the healthy forests reserve program.

(b) **Technical Service Providers.**—The Secretary of Agriculture may request the services of, and enter into cooperative agreements with, individuals or entities certified as technical service providers under section 1242 of the Food Security Act of 1985 (16 U.S.C. 3842), to assist the Secretary in providing technical assistance necessary to develop and implement the healthy forests reserve program.

**Sec. 506** (NOTE: 16 U.S.C. 6576.)  
Protections and Measures.

(a) **Protections.**—In the case of a landowner that enrolls land in the program and whose conservation activities result in a net conservation benefit for listed, candidate, or other species, the Secretary of Agriculture shall make available to the landowner safe harbor or similar assurances and protection under—

(1) section 7(b)(4) of the Endangered Species Act of 1973 (16 U.S.C. 1536(b)(4)); or

(2) section 10 (a) (1) of that Act (16 U.S.C. 1539 (a) (1)).

(b) **Measures.**—If protection under subsection (a) requires the taking of measures that are in addition to the measures covered by the applicable restoration plan agreed to under section 503, the cost of the additional measures, as well as the cost of any permit, shall be

considered part of the restoration plan for purposes of financial assistance under section 504.

**Sec. 507** (NOTE: 16 U.S.C. 6577.)  
Involvement By Other Agencies and Organizations. In carrying out this title, the Secretary of Agriculture may consult with—

- (1) nonindustrial private forest landowners;
- (2) other Federal agencies;
- (3) State fish and wildlife agencies;
- (4) State forestry agencies;
- (5) State environmental quality agencies;
- (6) other State conservation agencies; and
- (7) nonprofit conservation organizations.

**Sec. 508** (NOTE: 16 U.S.C. 6578.)  
Authorization of Appropriations. There are authorized to be appropriated to carry out this title—

- (1) \$25,000,000 for fiscal year 2004; and
- (2) such sums as are necessary for each of fiscal years 2005 through 2008.

## **Title VI—Miscellaneous**

**Sec. 601** (NOTE: 16 U.S.C. 6591.)  
Forest Stands Inventory and Monitoring Program to Improve Detection of and Response to Environmental Threats.

(a) In General.—The Secretary of Agriculture shall carry out a comprehen-

sive program to inventory, monitor, characterize, assess, and identify forest stands (with emphasis on hardwood forest stands) and potential forest stands—

- (1) in units of the National Forest System (other than those units created from the public domain); and
- (2) on private forest land, with the consent of the owner of the land.

(b) Issues to Be Addressed.—In carrying out the program, the Secretary shall address issues including—

- (1) early detection, identification, and assessment of environmental threats (including insect, disease, invasive species, fire, and weather-related risks and other episodic events);
- (2) loss or degradation of forests;
- (3) degradation of the quality forest stands caused by inadequate forest regeneration practices;
- (4) quantification of carbon uptake rates; and
- (5) management practices that focus on preventing further forest degradation.

(c) Early Warning System.—In carrying out the program, the Secretary shall develop a comprehensive early warning system for potential catastrophic environmental threats to forests to increase the likelihood that forest managers will be able to—

- (1) isolate and treat a threat before the threat gets out of control; and

(2) prevent epidemics, such as the American chestnut blight in the first half of the twentieth century, that could be environmentally and economically devastating to forests.

(d) Authorization of Appropriations.—  
There is authorized to be appropriated to carry out this section \$5,000,000 for each of fiscal years 2004 through 2008.

Approved December 3, 2003.

## Preservation of American Antiquities

June 8, 1906 (Ch. 3060, 34 Stat. 225; 16 U.S.C. 433, 431, 432)

### American antiquities

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

### National monuments; reservation of lands; relinquishment of private claims

The President of the United States is authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected. When such objects are situated upon a tract covered by a bona fide unperfected claim or held in private

ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is authorized to accept the relinquishment of such tracts in behalf of the Government of the United States. (16 U.S.C. 431)

### Permits to examine ruins, excavations, and gathering of objects; regulations

Permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and Army to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as they may prescribe: Provided, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums. The Secretaries of the departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this section and sections 431 and 433 of this title. (16 U.S.C. 432)

## National Historic Preservation Act

**October 15, 1966 (Pub. L. 89–665, 80 Stat. 915; 16 U.S.C. 470, 470-1, 470a to 470h, 470h-1 to 470h-5, 470i to 470v, 470w to 470w-6, 470x, 470x-1 to 470x-6)**

### **Short title; Congressional finding and declaration of policy**

**Sec. 1** (a) This subchapter may be cited as the “National Historic Preservation Act”.

(b) The Congress finds and declares that

(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(3) historic properties significant to the Nation’s heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

(4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

(5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present govern-

mental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

(6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and

(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities. (16 U.S.C. 470)

### **Declaration of policy of the Federal Government**

**Sec. 2** It shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations and individuals to—

- (1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;
- (2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations and in the administration of the national preservation program in partnership with States, Indian tribes, Native Hawaiians, and local governments;
- (3) administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;
- (4) contribute to the preservation of nonfederally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;
- (5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and
- (6) assist State and local governments, Indian tribes and Native Hawaiian

organizations and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities. (16 U.S.C. 470-1)

### **Historic preservation program**

**Sec. 101** (a) National Register of Historic Places; designation of properties as historic landmarks; properties deemed included; criteria; nomination of properties by States, local governments or individuals; regulations; review of threats to properties

(1)(A) The Secretary of the Interior is authorized to expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture. Notwithstanding section 1125(c) of title 15, buildings and structures on or eligible for inclusion on the National Register of Historic Places (either individually or as part of a historic district), or designated as an individual landmark or as a contributing building in a historic district by a unit of State or local government, may retain the name historically associated with the building or structure.

(B) Properties meeting the criteria for National Historic Landmarks established pursuant to paragraph (2) shall be designated as "National Historic Landmarks" and included on the National Register, subject to the requirements of paragraph (6). All historic properties included on the National Register on December 12,

1980, shall be deemed to be included on the National Register as of their initial listing for purposes of this subchapter. All historic properties listed in the Federal Register of February 6, 1979, as "National Historic Landmarks" or thereafter prior to the effective date of this Act are declared by Congress to be National Historic Landmarks of national historic significance as of their initial listing as such in the Federal Register for purposes of this subchapter and sections 461 to 467 of this title; except that in cases of National Historic Landmark districts for which no boundaries have been established, boundaries must first be published in the Federal Register.

(2) The Secretary in consultation with national historical and archaeological associations, shall establish or revise criteria for properties to be included on the National Register and criteria for National Historic Landmarks, and shall also promulgate or revise regulations as may be necessary for -

(A) nominating properties for inclusion in, and removal from, the National Register and the recommendation of properties by certified local governments;

(B) designating properties as National Historic Landmarks and removing such designation;

(C) considering appeals from such recommendations, nominations, removals, and designations (or any failure or refusal by a nominating

authority to nominate or designate);

(D) nominating historic properties for inclusion in the World Heritage List in accordance with the terms of the Convention concerning the Protection of the World Cultural and Natural Heritage;

(E) making determinations of eligibility of properties for inclusion on the National Register; and

(F) notifying the owner of a property, any appropriate local governments, and the general public, when the property is being considered for inclusion on the National Register, for designation as a National Historic Landmark or for nomination to the World Heritage List.

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(h) Professional standards for preservation of federally owned or controlled historic properties

Within one year after December 12, 1980, the Secretary shall establish, in consultation with the Secretaries of Agriculture and Defense, the Smithsonian Institution, and the Administrator of the General Services Administration, professional standards for the preservation of historic properties in Federal ownership or control. (16 U.S.C. 470a)

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**Effect of Federal undertakings upon property listed in National Register; comment by Advisory Council on Historic Preservation**

**Sec. 106** The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under part B of this subchapter a reasonable opportunity to comment with regard to such undertaking. (16 U.S.C. 470f)

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### **Historic properties owned or controlled by Federal agencies**

**Sec. 110** (a) Responsibilities of Federal agencies; program for identification, evaluation, nomination, and protection

(1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency, in accordance with Executive Order No. 13006, issued May 21, 1996 (61 Fed.

Reg. 26071). Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 470a(g) of this title, any preservation, as may be necessary to carry out this section.

(2) Each Federal agency shall establish (unless exempted pursuant to section 470v of this title), in consultation with the Secretary, a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. Such program shall ensure -

(A) that historic properties under the jurisdiction or control of the agency, are identified, evaluated, and nominated to the National Register;

(B) that such properties under the jurisdiction or control of the agency as are listed in or may be eligible for the National Register are managed and maintained in a way that considers the preservation of their historic, archaeological, architectural, and cultural values in compliance with section 470f of this title and gives special consideration to the preservation of such values in the case of properties designated as having National significance;

(C) that the preservation of properties not under the jurisdiction or control of the agency, but subject to be potentially affected by agency actions are given full consideration in planning;

(D) that the agency's preservation-

related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and with the private sector; and

(E) that the agency's procedures for compliance with section 470f of this title -

(i) are consistent with regulations issued by the Council pursuant to section 470s of this title;

(ii) provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered; and (iii) provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3002(c) of title 25.

(b) Records on historic properties to be altered or demolished; deposit in Library of Congress or other appropriate agency  
Each Federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, an historic property is to be substantially altered or demolished, timely steps are taken to make or have

made appropriate records, and that such records then be deposited, in accordance with section 470a(a) of this title, in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference.

(c) Agency Preservation Officer; responsibilities; qualifications

The head of each Federal agency shall, unless exempted under section 470v of this title, designate a qualified official to be known as the agency's "preservation officer" who shall be responsible for coordinating that agency's activities under this subchapter. Each Preservation Officer may, in order to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under section 470a(h) of this title.

(d) Agency programs and projects

Consistent with the agency's missions and mandates, all Federal agencies shall carry out agency programs and projects (including those under which any Federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this subchapter and, give consideration to programs and projects which will further the purposes of this subchapter.

(e) Review of plans of transferees of surplus federally owned historic properties

The Secretary shall review and approve the plans of transferees of surplus federally owned historic properties not

later than ninety days after his receipt of such plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced.

(f) Planning and actions to minimize harm to National Historic Landmarks

Prior to the approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.

(g) Costs of preservation as eligible project costs

Each Federal agency may include the costs of preservation activities of such agency under this subchapter as eligible project costs in all undertakings of such agency or assisted by such agency. The eligible project costs may also include amounts paid by a Federal agency to any State to be used in carrying out such preservation responsibilities of the Federal agency under this subchapter, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit.

(h) Annual preservation awards program

The Secretary shall establish an annual preservation awards program under which he may make monetary awards in

amounts of not to exceed \$1,000 and provide citations for special achievement to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic resources. Such program may include the issuance of annual awards by the President of the United States to any citizen of the United States recommended for such award by the Secretary.

(i) Environmental impact statement

Nothing in this subchapter shall be construed to require the preparation of an environmental impact statement where such a statement would not otherwise be required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and nothing in this subchapter shall be construed to provide any exemption from any requirement respecting the preparation of such a statement under such Act.

(j) Waiver of provisions in event of natural disaster or imminent threat to national security

The Secretary shall promulgate regulations under which the requirements of this section may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security.

(k) Assistance for adversely affected historic property

Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the

requirements of section 470f of this title, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant.

(l) Documentation of decisions respecting undertakings

With respect to any undertaking subject to section 470f of this title which adversely affects any property included in or eligible for inclusion in the National Register, and for which a Federal agency has not entered into an agreement pursuant to regulations issued by the Council, the head of such agency shall document any decision made pursuant to section 470f of this title. The head of such agency may not delegate his or her responsibilities pursuant to such section. Where a section 106 (16 U.S.C. 470f) memorandum of agreement has been executed with respect to an undertaking, such memorandum shall govern the undertaking and all of its parts. (16 U.S.C. 470h-2 )

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### **Professional standards**

**Sec. 112** (a) In general

Each Federal agency that is responsible for the protection of historic resources, including archaeological resources pursuant to this subchapter or any other law shall ensure each of the following -

(1)(A) All actions taken by employees or contractors of such agency shall meet professional standards under regulations developed by the Secretary in consultation with the Council, other affected agencies, and the appropriate professional societies of the disciplines involved, specifically archaeology, architecture, conservation, history, landscape architecture, and planning.

(B) Agency personnel or contractors responsible for historic resources shall meet qualification standards established by the Office of Personnel Management in consultation with the Secretary and appropriate professional societies of the disciplines involved. The Office of Personnel Management shall revise qualification standards within 2 years after October 30, 1992, for the disciplines involved, specifically archaeology, architecture, conservation, curation, history, landscape architecture, and planning. Such standards shall consider the particular skills and expertise needed for the preservation of historic resources and shall be equivalent requirements for the disciplines involved.

(2) Records and other data, including data produced by historical research and archaeological surveys and excavations are permanently maintained in appropriate data bases and made available to potential users pursuant to such regulations as the Secretary shall promulgate.

(b) Guidelines

In order to promote the preservation of

historic resources on properties eligible for listing in the National Register, the Secretary shall, in consultation with the Council, promulgate guidelines to ensure that Federal, State, and tribal historic preservation programs subject to this subchapter include plans to -

- (1) provide information to the owners of properties containing historic (including architectural, curatorial, and archaeological) resources with demonstrated or likely research significance, about the need for protection of such resources, and the available means of protection;
- (2) encourage owners to preserve such resources intact and in place and offer the owners of such resources information on the tax and grant assistance available for the donation of the resources or of a preservation easement of the resources;
- (3) encourage the protection of Native American cultural items (within the meaning of section 3001(3) and (9) of title 25) and of properties of religious or cultural importance to Indian tribes, Native Hawaiians, or other Native American groups; and
- (4) encourage owners who are undertaking archaeological excavations to -
  - (A) conduct excavations and analyses that meet standards for federally-sponsored excavations established by the Secretary;
  - (B) donate or lend artifacts of research significance to an appropriate research institution;
  - (C) allow access to artifacts for

research purposes; and

(D) prior to excavating or disposing of a Native American cultural item in which an Indian tribe or Native Hawaiian organization may have an interest under section 3002(a)(2)(B) or (C) of title 25, given notice to and consult with such Indian tribe or Native Hawaiian organization. (16 U.S.C. 470h-4)

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**Functions of Council; annual report to President and Congress; recommendations**

**Sec. 202 (a) Duties**

The Council <sup>1</sup> shall -

- (1) advise the President and the Congress on matters relating to historic preservation; recommend measures to coordinate activities of Federal, State, and local agencies and private institutions and individuals relating to historic preservation; and advise on the dissemination of information pertaining to such activities;
- (2) encourage, in cooperation with the National Trust for Historic Preservation and appropriate private agencies, public interest and participation in historic preservation;
- (3) recommend the conduct of studies in such areas as the adequacy of legislative and administrative statutes and regulations pertaining to historic preservation activities of State and local governments and the effects of tax policies at all levels of government on

historic preservation;

(4) advise as to guidelines for the assistance of State and local governments in drafting legislation relating to historic preservation;

(5) encourage, in cooperation with appropriate public and private agencies and institutions, training and education in the field of historic preservation;

(6) review the policies and programs of Federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under this subchapter; and

(7) inform and educate Federal agencies, State and local governments, Indian tribes, other nations and international organizations and private groups and individuals as to the Council's authorized activities.

(b) Annual report

The Council shall submit annually a comprehensive report of its activities and the results of its studies to the President and the Congress and shall from time to time submit such additional and special reports as it deems advisable. Each report shall propose such legislative enactments and other actions as, in the judgment of the Council, are necessary and appropriate to carry out its recommendations and shall provide the Council's assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of Federal agencies, State and

local governments, and the private sector in carrying out the purposes of this subchapter. (16 U.S.C. 470j)

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<sup>1</sup> Advisory Council on Historic Preservation

### **Exemption for Federal programs or undertakings; regulations**

**Sec. 214** The Council, with the concurrence of the Secretary, shall promulgate regulations or guidelines, as appropriate, under which Federal programs or undertakings may be exempted from any or all of the requirements of subchapter when such exemption is determined to be consistent with the purposes of subchapter, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties. (16 U.S.C. 470v)

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### **Access to information**

**Sec. 304** (a) Authority to withhold from disclosure

The head of a Federal agency or other public official receiving grant assistance pursuant to this subchapter, after consultation with the Secretary, shall withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Secretary and the agency determine that disclosure may -

(1) cause a significant invasion of privacy;

(2) risk harm to the historic resources; or

(3) impede the use of a traditional religious site by practitioners.

(b) Access determination

When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to subsection (a) of this section, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this subchapter.

(c) Consultation with Council

When the information in question has been developed in the course of an agency's compliance with section 470f or 470h-2(f) of this title, the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b) of this section. (16 U.S.C. 470w-3)

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## Preservation of Historical and Archeological Data

**May 24, 1974 (Pub. L. 93-291, 74 Stat. 220; 16 U.S.C. 469, 469a, 469a-1 to 496a-3, 469b, 469c)**

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**Threat of irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data by Federal construction projects; notice to Secretary of the Interior; survey; recovery, preservation, and protection of data**

**Sec. 1** (a) Notification and request for preservation of data

Whenever any Federal agency finds, or is notified, in writing, by an appropriate historical or archeological authority, that its activities in connection with any Federal construction project or federally licensed project, activity, or program may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, such agency shall notify the Secretary, in writing, and shall provide the Secretary with appropriate information concerning the project, program, or activity. Such agency may request the Secretary to undertake the recovery, protection, and preservation of such data (including preliminary survey, or other investigation as needed, and analysis and publication of the reports resulting from such investigation), or it may, with funds appropriated for such project, program, or activity, undertake such

activities. Copies of reports of any investigations made pursuant to this section shall be submitted to the Secretary, who shall make them available to the public for inspection and review.

(b) Survey of site; preservation of data; compensation

Whenever any Federal agency provides financial assistance by loan, grant, or otherwise to any private person, association, or public entity, the Secretary, if he determines that significant scientific, prehistorical, historical, or archeological data might be irrevocably lost or destroyed, may with funds appropriated expressly for this purpose conduct, with the consent of all persons, associations, or public entities having a legal interest in the property involved, a survey of the affected site and undertake the recovery, protection, and preservation of such data (including analysis and publication). The Secretary shall, unless otherwise mutually agreed to in writing, compensate any person, association, or public entity damaged as a result of delays in construction or as a result of the temporary loss of the use of private or any nonfederally owned lands. (16 U.S.C. 469a-1)

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## Archaeological Resources Protection Act

October 21, 1979 (Pub. L. 96-95, 93 Stat. 721; 16 U.S.C. 470aa note, 470aa to 470mm)

### Congressional findings and declaration of purpose

**Sec. 2** (a) The Congress finds that -

- (1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;
- (2) these resources are increasingly endangered because of their commercial attractiveness;
- (3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and
- (4) there is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeologists and institutions.

(b) The purpose of this chapter is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeo-

logical resources and data which were obtained before October 31, 1979. (16 U.S.C. 470aa)

### Definitions

**Sec. 3** As used in this chapter -

(1) The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this chapter. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

(2) The term "Federal land manager" means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumen-

tality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this chapter of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term “Federal land manager” means the Secretary of the Interior.

(3) The term “public lands” means -

(A) lands which are owned and administered by the United States as part of -

- (i) the national park system,
- (ii) the national wildlife refuge system, or
- (iii) the national forest system; and

(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution.

(4) The term “Indian lands” means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction

against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

(5) The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688) (43 U.S.C. 1601 et seq.).

(6) The term “person” means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

(7) The term “State” means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands. (16 U.S.C. 470bb)

## **Excavation and removal**

### **Sec. 4 (a) Application for permit**

Any person may apply to the Federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required, under uniform regulations under this chapter, to contain such information as the Federal land manager deems necessary, including information concerning the time, scope,

and location and specific purpose of the proposed work.

(b) Determinations by Federal land manager prerequisite to issuance of permit

A permit may be issued pursuant to an application under subsection (a) of this section if the Federal land manager determines, pursuant to uniform regulations under this chapter, that -

- (1) the applicant is qualified, to carry out the permitted activity,
- (2) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interest,
- (3) the archaeological resources which are excavated or removed from public lands will remain the property of the United States, and such resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution, and
- (4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

(c) Notification to Indian tribes of possible harm to or destruction of sites having religious or cultural importance

If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, before issuing such permit, the Federal land manager shall notify any Indian tribe which may consider the site as having religious or

cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 470hh of this title.

(d) Terms and conditions of permit

Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this chapter, as the Federal land manager concerned deems necessary to carry out the purposes of this chapter.

(e) Identification of individuals responsible for complying with permit terms and conditions and other applicable laws

Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this chapter and other law applicable to the permitted activity.

(f) Suspension or revocation of permits; grounds

Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of subsection (a), (b), or (c) of section 470ee of this title. Any such permit may be revoked by such Federal land manager upon assessment of a civil penalty under section 470ff of this title against the permittee or upon the permittee's conviction under section 470ee of this title.

(g) Excavation or removal by Indian tribes or tribe members; excavation or removal of resources located on Indian lands

(1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section.

(2) In the case of any permits for the excavation or removal of any archaeological resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

(h) Permits issued under Antiquities Act of 1906

(1) No permit or other permission shall be required under the Act of June 8, 1906 (16 U.S.C. 431-433), for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906 (16 U.S.C. 431-433), shall remain in effect according to its terms and conditions following the enactment of this chapter. No permit under this chapter shall be required to carry out any activity under a permit issued under the Act of June 8, 1906, before October 31, 1979, which remains in effect as provided in this paragraph, and nothing

in this chapter shall modify or affect any such permit.

(i) Compliance with provisions relating to undertakings on property listed in the National Register not required

Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 470f of this title.

(j) Issuance of permits to State Governors for archaeological activities on behalf of States or their educational institutions

Upon the written request of the Governor of any State, the Federal land manager shall issue a permit, subject to the provisions of subsections (b)(3), (b)(4), (c), (e), (f), (g), (h), and (i) of this section for the purpose of conducting archaeological research, excavation, removal, and curation, on behalf of the State or its educational institutions, to such Governor or to such designee as the Governor deems qualified to carry out the intent of this chapter. (16 U.S.C. 470cc)

### **Custody of archaeological resources**

**Sec. 5** The Secretary of the Interior may promulgate regulations providing for -

(1) the exchange, where appropriate, between suitable universities, museums, or other scientific or educational institutions, of archaeological resources removed from public lands and Indian lands pursuant to this chapter, and

(2) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1960 (16 U.S.C. 469-469c) (16 U.S.C. 469-469c-

1) or the Act of June 8, 1906 (16 U.S.C. 431-433). Any exchange or ultimate disposition under such regulation of archaeological resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe which owns or has jurisdiction over such lands. Following promulgation of regulations under this section, notwithstanding any other provision of law, such regulations shall govern the disposition of archaeological resources removed from public lands and Indian lands pursuant to this chapter. (16 U.S.C. 470dd)

**Prohibited acts and criminal penalties**

**Sec. 6** (a) Unauthorized excavation, removal, damage, alteration, or defacement of archaeological resources

No person may excavate, remove, damage, or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 470cc of this title, a permit referred to in section 470cc(h)(2) of this title, or the exemption contained in section 470cc(g)(1) of this title.

(b) Trafficking in archaeological resources the excavation or removal of which was wrongful under Federal law

No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated

or removed from public lands or Indian lands in violation of -

(1) the prohibition contained in subsection (a) of this section, or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) Trafficking in interstate or foreign commerce in archaeological resources the excavation, removal, sale, purchase, exchange, transportation or receipt of which was wrongful under State or local law

No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

(d) Penalties

Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year, or both: Provided, however, That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of \$500, such person shall be fined not more than \$20,000 or imprisoned not more than two years, or both. In the case of a second or subse-

quent such violation upon conviction such person shall be fined not more than \$100,000, or imprisoned not more than five years, or both.

(e) Effective date

The prohibitions contained in this section shall take effect on October 31, 1979.

(f) Prospective application

Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to October 31, 1979.

(g) Removal of arrowheads located on ground surface

Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground. (16 U.S.C. 470ee)

### Civil penalties

#### Sec. 7 (a) Assessment by Federal land manager

(1) Any person who violates any prohibition contained in an applicable regulation or permit issued under this chapter may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land man-

ager concerned.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this chapter, taking into account, in addition to other factors -

(A) the archaeological or commercial value of the archaeological resource involved, and

(B) the cost of restoration and repair of the resource and the archaeological site involved. Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person. The amount of any penalty assessed under this subsection for any violation shall not exceed an amount equal to double the cost of restoration and repair of resources and archaeological sites damaged and double the fair market value of resources destroyed or not recovered.

(3) No penalty shall be assessed under this section for the removal of arrowheads located on the surface of the ground.

#### (b) Judicial review of assessed penalties; collection of unpaid assessments

(1) Any person aggrieved by an order assessing a civil penalty under subsection (a) of this section may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other

district in which such a person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) If any person fails to pay an assessment of a civil penalty -

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (1), or

(B) after a court in an action brought under paragraph (1) has entered a final judgment upholding the assessment of a civil penalty, the Federal land managers may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In such action, the validity and amount of such penalty shall not be subject to review.

(c) Hearings

Hearings held during proceedings for the assessment of civil penalties authorized by subsection (a) of this section shall be conducted in accordance with section 554 of title 5. The Federal land manager may issue subpoenas for the attendance and

testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Federal land manager or to appear and produce documents before the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof. (16 U.S.C. 470ff)

## **Enforcement**

### **Sec. 8 (a) Rewards**

Upon the certification of the Federal land manager concerned, the Secretary of the Treasury is directed to pay from penalties and fines collected under sections 470ee and 470ff of this title an amount equal to one-half of such penalty or fine, but not to exceed \$500, to any person who furnishes information which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which such penalty or fine was paid. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or

renders service in the performance of his official duties shall be eligible for payment under this subsection.

(b) Forfeitures

All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 470ee of this title occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon -

(1) such person's conviction of such violation under section 470ee of this title,

(2) assessment of a civil penalty against such person under section 470ff of this title with respect to such violation, or

(3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

(c) Disposition of penalties collected and items forfeited in cases involving archaeological resources excavated or removed from Indian lands

In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 470ee of this title involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to the Indian or Indian tribe involved of all penalties collected pursuant to

section 470ff of this title and for the transfer to such Indian or Indian tribe of all items forfeited under this section. (16 U.S.C. 470gg)

**Confidentiality of information concerning nature and location of archaeological resources**

**Sec. 9 (a) Disclosure of information**

Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this chapter or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 or under any other provision of law unless the Federal land manager concerned determines that such disclosure would -

(1) further the purposes of this chapter or the Act of June 27, 1960 (16 U.S.C. 469-469c) (16 U.S.C. 469-469c-1), and

(2) not create a risk of harm to such resources or to the site at which such resources are located.

(b) Request for disclosure by Governors

Notwithstanding the provisions of subsection (a) of this section, upon the written request of the Governor of any State, which request shall state -

(1) the specific site or area for which information is sought,

(2) the purpose for which such information is sought,

(3) a commitment by the Governor to adequately protect the confidentiality of

such information to protect the resource from commercial exploitation, the Federal land manager concerned shall provide to the Governor information concerning the nature and location of archaeological resources within the State of the requesting Governor. (16 U.S.C. 470hh)

**Rules and regulations;  
intergovernmental coordination**

**Sec. 10** (a) Promulgation; effective date

The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this chapter. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996 (, 1996a)). Each uniform rule or regulation promulgated under this chapter shall be submitted on the same calendar day to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Natural Resources of the United States House of Representatives, and no such uniform rule or regulation may take effect before the expiration of a period of ninety calendar days following the date of its submission to such Committees.

(b) Federal land managers' rules

Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a) of this section, as may be appropriate for the carrying out of his functions and authorities under this chapter.

(c) Federal land managers' public awareness program of archaeological resources on public lands and Indian lands

Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources. (16 U.S.C. 470ii)

**Cooperation with private individuals**

**Sec. 11** The Secretary of the Interior shall take such action as may be necessary, consistent with the purposes of this chapter, to foster and improve the communication, cooperation, and exchange of information between -

(1) private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this chapter, and

(2) Federal authorities responsible for the protection of archaeological resources on the public lands and Indian lands and professional archaeologists and associations of professional archaeologists. In carrying out this section, the Secretary shall, to the extent practicable and consistent with the provisions of this chapter, make efforts to expand the archaeological data base for the archaeological resources of the United

States through increased cooperation between private individuals referred to in paragraph (1) and professional archaeologists and archaeological organizations. (16 U.S.C. 470jj)

### **Savings provisions**

**Sec. 12** (a) Mining, mineral leasing, reclamation, and other multiple uses

Nothing in this chapter shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

(b) Private collections

Nothing in this chapter applies to, or requires a permit for, the collection for private purposes of any rock, coin, bullet, or mineral which is not an archaeological resource, as determined under uniform regulations promulgated under section 470bb(1) of this title.

(c) Lands within chapter

Nothing in this chapter shall be construed to affect any land other than public land or Indian land or to affect the lawful recovery, collection, or sale of archaeological resources from land other than public land or Indian land. (16 U.S.C. 470kk)

### **Annual report to Congress**

**Sec. 13** As part of the annual report required to be submitted to the specified committees of the Congress pursuant to section 469a-3(c) of this title, the Secre-

tary of the Interior shall comprehensively report as a separate component on the activities carried out under the provisions of this chapter, and he shall make such recommendations as he deems appropriate as to changes or improvements needed in the provisions of this chapter. Such report shall include a brief summary of the actions undertaken by the Secretary under section 470jj of this title, relating to cooperation with private individuals. (16 U.S.C. 470ll)

### **Surveying of lands; reporting of violations**

**Sec. 14** The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority shall -

(a) develop plans for surveying lands under their control to determine the nature and extent of archeological resources on those lands;

(b) prepare a schedule for surveying lands that are likely to contain the most scientifically valuable archeological resources; and

(c) develop documents for the reporting of suspected violations of this chapter and establish when and how those documents are to be completed by officers, employees, and agents of their respective agencies. (16 U.S.C. 470mm)

## Native American Graves Protection and Repatriation Act

November 16, 1990 (Pub. L. 101-601, 104 Stat. 3048; 25 U.S.C. 3001 note, 3001, 3002, 18 U.S.C. 1170, 18 preceding 1151, 25 U.S.C. 3003 to 3013)

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### Definitions

**Sec. 2** For purposes of this chapter, the term –

(1) “burial site” means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited.

(2) “cultural affiliation” means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.

(3) “cultural items” means human remains and -

(A) “associated funerary objects” which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or

museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects. <sup>1</sup>

(B) “unassociated funerary objects” which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe,

(C) “sacred objects” which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and

(D) “cultural patrimony” which shall mean an object having ongoing historical, traditional, or cultural

importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

(4) “Federal agency” means any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution.

(5) “Federal lands” means any land other than tribal lands which are controlled or owned by the United States, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971 (43 U.S.C. 1601 et seq.).

(6) “Hui Malama I Na Kupuna O Hawai’i Nei” means the nonprofit, Native Hawaiian organization incorporated under the laws of the State of Hawaii by that name on April 17, 1989, for the purpose of providing guidance and expertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues.

(7) “Indian tribe” means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or

established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(8) “museum” means any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items. Such term does not include the Smithsonian Institution or any other Federal agency.

(9) “Native American” means of, or relating to, a tribe, people, or culture that is indigenous to the United States.

(10) “Native American” means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(11) “Native Hawaiian organization” means any organization which -

(A) serves and represents the interests of Native Hawaiians,

(B) has as a primary and stated purpose the provision of services to Native Hawaiians, and

(C) has expertise in Native Hawaiian Affairs, and shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai’i Nei.

(12) “Office of Hawaiian Affairs” means the Office of Hawaiian Affairs

established by the constitution of the State of Hawaii.

(13) “right of possession” means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession of that object, unless the phrase so defined would, as applied in section 3005(c) of this title, result in a Fifth Amendment taking by the United States as determined by the United States Court of Federal Claims pursuant to 28 U.S.C. 1491 in which event the “right of possession” shall be as provided under otherwise applicable property law. The original acquisition of Native American human remains and associated funerary objects which were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization is deemed to give right of possession to those remains.

(14) “Secretary” means the Secretary of the Interior.

(15) “tribal land” means -

- (A) all lands within the exterior boundaries of any Indian reservation;
- (B) all dependent Indian communities;<sup>2</sup>

(C) any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Public Law 86-3. (25 U.S.C. 3001)

<sup>1</sup> So in original. The period probably should be a comma.

<sup>2</sup> So in original. Probably should be followed by “and”.

### Ownership

**Sec. 3** (a) Native American human remains and objects

The ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after November 16, 1990, shall be (with priority given in the order listed) –

(1) in the case of Native American human remains and associated funerary objects, in the lineal descendants of the Native American; or

(2) in any case in which such lineal descendants cannot be ascertained, and in the case of unassociated funerary objects, sacred objects, and objects of cultural patrimony -

(A) in the Indian tribe or Native Hawaiian organization on whose tribal land such objects or remains were discovered;

(B) in the Indian tribe or Native Hawaiian organization which has the closest cultural affiliation with such remains or objects and which, upon

notice, states a claim for such remains or objects; or

(C) if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of some Indian tribe –

(1) in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, if upon notice, such tribe states a claim for such remains or objects, or

(2) if it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the remains or objects than the tribe or organization specified in paragraph (1), in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains or objects.

(b) Unclaimed Native American human remains and objects

Native American cultural items not claimed under subsection (a) of this section shall be disposed of in accordance with regulations promulgated by the Secretary in consultation with the review committee established under section 3006 of this title, Native American groups, representatives of museums and the scientific community.

(c) Intentional excavation and removal of

Native American human remains and objects

The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if –

(1) such items are excavated or removed pursuant to a permit issued under section 470cc of title 16 which shall be consistent with this chapter;

(2) such items are excavated or removed after consultation with or, in the case of tribal lands, consent of the appropriate (if any) Indian tribe or Native Hawaiian organization;

(3) the ownership and right of control of the disposition of such items shall be as provided in subsections (a) and (b) of this section; and

(4) proof of consultation or consent under paragraph (2) is shown.

(d) Inadvertent discovery of Native American remains and objects

(1) Any person who knows, or has reason to know, that such person has discovered Native American cultural items on Federal or tribal lands after November 16, 1990, shall notify, in writing, the Secretary of the Department, or head of any other agency or instrumentality of the United States, having primary management authority with respect to Federal lands and the appropriate Indian tribe or Native Hawaiian organization with respect to tribal lands, if known or readily ascertainable, and, in the case of lands

that have been selected by an Alaska Native Corporation or group organized pursuant to the Alaska Native Claims Settlement Act of 1971 (43 U.S.C. 1601 et seq.), the appropriate corporation or group. If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging, and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice under this subsection. Following the notification under this subsection, and upon certification by the Secretary of the department or the head of any agency or instrumentality of the United States or the appropriate Indian tribe or Native Hawaiian organization that notification has been received, the activity may resume after 30 days of such certification.

(2) The disposition of and control over any cultural items excavated or removed under this subsection shall be determined as provided for in this section.

(3) If the Secretary of the Interior consents, the responsibilities (in whole or in part) under paragraphs (1) and (2) of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary with respect to any land managed by such other Secretary or agency head.

(e) Relinquishment

Nothing in this section shall prevent the governing body of an Indian tribe or Native Hawaiian organization from expressly relinquishing control over any Native American human remains, or title to or control over any funerary object, or sacred object. (25 U.S.C. 3002)

### **Illegal trafficking in Native American human remains and cultural items**

**Sec. 4(a)** (a) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both.

(b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Grave Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 5 years, or both. (18 U.S.C. 1170)

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### **Inventory for human remains and associated funerary objects**

**Sec. 5 (a) In general**

Each Federal agency and each museum which has possession or control over holdings or collections of Native American human remains and associated funerary objects shall compile an inventory of such items and, to the extent possible based on information possessed by such museum or Federal agency, identify the geographical and cultural affiliation of such item.<sup>3</sup>

**(b) Requirements**

(1) The inventories and identifications required under subsection (a) of this section shall be -

(A) completed in consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders;

(B) completed by not later than the date that is 5 years after November 16, 1990, and

(C) made available both during the time they are being conducted and afterward to a review committee established under section 3006 of this title.

(2) Upon request by an Indian tribe or Native Hawaiian organization which receives or should have received notice, a museum or Federal agency shall supply additional available documentation to supplement the information required by subsection (a) of this section. The term "documentation" means a summary of existing museum or Federal agency records, including inventories or catalogues, relevant

studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American human remains and associated funerary objects subject to this section. Such term does not mean, and this chapter shall not be construed to be an authorization for, the initiation of new scientific studies of such remains and associated funerary objects or other means of acquiring or preserving additional scientific information from such remains and objects.

**(c) Extension of time for inventory**

Any museum which has made a good faith effort to carry out an inventory and identification under this section, but which has been unable to complete the process, may appeal to the Secretary for an extension of the time requirements set forth in subsection (b)(1)(B) of this section. The Secretary may extend such time requirements for any such museum upon a finding of good faith effort. An indication of good faith shall include the development of a plan to carry out the inventory and identification process.

**(d) Notification**

(1) If the cultural affiliation of any particular Native American human remains or associated funerary objects is determined pursuant to this section, the Federal agency or museum concerned shall, not later than 6 months after the completion of the inventory,

notify the affected Indian tribes or Native Hawaiian organizations.

(2) The notice required by paragraph (1) shall include information -

(A) which identifies each Native American human remains or associated funerary objects and the circumstances surrounding its acquisition;

(B) which lists the human remains or associated funerary objects that are clearly identifiable as to tribal origin; and

(C) which lists the Native American human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with that Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the remains or objects, are determined by a reasonable belief to be remains or objects culturally affiliated with the Indian tribe or Native Hawaiian organization.

(3) A copy of each notice provided under paragraph (1) shall be sent to the Secretary who shall publish each notice in the Federal Register.

(e) Inventory

For the purposes of this section, the term “inventory” means a simple itemized list that summarizes the information called for by this section. (25 U.S.C. 3003)

<sup>3</sup> So in original. Probably should be “items.”

**Summary for unassociated funerary**

**objects, sacred objects, and cultural patrimony**

**Sec. 6 (a) In general**

Each Federal agency or museum which has possession or control over holdings or collections of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony shall provide a written summary of such objects based upon available information held by such agency or museum. The summary shall describe the scope of the collection, kinds of objects included, reference to geographical location, means and period of acquisition and cultural affiliation, where readily ascertainable.

(b) Requirements

(1) The summary required under subsection (a) of this section shall be -

(A) in lieu of an object-by-object inventory;

(B) followed by consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders; and

(C) completed by not later than the date that is 3 years after November 16, 1990.

(2) Upon request, Indian Tribes <sup>4</sup> and Native Hawaiian organizations shall have access to records, catalogues, relevant studies or other pertinent data for the limited purposes of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American objects subject to this section. Such

information shall be provided in a reasonable manner to be agreed upon by all parties. (25 U.S.C. 3004)

<sup>4</sup> So in original. Probably should not be capitalized.

## Repatriation

**Sec. 7** (a) Repatriation of Native American human remains and objects possessed or controlled by Federal agencies and museums

(1) If, pursuant to section 3003 of this title, the cultural affiliation of Native American human remains and associated funerary objects with a particular Indian tribe or Native Hawaiian organization is established, then the Federal agency or museum, upon the request of a known lineal descendant of the Native American or of the tribe or organization and pursuant to subsections (b) and (e) of this section, shall expeditiously return such remains and associated funerary objects.

(2) If, pursuant to section 3004 of this title, the cultural affiliation with a particular Indian tribe or Native Hawaiian organization is shown with respect to unassociated funerary objects, sacred objects or objects of cultural patrimony, then the Federal agency or museum, upon the request of the Indian tribe or Native Hawaiian organization and pursuant to subsections (b), (c) and (e) of this section, shall expeditiously return such objects.

(3) The return of cultural items covered by this chapter shall be in consultation with the requesting lineal descendant or

tribe or organization to determine the place and manner of delivery of such items.

(4) Where cultural affiliation of Native American human remains and funerary objects has not been established in an inventory prepared pursuant to section 3003 of this title, or the summary pursuant to section 3004 of this title, or where Native American human remains and funerary objects are not included upon any such inventory, then, upon request and pursuant to subsections (b) and (e) of this section and, in the case of unassociated funerary objects, subsection (c) of this section, such Native American human remains and funerary objects shall be expeditiously returned where the requesting Indian tribe or Native Hawaiian organization can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion.

(5) Upon request and pursuant to subsections (b), (c) and (e) of this section, sacred objects and objects of cultural patrimony shall be expeditiously returned where -

(A) the requesting party is the direct lineal descendant of an individual who owned the sacred object;

(B) the requesting Indian tribe or Native Hawaiian organization can show that the object was owned or controlled by the tribe or organization;

or

(C) the requesting Indian tribe or Native Hawaiian organization can show that the sacred object was owned or controlled by a member thereof, provided that in the case where a sacred object was owned by a member thereof, there are no identifiable lineal descendants of said member or the lineal descendants, upon notice, have failed to make a claim for the object under this chapter.

(b) Scientific study

If the lineal descendant, Indian tribe, or Native Hawaiian organization requests the return of culturally affiliated Native American cultural items, the Federal agency or museum shall expeditiously return such items unless such items are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States. Such items shall be returned by no later than 90 days after the date on which the scientific study is completed.

(c) Standard of repatriation

If a known lineal descendant or an Indian tribe or Native Hawaiian organization requests the return of Native American unassociated funerary objects, sacred objects or objects of cultural patrimony pursuant to this chapter and presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the Federal agency or museum did not have the right of possession, then such agency or museums shall return such objects unless it can overcome such inference

and prove that it has a right of possession to the objects.

(d) Sharing of information by Federal agencies and museums

Any Federal agency or museum shall share what information it does possess regarding the object in question with the known lineal descendant, Indian tribe, or Native Hawaiian organization to assist in making a claim under this section.

(e) Competing claims

Where there are multiple requests for repatriation of any cultural item and, after complying with the requirements of this chapter, the Federal agency or museum cannot clearly determine which requesting party is the most appropriate claimant, the agency or museum may retain such item until the requesting parties agree upon its disposition or the dispute is otherwise resolved pursuant to the provisions of this chapter or by a court of competent jurisdiction.

(f) Museum obligation

Any museum which repatriates any item in good faith pursuant to this chapter shall not be liable for claims by an aggrieved party or for claims of breach of fiduciary duty, public trust, or violations of state<sup>5</sup> law that are inconsistent with the provisions of this chapter. (25 U.S.C. 3005)

<sup>5</sup> So in original. Probably should be capitalized.

**Review committee**

**Sec. 8 (a) Establishment**

Within 120 days after November 16,

1990, the Secretary shall establish a committee to monitor and review the implementation of the inventory and identification process and repatriation activities required under sections 3003, 3004 and 3005 of this title.

(b) Membership

(1) The Committee <sup>6</sup> established under subsection (a) of this section shall be composed of 7 members,

(A) 3 of whom shall be appointed by the Secretary from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders with at least 2 of such persons being traditional Indian religious leaders;

(B) 3 of whom shall be appointed by the Secretary from nominations submitted by national museum organizations and scientific organizations; and

(C) 1 who shall be appointed by the Secretary from a list of persons developed and consented to by all of the members appointed pursuant to subparagraphs (A) and (B).

(2) The Secretary may not appoint Federal officers or employees to the committee.

(3) In the event vacancies shall occur, such vacancies shall be filled by the Secretary in the same manner as the original appointment within 90 days of the occurrence of such vacancy.

(4) Members of the committee established under subsection (a) of this

section shall serve without pay, but shall be reimbursed at a rate equal to the daily rate for GS-18 of the General Schedule for each day (including travel time) for which the member is actually engaged in committee business. Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

(c) Responsibilities

The committee established under subsection (a) of this section shall be responsible for –

(1) designating one of the members of the committee as chairman;

(2) monitoring the inventory and identification process conducted under sections 3003 and 3004 of this title to ensure a fair, objective consideration and assessment of all available relevant information and evidence;

(3) upon the request of any affected party, reviewing and making findings related to –

(A) the identity or cultural affiliation of cultural items, or

(B) the return of such items;

(4) facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable;

(5) compiling an inventory of culturally unidentifiable human remains that are in

the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;

(6) consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations;

(7) consulting with the Secretary in the development of regulations to carry out this chapter;

(8) performing such other related functions as the Secretary may assign to the committee; and

(9) making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated.

(d) Admissibility of records and findings

Any records and findings made by the review committee pursuant to this chapter relating to the identity or cultural affiliation of any cultural items and the return of such items may be admissible in any action brought under section 3013 of this title.

(e) Recommendations and report

The committee shall make the recommendations under paragraph <sup>7</sup> (c)(5) in consultation with Indian tribes and Native Hawaiian organizations and appropriate scientific and museum groups.

(f) Access

The Secretary shall ensure that the committee established under subsection (a) of this section and the members of the

committee have reasonable access to Native American cultural items under review and to associated scientific and historical documents.

(g) Duties of Secretary

The Secretary shall –

(1) establish such rules and regulations for the committee as may be necessary, and

(2) provide reasonable administrative and staff support necessary for the deliberations of the committee.

(h) Annual report

The committee established under subsection (a) of this section shall submit an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.

(i) Termination

The committee established under subsection (a) of this section shall terminate at the end of the 120-day period beginning on the day the Secretary certifies, in a report submitted to Congress, that the work of the committee has been completed. (25 U.S.C. 3006)

<sup>6</sup> So in original. Probably should not be capitalized.

<sup>7</sup> So in original. Probably should be “subsection”.

**Penalty**

**Sec. 9 (a) Penalty**

Any museum that fails to comply with the requirements of this chapter may be

assessed a civil penalty by the Secretary of the Interior pursuant to procedures established by the Secretary through regulation. A penalty assessed under this subsection shall be determined on the record after opportunity for an agency hearing. Each violation under this subsection shall be a separate offense.

(b) Amount of penalty

The amount of a penalty assessed under subsection (a) of this section shall be determined under regulations promulgated pursuant to this chapter, taking into account, in addition to other factors-

- (1) the archaeological, historical, or commercial value of the item involved;
- (2) the damages suffered, both economic and non economic, by an aggrieved party, <sup>8</sup> and
- (3) the number of violations that have occurred.

(c) Actions to recover penalties

If any museum fails to pay an assessment of a civil penalty pursuant to a final order of the Secretary that has been issued under subsection (a) of this section and not appealed or after a final judgment has been rendered on appeal of such order, the Attorney General may institute a civil action in an appropriate district court of the United States to collect the penalty. In such action, the validity and amount of such penalty shall not be subject to review.

(d) Subpoenas

In hearings held pursuant to subsection (a) of this section, subpoenas may be

issued for the attendance and testimony of witnesses and the production of relevant papers, books, and documents. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. (25 U.S.C. 3007)

<sup>8</sup> So in original. The comma probably should be a semicolon.

## Grants

### Sec. 10 (a) Indian tribes and Native Hawaiian organizations

The Secretary is authorized to make grants to Indian tribes and Native Hawaiian organizations for the purpose of assisting such tribes and organizations in the repatriation of Native American cultural items.

(b) Museums

The Secretary is authorized to make grants to museums for the purpose of assisting the museums in conducting the inventories and identification required under sections 3003 and 3004 of this title. (25 U.S.C. 3008)

## Savings provision

Sec. 11 Nothing in this chapter shall be construed to –

- (1) limit the authority of any Federal agency or museum to -
  - (A) return or repatriate Native American cultural items to Indian tribes, Native Hawaiian organizations, or individuals, and
  - (B) enter into any other agreement

with the consent of the culturally affiliated tribe or organization as to the disposition of, or control over, items covered by this chapter;

- (2) delay actions on repatriation requests that are pending on November 16, 1990;
- (3) deny or otherwise affect access to any court;
- (4) limit any procedural or substantive right which may otherwise be secured to individuals or Indian tribes or Native Hawaiian organizations; or
- (5) limit the application of any State or Federal law pertaining to theft or stolen property. (25 U.S.C. 3009)

**Special relationship between Federal Government and Indian tribes and Native Hawaiian organizations**

**Sec. 12** This chapter reflects the unique relationship between the Federal Government and Indian tribes and Native Hawaiian organizations and should not be construed to establish a precedent with respect to any other individual, organization or foreign government. (25 U.S.C. 3010)

**Regulations**

**Sec. 13** The Secretary shall promulgate regulations to carry out this chapter within 12 months of November 16, 1990. (25 U.S.C. 3011)

**Authorization of appropriations**

**Sec. 14** There is authorized to be appropriated such sums as may be necessary

to carry out this chapter. (25 U.S.C. 3012)

**Enforcement**

**Sec. 15** The United States district courts shall have jurisdiction over any action brought by any person alleging a violation of this chapter and shall have the authority to issue such orders as may be necessary to enforce the provisions of this chapter. (25 U.S.C. 3013)

## **Minerals Resources on Weeks Lands**

**March 4, 1917 (Ch. 179, 39 Stat. 1150; 16 U.S.C. 520)**

### **Regulations as to mineral resources**

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

## Mineral Leasing Act

**February 25, 1920 (Ch. 25, 41 Stat. 437; 30 U.S.C. 181, 201, 202, 202a, 203, 205 to 208, 208-1, 211 to 214, 223 to 226, 228, 229, 241, 251, 261 to 263, 183 to 187, 187a, 187b, 188 to 190, 182, 191 to 193, 209, 229a, 195, 226-2, 226-3, 181 note)**

### **Lands subject to disposition; persons entitled to benefits; reciprocal privileges; helium rights reserved**

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

acquired under the provisions of this chapter.

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

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

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

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

## Leases and exploration

**Sec. 2** (a) Division into tracts; bidding and award; negotiated sales on exercise of right-of-way permits; leases to public agencies; fair market value of leases; leases in National Forests; comprehensive land-use plans; notice of proposed lease offering

(1) The Secretary of the Interior is authorized to divide any lands subject to this chapter which have been classified for coal leasing into leasing tracts of such size as he finds appropriate and in the public interest and which will permit the mining of all coal which can be economically extracted in such tract and thereafter he shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands for leasing and shall award leases thereon by competitive bidding: Provided, That notwithstanding the competitive bidding requirement of this section, the Secretary may, subject to such conditions which he deems appropriate, negotiate the sale at fair market value of coal the removal of which is necessary and incidental to the exercise of a right-of-way permit issued pursuant to title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.). No less than 50 per centum of the total acreage offered for lease by the Secretary in any one year shall be leased under a system of deferred bonus payment. Upon default or cancellation of any coal lease for which bonus payments are due, any unpaid remainder of the bid shall be immediately

payable to the United States. A reasonable number of leasing tracts shall be reserved and offered for lease in accordance with this section to public bodies, including Federal agencies, rural electric cooperatives, or nonprofit corporations controlled by any of such entities: Provided, That the coal so offered for lease shall be for use by such entity or entities in implementing a definite plan to produce energy for their own use or for sale to their members or customers (except for short-term sales to others). No bid shall be accepted which is less than the fair market value, as determined by the Secretary, of the coal subject to the lease. Prior to his determination of the fair market value of the coal subject to the lease, the Secretary shall give opportunity for and consideration to public comments on the fair market value. Nothing in this section shall be construed to require the Secretary to make public his judgment as to the fair market value of the coal to be leased, or the comments he receives thereon prior to the issuance of the lease. He is authorized, in awarding leases for coal lands improved and occupied or claimed in good faith, prior to February 25, 1920, to consider and recognize equitable rights of such occupants or claimants.

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

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

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

(3)(A)(i) No lease sale shall be held unless the lands containing the coal deposits have been included in a

comprehensive land-use plan and such sale is compatible with such plan. The Secretary of the Interior shall prepare such land-use plans on lands under his responsibility where such plans have not been previously prepared. The Secretary of the Interior shall inform the Secretary of Agriculture of substantial development interest in coal leasing on lands within the National Forest System. Upon receipt of such notification from the Secretary of the Interior, the Secretary of Agriculture shall prepare a comprehensive land-use plan for such areas where such plans have not been previously prepared. The plan of the Secretary of Agriculture shall take into consideration the proposed coal development in these lands: Provided, That where the Secretary of the Interior finds that because of non-Federal interest in the surface or because the coal resources are insufficient to justify the preparation costs of a Federal comprehensive land-use plan, the lease sale can be held if the lands containing the coal deposits have been included in either a comprehensive land-use plan prepared by the State within which the lands are located or a land use analysis prepared by the Secretary of the Interior.

(ii) In preparing such land-use plans, the Secretary of the Interior or, in the case of lands within the National Forest System, the Secretary of Agriculture, or in the case of a

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

(iii) Leases covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon consent of the other Federal agency and upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands.

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

(C) Prior to issuance of any coal lease, the Secretary shall consider

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

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

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

## (b) Exploration licenses; term; rights and conditions; violations

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

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

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

(3) The licensee shall furnish to the Secretary copies of all data (including, but not limited to, geological, geophysical, <sup>1</sup> and core drilling analyses) obtained during such exploration. The Secretary shall maintain the confidentiality of all data so obtained until after the areas involved have been leased or until such time as he determines that making the data available to the public would not damage the competitive position of the licensee, whichever comes first.

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

notice and opportunity for a hearing with respect to such violation. (30 U.S.C. 201)

<sup>1</sup> So in original. Probably should be “geophysical.”

### **Common carriers; limitations of lease or permit**

**Sec. 2(c)** No company or corporation operating a common-carrier railroad shall be given or hold a permit or lease under the provisions of this chapter for any coal deposits except for its own use for railroad purposes; and such limitations of use shall be expressed in all permits and leases issued to such companies or corporations; and no such company or corporation shall receive or hold under permit or lease more than ten thousand two hundred and forty acres in the aggregate nor more than one permit or lease for each two hundred miles of its railroad lines served or to be served from such coal deposits exclusive of spurs or switches and exclusive of branch lines built to connect the leased coal with the railroad, and also exclusive of parts of the railroad operated mainly by power produced otherwise than by steam. Nothing in this section and section 201 of this title shall preclude such a railroad of less than two hundred miles in length from securing one permit or lease thereunder but no railroad shall hold a permit or lease for lands in any State in which it does not operate main or branch lines. (30 U.S.C. 202)

### **Consolidation of coal leases into logical mining unit**

### **Sec. 2(d) (1) Approval by Secretary; public hearing; definition**

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

#### (2) Mining plan; requirements

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

#### (3) Conditions for approval

In approving a logical mining unit, the Secretary may provide, among other

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

(4) Amendment to lease

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

(5) Leases issued before date of enactment of this Act

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

(6) Lessee required to form unit

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

(7) Required acreage

No logical mining unit shall be approved by the Secretary if the total acreage (both Federal and non-Federal) of the

unit would exceed twenty-five thousand acres.

(8) Acreage limitations for coal leases not waived

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

**Additional contiguous or cornering lands allowed lessees; application of production or mining plan requirements and minimum royalty provisions**

**Sec. 3** Any person, association, or corporation holding a lease of coal lands or coal deposits under the provisions of this chapter may with the approval of the Secretary of the Interior, upon a finding by him that it would be in the interest of the United States, secure modifications of the original coal lease by including additional coal lands or coal deposits contiguous or cornering to those embraced in such lease, but in no event shall the total area added by such modifications to an existing coal lease exceed one hundred sixty acres, or add acreage larger than that in the original lease. The Secretary shall prescribe terms and conditions which shall be consistent with this chapter and applicable to all of the acreage in such modified lease except that nothing in this section shall require the Secretary to apply the production or mining plan requirements of sections 202a(2) and 207(c) of this title. The minimum royalty provisions of section 207(a) of this title shall not apply to any

lands covered by this modified lease prior to a modification until the term of the original lease or extension thereof which became effective prior to the effective date of this Act has expired. (30 U.S.C. 203)

### **Consolidation of leases**

**Sec. 5** If, in the judgment of the Secretary of the Interior, the public interest will be subserved thereby, lessees holding under lease areas not exceeding the maximum permitted under this chapter may consolidate their leases through the surrender of the original leases and the inclusion of such areas in a new lease of not to exceed two thousand five hundred and sixty acres of contiguous lands. (30 U.S.C. 205)

### **Noncontiguous coal or phosphate tracts in single lease**

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

### **Conditions of lease**

**Sec. 7** (a) Term of lease; annual rentals; royalties; readjustment of conditions

A coal lease shall be for a term of twenty years and for so long thereafter as coal is

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

(b) Diligent development and continued operation; suspension of condition on payment of advance royalties

Each lease shall be subject to the conditions of diligent development and continued operation of the mine or mines, except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. The Secretary of the Interior, upon determining that the public interest will be served thereby, may suspend the condition of continued operation upon the payment of advance royalties. Such advance royalties shall be no less than the production royalty which would otherwise be paid and shall be computed on a fixed reserve to production ratio (determined by the Secretary). The

aggregate number of years during the period of any lease for which advance royalties may be accepted in lieu of the condition of continued operation shall not exceed ten. The amount of any production royalty paid for any year shall be reduced (but not below 0) by the amount of any advance royalties paid under such lease to the extent that such advance royalties have not been used to reduce production royalties for a prior year. No advance royalty paid during the initial twenty-year term of a lease shall be used to reduce a production royalty after the twentieth year of a lease. The Secretary may, upon six months' notification to the lessee cease to accept advance royalties in lieu of the requirement of continued operation. Nothing in this subsection shall be construed to affect the requirement contained in the second sentence of subsection (a) of this section relating to commencement of production at the end of ten years.

(c) Operation and reclamation plan

Prior to taking any action on a leasehold which might cause a significant disturbance of the environment, and not later than three years after a lease is issued, the lessee shall submit for the Secretary's approval an operation and reclamation plan. The Secretary shall approve or disapprove the plan or require that it be modified. Where the land involved is under the surface jurisdiction of another Federal agency, that other agency must consent to the terms of such approval. (30 U.S.C. 207)

**Permits to take coal for local**

**domestic needs without royalty payments; corporation exclusion; area to municipalities for household use without profit**

**Sec. 8** In order to provide for the supply of strictly local domestic needs for fuel, the Secretary of the Interior may, under such rules and regulations as he may prescribe in advance, issue limited licenses or permits to individuals or associations of individuals to prospect for, mine, and take for their use but not for sale, coal from the public lands without payment of royalty for the coal mined or the land occupied, on such conditions not inconsistent with this chapter as in his opinion will safeguard the public interests. This privilege shall not extend to any corporations. In the case of municipal corporations the Secretary of the Interior may issue such limited license or permit, for not to exceed three hundred and twenty acres for a municipality of less than one hundred thousand population, and not to exceed one thousand two hundred and eighty acres for a municipality of not less than one hundred thousand and not more than one hundred and fifty thousand population; and not to exceed two thousand five hundred and sixty acres for a municipality of one hundred and fifty thousand population or more, the land to be selected within the State wherein the municipal applicant may be located, upon condition that such municipal corporations will mine the coal therein under proper conditions and dispose of the same without profit to residents of such municipality for household use: Provided, That the acquisition or holding

of a lease under sections 181, 201, and 202 to 207 of this title shall be no bar to the holding of such tract or operation of such mine under said limited license. (30 U.S.C. 208)

### **Exploratory program for evaluation of known recoverable coal resources**

#### **Sec. 8A (a) Authorization; purpose**

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

- (1) developing a comprehensive land use plan pursuant to section 2;
- (2) improving the information regarding the value of public resources and revenues which should be expected from leasing;
- (3) increasing competition among producers of coal, or products derived from the conversion of coal, by providing data and information to all potential bidders equally and equitably;
- (4) providing the public with information

on the nature of the coal deposits and the associated stratum and the value of the public resources being offered for sale; and

(5) providing the basis for the assessment of the amount of coal deposits in those lands subject to this chapter under subparagraph (B) of section 201(a)(3) of this title.

(b) Seismic, geophysical, geochemical or stratigraphic drilling

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

(c) Exploratory drilling by party not under contract to United States; confidentiality of information prior to award of lease

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

(d) Availability to public of all data, information, maps, surveys; confidentiality of information purchased from commercial sources not under contract to United States prior to award of lease

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

(e) Information or data from Federal departments or agencies; confidentiality of proprietary information or data; utilization of Federal departments and agencies by agreement

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

(f) Publication of geological and geophysical maps and reports of lands offered for lease

The Secretary is directed to prepare, publish, and keep current a series of detailed geological, and geophysical maps

of, and reports concerning, all coal lands to be offered for leasing under this chapter, based on data and information compiled pursuant to this section. Such maps and reports shall be prepared and revised at reasonable intervals beginning eighteen months after the date of enactment of this Act. Such maps and reports shall be made available on a continuing basis to any person on request.

(g) Implementation plan for coal lands exploration program; development and transmittal to Congress; contents

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

(h) Stratigraphic drilling; scope; statement of results

The stratigraphic drilling authorized in subsection (b) of this section shall be carried out in such a manner as to obtain information pertaining to all recoverable reserves. For the purpose of complying with subsection (a) of this section, the

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

### **Phosphate deposits**

**Sec. 9** (a) Authorization to lease land; terms and conditions; acreage

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

(b) Prospecting permits; issuance; term; acreage; entitlement to lease

Where prospecting or exploratory work is necessary to determine the existence or workability of phosphate deposits in any unclaimed, undeveloped area, the Secretary of the Interior is authorized to issue, to any applicant qualified under this

chapter, a prospecting permit which shall give the exclusive right to prospect for phosphate deposits, including associated minerals, for a period of two years, for not more than two thousand five hundred and sixty acres; and if prior to the expiration of the permit the permittee shows to the Secretary that valuable deposits of phosphate have been discovered within the area covered by his permit, the permittee shall be entitled to a lease for any or all of the land embraced in the prospecting permit.

(c) Extension of term of permit

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

### **Surveys; royalties; time payable; annual rentals; term of leases; readjustment on renewals; minimum production; suspension of operation**

**Sec. 10** Each lease shall describe the leased lands by the legal subdivisions of the public-land surveys. All leases shall be conditioned upon the payment to the United States of such royalties as may be specified in the lease, which shall be fixed by the Secretary of the Interior in

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

cannot be operated except at a loss. (30 U.S.C. 212)

### **Royalties for use of deposits of silica, limestone, or other rock embraced in lease**

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

### **Use of surface of other public lands; acreage; forest lands exception**

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

not be applicable to national forest lands. (30 U.S.C. 214)

**Sec. 13** Eliminated

**Leases; amount and survey of land; term of lease; royalties and annual rental**

**Sec. 14** Upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil or gas have been discovered within the limits of the land embraced in any permit, the permittee shall be entitled to a lease for one-fourth of the land embraced in the prospecting permit: Provided, That the permittee shall be granted a lease for as much as one hundred and sixty acres of said lands, if there be that number of acres within the permit. The area to be selected by the permittee, shall be in reasonably compact form and, if surveyed, to be described by the legal subdivisions of the public-land surveys; if unsurveyed, to be surveyed by the Government at the expense of the applicant for lease in accordance with rules and regulations to be prescribed by the Secretary of the Interior, and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such surveys; deposits made to cover expense of surveys shall be deemed appropriated for that purpose, and any excess deposits may be repaid to the person or persons making such deposit or their legal representatives. Such leases shall be for a term of twenty years upon a royalty of 5 per centum in amount or value of the production and the annual payment in advance of a rental of \$1 per acre, the rental paid for any one

year to be credited against the royalties as they accrue for that year, and shall continue in force otherwise as prescribed in section 226 of this title for leases issued prior to August 21, 1935. The permittee shall also be entitled to a preference right to a lease for the remainder of the land in his prospecting permit at a royalty of not less than 12 <sup>1/2</sup> per centum in amount or value of the production nor more than the royalty rate prescribed by regulation in force on January 1, 1935, for secondary leases issued under this section, and under such other conditions as are fixed for oil or gas leases issued under section 226 of this title the royalty to be determined by competitive bidding or fixed by such other method as the Secretary may by regulations prescribe: Provided further, That the Secretary shall have the right to reject any or all bids. (30 U.S.C. 223)

**Payments for oil or gas taken prior to application for lease**

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

**Condition of lease, forfeiture for violation**

**Sec. 16** All leases of lands containing oil or gas, made or issued under the provisions of this chapter, shall be subject to

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

### **Lease of oil and gas lands**

#### **Sec. 17 (a) Authority of Secretary**

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

(b) Lands within known geologic structure of a producing oil or gas field; lands within special tar sand areas; competitive bidding; royalties

(1)(A) All lands to be leased which are not subject to leasing under paragraphs (2) and (3) of this subsection shall be leased as provided in this paragraph to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than 2,560 acres, except in Alaska, where units shall be not more than 5,760 acres. Such units shall be as nearly compact as possible. Lease sales shall be conducted by oral bidding. Lease sales shall be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the

Interior determines such sales are necessary. A lease shall be conditioned upon the payment of a royalty at a rate of not less than 12.5 percent in amount or value of the production removed or sold from the lease. The Secretary shall accept the highest bid from a responsible qualified bidder which is equal to or greater than the national minimum acceptable bid, without evaluation of the value of the lands proposed for lease. Leases shall be issued within 60 days following payment by the successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first lease year. All bids for less than the national minimum acceptable bid shall be rejected. Lands for which no bids are received or for which the highest bid is less than the national minimum acceptable bid shall be offered promptly within 30 days for leasing under subsection (c) of this section and shall remain available for leasing for a period of 2 years after the competitive lease sale.

(B) The national minimum acceptable bid shall be \$2 per acre for a period of 2 years from December 22, 1987. Thereafter, the Secretary may establish by regulation a higher national minimum acceptable bid for all leases based upon a finding that such action is necessary: (i) to enhance financial returns to the United States; and (ii) to promote more efficient management of oil and gas resources on Federal lands. Ninety days before the Secretary makes any change in the national

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

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

(3)(A) If the United States held a vested future interest in a mineral estate that, immediately prior to becoming a vested present interest, was subject to a lease under which oil or gas was being produced, or had a well capable of producing, in paying quantities at an annual average production volume per well per day of either not more than 15 barrels per

day of oil or condensate, or not more than 60,000 cubic feet of gas, the holder of the lease may elect to continue the lease as a noncompetitive lease under subsection (c)(1) of this section.

(B) An election under this paragraph is effective -

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

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

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

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

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

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

(c) Lands subject to leasing under subsection (b); first qualified applicant

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

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

dance with subsection (b)(1) of this section.

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

(d) Annual rentals

All leases issued under this section, as amended by the Federal Onshore Oil and Gas Leasing Reform Act of 1987, shall be conditioned upon payment by the lessee of a rental of not less than \$1.50 per acre per year for the first through fifth years of the lease and not less than \$2 per acre per year for each year thereafter. A minimum royalty in lieu of rental of not less than the rental which otherwise would be required for that lease year shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased.

(e) Primary terms

Competitive and noncompetitive leases issued under this section shall be for a primary term of 10 years: Provided, however, That competitive leases issued in special tar sand areas shall also be for a primary term of ten years. Each such lease shall continue so long after its primary term as oil or gas is produced in paying quantities. Any lease issued under this section for land on which, or for which under an approved cooperative or unit plan of development or operation,

actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities.

(f) Notice of proposed action; posting of notice; terms and maps

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

(g) Regulation of surface-disturbing activities; approval of plan of operations; bond or surety; failure to comply with reclamation requirements as barring lease; opportunity to comply with requirements

The Secretary of the Interior, or for National Forest lands, the Secretary of Agriculture, shall regulate all surface-

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

concerned Secretary shall provide such entity with adequate notification and an opportunity to comply with such reclamation requirements and other standards and shall consider whether any administrative or judicial appeal is pending. Once the entity has complied with the reclamation requirement or other standard concerned an oil or gas lease may be issued to such entity under this chapter.

(h) National Forest System Lands

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

(i) Termination

No lease issued under this section which is subject to termination because of cessation of production shall be terminated for this cause so long as reworking or drilling operations which were commenced on the land prior to or within sixty days after cessation of production are conducted thereon with reasonable diligence, or so long as oil or gas is produced in paying quantities as a result of such operations. No lease issued under this section shall expire because operations or production is suspended under any order, or with the consent, of the Secretary. No lease issued under this section covering lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same unless the lessee is allowed a reasonable time, which shall be not less than sixty days after notice by registered or certified

mail, within which to place such well in producing status or unless, after such status is established, production is discontinued on the leased premises without permission granted by the Secretary under the provisions of this chapter.

(j) Drainage agreements; primary term of lease, extension

Whenever it appears to the Secretary that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent lands, he may negotiate agreements whereby the United States, or the United States and its lessees, shall be compensated for such drainage. Such agreements shall be made with the consent of the lessees, if any, affected thereby. If such agreement is entered into, the primary term of any lease for which compensatory royalty is being paid, or any extension of such primary term, shall be extended for the period during which such compensatory royalty is paid and for a period of one year from discontinuance of such payment and so long thereafter as oil or gas is produced in paying quantities.

(k) Mining claims; suspension of running time of lease

If, during the primary term or any extended term of any lease issued under this section, a verified statement is filed by any mining claimant pursuant to subsection (c) of section 527 of this title, whether such filing occur prior to September 2, 1960 or thereafter, asserting the existence of a conflicting unpatented mining claim or claims upon which diligent work is being prosecuted as to

any lands covered by the lease, the running of time under such lease shall be suspended as to the lands involved from the first day of the month following the filing of such verified statement until a final decision is rendered in the matter.

(l) Exchange of leases; conditions

The Secretary of the Interior shall, upon timely application therefor, issue a new lease in exchange for any lease issued for a term of twenty years, or any renewal thereof, or any lease issued prior to August 8, 1946, in exchange for a twenty-year lease, such new lease to be for a primary term of five years and so long thereafter as oil or gas is produced in paying quantities and at a royalty rate of not less than 12 <sup>1</sup>/<sub>2</sub> per centum in amount or value of the production removed or sold from such leases, except that the royalty rate shall be 12 <sup>1</sup>/<sub>2</sub> per centum in amount or value of the production removed or sold from said leases as to (1) such leases, or such parts of the lands subject thereto and the deposits underlying the same, as are not believed to be within the productive limits of any producing oil or gas deposit, as such productive limits are found by the Secretary to have existed on August 8, 1946; and (2) any production on a lease from an oil or gas deposit which was discovered after May 27, 1941, by a well or wells drilled within the boundaries of the lease, and which is determined by the Secretary to be a new deposit; and (3) any production on or allocated to a lease pursuant to an approved cooperative or unit plan of development or operation from an oil or gas deposit which was

discovered after May 27, 1941, on land committed to such plan, and which is determined by the Secretary to be a new deposit, where such lease, or a lease for which it is exchanged, was included in such plan at the time of discovery or was included in a duly executed and filed application for the approval of such plan at the time of discovery.

(m) Cooperative or unit plan; authority of Secretary of the Interior to alter or modify; communitization or drilling agreements; term of lease, conditions; Secretary to approve operating, drilling or development contracts, and subsurface storage

For the purpose of more properly conserving the natural resources of any oil or gas pool, field, or like area, or any part thereof (whether or not any part of said oil or gas pool, field, or like area, is then subject to any cooperative or unit plan of development or operation), lessees thereof and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of such pool, field, or like area, or any part thereof, whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest. The Secretary is thereunto authorized, in his discretion, with the consent of the holders of leases involved, to establish, alter, change, or revoke drilling, producing, rental, minimum royalty, and royalty requirements of such leases and to make such regulations with reference to such leases, with like

consent on the part of the lessees, in connection with the institution and operation of any such cooperative or unit plan as he may deem necessary or proper to secure the proper protection of the public interest. The Secretary may provide that oil and gas leases hereafter issued under this chapter shall contain a provision requiring the lessee to operate under such a reasonable cooperative or unit plan, and he may prescribe such a plan under which such lessee shall operate, which shall adequately protect the rights of all parties in interest, including the United States.

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

When separate tracts cannot be independently developed and operated in conformity with an established well-spacing or development program, any lease, or a portion thereof, may be pooled with other lands, whether or not owned by the United States, under a communitization or drilling agreement providing for an apportionment of production or royalties

among the separate tracts of land comprising the drilling or spacing unit when determined by the Secretary of the Interior to be in the public interest, and operations or production pursuant to such an agreement shall be deemed to be operations or production as to each such lease committed thereto.

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

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

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

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

(n) Conversion of oil and gas leases and claims on hydrocarbon resources to combined hydrocarbon leases for primary term of 10 years; application

(1)(A) The owner of (1) an oil and gas lease issued prior to November 16, 1981, or (2) a valid claim to any hydrocarbon resources leasable under this section based on a mineral location made prior to January 21, 1926, and located within a special tar sand area shall be entitled to convert such lease or claim to a combined hydrocarbon lease for a primary term of ten years upon the filing of an application within two years from November 16, 1981, containing an acceptable plan of operations which assures reasonable protection of the environment and diligent development of those resources requiring enhanced recovery

methods of development or mining. For purposes of conversion, no claim shall be deemed invalid solely because it was located as a placer location rather than a lode location or vice versa, notwithstanding any previous adjudication on that issue.

(B) The Secretary shall issue final regulations to implement this section within six months of November 16, 1981. If any oil and gas lease eligible for conversion under this section would otherwise expire after November 16, 1981, and before six months following the issuance of implementing regulations, the lessee may preserve his conversion right under such lease for a period ending six months after the issuance of implementing regulations by filing with the Secretary, before the expiration of the lease, a notice of intent to file an application for conversion. Upon submission of a complete plan of operations in substantial compliance with the regulations promulgated by the Secretary for the filing of such plans, the Secretary shall suspend the running of the term of any oil and gas lease proposed for conversion until the plan is finally approved or disapproved. The Secretary shall act upon a proposed plan of operations within fifteen months of its submittal.

(C) When an existing oil and gas lease is converted to a combined hydrocarbon lease, the royalty shall be that provided for in the original oil and gas lease and for a converted mining claim, 12 <sup>1/2</sup> per

centum in amount or value of production removed or sold from the lease.

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

(o) Certain outstanding oil and gas deposits

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

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

(3) Advance notice under paragraph (2) shall include each of the following items of information: (A) A designated field representative.

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

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

(D) A plan of erosion and sedimentation control.

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

(4) The person proposing to develop oil and gas deposits on lands described under paragraph (5) shall either - (A) permit the Secretary to market merchantable timber owned by the United States on lands subject to such activities; or

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

(5)(A) The lands referred to in this subsection are those lands referenced in subparagraph (B) which are under the administration of the Secretary of Agriculture where the United States acquired an interest in such lands pursuant to the Act of March 1, 1911 (36 Stat. 961 and following), but does not have an interest in oil and gas deposits that may be present under such lands. This subsection does not apply to any such lands where, under the provisions of its acquisition of an

interest in the lands, the United States is to acquire any oil and gas deposits that may be present under such lands in the future but such interest has not yet vested with the United States.

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

<sup>2</sup> So in original. Probably should be subsection "(k)(1)(C)".

### **Prospecting permits and leases to persons of lands not withdrawn; terms and conditions of; fraud of claimants**

**Sec. 19** Any person who on October 1, 1919, was a bona fide occupant or claimant of oil or gas lands under a claim initiated while such lands were not withdrawn from oil or gas location and entry, and who had previously performed all acts under then existing laws necessary to valid locations thereof except to make discovery, and upon which discovery had not been made prior to February 25, 1920, and who has performed work or expended on or for the benefit of such locations an amount equal in the aggregate of \$250 for each location if application therefor shall be made within six months from February 25, 1920, shall be entitled to prospecting permits thereon upon the same terms and conditions, and limitations as to acreage, as other permits provided for in this chapter, or where any such person has made such discovery, prior to said February 25, 1920, he shall be entitled to a lease thereon under such terms as the Secretary of the Interior

may prescribe unless otherwise provided for in section 227 [omitted] of this title: Provided, That where such prospecting permit is granted upon land within any known geologic structure of a producing oil or gas field, the royalty to be fixed in any lease thereafter granted thereon or any portion thereof shall be not less than 12 <sup>1</sup>/<sub>2</sub> per-centum of all the oil or gas produced except oil or gas used for production purposes on the claim, or unavoidably lost: Provided, however, That the provisions of this section shall not apply to lands reserved for the use of the Navy. No claimant for a permit or lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith shall be entitled to any of the benefits of this section.

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

**Preference right to permits or leases of claimants of lands bona fide entered as agricultural land; terms and conditions**

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

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

**Leases of lands**

**Sec. 21** (a) Authorization; survey; terms, royalties and annual rentals; readjustments on renewals; rights of existing claimants; fraud of claimants

The Secretary of the Interior is hereby authorized to lease to any person or corporation qualified under this chapter any deposits of oil shale, and gilsonite (including all vein-type solid hydrocarbons) belonging to the United States and the surface of so much of the public lands containing such deposits, or land adjacent thereto, as may be required for the extraction and reduction of the leased minerals, under such rules and regulations, not inconsistent with this chapter, as he may prescribe. No lease hereunder shall exceed five thousand one hundred and twenty acres of land, to be described by the legal subdivisions of the public-land surveys, or if unsurveyed, to be surveyed by the United States, at the

expense of the applicant, in accordance with regulations to be prescribed by the Secretary of the Interior. Leases may be for indeterminate periods, upon such conditions as may be imposed by the Secretary of the Interior, including covenants relative to methods of mining, prevention of waste, and productive development. For the privilege of mining, extracting, and disposing of the oil or other minerals covered by a lease under this section the lessee shall pay to the United States such royalties as shall be specified in the lease and an annual rental, payable at the beginning of each year, at the rate of 50 cents per acre per annum, for the lands included in the lease, the rental paid for any one year to be credited against the royalties accruing for that year; such royalties to be subject to readjustment at the end of each twenty-year period by the Secretary of the Interior. For the purpose of encouraging the production of petroleum products from shales the Secretary may, in his discretion, waive the payment of any royalty and rental during the first five years of any lease. Any person having a valid claim to such minerals under existing laws on January 1, 1919, shall, upon the relinquishment of such claim, be entitled to a lease under the provisions of this section for such area of the land relinquished as shall not exceed the maximum area authorized by this section to be leased to an individual or corporation. No claimant for a lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be

entitled to any of the benefits of this section. Not more than one lease shall be granted under this section to any one person, association, or corporation except that with respect to leases for gilsonite (including all vein-type solid hydrocarbons) no person, association, or corporation shall acquire or hold more than seven thousand six hundred eighty acres in any one State without respect to the number of leases.

(b) Offer for lease; deposits other than oil shale; questioned validity because of location; preference rights

If an offer for a lease under the provisions of this section for deposits other than oil shale is based upon a mineral location, the validity of which might be questioned because the claim was based on a placer location rather than on a lode location, or vice versa, the offeror shall have a preference right to a lease if the offer is filed not more than one year after September 2, 1960.

(c)<sup>3</sup> Multiple use principal leases; gilsonite including all vein-type solid hydrocarbons

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

(c)<sup>4</sup> Offsite leases (1) The Secretary may within the State of Colorado lease to the holder of the Federal oil shale lease known as Federal Prototype Tract C-a additional lands necessary for the disposal of oil shale wastes and the materi-

als removed from mined lands, and for the building of plants, reduction works, and other facilities connected with oil shale operations (which lease shall be referred to hereinafter as an “offsite lease”). The Secretary may only issue one offsite lease not to exceed six thousand four hundred acres. An offsite lease may not serve more than one Federal oil shale lease and may not be transferred except in conjunction with the transfer of the Federal oil shale lease that it serves.

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

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

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

(5) An offsite lease for lands the surface of which is under the jurisdiction of a Federal agency other than the Department of the Interior shall be issued only with the consent of that

other Federal agency and shall be subject to such terms and conditions as it may prescribe.

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

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

(8) An offsite lease may, at the option of the lessee, include provisions for payments in any year which payments shall be credited against any portion of the annual rental for a subsequent year to the extent that such payment is payable by the Secretary of the Treasury under section 191 of this title to the State within the boundaries of which the leased lands are located. Such funds shall be paid by the Secretary of the Treasury to the appropriate State in accordance with section 191 of this title, and such funds shall be distributed by the State only to those counties, municipalities, or jurisdictional subdivisions impacted by oil shale development and/or where the lease is sited.

(9) An offsite lease shall remain subject to leasing under the other provisions of this chapter where such leasing would not be incompatible with the offsite lease.

(d) Considerations governing issuance of offsite lease In recognition of the unique character of oil shale development:

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

(2) The Secretary may issue an offsite lease under subsection (d) <sup>5</sup> after consideration of (A) the need for leasing, (B) impacts on the environment and other resource values, (C) socio-economic factors, and (D) information from consultations with the Governors of the affected States.

(3) Before determining whether to offer an offsite lease under subsection (c) of this section, the Secretary shall seek the recommendation of the Governor of the State in which the lands to be leased are located as to whether or not to lease such lands, what alternative actions are available, and what special

conditions could be added to the proposed lease to mitigate impacts. The Secretary shall accept the recommendations of the Governor if he determines that they provide for a reasonable balance between the national interest and the State's interests. The Secretary shall communicate to the Governor, in writing, and publish in the Federal Register the reasons for his determination to accept or reject such Governor's recommendations. (30 U.S.C. 241)

<sup>3</sup>and <sup>4</sup> Two subsecs. (c) have been enacted.

<sup>5</sup> So in original. Probably should be subsection "(c)".

**Leases to claimants of withdrawn lands; terms and conditions; acreage; annual rentals and royalties; fraud of claimants**

**Sec. 22** Any bona fide occupant or claimant of oil or gas bearing lands in the Territory of Alaska, who, or whose predecessors in interest, prior to withdrawal had complied otherwise with the requirements of the mining laws, but had made no discovery of oil or gas in wells and who prior to withdrawal had made substantial improvements for the discovery of oil or gas on or for each location or had prior to February 25, 1920 expended not less than \$250 in improvements on or for each location shall be entitled, upon relinquishment or surrender to the United States within one year from February 25, 1920, or within six months after final denial or withdrawal of application for patent, to a lease or leases, under this

chapter covering such lands, not exceeding five leases in number and not exceeding an aggregate of one thousand two hundred and eighty acres in each: Provided, That the annual lease rentals for lands in the Territory of Alaska not within any known geological structure of a producing oil or gas field and the royalty payments from production of oil or gas sold or removed from such lands shall be identical with those prescribed for such leases covering similar lands in the States of the United States, except that leases which may issue pursuant to applications or offers to lease such lands, which applications or offers were filed prior to and were pending on May 3, 1958, shall require the payment of 25 cents per acre as lease rental for the first year of such leases; but the aforesaid exception shall not apply in any way to royalties to be required under leases which may issue pursuant to offers or applications filed prior to May 3, 1958.

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

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

### **Prospecting permits; lands included; acreage**

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

### **Leases to permittees; survey of lands; royalties and annual rentals**

**Sec. 24** Upon showing to the satisfaction of the Secretary of the Interior that valuable deposits of one of the substances enumerated in section 261 of this title have been discovered by the permittee within the area covered by his permit and that such land is chiefly valuable therefor, the permittee shall be entitled to a lease for any or all of the land embraced in the prospecting permit at a royalty of not less than 2 per centum of the quantity or gross value of the output of sodium compounds and other related products at the point of shipment to market; the lands in such lease to be taken in compact form by legal subdivisions of the public land surveys or, if the land be not surveyed, by survey executed at the cost of the permittee in accordance with regulations prescribed by the Secretary of the Interior. Lands known to

contain valuable deposits of one of the substances enumerated in section 261 of this title and not covered by permits or leases shall be subject to lease by the Secretary of the Interior through advertisement, competitive bidding, or such other methods as he may by general regulations adopt and in such areas as he shall fix, not exceeding two thousand five hundred and sixty acres. All leases under this section shall be conditioned upon the payment by the lessee of such royalty as may be fixed in the lease, not less than 2 per centum of the quantity or gross value of the output of sodium compounds and other related products at the point of shipment to market, and the payment in advance of a rental of 25 cents per acre for the first calendar year or fraction thereof, 50 cents per acre for the second, third, fourth, and fifth calendar years respectively; and \$1 per acre per annum thereafter during the continuance of the lease, such rental for any one year to be credited against royalties accruing for that year. Leases under this section shall be for a period of twenty years, with preferential right in the lessee to renew for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior unless otherwise provided by law at the expiration of such period: Provided, That nothing in this chapter shall prohibit the mining and sale of sodium compounds under potassium leases issued pursuant to subchapter VII (Sec. 141 et seq.) of chapter 3 of this title and subchapter IX of this chapter, nor the mining and sale of potassium compounds as a byproduct from sodium leases taken

under this section: Provided further, That on application by any lessee the Secretary of the Interior is authorized to modify the rental and royalty provisions stipulated in any existing sodium lease to conform to the provisions of this section. (30 U.S.C. 262)

#### **Permits to use or lease of nonmineral lands for camp sites, and other purposes; annual rentals; acreage**

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

#### **Cancellation of prospecting permits**

**Sec. 26** The Secretary of the Interior shall reserve and may exercise the authority to cancel any prospecting permit upon failure by the permittee to exercise due diligence in the prosecution of the prospecting work in accordance with the terms and conditions stated in the permit, and shall insert in every such permit issued under the provisions of this

chapter appropriate provisions for its cancellation by him. (30 U.S.C. 183)

**Limitations on leases held, owned or controlled by persons, associations or corporations**

**Sec. 27 (a) Coal leases**

No person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation shall take, hold, own or control at one time, whether acquired directly from the Secretary under this chapter or otherwise, coal leases or permits on an aggregate of more than 75,000 acres in any one State and in no case greater than an aggregate of 150,000 acres in the United States: Provided, That any person, association, or corporation currently holding, owning, or controlling more than an aggregate of 150,000 acres in the United States on the date of enactment of this section shall not be required on account of this section to relinquish said leases or permits: Provided, further, That in no case shall such person, association, or corporation be permitted to take, hold, own, or control any further Federal coal leases or permits until such time as their holdings, ownership, or control of Federal leases or permits has been reduced below an aggregate of 150,000 acres within the United States.

**(b) Sodium leases or permits, acreage**

(1) No person, association, or corporation, except as otherwise provided in this subsection, shall take, hold, own, or control at one time, whether acquired

directly from the Secretary under this chapter, or otherwise, sodium leases or permits on an aggregate of more than five thousand one hundred and twenty acres in any one State.

(2) The Secretary may, in his discretion, where the same is necessary in order to secure the economic mining of sodium compounds leasable under this chapter, permit a person, association, or corporation to take or hold sodium leases or permits on up to 30,720 acres in any one State.

**(c) Phosphate leases, acreage**

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

**(d) Oil or gas leases, acreage, Alaska; options, semi-annual statements**

(1) No person, association, or corporation, except as otherwise provided in this chapter, shall take, hold, own or control at one time, whether acquired directly from the Secretary under this chapter, or otherwise, oil or gas leases (including options for such leases or interests therein) on land held under the provisions of this chapter exceeding in the aggregate two hundred forty-six thousand and eighty acres in any one State other than Alaska <sup>6</sup> Provided, however, That acreage held in special tar sand areas shall not be chargeable against such State limitations. In the

case of the State of Alaska, the limit shall be three hundred thousand acres in the northern leasing district and three hundred thousand acres in the southern leasing district, and the boundary between said two districts shall be the left limit of the Tanana River from the border between the United States and Canada to the confluence of the Tanana and Yukon Rivers, and the left limit of the Yukon River from said confluence to its principal southern mouth.

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

optionor's interest in the whole or a part of the acreage under a lease is entered into, the acreage to which the option is applicable shall be fully charged to the optionor and a share thereof shall also be charged to the optionee, as his interest may appear, but after the option is exercised said acreage shall be charged to the parties pro rata as their interests may appear. In any case in which an assignment is made of a part of a lessee's interest in the whole or part of the acreage under a lease or an application for a lease, the acreage shall be charged to the parties pro rata as their interests may appear. No option or renewal thereof shall be enforceable until notice thereof has been filed with the Secretary or an officer or employee of the Department of the Interior designated by him to receive the same. Each such notice shall include, in addition to any other matters prescribed by the Secretary, the names and addresses of the parties thereto, the serial number of the lease or application for a lease to which the option is applicable, and a statement of the number of acres covered thereby and of the interests and obligations of the parties thereto and shall be subscribed by all parties to the option or their duly authorized agents. An option which has not been exercised shall remain charged as hereinbefore provided until notice of its relinquishment or surrender has been filed, by either party, with the Secretary or any officer or employee of the Department of the Interior designated by him to receive the same. In addition, each holder of any such option shall file with

the Secretary or an officer or employee of the Department of the Interior as aforesaid within ninety days after the 30th day of June and the 31st day of December in each year a statement showing, in addition to any other matters prescribed by the Secretary, his name, the name and address of each grantor of an option held by him, the serial number of every lease or application for a lease to which such an option is applicable, the number of acres covered by each such option, the total acreage in each State to which such options are applicable, and his interest and obligation under each such option. The failure of the holder of an option so to file shall render the option unenforcible<sup>7</sup> by him. The unenforcibility<sup>8</sup> of any option under the provisions of this paragraph shall not diminish the number of acres deemed to be held under option by any person, association, or corporation in computing the amount chargeable under the first sentence of this paragraph and shall not relieve any party thereto of any liability to cancellation, forfeiture, forced disposition, or other sanction provided by law. The Secretary may prescribe forms on which the notice and statements required by this paragraph shall be made.

(e) Association or stockholder interests, conditions; combined interests

(1) No person, association, or corporation shall take, hold, own or control at one time any interest as a member of an association or as a stockholder in a corporation holding a lease, option, or permit under the provisions of this

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

(2) No contract for development and operation of any lands leased under this chapter, whether or not coupled with an interest in such lease, and no lease held, owned, or controlled in common by two or more persons, associations, or corporations shall be deemed to create a separate association under the preceding paragraph of this subsection

between or among the contracting parties or those who hold, own or control the lease in common, but the proportionate interest of each such party shall be charged against the total acreage permitted to be held, owned or controlled by such party under this chapter. The total acreage so held, owned, or controlled in common by two or more parties shall not exceed, in the aggregate, an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee, optionee, or permittee under this chapter.

(f) Limitations on other sections; combined interests permitted for certain purposes

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

(g) Forbidden interests acquired by descent, will, judgment, or decree; permissible holding period

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

(h) Cancellation, forfeiture, or disposal of interests for violation; bona fide purchasers and other valid interests; sale by Secretary; record of proceedings

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

(2) The right to cancel or forfeit for violation of any of the provisions of this chapter shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, interest in a lease, option to acquire a lease or an interest therein, or permit which lease, interest, option, or permit was acquired and is held by a qualified person, association, or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease, interest, option, or permit was acquired, or of his predecessor in title (including

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

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

(i) Bona fide purchasers, conditions for obtaining dismissals

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

(j) Waiver or suspension of rights

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

(k) Unlawful trusts; forfeiture

Except as otherwise provided in this chapter, if any lands or deposits subject to

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

(l) Rules and regulations; notice to and consultation with Attorney General; application of antitrust laws; definitions

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

(2) No coal lease may be issued, renewed, or readjusted under this chapter until at least thirty days after the Secretary of the Interior notifies the Attorney General of the proposed issuance, renewal, or readjustment. Such notification shall contain such information as the Attorney General may require in order to advise the Secretary of the Interior as to whether such lease would create or maintain a situation inconsistent with the antitrust laws. If the Attorney General advises the Secretary of the Interior that a lease would create or maintain such a situation, the Secretary of the Interior may not issue such lease, nor may he renew or readjust such lease for a period not to exceed one year, as the case may be, unless he thereafter conducts a public hearing on the record in accordance with subchapter II of chapter 5 of title 5 and finds therein that such issuance, renewal, or readjustment is necessary to effectuate the purposes of this chapter, that it is consistent with the public interest, and that there are no reasonable alternatives consistent with this chapter, the antitrust laws, and the public interest.

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

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

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

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

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

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

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

<sup>6</sup> So in original. Probably should be followed by a colon.

<sup>7 and 8</sup> So in original. Probably should be “unenforceability”.

### **Rights-of-way for pipelines through Federal lands**

#### **Sec. 28 (a) Grant of authority**

Rights-of-way through any Federal lands may be granted by the Secretary of the Interior or appropriate agency head for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced

therefrom to any applicant possessing the qualifications provided in section 181 of this title in accordance with the provisions of this section.

#### **(b) Definitions**

(1) For the purposes of this section “Federal lands” means all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf. A right-of-way through a Federal reservation shall not be granted if the Secretary or agency head determines that it would be inconsistent with the purposes of the reservation.

(2) “Secretary” means the Secretary of the Interior.

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

#### **(c) Inter-agency coordination**

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

(2) Where the surface of the Federal lands involved is administered by the Secretary or by two or more Federal agencies, the Secretary is authorized, after consultation with the agencies involved, to grant or renew rights-of-

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

(d) Width limitations

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

(e) Temporary permits

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

(f) Regulatory authority

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

(g) Pipeline safety

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

(h) Environmental protection

(1) Nothing in this section shall be construed to amend, repeal, modify, or change in any way the requirements of section 102(2)(C) (42 U.S.C. 4332(2)(C)) or any other provision of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) The Secretary or agency head, prior to granting a right-of-way or permit pursuant to this section for a new

project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation for such right-of-way or permit which shall comply with this section. The Secretary or agency head shall issue regulations or impose stipulations which shall include, but shall not be limited to: (A) requirements for restoration, revegetation, and curtailment of erosion of the surface of the land; (B) requirements to insure that activities in connection with the right-of-way or permit will not violate applicable air and water quality standards nor related facility siting standards established by or pursuant to law; (C) requirements designed to control or prevent (i) damage to the environment (including damage to fish and wildlife habitat), (ii) damage to public or private property, and (iii) hazards to public health and safety; and (D) requirements to protect the interests of individuals living in the general area of the right-of-way or permit who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes. Such regulations shall be applicable to every right-of-way or permit granted pursuant to this section, and may be made applicable by the Secretary or agency head to existing rights-of-way or permits, or rights-of-way or permits to be renewed pursuant to this section.

(i) Disclosure

If the applicant is a partnership, corporation, association, or other business entity, the Secretary or agency head shall

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

(j) Technical and financial capability

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

(k) Public hearings

The Secretary or agency head by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local government agencies and the public adequate notice and an opportunity to comment upon

right-of-way applications filed after the date of enactment of this subsection.

(l) Reimbursement of costs

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

(m) Bonding

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

(n) Duration of grant

Each right-of-way or permit granted or renewed pursuant to this section shall be limited to a reasonable term in light of all circumstances concerning the project, but in no event more than thirty years. In determining the duration of a right-of-way the Secretary or agency head shall, among other things, take into consideration the cost of the facility, its useful life,

and any public purpose it serves. The Secretary or agency head shall renew any right-of-way, in accordance with the provisions of this section, so long as the project is in commercial operation and is operated and maintained in accordance with all of the provisions of this section.

(o) Suspension or termination of right-of-way

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

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

(3) Deliberate failure of the holder to use the right-of-way for the purpose for which it was granted or renewed for any continuous two-year period shall constitute a rebuttable presumption of

abandonment of the right-of-way: Provided, That where the failure to use the right-of-way is due to circumstances not within the holder's control the Secretary or agency head is not required to commence proceedings to suspend or terminate the right-of-way.

(p) Joint use of rights-of-way

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

(q) Statutes No rights-of-way for the purposes provided for in this section shall be granted or renewed across Federal lands except under and subject to the provisions, limitations, and conditions of this section. Any application for a right-of-way filed under any other law prior to the effective date of this provision may, at the applicant's option, be considered as an application under this section. The Secretary or agency head may require the applicant to submit any additional information he deems necessary to comply with the requirements of this section.

(r) Common carriers

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

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

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

(3)(A) The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act (15 U.S.C. 717 et seq.) or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

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

(4) The Government shall in express terms reserve and shall provide in every lease of oil lands under this chapter that

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

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

(6) The Secretary or agency head shall require, prior to granting or renewing a right-of-way, that the applicant submit and disclose all plans, contracts, agreements, or other information or material which he deems necessary to determine whether a right-of-way shall be granted or renewed and the terms and condi-

tions which should be included in the right-of-way. Such information may include, but is not limited to: (A) conditions for, and agreements among owners or operators, regarding the addition of pumping facilities, looping, or otherwise increasing the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand; (B) conditions for adding or abandoning intake, offtake, or storage points or facilities; and (C) minimum shipment or purchase tenders.

(s) Exports of Alaskan North Slope oil

(1) Subject to paragraphs (2) through (6) of this subsection and notwithstanding any other provision of this chapter or any other provision of law (including any regulation) applicable to the export of oil transported by pipeline over right-of-way granted pursuant to section 1652 of title 43, such oil may be exported unless the President finds that exportation of this oil is not in the national interest. The President shall make his national interest determination within five months of November 28, 1995. In evaluating whether exports of this oil are in the national interest, the President shall at a minimum consider -

(A) whether exports of this oil would diminish the total quantity or quality of petroleum available to the United States;

(B) the results of an appropriate environmental review, including consideration of appropriate measures to mitigate any potential adverse effects of exports of this oil on the

environment, which shall be completed within four months of November 28, 1995; and

(C) whether exports of this oil are likely to cause sustained material oil supply shortages or sustained oil prices significantly above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, including noncontiguous States and Pacific territories.

If the President determines that exports of this oil are in the national interest, he may impose such terms and conditions (other than a volume limitation) as are necessary or appropriate to ensure that such exports are consistent with the national interest.

(2) Except in the case of oil exported to a country with which the United States entered into a bilateral international oil supply agreement before November 26, 1979, or to a country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency, any oil transported by pipeline over right-of-way granted pursuant to section 1652 of title 43 shall, when exported, be transported by a vessel documented under the laws of the United States and owned by a citizen of the United States (as determined in accordance with sections 802 and 803 of title 46, Appendix).

(3) Nothing in this subsection shall restrict the authority of the President under the Constitution, the International

Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the National Emergencies Act (50 U.S.C. 1601 et seq.), or Part B of title II of the Energy Policy and Conservation Act (42 U.S.C. 6271-76) to prohibit exports.

(4) The Secretary of Commerce shall issue any rules necessary for implementation of the President's national interest determination, including any licensing requirements and conditions, within 30 days of the date of such determination by the President. The Secretary of Commerce shall consult with the Secretary of Energy in administering the provisions of this subsection.

(5) If the Secretary of Commerce finds that exporting oil under authority of this subsection has caused sustained material oil supply shortages or sustained oil prices significantly above world market levels and further finds that these supply shortages or price increases have caused or are likely to cause sustained material adverse employment effects in the United States, the Secretary of Commerce, in consultation with the Secretary of Energy, shall recommend, and the President may take, appropriate action concerning exports of this oil, which may include modifying or revoking authority to export such oil.

(6) Administrative action under this subsection is not subject to sections 551 and 553 through 559 of title 5.

(t) Existing rights-of-way

The Secretary or agency head may ratify and confirm any right-of-way or permit for an oil or gas pipeline or related facility

that was granted under any provision of law before the effective date of this subsection, if it is modified by mutual agreement to comply to the extent practical with the provisions of this section. Any action taken by the Secretary or agency head pursuant to this subsection shall not be considered a major Federal action requiring a detailed statement pursuant to section 102(2)(C) (42 U.S.C. 4332(2)(C)) of the National Environmental Policy Act of 1970 (Public Law 90-190; 42 U.S.C. 4321).

(u) Limitations on export

Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to this section, except such crude oil which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C. App. 2401 and following) and, in addition, before any crude oil subject to this section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of the Export Administration Act of 1979 the President must make and publish an express finding that such exports will not diminish the total quantity or quality of petroleum available to the United States, and are in the national interest and are in

accord with the provisions of the Export Administration Act of 1979: Provided, That the President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to the aforementioned Presidential findings shall cease.

(v) State standards

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

(w) Reports

(1) The Secretary and other appropriate agency heads shall report to the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate annually on the administration of this section and on the safety and environmental requirements imposed pursuant thereto.

(2) The Secretary or agency head shall promptly notify the Committee on Natural Resources of the United States House of Representatives and the

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

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

(x) Liability

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

(2) The Secretary or agency head may, by regulation or stipulation, impose a

standard of strict liability to govern activities taking place on a right-of-way or permit area which the Secretary or agency head determines, in his discretion, to present a foreseeable hazard or risk of danger to the United States.

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

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

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

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

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

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

(y) Antitrust laws

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

**Reservation of easements or rights-of-way for working purposes; reservation of right to dispose of surface of lands; determination before offering of lease; easement periods**

**Sec. 29** Any permit, lease, occupation, or use permitted under this chapter shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights-of-way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this chapter, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes. The Secretary of the Interior, in his discretion, in making any lease under this chapter, may reserve to the United States the right to lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, insofar as said surface is not necessary for use of the lessee in extracting and removing the deposits

therein. If such reservation is made it shall be so determined before the offering of such lease. The said Secretary, during the life of the lease, is authorized to issue such permits for easements herein provided to be reserved. (30 U.S.C. 186)

**Assignment or subletting of leases; relinquishment of rights under leases; conditions in leases for protection of diverse interests in operation of mines, wells, etc.; State laws not impaired**

**Sec. 30** No lease issued under the authority of this chapter shall be assigned or sublet, except with the consent of the Secretary of the Interior. The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease, and upon acceptance thereof be thereby relieved of all future obligations under said lease, and may with like consent surrender any legal subdivision of the area included within the lease. Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property; a provision that such rules for the safety and welfare of the miners and for the prevention of undue waste as may be prescribed by said Secretary shall be observed, including a restriction of the workday to not exceeding eight hours in any one day for underground workers except in cases of emergency; provisions prohibiting the employment of any child under the age of sixteen in any mine below the surface; provisions securing the workmen com-

plete freedom of purchase; provision requiring the payment of wages at least twice a month in lawful money of the United States, and providing proper rules and regulations to insure the fair and just weighing or measurement of the coal mined by each miner, and such other provisions as he may deem necessary to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, for the protection of the interests of the United States, for the prevention of monopoly, and for the safeguarding of the public welfare. None of such provisions shall be in conflict with the laws of the State in which the leased property is situated. (30 U.S.C. 187)

### **Oil or gas leases; partial assignments**

**Sec. 30A** Notwithstanding anything to the contrary in section 187 of this title, any oil or gas lease issued under the authority of this chapter may be assigned or subleased, as to all or part of the acreage included therein, subject to final approval by the Secretary and as to either a divided or undivided interest therein, to any person or persons qualified to own a lease under this chapter, and any assignment or sublease shall take effect as of the first day of the lease month following the date of filing in the proper land office of three original executed counterparts thereof, together with any required bond and proof of the qualification under this chapter of the assignee or sublessee to take or hold such lease or interest therein. Until such

approval, however, the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed. The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: Provided, however, That the Secretary may, in his discretion, disapprove an assignment of any of the following, unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas:

- (1) A separate zone or deposit under any lease.
- (2) A part of a legal subdivision.
- (3) Less than 640 acres outside Alaska or of less than 2,560 acres within Alaska. Requests for approval of assignment or sublease shall be processed promptly by the Secretary. Except where the assignment or sublease is not in accordance with applicable law, the approval shall be given within 60 days of the date of receipt by the Secretary of a request for such approval. Upon approval of any assignment or sublease, the assignee or sublessee shall be bound by the terms of the lease to the same extent as if such assignee or sublessee were the original lessee, any conditions in the assignment or sublease to the contrary notwithstanding. Any partial assignment of any lease shall segregate the assigned and retained portions thereof, and as above provided, release and discharge the assignor from all obligations thereafter

accruing with respect to the assigned lands; and such segregated leases shall continue in full force and effect for the primary term of the original lease, but for not less than two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the lands originally subject to such lease. Assignments under this section may also be made of parts of leases which are in their extended term because of any provision of this chapter. Upon the segregation by an assignment of a lease issued after September 2, 1960 and held beyond its primary term by production, actual or suspended, or the payment of compensatory royalty, the segregated lease of an undeveloped, assigned, or retained part shall continue for two years, and so long thereafter as oil or gas is produced in paying quantities. (30 U.S.C. 187a)

### **Oil or gas leases; written relinquishment of rights; release of obligations**

**Sec. 30B** Notwithstanding any provision to the contrary in section 187 of this title, a lessee may at any time make and file in the appropriate land office a written relinquishment of all rights under any oil or gas lease issued under the authority of this chapter or of any legal subdivision of the area included within any such lease. Such relinquishment shall be effective as of the date of its filing, subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to place all wells on the lands to be relinquished in condi-

tion for suspension or abandonment in accordance with the applicable lease terms and regulations; thereupon the lessee shall be released of all obligations thereafter accruing under said lease with respect to the lands relinquished, but no such relinquishment shall release such lessee, or his bond, from any liability for breach of any obligation of the lease, other than an obligation to drill, accrued at the date of the relinquishment. (30 U.S.C. 187b)

### **Failure to comply with provisions of lease**

#### **Sec. 31 (a) Forfeiture**

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

#### **(b) Cancellation**

Any lease issued after August 21, 1935, under the provisions of section 226 of this title shall be subject to cancellation by the Secretary of the Interior after 30 days notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the leasehold

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

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

#### (c) Reinstatement

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

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

(2) no valid lease has been issued affecting any of the lands covered by the terminated lease prior to the filing of said petition. The Secretary shall not issue any new lease affecting any of the lands covered by such terminated lease for a reasonable period, as determined in accordance with regulations issued by him. In any case where a reinstatement of a terminated lease is granted under

this subsection and the Secretary finds that the reinstatement of such lease will not afford the lessee a reasonable opportunity to continue operations under the lease, the Secretary may, at his discretion, extend the term of such lease for such period as he deems reasonable: Provided, That (A) such extension shall not exceed a period equivalent to the time beginning when the lessee knew or should have known of the termination and ending on the date the Secretary grants such petition; (B) such extension shall not exceed a period equal to the unexpired portion of the lease or any extension thereof remaining at the date of termination; and (C) when the reinstatement occurs after the expiration of the term or extension thereof the lease may be extended from the date the Secretary grants the petition.

(d) Additional grounds for reinstatement

(1) Where any oil and gas lease issued pursuant to section 226(b) or (c) of this title or the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.) has been, or is hereafter, terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of the rental due, and such rental is not paid or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was justifiable or not due to lack of reasonable diligence on the part of the lessee, or, no matter when the rental is paid after termination, it is shown to the satisfaction of the Secretary that such

failure was inadvertent, the Secretary may reinstate the lease as of the date of termination for the unexpired portion of the primary term of the original lease or any extension thereof remaining at the date of termination, and so long thereafter as oil or gas is produced in paying quantities. In any case where a lease is reinstated under this subsection and the Secretary finds that the reinstatement of such lease (A) occurs after the expiration of the primary term or any extension thereof, or (B) will not afford the lessee a reasonable opportunity to continue operations under the lease, the Secretary may, at his discretion, extend the term of such lease for such period as he deems reasonable, but in no event for more than two years from the date the Secretary authorizes the reinstatement and so long thereafter as oil or gas is produced in paying quantities. (2) No lease shall be reinstated under paragraph (1) of this subsection unless

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

(i) the lessee tendered rental prior to January 12, 1983, and the final determination that the lease terminated was made by the Secretary or a court less than three years before January 12, 1983, and (ii) a petition for reinstatement together with the required back rental and royalty accruing from the date of termination, is filed with the Secretary on or before the one hundred and twentieth day after January 12, 1983, or (B) with respect to any lease that

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

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

(ii) fifteen months after termination of the lease.

(e) Conditions for reinstatement

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

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

(2) payment of back rentals and either the inclusion in a reinstated lease issued pursuant to the provisions of section 226(b) of this title of a requirement for future rentals at a rate of not less than \$10 per acre per year, or the inclusion in a reinstated lease issued pursuant to the provisions of section 226(c) of this title

of a requirement that future rentals shall be at a rate not less than \$5 per acre per year, all as determined by the Secretary;

(3)(A) payment of back royalties and the inclusion in a reinstated lease issued pursuant to the provisions of section 226(b) of this title of a requirement for future royalties at a rate of not less than 16 2/3 percent computed on a sliding scale based upon the average production per well per day, at a rate which shall be not less than 4 percentage points greater than the competitive royalty<sup>8</sup> schedule then in force and used for royalty determination for competitive leases issued pursuant to such section as determined by the Secretary: Provided, That royalty on such reinstated lease shall be paid on all production removed or sold from such lease subsequent to the termination of the original lease;

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

(4) notice of the proposed reinstatement of a terminated lease, including the terms and conditions of reinstatement, shall be published in the Federal Register at least thirty days in advance of the

reinstatement.

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

(f) Issuance of noncompetitive oil and gas lease; conditions

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

statutory date the claim was deemed conclusively abandoned. Issuance of such a lease shall be conditioned upon:

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

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

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

(2) a valid lease not having been issued affecting any of the lands covered by the abandoned oil placer mining claim prior to the filing of such petition:

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

(3) a requirement in the lease for payment of rental, including back rentals accruing from the statutory date of

abandonment of the oil placer mining claim, of not less than \$5 per acre per year;

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

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

(g) Treatment of leases

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

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

(3) Notwithstanding any other provision of law, any lease issued pursuant to section 223 of this title shall be eligible for reinstatement under the terms and conditions set forth in subsections (c),

(d), and (e) of this section, applicable to leases issued under section 226(c) of this title except, that, upon reinstatement, such lease shall continue for twenty years and so long thereafter as oil or gas is produced in paying quantities.

(4) Notwithstanding any other provision of law, any lease issued pursuant to section 223 of this title shall, upon renewal on or after November 15, 1990, continue for twenty years and so long thereafter as oil or gas is produced in paying quantities.

(h) Statutory provisions applicable to leases

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

(i) Royalty reductions

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

(2) In acting on a petition for reinstatement pursuant to subsection (d) of this section or in response to a request filed after reinstatement, or both, the Secretary is authorized to reduce the royalty

in that reinstated lease on the entire leasehold or any tract or portion thereof segregated for royalty purposes if, in his judgment, there are uneconomic or other circumstances which could cause undue hardship or premature termination of production; or because of any written action of the United States, its agents or employees, which preceded, and was a major consideration in, the lessee's expenditure of funds to develop the property under the lease after the rent had become due and had not been paid; or if in the judgment of the Secretary it is equitable to do so for any reason.

(j) Discretion of Secretary

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

<sup>8</sup> So in original. Probably should be "royalty".

**Rules and regulations; boundary lines; State rights unaffected; taxation**

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

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

**Oath; requirement; form; blanks**

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

**Lands disposed of with reservation of deposits of coal, etc.**

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

### **Disposition of moneys received**

**Sec. 35** (a) All money received from sales, bonuses, royalties including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.), shall be paid into the Treasury of the United States; and, subject to the provisions of subsection (b) of this section, 50 per centum thereof shall be paid by the Secretary of the Treasury to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: Provided, That all moneys which may accrue to the United States under the provisions of this chapter and the Geothermal Steam Act of 1970 from lands within the naval

petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by section 7433(b) of title 10. All moneys received under the provisions of this chapter and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts. Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved.

(b) In determining the amount of payments to the States under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States. (30 U.S.C. 191)

### **Payment of royalties in oil or gas; sale of such oil or gas**

**Sec. 36** All royalty accruing to the United States under any oil or gas lease or permit under this chapter on demand of

the Secretary of the Interior shall be paid in oil or gas.

Upon granting any oil or gas lease under this chapter, and from time to time thereafter during said lease, the Secretary of the Interior shall, except whenever in his judgment it is desirable to retain the same for the use of the United States, offer for sale for such period as he may determine, upon notice and advertisement on sealed bids or at public auction, all royalty oil and gas accruing or reserved to the United States under such lease. Such advertisement and sale shall reserve to the Secretary of the Interior the right to reject all bids whenever within his judgment the interest of the United States demands; and in cases where no satisfactory bid is received or where the accepted bidder fails to complete the purchase, or where the Secretary of the Interior shall determine that it is unwise in the public interest to accept the offer of the highest bidder, the Secretary of the Interior, within his discretion, may readvertise such royalty for sale, or sell at private sale at not less than the market price for such period, or accept the value thereof from the lessee: Provided, That inasmuch as the public interest will be served by the sale of royalty oil to refineries not having their own source of supply for crude oil, the Secretary of the Interior, when he determines that sufficient supplies of crude oil are not available in the open market to such refineries, is authorized and directed to grant preference to such refineries in the sale of oil under the provisions of this section, for processing

or use in such refineries and not for resale in kind, and in so doing may sell to such refineries at private sale at not less than the market price any royalty oil accruing or reserved to the United States under leases issued pursuant to this chapter: Provided further, That in selling such royalty oil the Secretary of the Interior may at his discretion prorate such oil among such refineries in the area in which the oil is produced: Provided, however, That pending the making of a permanent contract for the sale of any royalty, oil or gas as herein provided, the Secretary of the Interior may sell the current product at private sale, at not less than the market price: And provided further, That any royalty, oil, or gas may be sold at not less than the market price at private sale to any department or agency of the United States. (30 U.S.C. 192)

#### **Application to contracts**

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

**Suspension, waiver, or reduction of rents or royalties to promote development or operation; extension of lease on suspension of operations and production**

**Sec. 39** The Secretary of the Interior, for the purpose of encouraging the greatest ultimate recovery of coal, oil, gas, oil shale, gilsonite (including all vein-type solid hydrocarbons), phosphate, sodium, potassium and sulfur, and in the interest of conservation of natural resources, is authorized to waive, suspend, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, or on any tract or portion thereof segregated for royalty purposes, whenever in his judgment it is necessary to do so in order to promote development, or whenever in his judgment the leases cannot be successfully operated under the terms provided therein.<sup>9</sup> Provided, however, That in order to promote development and the maximum production of tar sand, at the request of the lessee, the Secretary shall review, prior to commencement of commercial operations, the royalty rates established in each combined hydrocarbon lease issued in special tar sand areas. For purposes of this section, the term "tar sand" means any consolidated or unconsolidated rock (other than coal, oil shale, or gilsonite) that either:

- (1) contains a hydrocarbonaceous material with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise, or
- (2) contains a hydrocarbonaceous material and is produced by mining or

quarrying. In the event the Secretary of the Interior, in the interest of conservation, shall direct or shall assent to the suspension of operations and production under any lease granted under the terms of this chapter, any payment of acreage rental or of minimum royalty prescribed by such lease likewise shall be suspended during such period of suspension of operations and production; and the term of such lease shall be extended by adding any such suspension period thereto. The provisions of this section shall apply to all oil and gas leases issued under this chapter, including those within an approved or prescribed plan for unit or cooperative development and operation. Nothing in this section shall be construed as granting to the Secretary the authority to waive, suspend, or reduce advance royalties. (30 U.S.C. 209)

<sup>9</sup> So in original. The period probably should be a colon.

**Water struck while drilling for oil and gas**

**Sec. 40** (a) Acquisition; condition in lease

All prospecting permits and leases for oil or gas made or issued under the provisions of this chapter shall be subject to the condition that in case the permittee or lessee strikes water while drilling instead of oil or gas, the Secretary of the Interior may, when such water is of such quality and quantity as to be valuable and usable at a reasonable cost for agricultural, domestic, or other purposes, purchase the casing in the well at the reasonable value thereof to be fixed under rules and

regulations to be prescribed by the Secretary.

(b) Prior leases

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

(c) Disposition

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

(d) Revolving fund

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

(e) Operations under lease not restricted

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

## Enforcement

### Sec. 41 (a) Violations

It shall be unlawful for any person: (1) to organize or participate in any scheme, arrangement, plan, or agreement to circumvent or defeat the provisions of this chapter or its implementing regulations, or (2) to seek to obtain or to obtain any money or property by means of false statements of material facts or by failing to state material facts concerning:

- (A) the value of any lease or portion thereof issued or to be issued under this chapter;
- (B) the availability of any land for leasing under this chapter;
- (C) the ability of any person to obtain leases under this chapter; or
- (D) the provisions of this chapter and its implementing regulations.

(b) Penalty

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

(c) Civil actions

Whenever it shall appear that any person is engaged, or is about to engage, in any act which constitutes or will constitute a

violation of subsection (a) of this section, the Attorney General may institute a civil action in the district court of the United States for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located, for a temporary restraining order, injunction, civil penalty of not more than \$100,000 for each violation, or other appropriate remedy, including but not limited to, a prohibition from participation in exploration, leasing, or development of any Federal mineral, or any combination of the foregoing.

(d) Corporations

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

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

(e) Remedies, fines, and imprisonment

The remedies, penalties, fines, and imprisonment prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the

exercise of the others. Further, the remedies, penalties, fines, and imprisonment prescribed in this section shall be in addition to any other remedies, penalties, fines, and imprisonment afforded by any other law or regulation.

(f) State civil actions

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

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

(3) Any civil penalties recovered by a State under this subsection shall be retained by the State and may be expended in such manner and for such purposes as the State deems appropriate. If a civil action is jointly brought by

the Attorney General and a State, by more than one State or by the Attorney General and more than one State, any civil penalties recovered as a result of the joint action shall be shared by the parties bringing the action in the manner determined by the court rendering judgment in such action.

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

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

### **Limitations for filing oil and gas contests**

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

same be commenced or taken within ninety days after September 2, 1960. (30 U.S.C. 226-2)

### **Lands not subject to oil and gas leasing**

#### **Sec. 43 (a) Prohibition**

The Secretary shall not issue any lease under this chapter or under the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) on any of the following Federal lands:

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

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

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

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

#### **(b) Exploration**

In the case of any area of National Forest or public lands subject to this section, nothing in this section shall affect any authority of the Secretary of the Interior (or for National Forest Lands

reserved from the public domain, the Secretary of Agriculture) to issue permits for exploration for oil and gas, coal, oil shale, phosphate, potassium, sulphur, gilsonite or geothermal resources by means not requiring construction of roads or improvement of existing roads if such activity is conducted in a manner compatible with the preservation of the wilderness environment. (30 U.S.C. 226-3)

**Short Title**

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

## Minerals Act of 1947

July 31, 1947 (Ch. 406, 61 Stat. 681; 30 U.S.C. 601 to 604)

### Rules and regulations governing disposal of materials; payment; removal without charge; lands excluded

**Sec. 1** The Secretary, under such rules and regulations as he may prescribe, may dispose of mineral materials (including but not limited to common varieties of the following: sand, stone, gravel, pumice, pumicite, cinders, and clay) and vegetative materials (including but not limited to yucca, manzanita, mesquite, cactus, and timber or other forest products) on public lands of the United States, including, for the purposes of this subchapter, land described in subchapter V of chapter 28 of title 43, if the disposal of such mineral or vegetative materials (1) is not otherwise expressly authorized by law, including, but not limited to, subchapter I of chapter 8A of title 43, and the United States mining laws, and (2) is not expressly prohibited by laws of the United States, and (3) would not be detrimental to the public interest. Such materials may be disposed of only in accordance with the provisions of this subchapter and upon the payment of adequate compensation therefor, to be determined by the Secretary: Provided, however, That, to the extent not otherwise authorized by law, the Secretary is authorized in his discretion to permit any Federal, State, or Territorial agency, unit or subdivision, including municipalities, or any association or corporation not organized for profit, to take and remove, without charge, materials and resources subject to this subchap-

ter, for use other than for commercial or industrial purposes or resale. Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the department headed by the Secretary or of a State, Territory, county, municipality, water district or other local governmental subdivision or agency, the Secretary may make disposals under this subchapter only with the consent of such other Federal department or agency or of such State, Territory, or local governmental unit. Nothing in this subchapter shall be construed to apply to lands in any national park, or national monument or to any Indian lands, or lands set aside or held for the use or benefit of Indians, including lands over which jurisdiction has been transferred to the Department of the Interior by Executive order for the use of Indians. As used in this subchapter, the word "Secretary" means the Secretary of the Interior except that it means the Secretary of Agriculture where the lands involved are administered by him for national forest purposes or for the purposes of title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 et seq.) or where withdrawn for the purpose of any other function of the Department of Agriculture. (30 U.S.C. 601)

### Bidding; advertising and other notice; conditions for negotiation of contract

**Sec. 2** (a) The Secretary shall dispose of materials under this subchapter to the highest responsible qualified bidder after formal advertising and such other public notice as he deems appropriate: Provided, however, That the Secretary may authorize negotiation of a contract for the disposal of materials if -

(1) the contract is for the sale of less than two hundred fifty thousand board-feet of timber; or, if

(2) the contract is for the disposal of materials to be used in connection with a public works improvement program on behalf of a Federal, State or local governmental agency and the public exigency will not permit the delay incident to advertising; or, if

(3) the contract is for the disposal of property for which it is impracticable to obtain competition.

(b) Repealed

### **Disposition of moneys from disposal of materials**

**Sec. 3** All moneys received from the disposal of materials under this subchapter shall be disposed of in the same manner as moneys received from the sale of public lands, except that moneys received from the disposal of materials by the Secretary of Agriculture shall be disposed of in the same manner as other moneys received by the Department of Agriculture from the administration of the lands from which the disposal of materials is made, and except that revenues from the lands described in subchapter V of chapter 28 of title 43, shall be disposed of

in accordance with said sections and except that moneys received from the disposal of materials from school section lands in Alaska, reserved under section 1 of the Act of March 4, 1915 (38 Stat. 1214), shall be set apart as separate and permanent funds in the Territorial Treasury, as provided for income derived from said school section lands pursuant to said Act. (30 U.S.C. 603)

### **Disposal of sand, peat moss, etc., in Alaska; contracts**

**Sec. 4** Subject to the provisions of this subchapter, the Secretary may dispose of sand, stone, gravel, and vegetative materials located below highwater mark of navigable waters of the Territory of Alaska. Any contract, unexecuted in whole or in part, for the disposal under this subchapter of materials from land, title to which is transferred to a future State upon its admission to the Union, and which is situated within its boundaries, may be terminated or adopted by such State. (30 U.S.C. 604)

## Multiple Use Mining Act of 1955

July 23, 1955 (Ch. 375, 69 Stat. 367; 30 U.S.C. 601, 603, 611 to 615)

### **Rules and regulations governing disposal of materials; payment; removal without charge; lands excluded**

**Sec. 1** The Secretary, under such rules and regulations as he may prescribe, may dispose of mineral materials (including but not limited to common varieties of the following: sand, stone, gravel, pumice, pumicite, cinders, and clay) and vegetative materials (including but not limited to yucca, manzanita, mesquite, cactus, and timber or other forest products) on public lands of the United States, including, for the purposes of this subchapter, land described in subchapter V of chapter 28 of title 43, if the disposal of such mineral or vegetative materials (1) is not otherwise expressly authorized by law, including, but not limited to, subchapter I of chapter 8A of title 43, and the United States mining laws, and (2) is not expressly prohibited by laws of the United States, and (3) would not be detrimental to the public interest. Such materials may be disposed of only in accordance with the provisions of this subchapter and upon the payment of adequate compensation therefor, to be determined by the Secretary: Provided, however, That, to the extent not otherwise authorized by law, the Secretary is authorized in his discretion to permit any Federal, State, or Territorial agency, unit or subdivision, including municipalities, or any association

or corporation not organized for profit, to take and remove, without charge, materials and resources subject to this subchapter, for use other than for commercial or industrial purposes or resale. Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the department headed by the Secretary or of a State, Territory, county, municipality, water district or other local governmental subdivision or agency, the Secretary may make disposals under this subchapter only with the consent of such other Federal department or agency or of such State, Territory, or local governmental unit. Nothing in this subchapter shall be construed to apply to lands in any national park, or national monument or to any Indian lands, or lands set aside or held for the use or benefit of Indians, including lands over which jurisdiction has been transferred to the Department of the Interior by Executive order for the use of Indians. As used in this subchapter, the word "Secretary" means the Secretary of the Interior except that it means the Secretary of Agriculture where the lands involved are administered by him for national forest purposes or for the purposes of title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 et seq.) or where withdrawn for the purpose of any other function of the Department of Agriculture. (30 U.S.C. 601)

### **Disposition of moneys from disposal of materials**

**Sec. 2** All moneys received from the disposal of materials under this subchapter shall be disposed of in the same manner as moneys received from the sale of public lands, except that moneys received from the disposal of materials by the Secretary of Agriculture shall be disposed of in the same manner as other moneys received by the Department of Agriculture from the administration of the lands from which the disposal of materials is made, and except that revenues from the lands described in subchapter V of chapter 28 of title 43, shall be disposed of in accordance with said sections and except that moneys received from the disposal of materials from school section lands in Alaska, reserved under section 1 of the Act of March 4, 1915 (38 Stat. 1214), shall be set apart as separate and permanent funds in the Territorial Treasury, as provided for income derived from said school section lands pursuant to said Act. (30 U.S.C. 603)

### **Common varieties of sand, stone, gravel, pumice, pumicite, or cinders, and petrified wood**

**Sec. 3** No deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders and no deposit of petrified wood shall be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws: Provided, however, That nothing herein shall affect the validity of any mining

location based upon discovery of some other mineral occurring in or in association with such a deposit. "Common varieties" as used in this subchapter and sections 601 and 603 of this title does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and does not include so-called "block pumice" which occurs in nature in pieces having one dimension of two inches or more. "Petrified wood" as used in this subchapter and sections 601 and 603 of this title means agatized, opalized, petrified, or silicified wood, or any material formed by the replacement of wood by silica or other matter. (30 U.S.C. 611)

### **Unpatented mining claims**

**Sec. 4** (a) Prospecting, mining or processing operations

Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto.

(b) Reservations in the United States to use of the surface and surface resources

Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral depos-

its subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: Provided, however, That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto: Provided further, That if at any time the locator requires more timber for his mining operations than is available to him from the claim after disposition of timber therefrom by the United States, subsequent to the location of the claim, he shall be entitled, free of charge, to be supplied with timber for such requirements from the nearest timber administered by the disposing agency which is ready for harvesting under the rules and regulations of that agency and which is substantially equivalent in kind and quantity to the timber estimated by the disposing agency to have been disposed of from the claim: Provided further, That nothing in this subchapter and sections 601 and 603 of this title shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian relating to the ownership, control, appropriation, use, and distribution of ground or surface waters within any unpatented mining claim.

(c) Severance or removal of timber

Except to the extent required for the mining claimant's prospecting, mining or processing operations and uses reasonably incident thereto, or for the construction of buildings or structures in connection therewith, or to provide clearance for such operations or uses, or to the extent authorized by the United States, no claimant of any mining claim hereafter located under the mining laws of the United States shall, prior to issuance of patent therefor, sever, remove, or use any vegetative or other surface resources thereof which are subject to management or disposition by the United States under subsection (b) of this section. Any severance or removal of timber which is permitted under the exceptions of the preceding sentence, other than severance or removal to provide clearance, shall be in accordance with sound principles of forest management. (30 U.S.C. 612)

**Procedure for determining title uncertainties**

**Sec. 5** (a) Notice to mining claimants; request; publication; service

The head of a Federal department or agency which has the responsibility for administering surface resources of any lands belonging to the United States may file as to such lands in the office of the Secretary of the Interior, or in such office as the Secretary of the Interior may designate, a request for publication of notice to mining claimants, for determination of surface rights, which request shall contain a description of the lands covered thereby, showing the section or sections

of the public land surveys which embrace the lands covered by such request, or if such lands are unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument. The filing of such request for publication shall be accompanied by an affidavit or affidavits of a person or persons over twenty-one years of age setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons were in actual possession of or engaged in the working of such lands or any part thereof, and, if no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof on the date of such examination, setting forth such fact, or, if any person or persons were so found to be in actual possession or engaged in such working on the date of such examination, setting forth the name and address of each such person, unless affiant shall have been unable through reasonable inquiry to obtain information as to the name and address of any such person, in which event the affidavit shall set forth fully the nature and results of such inquiry.

The filing of such request for publication shall also be accompanied by the certificate of a title or abstract company, or of a title abstractor, or of an attorney, based upon such company's abstractor's, or attorney's examination of those instruments which are shown by the tract

indexes in the county office of record as affecting the lands described in said request, setting forth the name of any person disclosed by said instruments to have an interest in said lands under any unpatented mining claim heretofore located, together with the address of such person if such address is disclosed by such instruments of record. "Tract indexes" as used herein shall mean those indexes, if any, as to surveyed lands identifying instruments as affecting a particular legal subdivision of the public land surveys, and as to unsurveyed lands identifying instruments as affecting a particular probable legal subdivision according to a projected extension of the public land surveys.

Thereupon the Secretary of the Interior, at the expense of the requesting department or agency, shall cause notice to mining claimants to be published in a newspaper having general circulation in the county in which the lands involved are situate.

Such notice shall describe the lands covered by such request, as provided heretofore, and shall notify whomever it may concern that if any person claiming or asserting under, or by virtue of, any unpatented mining claim heretofore located, rights as to such lands or any part thereof, shall fail to file in the office where such request for publication was filed (which office shall be specified in such notice) and within one hundred and fifty days from the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth,

as to such unpatented mining claim -

- (1) the date of location;
- (2) the book and page of recordation of the notice or certificate of location;
- (3) the section or sections of the public land surveys which embrace such mining claims; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;
- (4) whether such claimant is a locator or purchaser under such location; and
- (5) the name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim;

such failure shall be conclusively deemed

- (i) to constitute a waiver and relinquishment by such mining claimant of any right, title, or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 612 of this title as to hereafter located unpatented mining claims, and (ii) to constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, shall be subject to the limitations and restrictions specified in section 612 of this title as to hereafter located unpatented mining claims, and (iii) to preclude thereafter, prior to issuance of patent, any assertion

by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 612 of this title as to hereafter located unpatented mining claims.

If such notice is published in a daily paper, it shall be published in the Wednesday issue for nine consecutive weeks, or, if in a weekly paper, in nine consecutive issues, or if in a semiweekly or triweekly paper, in the issue of the same day of each week for nine consecutive weeks.

Within fifteen days after the date of first publication of such notice, the department or agency requesting such publication (1) shall cause a copy of such notice to be personally delivered to or to be mailed by registered mail or by certified mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by an affidavit filed as aforesaid, and to each person who may have filed, as to any lands described in said notice, a request for notices, as provided in subsection (d) of this section, and shall cause a copy of such notice to be mailed by registered mail or by certified mail to each person whose name and address is set forth in the title or abstract company's or title abstractor's or attorney's certificate filed as aforesaid, as having an interest in the lands described in said notice under any unpatented mining claim heretofore located, such notice to be directed to such person's address as set forth in such certificate; and (2) shall file in the office where said request for publication was filed an affidavit showing that copies have

been so delivered or mailed.

(b) Failure to file verified statement

If any claimant under any unpatented mining claim heretofore located which embraces any of the lands described in any notice published in accordance with the provisions of subsection (a) of this section, shall fail to file a verified statement, as provided in such subsection (a), within one hundred and fifty days from the date of the first publication of such notice, such failure shall be conclusively deemed, except as otherwise provided in subsection (e) of this section, (i) to constitute a waiver and relinquishment by such mining claimant of any right, title, or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 612 of this title as to hereafter located unpatented mining claims, and (ii) to constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, shall be subject to the limitations and restrictions specified in section 612 of this title as to hereafter located unpatented mining claims, and (iii) to preclude thereafter, prior to issuance of patent, any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 612 of this title as to hereafter located unpatented mining claims.

(c) Hearings

If any verified statement shall be filed by a mining claimant as provided in subsection (a) of this section, then the Secretary

of Interior shall fix a time and place for a hearing to determine the validity and effectiveness of any right or title to, or interest in or under such mining claim, which the mining claimant may assert contrary to or in conflict with the limitations and restrictions specified in section 612 of this title as to hereafter located unpatented mining claims, which place of hearing shall be in the county where the lands in question or parts thereof are located, unless the mining claimant agrees otherwise. Where verified statements are filed asserting rights to an aggregate of more than twenty mining claims, any single hearing shall be limited to a maximum of twenty mining claims unless the parties affected shall otherwise stipulate and as many separate hearing<sup>1</sup> shall be set as shall be necessary to comply with this provision. The procedures with respect to notice of such a hearing and the conduct thereof, and in respect to appeals shall follow the then established general procedures and rules of practice of the Department of the Interior in respect to contests or protests affecting public lands of the United States. If, pursuant to such a hearing the final decision rendered in the matter shall affirm the validity and effectiveness of any mining claimant's so asserted right or interest under the mining claim, then no subsequent proceedings under this section shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim. If at any time prior to a hearing the department or agency requesting publication of notice and any person filing a verified statement pursuant to such notice

shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by that particular published notice.

(d) Request for copy of notice

Any person claiming any right under or by virtue of any unpatented mining claim heretofore located and desiring to receive a copy of any notice to mining claimants which may be published as provided in subsection (a) of this section, and which may affect lands embraced in such mining claim, may cause to be filed for record in the county office of record where the notice or certificate of location of such mining claim shall have been recorded, a duly acknowledged request for a copy of any such notice. Such request for copies shall set forth the name and address of the person requesting copies and shall also set forth, as to each heretofore located unpatented mining claim under which such person asserts rights -

- (1) the date of location;
- (2) the book and page of the recordation of the notice or certificate of location; and
- (3) the section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a

tie by courses and distances to an approved United States mineral monument.

Other than in respect to the requirements of subsection (a) of this section as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (e) of this section, no such request for copies of published notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

(e) Failure to deliver or mail copy of notice

If any department or agency requesting publication shall fail to comply with the requirements of subsection (a) of this section as to the personal delivery or mailing of a copy of notice to any person, the publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice, shall in no manner affect, diminish, prejudice or bar any rights of that person. (30 U.S.C. 613)

<sup>1</sup> So in original. Probably should be "hearings".

### **Waiver of rights**

**Sec. 6** The owner or owners of any unpatented mining claim heretofore located may waive and relinquish all

rights thereunder which are contrary to or in conflict with the limitations or restrictions specified in section 612 of this title as to hereafter located unpatented mining claims. The execution and acknowledgment of such a waiver and relinquishment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter and prior to issuance of patent subject to the limitations and restrictions in section 612 of this title in all respects as if said mining claim had been located after July 23, 1955, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof. (30 U.S.C. 614)

#### **Limitation of existing rights**

**Sec. 7** Nothing in this subchapter and sections 601 and 603 of this title shall be construed in any manner to limit or restrict or to authorize the limitation or restriction of any existing rights of any claimant under any valid mining claim heretofore located, except as such rights may be limited or restricted as a result of a proceeding pursuant to section 613 of this title, or as a result of a waiver and relinquishment pursuant to section 614 of this title; and nothing in this subchapter and sections 601 and 603 of this title shall be construed in any manner to authorized inclusion in any patent hereafter issued under the mining laws of the United States for any mining claim heretofore or hereafter located, of any reservation,

limitation, or restriction not otherwise authorized by law, or to limit or repeal any existing authority to include any reservation, limitation, or restriction in any such patent, or to limit or restrict any use of the lands covered by any patented or unpatented mining claim by the United States, its lessees, permittees, and licensees which is otherwise authorized by law. (30 U.S.C. 615)

## Public Rangelands Improvement Act of 1978

October 25, 1978 (Pub. L. 95-514, 92 Stat. 1803; 43 U.S.C. 1901 note, 1901 to 1905, 1751, 1752, 1906, 1753, 1907, 1908, 1739, 16 U.S.C. 1333, 1332)

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### Congressional findings and declaration of policy

**Sec. 2** (a) The Congress finds and declares that –

- (1) vast segments of the public rangelands are producing less than their potential for livestock, wildlife habitat, recreation, forage, and water and soil conservation benefits, and for that reason are in an unsatisfactory condition;
- (2) such rangelands will remain in an unsatisfactory condition and some areas may decline further under present levels of, and funding for, management;
- (3) unsatisfactory conditions on public rangelands present a high risk of soil loss, desertification, and a resultant underproductivity for large acreages of the public lands; contribute significantly to unacceptable levels of siltation and salinity in major western watersheds including the Colorado River; negatively impact the quality and availability of scarce western water supplies; threaten important and frequently critical fish and wildlife habitat; prevent expansion of the forage resource and resulting benefits to livestock and wildlife production; increase surface runoff and flood danger; reduce the value of such lands

for recreational and esthetic purposes; and may ultimately lead to unpredictable and undesirable long-term local and regional climatic and economic changes;

(4) the above-mentioned conditions can be addressed and corrected by an intensive public rangelands maintenance, management, and improvement program involving significant increases in levels of rangeland management and improvement funding for multiple-use values;

(5) to prevent economic disruption and harm to the western livestock industry, it is in the public interest to charge a fee for livestock grazing permits and leases on the public lands which is based on a formula reflecting annual changes in the costs of production;

(6) the Act of December 15, 1971 (85 Stat. 649, 16 U.S.C. 1331 et seq.), continues to be successful in its goal of protecting wild free-roaming horses and burros from capture, branding, harassment, and death, but that certain amendments are necessary thereto to avoid excessive costs in the administration of the Act, and to facilitate the humane adoption or disposal of excess wild free-roaming horses and burros which because they exceed the carrying capacity of the range, pose a threat to their own habitat, fish, wildlife, recre-

ation, water and soil conservation, domestic livestock grazing, and other rangeland values;

(b) The Congress therefore hereby establishes and reaffirms a national policy and commitment to:

(1) inventory and identify current public rangelands conditions and trends as a part of the inventory process required by section 1711(a) of this title;

(2) manage, maintain and improve the condition of the public rangelands so that they become as productive as feasible for all rangeland values in accordance with management objectives and the land use planning process established pursuant to section 1712 of this title;

(3) charge a fee for public grazing use which is equitable and reflects the concerns addressed in paragraph (a)(5) above;

(4) continue the policy of protecting wild free-roaming horses and burros from capture, branding, harassment, or death, while at the same time facilitating the removal and disposal of excess wild free-roaming horses and burros which pose a threat to themselves and their habitat and to other rangeland values;

(c) The policies of this chapter shall become effective only as specific statutory authority for their implementation is enacted by this chapter or by subsequent legislation, and shall be construed as supplemental to and not in derogation of the purposes for which public rangelands are administered under other provisions of

law. (43 U.S.C. 1901)

## Definitions

**Sec. 3** As used in this chapter –

(a) The terms “rangelands” or “public rangelands” means lands administered by the Secretary of the Interior through the Bureau of Land Management or the Secretary of Agriculture through the Forest Service in the sixteen contiguous Western States on which there is domestic livestock grazing or which the Secretary concerned determines may be suitable for domestic livestock grazing.

(b) The term “allotment management plan” is the same as defined in section 1702(k) of this title, except that as used in this chapter such term applies to the sixteen contiguous Western States.

(c) The term “grazing permit and lease” means any document authorizing use of public lands or lands in national forests in the sixteen contiguous Western States for the purpose of grazing domestic livestock.

(d) The term “range condition” means the quality of the land reflected in its ability in specific vegetative areas to support various levels of productivity in accordance with range management objectives and the land use planning process, and relates to soil quality, forage values (whether seasonal or year round), wildlife habitat, watershed and plant communities, the present state of vegetation of a range site in relation to the potential plant community for that site, and the relative degree to which the kinds, proportions, and amounts of vegetation in a plant community resemble that of the desired

community for that site.

(e) The term “native vegetation” means those plant species, communities, or vegetative associations which are endemic to a given area and which would normally be identified with a healthy and productive range condition occurring as a result of the natural vegetative process of the area.

(f) The term “range improvement” means any activity or program on or relating to rangelands which is designed to improve production of forage; change vegetative composition; control patterns of use; provide water; stabilize soil and water conditions; and provide habitat for livestock and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical means to accomplish the desired results.

(g) The term “court ordered environmental impact statement” means any environmental statements which are required to be prepared by the Secretary of the Interior pursuant to the final judgment or subsequent modification thereof as set forth on June 18, 1975, in the matter of Natural Resources Defense Council against Andrus.

(h) The term “Secretary” unless specifically designated otherwise, means the Secretary of the Interior.

(i) The term “sixteen contiguous Western States” means the States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. (43 U.S.C. 1902)

### **Rangelands inventory and management; public availability**

**Sec. 4** (a) Following enactment of this chapter, the Secretary of the Interior and the Secretary of Agriculture shall update, develop (where necessary) and maintain on a continuing basis thereafter, an inventory of range conditions and record of trends of range conditions on the public rangelands, and shall categorize or identify such lands on the basis of the range conditions and trends thereof as they deem appropriate. Such inventories shall be conducted and maintained by the Secretary as a part of the inventory process required by section 201(a) of the Federal Land Policy and Management Act (43 U.S.C. 1711), and by the Secretary of Agriculture in accordance with section 1603 of title 16; shall be kept current on a regular basis so as to reflect changes in range conditions; and shall be available to the public.

(b) The Secretary shall manage the public rangelands in accordance with the Taylor Grazing Act (43 U.S.C. 315-315(o)), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701-1782), and other applicable law consistent with the public rangelands improvement program pursuant to this chapter. Except where the land use planning process required pursuant to section 202 of the Federal Land Policy and Management Act (43 U.S.C. 1712) determines otherwise or the Secretary determines, and sets forth his reasons for this determination, that grazing uses should be discontinued (either temporarily or permanently) on certain lands, the goal of such manage-

ment shall be to improve the range conditions of the public rangelands so that they become as productive as feasible in accordance with the rangeland management objectives established through the land use planning process, and consistent with the values and objectives listed in sections 1901 (a) and (b)(2) of this title. (43 U.S.C. 1903)

### **Range improvement funding**

#### **Sec. 5 (a) Authorization of additional appropriations**

In order to accomplish the purposes of this chapter, there are hereby authorized to be appropriated the sum of an additional \$15,000,000 annually in fiscal years 1980 through 1982; for fiscal years 1983 through 1986 an amount no less than the amount authorized for 1982; and for fiscal years 1987 through 1999 an amount not less than \$5,000,000 annually more than the amount authorized for fiscal year 1986. Such funds shall be in addition to any range, wildlife, and soil and water management moneys which have been requested by the Secretary under the provisions of section 1748 of this title, and in addition to the moneys which are available for range improvements under section 1751 of this title.

#### **(b) Availability of unappropriated funds for subsequent fiscal years**

Any amounts authorized by this section not appropriated in one or more fiscal years shall be available for appropriation in any subsequent years.

#### **(c) Fund limitations for prescribed uses; distribution, consultation and coordination;**

public hearings and meetings; interested parties; priority of cooperative agreements with range users

No less than 80 per centum of such funds provided herein shall be used for on-the-ground range rehabilitation, maintenance and the construction of range improvements (including project layout, project design, and project supervision). No more than 15 per centum of such funds provided herein shall be used to hire and train such experienced and qualified personnel as are necessary to implement on-the-ground supervision and enforcement of the land use plans required pursuant to section 1712 of this title and such allotment management plans as may be developed. Such funds shall be distributed as the Secretary deems advisable after careful and considered consultation and coordination, including public hearings and meetings where appropriate, with the district grazing advisory boards established pursuant to section 1753 of this title, and the advisory councils established pursuant to section 1739 of this title, range user representatives, and other interested parties. To the maximum extent practicable, and where economically sound, the Secretary shall give priority to entering into cooperative agreements with range users (or user groups) for the installation and maintenance of on-the-ground range improvements.

#### **(d) Environmental assessment record and environmental impact statement requirements**

Prior to the use of any funds authorized by this section the Secretary shall cause

to have prepared an environmental assessment record on each range improvement project. Thereafter, improvement projects may be constructed unless the Secretary determines that impact on the quality of human environment, necessitating an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321 et seq.) prior to the expenditure of funds. (43 U.S.C. 1904)

**Grazing fees; economic value of use of land; fair market value components; annual percentage change limitation**

**Sec. 6(a)** For the grazing years 1979 through 1985, the Secretaries of Agriculture and Interior shall charge the fee for domestic livestock grazing on the public rangelands which Congress finds represents the economic value of the use of the land to the user, and under which Congress finds fair market value for public grazing equals the \$1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplied by the Economic Research Service) added to the Combined Index (Beef Cattle Price Index minus the Price Paid Index) and divided by 100: Provided, That the annual increase or decrease in such fee for any given year shall be limited to not more than plus or minus 25 per centum of the previous year's fee. (43 U.S.C. 1905)

**Grazing fees; feasibility study; contents; submission of report; annual distribution and use of range**

**betterment funds; nature of distributions**

**Sec. 6(b)** (a) The Secretary of Agriculture and the Secretary of the Interior shall jointly cause to be conducted a study to determine the value of grazing on the lands under their jurisdiction in the eleven Western States with a view to establishing a fee to be charged for domestic livestock grazing on such lands which is equitable to the United States and to the holders of grazing permits and leases on such lands. In making such study, the Secretaries shall take into consideration the costs of production normally associated with domestic livestock grazing in the eleven Western States, differences in forage values, and such other factors as may relate to the reasonableness of such fees. The Secretaries shall report the result of such study to the Congress not later than one year from and after October 21, 1976, together with recommendations to implement a reasonable grazing fee schedule based upon such study. If the report required herein has not been submitted to the Congress within one year after October 21, 1976, the grazing fee charge then in effect shall not be altered and shall remain the same until such report has been submitted to the Congress. Neither Secretary shall increase the grazing fee in the 1977 grazing year.

(b)(1) Congress finds that a substantial amount of the Federal range lands is deteriorating in quality, and that installation of additional range improvements could arrest much of the continuing deterioration and could lead to substantial

betterment of forage conditions with resulting benefits to wildlife, watershed protection, and livestock production. Congress therefore directs that 50 per centum or \$10,000,000 per annum, whichever is greater of all moneys received by the United States as fees for grazing domestic livestock on public lands (other than from ceded Indian lands) under the Taylor Grazing Act (48 Stat. 1269; 43 U.S.C. 315 et seq.) and the Act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181d), and on lands in National Forests in the sixteen contiguous Western States under the provisions of this section shall be credited to a separate account in the Treasury, one-half of which is authorized to be appropriated and made available for use in the district, region, or national forest from which such moneys were derived, as the respective Secretary may direct after consultation with district, regional, or national forest user representatives, for the purpose of on-the-ground range rehabilitation, protection, and improvements on such lands, and the remaining one-half shall be used for on-the-ground range rehabilitation, protection, and improvements as the Secretary concerned directs. Any funds so appropriated shall be in addition to any other appropriations made to the respective Secretary for planning and administration of the range betterment program and for other range management. Such rehabilitation, protection, and improvements shall include all forms of range land betterment including, but not limited to, seeding and reseeding, fence construction, weed control, water development, and fish and wildlife habitat enhancement as the

respective Secretary may direct after consultation with user representatives. The annual distribution and use of range betterment funds authorized by this paragraph shall not be considered a major Federal action requiring a detailed statement pursuant to section 4332(c) of title 42.

(2) All distributions of moneys made under subsection (b)(1) of this section shall be in addition to distributions made under section 10 of the Taylor Grazing Act (43 U.S.C. 315i) and shall not apply to distribution of moneys made under section 11 of that Act (43 U.S.C. 315j). The remaining moneys received by the United States as fees for grazing domestic livestock on the public lands shall be deposited in the Treasury as miscellaneous receipts. (43 U.S.C. 1751)

### **Grazing leases and permits**

#### **Sec. 7 and Sec. 8 (a) Terms and conditions**

Except as provided in subsection (b) of this section, permits and leases for domestic livestock grazing on public lands issued by the Secretary under the Act of June 28, 1934 (48 Stat. 1269, as amended; 43 U.S.C. 315 et seq.) or the Act of August 28, 1937 (50 Stat. 874, as amended; 43 U.S.C. 1181a-1181j), or by the Secretary of Agriculture, with respect to lands within National Forests in the sixteen contiguous Western States, shall be for a term of ten years subject to such terms and conditions the Secretary concerned deems appropriate and consistent with the governing law, including, but

not limited to, the authority of the Secretary concerned to cancel, suspend, or modify a grazing permit or lease, in whole or in part, pursuant to the terms and conditions thereof, or to cancel or suspend a grazing permit or lease for any violation of a grazing regulation or of any term or condition of such grazing permit or lease.

(b) Terms of lesser duration

Permits or leases may be issued by the Secretary concerned for a period shorter than ten years where the Secretary concerned determines that

- (1) the land is pending disposal; or
- (2) the land will be devoted to a public purpose prior to the end of ten years; or
- (3) it will be in the best interest of sound land management to specify a shorter term: Provided, That the absence from an allotment management plan of details the Secretary concerned would like to include but which are undeveloped shall not be the basis for establishing a term shorter than ten years: Provided further, That the absence of completed land use plans or court ordered environmental statements shall not be the sole basis for establishing a term shorter than ten years unless the Secretary determines on a case-by-case basis that the information to be contained in such land use plan or court ordered environmental impact statement is necessary to determine whether a shorter term should be established for any of the reasons set forth in items (1) through (3) of this subsection.

(c) First priority for renewal of expiring permit or lease

So long as (1) the lands for which the permit or lease is issued remain available for domestic livestock grazing in accordance with land use plans prepared pursuant to section 1712 of this title or section 1604 of title 16, (2) the permittee or lessee is in compliance with the rules and regulations issued and the terms and conditions in the permit or lease specified by the Secretary concerned, and (3) the permittee or lessee accepts the terms and conditions to be included by the Secretary concerned in the new permit or lease, the holder of the expiring permit or lease shall be given first priority for receipt of the new permit or lease.

(d) Allotment management plan requirements

All permits and leases for domestic livestock grazing issued pursuant to this section may incorporate an allotment management plan developed by the Secretary concerned. However, nothing in this subsection shall be construed to supersede any requirement for completion of court ordered environmental impact statements prior to development and incorporation of allotment management plans. If the Secretary concerned elects to develop an allotment management plan for a given area, he shall do so in careful and considered consultation, cooperation and coordination with the lessees, permittees, and landowners involved, the district grazing advisory boards established pursuant to section 1753 of this title, and any State or States having lands within

the area to be covered by such allotment management plan. Allotment management plans shall be tailored to the specific range condition of the area to be covered by such plan, and shall be reviewed on a periodic basis to determine whether they have been effective in improving the range condition of the lands involved or whether such lands can be better managed under the provisions of subsection (e) of this section. The Secretary concerned may revise or terminate such plans or develop new plans from time to time after such review and careful and considered consultation, cooperation and coordination with the parties involved. As used in this subsection, the terms “court ordered environmental impact statement” and “range condition” shall be defined as in the “Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.)”.

(e) Omission of allotment management plan requirements and incorporation of appropriate terms and conditions; reexamination of range conditions

In all cases where the Secretary concerned has not completed an allotment management plan or determines that an allotment management plan is not necessary for management of livestock operations and will not be prepared, the Secretary concerned shall incorporate in grazing permits and leases such terms and conditions as he deems appropriate for management of the permitted or leased lands pursuant to applicable law. The Secretary concerned shall also specify therein the numbers of animals to be grazed and the seasons of use and that he may reexamine the condition of the

range at any time and, if he finds on reexamination that the condition of the range requires adjustment in the amount or other aspect of grazing use, that the permittee or lessee shall adjust his use to the extent the Secretary concerned deems necessary. Such readjustment shall be put into full force and effect on the date specified by the Secretary concerned.

(f) Allotment management plan applicability to non-Federal lands; appeal rights

Allotment management plans shall not refer to livestock operations or range improvements on non-Federal lands except where the non-Federal lands are intermingled with, or, with the consent of the permittee or lessee involved, associated with, the Federal lands subject to the plan. The Secretary concerned under appropriate regulations shall grant to lessees and permittees the right of appeal from decisions which specify the terms and conditions of allotment management plans. The preceding sentence of this subsection shall not be construed as limiting any other right of appeal from decisions of such officials.

(g) Cancellation of permit or lease; determination of reasonable compensation; notice

Whenever a permit or lease for grazing domestic livestock is canceled in whole or in part, in order to devote the lands covered by the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States a reasonable compensation for the adjusted value, to be determined

by the Secretary concerned, of his interest in authorized permanent improvements placed or constructed by the permittee or lessee on lands covered by such permit or lease, but not to exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein. Except in cases of emergency, no permit or lease shall be canceled under this subsection without two years' prior notification.

(h) Applicability of provisions to rights, etc., in or to public lands or lands in National Forests

Nothing in this Act shall be construed as modifying in any way law existing on October 21, 1976, with respect to the creation of right, title, interest or estate in or to public lands or lands in National Forests by issuance of grazing permits and leases. (43 U.S.C. 1752)

### **Authority for cooperative agreements and payments effective as provided in appropriations**

**Sec. 9** Notwithstanding any other provision of this chapter, authority to enter into cooperative agreements and to make payments under this chapter shall be effective only to the extent or in such amounts as are provided in advance in appropriation Acts. (43 U.S.C. 1906)

### **Grazing advisory boards**

**Sec. 10** (a) Establishment; maintenance

For each Bureau district office and National Forest headquarters office in the sixteen contiguous Western States having jurisdiction over more than five hundred

thousand acres of lands subject to commercial livestock grazing (hereinafter in this section referred to as "office"), the Secretary and the Secretary of Agriculture, upon the petition of a simple majority of the livestock lessees and permittees under the jurisdiction of such office, shall establish and maintain at least one grazing advisory board of not more than fifteen advisers.

(b) Functions

The function of grazing advisory boards established pursuant to this section shall be to offer advice and make recommendations to the head of the office involved concerning the development of allotment management plans and the utilization of range-betterment funds.

(c) Appointment and terms of members

The number of advisers on each board and the number of years an adviser may serve shall be determined by the Secretary concerned in his discretion. Each board shall consist of livestock representatives who shall be lessees or permittees in the area administered by the office concerned and shall be chosen by the lessees and permittees in the area through an election prescribed by the Secretary concerned.

(d) Meetings

Each grazing advisory board shall meet at least once annually.

(e) Federal Advisory Committee Act applicability

Except as may be otherwise provided by this section, the provisions of the Federal

Advisory Committee Act (86 Stat. 770) shall apply to grazing advisory boards.

(f) Expiration date

The provisions of this section shall expire December 31, 1985. (43 U.S.C. 1753)

### **National Grasslands; exemptions**

**Sec. 11** All National Grasslands are exempted from the provisions of this chapter. (43 U.S.C. 1907)

### **Experimental stewardship program**

**Sec. 12** (a) Scope of program

The Secretaries of Interior and Agriculture are hereby authorized and directed to develop and implement, on an experimental basis on selected areas of the public rangelands which are representative of the broad spectrum of range conditions, trends, and forage values, a program which provides incentives to, or rewards for, the holders of grazing permits and leases whose stewardship results in an improvement of the range condition of lands under permit or lease. Such program shall explore innovative grazing management policies and systems which might provide incentives to improve range conditions. These may include, but need not be limited to –

- (1) cooperative range management projects designed to foster a greater degree of cooperation and coordination between the Federal and State agencies charged with the management of the rangelands and with local private range users,
- (2) the payment of up to 50 per centum

of the amount due the Federal Government from grazing permittees in the form of range improvement work,

(3) such other incentives as he may deem appropriate.

(b) Report to Congress

No later than December 31, 1985, the Secretaries shall report to the Congress the results of such experimental program, their evaluation of the fee established in section 1905 of this title and other grazing fee options, and their recommendations to implement a grazing fee schedule for the 1986 and subsequent grazing years. (43 U.S.C. 1908)

### **Advisory councils**

**Sec. 13** (a) Establishment; membership; operation

The Secretary shall establish advisory councils of not less than ten and not more than fifteen members appointed by him from among persons who are representative of the various major citizens' interests concerning the problems relating to land use planning or the management of the public lands located within the area for which an advisory council is established. At least one member of each council shall be an elected official of general purpose government serving the people of such area. To the extent practicable there shall be no overlap or duplication of such councils. Appointments shall be made in accordance with rules prescribed by the Secretary. The establishment and operation of an advisory council established under this section shall conform to the requirements of the Federal Advisory

Committee Act (86 Stat. 770).

(b) Meetings

Notwithstanding the provisions of subsection (a) of this section, each advisory council established by the Secretary under this section shall meet at least once a year with such meetings being called by the Secretary.

(c) Travel and per diem payments

Members of advisory councils shall serve without pay, except travel and per diem will be paid each member for meetings called by the Secretary.

(d) Functions

An advisory council may furnish advice to the Secretary with respect to the land use planning, classification, retention, management, and disposal of the public lands within the area for which the advisory council is established and such other matters as may be referred to it by the Secretary.

(e) Public participation; procedures applicable

In exercising his authorities under this Act, the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, the public lands. (43 U.S.C. 1739)

### **Powers and duties of Secretary**

**Sec. 14(a)** (a) Jurisdiction; management; ranges; ecological balance objectives; scientific recommendations; forage allocation adjustments

All wild free-roaming horses and burros are hereby declared to be under the jurisdiction of the Secretary for the purpose of management and protection in accordance with the provisions of this chapter. The Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands, and he may designate and maintain specific ranges on public lands as sanctuaries for their protection and preservation, where the Secretary after consultation with the wildlife agency of the State wherein any such range is proposed and with the Advisory Board established in section 1337 of this title deems such action desirable. The Secretary shall manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands. He shall consider the recommendations of qualified scientists in the field of biology and ecology, some of whom shall be independent of both Federal and State agencies and may include members of the Advisory Board established in section 1337 of this title. All management activities shall be at the minimal feasible level and shall be carried out in consultation with the wildlife agency of the State wherein such lands are located in order to protect the natural ecological balance of all wildlife species which inhabit such lands, particularly endangered wildlife species. Any adjust-

ments in forage allocations on any such lands shall take into consideration the needs of other wildlife species which inhabit such lands.

(b) Inventory and determinations; consultation; overpopulation; research study: submittal to Congress

(1) The Secretary shall maintain a current inventory of wild free-roaming horses and burros on given areas of the public lands. The purpose of such inventory shall be to: make determinations as to whether and where an overpopulation exists and whether action should be taken to remove excess animals; determine appropriate management levels of wild free-roaming horses and burros on these areas of the public lands; and determine whether appropriate management levels should be achieved by the removal or destruction of excess animals, or other options (such as sterilization, or natural controls on population levels). In making such determinations the Secretary shall consult with the United States Fish and Wildlife Service, wildlife agencies of the State or States wherein wild free-roaming horses and burros are located, such individuals independent of Federal and State government as have been recommended by the National Academy of Sciences, and such other individuals whom he determines have scientific expertise and special knowledge of wild horse and burro protection, wildlife management and animal husbandry as related to rangeland management.

(2) Where the Secretary determines on

the basis of (i) the current inventory of lands within his jurisdiction; (ii) information contained in any land use planning completed pursuant to section 1712 of title 43; (iii) information contained in court ordered environmental impact statements as defined in section 1902 of title 43; and (iv) such additional information as becomes available to him from time to time, including that information developed in the research study mandated by this section, or in the absence of the information contained in (i-iv) above on the basis of all information currently available to him, that an overpopulation exists on a given area of the public lands and that action is necessary to remove excess animals, he shall immediately remove excess animals from the range so as to achieve appropriate management levels. Such action shall be taken, in the following order and priority, until all excess animals have been removed so as to restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation:

(A) The Secretary shall order old, sick, or lame animals to be destroyed in the most humane manner possible;

(B) The Secretary shall cause such number of additional excess wild free-roaming horses and burros to be humanely captured and removed for private maintenance and care for which he determines an adoption demand exists by qualified individuals, and for which he determines he can assure humane treatment and care

(including proper transportation, feeding, and handling): Provided, That, not more than four animals may be adopted per year by any individual unless the Secretary determines in writing that such individual is capable of humanely caring for more than four animals, including the transportation of such animals by the adopting party; and

(C) The Secretary shall cause additional excess wild free-roaming horses and burros for which an adoption demand by qualified individuals does not exist to be destroyed in the most humane and cost efficient manner possible.

(3) For the purpose of furthering knowledge of wild horse and burro population dynamics and their interrelationship with wildlife, forage and water resources, and assisting him in making his determination as to what constitutes excess animals, the Secretary shall contract for a research study of such animals with such individuals independent of Federal and State government as may be recommended by the National Academy of Sciences for having scientific expertise and special knowledge of wild horse and burro protection, wildlife management and animal husbandry as related to rangeland management. The terms and outline of such research study shall be determined by a research design panel to be appointed by the President of the National Academy of Sciences. Such study shall be completed and submitted by the Secretary to the Senate and House of Repre-

sentatives on or before January 1, 1983.

(c) Title of transferee to limited number of excess animals adopted for requisite period

Where excess animals have been transferred to a qualified individual for adoption and private maintenance pursuant to this chapter and the Secretary determines that such individual has provided humane conditions, treatment and care for such animal or animals for a period of one year, the Secretary is authorized upon application by the transferee to grant title to not more than four animals to the transferee at the end of the one-year period.

(d) Loss of status as wild free-roaming horses and burros; exclusion from coverage Wild free-roaming horses and burros or their remains shall lose their status as wild free-roaming horses or burros and shall no longer be considered as falling within the purview of this chapter –

(1) upon passage of title pursuant to subsection (c) of this section except for the limitation of subsection (c)(1) <sup>1</sup> of this section; or

(2) if they have been transferred for private maintenance or adoption pursuant to this chapter and die of natural causes before passage of title; or

(3) upon destruction by the Secretary or his designee pursuant to subsection (b) of this section; or

(4) if they die of natural causes on the public lands or on private lands where maintained thereon pursuant to section 1334 of this title and disposal is autho-

rized by the Secretary or his designee;  
or

(5) upon destruction or death for purposes of or incident to the program authorized in this section; Provided, That no wild free-roaming horse or burro or its remains may be sold or transferred for consideration for processing into commercial products. (16 U.S.C. 1333)

<sup>1</sup> So in original. Probably should be subsection “(c)”.

### Definitions

**Sec. 14(b)** As used in this chapter –

(a) “Secretary” means the Secretary of the Interior when used in connection with public lands administered by him through the Bureau of Land Management and the Secretary of Agriculture in connection with public lands administered by him through the Forest Service;

(b) “wild free-roaming horses and burros” means all unbranded and unclaimed horses and burros on public lands of the United States;

(c) “range” means the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses and burros, which does not exceed their known territorial limits, and which is devoted principally but not necessarily exclusively to their welfare in keeping with the multiple-use management concept for the public lands;

(d) “herd” means one or more stallions and his mares; and

(e) “public lands” means any lands administered by the Secretary of the Interior through the Bureau of Land Management or by the Secretary of Agriculture through the Forest Service.

(f) “excess animals” means wild free-roaming horses or burros (1) which have been removed from an area by the Secretary pursuant to applicable law or, (2) which must be removed from an area in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area. (16 U.S.C. 1332)

## Occupancy Permits

March 4, 1915 (Ch. 144, 38 Stat. 1100; 16 U.S.C. 497)

### **Use and occupation of lands for hotels, resorts, summer homes, stores, and facilities for industrial, commercial, educational or public uses**

The Secretary of Agriculture is authorized, under such regulations as he may make and upon such terms and conditions as he may deem proper, (a) to permit the use and occupancy of suitable areas of land within the national forests, not exceeding eighty acres and for periods not exceeding thirty years, for the purpose of constructing or maintaining hotels, resorts, and any other structures or facilities necessary or desirable for recreation, public convenience, or safety; (b) to permit the use and occupancy of suitable areas of land within the national forests, not exceeding five acres and for periods not exceeding thirty years, for the purpose of constructing or maintaining summer homes and stores; (c) to permit the use and occupancy of suitable areas of land within the national forest, not exceeding eighty acres and for periods not exceeding thirty years, for the purpose of constructing or maintaining buildings, structures, and facilities for industrial or commercial purposes whenever such use is related to or consistent with other uses on the national forests; (d) to permit any State or political subdivision thereof, or any public or nonprofit agency, to use and occupy suitable areas

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

## Wild and Scenic Rivers Act

**October 2, 1968 (Pub. L. 90-542, 82 Stat. 906; 16 U.S.C. 1271 to 1282, 1250, 1253, 1251, 1284, 1285, 1285a, 1285b, 1286, 1287)**

### Short title

**Sec. 1 (a)** This Act may be cited as the ‘Wild and Scenic Rivers Act’. (16 U.S.C. 1271 note)

### Congressional declaration of policy

**Sec. 1(b)** It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes. (16 U.S.C. 1271)

**Sec. 1(c)** The purpose of this chapter is to implement the policy set out in section 1271 of this title by instituting a national wild and scenic rivers system, by designating the initial components of that system, and by prescribing the methods by which and standards according to

which additional components may be added to the system from time to time. (16 U.S.C. 1272)

### National wild and scenic rivers system

**Sec. 2 (a)** Composition; application; publication in Federal Register; expense; administration of federally owned lands

The national wild and scenic rivers system shall comprise rivers (i) that are authorized for inclusion therein by Act of Congress, or (ii) that are designated as wild, scenic or recreational rivers by or pursuant to an act of the legislature of the State or States through which they flow, that are to be permanently administered as wild, scenic or recreational rivers by an agency or political subdivision of the State or States concerned that are found by the Secretary of the Interior, upon application of the Governor of the State or the Governors of the States concerned, or a person or persons thereunto duly appointed by him or them, to meet the criteria established in this chapter and such criteria supplementary thereto as he may prescribe, and that are approved by him for inclusion in the system, including, upon application of the Governor of the State concerned, the Allagash Wilderness Waterway, Maine; that segment of the Wolf River, Wisconsin, which flows through Langlade County; and that

segment of the New River in North Carolina extending from its confluence with Dog Creek downstream approximately 26.5 miles to the Virginia State line. Upon receipt of an application under clause (ii) of this subsection, the Secretary shall notify the Federal Energy Regulatory Commission and publish such application in the Federal Register. Each river designated under clause (ii) shall be administered by the State or political subdivision thereof without expense to the United States other than for administration and management of federally owned lands. For purposes of the preceding sentence, amounts made available to any State or political subdivision under the Land and Water Conservation Act of 1965 (16 U.S.C. 4601-4 et seq.) or any other provision of law shall not be treated as an expense to the United States. Nothing in this subsection shall be construed to provide for the transfer to, or administration by, a State or local authority of any federally owned lands which are within the boundaries of any river included within the system under clause (ii).

(b) Classification, designation, and administration of rivers

A wild, scenic or recreational river area eligible to be included in the system is a free-flowing stream and the related adjacent land area that possesses one or more of the values referred to in section 1271 of this title. Every wild, scenic or recreational river in its free-flowing condition, or upon restoration to this condition, shall be considered eligible for inclusion in the national wild and scenic

river system and, if included, shall be classified, designated, and administered as one of the following:

(1) Wild river areas - Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.

(2) Scenic river areas - Those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.

(3) Recreational river areas - Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past. (16 U.S.C. 1273)

### **Component rivers and adjacent lands**

#### **Sec. 3 (a) Designation**

The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

\*\*\* (16 U.S.C. 1274)

### **Additions to national wild and scenic rivers system**

**Sec. 4 (a) Reports by Secretaries of the Interior and Agriculture; recommendations to Congress; contents of reports**

The Secretary of the Interior or, where

national forest lands are involved, the Secretary of Agriculture or, in appropriate cases, the two Secretaries jointly shall study and submit to the President reports on the suitability or unsuitability for addition to the national wild and scenic rivers system of rivers which are designated herein or hereafter by the Congress as potential additions to such system. The President shall report to the Congress his recommendations and proposals with respect to the designation of each such river or section thereof under this chapter. Such studies shall be completed and such reports shall be made to the Congress with respect to all rivers named in section 1276(a) (1) through (27) of this title no later than October 2, 1978. In conducting these studies the Secretary of the Interior and the Secretary of Agriculture shall give priority to those rivers (i) with respect to which there is the greatest likelihood of developments which, if undertaken, would render the rivers unsuitable for inclusion in the national wild and scenic rivers system, and (ii) which possess the greatest proportion of private lands within their areas. Every such study and plan shall be coordinated with any water resources planning involving the same river which is being conducted pursuant to the Water Resources Planning Act (42 U.S.C. 1962 et seq.). Each report, including maps and illustrations, shall show among other things the area included within the report; the characteristics which do or do not make the area a worthy addition to the system; the current status of land ownership and use in the area; the reasonably foreseeable potential uses of the land and water which would

be enhanced, foreclosed, or curtailed if the area were included in the national wild and scenic rivers system; the Federal agency (which in the case of a river which is wholly or substantially within a national forest, shall be the Department of Agriculture) by which it is proposed the area, should it be added to the system, be administered; the extent to which it is proposed that such administration, including the costs thereof, be shared by State and local agencies; and the estimated cost to the United States of acquiring necessary lands and interests in land and of administering the area, should it be added to the system. Each such report shall be printed as a Senate or House document.

(b) Study of report by affected Federal and State officials; recommendations and comments; transmittal to President and Congress

Before submitting any such report to the President and the Congress, copies of the proposed report shall, unless it was prepared jointly by the Secretary of the Interior and the Secretary of Agriculture, be submitted by the Secretary of the Interior to the Secretary of Agriculture or by the Secretary of Agriculture to the Secretary of the Interior, as the case may be, and to the Secretary of the Army, the Secretary of Energy, the head of any other affected Federal department or agency and, unless the lands proposed to be included in the area are already owned by the United States or have already been authorized for acquisition by Act of Congress, the Governor of the State or States in which they are located or an officer designated by the Governor to

receive the same. Any recommendations or comments on the proposal which the said officials furnish the Secretary or Secretaries who prepared the report within ninety days of the date on which the report is submitted to them, together with the Secretary's or Secretaries' comments thereon, shall be included with the transmittal to the President and the Congress.

(c) Publication in Federal Register

Before approving or disapproving for inclusion in the national wild and scenic rivers system any river designated as a wild, scenic or recreational river by or pursuant to an act of a State legislature, the Secretary of the Interior shall submit the proposal to the Secretary of Agriculture, the Secretary of the Army, the Secretary of Energy, and the head of any other affected Federal department or agency and shall evaluate and give due weight to any recommendations or comments which the said officials furnish him within ninety days of the date on which it is submitted to them. If he approves the proposed inclusion, he shall publish notice thereof in the Federal Register.

(d) Areas comprised by boundaries; scope of study report

The boundaries of any river proposed in section 1276(a) of this title for potential addition to the National Wild and Scenic Rivers System shall generally comprise that area measured within one-quarter mile from the ordinary high water mark on each side of the river. In the case of any designated river, prior to publication

of boundaries pursuant to section 1274(b) of this title, the boundaries also shall comprise the same area. This subsection shall not be construed to limit the possible scope of the study report to address areas which may lie more than one-quarter mile from the ordinary high water mark on each side of the river. (16 U.S.C. 1275)

**Rivers constituting potential additions to national wild and scenic rivers system**

**Sec. 5** (a) Enumeration of designated rivers

The following rivers are hereby designated for potential addition to the national wild and scenic rivers system: \*\*\* (16 U.S.C. 1276)

**Land acquisition**

**Sec. 6** (a) Grant of authority to acquire; State and Indian lands; use of appropriated funds; acquisition of tracts partially outside component boundaries; disposition of lands

(1) The Secretary of the Interior and the Secretary of Agriculture are each authorized to acquire lands and interests in land within the authorized boundaries of any component of the national wild and scenic rivers system designated in section 1274 of this title, or hereafter designated for inclusion in the system by Act of Congress, which is administered by him, but he shall not acquire fee title to an average of more than 100 acres per mile on both sides of the river. Lands owned by a State may be acquired only by donation or by exchange in accordance with subsection

(d) of this section. Lands owned by an Indian tribe or a political subdivision of a State may not be acquired without the consent of the appropriate governing body thereof as long as the Indian tribe or political subdivision is following a plan for management and protection of the lands which the Secretary finds protects the land and assures its use for purposes consistent with this chapter. Money appropriated for Federal purposes from the land and water conservation fund shall, without prejudice to the use of appropriations from other sources, be available to Federal departments and agencies for the acquisition of property for the purposes of this chapter.

(2) When a tract of land lies partially within and partially outside the boundaries of a component of the National Wild and Scenic Rivers System, the appropriate Secretary may, with the consent of the landowners for the portion outside the boundaries, acquire the entire tract. The land or interest therein so acquired outside the boundaries shall not be counted against the average one-hundred-acre-per-mile fee title limitation of subsection (a)(1) of this section. The lands or interests therein outside such boundaries, shall be disposed of, consistent with existing authorities of law, by sale, lease, or exchange.

(b) Curtailment of condemnation power in area 50 per centum or more of which is owned in fee title by Federal or State government  
If 50 per centum or more of the entire

acreage outside the ordinary high water mark on both sides of the river within a federally administered wild, scenic or recreational river area is owned in fee title by the United States, by the State or States within which it lies, or by political subdivisions of those States, neither Secretary shall acquire fee title to any lands by condemnation under authority of this chapter. Nothing contained in this section, however, shall preclude the use of condemnation when necessary to clear title or to acquire scenic easements or such other easements as are reasonably necessary to give the public access to the river and to permit its members to traverse the length of the area or of selected segments thereof.

(c) Curtailment of condemnation power in urban areas covered by valid and satisfactory zoning ordinances

Neither the Secretary of the Interior nor the Secretary of Agriculture may acquire lands by condemnation, for the purpose of including such lands in any national wild, scenic or recreational river area, if such lands are located within any incorporated city, village, or borough which has in force and applicable to such lands a duly adopted, valid zoning ordinance that conforms with the purposes of this chapter. In order to carry out the provisions of this subsection the appropriate Secretary shall issue guidelines, specifying standards for local zoning ordinances, which are consistent with the purposes of this chapter. The standards specified in such guidelines shall have the object of (A) prohibiting new commercial or industrial uses other than commercial or

industrial uses which are consistent with the purposes of this chapter, and (B) the protection of the bank lands by means of acreage, frontage, and setback requirements on development.

(d) Exchange of property

The appropriate Secretary is authorized to accept title to non-Federal property within the authorized boundaries of any federally administered component of the national wild and scenic rivers system designated in section 1274 of this title or hereafter designated for inclusion in the system by Act of Congress and, in exchange therefor, convey to the grantor any federally owned property which is under his jurisdiction within the State in which the component lies and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal or, if they are not approximately equal, shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(e) Transfer of jurisdiction over federally owned property to appropriate Secretary

The head of any Federal department or agency having administrative jurisdiction over any lands or interests in land within the authorized boundaries of any federally administered component of the national wild and scenic rivers system designated in section 1274 of this title or hereafter designated for inclusion in the system by Act of Congress is authorized to transfer to the appropriate secretary jurisdiction over such lands for administration in accordance with the provisions of this

chapter. Lands acquired by or transferred to the Secretary of Agriculture for the purposes of this chapter within or adjacent to a national forest shall upon such acquisition or transfer become national forest lands.

(f) Acceptance of donated land, funds, and other property

The appropriate Secretary is authorized to accept donations of lands and interests in land, funds, and other property for use in connection with his administration of the national wild and scenic rivers system.

(g) Retained right of use and occupancy; termination; fair market value; "improved property" defined

(1) Any owner or owners (hereinafter in this subsection referred to as "owner") of improved property on the date of its acquisition, may retain for themselves and their successors or assigns a right of use and occupancy of the improved property for noncommercial residential purposes for a definite term not to exceed twenty-five years or, in lieu thereof, for a term ending at the death of the owner, or the death of his spouse, or the death of either or both of them. The owner shall elect the term to be reserved. The appropriate Secretary shall pay to the owner the fair market value of the property on the date of such acquisition less the fair market value on such date of the right retained by the owner.

(2) A right of use and occupancy retained pursuant to this subsection shall be subject to termination whenever the appropriate Secretary is given reason-

able cause to find that such use and occupancy is being exercised in a manner which conflicts with the purposes of this chapter. In the event of such a finding, the Secretary shall tender to the holder of that right an amount equal to the fair market value of that portion of the right which remains unexpired on the date of termination. Such right of use or occupancy shall terminate by operation of law upon tender of the fair market price.

(3) The term “improved property”, as used in this chapter, means a detached, one-family dwelling (hereinafter referred to as “dwelling”), the construction of which was begun before January 1, 1967, (except where a different date is specifically provided by law with respect to any particular river) together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the appropriate Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use, together with any structures accessory to the dwelling which are situated on the land so designated. (16 U.S.C. 1277)

### **Restrictions on water resources projects**

**Sec. 7** (a) Construction projects licensed by Federal Energy Regulatory Commission

The Federal Energy Regulatory Commission shall not license the construction of any dam, water conduit, reservoir, power-

house, transmission line, or other project works under the Federal Power Act (41 Stat. 1063), as amended (16 U.S.C. 791a et seq.), on or directly affecting any river which is designated in section 1274 of this title as a component of the national wild and scenic rivers system or which is hereafter designated for inclusion in that system, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on the date of designation of a river as a component of the National Wild and Scenic Rivers System. No department or agency of the United States shall recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration, or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior or the Secretary of Agriculture, as the case may be, in writing of its intention so to do at least sixty days in advance, and without

specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this chapter and would affect the component and the values to be protected by it under this chapter. Any license heretofore or hereafter issued by the Federal Energy Regulatory Commission affecting the New River of North Carolina shall continue to be effective only for that portion of the river which is not included in the National Wild and Scenic Rivers System pursuant to section 1273 of this title and no project or undertaking so licensed shall be permitted to invade, inundate or otherwise adversely affect such river segment.

(b) Construction projects on rivers designated for potential addition to system

The Federal Energy Regulatory Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, as amended (16 U.S.C. 791a et seq.), on or directly affecting any river which is listed in section 1276(a) of this title, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river might be designated, as determined by the Secretary responsible for its study or approval –

(i) during the ten-year period following October 2, 1968, or for a three complete fiscal year period following

any Act of Congress designating any river for potential addition to the national wild and scenic rivers system, whichever is later, unless, prior to the expiration of the relevant period, the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture, on the basis of study, determine that such river should not be included in the national wild and scenic rivers system and notify the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives, in writing, including a copy of the study upon which the determination was made, at least one hundred and eighty days while Congress is in session prior to publishing notice to that effect in the Federal Register: Provided, That if any Act designating any river or rivers for potential addition to the national wild and scenic rivers system provides a period for the study or studies which exceeds such three complete fiscal year period the period provided for in such Act shall be substituted for the three complete fiscal year period in the provisions of this clause (i); and

(ii) during such interim period from the date a report is due and the time a report is actually submitted to the Congress; and

(iii) during such additional period thereafter as, in the case of any river the report for which is submitted to the President and the Congress, is

necessary for congressional consideration thereof or, in the case of any river recommended to the Secretary of the Interior for inclusion in the national wild and scenic rivers system under section 1273(a)(ii) of this title, is necessary for the Secretary's consideration thereof, which additional period, however, shall not exceed three years in the first case and one year in the second. Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a potential wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or diminish the scenic, recreational, and fish and wildlife values present in the potential wild, scenic or recreational river area on the date of designation of a river for study as provided for in section 1276 of this title. No department or agency of the United States shall, during the periods hereinbefore specified, recommend authorization of any water resources project on any such river or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture in writing of its intention so to do at least sixty days in advance of doing so and without specifically reporting to the Congress in writing at the time it makes its recommenda-

tion or request in what respect construction of such project would be in conflict with the purposes of this chapter and would affect the component and the values to be protected by it under this chapter.

(c) Activities in progress affecting river of system; notice to Secretary

The Federal Energy Regulatory Commission and all other Federal agencies shall, promptly upon enactment of this chapter, inform the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture, of any proceedings, studies, or other activities within their jurisdiction which are now in progress and which affect or may affect any of the rivers specified in section 1276(a) of this title. They shall likewise inform him of any such proceedings, studies, or other activities which are hereafter commenced or resumed before they are commenced or resumed.

(d) Grants under Land and Water Conservation Fund Act of 1965

Nothing in this section with respect to the making of a loan or grant shall apply to grants made under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 et seq.). (16 U.S.C. 1278)

### **Withdrawal of public lands from entry, sale, or other disposition under public land laws**

**Sec. 8** (a) Lands within authorized boundaries of components of system

All public lands within the authorized boundaries of any component of the national wild and scenic rivers system

which is designated in section 1274 of this title or which is designated after October 2, 1968, for inclusion in that system are hereby withdrawn from entry, sale, or other disposition under the public land laws of the United States. This subsection shall not be construed to limit the authorities granted in section 1277(d) or section 1285a of this title.

(b) Lands constituting bed or bank of river; lands within bank area

All public lands which constitute the bed or bank, or are within one-quarter mile of the bank, of any river which is listed in section 1276(a) of this title are hereby withdrawn from entry, sale, or other disposition under the public land laws of the United States for the periods specified in section 1278(b) of this title. Notwithstanding the foregoing provisions of this subsection or any other provision of this chapter, subject only to valid existing rights, including valid Native selection rights under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), all public lands which constitute the bed or bank, or are within an area extending two miles from the bank of the river channel on both sides of the river segments referred to in paragraphs (77) through (88) of section 1276(a) of this title are hereby withdrawn from entry, sale, State selection or other disposition under the public land laws of the United States for the periods specified in section 1278(b) of this title. (16 U.S.C. 1279)

### **Federal mining and mineral leasing laws**

**Sec. 9** (a) Applicability to components of

system Nothing in this chapter shall affect the applicability of the United States mining and mineral leasing laws within components of the national wild and scenic rivers system except that –

(i) all prospecting, mining operations, and all other activities on mining claims which, in the case of a component of the system designated in section 1274 of this title, have not heretofore been perfected or which, in the case of a component hereafter designated pursuant to this chapter or any other Act of Congress, are not perfected before its inclusion in the system and all mining operations and other activities under a mineral lease, license, or permit issued or renewed after inclusion of a component in the system shall be subject to such regulations as the Secretary of the Interior or, in the case of national forest lands, the Secretary of Agriculture may prescribe to effectuate the purposes of this chapter;

(ii) subject to valid existing rights, the perfection of, issuance of a patent to, any mining claim affecting lands within the system shall confer or convey a right or title only to the mineral deposits and such rights only to the use of the surface and the surface resources as are reasonably required to carrying on prospecting or mining operations and are consistent with such regulations as may be prescribed by the Secretary of the Interior or, in the case of national forest lands, by the Secretary of Agriculture; and

(iii) subject to valid existing rights, the minerals in Federal lands which are part of the system and constitute the bed or bank or are situated within one-quarter mile of the bank of any river designated a wild river under this chapter or any subsequent Act are hereby withdrawn from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto. Regulations issued pursuant to paragraphs (i) and (ii) of this subsection shall, among other things, provide safeguards against pollution of the river involved and unnecessary impairment of the scenery within the component in question.

(b) Withdrawal from appropriation of minerals in Federal river beds or bank areas; prospecting, leases, licenses, and permits

The minerals in any Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river which is listed in section 1276(a) of this title are hereby withdrawn from all forms of appropriation under the mining laws during the periods specified in section 1278(b) of this title. Nothing contained in this subsection shall be construed to forbid prospecting or the issuance of leases, licenses, and permits under the mineral leasing laws subject to such conditions as the Secretary of the Interior and, in the case of national forest lands, the Secretary of Agriculture find appro-

priate to safeguard the area in the event it is subsequently included in the system. Notwithstanding the foregoing provisions of this subsection or any other provision of this chapter, all public lands which constitute the bed or bank, or are within an area extending two miles from the bank of the river channel on both sides of the river segments referred to in paragraphs (77) through (88) of section 1276(a) of this title are hereby withdrawn subject to valid existing rights, from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto, during the periods specified in section 1278(b) of this title. (16 U.S.C. 1280)

### **Administration**

**Sec. 10** (a) Public use and enjoyment of components; protection of features; management plans

Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its esthetic, scenic, historic, archeologic, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and develop-

ment, based on the special attributes of the area.

(b) Wilderness areas

Any portion of a component of the national wild and scenic rivers system that is within the national wilderness preservation system, as established by or pursuant to the Wilderness Act (16 U.S.C. 1131 et seq.), shall be subject to the provisions of both the Wilderness Act and this chapter with respect to preservation of such river and its immediate environment, and in case of conflict between the provisions of the Wilderness Act and this chapter the more restrictive provisions shall apply.

(c) Areas administered by National Park Service and Fish and Wildlife Service

Any component of the national wild and scenic rivers system that is administered by the Secretary of the Interior through the National Park Service shall become a part of the national park system, and any such component that is administered by the Secretary through the Fish and Wildlife Service shall become a part of the national wildlife refuge system. The lands involved shall be subject to the provisions of this chapter and the Acts under which the national park system or national wildlife system, as the case may be, is administered, and in case of conflict between the provisions of this chapter and such Acts, the more restrictive provisions shall apply. The Secretary of the Interior, in his administration of any component of the national wild and scenic rivers system, may utilize such general statutory authorities relating to areas of

the national park system and such general statutory authorities otherwise available to him for recreation and preservation purposes and for the conservation and management of natural resources as he deems appropriate to carry out the purposes of this chapter.

(d) Statutory authorities relating to national forests

The Secretary of Agriculture, in his administration of any component of the national wild and scenic rivers system area, may utilize the general statutory authorities relating to the national forests in such manner as he deems appropriate to carry out the purposes of this chapter.

(e) Cooperative agreements with State and local governments

The Federal agency charged with the administration of any component of the national wild and scenic rivers system may enter into written cooperative agreements with the Governor of a State, the head of any State agency, or the appropriate official of a political subdivision of a State for State or local governmental participation in the administration of the component. The States and their political subdivisions shall be encouraged to cooperate in the planning and administration of components of the system which include or adjoin State- or county-owned lands. (16 U.S.C. 1281)

### **Assistance to State and local projects**

**Sec. 11** (a) Assistance of Secretary of the Interior

The Secretary of the Interior shall

encourage and assist the States to consider, in formulating and carrying out their comprehensive statewide outdoor recreation plans and proposals for financing assistance for State and local projects submitted pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) (16 U.S.C. 4601-4 et seq.), needs and opportunities for establishing State and local wild, scenic and recreational areas.

(b) Assistance of Secretaries of the Interior, Agriculture, or other Federal agency heads; use of Federal facilities, equipment, etc.; conditions on permits or other authorizations

(1) The Secretary of the Interior, the Secretary of Agriculture, or the head of any other Federal agency, shall assist, advise, and cooperate with States or their political subdivisions, landowners, private organizations, or individuals to plan, protect, and manage river resources. Such assistance, advice, and cooperation may be through written agreements or otherwise. This authority applies within or outside a federally administered area and applies to rivers which are components of the National Wild and Scenic Rivers System and to other rivers. Any agreement under this subsection may include provisions for limited financial or other assistance to encourage participation in the acquisition, protection, and management of river resources.

(2) Wherever appropriate in furtherance of this chapter, the Secretary of Agriculture and the Secretary of the Interior are authorized and encouraged to utilize

the following:

(A) For activities on federally owned land, the Volunteers in the Parks Act of 1969 (16 U.S.C. 18g et seq.) and the Volunteers in the Forest Act of 1972 (16 U.S.C. 558a-558d).

(B) For activities on all other lands, section 6 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-8) (relating to the development of statewide comprehensive outdoor recreation plans).

(3) For purposes of this subsection, the appropriate Secretary or the head of any Federal agency may utilize and make available Federal facilities, equipment, tools and technical assistance to volunteers and volunteer organizations, subject to such limitations and restrictions as the appropriate Secretary or the head of any Federal agency deems necessary or desirable.

(4) No permit or other authorization provided for under provision of any other Federal law shall be conditioned on the existence of any agreement provided for in this section. (16 U.S.C. 1282)

### **Volunteer trails assistance**

(a) Volunteer planning, development, maintenance, and management of trails

(1) In addition to the cooperative agreement and other authorities contained in this chapter, the Secretary of the Interior, the Secretary of Agriculture, and the head of any Federal agency administering Federal lands, are authorized to encourage volunteers and

volunteer organizations to plan, develop, maintain, and manage, where appropriate, trails throughout the Nation.

(2) Wherever appropriate in furtherance of the purposes of this chapter, the Secretaries are authorized and encouraged to utilize the Volunteers in the Parks Act of 1969 (16 U.S.C. 18g et seq.), the Volunteers in the Forests Act of 1972 (16 U.S.C. 558a et seq.), and section 4601-8 of this title (relating to the development of Statewide Comprehensive Outdoor Recreation Plans).

(b) Scope of volunteer work

Each Secretary or the head of any Federal land managing agency may assist volunteers and volunteer organizations in planning, developing, maintaining, and managing trails. Volunteer work may include, but need not be limited to –

(1) planning, developing, maintaining, or managing (A) trails which are components of the national trails system, or (B) trails which, if so developed and maintained, could qualify for designation as components of the national trails system; or

(2) operating programs to organize and supervise volunteer trail building efforts with respect to the trails referred to in paragraph (1), conducting trail-related research projects, or providing education and training to volunteers on methods of trails planning, construction, and maintenance.

(c) Use of Federal facilities, equipment, tools, and technical assistance

The appropriate Secretary or the head of

any Federal land managing agency may utilize and make available Federal facilities, equipment, tools, and technical assistance to volunteers and volunteer organizations, subject to such limitations and restrictions as the appropriate Secretary or the head of any Federal land managing agency deems necessary or desirable. (16 U.S.C. 1250)

### Management policies

**Sec. 12** (a) Action of Secretaries and heads of agencies; cooperative agreements

The Secretary of the Interior, the Secretary of Agriculture, and the head of any other Federal department or agency having jurisdiction over any lands which include, border upon, or are adjacent to, any river included within the National Wild and Scenic Rivers System or under consideration for such inclusion, in accordance with section 1273(a)(ii), 1274(a), or 1276(a) of this title, shall take such action respecting management policies, regulations, contracts, plans, affecting such lands, following November 10, 1978, as may be necessary to protect such rivers in accordance with the purposes of this chapter. Such Secretary or other department or agency head shall, where appropriate, enter into written cooperative agreements with the appropriate State or local official for the planning, administration, and management of Federal lands which are within the boundaries of any rivers for which approval has been granted under section 1273(a)(ii) of this title. Particular attention shall be given to scheduled timber har-

vesting, road construction, and similar activities which might be contrary to the purposes of this chapter.

(b) Existing rights, privileges, and contracts affecting Federal lands

Nothing in this section shall be construed to abrogate any existing rights, privileges, or contracts affecting Federal lands held by any private party without consent of said party.

(c) Water pollution

The head of any agency administering a component of the national wild and scenic rivers system shall cooperate with the Administrator, Environmental Protection Agency and with the appropriate State water pollution control agencies for the purpose of eliminating or diminishing the pollution of waters of the river. (16 U.S.C. 1283)

**Existing State jurisdiction and responsibilities**

**Sec. 13 (a) Fish and wildlife**

Nothing in this chapter shall affect the jurisdiction or responsibilities of the States with respect to fish and wildlife. Hunting and fishing shall be permitted on lands and waters administered as parts of the system under applicable State and Federal laws and regulations unless, in the case of hunting, those lands or waters are within a national park or monument. The administering Secretary may, however, designate zones where, and establish periods when, no hunting is permitted for reasons of public safety, administration, or public use and enjoyment and shall issue appropriate regulations after consultation

with the wildlife agency of the State or States affected.

(b) Compensation for water rights

The jurisdiction of the States and the United States over waters of any stream included in a national wild, scenic or recreation river area shall be determined by established principles of law. Under the provisions of this chapter, any taking by the United States of a water right which is vested under either State or Federal law at the time such river is included in the national wild and scenic rivers system shall entitle the owner thereof to just compensation. Nothing in this chapter shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(c) Reservation of waters for other purposes or in unnecessary quantities prohibited

Designation of any stream or portion thereof as a national wild, scenic or recreational river area shall not be construed as a reservation of the waters of such streams for purposes other than those specified in this chapter, or in quantities greater than necessary to accomplish these purposes.

(d) State jurisdiction over included streams

The jurisdiction of the States over waters of any stream included in a national wild, scenic or recreational river area shall be unaffected by this chapter to the extent that such jurisdiction may be exercised without impairing the purposes of this chapter or its administration.

(e) Interstate compacts

Nothing contained in this chapter shall be construed to alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by any States which contain any portion of the national wild and scenic rivers system.

(f) Rights of access to streams

Nothing in this chapter shall affect existing rights of any State, including the right of access, with respect to the beds of navigable streams, tributaries, or rivers (or segments thereof) located in a national wild, scenic or recreational river area.

(g) Easements and rights-of-way

The Secretary of the Interior or the Secretary of Agriculture, as the case may be, may grant easements and rights-of-way upon, over, under, across, or through any component of the national wild and scenic rivers system in accordance with the laws applicable to the national park system and the national forest system, respectively: Provided, That any conditions precedent to granting such easements and rights-of-way shall be related to the policy and purpose of this chapter. (16 U.S.C. 1284)

**Claim and allowance of charitable deduction for contribution or gift of easement**

**Sec. 14** The claim and allowance of the value of an easement as a charitable contribution under section 170 of title 26, or as a gift under section 2522 of said title shall constitute an agreement by the donor on behalf of himself, his heirs, and

assigns that, if the terms of the instrument creating the easement are violated, the donee or the United States may acquire the servient estate at its fair market value as of the time the easement was donated minus the value of the easement claimed and allowed as a charitable contribution or gift. (16 U.S.C. 1285)

**Lease of Federal lands**

**Sec. 14A** (a) Authority of Secretary; restrictive covenants

Where appropriate in the discretion of the Secretary, he may lease federally owned land (or any interest therein) which is within the boundaries of any component of the National Wild and Scenic Rivers System and which has been acquired by the Secretary under this chapter. Such lease shall be subject to such restrictive covenants as may be necessary to carry out the purposes of this chapter.

(b) Offer to prior owner

Any land to be leased by the Secretary under this section shall be offered first for such lease to the person who owned such land immediately before its acquisition by the United States. (16 U.S.C. 1285a)

**Establishment of boundaries for certain component rivers in Alaska; withdrawal of minerals**

**Sec. 15** Notwithstanding any other provision to the contrary in sections 1274 and 1280 of this title, with respect to components of the National Wild and Scenic Rivers System in Alaska designated by paragraphs (38) through (50) of section 1274(a) of this title -

(1) the boundary of each such river shall include an average of not more than six hundred and forty acres per mile on both sides of the river. Such boundary shall not include any lands owned by the State or a political subdivision of the State nor shall such boundary extend around any private lands adjoining the river in such manner as to surround or effectively surround such private lands; and

(2) the withdrawal made by paragraph (iii) of section 1280(a) of this title shall apply to the minerals in Federal lands which constitute the bed or bank or are situated within one-half mile of the bank of any river designated a wild river by the Alaska National Interest Lands Conservation Act. (16 U.S.C. 1285b)

### Definitions

**Sec. 16** As used in this chapter, the term –

(a) “River” means a flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes.

(b) “Free-flowing”, as applied to any river or section of a river, means existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence, however, of low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the national wild and scenic rivers system shall not automatically bar its consideration for such inclusion: Provided, That this shall not be

construed to authorize, intend, or encourage future construction of such structures within components of the national wild and scenic rivers system.

(c) “Scenic easement” means the right to control the use of land (including the air space above such land) within the authorized boundaries of a component of the wild and scenic rivers system, for the purpose of protecting the natural qualities of a designated wild, scenic or recreational river area, but such control shall not affect, without the owner’s consent, any regular use exercised prior to the acquisition of the easement. For any designated wild and scenic river, the appropriate Secretary shall treat the acquisition of fee title with the reservation of regular existing uses to the owner as a scenic easement for purposes of this chapter. Such an acquisition shall not constitute fee title ownership for purposes of section 1277(b) of this title. (16 U.S.C. 1286)

### Authorization of appropriations

**Sec. 17** There are hereby authorized to be appropriated, including such sums as have heretofore been appropriated, the following amounts for land acquisition for each of the rivers (described in section 1274(a) of this title): \*\*\* (16 U.S.C. 1287)

## National Trails System Act

**October 2, 1968 (Pub. L. 90-543, 82 Stat. 919; 16 U.S.C. 1241 note, 1241 to 1251)**

### Short title

**Sec. 1** This Act may be cited as the 'National Trails System Act'. (16 U.S.C. 1241 note)

### Congressional statement of policy and declaration of purpose

**Sec. 2** (a) Considerations for determining establishment of trails

In order to provide for the ever-increasing outdoor recreation needs of an expanding population and in order to promote the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas and historic resources of the Nation, trails should be established

- (i) primarily, near the urban areas of the Nation, and
- (ii) secondarily, within scenic areas and along historic travel routes of the Nation, which are often more remotely located.

(b) Initial components

The purpose of this chapter is to provide the means for attaining these objectives by instituting a national system of recreation, scenic and historic trails, by designating the Appalachian Trail and the Pacific Crest Trail as the initial components of that system, and by prescribing the methods by which, and standards according to which, additional compo-

nents may be added to the system.

(c) Volunteer citizen involvement

The Congress recognizes the valuable contributions that volunteers and private, nonprofit trail groups have made to the development and maintenance of the Nation's trails. In recognition of these contributions, it is further the purpose of this chapter to encourage and assist volunteer citizen involvement in the planning, development, maintenance, and management, where appropriate, of trails. (16 U.S.C. 1241)

### National trails system

**Sec. 3** (a) Composition: recreation trails; scenic trails; historic trails; connecting or side trails; uniform markers

The national system of trails shall be composed of the following:

- (1) National recreation trails, established as provided in section 1243 of this title, which will provide a variety of outdoor recreation uses in or reasonably accessible to urban areas.
- (2) National scenic trails, established as provided in section 1244 of this title, which will be extended trails so located as to provide for maximum outdoor recreation potential and for the conservation and enjoyment of the nationally significant scenic, historic, natural, or cultural qualities of the areas through

which such trails may pass. National scenic trails may be located so as to represent desert, marsh, grassland, mountain, canyon, river, forest, and other areas, as well as landforms which exhibit significant characteristics of the physiographic regions of the Nation.

(3) National historic trails, established as provided in section 1244 of this title, which will be extended trails which follow as closely as possible and practicable the original trails or routes of travel of national historical significance. Designation of such trails or routes shall be continuous, but the established or developed trail, and the acquisition thereof, need not be continuous onsite. National historic trails shall have as their purpose the identification and protection of the historic route and its historic remnants and artifacts for public use and enjoyment. Only those selected land and water based components of an historic trail which are on federally owned lands and which meet the national historic trail criteria established in this chapter are included as Federal protection components of a national historic trail. The appropriate Secretary may certify other lands as protected segments of an historic trail upon application from State or local governmental agencies or private interests involved if such segments meet the national historic trail criteria established in this chapter and such criteria supplementary thereto as the appropriate Secretary may prescribe, and are administered by such agencies or interests without expense to the United

States.

(4) Connecting or side trails, established as provided in section 1245 of this title, which will provide additional points of public access to national recreation, national scenic or national historic trails or which will provide connections between such trails.

The Secretary of the Interior and the Secretary of Agriculture, in consultation with appropriate governmental agencies and public and private organizations, shall establish a uniform marker for the national trails system.

(b) Extended trails

For purposes of this section, the term "extended trails" means trails or trail segments which total at least one hundred miles in length, except that historic trails of less than one hundred miles may be designated as extended trails. While it is desirable that extended trails be continuous, studies of such trails may conclude that it is feasible to propose one or more trail segments which, in the aggregate, constitute at least one hundred miles in length. (16 U.S.C. 1242)

**National recreation trails;  
establishment and designation;  
prerequisites**

**Sec. 4** (a) The Secretary of the Interior, or the Secretary of Agriculture where lands administered by him are involved, may establish and designate national recreation trails, with the consent of the Federal agency, State, or political subdivision having jurisdiction over the lands involved, upon finding that -

(i) such trails are reasonably accessible to urban areas, and, or

(ii) such trails meet the criteria established in this chapter and such supplementary criteria as he may prescribe.

(b) As provided in this section, trails within park, forest, and other recreation areas administered by the Secretary of the Interior or the Secretary of Agriculture or in other federally administered areas may be established and designated as "National Recreation Trails" by the appropriate Secretary and, when no Federal land acquisition is involved -

(i) trails in or reasonably accessible to urban areas may be designated as "National Recreation Trails" by the appropriate Secretary with the consent of the States, their political subdivisions, or other appropriate administering agencies;

(ii) trails within park, forest, and other recreation areas owned or administered by States may be designated as "National Recreation Trails" by the appropriate Secretary with the consent of the State; and

(iii) trails on privately owned lands may be designated "National Recreation Trails" by the appropriate Secretary with the written consent of the owner of the property involved. (16 U.S.C. 1243)

### **National scenic and national historic trails**

**Sec. 5** (a) Establishment and designation;

administration

National scenic and national historic trails shall be authorized and designated only by Act of Congress. There are hereby established the following National Scenic and National Historic Trails:

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(b) Additional national scenic or national historic trails; feasibility studies; consultations; submission of studies to Congress; scope of studies; qualifications for national historic trail designation

The Secretary of the Interior, through the agency most likely to administer such trail, and the Secretary of Agriculture where lands administered by him are involved, shall make such additional studies as are herein or may hereafter be authorized by the Congress for the purpose of determining the feasibility and desirability of designating other trails as national scenic or national historic trails. Such studies shall be made in consultation with the heads of other Federal agencies administering lands through which such additional proposed trails would pass and in cooperation with interested interstate, State, and local governmental agencies, public and private organizations, and landowners and land users concerned. The feasibility of designating a trail shall be determined on the basis of an evaluation of whether or not it is physically possible to develop a trail along a route being studied, and whether the development of a trail would be financially feasible. The studies listed in subsection (c) of this section shall be completed and submitted to the Congress, with recom-

mendations as to the suitability of trail designation, not later than three complete fiscal years from the date of enactment of their addition to this subsection, or from November 10, 1978, whichever is later. Such studies, when submitted, shall be printed as a House or Senate document, and shall include, but not be limited to:

- (1) the proposed route of such trail (including maps and illustrations);
- (2) the areas adjacent to such trails, to be utilized for scenic, historic, natural, cultural, or developmental, purposes;
- (3) the characteristics which, in the judgment of the appropriate Secretary, make the proposed trail worthy of designation as a national scenic or national historic trail; and in the case of national historic trails the report shall include the recommendation of the Secretary of the Interior's National Park System Advisory Board as to the national historic significance based on the criteria developed under the Historic Sites Act of 1935 (49 Stat. 666; 16 U.S.C. 461);
- (4) the current status of land ownership and current and potential use along the designated route;
- (5) the estimated cost of acquisition of lands or interests in lands, if any;
- (6) the plans for developing and maintaining the trail and the cost thereof;
- (7) the proposed Federal administering agency (which, in the case of a national scenic trail wholly or substantially within a national forest, shall be the Department of Agriculture);

(8) the extent to which a State or its political subdivisions and public and private organizations might reasonably be expected to participate in acquiring the necessary lands in the administration thereof;

(9) the relative uses of the lands involved, including: the number of anticipated visitor-days for the entire length of, as well as for segments of, such trail; the number of months which such trail, or segments thereof, will be open for recreation purposes; the economic and social benefits which might accrue from alternate land uses; and the estimated man-years of civilian employment and expenditures expected for the purposes of maintenance, supervision, and regulation of such trail;

(10) the anticipated impact of public outdoor recreation use on the preservation of a proposed national historic trail and its related historic and archeological features and settings, including the measures proposed to ensure evaluation and preservation of the values that contribute to their national historic significance; and

(11) to qualify for designation as a national historic trail, a trail must meet all three of the following criteria:

- (A) It must be a trail or route established by historic use and must be historically significant as a result of that use. The route need not currently exist as a discernible trail to qualify, but its location must be sufficiently known to permit evaluation of public recreation and historical interest

potential. A designated trail should generally accurately follow the historic route, but may deviate somewhat on occasion of necessity to avoid difficult routing through subsequent development, or to provide some route variation offering a more pleasurable recreational experience. Such deviations shall be so noted on site. Trail segments no longer possible to travel by trail due to subsequent development as motorized transportation routes may be designated and marked onsite as segments which link to the historic trail.

(B) It must be of national significance with respect to any of several broad facets of American history, such as trade and commerce, exploration, migration and settlement, or military campaigns. To qualify as nationally significant, historic use of the trail must have had a far-reaching effect on broad patterns of American culture. Trails significant in the history of native Americans may be included.

(C) It must have significant potential for public recreational use or historical interest based on historic interpretation and appreciation. The potential for such use is generally greater along roadless segments developed as historic trails, and at historic sites associated with the trail. The presence of recreation potential not related to historic appreciation is not sufficient justification for designation under this category.

(c) Routes subject to consideration for

designation as national scenic trails

The following routes shall be studied in accordance with the objectives outlined in subsection (b) of this section:

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(d) Trail advisory councils; establishment and termination; term and compensation; membership; chairman

The Secretary charged with the administration of each respective trail shall, within one year of the date of the addition of any national scenic or national historic trail to the System, and within sixty days of November 10, 1978, for the Appalachian and Pacific Crest National Scenic Trails, establish an advisory council for each such trail, each of which councils shall expire ten years from the date of its establishment, <sup>1</sup> except that the Advisory Council established for the Iditarod Historic Trail shall expire twenty years from the date of its establishment. If the appropriate Secretary is unable to establish such an advisory council because of the lack of adequate public interest, the Secretary shall so advise the appropriate committees of the Congress. The appropriate Secretary shall consult with such council from time to time with respect to matters relating to the trail, including the selection of rights-of-way, standards for the erection and maintenance of markers along the trail, and the administration of the trail. The members of each advisory council, which shall not exceed thirty-five in number, shall serve for a term of two years and without compensation as such, but the Secretary may pay, upon vouchers signed

by the chairman of the council, the expenses reasonably incurred by the council and its members in carrying out their responsibilities under this section. Members of each council shall be appointed by the appropriate Secretary as follows:

- (1) the head of each Federal department or independent agency administering lands through which the trail route passes, or his designee;
  - (2) a member appointed to represent each State through which the trail passes, and such appointments shall be made from recommendations of the Governors of such States;
  - (3) one or more members appointed to represent private organizations, including corporate and individual landowners and land users, which in the opinion of the Secretary, have an established and recognized interest in the trail, and such appointments shall be made from recommendations of the heads of such organizations: Provided, That the Appalachian Trail Conference shall be represented by a sufficient number of persons to represent the various sections of the country through which the Appalachian Trail passes; and
  - (4) the Secretary shall designate one member to be chairman and shall fill vacancies in the same manner as the original appointment.
- (e) Comprehensive national scenic trail plan; consultation; submission to Congressional committees

Within two complete fiscal years of the

date of enactment of legislation designating a national scenic trail, except for the Continental Divide National Scenic Trail and the North Country National Scenic Trail, as part of the system, and within two complete fiscal years of November 10, 1978, for the Pacific Crest and Appalachian Trails, the responsible Secretary shall, after full consultation with affected Federal land managing agencies, the Governors of the affected States, the relevant advisory council established pursuant to subsection (d) of this section, and the Appalachian Trail Conference in the case of the Appalachian Trail, submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a comprehensive plan for the acquisition, management, development, and use of the trail, including but not limited to, the following items:

- (1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved (along with high potential historic sites and high potential route segments in the case of national historic trails), details of anticipated cooperative agreements to be consummated with other entities, and an identified carrying capacity of the trail and a plan for its implementation;
- (2) an acquisition or protection plan, by fiscal year, for all lands to be acquired by fee title or lesser interest, along with detailed explanation of anticipated necessary cooperative agreements for any lands not to be acquired; and

(3) general and site-specific development plans including anticipated costs.

(f) Comprehensive national historic trail plan; consultation; submission to Congressional committees

Within two complete fiscal years of the date of enactment of legislation designating a national historic trail or the Continental Divide National Scenic Trail or the North Country National Scenic Trail as part of the system, the responsible Secretary shall, after full consultation with affected Federal land managing agencies, the Governors of the affected States, and the relevant Advisory Council established pursuant to subsection (d) of this section, submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a comprehensive plan for the management, and use of the trail, including but not limited to, the following items:

(1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved, details of any anticipated cooperative agreements to be consummated with State and local government agencies or private interests, and for national scenic or national historic trails an identified carrying capacity of the trail and a plan for its implementation;

(2) the process to be followed by the appropriate Secretary to implement the marking requirements established in section 1246(c) of this title;

(3) a protection plan for any high potential historic sites or high potential route segments; and

(4) general and site-specific development plans, including anticipated costs. (16 U.S.C. 1244)

<sup>1</sup> So in original. The words “its establishment. establishment,” probably should be “its establishment.”.

### **Connecting or side trails; establishment, designation, and marking as components of national trails system; location**

**Sec. 6** Connecting or side trails within park, forest, and other recreation areas administered by the Secretary of the Interior or Secretary of Agriculture may be established, designated, and marked by the appropriate Secretary as components of a national recreation, national scenic or national historic trail. When no Federal land acquisition is involved, connecting or side trails may be located across lands administered by interstate, State, or local governmental agencies with their consent, or, where the appropriate Secretary deems necessary or desirable, on privately owned lands with the consent of the landowner. Applications for approval and designation of connecting and side trails on non-Federal lands shall be submitted to the appropriate Secretary. (16 U.S.C. 1245)

### **Administration and development of national trails system**

**Sec. 7** (a) Consultation of Secretary with other agencies; transfer of management

responsibilities; selection of rights-of-way; criteria for selection; notice; impact upon established uses

(1) (A) The Secretary charged with the overall administration of a trail pursuant to section 1244(a) of this title shall, in administering and managing the trail, consult with the heads of all other affected State and Federal agencies. Nothing contained in this chapter shall be deemed to transfer among Federal agencies any management responsibilities established under any other law for federally administered lands which are components of the National Trails System. Any transfer of management responsibilities may be carried out between the Secretary of the Interior and the Secretary of Agriculture only as provided under subparagraph (B).

(B) The Secretary charged with the overall administration of any trail pursuant to section 1244(a) of this title may transfer management of any specified trail segment of such trail to the other appropriate Secretary pursuant to a joint memorandum of agreement containing such terms and conditions as the Secretaries consider most appropriate to accomplish the purposes of this chapter. During any period in which management responsibilities for any trail segment are transferred under such an agreement, the management of any such segment shall be subject to the laws, rules, and regulations of the Secretary provided with the management authority under the agreement, except to such extent as the agreement may otherwise

expressly provide.

(2) Pursuant to section 1244(a) of this title, the appropriate Secretary shall select the rights-of-way for national scenic and national historic trails and shall publish notice of the availability of appropriate maps or descriptions in the Federal Register: Provided, That in selecting the rights-of-way full consideration shall be given to minimizing the adverse effects upon the adjacent landowner or user and his operation. Development and management of each segment of the National Trails System shall be designed to harmonize with and complement any established multiple-use plans for that specific area in order to insure continued maximum benefits from the land. The location and width of such rights-of-way across Federal lands under the jurisdiction of another Federal agency shall be by agreement between the head of that agency and the appropriate Secretary. In selecting rights-of-way for trail purposes, the Secretary shall obtain the advice and assistance of the States, local governments, private organizations, and landowners and land users concerned.

(b) Relocation of segment of national, scenic or historic, trail right-of-way; determination of necessity with official having jurisdiction; necessity for Act of Congress

After publication of notice of the availability of appropriate maps or descriptions in the Federal Register, the Secretary charged with the administration of a national scenic or national historic trail

may relocate segments of a national scenic or national historic trail right-of-way, with the concurrence of the head of the Federal agency having jurisdiction over the lands involved, upon a determination that: (i) such a relocation is necessary to preserve the purposes for which the trail was established, or (ii) the relocation is necessary to promote a sound land management program in accordance with established multiple-use principles: Provided, That a substantial relocation of the rights-of-way for such trail shall be by Act of Congress.

(c) Facilities on national, scenic or historic, trails; permissible activities; use of motorized vehicles; trail markers; establishment of uniform marker; placement of uniform markers; trail interpretation sites

National scenic or national historic trails may contain campsites, shelters, and related-public-use facilities. Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted by the Secretary charged with the administration of the trail. Reasonable efforts shall be made to provide sufficient access opportunities to such trails and, to the extent practicable, efforts shall be made to avoid activities incompatible with the purposes for which such trails were established. The use of motorized vehicles by the general public along any national scenic trail shall be prohibited and nothing in this chapter shall be construed as authorizing the use of motorized vehicles within the natural and historical areas of the national park system, the national wildlife refuge

system, the national wilderness preservation system where they are presently prohibited or on other Federal lands where trails are designated as being closed to such use by the appropriate Secretary: Provided, That the Secretary charged with the administration of such trail shall establish regulations which shall authorize the use of motorized vehicles when, in his judgment, such vehicles are necessary to meet emergencies or to enable adjacent landowners or land users to have reasonable access to their lands or timber rights: Provided further, That private lands included in the national recreation, national scenic, or national historic trails by cooperative agreement of a landowner shall not preclude such owner from using motorized vehicles on or across such trails or adjacent lands from time to time in accordance with regulations to be established by the appropriate Secretary. Where a national historic trail follows existing public roads, developed rights-of-way or waterways, and similar features of man's nonhistorically related development, approximating the original location of a historic route, such segments may be marked to facilitate retracement of the historic route, and where a national historic trail parallels an existing public road, such road may be marked to commemorate the historic route. Other uses along the historic trails and the Continental Divide National Scenic Trail, which will not substantially interfere with the nature and purposes of the trail, and which, at the time of designation, are allowed by administrative regulations, including the use of motorized vehicles,

shall be permitted by the Secretary charged with the administration of the trail. The Secretary of the Interior and the Secretary of Agriculture, in consultation with appropriate governmental agencies and public and private organizations, shall establish a uniform marker, including thereon an appropriate and distinctive symbol for each national recreation, national scenic, and national historic trail. Where the trails cross lands administered by Federal agencies such markers shall be erected at appropriate points along the trails and maintained by the Federal agency administering the trail in accordance with standards established by the appropriate Secretary and where the trails cross non-Federal lands, in accordance with written cooperative agreements, the appropriate Secretary shall provide such uniform markers to cooperating agencies and shall require such agencies to erect and maintain them in accordance with the standards established. The appropriate Secretary may also provide for trail interpretation sites, which shall be located at historic sites along the route of any national scenic or national historic trail, in order to present information to the public about the trail, at the lowest possible cost, with emphasis on the portion of the trail passing through the State in which the site is located. Wherever possible, the sites shall be maintained by a State agency under a cooperative agreement between the appropriate Secretary and the State agency.

(d) Use and acquisition of lands within exterior boundaries of areas included within right-of-way

Within the exterior boundaries of areas under their administration that are included in the right-of-way selected for a national recreation, national scenic, or national historic trail, the heads of Federal agencies may use lands for trail purposes and may acquire lands or interests in lands by written cooperative agreement, donation, purchase with donated or appropriated funds or exchange.

(e) Right-of-way lands outside exterior boundaries of federally administered areas; cooperative agreements or acquisition; failure to agree or acquire; agreement or acquisition by Secretary concerned; right of first refusal for original owner upon disposal

Where the lands included in a national scenic or national historic trail right-of-way are outside of the exterior boundaries of federally administered areas, the Secretary charged with the administration of such trail shall encourage the States or local governments involved (1) to enter into written cooperative agreements with landowners, private organizations, and individuals to provide the necessary trail right-of-way, or (2) to acquire such lands or interests therein to be utilized as segments of the national scenic or national historic trail: Provided, That if the State or local governments fail to enter into such written cooperative agreements or to acquire such lands or interests therein after notice of the selection of the right-of-way is published, the appropriate Secretary may (i) enter into such agreements with landowners, States, local governments, private organizations, and individuals for the use of lands for trail

purposes, or (ii) acquire private lands or interests therein by donation, purchase with donated or appropriated funds or exchange in accordance with the provisions of subsection (f) of this section: Provided further, That the appropriate Secretary may acquire lands or interests therein from local governments or governmental corporations with the consent of such entities. The lands involved in such rights-of-way should be acquired in fee, if other methods of public control are not sufficient to assure their use for the purpose for which they are acquired: Provided, That if the Secretary charged with the administration of such trail permanently relocates the right-of-way and disposes of all title or interest in the land, the original owner, or his heirs or assigns, shall be offered, by notice given at the former owner's last known address, the right of first refusal at the fair market price.

(f) Exchange of property within the right-of-way by Secretary of the Interior; property subject to exchange; equalization of value of property; exchange of national forest lands by Secretary of Agriculture; tracts lying outside trail acquisition area

(1) The Secretary of the Interior, in the exercise of his exchange authority, may accept title to any non-Federal property within the right-of-way and in exchange therefor he may convey to the grantor of such property any federally owned property under his jurisdiction which is located in the State wherein such property is located and which he classifies as suitable for exchange or other disposal. The values of the

properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require. The Secretary of Agriculture, in the exercise of his exchange authority, may utilize authorities and procedures available to him in connection with exchanges of national forest lands.

(2) In acquiring lands or interests therein for a National Scenic or Historic Trail, the appropriate Secretary may, with consent of a landowner, acquire whole tracts notwithstanding that parts of such tracts may lie outside the area of trail acquisition. In furtherance of the purposes of this chapter, lands so acquired outside the area of trail acquisition may be exchanged for any non-Federal lands or interests therein within the trail right-of-way, or disposed of in accordance with such procedures or regulations as the appropriate Secretary shall prescribe, including: (i) provisions for conveyance of such acquired lands or interests therein at not less than fair market value to the highest bidder, and (ii) provisions for allowing the last owners of record a right to purchase said acquired lands or interests therein upon payment or agreement to pay an amount equal to the highest bid price. For lands designated for exchange or disposal, the appropriate Secretary may convey these lands with any reservations or covenants deemed desirable to further the purposes of this chapter. The

proceeds from any disposal shall be credited to the appropriation bearing the costs of land acquisition for the affected trail.

(g) Condemnation proceedings to acquire private lands; limitations; availability of funds for acquisition of lands or interests therein; acquisition of high potential, route segments or historic sites

The appropriate Secretary may utilize condemnation proceedings without the consent of the owner to acquire private lands or interests therein pursuant to this section only in cases where, in his judgment, all reasonable efforts to acquire such lands or interests therein by negotiation have failed, and in such cases he shall acquire only such title as, in his judgment, is reasonably necessary to provide passage across such lands:

Provided, That condemnation proceedings may not be utilized to acquire fee title or lesser interests to more than an average of one hundred and twenty-five acres per mile. Money appropriated for Federal purposes from the land and water conservation fund shall, without prejudice to appropriations from other sources, be available to Federal departments for the acquisition of lands or interests in lands for the purposes of this chapter. For national historic trails, direct Federal acquisition for trail purposes shall be limited to those areas indicated by the study report or by the comprehensive plan as high potential route segments or high potential historic sites. Except for designated protected components of the trail, no land or site located along a designated national historic trail or along the Conti-

ental Divide National Scenic Trail shall be subject to the provisions of section 303 of title 49 unless such land or site is deemed to be of historical significance under appropriate historical site criteria such as those for the National Register of Historic Places.

(h) Development and maintenance of national, scenic or historic, trails; cooperation with States over portions located outside of federally administered areas; cooperative agreements; participation of volunteers; reservation of right-of-way for trails in conveyances by Secretary of the Interior

(1) The Secretary charged with the administration of a national recreation, national scenic, or national historic trail shall provide for the development and maintenance of such trails within federally administered areas and shall cooperate with and encourage the States to operate, develop, and maintain portions of such trails which are located outside the boundaries of federally administered areas. When deemed to be in the public interest, such Secretary may enter written cooperative agreements with the States or their political subdivisions, landowners, private organizations, or individuals to operate, develop, and maintain any portion of such a trail either within or outside a federally administered area. Such agreements may include provisions for limited financial assistance to encourage participation in the acquisition, protection, operation, development, or maintenance of such trails, provisions providing volunteer in the park or volunteer in the

forest status (in accordance with the Volunteers in the Parks Act of 1969 (16 U.S.C. 18g et seq.) and the Volunteers in the Forests Act of 1972 (16 U.S.C. 558a et seq.)) to individuals, private organizations, or landowners participating in such activities, or provisions of both types. The appropriate Secretary shall also initiate consultations with affected States and their political subdivisions to encourage -

(A) the development and implementation by such entities of appropriate measures to protect private landowners from trespass resulting from trail use and from unreasonable personal liability and property damage caused by trail use, and

(B) the development and implementation by such entities of provisions for land practices, compatible with the purposes of this chapter, for property within or adjacent to trail rights-of-way. After consulting with States and their political subdivisions under the preceding sentence, the Secretary may provide assistance to such entities under appropriate cooperative agreements in the manner provided by this subsection.

(2) Whenever the Secretary of the Interior makes any conveyance of land under any of the public land laws, he may reserve a right-of-way for trails to the extent he deems necessary to carry out the purposes of this chapter.

(i) Regulations; issuance; concurrence and consultation; revision; publication; violations; penalties; utilization of national

park or national forest authorities

The appropriate Secretary, with the concurrence of the heads of any other Federal agencies administering lands through which a national recreation, national scenic, or national historic trail passes, and after consultation with the States, local governments, and organizations concerned, may issue regulations, which may be revised from time to time, governing the use, protection, management, development, and administration of trails of the national trails system. In order to maintain good conduct on and along the trails located within federally administered areas and to provide for the proper government and protection of such trails, the Secretary of the Interior and the Secretary of Agriculture shall prescribe and publish such uniform regulations as they deem necessary and any person who violates such regulations shall be guilty of a misdemeanor, and may be punished by a fine of not more than \$500, or by imprisonment not exceeding six months, or by both such fine and imprisonment. The Secretary responsible for the administration of any segment of any component of the National Trails System (as determined in a manner consistent with subsection (a)(1) of this section) may also utilize authorities related to units of the national park system or the national forest system, as the case may be, in carrying out his administrative responsibilities for such component.

(j) Types of trail use allowed

Potential trail uses allowed on designated components of the national trails system

may include, but are not limited to, the following: bicycling, cross-country skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long-distance backpacking, snowmobiling, and surface water and underwater activities. Vehicles which may be permitted on certain trails may include, but need not be limited to, motorcycles, bicycles, four-wheel drive or all-terrain off-road vehicles. In addition, trail access for handicapped individuals may be provided. The provisions of this subsection shall not supersede any other provisions of this chapter or other Federal laws, or any State or local laws.

(k) Donations or other conveyances of qualified real property interests

For the conservation purpose of preserving or enhancing the recreational, scenic, natural, or historical values of components of the national trails system, and environs thereof as determined by the appropriate Secretary, landowners are authorized to donate or otherwise convey qualified real property interests to qualified organizations consistent with section 170(h)(3) of title 26, including, but not limited to, right-of-way, open space, scenic, or conservation easements, without regard to any limitation on the nature of the estate or interest otherwise transferable within the jurisdiction where the land is located. The conveyance of any such interest in land in accordance with this subsection shall be deemed to further a Federal conservation policy and yield a significant public benefit for purposes of section 6 of Public Law 96-541. (16 U.S.C. 1246)

### **State and local area recreation and historic trails**

**Sec. 8** (a) Secretary of the Interior to encourage States, political subdivisions, and private interests; financial assistance for State and local projects State and local projects

The Secretary of the Interior is directed to encourage States to consider, in their comprehensive statewide outdoor recreation plans and proposals for financial assistance for State and local projects submitted pursuant to the Land and Water Conservation Fund Act (16 U.S.C. 4601-4 et seq.), needs and opportunities for establishing park, forest, and other recreation and historic trails on lands owned or administered by States, and recreation and historic trails on lands in or near urban areas. The Secretary is also directed to encourage States to consider, in their comprehensive statewide historic preservation plans and proposals for financial assistance for State, local, and private projects submitted pursuant to the Act of October 15, 1966 (80 Stat. 915), as amended (16 U.S.C. 470 et seq.), needs and opportunities for establishing historic trails. He is further directed, in accordance with the authority contained in the Act of May 28, 1963 (77 Stat. 49) (16 U.S.C. 4601 et seq.), to encourage States, political subdivisions, and private interests, including nonprofit organizations, to establish such trails.

(b) Secretary of Housing and Urban Development to encourage metropolitan and other urban areas; administrative and financial assistance in connection with

recreation and transportation planning; administration of urban open-space program

The Secretary of Housing and Urban Development is directed, in administering the program of comprehensive urban planning and assistance under section 701 of the Housing Act of 1954 (40 U.S.C. 461), to encourage the planning of recreation trails in connection with the recreation and transportation planning for metropolitan and other urban areas. He is further directed, in administering the urban open-space program under title VII of the Housing Act of 1961 (42 U.S.C. 1500 et seq.), to encourage such recreation trails.

(c) Secretary of Agriculture to encourage States, local agencies, and private interests

The Secretary of Agriculture is directed, in accordance with authority vested in him, to encourage States and local agencies and private interests to establish such trails.

(d) Interim use of railroad rights-of-way

The Secretary of Transportation, the Chairman of the Surface Transportation Board, and the Secretary of the Interior, in administering the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et seq.), shall encourage State and local agencies and private interests to establish appropriate trails using the provisions of such programs. Consistent with the purposes of that Act, and in furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service,

to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with this chapter, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes. If a State, political subdivision, or qualified private organization is prepared to assume full responsibility for management of such rights-of-way and for any legal liability arising out of such transfer or use, and for the payment of any and all taxes that may be levied or assessed against such rights-of-way, then the Board shall impose such terms and conditions as a requirement of any transfer or conveyance for interim use in a manner consistent with this chapter, and shall not permit abandonment or discontinuance inconsistent or disruptive of such use.

(e) Designation and marking of trails; approval of Secretary of the Interior

Such trails may be designated and suitably marked as parts of the nationwide system of trails by the States, their political subdivisions, or other appropriate administering agencies with the approval of the Secretary of the Interior. (16 U.S.C. 1247)

### **Easements and rights-of-way**

**Sec. 9** (a) Authorization; conditions

The Secretary of the Interior or the

Secretary of Agriculture as the case may be, may grant easements and rights-of-way upon, over, under, across, or along any component of the national trails system in accordance with the laws applicable to the national park system and the national forest system, respectively: Provided, That any conditions contained in such easements and rights-of-way shall be related to the policy and purposes of this chapter.

(b) Cooperation of Federal agencies with Secretary of the Interior and Secretary of Agriculture

The Department of Defense, the Department of Transportation, the Surface Transportation Board, the Federal Communications Commission, the Secretary of Energy, and other Federal agencies having jurisdiction or control over or information concerning the use, abandonment, or disposition of roadways, utility rights-of-way, or other properties which may be suitable for the purpose of improving or expanding the national trails system shall cooperate with the Secretary of the Interior and the Secretary of Agriculture in order to assure, to the extent practicable, that any such properties having values suitable for trail purposes may be made available for such use.

(c) Abandoned railroad grants; retention of rights

Commencing October 4, 1988, any and all right, title, interest, and estate of the United States in all rights-of-way of the type described in section 912 of title 43, shall remain in the United States upon the

abandonment or forfeiture of such rights-of-way, or portions thereof, except to the extent that any such right-of-way, or portion thereof, is embraced within a public highway no later than one year after a determination of abandonment or forfeiture, as provided under such section.

(d) Location, incorporation, and management

(1) All rights-of-way, or portions thereof, retained by the United States pursuant to subsection (c) of this section which are located within the boundaries of a conservation system unit or a National Forest shall be added to and incorporated within such unit or National Forest and managed in accordance with applicable provisions of law, including this chapter.

(2) All such retained rights-of-way, or portions thereof, which are located outside the boundaries of a conservation system unit or a National Forest but adjacent to or contiguous with any portion of the public lands shall be managed pursuant to the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and other applicable law, including this section.

(3) All such retained rights-of-way, or portions thereof, which are located outside the boundaries of a conservation system unit or National Forest which the Secretary of the Interior determines suitable for use as a public recreational trail or other recreational purposes shall be managed by the Secretary for such uses, as well as for such other uses as the Secretary determines to be appro-

appropriate pursuant to applicable laws, as long as such uses do not preclude trail use.

(e) Release and quitclaim; conditions; sale; proceeds

(1) The Secretary of the Interior is authorized where appropriate to release and quitclaim to a unit of government or to another entity meeting the requirements of this subsection any and all right, title, and interest in the surface estate of any portion of any right-of-way to the extent any such right, title, and interest was retained by the United States pursuant to subsection (c) of this section, if such portion is not located within the boundaries of any conservation system unit or National Forest. Such release and quitclaim shall be made only in response to an application therefor by a unit of State or local government or another entity which the Secretary of the Interior determines to be legally and financially qualified to manage the relevant portion for public recreational purposes. Upon receipt of such an application, the Secretary shall publish a notice concerning such application in a newspaper of general circulation in the area where the relevant portion is located. Such release and quitclaim shall be on the following conditions:

(A) If such unit or entity attempts to sell, convey, or otherwise transfer such right, title, or interest or attempts to permit the use of any part of such portion for any purpose incompatible with its use for public recreation, then

any and all right, title, and interest released and quitclaimed by the Secretary pursuant to this subsection shall revert to the United States.

(B) Such unit or entity shall assume full responsibility and hold the United States harmless for any legal liability which might arise with respect to the transfer, possession, use, release, or quitclaim of such right-of-way.

(C) Notwithstanding any other provision of law, the United States shall be under no duty to inspect such portion prior to such release and quitclaim, and shall incur no legal liability with respect to any hazard or any unsafe condition existing on such portion at the time of such release and quitclaim.

(2) The Secretary is authorized to sell any portion of a right-of-way retained by the United States pursuant to subsection (c) of this section located outside the boundaries of a conservation system unit or National Forest if any such portion is -

(A) not adjacent to or contiguous with any portion of the public lands; or

(B) determined by the Secretary, pursuant to the disposal criteria established by section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713), to be suitable for sale. Prior to conducting any such sale, the Secretary shall take appropriate steps to afford a unit of State or local government or any other entity an opportunity to seek to obtain such portion pursuant to paragraph (1) of this subsection.

(3) All proceeds from sales of such retained rights of way shall be deposited into the Treasury of the United States and credited to the Land and Water Conservation Fund as provided in section 4601-5 of this title.

(4) The Secretary of the Interior shall annually report to the Congress the total proceeds from sales under paragraph (2) during the preceding fiscal year. Such report shall be included in the President's annual budget submitted to the Congress.

(f) "Conservation system unit" and "public lands" defined

As used in this section -

(1) The term "conservation system unit" has the same meaning given such term in the Alaska National Interest Lands Conservation Act (Public Law 96-487; 94 Stat. 2371 et seq.), except that such term shall also include units outside Alaska.

(2) The term "public lands" has the same meaning given such term in the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.). (16 U.S.C. 1248)

### **Authorization of appropriations**

**Sec. 10** (a) (1) There are hereby authorized to be appropriated for the acquisition of lands or interests in lands not more than \$5,000,000 for the Appalachian National Scenic Trail and not more than \$500,000 for the Pacific Crest National Scenic Trail. From the appropriations authorized for fiscal year 1979 and

succeeding fiscal years pursuant to the Land and Water Conservation Fund Act (78 Stat. 897), as amended (16 U.S.C. 4601-4 et seq.), not more than the following amounts may be expended for the acquisition of lands and interests in lands authorized to be acquired pursuant to the provisions of this chapter: for the Appalachian National Scenic Trail, not to exceed \$30,000,000 for fiscal year 1979, \$30,000,000 for fiscal year 1980, and \$30,000,000 for fiscal year 1981, except that the difference between the foregoing amounts and the actual appropriations in any one fiscal year shall be available for appropriation in subsequent fiscal years.

(2) It is the express intent of the Congress that the Secretary should substantially complete the land acquisition program necessary to insure the protection of the Appalachian Trail within three complete fiscal years following March 21, 1978.

(b) For the purposes of Public Law 95-42 (91 Stat. 211), the lands and interests therein acquired pursuant to this section shall be deemed to qualify for funding under the provisions of section 1, clause 2, of said Act (16 U.S.C. 4601-7).

(c) (1) There is hereby authorized to be appropriated such sums as may be necessary to implement the provisions of this chapter relating to the trails designated by section 1244(a)(3), (4), (5), (6), (7), (8), (9), and (10) of this title: Provided, That no such funds are authorized to be appropriated prior to October 1, 1978: And provided further, That notwithstanding any other provisions of this

chapter or any other provisions of law, no funds may be expended by Federal agencies for the acquisition of lands or interests in lands outside the exterior boundaries of existing Federal areas for the Continental Divide National Scenic Trail, the North Country National Scenic Trail, The <sup>1</sup> Ice Age National Scenic Trail, the Oregon National Historic Trail, the Mormon Pioneer National Historic Trail, the Lewis and Clark National Historic Trail, and the Iditarod National Historic Trail, except that funds may be expended for the acquisition of lands or interests therein for the purpose of providing for one trail interpretation site, as described in section 1246(c) of this title, along with such trail in each State crossed by the trail.

(2) Except as otherwise provided in this chapter, there is authorized to be appropriated such sums as may be necessary to implement the provisions of this chapter relating to the trails designated by section 1244(a) of this title. Not more than \$500,000 may be appropriated for the purposes of acquisition of land and interests therein for the trail designated by section 1244(a)(12) of this title, and not more than \$2,000,000 may be appropriated for the purposes of the development of such trail. The administering agency for the trail shall encourage volunteer trail groups to participate in the development of the trail. (16 U.S.C. 1249)

<sup>1</sup> So in original. Probably should not be capitalized.

### **Volunteer trails assistance**

**Sec. 11** (a) Volunteer planning, development, maintenance, and management of trails

(1) In addition to the cooperative agreement and other authorities contained in this chapter, the Secretary of the Interior, the Secretary of Agriculture, and the head of any Federal agency administering Federal lands, are authorized to encourage volunteers and volunteer organizations to plan, develop, maintain, and manage, where appropriate, trails throughout the Nation.

(2) Wherever appropriate in furtherance of the purposes of this chapter, the Secretaries are authorized and encouraged to utilize the Volunteers in the Parks Act of 1969 (16 U.S.C. 18g et seq.), the Volunteers in the Forests Act of 1972 (16 U.S.C. 558a et seq.), and section 4601-8 of this title (relating to the development of Statewide Comprehensive Outdoor Recreation Plans).

(b) Scope of volunteer work

Each Secretary or the head of any Federal land managing agency may assist volunteers and volunteer organizations in planning, developing, maintaining, and managing trails. Volunteer work may include, but need not be limited to -

(1) planning, developing, maintaining, or managing (A) trails which are components of the national trails system, or (B) trails which, if so developed and maintained, could qualify for designation as components of the national trails system; or

(2) operating programs to organize and

supervise volunteer trail building efforts with respect to the trails referred to in paragraph (1), conducting trail-related research projects, or providing education and training to volunteers on methods of trails planning, construction, and maintenance.

(c) Use of Federal facilities, equipment, tools, and technical assistance

The appropriate Secretary or the head of any Federal land managing agency may utilize and make available Federal facilities, equipment, tools, and technical assistance to volunteers and volunteer organizations, subject to such limitations and restrictions as the appropriate Secretary or the head of any Federal land managing agency deems necessary or desirable. (16 U.S.C. 1250)

## Definitions

**Sec. 12** As used in this chapter:

(1) The term “high potential historic sites” means those historic sites related to the route, or sites in close proximity thereto, which provide opportunity to interpret the historic significance of the trail during the period of its major use. Criteria for consideration as high potential sites include historic significance, presence of visible historic remnants, scenic quality, and relative freedom from intrusion.

(2) The term “high potential route segments” means those segments of a trail which would afford high quality recreation experience in a portion of the route having greater than average scenic values or affording an opportu-

nity to vicariously share the experience of the original users of a historic route.

(3) The term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and any other territory or possession of the United States.

(4) The term “without expense to the United States” means that no funds may be expended by Federal agencies for the development of trail related facilities or for the acquisition of lands or interests in lands outside the exterior boundaries of Federal areas. For the purposes of the preceding sentence, amounts made available to any State or political subdivision under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 et seq.) or any other provision of law shall not be treated as an expense to the United States. (16 U.S.C. 1251)

## Federal Cave Resources Protection Act

November 18, 1988 (Pub. L. 100-691, 102 Stat. 4546; 16 U.S.C. 4301 note, 4301 to 4309)

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### Findings, purposes, and policy

#### Sec. 2 (a) Findings

The Congress finds and declares that -

- (1) significant caves on Federal lands are an invaluable and irreplaceable part of the Nation's natural heritage; and
- (2) in some instances, these significant caves are threatened due to improper use, increased recreational demand, urban spread, and a lack of specific statutory protection.

#### (b) Purposes

The purposes of this chapter are -

- (1) to secure, protect, and preserve significant caves on Federal lands for the perpetual use, enjoyment, and benefit of all people; and
- (2) to foster increased cooperation and exchange of information between governmental authorities and those who utilize caves located on Federal lands for scientific, education, or recreational purposes.

#### (c) Policy

It is the policy of the United States that Federal lands be managed in a manner which protects and maintains, to the extent practical, significant caves. (16 U.S.C. 4301)

### Definitions

Sec. 3 For purposes of this chapter:

#### (1) Cave

The term "cave" means any naturally occurring void, cavity, recess, or system of interconnected passages which occurs beneath the surface of the earth or within a cliff or ledge (including any cave resource therein, but not including any vug, mine, tunnel, aqueduct, or other manmade excavation) and which is large enough to permit an individual to enter, whether or not the entrance is naturally formed or manmade. Such term shall include any natural pit, sinkhole, or other feature which is an extension of the entrance.

#### (2) Federal lands

The term "Federal lands" means lands the fee title to which is owned by the United States and administered by the Secretary of Agriculture or the Secretary of the Interior.

#### (3) Indian lands

The term "Indian lands" means lands of Indian tribes or Indian individuals which are either held in trust by the United States for the benefit of an Indian tribe or subject to a restriction against alienation imposed by the United States.

#### (4) Indian tribe

The term "Indian tribe" means any

Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims settlement <sup>1</sup> Act (43 U.S.C. 1601 et seq.).

(5) Cave resource

The term “cave resource” includes any material or substance occurring naturally in caves on Federal lands, such as animal life, plant life, paleontological deposits, sediments, minerals, speleogens, and speleothems.

(6) Secretary

The term “Secretary” means the Secretary of Agriculture or the Secretary of the Interior, as appropriate.

(7) Speleothem

The term “speleothem” means any natural mineral formation or deposit occurring in a cave or lava tube, including but not limited to any stalactite, stalagmite, helictite, cave flower, flowstone, concretion, drapery, rimstone, or formation of clay or mud.

(8) Speleogen

The term “speleogen” means relief features on the walls, ceiling, and floor of any cave or lava tube which are part of the surrounding bedrock, including but not limited to anastomoses, scallops, meander niches, petromorphs and rock pendants in solution caves and similar features unique to volcanic caves. (16 U.S.C. 4302)

<sup>1</sup> So in original. Probably should be

capitalized.

## Management actions

### Sec. 4 (a) Regulations

Not later than nine months after November 18, 1988, the Secretary shall issue such regulations as he deems necessary to achieve the purposes of this chapter.

Regulations shall include, but not be limited to, criteria for the identification of significant caves. The Secretaries shall cooperate and consult with one another in preparation of the regulations. To the extent practical, regulations promulgated by the respective Secretaries should be similar.

#### (b) In general

The Secretary shall take such actions as may be necessary to further the purposes of this chapter. Those actions shall include (but need not be limited to) -

##### (1) identification of significant caves on Federal lands:

(A) The Secretary shall prepare an initial list of significant caves for lands under his jurisdiction not later than one year after the publication of final regulations using the significance criteria defined in such regulations. Such a list shall be developed after consultation with appropriate private sector interests, including cavers.

(B) The initial list of significant caves shall be updated periodically, after consultation with appropriate private sector interests, including cavers. The Secretary shall prescribe by policy or regulation the requirements and

process by which the initial list will be updated, including management measures to assure that caves under consideration for the list are protected during the period of consideration. Each cave recommended to the Secretary by interested groups for possible inclusion on the list of significant caves shall be considered by the Secretary according to the requirements prescribed pursuant to this paragraph, and shall be added to the list if the Secretary determines that the cave meets the criteria for significance as defined by the regulations.

(2) regulation or restriction of use of significant caves, as appropriate;

(3) entering into volunteer management agreements with persons of the scientific and recreational caving community; and

(4) appointment of appropriate advisory committees.

(c) Planning and public participation

The Secretary shall -

(1) ensure that significant caves are considered in the preparation or implementation of any land management plan if the preparation or revision of the plan began after November 18, 1988; and

(2) foster communication, cooperation, and exchange of information between land managers, those who utilize caves, and the public. (16 U.S.C. 4303)

**Confidentiality of information concerning nature and location of significant caves**

**Sec. 5 (a) In general**

Information concerning the specific location of any significant cave may not be made available to the public under section 552 of title 5 unless the Secretary determines that disclosure of such information would further the purposes of this chapter and would not create a substantial risk of harm, theft, or destruction of such cave.

(b) Exceptions

Notwithstanding subsection (a) of this section, the Secretary may make available information regarding significant caves upon the written request by Federal and State governmental agencies or bona fide educational and research institutions. Any such written request shall, at a minimum -

(1) describe the specific site or area for which information is sought;

(2) explain the purpose for which such information is sought; and

(3) include assurances satisfactory to the Secretary that adequate measures are being taken to protect the confidentiality of such information and to ensure the protection of the significant cave from destruction by vandalism and unauthorized use. (16 U.S.C. 4304)

**Collection and removal from Federal caves**

**Sec. 6 (a) Permit**

The Secretary is authorized to issue permits for the collection and removal of cave resources under such terms and

conditions as the Secretary may impose, including the posting of bonds to insure compliance with the provisions of any permit:

(1) Any permit issued pursuant to this section shall include information concerning the time, scope, location, and specific purpose of the proposed collection, removal or associated activity, and the manner in which such collection, removal, or associated activity is to be performed must be provided.

(2) The Secretary may issue a permit pursuant to this subsection only if he determines that the proposed collection or removal activities are consistent with the purposes of this chapter, and with other applicable provisions of law.

(b) Revocation of permit

Any permit issued under this section shall be revoked by the Secretary upon a determination by the Secretary that the permittee has violated any provision of this chapter, or has failed to comply with any other condition upon which the permit was issued. Any such permit shall be revoked by the Secretary upon assessment of a civil penalty against the permittee pursuant to section 4307 of this title or upon the permittee's conviction under section 4306 of this title. The Secretary may refuse to issue a permit under this section to any person who has violated any provision of this chapter or who has failed to comply with any condition of a prior permit.

(c) Transferability of permits

Permits issued under this chapter are not transferable.

(d) Cave resources located on Indian lands

(1) (A) Upon application by an Indian tribe, the Secretary is authorized to delegate to the tribe all authority of the Secretary under this section with respect to issuing and enforcing permits for the collection or removal of any cave resource, or to carrying out activities associated with such collection or removal, from any cave resource located on the affected Indian lands.

(B) In the case of any permit issued by the Secretary for the collection or removal of any cave resource, or to carry out activities associated with such collection or removal, from any cave resource located on Indian lands (other than permits issued pursuant to subparagraph (A)), the permit may be issued only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such reasonable terms and conditions as may be requested by such Indian or Indian tribe.

(2) If the Secretary determines that issuance of a permit pursuant to this section may result in harm to, or destruction of, any religious or cultural site, the Secretary, prior to issuing such permit, shall notify any Indian tribe which may consider the site as having significant religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes

of section 4304 of this title.

(3) A permit shall not be required under this section for the collection or removal of any cave resource located on Indian lands or activities associated with such collection, by the Indian or Indian tribe owning or having jurisdiction over such lands.

(e) Effect of permit

No action specifically authorized by a permit under this section shall be treated as a violation of section 4306 of this title. (16 U.S.C. 4305)

### **Prohibited acts and criminal penalties**

**Sec. 7 (a) Prohibited acts**

(1) Any person who, without prior authorization from the Secretary knowingly destroys, disturbs, defaces, mars, alters, removes or harms any significant cave or alters the free movement of any animal or plant life into or out of any significant cave located on Federal lands, or enters a significant cave with the intention of committing any act described in this paragraph shall be punished in accordance with subsection (b) of this section.

(2) Any person who possesses, consumes, sells, barter or exchanges, or offers for sale, barter or exchange, any cave resource from a significant cave with knowledge or reason to know that such resource was removed from a significant cave located on Federal lands shall be punished in accordance

with subsection (b) of this section.

(3) Any person who counsels, procures, solicits, or employs any other person to violate any provisions of this subsection shall be punished in accordance with section <sup>1</sup> (b) of this section.

(4) Nothing in this section shall be deemed applicable to any person who was in lawful possession of a cave resource from a significant cave prior to November 18, 1988.

(b) Punishment

The punishment for violating any provision of subsection (a) of this section shall be imprisonment of not more than one year or a fine in accordance with the applicable provisions of title 18, or both. In the case of a second or subsequent violation, the punishment shall be imprisonment of not more than 3 years or a fine in accordance with the applicable provisions of title 18, or both. (16 U.S.C. 4306)

<sup>1</sup> So in original. Probably should be "subsection".

### **Civil penalties**

**Sec. 8 (a) Assessment**

(1) The Secretary may issue an order assessing a civil penalty against any person who violates any prohibition contained in this chapter, any regulation promulgated pursuant to this chapter, or any permit issued under this chapter. Before issuing such an order, the Secretary shall provide such person written notice and the opportunity to request a hearing on the record within 30 days. Each violation shall be a

separate offense, even if such violations occurred at the same time.

(2) The amount of such civil penalty shall be determined by the Secretary taking into account appropriate factors, including

- (A) the seriousness of the violation;
- (B) the economic benefit (if any) resulting from the violation;
- (C) any history of such violations; and
- (D) such other matters as the Secretary deems appropriate. The maximum fine permissible under this section is \$10,000.

(b) Judicial review

Any person aggrieved by an assessment of a civil penalty under this section may file a petition for judicial review of such assessment with the United States District Court for the District of Columbia or for the district in which the violation occurred. Such a petition shall be filed within the 30-day period beginning on the date the order assessing the civil penalty was issued.

(c) Collection

If any person fails to pay an assessment of a civil penalty -

- (1) within 30 days after the order was issued under subsection (a) of this section, or
- (2) if the order is appealed within such 30-day period, within 10 days after court has entered a final judgment in favor of the Secretary under subsection (b) of this section, the Secretary shall

notify the Attorney General and the Attorney General shall bring a civil action in an appropriate United States district court to recover the amount of penalty assessed (plus costs, attorney's fees, and interest at currently prevailing rates from the date the order was issued or the date of such final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(d) Subpoenas

The Secretary may issue subpoenas in connection with proceedings under this subsection compelling the attendance and testimony of witnesses and subpoenas duces tecum, and may request the Attorney General to bring an action to enforce any subpoena under this section. The district courts shall have jurisdiction to enforce such subpoenas and impose sanctions. (16 U.S.C. 4307)

**Miscellaneous provisions**

**Sec. 9 (a) Authorization of appropriations**

There are authorized to be appropriated \$100,000 to carry out the purposes of this chapter.

(b) Effect on land management plans

Nothing in this chapter shall require the amendment or revision of any land management plan the preparation of which began prior to November 18, 1988.

(c) Fund

Any money collected by the United States as permit fees for collection and

removal of cave resources; received by the United States as a result of the forfeiture of a bond or other security by a permittee who does not comply with the requirements of such permit issued under section 4306 of this title; or collected by the United States by way of civil penalties or criminal fines for violations of this chapter shall be placed in a special fund in the Treasury. Such moneys shall be available for obligation or expenditure (to the extent provided for in advance in appropriation Acts) as determined by the Secretary for the improved management, benefit, repair, or restoration of significant caves located on Federal lands.

(d) Existing rights

Nothing in this chapter shall be deemed to affect the full operation of the mining and mineral leasing laws of the United States, or otherwise affect valid existing rights. (16 U.S.C. 4308)

**Savings provision**

**Sec. 10 (a) Water**

Nothing in this chapter shall be construed as authorizing the appropriation of water by any Federal, State, or local agency, Indian tribe, or any other entity or individual. Nor shall any provision of this chapter -

(1) affect the rights or jurisdiction of the United States, the States, Indian tribes, or other entities over waters of any river or stream or over any ground water resource;

(2) alter, amend, repeal, interpret, modify, or be in conflict with any

interstate compact made by the States; or

(3) alter or establish the respective rights of States, the United States, Indian tribes, or any person with respect to any water or water-related right.

(b) Fish and wildlife

Nothing in this chapter shall be construed as affecting the jurisdiction or responsibilities of the States with respect to fish and wildlife. (16 U.S.C. 4309)

## Recreational Fee Demonstration Program, Department of the Interior and Related Agencies Appropriations Act of 1996

April 26, 1996 (Pub. L. 104–134; 110 Stat. 1321– 200; 16 U.S.C. 4601–6a note)

Recreational Fee Demonstration Program.—

(a) The Secretary of the Interior (acting through the Bureau of Land Management, the National Park Service and the United States Fish and Wildlife Service) and the Secretary of Agriculture (acting through the Forest Service) shall each implement a fee program to demonstrate the feasibility of user-generated cost recovery for the operation and maintenance of recreation areas or sites and habitat enhancement projects on Federal lands.

(b) In carrying out the pilot program established pursuant to this section, the appropriate Secretary shall select from areas under the jurisdiction of each of the four agencies referred to in subsection (a) areas, sites or projects for fee demonstration. For each such demonstration, the Secretary, notwithstanding any other provision of law—

(1) shall charge and collect fees for admission to the area or for the use of outdoor recreation sites, facilities, visitor centers, equipment, and services by individuals and groups, or any combination thereof;

(2) shall establish fees under this section based upon a variety of cost recovery

and fair market valuation methods to provide a broad basis for feasibility testing, including the provision of discounted or free admission or use as the Secretary considers appropriate;

(3) may contract, including provisions for reasonable commissions, with any public or private entity to provide visitor services, including reservations and information, and may accept services of volunteers to collect fees charged pursuant to paragraph (1);

(4) may encourage private investment and partnerships to enhance the delivery of quality customer services and resource enhancement, and provide appropriate recognition to such partners or investors; and

(5) may assess a fine of not more than \$100 for any violation of the authority to collect fees for admission to the area or for the use of outdoor recreation sites, facilities, visitor centers, equipment, and services.

(c) (1) Amounts collected at each fee demonstration area, site or project shall be distributed as follows:

(A) Eighty percent to a special account in the Treasury for use without further appropriation, by the agency which administers the site, to

remain available for expenditure in accordance with paragraph (2)(A)

(B) Twenty percent to a special account in the Treasury for use without further appropriation, by the agency which administers the site, to remain available for expenditure in accordance with paragraph (2)(B).

(C) For agencies other than the Fish and Wildlife Service and the National Park Service, up to 15% of current year collections of each agency, but not greater than fee collection costs for that fiscal year, to remain available for expenditure without further appropriation in accordance with paragraph (2)(C).

(D) For agencies other than the Fish and Wildlife Service, the balance to the special account established pursuant to subparagraph(A) of section 4 (i)(1) of the Land and Water Conservation Fund Act, as amended.

(E) For the Fish and Wildlife Service, the balance shall be available to the Secretary of the Interior until expended to be used in accordance with clauses (i), (ii), and (iii) of section 201(c)(A) of the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3911(c)(A)).

(2)(A) Expenditures from site specific special funds shall be for further activities of the area, site or project from which funds are collected, and shall be accounted for separately.

(B) Expenditures from agency specific special funds shall be for use on an

agency-wide basis and shall be accounted for separately.

(C) Expenditures from the fee collection support fund shall be used to cover fee collection costs in accordance with section 4(i)(1)(B) of the Land and Water Conservation Fund Act, as amended: Provided, That funds unexpended and unobligated at the end of the fiscal year shall not be deposited into the special account established pursuant to section 4(i)(1)(A) of said Act and shall remain available for expenditure without further appropriation. <sup>1</sup>

(D) None of the funds collected under this section may be used to plan, design, or construct a visitor center or any other permanent structure without prior approval of the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate if the estimated total cost of the structure exceeds \$500,000.

(3) In order to increase the quality of the visitor experience at public recreational areas and enhance the protection of resources, amounts available for expenditure under this section may only be used for the area, site or project concerned, for backlogged repair and maintenance projects (including projects relating to health and safety) and for interpretation, signage, habitat or facility enhancement, resource preservation, annual operation (including fee collection), maintenance, and law enforcement relating to public use. The agency

wide accounts may be used for the same purposes set forth in the preceding sentence, but for areas, sites or projects selected at the discretion of the respective agency head.<sup>2</sup>

(d) (1) Amounts collected under this section shall not be taken into account for the purposes of the Act of May 23, 1908 and the Act of March 1, 1911 (16 U.S.C. 500), the Act of March 4, 1913 (16 U.S.C. 501), the Act of July 22, 1937 (7 U.S.C. 1012), the Act of August 8, 1937 and the Act of May 24, 1939 (43 U.S.C. 1181f et seq.), the Act of June 14, 1926 (43 U.S.C. 869–4), chapter 69 of title 31, United States Code, section 401 of the Act of June 15, 1935 (16 U.S.C. 715s), the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l), the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393; 16 U.S.C. 500 note), and any other provision of law relating to revenue allocation.

(2) Fees charged pursuant to this section shall be in lieu of fees charged under any other provision of law.

(e) The Secretary of the Interior and the Secretary of Agriculture shall carry out this section without promulgating regulations.

(f) The authority to collect fees under this section shall end on December 31, 2005. Funds in accounts established shall remain available through September 30, 2008. (16 U.S.C. 460l–6a)

<sup>1</sup> Section 107 of the Department of the Interior and Related Agencies Appropriations Act, 1998 (Public Law 105–83; 111

Stat. 1561; (16 U.S.C. 460l–6a note), provides as follows:

“In fiscal year 1998 and thereafter, for those years in which the recreation fee demonstration program authorized in Public Law 104–134 is in effect, the fee collection support authority provided in 16 U.S.C. 460l–6(i)(1)(B) (probably should be 460l–6a(i)(1)(B)) applies only to parks not included in the fee demonstration program, and that the amount retained under this authority to cover fee collection costs will not exceed those costs at the non-demonstration parks, or 15 percent of all fees collected at non-demonstration parks in a fiscal year whichever is less. Fee collection costs for parks included in the fee demonstration program will be covered by the fees retained at those parks.”.

<sup>2</sup> Section 319 of the Department of the Interior and Related Agencies Appropriations Act, 2004 (Public Law 108–108; 117 Stat. 1306; (16 U.S.C. 460l–6a note), provides as follows:

Sec. 325. A project undertaken by the Forest Service under the Recreation Fee Demonstration Program as authorized by section 315 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1996, as amended, shall not result in—

(1) displacement of the holder of an authorization to provide commercial recreation services on Federal lands. Prior to initiating any project, the Secretary shall consult with potentially affected holders to determine what impacts the project may have on the

holders. Any modifications to the authorization shall be made within the terms and conditions of the authorization and authorities of the impacted agency.

(2) the return of a commercial recreation service to the Secretary for operation when such services have been provided in the past by a private sector provider, except when—

(A) the private sector provider fails to bid on such opportunities;

(B) the private sector provider terminates its relationship with the agency;  
or

(C) the agency revokes the permit for non-compliance with the terms and conditions of the authorization.

In such cases, the agency may use the Recreation Fee Demonstration Program to provide for operations until a subsequent operator can be found through the offering of a new prospectus.

## Ski Fees, Omnibus Parks and Public Lands Management Act of 1996

November 12, 1996 (Pub. L. 104-333, div. I, Title VII, Sec. 701, 110 Stat. 4182; 16 U.S.C. 497c)

### Ski area permit rental charge

#### (a) In general

The Secretary of Agriculture shall charge a rental charge for all ski area permits issued pursuant to section 3 of the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b), the Act of March 4, 1915 (38 Stat. 1101, chapter 144; 16 U.S.C. 497), or the 9th through 20th paragraphs under the heading "SURVEYING THE PUBLIC LANDS" under the heading "UNDER THE DEPARTMENT OF THE INTERIOR" in the Act of June 4, 1897 (30 Stat. 34, chapter 2), on National Forest System lands. Permit rental charges for permits issued pursuant to the National Forest Ski Area Permit Act of 1986 shall be calculated as set forth in subsection (b) of this section. Permit rental charges for existing ski area permits issued pursuant to the Act of March 4, 1915, and the Act of June 4, 1897, shall be calculated in accordance with those existing permits: Provided, That a permittee may, at the permittee's option, use the calculation method set forth in subsection (b) of this section.

#### (b) Formula

(1) The ski area permit rental charge (SAPRC) shall be calculated by adding the permittee's gross revenues from lift ticket/year-round ski area use pass

sales plus revenue from ski school operations (LT+SS) and multiplying such total by the slope transport feet percentage (STFP) on National Forest System land. That amount shall be increased by the gross year-round revenue from ancillary facilities (GRAF) physically located on national forest land, including all permittee or subpermittee lodging, food service, rental shops, parking and other ancillary operations, to determine the adjusted gross revenue (AGR) subject to the permit rental charge. The final rental charge shall be calculated by multiplying the AGR by the following percentages for each revenue bracket and adding the total for each revenue bracket:

(A) 1.5 percent of all adjusted gross revenue below \$3,000,000;

(B) 2.5 percent for adjusted gross revenue between \$3,000,000 and \$15,000,000;

(C) 2.75 percent for adjusted gross revenue between \$15,000,000 and \$50,000,000; and

(D) 4.0 percent for the amount of adjusted gross revenue that exceeds \$50,000,000. Utilizing the abbreviations indicated in this subsection the ski area permit fee (SAPF) formula can be simply illustrated as:  $SAPF = ((LT +$

SS) STFP) + GRAF = AGR; AGR %  
BRACKETS

(2) In cases where ski areas are only partially located on national forest lands, the slope transport feet percentage on national forest land referred to in this subsection shall be calculated as generally described in the Forest Service Manual in effect as of January 1, 1992. Revenues from Nordic ski operations shall be included or excluded from the rental charge calculation according to the percentage of trails physically located on national forest land.

(3) In order to ensure that the rental charge remains fair and equitable to both the United States and the ski area permittees, the adjusted gross revenue figures for each revenue bracket in paragraph (1) shall be adjusted annually by the percent increase or decrease in the national Consumer Price Index for the preceding calendar year. No later than 3 years after November 12, 1996, and every 5 years thereafter the Secretary shall submit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives a report analyzing whether the ski area permit rental charge required by this section is returning a fair market value rental to the United States together with any recommendations the Secretary may have for modifications of the system.

(c) Payment

The rental charge set forth in subsection (b) of this section shall be due on June 1 of each year and shall be paid or prepaid by the permittee on a monthly, quarterly, annual or other schedule as determined appropriate by the Secretary in consultation with the permittee. Unless mutually agreed otherwise by the Secretary and the permittee, the payment or prepayment schedule shall conform to the permittee's schedule in effect prior to November 12, 1996. To reduce costs to the permittee and the Forest Service, the Secretary shall each year provide the permittee with a standardized form and worksheets (including annual rental charge calculation brackets and rates) to be used for rental charge calculation and submitted with the rental charge payment. Information provided on such forms shall be compiled by the Secretary annually and kept in the Office of the Chief, United States Forest Service.

(d) Effective date

The ski area permit rental charge set forth in this section shall become effective on June 1, 1996 and cover receipts retroactive to June 1, 1995: Provided, That if a permittee has paid rental charges for the period June 1, 1995, to June 1, 1996, under the graduated rate rental charge system formula in effect prior to November 12, 1996, such rental charges shall be credited toward the new rental charge due on June 1, 1996. In order to ensure increasing rental charge receipt levels to the United States during transition from the graduated rate rental charge system formula to the formula of this section, the rental charge paid by any

individual permittee shall be

(1) for the 1995-1996 permit year, either the rental charge paid for the preceding 1994-1995 base year or the rental charge calculated pursuant to this section, whichever is higher;

(2) for the 1996-1997 permit year, either the rental charge paid for the 1994-1995 base year or the rental charge calculated pursuant to this section, whichever is higher; and

(3) for the 1997-1998 permit year, either the rental charge for the 1994-1995 base year or the rental charge calculated pursuant to this section, whichever is higher. If an individual permittee's adjusted gross revenue for the 1995-1996, 1996-1997, or 1997-1998 permit years falls more than 10 percent below the adjusted gross revenue for the 1994-1995 base year, the rental charge paid shall be the rental charge calculated pursuant to this section.

(e) Non-national forest land operations

Under no circumstances shall revenue, or subpermittee revenue (other than lift ticket, area use pass, or ski school sales) obtained from operations physically located on non-national forest land be included in the ski area permit rental charge calculation.

(f) "Revenue" and "sales" defined; limitations

To reduce administrative costs of ski area permittees and the Forest Service the terms "revenue" and "sales", as used in this section, shall mean actual income from sales and shall not include sales of

operating equipment, refunds, rent paid to the permittee by sublessees, sponsor contributions to special events or any amounts attributable to employee gratuities or employee lift tickets, discounts, or other goods or services (except for bartered goods and complimentary lift tickets offered for commercial or other promotional purposes) for which the permittee does not receive money.

(g) Minimum rental charge

In cases where an area of national forest land is under a ski area permit but the permittee does not have revenue or sales qualifying for rental charge payment pursuant to subsection (a) of this section, the permittee shall pay an annual minimum rental charge of \$2 for each national forest acre under permit or a percentage of appraised land value, as determined appropriate by the Secretary.

(h) Five-year phase-in of increase

Where the new rental charge provided for in subsection (b)(1) of this section results in an increase in permit rental charge greater than one-half of 1 percent of the permittee's adjusted gross revenue as determined under subsection (b)(1) of this section, the new rental charge shall be phased in over a five-year period in a manner providing for increases of approximately equal increments.

(i) Construction with National Environmental Policy Act of 1969

To reduce Federal costs in administering the provisions of this section, the reissuance of a ski area permit to provide activities similar in nature and amount to

the activities provided under the previous permit shall not constitute a major Federal action for the purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.).

(j) Withdrawal from mining laws

Subject to valid existing rights, all lands located within the boundaries of ski area permits issued prior to, on or after November 12, 1996, pursuant to authority of the Act of March 4, 1915 (38 Stat. 1101, chapter 144; 16 U.S.C. 497), and the Act of June 4, 1897, or the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b) are hereby and henceforth automatically withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral and geothermal leasing and all amendments thereto. Such withdrawal shall continue for the full term of the permit and any modification, reissuance, or renewal thereof. Unless the Secretary requests otherwise of the Secretary of the Interior, such withdrawal shall be canceled automatically upon expiration or other termination of the permit and the land automatically restored to all appropriation not otherwise restricted under the public land laws. (16 U.S.C. 497c)

# Cabin User Fee Fairness Act of 2000, Department of the Interior and Related Agencies Appropriations Act of 2001

October 11, 2000 (Pub. L. 106-291, 114 Stat. 1014; 16 U.S.C. 6201 note, 6201 to 6213)

## Title VI

### Short Title

**Sec. 601** This title may be cited as the “Cabin User Fee Fairness Act of 2000”. (16 U.S.C. 6201 note)

### Findings

**Sec. 602** Congress finds that -

- (1) cabins located on forest land have provided a unique recreation experience to a large number of cabin owners, their families, and guests each year since Congress authorized the recreation residence program in 1915; and
- (2) the fact that current appraisal procedures have, in certain circumstances, been inconsistently applied in determining fair market values for residential lots demonstrates that problems exist in accurately reflecting market values. (16 U.S.C. 6201)

### Purposes

**Sec. 603** The purposes of this chapter are -

- (1) to ensure, to the maximum extent practicable, that the National Forest System recreation residence program is managed to preserve the opportunity for individual and family-oriented recre-

ation; and

- (2) to develop and implement a more consistent procedure for determining cabin user fees, taking into consideration the limitations of an authorization and other relevant market factors. (16 U.S.C. 6202)

### Definitions

**Sec. 604** In this chapter:

- (1) Agency

The term “agency” means the Forest Service.

- (2) Authorization

The term “authorization” means a special use permit for the use and occupancy of National Forest System land by a cabin owner under the authority of the program.

- (3) Base cabin user fee

The term “base cabin user fee” means the fee for an authorization that results from the appraisal of a lot as determined in accordance with sections 6205 and 6206 of this title.

- (4) Cabin

The term “cabin” means a privately built and owned recreation residence that is authorized for use and occupancy

on National Forest System land.

(5) Cabin owner

The term “cabin owner” means -

(A) a person authorized by the agency to use and to occupy a cabin on National Forest System land; and

(B) an heir or assign of such a person.

(6) Cabin user fee

The term “cabin user fee” means a special use fee paid annually by a cabin owner to the Secretary in accordance with this chapter.

(7) Caretaker cabin

The term “caretaker cabin” means a caretaker residence occupied in limited cases in which caretaker services are necessary to maintain the security of a tract.

(8) Current cabin user fee

The term “current cabin user fee” means the most recent cabin user fee that results from an annual adjustment to the base cabin user fee in accordance with section 6207 of this title.

(9) Lot

The term “lot” means a parcel of land in the National Forest System

(A) on which a cabin owner is authorized to build, use, occupy, and maintain a cabin and related improvements; and

(B) that is considered to be in its natural, native state at the time at which a use of the lot described in subparagraph (A) is first permitted by

the Secretary.

(10) Natural, native state

The term “natural, native state” means the condition of a lot or site, free of any improvements, at the time at which the lot or site is first authorized for recreation residence use by the agency.

(11) Program

The term “program” means the recreation residence program established under the authority of section 497 of this title.

(12) Secretary

The term “Secretary” means the Secretary of Agriculture, acting through the Chief of the Forest Service.

(13) Tract

The term “tract” means an established location within a National Forest containing 1 or more cabins authorized in accordance with the program.

(14) Tract association

The term “tract association” means a cabin owner association in which all cabin owners within a tract are eligible for membership.

(15) Typical lot

The term “typical lot” means a cabin lot, or a group of cabin lots, in a tract that is selected for use in an appraisal as being representative of, and that has similar value characteristics as, other lots or groups of lots within the tract. (16 U.S.C. 6203)

## Administration of recreation

### residence program

**Sec. 605** The Secretary shall ensure, to the maximum extent practicable, that the basis and procedure for calculating cabin user fees results in a fee for an authorization that reflects, in accordance with this chapter -

- (1) the market value of a lot; and
- (2) regional and local economic influences. (16 U.S.C. 6204)

### Appraisals

**Sec. 606** (a) Requirements for conducting appraisals

In implementing and conducting an appraisal process for determining cabin user fees, the Secretary shall -

- (1) complete an inventory of improvements that were paid for by -
  - (A) the agency;
  - (B) third parties; or
  - (C) cabin owners (or predecessors of cabin owners), during the completion of which the Secretary shall presume that a cabin owner, or a predecessor of the owner, has paid for the capital costs of any utility, access, or facility serving the lot being appraised, unless the Forest Service produces evidence that the agency or a third party has paid for the capital costs;
- (2) establish an appraisal process to determine the market value of the fee simple estate of a typical lot or lots considered to be in a natural, native state, subject to subsection (b)(4)(A) of this section;

(3) enter into a contract with an appropriate professional appraisal organization to manage the development of specific appraisal guidelines in accordance with subsection (b) of this section, subject to public comment and congressional review;

(4) require that an appraisal be performed by a State-certified general real estate appraiser, selected by the Secretary and licensed to practice in the State in which the lot is located;

(5) provide the appraiser with appraisal guidelines developed in accordance with this chapter;

(6) notwithstanding any other provision of law, require the appraiser to coordinate the appraisal closely with affected parties by seeking information, cooperation, and advice from cabin owners and tract associations;

(7) require that the appraiser perform the appraisal in compliance with -

- (A) the most current edition of the Uniform Standards of Professional Appraisal Practice in effect on the date of the appraisal;
- (B) the most current edition of the Uniform Appraisal Standards for Federal Land Acquisitions that is in effect on the date of the appraisal; and
- (C) the specific appraisal guidelines developed in accordance with this chapter;

(8) require that the appraisal report -

- (A) be a full narrative report, in compliance with the reporting stan-

dards of the Uniform Standards of Professional Appraisal Practice; and

(B) comply with the reporting guidelines established by the Uniform Appraisal Standards for Federal Land Acquisitions; and

(9) before accepting any appraisal, conduct a review of the appraisal to ensure that the guidelines made available to the appraiser have been followed and that the appraised values are properly supported.

(b) Specific appraisal guidelines

In the development of specific appraisal guidelines in accordance with subsection (a)(3) of this section, the instructions to an appraiser shall require, at a minimum, the following:

(1) Appraisal of a typical lot

(A) In general In conducting an appraisal under this section, the appraiser -

(i) shall not appraise each individual lot;

(ii) shall appraise a typical lot or lots, selected by the cabin owners and the agency in a manner consistent with the policy of the program; and

(iii) shall be provided, and give appropriate consideration to, any information contained in the inventory of improvements relating to the lot being appraised.

(B) Estimate of market value of typical lot

(i) In general

The appraiser shall estimate the market value of a typical lot in accordance with this chapter.

(ii) Equivalence to legally subdivided lot In selecting a comparable sale under this chapter, the appraiser shall recognize that the typical lot will not usually be equivalent to a legally subdivided lot.

(2) Exception for certain sales of land

In conducting an appraisal under this chapter, the appraiser -

(A) shall not select sales of comparable land that are sales of land within developed urban areas; and

(B) should not, in most circumstances, select a sale of comparable land that includes land that is encumbered by a conservation or recreational easement that is held by a government or institution, except land that is limited to use as a site for 1 home.

(3) Adjustments for typical value influences

(A) In general

The appraiser shall consider, and adjust as appropriate, the price of sales of comparable land for all typical value influences described in subparagraph (B).

(B) Value influences

The typical value influences referred to in subparagraph (A) include -

(i) differences in the locations of the parcels;

(ii) accessibility, including limitations

on access attributable to -

- (I) weather;
- (II) the condition of roads or trails;
- (III) restrictions imposed by the agency; or
- (IV) other factors;

(iii) the presence of marketable timber;

(iv) limitations on, or the absence of, services such as law enforcement, fire control, road maintenance, or snow plowing;

(v) the condition and regulatory compliance of any site improvements; and

(vi) any other typical value influences described in standard appraisal literature.

(4) Adjustments to sales of comparable parcels

(A) Utilities, access, or facilities

(i) Agency

Utilities, access, or facilities serving a lot that are provided by the agency shall be included as features of the lot being appraised.

(ii) Cabin owners

Utilities, access, or facilities serving a lot that are provided by the cabin owner (or a predecessor of the cabin owner) shall not be included as a feature of the lot being appraised.

(iii) Third parties

Utilities, access, or facilities serving

a lot that are provided by a third party shall not be included as a feature of the lot being appraised unless, in accordance with subsection (a)(1) of this section, the agency determines that the capital costs have not been or are not being paid by the cabin owner (or a predecessor of the cabin owner).

(iv) Withdrawal of utility or access by agency

If, during the term of an authorization, the agency or an act of God creates a substantial and materially adverse change in -

(I) the provision or maintenance of any utility or access; or

(II) a qualitative feature of the lot or immediate surroundings, the cabin owner shall have the right to request, and, at the discretion of the Secretary, obtain a new determination of the base cabin user fee at the expense of the agency.

(B) Adjustment for exclusion

In a case in which any comparable sale includes utilities, access, or facilities that are to be excluded in the appraisal of the subject lot, the price of the comparable sale shall be adjusted, as appropriate.

(C) Adjustment process

(i) In general

The appraiser shall consider and adjust, as appropriate, the price of each sale of a comparable parcel for

all nonnatural features referred to in subparagraph (A)(ii) that -

(I)(aa) are present at, or add value to, the comparable parcel; but

(bb) are not present at the lot being appraised; or

(II) are not included in the appraisal as described in subparagraph (A).

(ii) Adjustments

(I) In general

In a case in which the price of a parcel sold is to be adjusted in accordance with subparagraph (B), the adjustment may be based on an analysis of market or cost information or both.

(II) Cost information

If cost information is used as the basis of an adjustment under subclause (I), the cost information shall be supported by direct market evidence.

(iii) Analysis of cost information

An analysis of cost information under clause (ii)(I) should include allowances, as appropriate, if the allowances are consistent with -

(I) the Uniform Standards of Professional Appraisal Practice in effect on the date of the analysis; and

(II) the Uniform Appraisal Standards for Federal Land Acquisition.

(D) Reappraisal for and recalculation

of base cabin user fee Periodically, but not less often than once every 10 years, the Secretary shall recalculate the base cabin user fee (including conducting any reappraisal required to recalculate the base cabin user fee). (16 U.S.C. 6205)

### Cabin user fees

#### Sec. 607 (a) In general

The Secretary shall establish the cabin user fee as the amount that is equal to 5 percent of the market value of the lot, as determined in accordance with section 6205 of this title, reflecting an adjustment to the typical market rate of return due to restrictions imposed by the permit, including -

- (1) the limited term of the authorization;
- (2) the absence of significant property rights normally attached to fee simple ownership; and
- (3) the public right of access to, and use of, any open portion of the lot on which the cabin or other enclosed improvements are not located.

#### (b) Fee for caretaker cabin

The base cabin user fee for a lot on which a caretaker cabin is located shall not be greater than the base cabin user fee charged for the authorized use of a similar typical lot in the tract.

#### (c) Annual cabin user fee in the event of determination not to reissue authorization

If the Secretary determines that an authorization should not be reissued at the end of a term, the Secretary shall -

(1) establish as the new base cabin user fee for the remaining term of the authorization the amount charged as the cabin user fee in the year that was 10 years before the year in which the authorization expires; and

(2) calculate the current cabin user fee for each of the remaining 9 years of the term of the authorization by multiplying -

(A) <sup>1/10</sup> of the new base cabin user fee; by

(B) the number of years remaining in the term of the authorization after the year for which the cabin user fee is being calculated.

(d) Annual cabin user fee in event of changed conditions

If a review of a decision to convert a lot to an alternative public use indicates that the continuation of the authorization for use and occupancy of the cabin by the cabin owner is warranted, and the decision is subsequently reversed, the Secretary may require the cabin owner to pay any portion of annual cabin user fees that were forgone as a result of the expectation of termination of use and occupancy of the cabin by the cabin owner.

(e) Termination of fee obligation in loss resulting from acts of God or catastrophic events

On a determination by the agency that, because of an act of God or a catastrophic event, a lot cannot be safely occupied and the authorization for the lot should accordingly be terminated, the fee obligation of the cabin owner shall

terminate effective on the date of the occurrence of the act or event. (16 U.S.C. 6206)

### Annual adjustment of cabin user fee

**Sec. 608** (a) In general

The Secretary shall adjust the cabin user fee annually, using a rolling 5-year average of a published price index in accordance with subsection (b) or (c) of this section that reports changes in rural or similar land values in the State, county, or market area in which the lot is located.

(b) Initial index

(1) In general

For the period of 10 years beginning on October 11, 2000, the Secretary shall use changes in agricultural land prices in the appropriate State or county, as reported in the Index of Agricultural Land Prices published by the Department of Agriculture, to determine the annual adjustment to the cabin user fee in accordance with subsections (a) and (d) of this section.

(2) Statewide changes

In determining the annual adjustment to the cabin user fee for an authorization located in a county in which agricultural land prices are influenced by the [Amended by Pub. L. 108-7, sec. 324, 117 Stat. 275] ~~value influences~~ criteria described in section 6205(b)(3) of this title, the Secretary shall use average statewide changes in the State in which the lot is located.

(c) New index

## (1) In general

Not later than 10 years after October 11, 2000, the Secretary may select and use an index other than the method of adjustment of a cabin user fee described in subsection (b)(2) of this section to adjust a cabin user fee if the Secretary determines that a different index better reflects change in the value of a lot over time.

## (2) Selection process

Before selecting a new index, the Secretary shall -

(A) solicit and consider comments from the public; and

(B) not later than 60 days before the date on which the Secretary makes a final index selection, submit any proposed selection of a new index to -

(i) the Committee on Resources of the House of Representatives; and

(ii) the Committee on Agriculture, Nutrition, and Forestry of the Senate.

## (d) Limitation

In calculating an annual adjustment to the base cabin user fee as determined by the initial index described in section <sup>1</sup> (b) of this section, the Secretary shall -

(1) limit any annual fee adjustment to an amount that is not more than 5 percent per year when the change in agricultural land values exceeds 5 percent in any 1 year; and

(2) apply the amount of any adjustment that exceeds 5 percent to the annual fee

payment for the next year in which the change in the index factor is less than 5 percent. (16 U.S.C. 6207)

<sup>1</sup> So in original. Probably should be “subsection”.

**Payment of cabin user fees**

**Sec. 609** (a) Due date for payment of fees

A cabin user fee shall be prepaid annually by the cabin owner.

## (b) Payment of equal or lesser fee

If, in accordance with section 6206 of this title, the Secretary determines that the amount of a new base cabin user fee is equal to or less than the amount of the current base cabin user fee, the Secretary shall require payment of the new base cabin user fee by the cabin owner in accordance with subsection (a) of this section.

## (c) Payment of greater fee

If, in accordance with section 6206 of this title, the Secretary determines that the amount of a new base cabin user fee is greater than the amount of the current base cabin user fee, the Secretary shall -

(1) require full payment of the new base cabin user fee in the first year following completion of the fee determination procedure if the increase in the amount of the new base cabin user fee is not more than 100 percent of the current base cabin user fee; or

(2) phase in the increase over the current base cabin user fee in approximately equal increments over 3 years if

the increase in the amount of the new base cabin user fee is more than 100 percent of the current base cabin user fee. (16 U.S.C. 6208)

### **Right of second appraisal**

#### **Sec. 610 (a) Right of second appraisal**

On receipt of notice from the Secretary of the determination of a new base cabin user fee, the cabin owner -

(1) not later than 60 days after the date on which the notice is received, may notify the Secretary of the intent of the cabin owner to obtain a second appraisal; and

(2) may obtain, within 1 year following the date of receipt of the notice under this subsection, at the expense of the cabin owner, a second appraisal of the typical lot on which the initial appraisal was conducted.

#### **(b) Conduct of second appraisal**

In conducting a second appraisal, the appraiser selected by the cabin owner shall -

(1) have qualifications equivalent to the appraiser that conducted the initial appraisal in accordance with section 6205(a)(4) of this title;

(2) use the appraisal guidelines used in the initial appraisal in accordance with section 6205(a)(5) of this title;

(3) consider all relevant factors in accordance with this chapter (including guidelines developed under section 6205(a)(3) of this title); and

(4) notify the Secretary of any material

differences of fact or opinion between the initial appraisal conducted by the agency and the second appraisal.

#### **(c) Request for reconsideration of base cabin user fee**

A cabin owner shall submit to the Secretary any request for reconsideration of the base cabin user fee, based on the results of the second appraisal, not later than 60 days after the receipt of the report for the second appraisal.

#### **(d) Reconsideration of base cabin user fee**

On receipt of a request from the cabin owner under subsection (c) of this section for reconsideration of a base cabin user fee, not later than 60 days after the date of receipt of the request, the Secretary shall -

(1) review the initial appraisal of the agency;

(2) review the results and commentary from the second appraisal;

(3) determine a new base cabin user fee in an amount that is -

(A) equal to the base cabin user fee determined by the initial or the second appraisal; or

(B) within the range of values, if any, between the initial and second appraisals; and

(4) notify the cabin owner of the amount of the new base cabin user fee. (16 U.S.C. 6209)

### **Right of appeal and judicial review**

**Sec. 611** (a) Right of appeal

Notwithstanding any action of a cabin owner to exercise rights in accordance with section 6209 of this title, the Secretary shall by regulation grant the cabin owner the right to an administrative appeal of the determination of a new base cabin user fee.

## (b) Judicial review

A cabin owner that is adversely affected by a final decision of the Secretary under this chapter may bring a civil action in United States district court. (16 U.S.C. 6210)

**Consistency with other law and rights****Sec. 612** (a) Consistency with rights of the United States

Nothing in this chapter limits or restricts any right, title, or interest of the United States in or to any land or resource.

## (b) Special rule for Alaska

In determining a cabin user fee in the State of Alaska, the Secretary shall not establish or impose a cabin user fee or a condition affecting a cabin user fee that is inconsistent with section 3193(d) of this title. (16 U.S.C. 6211)

**Regulations**

**Sec. 613** Not later than 2 years after October 11, 2000, the Secretary shall promulgate regulations to carry out this chapter. (16 U.S.C. 6212)

**Transition provisions****Sec. 614** (a) Assessment of annual fees

For the period of time determined under subsection (b) of this section, the Secretary shall charge each cabin owner an annual fee as follows:

(1) Lots not appraised since September 30, 1995

For a lot that has not been appraised since September 30, 1995, the annual fee shall be equal to the amount of the annual fee in effect on October 11, 2000, adjusted annually to reflect changes in the Implicit Price Deflator-Gross National Product Index.

(2) Lots appraised on or after September 30, 1995

## (A) In general

Except as provided in subparagraph (B), for a lot that has been appraised on or after September 30, 1995, the annual fee shall be equal to the amount of the fee in effect on October 11, 2000, adjusted annually to reflect changes in the Implicit Price Deflator-Gross National Product Index.

(B) Appraisals resulting in base fee increase

## (i) In general

Except as provided in clause (ii), for a lot that has been appraised on or after September 30, 1995, for which the appraisal resulted in an increase of the base fee by an amount greater than \$3,000, the annual fee shall be equal to the sum of \$3,000 plus the amount of the annual fee in effect on October 1, 1996, adjusted annually to reflect the percentage change in the

Implicit Price Deflator-Gross National Product Index.

(ii) Fees paid after request of new appraisal or peer review If -

(I) the cabin owner of a lot described in clause (i) requests a new appraisal or peer review under subsection (c) of this section; and

(II) the base cabin user fee established as a result of the appraisal or peer review is determined to be an amount that is 90 percent or more of the fee in effect for the lot as determined by an appraisal conducted on or after September 30, 1995, the Secretary shall charge the cabin owner, in addition to the annual fee that would otherwise have been due under section 6208 of this title, the difference between the base cabin user fee determined through the conduct of the new appraisal or peer review and the annual fee that would otherwise have been due under section 6208 of this title, to be assessed retroactively for each year beginning with the year in which the previous appraisal was conducted, and to be paid in 3 equal annual installments.

(b) Term

(1) Lots not appraised since September 30, 1995

For a lot that has not been appraised since September 30, 1995, the Secretary shall charge fees in accordance with subsection (a)(2)(A) of this section until

-

(A) a base cabin user fee is determined in accordance with -

(i) this chapter; or

(ii) regulations and policies in effect on October 11, 2000; and

(B) the right of the cabin owner to a second appraisal under section 6209 of this title is exhausted.

(2) Lots appraised on or after September 30, 1995

For a lot that has been appraised on or after September 30, 1995, the Secretary shall charge fees under subsection

(a)(2) of this section until -

(A) the cabin owner requests a new appraisal or peer review, and a base cabin user fee is established, under subsection (c) of this section; or

(B) in the absence of a request for a peer review or a new appraisal under subsection (c) of this section, the date that is 2 years after the date on which the Forest Service promulgates regulations and policies and develops appraisal guidelines under this chapter.

(c) Request for new appraisal under new law

(1) In general

Not later than 2 years after the promulgation of final regulations and policies and the development of appraisal guidelines in accordance with section 6205(a)(5) of this title, cabin owners that are subject to appraisals completed after September 30, 1995, but before

the date of promulgation of final regulations under section 6212 of this title, may request, in accordance with paragraph (2), that the Secretary -

(A) conduct a new appraisal and determine a new base cabin user fee in accordance with this chapter; or

(B) commission a peer review of the existing appraisals in accordance with paragraph (4).

(2) Appraisal groupings by typical lot

A request for a new appraisal or for a peer review of existing appraisals under paragraph (1) shall be made by a majority of the cabin owners in a group of cabins represented in the appraisal process by a typical lot.

(3) Conduct of new appraisal

On receipt of a request for an appraisal and fee determination in accordance with paragraph (2), the Secretary shall conduct the new appraisal and fee determination in accordance with this chapter.

(4) Peer review of existing appraisals

(A) In general

On receipt of a request for peer review in accordance with paragraph (2), the Secretary shall obtain from an independent professional appraisal organization a review of the appraisal (including any report on the appraisal) that was used to establish the estimated fee simple value of the lots within the subject grouping.

(B) Inconsistency

If peer review described in subparagraph (A) results in a determination that an appraisal or appraisal report includes provisions or procedures that were implemented or conducted in a manner inconsistent with this chapter, the Secretary shall, as appropriate and in accordance with this chapter -

(i) revise an existing base cabin user fee; or

(ii) subject to an agreement with the cabin owners, conduct a new appraisal and fee determination.

(5) Payment of costs

Cabin owners and the Secretary shall share, in equal proportion, the payment of all reasonable costs of any new appraisal or peer review.

(d) Assumption of new base cabin user fee

In the absence of a request under subsection (c) of this section for a new appraisal and fee determination from a cabin owner whose cabin user fee was determined as a result of an appraisal conducted after September 30, 1995, but before the date of promulgation of final regulations under section 6212 of this title, the Secretary may consider the base cabin user fee resulting from the appraisal conducted between September 30, 1995 and the date of promulgation of the final regulations under section 6212 of this title, to be the base cabin user fee that complies with this section. (16 U.S.C. 6213)

## Sustained-Yield Forest Management Act

March 29, 1944 (Ch. 146, 58 Stat. 132; 16 U.S.C. 583, 583a to 583i)

### **Establishment of sustained-yield units to stabilize forest industries, employment, communities and taxable wealth**

**Sec. 1** In order to promote the stability of forest industries, of employment, of communities, and of taxable forest wealth, through continuous supplies of timber; in order to provide for a continuous and ample supply of forest products; and in order to secure the benefits of forests in maintenance of water supply, regulation of stream flow, prevention of soil erosion, amelioration of climate, and preservation of wildlife, the Secretary of Agriculture and the Secretary of the Interior are severally authorized to establish by formal declaration, when in their respective judgments such action would be in the public interest, cooperative sustained-yield units which shall consist of federally owned or administered forest land under the jurisdiction of the Secretary establishing the unit and, in addition thereto, land which reasonably may be expected to be made the subject of one or more of the cooperative agreements with private landowners authorized by section 583a of this title. (16 U.S.C. 583)

### **Cooperative agreements with private owners; privileges of private owners; recordation of agreements**

**Sec. 2** The Secretary of Agriculture, with

respect to forest land under his jurisdiction, and the Secretary of the Interior, with respect to forest land under his jurisdiction, are severally authorized, for the purposes specified in section 583 of this title, to enter into cooperative agreements with private owners of forest land within a cooperative sustained-yield unit, established pursuant to said section, providing for the coordinated management of such private forest land and of federally owned or administered forest lands within the sustained-yield unit involved. Each cooperative agreement may give the cooperating private landowner the privilege of purchasing without competitive bidding at prices not less than their appraised value, subject to periodic readjustments of stumpage rates and to such other conditions and requirements as the Secretary may prescribe, timber and other forest products from federally owned or administered forest land within the unit, in accordance with the provisions of sustained-yield management plans formulated or approved by the Secretary for the unit; shall limit the time, rate, and method of cutting or otherwise harvesting timber and other forest products from the land of the cooperating private landowner, due consideration being given to the character and condition of the timber, to the relation of the proposed cutting to the sustained-yield plan for the unit, and to the productive capacity of the land; shall prescribe the terms and conditions, but

not the price, upon which the cooperating private landowner may sell to any person timber and other forest products from his land, compliance by the purchaser with such conditions to be required by the contract of sale; shall contain such provisions as the Secretary deems necessary to protect the reasonable interest of other owners of forest land within the unit; and shall contain such other provisions as the Secretary believes necessary to carry out the purposes of this subchapter. Each cooperative agreement shall be placed on record in the county or counties in which the lands of the cooperating private landowner covered thereby are located, and the costs incident to such recordation may be paid out of any funds available for the protection or management of federally owned or administered forest land within the unit. When thus recorded, the agreement shall be binding upon the heirs, successors, and assigns of the owner of such land, and upon purchasers of timber or other forest products from such land, throughout the life of such cooperative agreement. (16 U.S.C. 583a)

#### **Establishment of sustained-yield units to stabilize sale of timber and forest products**

**Sec. 3** The Secretary of Agriculture and the Secretary of the Interior are further severally authorized, whenever in their respective judgments the maintenance of a stable community or communities is primarily dependent upon the sale of timber or other forest products from federally owned or administered forest

land and such maintenance cannot effectively be secured by following the usual procedures in selling such timber or other forest products, to establish by formal declaration for the purpose of maintaining the stability of such community or communities a sustained-yield unit consisting of forest land under the jurisdiction of the Secretary establishing such unit, to determine and define the boundaries of the community or communities for whose benefit such unit is created, and to sell, subject to such conditions and requirements as the Secretary believes necessary, federally owned or administered timber and other forest products from such unit without competitive bidding at prices not less than their appraised values, to responsible purchasers within such community or communities. (16 U.S.C. 583b)

#### **Agreements between Secretaries of Agriculture and the Interior, or with other Federal agencies having jurisdiction over forest land**

**Sec. 4** Each of the said Secretaries is further authorized in his discretion to enter into cooperative agreements with the other Secretary, or with any Federal agency having jurisdiction over federally owned or administered forest land, or with any State or local agency having jurisdiction over publicly owned or administered forest land, providing for the inclusion of such land in any coordinated plan of management otherwise authorized by the provisions of this subchapter when by such a cooperative agreement he may be aided in accomplishing the purposes of

this subchapter; but no federally or publicly owned or administered forest land not under the jurisdiction of the Secretary establishing the sustained-yield unit concerned shall be included in any such plan except in pursuance of a cooperative agreement made under this section. (16 U.S.C. 583c)

**Notice; registered mail and publication; costs; contents; request for hearing; time; determination and record available for inspection**

**Sec. 5** Before any sustained-yield unit authorized by section 583 or 583b of this title shall be established, and before any cooperative agreement authorized by section 583a or 583c of this title shall be entered into, advance notice thereof shall be given by registered mail or by certified mail to each landowner whose land is proposed to be included and by publication in one or more newspapers of general circulation in the vicinity of the place where the timber is located, and the costs incident to such publication may be paid out of any funds available for the protection or management of the federally owned or administered forest land involved. This notice shall state: (1) the location of the proposed unit; (2) the name of each proposed cooperator; (3) the duration of the proposed cooperative agreement or agreements; (4) the location and estimated quantity of timber on the land of each proposed cooperator and on the Federal land involved; (5) the expected rate of cutting of such timber; and (6) the time and place of a public hearing to be held not less than thirty days after

the first publication of said notice for the presentation of the advantages and disadvantages of the proposed action to the community or communities affected.

Before any sale agreement made without competition and involving more than \$500 in stumpage value of federally owned or administered timber shall be entered into under this subchapter, advance notice thereof shall be given by publication once weekly for four consecutive weeks in one or more newspapers of general circulation in the vicinity of the place where the timber is located, and the costs incident to such publication may be paid out of any funds available for the protection or management of federally owned or administered forest land within the unit concerned. This notice shall state: (1) the quantity and appraised value of the timber; (2) the time and place of a public hearing to be held not less than thirty days after the first publication of said notice if requested by the State or county where the timber is located or by any other person deemed to have a reasonable interest in the proposed sale or in its terms; and (3) the place where any request for a public hearing shall be made. Such requests need be considered only if received at the place designated in the notice not later than fifteen days after the first publication of such notice. If a request for a hearing is received within the time designated, notice of the holding of the hearing shall be given not less than ten days before the time set for such hearing, in the same manner as provided for the original notice.

The determination made by the Secretary

having jurisdiction upon the proposals considered at any such hearing, which determination may include the modification of the terms of such proposals, together with the minutes or other record of the hearing, shall be available for public inspection during the life of any coordinated plan of management or agreement entered into in consequence of such determination. (16 U.S.C. 583d)

#### **Remedies against private owners; jurisdiction; final orders; "owner" defined**

**Sec. 6** In addition to any other remedy available under existing law, upon failure of any private owner of forest land which is subject to a cooperative agreement entered into pursuant to this subchapter to comply with the terms of such agreement, or upon failure of any purchaser of timber or other forest products from such land to comply with the terms and conditions required by such agreement to be included in the contract of sale, the Attorney General, at the request of the Secretary concerned, is authorized to institute against such owner or such purchaser a proceeding in equity in the proper district court of the United States, to require compliance with the terms and conditions of said cooperative agreement; and jurisdiction is conferred upon said district courts to hear and determine such proceedings, to order compliance with the terms and conditions of cooperative agreements entered into pursuant to this subchapter, and to make such temporary and final orders as shall be deemed just in the premises. As used in this section the

term "owner" shall include the heirs, successors, and assigns of the landowner entering into the cooperative agreements. (16 U.S.C. 583e)

#### **"Federally owned or administered forest land" defined**

**Sec. 7** Whenever used in this subchapter, the term "federally owned or administered forest land" shall be construed to mean forest land in which, or in the natural resources of which, the United States has a legal or equitable interest of any character sufficient to entitle the United States to control the management or disposition of the timber or other forest products thereon, except land heretofore or hereafter reserved or withdrawn for purposes which are inconsistent with the exercise of the authority conferred by this subchapter; and shall include trust or restricted Indian land, whether tribal or allotted, except that such land shall not be included without the consent of the Indians concerned. (16 U.S.C. 583f)

#### **Rules and regulations; delegation of powers and duties**

**Sec. 8** The Secretary of Agriculture and the Secretary of the Interior may severally prescribe such rules and regulations as may be appropriate to carry out the purposes of this subchapter. Each Secretary may delegate any of his powers and duties under this subchapter to other officers or employees of his Department. (16 U.S.C. 583g)

#### **Prior acts as affecting or affected by subchapter**

**Sec. 9** Nothing contained in this subchapter shall be construed to abrogate or curtail any authority conferred upon the Secretary of Agriculture or the Secretary of the Interior by any Act relating to management of federally owned or administered forest lands, and nothing contained in any such Acts shall be construed to limit or restrict any authority conferred upon the Secretary of Agriculture or the Secretary of the Interior by this subchapter. (16 U.S.C. 583h)

#### **Authorization of appropriations**

**Sec. 10** Funds available for the protection or management of Federally owned or administered forest land within the unit concerned may also be expended in carrying out the purposes of this subchapter, and there are authorized to be appropriated such additional sums for the purposes of this subchapter as the Congress may from time to time deem necessary, but such additional sums shall not exceed \$150,000 for the Department of Agriculture and \$50,000 for the Department of the Interior, for any fiscal year. (16 U.S.C. 583i)

## Forest Resources Conservation and Shortage Relief Act of 1990, Customs and Trade Act of 1990

August 20, 1990 (Pub. L. 101-382, 104 Stat. 714; 16 U.S.C. 620, 620a to 620e, 620 note, 620f to 620j)

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### Findings and purposes

#### Sec. 488 (a) Findings

The Congress makes the following findings:

- (1) Timber is essential to the United States.
- (2) Forests, forest resources, and the forest environment are exhaustible natural resources that require efficient and effective conservation efforts.
- (3) In the interest of conserving those resources, the United States has set aside millions of acres of otherwise harvestable timberlands in the western United States, representing well over 100,000,000,000 board feet of otherwise harvestable timber.
- (4) In recent years, administrative, statutory, or judicial action has been taken to set aside an increased amount of otherwise harvestable timberlands for conservation purposes.
- (5) In the next few months and years, additional amounts of otherwise harvestable timberlands may be set aside for conservation purposes, pursuant to the Endangered Species Act of

1973 (16 U.S.C. 1531 et seq.), the National Forest Management Act of 1976, or other expected statutory, administrative, and judicial actions.

(6) There is evidence of a shortfall in the supply of unprocessed timber in the western United States.

(7) There is reason to believe that any shortfall which may already exist may worsen unless action is taken.

(8) In conjunction with the broad conservation actions expected in the next few months and years, conservation action is necessary with respect to exports of unprocessed timber.

#### (b) Purposes

The purposes of sections 620 to 620j of this title are –

- (1) to promote the conservation of forest resources in conjunction with State and Federal resources management plans, and other actions or decisions, affecting the use of forest resources;
- (2) to take action essential for the acquisition and distribution of forest resources or products in short supply in the western United States;
- (3) to take action necessary, to meet the

goals of Article XI 2(a) of the GATT 1994 (as defined in section 3501(1)(B) of title 19), to ensure sufficient supplies of certain forest resources or products which are essential to the United States;

(4) to continue and refine the existing Federal policy of restricting the export of unprocessed timber harvested from Federal lands in the western United States; and

(5) to effect measures aimed at meeting these objectives in conformity with the obligations of the United States under the WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (9) and (4), respectively, of section 3501 of title 19). (16 U.S.C. 620)

### **Restrictions on exports of unprocessed timber originating from Federal lands**

**Sec. 489** (a) Prohibition on export of unprocessed timber originating from Federal lands

Federal lands No person who acquires unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States may export such timber from the United States, or sell, trade, exchange, or otherwise convey such timber to any other person for the purpose of exporting such timber from the United States, unless such timber has been determined under subsection (b) of this section to be surplus to the needs of timber manufacturing facilities in the United States.

(b) Surpluses

(1) Determinations by Secretary concerned

The prohibition contained in subsection (a) of this section shall not apply to specific quantities of grades and species of unprocessed timber originating from Federal lands which the Secretary concerned determines to be surplus to domestic manufacturing needs.

(2) Procedures

Any determination under paragraph (1) shall be made in regulations issued in accordance with section 553 of title 5. Any such determination shall be reviewed at least once in every 3-year period. The Secretary concerned shall publish notice of such review in the Federal Register, and shall give the public an opportunity to comment on such review. (16 U.S.C. 620a)

### **Limitations on substitution of unprocessed Federal timber for unprocessed timber exported from private lands**

**Sec. 490** (a) Direct substitution

(1) Except as provided in paragraph (3) and subsection (c) of this section, no person may purchase directly from any department or agency of the United States unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if -

(A) such unprocessed timber is to be used in substitution for exported unprocessed timber originating from private lands; or

(B) such person has, during the

preceding 24-month period, exported unprocessed timber originating from private lands.

(2) Notwithstanding paragraph (1)

(A) Federal timber purchased pursuant to a contract entered into between the purchaser and the Secretary concerned before the date on which regulations to carry out this subsection are issued under section 620f of this title shall be governed by the regulations of the Secretary concerned in effect before such date that restrict the substitution of unprocessed timber originating from Federal lands for exported timber originating from private lands;

(B) in the 1-year period beginning on August 20, 1990, any person who operates under a Cooperative Sustained Yield Unit Agreement, and who has an historic export quota shall be limited to entering into contracts under such a quota to a volume equal to not more than 66 percent of the person's historic export quota used during fiscal year 1989;

(C) a person referred to in subparagraph (B) shall reduce the person's remaining substitution volume by an equal amount each year thereafter such that no volume is substituted under such a quota in fiscal year 1995 or thereafter; and

(D) the 24-month period referred to in paragraph (1)(B) shall not apply to any person who -

(i) before August 20, 1990, has,

under an historic export quota approved by the Secretary concerned, purchased unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States in substitution for exported unprocessed timber originating from private lands;

(ii) certifies to the Secretary concerned, within 3 months after August 20, 1990, that the person will, within 6 months after August 20, 1990, cease exporting unprocessed timber originating from private lands; and

(iii) ceases exports in accordance with such certification.

(3) Applicability. - In the case of the purchase by a person of unprocessed timber originating from Federal lands west of the 119th meridian in the State of Washington, paragraph (1) shall apply only if -

(A) the private lands referred to in paragraph (1) are owned by the person; or

(B) the person has the exclusive right to harvest timber from the private lands described in paragraph (1) during a period of more than 7 years, and may exercise that right at any time of the person's choosing.

(b) Indirect substitution

(1) In general

Except as provided in paragraph (2), no person may, beginning 21 days after August 20, 1990, purchase from any other person unprocessed timber

originating from Federal lands west of the 100th meridian in the contiguous 48 States if such person would be prohibited from purchasing such timber directly from a department or agency of the United States. Acquisitions of western red cedar which are domestically processed into finished products to be sold into domestic or international markets are exempt from the prohibition contained in this paragraph.

(2) Exceptions

(A) The Secretary of Agriculture shall, as soon as practicable but not later than 9 months after August 20, 1990, establish, by rule, a limited amount of unprocessed timber originating from Federal lands described in subparagraph (B) which may be purchased by a person otherwise covered by the prohibition contained in paragraph (1). Such limit shall equal -

(i) the amount of such timber acquired by such person, based on the higher of the applicant's actual timber purchasing receipts or the appropriate Federal agency's records, during fiscal years 1988, 1989, and 1990, divided by 3, or

(ii) 15 million board feet, whichever is less, except that such limit shall not exceed such person's proportionate share, with respect to all persons covered under this paragraph, of 50 million board feet.

(B) The Federal lands referred to in subparagraph (A) are Federal lands administered by the United States Forest Service Region 6 that are

located north of the Columbia River from its mouth and east to its first intersection with the 119th meridian, and from that point north of the 46th parallel and east.

(C) Any person may sell, trade, or otherwise exchange with any other person the rights obtained under subparagraph (A), except that such rights may not be sold, traded, or otherwise exchanged to persons already in possession of such rights obtained under subparagraph (A).

(D) Federal timber purchased from Federal lands described in subparagraph (B) pursuant to a contract entered into between the purchaser and the Secretary of Agriculture before the date on which regulations to carry out this subsection are issued under section 620f of this title shall be governed by the regulations of the Secretary of Agriculture in effect before such date that restrict the substitution of unprocessed timber originating from Federal lands for exported timber originating from private lands.

(c) Sourcing areas

(1) In general

The prohibitions contained in subsections (a) and (b) of this section shall not apply with respect to the acquisition of unprocessed timber originating from Federal lands within a sourcing area west of the 100th meridian in the contiguous 48 States approved by the Secretary concerned under this subsection by a person who -

(A) in the previous 24 months, has not exported unprocessed timber originating from private lands within the sourcing area; and

(B) during the period in which such approval is in effect, does not export unprocessed timber originating from private lands within the sourcing area. The Secretary concerned may waive the 24-month requirement set forth in subparagraph (A) for any person who, within 3 months after August 20, 1990, certifies that, within 6 months after August 20, 1990, such person will, for a period of not less than 3 years, cease exporting unprocessed timber originating from private lands within the sourcing area.

(2) Requirements for application for sourcing areas for processing facilities located outside the northwestern private timber open market area

The Secretaries concerned shall, not later than 3 months after August 20, 1990, prescribe procedures to be used by a person applying for approval of a sourcing area under paragraph (1). Such procedures shall require, at a minimum, the applicant to provide

(A) information regarding the location of private lands (except private land located in the northwestern private timber open market area) from which such person has, within the previous year, harvested or otherwise acquired unprocessed timber which has been exported from the United States; and

(B) information regarding the location of each timber manufacturing facility

owned or operated by such person within the proposed sourcing area boundaries at which the applicant proposes to process timber originating from Federal lands.

The prohibition contained in subsection (a) of this section shall not apply to a person before the date which is 1 month after the procedures referred to in this paragraph are prescribed. With respect to any person who submits an application in accordance with such procedures by the end of the time period set forth in the preceding sentence, the prohibition contained in subsection (a) of this section shall not apply to such person before the date on which the Secretary concerned approves or disapproves such application.

(3) Grant of approval for sourcing areas for processing facilities located outside of the northwestern private timber open market area

(A) In general

For each applicant, the Secretary concerned shall, on the record and after an opportunity for a hearing, not later than 4 months after receipt of the application for a sourcing area, either approve or disapprove the application. The Secretary concerned may approve such application only if the Secretary determines that the area that is the subject of the application, in which the timber manufacturing facilities at which the applicant desires to process timber originating from Federal lands are located, is geographically and economically separate

from any geographic area from which that person harvests for export any unprocessed timber originating from private lands.

(B) For timber manufacturing facilities located in Idaho

Except as provided in subparagraph (D), in making a determination referred to in subparagraph (A), the Secretary concerned shall consider the private timber export and the private and Federal timber sourcing patterns for the applicant's timber manufacturing facilities, as well as the private and Federal timber sourcing patterns for the timber manufacturing facilities of other persons in the same local vicinity of the applicant, and the relative similarity of such private and Federal timber sourcing patterns.

(C) For timber manufacturing facilities located in States other than Idaho

Except as provided in subparagraph (D), in making the determination referred to in subparagraph (A), the Secretary concerned shall consider the private timber export and the Federal timber sourcing patterns for the applicant's timber manufacturing facilities, as well as the Federal timber sourcing patterns for the timber manufacturing facilities of other persons in the same local vicinity of the applicant, and the relative similarity of such Federal timber sourcing patterns. Private timber sourcing patterns shall not be a factor in such determinations in States other than Idaho.

(D) Area not included

In deciding whether to approve or disapprove an application, the Secretary shall not -

(i) consider land located in the northwestern private timber open market area; or

(ii) condition approval of the application on the inclusion of any such land in the applicant's sourcing area, such land being includable in the sourcing area only to the extent requested by the applicant.

(4) Denial of application for sourcing areas for processing facilities located outside the northwestern private timber open market area

(A) Subject to subparagraph (B), and notwithstanding any other provision of law, in the 9-month period after receiving disapproval of an application submitted pursuant to this subsection, the applicant may purchase unprocessed timber originating from Federal lands in the area which is the subject of the application in an amount not to exceed 75 percent of the annual average of such person's purchases of unprocessed timber originating from Federal lands in the same area during the 5 full fiscal years immediately prior to submission of the application. In the subsequent 6-month period, such person may purchase not more than 25 percent of such annual average, after which time the prohibitions contained in subsection (a) of this section shall fully apply.

(B) If a person referred to in subparagraph (A) certifies to the Secretary concerned, within 90 days after receiving disapproval of such application, that such person shall, within 15 months after such disapproval, cease the export of unprocessed timber originating from private lands from the geographic area determined by the Secretary for which the application would have been approved, such person may continue to purchase unprocessed timber originating from Federal lands in the area which is the subject of the application, without being subject to the restrictions of subparagraph (A), except that such purchases during that 15-month period may not exceed 125 percent of the annual average of such person's purchases of unprocessed timber originating from Federal lands in the same area during the 5 full fiscal years immediately prior to submission of the application which was denied.

(C) Any person to whom subparagraph (B) applies may not, during the 15-month period after the person's application for sourcing area boundaries is denied, export unprocessed timber originating from private lands in the geographic area determined by the Secretary concerned for which the application would have been approved in amounts that exceed 125 percent of the annual average of such person's exports of unprocessed timber from such private lands during the 5 full fiscal years immediately prior to submission of the application.

(5) Review of determinations for sourcing areas for processing facilities located outside the northwestern private timber open market area Determinations made under paragraph (3) shall be reviewed, in accordance with the procedures prescribed in sections 620 to 620j of this title, not less often than every 5 years.

(6) Sourcing areas for processing facilities located in the northwestern private timber open market area

(A) Establishment In the northwestern private timber open market area -

(i) a sourcing area boundary shall be a circle around the processing facility of the sourcing area applicant or holder;

(ii) the radius of the circle -

(I) shall be the furthest distance that the sourcing area applicant or holder proposes to haul Federal timber for processing at the processing facility; and

(II) shall be determined solely by the sourcing area applicant or holder;

(iii) a sourcing area shall become effective on written notice to the Regional Forester for Region 6 of the Forest Service of the location of the boundary of the sourcing area;

(iv) the 24-month requirement in paragraph (1)(A) shall not apply;

(v) a sourcing area holder -

(I) may adjust the radius of the sourcing area not more frequently

than once every 24 months; and

(II) shall provide written notice to the Regional Forester for Region 6 of the adjusted boundary of its sourcing area before using the adjusted sourcing area; and

(vi) a sourcing area holder that relinquishes a sourcing area may not reestablish a sourcing area for that processing facility before the date that is 24 months after the date on which the sourcing area was relinquished.

(B) Transition

With respect to a portion of a sourcing area established before November 14, 1997, that contains Federal timber under contract before November 14, 1997, and is outside the boundary of a new sourcing area established under subparagraph (A) -

(i) that portion shall continue to be a sourcing area only until unprocessed Federal timber from the portion is no longer in the possession of the sourcing area holder; and

(ii) unprocessed timber from private land in that portion shall be exportable immediately after unprocessed timber from Federal land in the portion is no longer in the possession of the sourcing area holder.

(7) Relinquishment and termination of sourcing areas

(A) In general

A sourcing area may be relinquished at any time.

(B) Effective date

A relinquishment of a sourcing area shall be effective as of the date on which written notice is provided by the sourcing area holder to the Regional Forester with jurisdiction over the sourcing area where the processing facility of the holder is located.

(C) Exportability

(i) In general

On relinquishment or termination of a sourcing area, unprocessed timber from private land within the former boundary of the relinquished or terminated sourcing area is exportable immediately after unprocessed timber from Federal land from within that area is no longer in the possession of the former sourcing area holder.

(ii) No restriction

The exportability of unprocessed timber from private land located outside of a sourcing area shall not be restricted or in any way affected by relinquishment or termination of a sourcing area.

(d) Domestic transportation and processing of private timber

Nothing in this section restricts or authorizes any restriction on the domestic transportation or processing of timber harvested from private land, except that the Secretary may prohibit processing facilities located in the State of Idaho that have sourcing areas from processing timber harvested from private land

outside of the boundaries of those sourcing areas. (16 U.S.C. 620b)

**Restriction on exports of unprocessed timber from State and other public lands**

**Sec. 491** (a) Order to prohibit export of unprocessed timber originating from State or other public lands State or other public lands

Except as provided in subsection (g) of this section, the Secretary of Commerce shall issue orders to prohibit the export from the United States of unprocessed timber originating from public lands, as provided in subsection (b) of this section.

(b) Schedule for determination to prohibit export of unprocessed timber originating from State or other public lands

(1) States with annual sales of 400,000,000 board feet or less

With respect to States with annual sales volumes of 400,000,000 board feet or less, the Secretary of Commerce shall issue an order referred to in subsection (a) of this section to prohibit, notwithstanding any other provision of law, the export of unprocessed timber originating from public lands, effective June 1, 1993.

(2) States with annual sales of greater than 400,000,000 board feet

With respect to any State with an annual sales volume greater than 400,000,000 board feet, the Secretary of Commerce shall issue an order referred to in subsection (a) of this section to prohibit, notwithstanding any other

provision of law, the export of unprocessed timber originating from public lands, effective as of November 14, 1997.

(3) Prohibition on substitution

(A) Prohibition

Subject to subparagraph (B), each order of the Secretary of Commerce under paragraph (1) or (2) shall also prohibit, notwithstanding any other provision of law, any person from purchasing, directly or indirectly, unprocessed timber originating from public lands in a State if -

(i) such unprocessed timber would be used in substitution for exported unprocessed timber originating from private lands in that State; or

(ii) such person has, during the preceding 24-month period, exported unprocessed timber originating from private lands in that State.

(B) Exemption

The prohibitions referred to in subparagraph (A) shall not apply in a State on or after the date on which -

(i) the Governor of that State provides the Secretary of Commerce with notification of a prior program under subparagraph (C) of subsection (d)(2) of this section,

(ii) the Secretary of Commerce approves a program of that State under subparagraph (A) of subsection (d)(2) of this section, or

(iii) regulations of the Secretary of Commerce issued under subsection

(c) of this section to carry out this section take effect, whichever occurs first.

(4) Report to Congress

Not later than June 1, 1995, the Secretary of Commerce, in conjunction with the Secretaries of Agriculture and Interior, shall issue a report to the Congress on the effects of the reallocation, as a result of the enactment of sections 620 to 620j of this title, of public lands timber resources to the domestic timber processing sector, the ability of the domestic timber processing sector to meet domestic demand for forest products, the volume of transshipment of timber originating from public lands across State borders, the effectiveness of rules issued and administered by the Secretary of Commerce pursuant to sections 620 to 620j of this title and the effectiveness of State programs authorized under subsection (d) of this section, and trends in growth and productivity in the domestic timber processing sector.

(c) Federal program

(1) Administration by the Secretary of Commerce

(A) In general

Subject to subparagraph (B), the Secretary of Commerce shall, as soon as possible after July 1, 1993 -

(i) determine the species, grades, and geographic origin of unprocessed timber to be prohibited from export in each State that is subject to an order issued under subsection (a)

of this section;

(ii) administer the prohibitions consistent with sections 620 to 620j of this title;

(iii) ensure that the species, grades, and geographic origin of unprocessed timber prohibited from export within each State is representative of the species, grades, and geographic origin of timber comprising the total timber sales program of the State; and

(iv) issue such regulations as are necessary to carry out this section.

(B) Exemption

The actions and regulations of the Secretary under subparagraph (A) shall not apply with respect to a State that is administering and enforcing a program under subsection (d) of this section.

(2) Cooperation with other agencies

The Secretary of Commerce is authorized to enter into agreements with Federal and State agencies with appropriate jurisdiction to assist the Secretary in carrying out sections 620 to 620j of this title.

(d) Authorized State programs

(1) Authorization of new State programs

Notwithstanding subsection (c) of this section, the Governor of any State may submit a program to the Secretary of Commerce for approval that -

(A) implements, with respect to unprocessed timber originating from

public lands in that State, the prohibition on exports set forth in the Secretary's order under subsection (a) of this section; and

(B) ensures that the species, grades, and geographic origin of unprocessed timber prohibited from export within the State is representative of the species, grades, and geographic origin of timber comprising the total timber sales program of the State.

(2) Approval of State programs

(A) Program approval

Not later than 30 days after the submission of a program under paragraph (1), the Secretary of Commerce shall approve the program unless the Secretary finds that the program will result in the export of unprocessed timber from public lands in violation of sections 620 to 620j of this title and publishes that finding in the Federal Register.

(B) State program in lieu of Federal program

If the Secretary of Commerce approves a program submitted under paragraph (1), the Governor of the State for which the program was submitted, or such other official of that State as the Governor may designate, may administer and enforce the program, which shall apply in that State in lieu of the regulations issued under subsection (c) of this section.

(C) Prior State programs

Not later than 30 days after July 1,

1993, the Governor of any State that had, before May 4, 1993, issued regulations under this subsection as in effect before May 4, 1993, may provide the Secretary of Commerce with written notification that the State has a program that was in effect on May 3, 1993, and that meets the requirements of paragraph (1). Upon such notification, that State may administer and enforce that program in that State until the end of the 9-month period beginning on the date on which the Secretary of Commerce issues regulations under subsection (c) of this section, and that program shall, during the period in which it is so administered and enforced, apply in that State in lieu of the regulations issued under subsection (c) of this section. Such Governor may submit, with such notification, the program for approval by the Secretary under paragraph (1).

(e) Prior contracts

Nothing in this section shall apply to -

(1) any contract for the purchase of unprocessed timber originating from public lands that was entered into before -

(A) September 10, 1990, with respect to States with annual sales volumes of 400,000,000 board feet or less; or

(B) January 1, 1991, with respect to States with annual sales volumes greater than 400,000,000 board feet; or

(2) any contract under which exports of unprocessed timber were permitted

pursuant to an order of the Secretary of Commerce in effect under this section before October 23, 1992.

(f) Western red cedar

Nothing in this section shall be construed to supersede section 2406(i) of title 50, Appendix.

(g) Presidential authority

The President is authorized, after suitable notice and a public comment period of not less than 120 days, to suspend the provisions of this section if a panel of experts has reported to the Dispute Settlement Body of the World Trade Organization (as the term "World Trade Organization" is defined in section 3501(8) of title 19), or a ruling issued under the formal dispute settlement proceeding provided under any other trade agreement finds, that the provisions of this section are in violation of, or inconsistent with, United States obligations under that trade agreement.

(h) Removal or modifications of State restrictions

Based upon a determination that it is in the national economic interest, the President may remove or modify any prohibition on exports from public lands in a State if that State petitions the President to remove or modify such prohibition.

(i) Effect of prior Federal law

No provision of Federal law which imposes requirements with respect to the generation of revenue from State timberlands and was enacted before August 20, 1990, shall be construed to invalidate, supersede, or otherwise affect any action

of a State or political subdivision of a State pursuant to sections 620 to 620j of this title.

(j) Surplus timber

The prohibitions on exports contained in orders of the Secretary of Commerce issued under subsection (a) of this section shall not apply to specific quantities of grades and species of unprocessed timber originating from public lands which the Secretary concerned determines by rule to be surplus to the needs of timber manufacturing facilities in the United States. Any such determination may, by rule, be withdrawn by the Secretary concerned if the Secretary determines that the affected timber is no longer surplus to the needs of timber manufacturing facilities in the United States.

(k) Suspension of prohibitions

Notwithstanding any other provision of this section, beginning on January 1, 1998, and annually thereafter, if the President finds, upon review of the purposes and implementation of sections 620 to 620j of this title, that the prohibitions on exports required by subsection (a) of this section no longer promote the purposes of sections 620 to 620j of this title, then the President may suspend such prohibitions, except that such suspension shall not take effect until 90 days after the President notifies the Congress of such finding.

(l) Existing authority not affected

Nothing in sections 620 to 620j of this title shall be construed to limit the authority of the President or the United States Trade Representative to take action authorized

by law to respond appropriately to any measures taken by a foreign government in connection with sections 620 to 620j of this title. (16 U.S.C. 620c)

### **Monitoring and enforcement**

#### **Sec. 492 (a) Monitoring and reports**

In accordance with regulations issued under this section –

(1) each person who acquires, either directly or indirectly, unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States shall report the receipt and disposition of such timber to the Secretary concerned, in such form as such Secretary may by rule prescribe; except that nothing in this paragraph shall be construed to hold any person responsible for the reporting of the disposition of any such timber held by subsequent persons;

(2) each person who transfers to another person unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States shall, before completing such transfer -

(A) provide to such other person a written notice, in such form as the Secretary concerned may prescribe, which shall identify the Federal origin of such timber;

(B) receive from such other person a written acknowledgment of such notice and a written agreement that such other person will comply with the requirements of sections 620 to 620j of

this title, in such form as the Secretary concerned may prescribe; and

(C) provide to the Secretary concerned copies of all notices, acknowledgments, and agreements referred to in subparagraphs (A) and (B);

(3) each person who acquires, either directly or indirectly, unprocessed timber originating from public lands in a State that is subject to an order issued by the Secretary of Commerce under section 620c(a) of this title, other than a State that is administering and enforcing a program under section 620c(d) of this title, shall report the receipt and disposition of the timber to the Secretary of Commerce, in such form as the Secretary may by rule prescribe, except that nothing in this paragraph shall be construed to hold any person responsible for reporting the disposition of any timber held by subsequent persons; and

(4) each person who transfers to another person unprocessed timber originating from public lands in a State that is subject to an order issued by the Secretary of Commerce under section 620c(a) of this title, other than a State that is administering and enforcing a program under section 620c(d) of this title, shall, before completing the transfer -

(A) provide to such other person a written notice, in such form as the Secretary of Commerce may prescribe, that shall identify the public lands from which the timber originated; and

(B) receive from such other person -

(i) a written acknowledgment of the notice, and

(ii) a written agreement that the recipient of the timber will comply with the requirements of sections 620 to 620j of this title, in such form as the Secretary of Commerce may prescribe; and

(C) provide to the Secretary of Commerce copies of all notices, acknowledgments, and agreements referred to in subparagraphs (A) and (B).

(b) Report to Congress

Using the information gathered under subsection (a) of this section, the Secretaries of Agriculture and Interior shall, not later than June 1, 1995, submit to the Congress a report on the disposition of unprocessed timber harvested from Federal lands west of the 100th meridian in the contiguous 48 States, and recommendations concerning the practice of indirect substitution of such timber for exported timber harvested from private lands. Specifically, such report shall –

- (1) analyze the effects of indirect substitution on market efficiency;
- (2) analyze the effects of indirect substitution on domestic log supply;
- (3) offer any recommendations that the Secretaries consider necessary for specific statutory or regulatory changes regarding indirect substitution;
- (4) provide summaries of the data collected;
- (5) analyze the effects of the provisions

of section 620b(b)(2)(C) of this title; and

(6) provide such other information as the Secretaries consider appropriate.

(c) Civil penalties for violation

(1) Exports

(A) If the Secretary concerned finds, on the record and after an opportunity for a hearing, that a person, with willful disregard for the prohibition contained in sections 620 to 620j of this title against exporting Federal timber, exported or caused to be exported unprocessed timber originating from Federal lands in violation of sections 620 to 620j of this title, such Secretary may assess against such person a civil penalty of not more than \$500,000 for each violation, or 3 times the gross value of the unprocessed timber involved in the violation, whichever amount is greater.

(B) (i) Subject to clause (ii), if the Secretary of Commerce finds, on the record and after an opportunity for a hearing, that a person, with willful disregard for the restrictions contained in an order of the Secretary under section 620c(a) of this title on exports of unprocessed timber from public lands, exported or caused to be exported unprocessed timber originating from public lands in violation of such order, the Secretary may assess against such person a civil penalty of not more than \$500,000 for each violation, or 3 times the gross value of the unprocessed timber involved in the violation, whichever amount is greater.

(ii) Clause (i) shall not apply with respect to exports of unprocessed timber originating from public lands in a State that is administering and enforcing a program under section 620c(d) of this title.

(2) Other violations

(A) If the Secretary concerned finds, on the record and after an opportunity for a hearing, that a person has violated any provision of sections 620 to 620j of this title or any regulation issued under sections 620 to 620j of this title relating to lands which they administer (notwithstanding that such violation may not have caused the export of unprocessed Federal timber in violation of sections 620 to 620j of this title), such Secretary may -

(i) assess against such person a civil penalty of not more than \$75,000 for each violation if the Secretary determines that the person committed such violation in disregard of such provision or regulation;

(ii) assess against such person a civil penalty of not more than \$50,000 for each violation if the Secretary determines that the person should have known that the action constituted a violation; or

(iii) assess against such person a civil penalty of not more than \$500,000 if the Secretary determines that the person committed such violation willfully.

(B) (i) Subject to clause (ii), if the

Secretary of Commerce finds, on the record and after an opportunity for a hearing, that a person has violated, on or after June 1, 1993, any provision of sections 620 to 620j of this title or any regulation issued under sections 620 to 620j of this title relating to the export of unprocessed timber originating from public lands (whether or not the violation caused the export of unprocessed timber from public lands in violation of sections 620 to 620j of this title), the Secretary may assess against such person a civil penalty to the same extent as the Secretary concerned may impose a penalty under clause (i), (ii), or (iii) of subparagraph (A).

(ii) Clause (i) shall not apply with respect to unprocessed timber originating from public lands in a State that is administering and enforcing a program under section 620c (d) of this title.

(C) Mitigation of penalties. -

(i) In general. - The Secretary concerned -

(I) in determining the applicability of any penalty imposed under this paragraph, shall take into account all relevant mitigating factors, including mistake, inadvertence, and error; and

(II) based on any mitigating factor, may, with respect to any penalty imposed under this paragraph -

(aa) reduce the penalty;

(bb) not impose the penalty; or

(cc) on condition of there being no further violation under this paragraph for a prescribed period, suspend imposition of the penalty.

(ii) Contractual remedies. - In the case of a minor violation of sections 620 to 620j of this title (including a regulation), the Secretary concerned shall, to the maximum extent practicable, permit a contracting officer to redress the violation in accordance with the applicable timber sale contract rather than assess a penalty under this paragraph.

(3) Penalties not exclusive; judicial review

A penalty assessed under this subsection shall not be exclusive of any other penalty provided by law and shall be subject to review in an appropriate United States district court.

(d) Administrative remedies

(1) Debarment

(A) In general

Subject to subparagraph (B), the head of the appropriate Federal department or agency under sections 620 to 620j of this title may debar any person who violates sections 620 to 620j of this title, or any regulation or contract issued under sections 620 to 620j of this title, from entering into any contract for the purchase of unprocessed timber from Federal lands for a period of not more than 5 years. Such person shall also be precluded from taking delivery of Federal timber

purchased by another party for the period of debarment.

(B) Prerequisites for debarment

(i) In general

No person may be debarred from bidding for or entering into a contract for the purchase of unprocessed timber from Federal lands under subparagraph (A) unless the head of the appropriate Federal department or agency first finds, on the record and after an opportunity for a hearing, that debarment is warranted.

(ii) Withholding of awards during debarment proceedings

The head of an appropriate Federal department or agency may withhold an award under sections 620 to 620j of this title of a contract for the purchase of unprocessed timber from Federal lands during a debarment proceeding.

(2) Cancellation of contracts

The head of the appropriate Federal department or agency under sections 620 to 620j of this title may cancel any contract entered into with a person found to have violated sections 620 to 620j of this title or regulations issued under sections 620 to 620j of this title.

(e) Exception

Subsections (c) and (d) of this section do not apply to violations of section 620i of this title. (16 U.S.C. 620d)

**Definitions**

**Sec. 493** For purposes of sections 620 to 620j of this title:

(1) The term “acquire” means to come into possession of, whether directly or indirectly, through a sale, trade, exchange, or other transaction, and the term “acquisition” means the act of acquiring.

(2) The term “Federal lands” means lands that are owned by the United States, but does not include any lands the title to which is -

(A) held in trust by the United States for the benefit of any Indian tribe or individual,

(B) held by any Indian tribe or individual subject to a restriction by the United States against alienation, or

(C) held by any Native Corporation as defined in section 1602 of title 43.

(3) Minor violation. - The term “minor violation” means a violation, other than an intentional violation, involving a single contract, purchase order, processing facility, or log yard involving a quantity of logs that is less than 25 logs and has a total value (at the time of the violation) of less than \$10,000.

(4) Northwestern private timber open market area. - The term “northwestern private timber open market area” means the State of Washington.

(5) The term “person” means any individual, partnership, corporation, association, or other legal entity and includes any subsidiary, subcontractor, or parent company, and business

affiliates where 1 affiliate controls or has the power to control the other or when both are controlled directly or indirectly by a third person.

(6) The term “private lands” means lands held or owned by a person. Such term does not include Federal lands or public lands, or any lands the title to which is -

(A) held in trust by the United States for the benefit of any Indian tribe or individual,

(B) held by any Indian tribe or individual subject to a restriction by the United States against alienation, or

(C) held by any Native Corporation as defined in section 1602 of title 43.

(7) The term “public lands” means lands west of the 100th meridian in the contiguous 48 States, that are held or owned by a State or political subdivision thereof, or any other public agency. Such term does not include any lands the title to which is -

(A) held by the United States;

(B) held in trust by the United States for the benefit of any Indian tribe or individual,

(C) held by any Indian tribe or individual subject to a restriction by the United States against alienation, or

(D) held by any Native Corporation as defined in section 1602 of title 43.

(8) The term “Secretary concerned” means -

(A) the Secretary of Agriculture, with

respect to Federal lands administered by that Secretary; and

(B) the Secretary of the Interior with respect to Federal lands administered by that Secretary.

(9) (A) The term “unprocessed timber” means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use.

(B) The term “unprocessed timber” does not include timber processed into any one of the following:

(i) Lumber or construction timbers, except Western Red Cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list grades, sawn on 4 sides, not intended for remanufacture.

(ii) Lumber, construction timbers, or cants for remanufacture, except Western Red Cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list clear grades, sawn on 4 sides, not to exceed 12 inches in thickness.

(iii) Lumber, construction timbers, or cants for remanufacture, except Western Red Cedar, that do not meet the grades referred to in clause (ii) and are sawn on 4 sides, with wane less than 1/4 of any face, not exceeding 8 3/4 inches in thickness.

(iv) Chips, pulp, or pulp products.

(v) Veneer or plywood.

(vi) Poles, posts, or piling cut or treated with preservatives for use as such.

(vii) Shakes or shingles.

(viii) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp.

(ix) Pulp logs, cull logs, and incidental volumes of grade 3 and 4 sawlogs processed at domestic pulp mills, domestic chip plants, or other domestic operations for the primary purpose of conversion of the logs into chips, or to the extent that a small quantity of such logs are processed, into other products at domestic processing facilities.

(10) The acquisition of unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States to be used in “substitution” for exported unprocessed timber originating from private lands means acquiring unprocessed timber from such Federal lands and engaging in exporting, or selling for export, unprocessed timber originating from private lands within the same geographic and economic area.

(11) Violation. - The term “violation” means a violation of sections 620 to 620j of this title (including a regulation issued to implement sections 620 to 620j of this title) with regard to a course of action, including -

(A) in the case of a violation by the original purchaser of unprocessed timber, an act or omission with respect to a single timber sale; and

(B) in the case of a violation of a subsequent purchaser of the timber, an act or omission with respect to an operation at a particular processing facility or log yard. (16 U.S.C. 620e)

### Effective date

**Sec. 494** Except as otherwise provided in this title, the provisions of this title (enacting this section and sections 620a to 620j of this title and provisions set out as a note below) take effect on the date of the enactment of this Act (Aug. 20, 1990).” (16 U.S.C. 620 note)

### Regulations and review

#### Sec. 495 (a) Regulations

##### (1) Agriculture and Interior

The Secretaries of Agriculture and Interior shall, in consultation, each prescribe new coordinated and consistent regulations to implement sections 620 to 620j of this title on lands which they administer.

##### (2) Commerce

The Secretary of Commerce shall promulgate such rules and guidelines as may be necessary to carry out sections 620 to 620j of this title.

##### (3) Deadline

(A) In general. - Except as otherwise provided in sections 620 to 620j of this title, regulations and guidelines required under this subsection shall be issued not later than June 1, 1998.

(B) The regulations and guidelines issued under sections 620 to 620j of

this title that were in effect prior to September 8, 1995 shall remain in effect until new regulations and guidelines are issued under subparagraph (A).

#### (4) Painting and branding

##### (A) In general

The Secretary concerned shall issue regulations that impose reasonable painting, branding, or other forms of marking or tracking requirements on unprocessed timber if -

(i) the benefits of the requirements outweigh the cost of complying with the requirements; and

(ii) the Secretary determines that, without the requirements, it is likely that the unprocessed timber -

(I) would be exported in violation of sections 620 to 620j of this title; or

(II) if the unprocessed timber originated from Federal lands, would be substituted for unprocessed timber originating from private lands west of the 100th Meridian in the contiguous 48 States in violation of sections 620 to 620j of this title.

##### (B) Minimum size

The Secretary concerned shall not impose painting, branding, or other forms of marking or tracking requirements on -

(i) the face of a log that is less than 7 inches in diameter; or

(ii) unprocessed timber that is less than 8 feet in length or less than 1/3 sound wood.

(C) Waivers

(i) In general

The Secretary concerned may waive log painting and branding requirements -

(I) for a geographic area, if the Secretary determines that the risk of the unprocessed timber being exported from the area or used in substitution is low;

(II) with respect to unprocessed timber originating from private lands located within an approved sourcing area for a person who certifies that the timber will be processed at a specific domestic processing facility to the extent that the processing does occur; or

(III) as part of a log yard agreement that is consistent with the purposes of the export and substitution restrictions imposed under sections 620 to 620j of this title.

(ii) Review and termination of waivers A waiver granted under clause (i) -

(I) shall, to the maximum extent practicable, be reviewed once a year; and

(II) shall remain effective until terminated by the Secretary.

(D) Factors

In making a determination under this

paragraph, the Secretary concerned shall consider -

(i) the risk of unprocessed timber of that species, grade, and size being exported or used in substitution;

(ii) the location of the unprocessed timber and the effect of the location on its being exported or used in substitution;

(iii) the history of the person involved with respect to compliance with log painting and branding requirements; and

(iv) any other factor that is relevant to determining the likelihood of the unprocessed timber being exported or used in substitution.

(5) Reporting

(A) In general

Subject to subparagraph (B), the Secretary concerned shall issue regulations that impose reasonable documentation and reporting requirements if the benefits of the requirements outweigh the cost of complying with the requirements.

(B) Waivers

(i) In general

The Secretary concerned may waive documentation and reporting requirements for a person if -

(I) an audit of the records of the facility of the person reveals substantial compliance with all notice, reporting, painting, and branding requirements during the

preceding year; or

(II) the person transferring the unprocessed timber and the person processing the unprocessed timber enter into an advance agreement with the Secretary concerned regarding the disposition of the unprocessed timber by domestic processing.

(ii) Review and termination of waivers

A waiver granted under clause (i) -

(I) shall, to the maximum extent practicable, be reviewed once a year; and

(II) shall remain effective until terminated by the Secretary.

(b) Review

The Secretaries of Agriculture and Interior shall, in consultation, review the definition of unprocessed timber under section 620e(7) of this title for purposes of sections 620 to 620j of this title and, not later than 18 months after August 20, 1990, submit to the Congress any recommendations they have with respect to such definition. Specifically, the Secretaries shall report on the effects of maintaining 2 size standards under section 620e(B)(ii) and (iii) of this title. “620e(7)(B)(ii)”. (16 U.S.C. 620f)

### **Authorization of appropriations**

**Sec. 496** There are authorized to be appropriated such sums as may be necessary to carry out sections 620 to 620j of this title. (16 U.S.C. 620g)

### **Savings provision**

**Sec. 497** Nothing in sections 620 to 620j of this title, or regulations issued under sections 620 to 620j of this title, shall be construed to abrogate or affect any timber sale contract entered into before August 20, 1990. (16 U.S.C. 620h)

### **Eastern hardwoods study**

**Sec. 498** (a) Study

The Secretary of Commerce, in conjunction with the Secretary of Agriculture and the Secretary of the Interior, shall conduct a study of the export from the United States, during the 2-year period beginning on January 1, 1991, of unprocessed hardwood timber harvested from Federal lands or public lands east of the 100th meridian. In order to carry out the provisions of this section -

(1) the Secretary of Commerce shall require each person exporting such timber from the United States to declare, in addition to the information normally required in the Shipper’s Export Declarations, the State in which the timber was grown and harvested; and

(2) the Secretary of Agriculture and the Secretary of the Interior shall ensure that all hardwood saw timber harvested from Federal lands east of the 100th meridian is marked in such a manner as to make it readily identifiable at all times before its manufacture, and shall take such steps as each Secretary considers appropriate to ensure that such markings are not altered or destroyed before

manufacturing.

(b) Report to Congress

Not later than April 1, 1993, the Secretary of Commerce shall submit to the Committees on Agriculture, Natural Resources, and Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the volume and value of unprocessed timber grown and harvested from Federal lands or public lands east of the 100th meridian that is exported from the United States during the 2-year period beginning on January 1, 1991, the country to which such timber is exported, and the State in which such timber was grown and harvested. (16 U.S.C. 620i)

**Authority of Export Administration Act of 1979**

**Sec. 499** Nothing in sections 620 to 620j of this title shall be construed to -

- (1) prejudice the outcome of pending or prospective petitions filed under, or
- (2) warrant the exercise of the authority contained in, section 7 of the Export Administration Act of 1979 (50 App. U.S.C. 2406) with respect to the export of unprocessed timber. (16 U.S.C. 620j)

## Wilderness Act

**September 3, 1964 (Pub. L. 88-577, 78 Stat. 890; 16 U.S.C. 1131 note, 1131, 1132, 1132 note, 1133 to 1136)**

### Short title

**Sec. 1** “This Act may be cited as the ‘Wilderness Act’. (16 U.S.C. 1131 note)

### National Wilderness Preservation System

**Sec. 2** (a) Establishment; Congressional declaration of policy; wilderness areas; administration for public use and enjoyment, protection, preservation, and gathering and dissemination of information; provisions for designation as wilderness areas

In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness. For this purpose there is hereby established a National Wilderness Preservation System to be composed of federally owned areas designated by Congress as “wilderness areas”, and these shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to

provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness; and no Federal lands shall be designated as “wilderness areas” except as provided for in this chapter or by a subsequent Act.

(b) Management of area included in System; appropriations

The inclusion of an area in the National Wilderness Preservation System notwithstanding, the area shall continue to be managed by the Department and agency having jurisdiction thereover immediately before its inclusion in the National Wilderness Preservation System unless otherwise provided by Act of Congress. No appropriation shall be available for the payment of expenses or salaries for the administration of the National Wilderness Preservation System as a separate unit nor shall any appropriations be available for additional personnel stated as being required solely for the purpose of managing or administering areas solely because they are included within the National Wilderness Preservation System.

(c) “Wilderness” defined

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where

man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of underdeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value. (16 U.S.C. 1131)

### **Extent of System**<sup>1</sup>

**Sec. 3** (a) Designation of wilderness areas; filing of maps and descriptions with Congressional committees; correction of errors; public records; availability of records in regional offices

All areas within the national forests classified at least 30 days before September 3, 1964 by the Secretary of Agriculture or the Chief of the Forest Service as "wilderness", "wild", or "canoe" are hereby designated as wilderness areas. The Secretary of Agriculture shall -

(1) Within one year after September 3, 1964, file a map and legal description of each wilderness area with the Interior and Insular Affairs Committees of the

United States Senate and the House of Representatives, and such descriptions shall have the same force and effect as if included in this chapter: Provided, however, That correction of clerical and typographical errors in such legal descriptions and maps may be made.

(2) Maintain, available to the public, records pertaining to said wilderness areas, including maps and legal descriptions, copies of regulations governing them, copies of public notices of, and reports submitted to Congress regarding pending additions, eliminations, or modifications. Maps, legal descriptions, and regulations pertaining to wilderness areas within their respective jurisdictions also shall be available to the public in the offices of regional foresters, national forest supervisors, and forest rangers.

(b) Review by Secretary of Agriculture of classifications as primitive areas; Presidential recommendations to Congress; approval of Congress; size of primitive areas; Gore Range-Eagles Nest Primitive Area, Colorado

The Secretary of Agriculture shall, within ten years after September 3, 1964, review, as to its suitability or nonsuitability for preservation as wilderness, each area in the national forests classified on September 3, 1964 by the Secretary of Agriculture or the Chief of the Forest Service as "primitive" and report his findings to the President. The President shall advise the United States Senate and House of Representatives of his recommendations with respect to the designa-

tion as "wilderness" or other reclassification of each area on which review has been completed, together with maps and a definition of boundaries. Such advice shall be given with respect to not less than one-third of all the areas now classified as "primitive" within three years after September 3, 1964, not less than two-thirds within seven years after September 3, 1964, and the remaining areas within ten years after September 3, 1964. Each recommendation of the President for designation as "wilderness" shall become effective only if so provided by an Act of Congress. Areas classified as "primitive" on September 3, 1964 shall continue to be administered under the rules and regulations affecting such areas on September 3, 1964 until Congress has determined otherwise. Any such area may be increased in size by the President at the time he submits his recommendations to the Congress by not more than five thousand acres with no more than one thousand two hundred and eighty acres of such increase in any one compact unit; if it is proposed to increase the size of any such area by more than five thousand acres or by more than one thousand two hundred and eighty acres in any one compact unit the increase in size shall not become effective until acted upon by Congress. Nothing herein contained shall limit the President in proposing, as part of his recommendations to Congress, the alteration of existing boundaries of primitive areas or recommending the addition of any contiguous area of national forest lands predominantly of wilderness value. Notwithstanding any other provisions of this chapter,

the Secretary of Agriculture may complete his review and delete such area as may be necessary, but not to exceed seven thousand acres, from the southern tip of the Gore Range-Eagles Nest Primitive Area, Colorado, if the Secretary determines that such action is in the public interest.

(c) Review by Secretary of the Interior of roadless areas of national park system and national wildlife refuges and game ranges and suitability of areas for preservation as wilderness; authority of Secretary of the Interior to maintain roadless areas in national park system unaffected

Within ten years after September 3, 1964 the Secretary of the Interior shall review every roadless area of five thousand contiguous acres or more in the national parks, monuments and other units of the national park system and every such area of, and every roadless island within the national wildlife refuges and game ranges, under his jurisdiction on September 3, 1964 and shall report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness. The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendation with respect to the designation as wilderness of each such area or island on which review has been completed, together with a map thereof and a definition of its boundaries. Such advice shall be given with respect to not less than one-third of the areas and islands to be reviewed under this subsection within three years after September 3, 1964, not less than

two-thirds within seven years of September 3, 1964 and the remainder within ten years of September 3, 1964. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress. Nothing contained herein shall, by implication or otherwise, be construed to lessen the present statutory authority of the Secretary of the Interior with respect to the maintenance of roadless areas within units of the national park system.

(d) Conditions precedent to administrative recommendations of suitability of areas for preservation as wilderness; publication in Federal Register; public hearings; views of State, county, and Federal officials; submission of views to Congress

(1) The Secretary of Agriculture and the Secretary of the Interior shall, prior to submitting any recommendations to the President with respect to the suitability of any area for preservation as wilderness -

(A) give such public notice of the proposed action as they deem appropriate, including publication in the Federal Register and in a newspaper having general circulation in the area or areas in the vicinity of the affected land;

(B) hold a public hearing or hearings at a location or locations convenient to the area affected. The hearings shall be announced through such means as the respective Secretaries involved deem appropriate, including notices in the Federal Register and in newspapers of general circulation in the area:

Provided, That if the lands involved are located in more than one State, at least one hearing shall be held in each State in which a portion of the land lies;

(C) at least thirty days before the date of a hearing advise the Governor of each State and the governing board of each county, or in Alaska the borough, in which the lands are located, and Federal departments and agencies concerned, and invite such officials and Federal agencies to submit their views on the proposed action at the hearing or by no later than thirty days following the date of the hearing.

(2) Any views submitted to the appropriate Secretary under the provisions of (1) of this subsection with respect to any area shall be included with any recommendations to the President and to Congress with respect to such area.

(e) Modification or adjustment of boundaries; public notice and hearings; administrative and executive recommendations to Congress; approval of Congress

Any modification or adjustment of boundaries of any wilderness area shall be recommended by the appropriate Secretary after public notice of such proposal and public hearing or hearings as provided in subsection (d) of this section. The proposed modification or adjustment shall then be recommended with map and description thereof to the President. The President shall advise the United States Senate and the House of Representatives of his recommendations with respect to such modification or adjustment and such

recommendations shall become effective only in the same manner as provided for in subsections (b) and (c) of this section.

\*\*\* (16 U.S.C. 1132)

<sup>1</sup> A complete list of Wilderness areas can be found at 16 U.S.C. 1132.

### Use of wilderness areas

**Sec. 4** (a) Purposes of national forests, national park system, and national wildlife refuge system; other provisions applicable to national forests, Superior National Forest, and national park system

The purposes of this chapter are hereby declared to be within and supplemental to the purposes for which national forests and units of the national park and national wildlife refuge systems are established and administered and -

(1) Nothing in this chapter shall be deemed to be in interference with the purpose for which national forests are established as set forth in the Act of June 4, 1897 (30 Stat. 11), and the Multiple-Use Sustained-Yield Act of June 12, 1960 (74 Stat. 215) (16 U.S.C. 528-531).

(2) Nothing in this chapter shall modify the restrictions and provisions of the Shipstead-Nolan Act (Public Law 539, Seventy-first Congress, July 10, 1930; 46 Stat. 1020), the Thye-Blatnik Act (Public Law 733, Eightieth Congress, June 22, 1948; 62 Stat. 568), and the Humphrey-Thye-Blatnik-Andresen Act (Public Law 607, Eighty-Fourth Congress, June 22, 1956; 70 Stat. 326), as applying to the Superior National Forest

or the regulations of the Secretary of Agriculture.

(3) Nothing in this chapter shall modify the statutory authority under which units of the national park system are created. Further, the designation of any area of any park, monument, or other unit of the national park system as a wilderness area pursuant to this chapter shall in no manner lower the standards evolved for the use and preservation of such park, monument, or other unit of the national park system in accordance with sections 1, 2, 3, and 4 of this title, the statutory authority under which the area was created, or any other Act of Congress which might pertain to or affect such area, including, but not limited to, the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 432 et seq.); section 3(2) of the Federal Power Act (16 U.S.C. 796(2)); and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461 et seq.).

(b) Agency responsibility for preservation and administration to preserve wilderness character; public purposes of wilderness areas

Except as otherwise provided in this chapter, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in this chapter, wilderness areas shall be devoted to the public purposes of recreational,

scenic, scientific, educational, conservation, and historical use.

(c) Prohibition provisions: commercial enterprise, permanent or temporary roads, mechanical transports, and structures or installations; exceptions: area administration and personal health and safety emergencies

Except as specifically provided for in this chapter, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this chapter and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this chapter (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.

(d) Special provisions

The following special provisions are hereby made:

(1) Aircraft or motorboats; fire, insects, and diseases

Within wilderness areas designated by this chapter the use of aircraft or motorboats, where these uses have already become established, may be permitted to continue subject to such restrictions as the Secretary of Agriculture deems desirable. In addition, such measures may be taken as may be

necessary in the control of fire, insects, and diseases, subject to such conditions as the Secretary deems desirable.

(2) Mineral activities, surveys for mineral value

Nothing in this chapter shall prevent within national forest wilderness areas any activity, including prospecting, for the purpose of gathering information about mineral or other resources, if such activity is carried on in a manner compatible with the preservation of the wilderness environment. Furthermore, in accordance with such program as the Secretary of the Interior shall develop and conduct in consultation with the Secretary of Agriculture, such areas shall be surveyed on a planned, recurring basis consistent with the concept of wilderness preservation by the United States Geological Survey and the United States Bureau of Mines to determine the mineral values, if any, that may be present; and the results of such surveys shall be made available to the public and submitted to the President and Congress.

(3) Mining and mineral leasing laws; leases, permits, and licenses; withdrawal of minerals from appropriation and disposition

Notwithstanding any other provisions of this chapter, until midnight December 31, 1983, the United States mining laws and all laws pertaining to mineral leasing shall, to the same extent as applicable prior to September 3, 1964, extend to those national forest lands designated by this chapter as "wilderness areas";

subject, however, to such reasonable regulations governing ingress and egress as may be prescribed by the Secretary of Agriculture consistent with the use of the land for mineral location and development and exploration, drilling, and production, and use of land for transmission lines, waterlines, telephone lines, or facilities necessary in exploring, drilling, producing, mining, and processing operations, including where essential the use of mechanized ground or air equipment and restoration as near as practicable of the surface of the land disturbed in performing prospecting, location, and, in oil and gas leasing, discovery work, exploration, drilling, and production, as soon as they have served their purpose. Mining locations lying within the boundaries of said wilderness areas shall be held and used solely for mining or processing operations and uses reasonably incident thereto; and hereafter, subject to valid existing rights, all patents issued under the mining laws of the United States affecting national forest lands designated by this chapter as wilderness areas shall convey title to the mineral deposits within the claim, together with the right to cut and use so much of the mature timber therefrom as may be needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available, and if the timber is cut under sound principles of forest management as defined by the national forest rules and regulations, but each such patent shall reserve to the United States all title in or to the surface of the lands and products thereof, and

no use of the surface of the claim or the resources therefrom not reasonably required for carrying on mining or prospecting shall be allowed except as otherwise expressly provided in this chapter: Provided, That, unless hereafter specifically authorized, no patent within wilderness areas designated by this chapter shall issue after December 31, 1983, except for the valid claims existing on or before December 31, 1983. Mining claims located after September 3, 1964, within the boundaries of wilderness areas designated by this chapter shall create no rights in excess of those rights which may be patented under the provisions of this subsection. Mineral leases, permits, and licenses covering lands within national forest wilderness areas designated by this chapter shall contain such reasonable stipulations as may be prescribed by the Secretary of Agriculture for the protection of the wilderness character of the land consistent with the use of the land for the purposes for which they are leased, permitted, or licensed. Subject to valid rights then existing, effective January 1, 1984, the minerals in lands designated by this chapter as wilderness areas are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

(4) Water resources, reservoirs, and other facilities; grazing

Within wilderness areas in the national forests designated by this chapter, (1) the President may, within a specific

area and in accordance with such regulations as he may deem desirable, authorize prospecting for water resources, the establishment and maintenance of reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest, including the road construction and maintenance essential to development and use thereof, upon his determination that such use or uses in the specific area will better serve the interests of the United States and the people thereof than will its denial; and (2) the grazing of livestock, where established prior to September 3, 1964, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture.

(5) Commercial services

Commercial services may be performed within the wilderness areas designated by this chapter to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.

(6) State water laws exemption

Nothing in this chapter shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(7) State jurisdiction of wildlife and fish in national forests

Nothing in this chapter shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the

national forests. (16 U.S.C. 1133)

**State and private lands within wilderness areas**

**Sec. 5 (a) Access; exchange of lands; mineral interests restriction**

In any case where State-owned or privately owned land is completely surrounded by national forest lands within areas designated by this chapter as wilderness, such State or private owner shall be given such rights as may be necessary to assure adequate access to such State-owned or privately owned land by such State or private owner and their successors in interest, or the State-owned land or privately owned land shall be exchanged for federally owned land in the same State of approximately equal value under authorities available to the Secretary of Agriculture: Provided, however, That the United States shall not transfer to a State or private owner any mineral interests unless the State or private owner relinquishes or causes to be relinquished to the United States the mineral interest in the surrounded land.

(b) Customary means for ingress and egress to wilderness areas subject to mining claims or other occupancies

In any case where valid mining claims or other valid occupancies are wholly within a designated national forest wilderness area, the Secretary of Agriculture shall, by reasonable regulations consistent with the preservation of the area as wilderness, permit ingress and egress to such surrounded areas by means which have been or are being customarily enjoyed

with respect to other such areas similarly situated.

(c) Acquisition of lands

Subject to the appropriation of funds by Congress, the Secretary of Agriculture is authorized to acquire privately owned land within the perimeter of any area designated by this chapter as wilderness if (1) the owner concurs in such acquisition or (2) the acquisition is specifically authorized by Congress. (16 U.S.C. 1134)

**Gifts, bequests, and contributions**

**Sec. 6** (a) Acceptance by Secretary of Agriculture of land for preservation as wilderness; regulations

The Secretary of Agriculture may accept gifts or bequests of land within wilderness areas designated by this chapter for preservation as wilderness. The Secretary of Agriculture may also accept gifts or bequests of land adjacent to wilderness areas designated by this chapter for preservation as wilderness if he has given sixty days advance notice thereof to the President of the Senate and the Speaker of the House of Representatives. Land accepted by the Secretary of Agriculture under this section shall be come part of the wilderness area involved. Regulations with regard to any such land may be in accordance with such agreements, consistent with the policy of this chapter, as are made at the time of such gift, or such conditions, consistent with such policy, as may be included in, and accepted with, such bequest.

(b) Authorization to accept private contributions and gifts

The Secretary of Agriculture or the Secretary of the Interior is authorized to accept private contributions and gifts to be used to further the purposes of this chapter. (16 U.S.C. 1135)

**Annual reports to Congress**

**Sec. 7** At the opening of each session of Congress, the Secretaries of Agriculture and Interior shall jointly report to the President for transmission to Congress on the status of the wilderness system, including a list and descriptions of the areas in the system, regulations in effect, and other pertinent information, together with any recommendations they may care to make. (16 U.S.C. 1136)

## Migratory Bird Treaty Act

**July 3, 1918 (Ch. 128, 40 Stat. 755; 16 U.S.C. 710, 703 to 708, 709a, 710 to 711)**

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### **Taking, killing, or possessing migratory birds unlawful**

**Sec. 2** Unless and except as permitted by regulations made as hereinafter provided in this subchapter, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or eggs of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof, included in the terms of the conventions between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916 (39 Stat. 1702), the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936, the United States and the Government of Japan for the protection of migratory birds and birds in danger of extinction, and their environment concluded March 4, 1972<sup>1</sup> and the

convention between the United States and the Union of Soviet Socialist Republics for the conservation of migratory birds and their environments concluded November 19, 1976. (16 U.S.C. 703)

<sup>1</sup> So in original. Probably should be followed by a comma.

### **Determination as to when and how migratory birds may be taken, killed, or possessed**

**Sec. 3** (a) Subject to the provisions and in order to carry out the purposes of the conventions, referred to in section 703 of this title, the Secretary of the Interior is authorized and directed, from time to time, having due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds, to determine when, to what extent, if at all, and by what means, it is compatible with the terms of the conventions to allow hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any such bird, or any part, nest, or egg thereof, and to adopt suitable regulations permitting and governing the same, in accordance with such determinations, which regulations shall become effective when approved by the President.

(b) It shall be unlawful for any person to –

(1) take any migratory game bird by the aid of baiting, or on or over any baited area, if the person knows or reasonably should know that the area is a baited area; or

(2) place or direct the placement of bait on or adjacent to an area for the purpose of causing, inducing, or allowing any person to take or attempt to take any migratory game bird by the aid of baiting on or over the baited area. (16 U.S.C. 704)

#### **Transportation or importation of migratory birds; when unlawful**

**Sec. 4** It shall be unlawful to ship, transport, or carry, by any means whatever, from one State, Territory, or district to or through another State, Territory, or district, or to or through a foreign country, any bird, or any part, nest, or egg thereof, captured, killed, taken, shipped, transported, or carried at any time contrary to the laws of the State, Territory, or district in which it was captured, killed, or taken, or from which it was shipped, transported, or carried. It shall be unlawful to import any bird, or any part, nest, or egg thereof, captured, killed, taken, shipped, transported, or carried contrary to the laws of any Province of the Dominion of Canada in which the same was captured, killed, or taken, or from which it was shipped, transported, or carried. (16 U.S.C. 705)

#### **Arrests; search warrants**

**Sec. 5** Any employee of the Department of the Interior authorized by the Secretary of the Interior to enforce the provisions of this subchapter shall have power, without

warrant, to arrest any person committing a violation of this subchapter in his presence or view and to take such person immediately for examination or trial before an officer or court of competent jurisdiction; shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of the provisions of this subchapter; and shall have authority, with a search warrant, to search any place. The several judges of the courts established under the laws of the United States, and United States magistrate judges may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. All birds, or parts, nests, or eggs thereof, captured, killed, taken, sold or offered for sale, bartered or offered for barter, purchased, shipped, transported, carried, imported, exported, or possessed contrary to the provisions of this subchapter or of any regulation prescribed thereunder shall, when found, be seized and, upon conviction of the offender or upon judgment of a court of the United States that the same were captured, killed, taken, sold or offered for sale, bartered or offered for barter, purchased, shipped, transported, carried, imported, exported, or possessed contrary to the provisions of this subchapter or of any regulation prescribed thereunder, shall be forfeited to the United States and disposed of by the Secretary of the Interior in such manner as he deems appropriate. (16 U.S.C. 706)

#### **Violations and penalties; forfeitures**

**Sec. 6** (a) Except as otherwise provided in this section, any person, association, partnership, or corporation who shall violate any provisions of said conventions or of this subchapter, or who shall violate or fail to comply with any regulation made pursuant to this subchapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$15,000 or be imprisoned not more than six months, or both.

(b) Whoever, in violation of this subchapter, shall knowingly –

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

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

(c) Whoever violates section 704(b)(2) of this title shall be fined under title 18, imprisoned not more than 1 year, or both.

(d) All guns, traps, nets and other equipment, vessels, vehicles, and other means of transportation used by any person when engaged in pursuing, hunting, taking, trapping, ensnaring, capturing, killing, or attempting to take, capture, or kill any migratory bird in violation of this subchapter with the intent to offer for sale, or sell, or offer for barter, or barter such bird in violation of this subchapter shall be forfeited to the United States and may be seized and held pending the prosecution of any person arrested for violating this subchapter and upon conviction for such

violation, such forfeiture shall be adjudicated as a penalty in addition to any other provided for violation of this subchapter. Such forfeited property shall be disposed of and accounted for by, and under the authority of, the Secretary of the Interior. (16 U.S.C. 707)

### **State or Territorial laws or regulations**

**Sec. 7** States and Territories from making or enforcing laws or regulations not inconsistent with the provisions of said conventions or of this subchapter, or from making or enforcing laws or regulations which shall give further protection to migratory birds, their nests, and eggs, if such laws or regulations do not extend the open seasons for such birds beyond the dates approved by the President in accordance with section 704 of this title. (16 U.S.C. 708)

### **Authorization of appropriations**

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

therewith. (16 U.S.C. 709a)

### **Partial invalidity; short title**

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

### **Breeding and sale for food supply**

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

## Migratory Bird Conservation Act

February 18, 1929 (Ch 257, 45 Stat. 1222; 16 U.S.C. 715, 715a to 715k, 715n to 715r)

### Short title

**Sec. 1** This subchapter shall be known by the short title of ‘Migratory Bird Conservation Act.’ (16 U.S.C. 715)

### Migratory Bird Conservation Commission; creation; composition; duties; approval of areas of land and water recommended for purchase or rental

**Sec. 2** A commission to be known as the Migratory Bird Conservation Commission, consisting of the Secretary of the Interior, as chairman, the Administrator of the Environmental Protection Agency, the Secretary of Agriculture and two Members of the Senate, to be selected by the President of the Senate, and two Members of the House of Representatives to be selected by the Speaker, is created and authorized to consider and pass upon any area of land, water, or land and water that may be recommended by the Secretary of the Interior for purchase or rental under this subchapter, and to fix the price or prices at which such area may be purchased or rented; and no purchase or rental shall be made of any such area until it has been duly approved for purchase or rental by said commission. Any Member of the House of Representatives who is a member of the commission, if reelected to the succeeding Congress, may serve on the commission notwithstanding the expiration of a Congress.

Any vacancy on the commission shall be filled in the same manner as the original appointment. The ranking officer of the branch or department of a State to which is committed the administration of its game laws, or his authorized representative, and in a State having no such branch or department, the governor thereof, or his authorized representative, shall be a member ex officio of said commission for the purpose of considering and voting on all questions relating to the acquisition, under this subchapter, of areas in his State. For purposes of this subchapter, the purchase or rental of any area of land, water, or land and water includes the purchase or rental of any interest in any such area of land, water, or land and water. (16 U.S.C. 715a)

### Areas recommended for approval; character

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

- (1) has determined that such area is necessary for the conservation of migratory birds; and
- (2) has consulted with the county or other unit of local government in which such area is located and with the Governor of the State concerned or the appropriate State agency. (16 U.S.C. 715c)

**Purchase or rental of approved areas or interests therein; gifts and devises; United States lands**

**Sec. 5** The Secretary of the Interior may

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

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

**Examination of title; easements and reservations**

**Sec. 6** The Secretary of the Interior may do all things and make all expenditures necessary to secure the safe title in the United States to the areas which may be acquired under this subchapter, but no payment shall be made for any such areas until the title thereto shall be

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

**Consent of State to conveyance in fee**

**Sec. 7** No deed or instrument of conveyance in fee shall be accepted by the Secretary of the Interior under this subchapter unless the State in which the area lies shall have consented by law to

the acquisition by the United States of lands in that State. (16 U.S.C. 715f)

### **Jurisdiction of State over areas acquired**

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

### **Operation of State game laws**

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

### **Administration**

**Sec. 10** (a) Treaty obligations; rules and regulations

Areas of lands, waters, or interests therein acquired or reserved pursuant to this subchapter shall, unless otherwise provided by law, be administered by the Secretary of the Interior under rules and regulations prescribed by him to conserve and protect migratory birds in accordance with treaty obligations with Mexico, Canada, Japan, and the Union of Soviet Socialist Republics, and other species of wildlife found thereon, including species that are listed pursuant to section 1533 of this title as endangered species or threat-

ened species, and to restore or develop adequate wildlife habitat.

(b) Management and public and private agency agreements authorization

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

### **“Migratory birds” defined**

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

### **Authorization of appropriations for**

**purposes of subchapter; disposal; reservation protectors**

**Sec. 12** For the acquisition, including the location, examination, and survey, of suitable areas of land, water, or land and water, for use as migratory bird reservations, and necessary expenses incident thereto, and for the administration, maintenance, and development of such areas and other preserves, reservations, or breeding grounds frequented by migratory birds and under the administration of the Secretary of the Interior, including the construction of dams, dikes, ditches, flumes, spillways, buildings, and other necessary improvements, and for the elimination of the loss of migratory birds from alkali poisoning, oil pollution of waters, or other causes, for cooperation with local authorities in wildlife conservation, for investigations and publications relating to North American birds, for personal services, printing, engraving, and issuance of circulars, posters, and other necessary matter and for the enforcement of the provisions of this subchapter, there are hereby authorized to be appropriated, in addition to all other amounts authorized by law to be appropriated, \$200,000 for the fiscal year ending June 30, 1940, and for each fiscal year thereafter. No part of any appropriation authorized by this section shall be used for payment of the salary, compensation, or expenses of any United States protector, except reservation protectors for the administration, maintenance and protection of such reservations and the birds thereon: Provided, That reservation protectors appointed under the provisions

of this subchapter, shall be selected, when practicable, from qualified citizens of the State in which they are to be employed. The Secretary of the Interior is authorized and directed to make such expenditures and to employ such means, including personal services in the District of Columbia and elsewhere, as may be necessary to carry out the foregoing objects. (16 U.S.C. 715k)

**“Take” defined**

**Sec. 15** For the purposes of this subchapter the word “take” shall be construed to mean pursue, hunt, shoot, capture, collect, kill, or attempt to pursue, hunt, shoot, capture, collect, or kill, unless the context otherwise requires. (16 U.S.C. 715n)

**National forest and power sites; use for migratory bird reservations**

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

**Cooperation of State in enforcement of provisions**

**Sec. 17** When any State shall, by suitable legislation, make provision adequately to

enforce the provisions of this subchapter and all regulations promulgated thereunder, the Secretary of the Interior may so certify, and then and thereafter said State may cooperate with the Secretary of the Interior in the enforcement of this subchapter and the regulations thereunder. (16 U.S.C. 715p)

**Expenses of commission;  
authorization of appropriations**

**Sec. 18** A sum sufficient to pay the necessary expenses of the commission and its members, not to exceed an annual expenditure of \$7,500, is authorized to be appropriated out of any money in the Treasury not otherwise appropriated. Said appropriation shall be paid out on the audit and order of the chairman of said commission, which audit and order shall be conclusive and binding upon the General Accounting Office as to the correctness of the accounts of said commission. (16 U.S.C. 715q)

**Partial invalidity; validity of  
remainder**

**Sec. 19** If any provision of this subchapter or the application thereof to any person or circumstance is held invalid the validity of the remainder of this subchapter and of the application of such provision to other persons and circumstances shall not be affected thereby. (16 U.S.C. 715r)

## Bald and Golden Eagle Protection Act

June 8, 1940 (Ch. 278, 54 Stat. 250; 16 U.S.C. 668, 668a to 668d)

### Bald and golden eagles

#### Sec. 1 (a) Prohibited acts; criminal penalties

Whoever, within the United States or any place subject to the jurisdiction thereof, without being permitted to do so as provided in this subchapter, shall knowingly, or with wanton disregard for the consequences of his act take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner any bald eagle commonly known as the American eagle or any golden eagle, alive or dead, or any part, nest, or egg thereof of the foregoing eagles, or whoever violates any permit or regulation issued pursuant to this subchapter, shall be fined not more than \$5,000 or imprisoned not more than one year or both: Provided, That in the case of a second or subsequent conviction for a violation of this section committed after October 23, 1972, such person shall be fined not more than \$10,000 or imprisoned not more than two years, or both: Provided further, That the commission of each taking or other act prohibited by this section with respect to a bald or golden eagle shall constitute a separate violation of this section: Provided further, That one-half of any such fine, but not to exceed \$2,500, shall be paid to the person or persons giving information which leads to conviction: Provided further, That nothing herein shall be

construed to prohibit possession or transportation of any bald eagle, alive or dead, or any part, nest, or egg thereof, lawfully taken prior to June 8, 1940, and that nothing herein shall be construed to prohibit possession or transportation of any golden eagle, alive or dead, or any part, nest, or egg thereof, lawfully taken prior to the addition to this subchapter of the provisions relating to preservation of the golden eagle.

#### (b) Civil penalties

Whoever, within the United States or any place subject to the jurisdiction thereof, without being permitted to do so as provided in this subchapter, shall take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner, any bald eagle, commonly known as the American eagle, or any golden eagle, alive or dead, or any part, nest, or egg thereof of the foregoing eagles, or whoever violates any permit or regulation issued pursuant to this subchapter, may be assessed a civil penalty by the Secretary of not more than \$5,000 for each such violation. Each violation shall be a separate offense. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. In determining the amount of the penalty, the gravity of the violation, and the demonstrated good faith of the person charged shall be considered

by the Secretary. For good cause shown, the Secretary may remit or mitigate any such penalty. Upon any failure to pay the penalty assessed under this section, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found or resides or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In hearing any such action, the court must sustain the Secretary's action if supported by substantial evidence.

(c) Cancellation of grazing agreements

The head of any Federal agency who has issued a lease, license, permit, or other agreement authorizing the grazing of domestic livestock on Federal lands to any person who is convicted of a violation of this subchapter or of any permit or regulation issued hereunder may immediately cancel each such lease, license, permit, or other agreement. The United States shall not be liable for the payment of any compensation, reimbursement, or damages in connection with the cancellation of any lease, license, permit, or other agreement pursuant to this section. (16 U.S.C. 668)

**Taking and using of the bald and golden eagle for scientific, exhibition, and religious purposes**

**Sec. 2** Whenever, after investigation, the Secretary of the Interior shall determine that it is compatible with the preservation of the bald eagle or the golden eagle to permit the taking, possession, and transportation of specimens thereof for the

scientific or exhibition purposes of public museums, scientific societies, and zoological parks, or for the religious purposes of Indian tribes, or that it is necessary to permit the taking of such eagles for the protection of wildlife or of agricultural or other interests in any particular locality, he may authorize the taking of such eagles pursuant to regulations which he is hereby authorized to prescribe: Provided, That on request of the Governor of any State, the Secretary of the Interior shall authorize the taking of golden eagles for the purpose of seasonally protecting domesticated flocks and herds in such State, in accordance with regulations established under the provisions of this section, in such part or parts of such State and for such periods as the Secretary determines to be necessary to protect such interests: Provided further, That bald eagles may not be taken for any purpose unless, prior to such taking, a permit to do so is procured from the Secretary of the Interior: Provided further, That the Secretary of the Interior, pursuant to such regulations as he may prescribe, may permit the taking, possession, and transportation of golden eagles for the purposes of falconry, except that only golden eagles which would be taken because of depredations on livestock or wildlife may be taken for purposes of falconry: Provided further, That the Secretary of the Interior, pursuant to such regulations as he may prescribe, may permit the taking of golden eagle nests which interfere with resource development or recovery operations. (16 U.S.C. 668a)

**Enforcement provisions**

**Sec. 3** (a) Arrest; search; issuance and execution of warrants and process

Any employee of the Department of the Interior authorized by the Secretary of the Interior to enforce the provisions of this subchapter may, without warrant, arrest any person committing in his presence or view a violation of this subchapter or of any permit or regulations issued hereunder and take such person immediately for examination or trial before an officer or court of competent jurisdiction; may execute any warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of the provisions of this subchapter; and may, with or without a warrant, as authorized by law, search any place. The Secretary of the Interior is authorized to enter into cooperative agreements with State fish and wildlife agencies or other appropriate State authorities to facilitate enforcement of this subchapter, and by said agreements to delegate such enforcement authority to State law enforcement personnel as he deems appropriate for effective enforcement of this subchapter. Any judge of any court established under the laws of the United States, and any United States magistrate judge may, within his respective jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all such cases.

(b) Forfeiture

All bald or golden eagles, or parts, nests, or eggs thereof, taken, possessed, sold, purchased, bartered, offered for sale, purchase, or barter, transported, exported,

or imported contrary to the provisions of this subchapter, or of any permit or regulation issued hereunder, and all guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid in the taking, possessing, selling, purchasing, bartering, offering for sale, purchase, or barter, transporting, exporting, or importing of any bird, or part, nest, or egg thereof, in violation of this subchapter or of any permit or regulation issued hereunder shall be subject to forfeiture to the United States.

(c) Customs laws applied

All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this subchapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this subchapter: Provided, That all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this subchapter, be exercised or performed by the Secretary of the Interior or by such persons as he may designate. (16 U.S.C. 668b)

**Definitions**

**Sec. 4** As used in this subchapter “whoever” includes also associations, partnerships, and corporations; “take” includes

also pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb; “transport” includes also ship, convey, carry, or transport by any means whatever, and deliver or receive or cause to be delivered or received for such shipment, conveyance, carriage or transportation. (16 U.S.C. 668c)

**Availability of appropriations for Migratory Bird Treaty Act**

**Sec. 5** Moneys now or hereafter available to the Secretary of the Interior for the administration and enforcement of the Migratory Bird Treaty Act of July 3, 1918 (16 U.S.C. 703 et seq.), shall be equally available for the administration and enforcement of this subchapter. (16 U.S.C. 668d)

## Sikes Improvement Act of 1997

September 15, 1960, (Pub. L. 86-797, 74 Stat. 1052; 16 U.S.C. 670 note, 670a to 670m, 670o)

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**Wildlife, fish, and game conservation and rehabilitation programs; cooperation between Secretary of the Interior, Secretary of Agriculture, and State agencies in planning, etc., in accordance with comprehensive plans; scope and implementation of programs**

**Sec. 201** (a) Conservation and rehabilitation programs

The Secretary of the Interior and the Secretary of Agriculture shall each, in cooperation with the State agencies and in accordance with comprehensive plans developed pursuant to section 670h of this title, plan, develop, maintain, and coordinate programs for the conservation and rehabilitation of wildlife, fish, and game. Such conservation and rehabilitation programs shall include, but not be limited to, specific habitat improvement projects and related activities and adequate protection for species of fish, wildlife, and plants considered threatened or endangered.

(b) Implementation of programs

The Secretary of the Interior shall implement the conservation and rehabilitation programs required under subsection (a) of this section on public land under his jurisdiction. The Secretary of the Interior shall adopt, modify, and implement the

conservation and rehabilitation programs required under subsection (a) of this section on public land under the jurisdiction of the Chairman, but only with the prior written approval of the Atomic Energy Commission, and on public land under the jurisdiction of the Administrator, but only with the prior written approval of the Administrator. The Secretary of Agriculture shall implement such conservation and rehabilitation programs on public land under his jurisdiction. (16 U.S.C. 670g)

**Comprehensive plans for conservation and rehabilitation programs**

**Sec. 202.** (a) Development by Secretary of the Interior and Secretary of Agriculture; consultation with State agencies; prior written approval of concerned Federal agencies

(1) The Secretary of the Interior shall develop, in consultation with the State agencies, a comprehensive plan for conservation and rehabilitation programs to be implemented on public land under his jurisdiction and the Secretary of Agriculture shall do the same in connection with public land under his jurisdiction.

(2) The Secretary of the Interior shall develop, with the prior written approval of the Atomic Energy Commission, a

comprehensive plan for conservation and rehabilitation programs to be implemented on public land under the jurisdiction of the Chairman and develop, with the prior written approval of the Administrator, a comprehensive plan for such programs to be implemented on public land under the jurisdiction of the Administrator. Each such plan shall be developed after the Secretary of the Interior makes, with the prior written approval of the Chairman or the Administrator, as the case may be, and in consultation with the State agencies, necessary studies and surveys of the land concerned to determine where conservation and rehabilitation programs are most needed.

(b) Development consistent with overall land use and management plans; hunting, trapping, and fishing authorized in accordance with applicable State laws and regulations

Each comprehensive plan developed pursuant to this section shall be consistent with any overall land use and management plans for the lands involved. In any case in which hunting, trapping, or fishing (or any combination thereof) of resident fish and wildlife is to be permitted on public land under a comprehensive plan, such hunting, trapping, and fishing shall be conducted in accordance with applicable laws and regulations of the State in which such land is located.

(c) Cooperative agreements by State agencies for implementation of programs; modifications; contents; hunting, trapping and fishing authorized in accordance with

applicable State laws and regulations; regulations

(1) Each State agency may enter into a cooperative agreement with

(A) the Secretary of the Interior with respect to those conservation and rehabilitation programs to be implemented under this subchapter within the State on public land which is under his jurisdiction;

(B) the Secretary of Agriculture with respect to those conservation and rehabilitation programs to be implemented under this subchapter within the State on public land which is under his jurisdiction; and

(C) the Secretary of the Interior and the Chairman or the Administrator, as the case may be, with respect to those conservation and rehabilitation programs to be implemented under this subchapter within the State on public land under the jurisdiction of the Chairman or the Administrator; except that before entering into any cooperative agreement which affects public land under the jurisdiction of the Chairman, the Secretary of the Interior shall obtain the prior written approval of the Atomic Energy Commission and before entering into any cooperative agreement which affects public lands under the jurisdiction of the Administrator, the Secretary of the Interior shall obtain the prior written approval of the Administrator.

Conservation and rehabilitation programs developed and implemented pursuant to this subchapter shall be

deemed as supplemental to wildlife, fish, and game-related programs conducted by the Secretary of the Interior and the Secretary of Agriculture pursuant to other provisions of law. Nothing in this subchapter shall be construed as limiting the authority of the Secretary of the Interior or the Secretary of Agriculture, as the case may be, to manage the national forests or other public lands for wildlife and fish and other purposes in accordance with the Multiple-Use Sustained-Yield Act of 1960 (74 Stat. 215; 16 U.S.C. 528-531) or other applicable authority.

(2) Any conservation and rehabilitation program included within a cooperative agreement entered into under this subsection may be modified in a manner mutually agreeable to the State agency and the Secretary concerned (and the Chairman or the Administrator, as the case may be, if public land under his jurisdiction is involved). Before modifying any cooperative agreement which affects public land under the jurisdiction of the Chairman, the Secretary of the Interior shall obtain the prior written approval of the Atomic Energy Commission and before modifying any cooperative agreement which affects public land under the jurisdiction of the Administrator, the Secretary of the Interior shall obtain the prior written approval of the Administrator.

(3) Each cooperative agreement entered into under this subsection shall -

(A) specify those areas of public land within the State on which conservation

and rehabilitation programs will be implemented;

(B) provide for fish and wildlife habitat improvements or modifications, or both;

(C) provide for range rehabilitation where necessary for support of wildlife;

(D) provide adequate protection for fish and wildlife officially classified as threatened or endangered pursuant to section 1533 of this title or considered to be threatened, rare, or endangered by the State agency;

(E) require the control of off-road vehicle traffic;

(F) if the issuance of public land area management stamps is agreed to pursuant to section 670i(a) of this title -

(i) contain such terms and conditions as are required under section 670i(b) of this title;

(ii) require the maintenance of accurate records and the filing of annual reports by the State agency to the Secretary of the Interior or the Secretary of Agriculture, or both, as the case may be, setting forth the amount and disposition of the fees collected for such stamps; and

(iii) authorize the Secretary concerned and the Comptroller General of the United States, or their authorized representatives, to have access to such records for purposes of audit and examination; and

(G) contain such other terms and

conditions as the Secretary concerned and the State agency deem necessary and appropriate to carry out the purposes of this subchapter.

A cooperative agreement may also provide for arrangements under which the Secretary concerned may authorize officers and employees of the State agency to enforce, or to assist in the enforcement of, section 670j(a) of this title.

(4) Except where limited under a comprehensive plan or pursuant to cooperative agreement, hunting, fishing, and trapping shall be permitted with respect to resident fish and wildlife in accordance with applicable laws and regulations of the State in which such land is located on public land which is the subject of a conservation and rehabilitation program implemented under this subchapter.

(5) The Secretary of the Interior and the Secretary of Agriculture, as the case may be, shall prescribe such regulations as are deemed necessary to control, in a manner consistent with the applicable comprehensive plan and cooperative agreement, the public use of public land which is the subject of any conservation and rehabilitation program implemented by him under this subchapter.

(d) State agency agreements not cooperative agreements under other provisions

Agreements entered into by State agencies under the authority of this section shall not be deemed to be, or treated as, cooperative agreements to which chapter

63 of title 31 applies. (16 U.S.C. 670h)

**Public land management area stamps; agreement between State agencies and Secretary of the Interior and Secretary of Agriculture requiring stamps for hunting, trapping, and fishing on public lands subject to programs; conditions of agreement**

**Sec. 203** (a) Any State agency may agree with the Secretary of the Interior and the Secretary of Agriculture (or with the Secretary of the Interior or the Secretary of Agriculture, as the case may be, if within the State concerned all conservation and rehabilitation programs under this subchapter will be implemented by him) that no individual will be permitted to hunt, trap, or fish on any public land within the State which is subject to a conservation and rehabilitation program implemented under this subchapter unless at the time such individual is engaged in such activity he has on his person a valid public land management area stamp issued pursuant to this section.

(b) Any agreement made pursuant to subsection (a) of this section to require the issuance of public land management area stamps shall be subject to the following conditions:

(1) Such stamps shall be issued, sold, and the fees therefor collected, by the State agency or by the authorized agents of such agency.

(2) Notice of the requirement to possess such stamps shall be displayed prominently in all places where State hunting,

trapping, or fishing licenses are sold. To the maximum extent practicable, the sale of such stamps shall be combined with the sale of such State hunting, trapping, and fishing licenses.

(3) Except for expenses incurred in the printing, issuing, or selling of such stamps, the fees collected for such stamps by the State agency shall be utilized in carrying out conservation and rehabilitation programs implemented under this subchapter in the State concerned. Such fees may be used by the State agency to acquire lands or interests therein from willing sellers or donors to provide public access to program lands that have no existing public access for enhancement of outdoor recreation and wildlife conservation: Provided, That the Secretary of Agriculture and the Secretary of the Interior maintain such access, or ensure that maintenance is provided for such access, through or to lands within their respective jurisdiction.

(4) The purchase of any such stamp shall entitle the purchaser thereof to hunt, trap, and fish on any public land within such State which is the subject of a conservation or rehabilitation program implemented under this subchapter except to the extent that the public use of such land is limited pursuant to a comprehensive plan or cooperative agreement; but the purchase of any such stamp shall not be construed as (A) eliminating the requirement for the purchase of a migratory bird hunting stamp as set forth in section 718a of this title, or (B) relieving the purchaser from

compliance with any applicable State game and fish laws and regulations.

(5) The amount of the fee to be charged for such stamps, the age at which the individual is required to acquire such a stamp, and the expiration date for such stamps shall be mutually agreed upon by the State agency and the Secretary or Secretaries concerned; except that each such stamp shall be void not later than one year after the date of issuance.

(6) Each such stamp must be validated by the purchaser thereof by signing his name across the face of the stamp.

(7) Any individual to whom a stamp is sold pursuant to this section shall upon request exhibit such stamp for inspection to any officer or employee of the Department of the Interior or the Department of Agriculture, or to any other person who is authorized to enforce section 670j(a) of this title. (16 U.S.C. 670i)

### **Enforcement provisions**

#### **Sec. 204 (a) Violations and penalties**

(1) Any person who hunts, traps, or fishes on any public land which is subject to a conservation and rehabilitation program implemented under this subchapter without having on his person a valid public land management area stamp, if the possession of such a stamp is required, shall be fined not more than \$1,000, or imprisoned for not more than six months, or both.

(2) Any person who knowingly violates or fails to comply with any regulations

prescribed under section 670h(c)(5) of this title shall be fined not more than \$500, or imprisoned not more than six months, or both.

(b) Designation of enforcement personnel powers; issuance of arrest warrants; trial and sentencing by United States magistrate judges

(1) For the purpose of enforcing subsection (a) of this section, the Secretary of the Interior and the Secretary of Agriculture may designate any employee of their respective departments, and any State officer or employee authorized under a cooperative agreement to enforce subsection (a) of this section to (i) carry firearms; (ii) execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; (iii) make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view; (iv) search without warrant or process any person, place, or conveyance as provided by law; and (v) seize without warrant or process any evidentiary item as provided by law.

(2) Upon the sworn information by a competent person, any United States magistrate judge or court of competent jurisdiction may issue process for the arrest of any person charged with committing any offense under subsection (a) of this section.

(3) Any person charged with committing any offense under subsection (a) of this section may be tried and sentenced by

any United States magistrate judge designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401 of title 18.

(c) Seizure and forfeiture of equipment and vessels

All guns, traps, nets, and other equipment, vessels, vehicles, and other means of transportation used by any person when engaged in committing an offense under subsection (a) of this section shall be subject to forfeiture to the United States and may be seized and held pending the prosecution of any person arrested for committing such offense. Upon conviction for such offense, such forfeiture may be adjudicated as a penalty in addition to any other provided for committing such offense.

(d) Applicability of customs laws to seizures and forfeitures; exceptions

All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as such provisions of law are applicable and not inconsistent with the provisions of this section; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Department of the Treasury shall, for the purposes of this

section, be exercised or performed by the Secretary of the Interior or the Secretary of Agriculture, as the case may be, or by such persons as he may designate. (16 U.S.C. 670j)

## Definitions

**Sec. 205** As used in this subchapter

(1) The term “Administrator” means the Administrator of the National Aeronautics and Space Administration.

(2) The term “Chairman” means the Chairman of the Atomic Energy Commission.

(3) The term “off-road vehicle” means any motorized vehicle designed for, or capable of, cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain; but such term does not include -

(A) any registered motorboat at the option of each State;

(B) any military, fire, emergency, or law enforcement vehicle when used for emergency purposes; and

(C) any vehicle the use of which is expressly authorized by the Secretary of the Interior or the Secretary of Agriculture under a permit, lease, license, or contract.

(4) The term “public land” means all lands, under the respective jurisdiction of the Secretary of the Interior, the Secretary of Agriculture, the Chairman, and the Administrator, except land which is, or hereafter may be, within or

designated as -

(A) a military reservation;

(B) a unit of the National Park System;

(C) an area within the national wildlife refuge system;

(D) an Indian reservation; or

(E) an area within an Indian reservation or land held in trust by the United States for an Indian or Indian tribe.

(5) The term “State agency” means the agency or agencies of a State responsible for the administration of the fish and game laws of the State.

(6) The term “conservation and rehabilitation programs” means to utilize those methods and procedures which are necessary to protect, conserve, and enhance wildlife, fish, and game resources to the maximum extent practicable on public lands subject to this subchapter consistent with any overall land use and management plans for the lands involved. Such methods and procedures shall include, but shall not be limited to, all activities associated with scientific resources management such as protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking in conformance with the provisions of this subchapter. Nothing in this term shall be construed as diminishing the authority or jurisdiction of the States with respect to the management of resident species of fish, wildlife, or game, except as otherwise provided by law. (16 U.S.C. 670k)

**Applicability to Forest Service and Bureau of Land Management lands of public land management area stamp requirements; authorized fees**

**Sec. 206** Notwithstanding any other provision in this subchapter, section 670i of this title shall not apply to land which is, or hereafter may be, within or designated as Forest Service land or as Bureau of Land Management land of any State in which all Federal lands therein comprise 60 percent or more of the total area of such State; except that in any such State, any appropriate State agency may agree with the Secretary of Agriculture or the Secretary of the Interior, or both, as the case may be, to collect a fee as specified in such agreement at the point of sale of regular licenses to hunt, trap, or fish in such State, the proceeds of which shall be utilized in carrying out conservation and rehabilitation programs implemented under this subchapter in the State concerned and for no other purpose. (16 U.S.C. 670l)

**Indian rights unaffected; State or Federal jurisdiction regulating Indian rights preserved**

**Sec. 207** Nothing in this subchapter shall enlarge or diminish or in any way affect (1) the rights of Indians or Indian tribes to the use of water or natural resources or their rights to fish, trap, or hunt wildlife as secured by statute, agreement, treaty, Executive order, or court decree; or (2) existing State or Federal jurisdiction to regulate those rights either on or off reservations. (16 U.S.C. 670m)

**Authorization of appropriations**

**Sec. 209** (a) Functions and responsibilities of Secretary of the Interior

There are authorized to be appropriated \$4,000,000 for each of fiscal years 1998 through 2003, to enable the Secretary of the Interior to carry out his functions and responsibilities under this subchapter, including data collection, research, planning, and conservation and rehabilitation programs on public lands. Such funds shall be in addition to those authorized for wildlife, range, soil, and water management pursuant to section 1748 of title 43, or other provisions of law.

(b) Functions and responsibilities of Secretary of Agriculture

There are authorized to be appropriated \$5,000,000 for each of fiscal years 1998 through 2003, to enable the Secretary of Agriculture to carry out his functions and responsibilities under this subchapter. Such funds shall be in addition to those provided under other provisions of law. In requesting funds under this subsection the Secretary shall take into account fish and wildlife program needs, including those for projects, identified in the State comprehensive plans as contained in the program developed pursuant to the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (16 U.S.C. 1601-1610).

(c) Use of other conservation or rehabilitation authorities

The Secretary of the Interior and the Secretary of Agriculture may each use any authority available to him under other

laws relating to fish, wildlife, or plant conservation or rehabilitation for purposes of carrying out the provisions of this subchapter.

(d) Contract authority respecting property, services or assistance affecting State agencies; appropriations requirement

The Secretary of the Interior and the Secretary of Agriculture may each make purchases and contracts for property and services from, or provide assistance to, the State agencies concerned, if such property, services or assistance is required to implement those projects and programs carried out on, or of benefit to, Federal lands and identified in the comprehensive plans or cooperative agreements developed under section 670h of this title without regard to title III (other than section 304) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251-260). Contract authority provided in this section is effective only to such extent or in such amounts as are provided in appropriation Acts. (16 U.S.C. 670o)

## Endangered Species Act of 1982

**December 28, 1973 (Pub. L. 93-205, 87 Stat. 884; 16 U.S.C. 1531 note, 1531 to 1537, 1537a, 1538 to 1541, 668dd, 460l-9, 460k-1, 1362, 1371, 1372, 1402,7 U.S.C. 136, 16 U.S.C. 1542, 1531 note, 1543, 1544)**

### **Congressional findings and declaration of purposes and policy**

**Sec. 2 (a) Findings** The Congress finds and declares that -

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to -

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protec-

tion and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements; and

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.

### **(b) Purposes**

The purposes of this chapter are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species

and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) Policy

(1) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this chapter.

(2) It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species. (16 U.S.C. 1531)

**Definitions**

**Sec. 3** For the purpose of this chapter -

(1) The term “alternative courses of action” means all alternatives and thus is not limited to original project objectives and agency jurisdiction.

(2) The term “commercial activity” means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: Provided, however, That it does not include exhibition of commodities by museums or similar cultural or historical organizations.

(3) The terms “conserve”, “conserving”, and “conservation” mean to use

and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(4) The term “Convention” means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(5)(A) The term “critical habitat” for a threatened or endangered species means -

(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 1533 of this title, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 1533 of this title, upon a determination by the Secretary that

such areas are essential for the conservation of the species.

(B) Critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subparagraph (A) of this paragraph.

(C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

(6) The term “endangered species” means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this chapter would present an overwhelming and overriding risk to man.

(7) The term “Federal agency” means any department, agency, or instrumentality of the United States.

(8) The term “fish or wildlife” means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

(9) The term “foreign commerce” includes, among other things, any transaction -

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

(10) The term “import” means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(11) Repealed

(12) The term “permit or license applicant” means, when used with respect to an action of a Federal agency for which exemption is sought under section 1536 of this title, any person whose application to such agency for a permit or license has been denied primarily because of the application of section 1536(a) of this title to such agency action.

(13) The term “person” means an individual, corporation, partnership, trust,

association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States.

(14) The term “plant” means any member of the plant kingdom, including seeds, roots and other parts thereof.

(15) The term “Secretary” means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this chapter and the Convention which pertain to the importation or exportation of terrestrial plants, the term also means the Secretary of Agriculture.

(16) The term “species” includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.

(17) The term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(18) The term “State agency” means any State agency, department, board, commission, or other governmental

entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

(19) The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(20) The term “threatened species” means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(21) The term “United States”, when used in a geographical context, includes all States. (16 U.S.C. 1532)

### **Determination of endangered species and threatened species**

#### **Sec. 4 (a) Generally**

(1) The Secretary shall by regulation promulgated in accordance with subsection (b) of this section determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) the present or threatened destruction, modification, or curtailment of its habitat or range;

(B) overutilization for commercial, recreational, scientific, or educational purposes;

(C) disease or predation;

(D) the inadequacy of existing regulatory mechanisms; or

(E) other natural or manmade factors affecting its continued existence.

(2) With respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan Numbered 4 of 1970 -

(A) in any case in which the Secretary of Commerce determines that such species should -

- (i) be listed as an endangered species or a threatened species, or
- (ii) be changed in status from a threatened species to an endangered species, he shall so inform the Secretary of the Interior; who shall list such species in accordance with this section;

(B) in any case in which the Secretary of Commerce determines that such species should -

- (i) be removed from any list published pursuant to subsection (c) of this section, or
- (ii) be changed in status from an endangered species to a threatened species, he shall recommend such action to the Secretary of the Interior, and the Secretary of the Interior, if he concurs in the recommendation, shall implement such action; and

(C) the Secretary of the Interior may not list or remove from any list any such species, and may not change the status of any such species which are listed, without a prior favorable determination made pursuant to this section by the Secretary of Commerce.

(3) The Secretary, by regulation promulgated in accordance with subsection (b) of this section and to the maximum extent prudent and determinable -

(A) shall, concurrently with making a determination under paragraph (1) that a species is an endangered species or a threatened species, designate any habitat of such species which is then considered to be critical habitat; and

(B) may, from time-to-time thereafter as appropriate, revise such designation.

(b) Basis for determinations

(1)(A) The Secretary shall make determinations required by subsection (a)(1) of this section solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction; or on the high seas.

(B) In carrying out this section, the Secretary shall give consideration to species which have been -

- (i) designated as requiring protection from unrestricted commerce by any foreign nation, or pursuant to any international agreement; or (ii) identified as in danger of extinction, or likely to become so within the

foreseeable future, by any State agency or by any agency of a foreign nation that is responsible for the conservation of fish or wildlife or plants.

(2) The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) of this section on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

(3)(A) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, to add a species to, or to remove a species from, either of the lists published under subsection (c) of this section, the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. If such a petition is found to present such information, the Secretary shall promptly commence a review of the status of the species concerned. The Secretary shall promptly publish each finding made under this subparagraph in

the Federal Register.

(B) Within 12 months after receiving a petition that is found under subparagraph (A) to present substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings:

(i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the Federal Register.

(ii) The petitioned action is warranted, in which case the Secretary shall promptly publish in the Federal Register a general notice and the complete text of a proposed regulation to implement such action in accordance with paragraph (5).

(iii) The petitioned action is warranted, but that -

(I) the immediate proposal and timely promulgation of a final regulation implementing the petitioned action in accordance with paragraphs (5) and (6) is precluded by pending proposals to determine whether any species is an endangered species or a threatened species, and

(II) expeditious progress is being made to add qualified species to either of the lists published under subsection (c) of this section and to remove from such lists species for which the protections of this chapter are no longer necessary, in which case the Secretary shall

promptly publish such finding in the Federal Register, together with a description and evaluation of the reasons and data on which the finding is based.

(C)(i) A petition with respect to which a finding is made under subparagraph (B)(iii) shall be treated as a petition that is resubmitted to the Secretary under subparagraph (A) on the date of such finding and that presents substantial scientific or commercial information that the petitioned action may be warranted.

(ii) Any negative finding described in subparagraph (A) and any finding described in subparagraph (B)(i) or (iii) shall be subject to judicial review.

(iii) The Secretary shall implement a system to monitor effectively the status of all species with respect to which a finding is made under subparagraph (B)(iii) and shall make prompt use of the authority under paragraph 7<sup>1</sup> to prevent a significant risk to the well being of any such species.

(D)(i) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, to revise a critical habitat designation, the Secretary shall make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Secretary shall promptly publish such

finding in the Federal Register.

(ii) Within 12 months after receiving a petition that is found under clause (i) to present substantial information indicating that the requested revision may be warranted, the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the Federal Register.

(4) Except as provided in paragraphs (5) and (6) of this subsection, the provisions of section 553 of title 5 (relating to rulemaking procedures), shall apply to any regulation promulgated to carry out the purposes of this chapter.

(5) With respect to any regulation proposed by the Secretary to implement a determination, designation, or revision referred to in subsection (a)(1) or (3) of this section, the Secretary shall -

(A) not less than 90 days before the effective date of the regulation -

(i) publish a general notice and the complete text of the proposed regulation in the Federal Register, and

(ii) give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county, or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each such jurisdic-

tion, thereon;

(B) insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to each foreign nation in which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation thereon;

(C) give notice of the proposed regulation to such professional scientific organizations as he deems appropriate;

(D) publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur; and

(E) promptly hold one public hearing on the proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of general notice.

(6)(A) Within the one-year period beginning on the date on which general notice is published in accordance with paragraph (5)(A)(i) regarding a proposed regulation, the Secretary shall publish in the Federal Register -

(i) if a determination as to whether a species is an endangered species or a threatened species, or a revision of critical habitat, is involved, either -

(I) a final regulation to implement such determination,

(II) a final regulation to implement such revision or a finding that such

revision should not be made,

(III) notice that such one-year period is being extended under subparagraph (B)(i), or

(IV) notice that the proposed regulation is being withdrawn under subparagraph (B)(ii), together with the finding on which such withdrawal is based; or

(ii) subject to subparagraph (C), if a designation of critical habitat is involved, either -

(I) a final regulation to implement such designation, or

(II) notice that such one-year period is being extended under such subparagraph.

(B)(i) If the Secretary finds with respect to a proposed regulation referred to in subparagraph (A)(i) that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned, the Secretary may extend the one-year period specified in subparagraph (A) for not more than six months for purposes of soliciting additional data.

(ii) If a proposed regulation referred to in subparagraph (A)(i) is not promulgated as a final regulation within such one-year period (or longer period if extension under clause (i) applies) because the Secretary finds that there is not sufficient evidence to justify the action proposed by the regulation, the Secretary shall immediately

withdraw the regulation. The finding on which a withdrawal is based shall be subject to judicial review. The Secretary may not propose a regulation that has previously been withdrawn under this clause unless he determines that sufficient new information is available to warrant such proposal.

(iii) If the one-year period specified in subparagraph (A) is extended under clause (i) with respect to a proposed regulation, then before the close of such extended period the Secretary shall publish in the Federal Register either a final regulation to implement the determination or revision concerned, a finding that the revision should not be made, or a notice of withdrawal of the regulation under clause (ii), together with the finding on which the withdrawal is based.

(C) A final regulation designating critical habitat of an endangered species or a threatened species shall be published concurrently with the final regulation implementing the determination that such species is endangered or threatened, unless the Secretary deems that -

(i) it is essential to the conservation of such species that the regulation implementing such determination be promptly published; or (ii) critical habitat of such species is not then determinable, in which case the Secretary, with respect to the proposed regulation to designate such habitat, may extend the one-

year period specified in subparagraph (A) by not more than one additional year, but not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat.

(7) Neither paragraph (4), (5), or (6) of this subsection nor section 553 of title 5 shall apply to any regulation issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of fish or wildlife or plants, but only if -

(A) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary; and

(B) in the case such regulation applies to resident species of fish or wildlife, or plants, the Secretary gives actual notice of such regulation to the State agency in each State in which such species is believed to occur. Such regulation shall, at the discretion of the Secretary, take effect immediately upon the publication of the regulation in the Federal Register. Any regulation promulgated under the authority of this paragraph shall cease to have force and effect at the close of the 240-day period following the date of publication unless, during such 240-day period, the rulemaking procedures which would apply to such regulation without regard to this paragraph are complied with. If at any time after issuing an emergency

regulation the Secretary determines, on the basis of the best appropriate data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it.

(8) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this chapter shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulation; and if such regulation designates or revises critical habitat, such summary shall, to the maximum extent practicable, also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be affected by such designation.

(c) Lists

(1) The Secretary of the Interior shall publish in the Federal Register a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names, if any, specify with respect to each such species over what portion of its range it is endangered or threatened, and specify any critical habitat within such range. The Secretary shall from time to time revise each list published under the authority of this subsection to reflect recent determi-

nations, designations, and revisions made in accordance with subsections (a) and (b) of this section.

(2) The Secretary shall -

(A) conduct, at least once every five years, a review of all species included in a list which is published pursuant to paragraph (1) and which is in effect at the time of such review; and

(B) determine on the basis of such review whether any such species should -

(i) be removed from such list;

(ii) be changed in status from an endangered species to a threatened species; or

(iii) be changed in status from a threatened species to an endangered species. Each determination under subparagraph (B) shall be made in accordance with the provisions of subsections (a) and (b) of this section.

(d) Protective regulations

Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 1538(a)(1) of this title, in the case of fish or wildlife, or section 1538(a)(2) of this title, in the case of plants, with respect to endangered species; except that with respect to the taking of resident species of fish or

wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 1535(c) of this title only to the extent that such regulations have also been adopted by such State.

(e) Similarity of appearance cases

The Secretary may, by regulation of commerce or taking, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to this section if he finds that -

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this chapter.

(f) Recovery plans

(1) The Secretary shall develop and implement plans (hereinafter in this subsection referred to as "recovery plans") for the conservation and survival of endangered species and threatened species listed pursuant to this section, unless he finds that such a plan will not promote the conservation of the species. The Secretary, in developing

and implementing recovery plans, shall, to the maximum extent practicable -

(A) give priority to those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity;

(B) incorporate in each plan -

(i) a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species;

(ii) objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list; and

(iii) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

(2) The Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions, and other qualified persons. Recovery teams appointed pursuant to this subsection shall not be subject to the Federal Advisory Committee Act.

(3) The Secretary shall report every two years to the Committee on Environ-

ment and Public Works of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on the status of efforts to develop and implement recovery plans for all species listed pursuant to this section and on the status of all species for which such plans have been developed.

(4) The Secretary shall, prior to final approval of a new or revised recovery plan, provide public notice and an opportunity for public review and comment on such plan. The Secretary shall consider all information presented during the public comment period prior to approval of the plan.

(5) Each Federal agency shall, prior to implementation of a new or revised recovery plan, consider all information presented during the public comment period under paragraph (4).

(g) Monitoring

(1) The Secretary shall implement a system in cooperation with the States to monitor effectively for not less than five years the status of all species which have recovered to the point at which the measures provided pursuant to this chapter are no longer necessary and which, in accordance with the provisions of this section, have been removed from either of the lists published under subsection (c) of this section.

(2) The Secretary shall make prompt use of the authority under paragraph 7<sup>2</sup> of subsection (b) of this section to prevent a significant risk to the well being of any such recovered species.

(h) Agency guidelines; publication in Federal Register; scope; proposals and amendments: notice and opportunity for comments

The Secretary shall establish, and publish in the Federal Register, agency guidelines to insure that the purposes of this section are achieved efficiently and effectively. Such guidelines shall include, but are not limited to -

(1) procedures for recording the receipt and the disposition of petitions submitted under subsection (b)(3) of this section;

(2) criteria for making the findings required under such subsection with respect to petitions;

(3) a ranking system to assist in the identification of species that should receive priority review under subsection (a)(1) of this section; and

(4) a system for developing and implementing, on a priority basis, recovery plans under subsection (f) of this section. The Secretary shall provide to the public notice of, and opportunity to submit written comments on, any guideline (including any amendment thereto) proposed to be established under this subsection.

(i) Submission to State agency of justification for regulations inconsistent with State agency's comments or petition

If, in the case of any regulation proposed by the Secretary under the authority of this section, a State agency to which notice thereof was given in accordance with subsection (b)(5)(A)(ii) of this section files comments disagreeing with

all or part of the proposed regulation, and the Secretary issues a final regulation which is in conflict with such comments, or if the Secretary fails to adopt a regulation pursuant to an action petitioned by a State agency under subsection (b)(3) of this section, the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition. (16 U.S.C. 1533)

<sup>1</sup> So in original. Probably should be paragraph "(7)".

<sup>2</sup> So in original. Probably should be paragraph "(7)".

### **Land acquisition**

**Sec. 5** (a) Implementation of conservation program; authorization of Secretary and Secretary of Agriculture

The Secretary, and the Secretary of Agriculture with respect to the National Forest System, shall establish and implement a program to conserve fish, wildlife, and plants, including those which are listed as endangered species or threatened species pursuant to section 1533 of this title. To carry out such a program, the appropriate Secretary -

(1) shall utilize the land acquisition and other authority under the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742a et seq.), the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 et seq.), and the Migratory Bird Conservation Act (16 U.S.C. 715 et seq.), as appropriate; and

(2) is authorized to acquire by purchase,

donation, or otherwise, lands, waters, or interest therein, and such authority shall be in addition to any other land acquisition authority vested in him.

(b) Availability of funds for acquisition of lands, waters, etc.

Funds made available pursuant to the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 4601-4 et seq.), may be used for the purpose of acquiring lands, waters, or interests therein under subsection (a) of this section. (16 U.S.C. 1534)

### **Cooperation with States**

**Sec. 6** (a) Generally

In carrying out the program authorized by this chapter, the Secretary shall cooperate to the maximum extent practicable with the States. Such cooperation shall include consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered species or threatened species.

(b) Management agreements

The Secretary may enter into agreements with any State for the administration and management of any area established for the conservation of endangered species or threatened species. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 715s of this title.

(c) Cooperative agreements

(1) In furtherance of the purposes of

this chapter, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this chapter.

Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this chapter, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species and threatened species, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program -

(A) authority resides in the State agency to conserve resident species of fish or wildlife determined by the State agency or the Secretary to be endangered or threatened;

(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this chapter, for all resident species of fish or wildlife in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data re-

quested to the Secretary;

(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife;

(D) the State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered or threatened species of fish or wildlife; and

(E) provision is made for public participation in designating resident species of fish or wildlife as endangered or threatened; or that under the State program -

(i) the requirements set forth in subparagraphs (C), (D), and (E) of this paragraph are complied with, and

(ii) plans are included under which immediate attention will be given to those resident species of fish and wildlife which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 1533(d) of this title or section 1538(a)(1) of this title with respect to the taking of any resident endangered or threatened

species.

(2) In furtherance of the purposes of this chapter the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species of plants. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this chapter. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this chapter, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species of plants and threatened species of plants, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program -

(A) authority resides in the State agency to conserve resident species of plants determined by the State agency or the Secretary to be endangered or threatened;

(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this chapter, for all resident species of plants in the State which are deemed by the Secretary to be

endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of plants; and

(D) provision is made for public participation in designating resident species of plants as endangered or threatened; or that under the State program -

(i) the requirements set forth in subparagraphs (C) and (D) of this paragraph are complied with, and

(ii) plans are included under which immediate attention will be given to those resident species of plants which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 1533(d) or section 1538(a)(1) of this title with respect to the taking of any resident endangered or threatened species.

(d) Allocation of funds

(1) The Secretary is authorized to

provide financial assistance to any State, through its respective State agency, which has entered into a cooperative agreement pursuant to subsection (c) of this section to assist in development of programs for the conservation of endangered and threatened species or to assist in monitoring the status of candidate species pursuant to subparagraph (C) of section 1533(b)(3) of this title and recovered species pursuant to section 1533(g) of this title. The Secretary shall allocate each annual appropriation made in accordance with the provisions of subsection (i) of this section to such States based on consideration of -

- (A) the international commitments of the United States to protect endangered species or threatened species;
- (B) the readiness of a State to proceed with a conservation program consistent with the objectives and purposes of this chapter;
- (C) the number of endangered species and threatened species within a State;
- (D) the potential for restoring endangered species and threatened species within a State;
- (E) the relative urgency to initiate a program to restore and protect an endangered species or threatened species in terms of survival of the species;
- (F) the importance of monitoring the status of candidate species within a State to prevent a significant risk to the well being of any such species;

and

(G) the importance of monitoring the status of recovered species within a State to assure that such species do not return to the point at which the measures provided pursuant to this chapter are again necessary. So much of the annual appropriation made in accordance with provisions of subsection (i) of this section allocated for obligation to any State for any fiscal year as remains unobligated at the close thereof is authorized to be made available to that State until the close of the succeeding fiscal year. Any amount allocated to any State which is unobligated at the end of the period during which it is available for expenditure is authorized to be made available for expenditure by the Secretary in conducting programs under this section.

(2) Such cooperative agreements shall provide for (A) the actions to be taken by the Secretary and the States; (B) the benefits that are expected to be derived in connection with the conservation of endangered or threatened species; (C) the estimated cost of these actions; and (D) the share of such costs to be borne by the Federal Government and by the States; except that -

- (i) the Federal share of such program costs shall not exceed 75 percent of the estimated program cost stated in the agreement; and
- (ii) the Federal share may be increased to 90 percent whenever two or more States having a common

interest in one or more endangered or threatened species, the conservation of which may be enhanced by cooperation of such States, enter jointly into an agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement. For the purposes of this section, the non-Federal share may, in the discretion of the Secretary, be in the form of money or real property, the value of which will be determined by the Secretary, whose decision shall be final.

(e) Review of State programs

Any action taken by the Secretary under this section shall be subject to his periodic review at no greater than annual intervals.

(f) Conflicts between Federal and State laws

Any State law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively (1) permit what is prohibited by this chapter or by any regulation which implements this chapter, or (2) prohibit what is authorized pursuant to an exemption or permit provided for in this chapter or in any regulation which implements this chapter. This chapter shall not otherwise be construed to void any State law or regulation which is

intended to conserve migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife. Any State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than the exemptions or permits provided for in this chapter or in any regulation which implements this chapter but not less restrictive than the prohibitions so defined.

(g) Transition

(1) For purposes of this subsection, the term "establishment period" means, with respect to any State, the period beginning on December 28, 1973, and ending on whichever of the following dates first occurs: (A) the date of the close of the 120-day period following the adjournment of the first regular session of the legislature of such State which commences after December 28, 1973, or (B) the date of the close of the 15-month period following December 28, 1973.

(2) The prohibitions set forth in or authorized pursuant to sections 1533(d) and 1538(a)(1)(B) of this title shall not apply with respect to the taking of any resident endangered species or threatened species (other than species listed in Appendix I to the Convention or otherwise specifically covered by any other treaty or Federal law) within any State -

(A) which is then a party to a cooperative agreement with the Secretary pursuant to subsection (c) of this section (except to the extent that the

taking of any such species is contrary to the law of such State); or (B) except for any time within the establishment period when -

- (i) the Secretary applies such prohibition to such species at the request of the State, or
- (ii) the Secretary applies such prohibition after he finds, and publishes his finding, that an emergency exists posing a significant risk to the well-being of such species and that the prohibition must be applied to protect such species. The Secretary's finding and publication may be made without regard to the public hearing or comment provisions of section 553 of title 5 or any other provision of this chapter; but such prohibition shall expire 90 days after the date of its imposition unless the Secretary further extends such prohibition by publishing notice and a statement of justification of such extension.

(h) Regulations

The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the provisions of this section relating to financial assistance to States.

(i) Appropriations

- (1) To carry out the provisions of this section for fiscal years after September 30, 1988, there shall be deposited into a special fund known as the cooperative endangered species conservation fund, to be administered by the Secretary, an

amount equal to 5 percent of the combined amounts covered each fiscal year into the Federal aid to wildlife restoration fund under section 669b of this title, and paid, transferred, or otherwise credited each fiscal year to the Sport Fishing Restoration Account established under 1016 of the Act of July 18, 1984.

- (2) Amounts deposited into the special fund are authorized to be appropriated annually and allocated in accordance with subsection (d) of this section. (16 U.S.C. 1535)

### **Interagency cooperation**

**Sec. 7** (a) Federal agency actions and consultations

(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 1533 of this title.

- (2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result

in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

(3) Subject to such guidelines as the Secretary may establish, a Federal agency shall consult with the Secretary on any prospective agency action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species or a threatened species may be present in the area affected by his project and that implementation of such action will likely affect such species.

(4) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 1533 of this title or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d) of this section.

(b) Opinion of Secretary

(1)(A) Consultation under subsection (a)(2) of this section with respect to any

agency action shall be concluded within the 90-day period beginning on the date on which initiated or, subject to subparagraph (B), within such other period of time as is mutually agreeable to the Secretary and the Federal agency.

(B) In the case of an agency action involving a permit or license applicant, the Secretary and the Federal agency may not mutually agree to conclude consultation within a period exceeding 90 days unless the Secretary, before the close of the 90th day referred to in subparagraph (A) -

(i) if the consultation period proposed to be agreed to will end before the 150th day after the date on which consultation was initiated, submits to the applicant a written statement setting forth -

(I) the reasons why a longer period is required,

(II) the information that is required to complete the consultation, and

(III) the estimated date on which consultation will be completed; or

(ii) if the consultation period proposed to be agreed to will end 150 or more days after the date on which consultation was initiated, obtains the consent of the applicant to such period. The Secretary and the Federal agency may mutually agree to extend a consultation period established under the preceding sentence if the Secretary, before the close of such period, obtains the consent of the applicant to the

extension.

(2) Consultation under subsection (a)(3) of this section shall be concluded within such period as is agreeable to the Secretary, the Federal agency, and the applicant concerned.

(3)(A) Promptly after conclusion of consultation under paragraph (2) or (3) of subsection (a) of this section, the Secretary shall provide to the Federal agency and the applicant, if any, a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat. If jeopardy or adverse modification is found, the Secretary shall suggest those reasonable and prudent alternatives which he believes would not violate subsection (a)(2) of this section and can be taken by the Federal agency or applicant in implementing the agency action.

(B) Consultation under subsection (a)(3) of this section, and an opinion issued by the Secretary incident to such consultation, regarding an agency action shall be treated respectively as a consultation under subsection (a)(2) of this section, and as an opinion issued after consultation under such subsection, regarding that action if the Secretary reviews the action before it is commenced by the Federal agency and finds, and notifies such agency, that no significant changes have been made with respect to the action and that no significant change has occurred regarding the information used

during the initial consultation.

(4) If after consultation under subsection (a)(2) of this section, the Secretary concludes that -

(A) the agency action will not violate such subsection, or offers reasonable and prudent alternatives which the Secretary believes would not violate such subsection;

(B) the taking of an endangered species or a threatened species incidental to the agency action will not violate such subsection; and

(C) if an endangered species or threatened species of a marine mammal is involved, the taking is authorized pursuant to section 1371(a)(5) of this title; the Secretary shall provide the Federal agency and the applicant concerned, if any, with a written statement that -

(i) specifies the impact of such incidental taking on the species,

(ii) specifies those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impact,

(iii) in the case of marine mammals, specifies those measures that are necessary to comply with section 1371(a)(5) of this title with regard to such taking, and

(iv) sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or applicant (if any), or both, to

implement the measures specified under clauses (ii) and (iii).

(c) Biological assessment

(1) To facilitate compliance with the requirements of subsection (a)(2) of this section, each Federal agency shall, with respect to any agency action of such agency for which no contract for construction has been entered into and for which no construction has begun on November 10, 1978, request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed within 180 days after the date on which initiated (or within such other period as is mutually agreed to by the Secretary and such agency, except that if a permit or license applicant is involved, the 180-day period may not be extended unless such agency provides the applicant, before the close of such period, with a written statement setting forth the estimated length of the proposed extension and the reasons therefor) and, before any contract for construction is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency's compliance with the require-

ments of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(2) Any person who may wish to apply for an exemption under subsection (g) of this section for that action may conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by such action. Any such biological assessment must, however, be conducted in cooperation with the Secretary and under the supervision of the appropriate Federal agency.

(d) Limitation on commitment of resources

After initiation of consultation required under subsection (a)(2) of this section, the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2) of this section.

(e) Endangered Species Committee

(1) There is established a committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the "Committee").

(2) The Committee shall review any application submitted to it pursuant to this section and determine in accordance with subsection (h) of this section whether or not to grant an exemption from the requirements of subsection

(a)(2) of this section for the action set forth in such application.

(3) The Committee shall be composed of seven members as follows:

(A) The Secretary of Agriculture.

(B) The Secretary of the Army.

(C) The Chairman of the Council of Economic Advisors.

(D) The Administrator of the Environmental Protection Agency.

(E) The Secretary of the Interior.

(F) The Administrator of the National Oceanic and Atmospheric Administration.

(G) The President, after consideration of any recommendations received pursuant to subsection (g)(2)(B) of this section shall appoint one individual from each affected State, as determined by the Secretary, to be a member of the Committee for the consideration of the application for exemption for an agency action with respect to which such recommendations are made, not later than 30 days after an application is submitted pursuant to this section.

(4)(A) Members of the Committee shall receive no additional pay on account of their service on the Committee.

(B) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons

employed intermittently in the Government service are allowed expenses under section 5703 of title 5.

(5)(A) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that, in no case shall any representative be considered in determining the existence of a quorum for the transaction of any function of the Committee if that function involves a vote by the Committee on any matter before the Committee.

(B) The Secretary of the Interior shall be the Chairman of the Committee.

(C) The Committee shall meet at the call of the Chairman or five of its members.

(D) All meetings and records of the Committee shall be open to the public.

(6) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Committee to assist it in carrying out its duties under this section.

(7)(A) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Committee deems advisable.

(B) When so authorized by the Committee, any member or agent of the Committee may take any action which the Committee is authorized to take by this paragraph.

(C) Subject to the Privacy Act (5 U.S.C. 552a), the Committee may secure directly from any Federal agency information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Committee, the head of such Federal agency shall furnish such information to the Committee.

(D) The Committee may use the United States mails in the same manner and upon the same conditions as a Federal agency.

(E) The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.

(8) In carrying out its duties under this section, the Committee may promulgate and amend such rules, regulations, and procedures, and issue and amend such orders as it deems necessary.

(9) For the purpose of obtaining information necessary for the consideration of an application for an exemption under this section the Committee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(10) In no case shall any representative, including a representative of a member designated pursuant to paragraph (3)(G) of this subsection, be eligible to cast a vote on behalf of any member.

(f) Promulgation of regulations; form and contents of exemption application

Not later than 90 days after November 10, 1978, the Secretary shall promulgate regulations which set forth the form and manner in which applications for exemption shall be submitted to the Secretary and the information to be contained in such applications. Such regulations shall require that information submitted in an application by the head of any Federal agency with respect to any agency action include, but not be limited to -

(1) a description of the consultation process carried out pursuant to subsection (a)(2) of this section between the head of the Federal agency and the Secretary; and

(2) a statement describing why such action cannot be altered or modified to conform with the requirements of subsection (a)(2) of this section.

(g) Application for exemption; report to Committee

(1) A Federal agency, the Governor of the State in which an agency action will occur, if any, or a permit or license applicant may apply to the Secretary for an exemption for an agency action of such agency if, after consultation under subsection (a)(2) of this section, the Secretary's opinion under subsection (b) of this section indicates that the agency action would violate subsection (a)(2) of this section. An application for an exemption shall be considered initially by the Secretary in the manner provided for in this subsection, and shall be considered by the Committee for a final determination under subsection (h) of this section after a report is made

pursuant to paragraph (5). The applicant for an exemption shall be referred to as the “exemption applicant” in this section.

(2)(A) An exemption applicant shall submit a written application to the Secretary, in a form prescribed under subsection (f) of this section, not later than 90 days after the completion of the consultation process; except that, in the case of any agency action involving a permit or license applicant, such application shall be submitted not later than 90 days after the date on which the Federal agency concerned takes final agency action with respect to the issuance of the permit or license. For purposes of the preceding sentence, the term “final agency action” means (i) a disposition by an agency with respect to the issuance of a permit or license that is subject to administrative review, whether or not such disposition is subject to judicial review; or (ii) if administrative review is sought with respect to such disposition, the decision resulting after such review. Such application shall set forth the reasons why the exemption applicant considers that the agency action meets the requirements for an exemption under this subsection.

(B) Upon receipt of an application for exemption for an agency action under paragraph (1), the Secretary shall promptly (i) notify the Governor of each affected State, if any, as determined by the Secretary, and request the Governors so notified to recommend individuals to be appointed to the

Endangered Species Committee for consideration of such application; and (ii) publish notice of receipt of the application in the Federal Register, including a summary of the information contained in the application and a description of the agency action with respect to which the application for exemption has been filed.

(3) The Secretary shall within 20 days after the receipt of an application for exemption, or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary -

(A) determine that the Federal agency concerned and the exemption applicant have -

(i) carried out the consultation responsibilities described in subsection (a) of this section in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed agency action which would not violate subsection (a)(2) of this section;

(ii) conducted any biological assessment required by subsection (c) of this section; and

(iii) to the extent determinable within the time provided herein, refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d) of this section; or

(B) deny the application for exemption because the Federal agency con-

cerned or the exemption applicant have not met the requirements set forth in subparagraph (A)(i), (ii), and (iii). The denial of an application under subparagraph (B) shall be considered final agency action for purposes of chapter 7 of title 5.

(4) If the Secretary determines that the Federal agency concerned and the exemption applicant have met the requirements set forth in paragraph (3)(A)(i), (ii), and (iii) he shall, in consultation with the Members of the Committee, hold a hearing on the application for exemption in accordance with sections 554, 555, and 556 (other than subsection (b)(1) and (2) thereof) of title 5 and prepare the report to be submitted pursuant to paragraph (5).

(5) Within 140 days after making the determinations under paragraph (3) or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary, the Secretary shall submit to the Committee a report discussing -

(A) the availability of reasonable and prudent alternatives to the agency action, and the nature and extent of the benefits of the agency action and of alternative courses of action consistent with conserving the species or the critical habitat;

(B) a summary of the evidence concerning whether or not the agency action is in the public interest and is of national or regional significance;

(C) appropriate reasonable mitigation and enhancement measures which

should be considered by the Committee; and

(D) whether the Federal agency concerned and the exemption applicant refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d) of this section.

(6) To the extent practicable within the time required for action under subsection (g) of this section, and except to the extent inconsistent with the requirements of this section, the consideration of any application for an exemption under this section and the conduct of any hearing under this subsection shall be in accordance with sections 554, 555, and 556 (other than subsection (b)(3) of section 556) of title 5.

(7) Upon request of the Secretary, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Secretary to assist him in carrying out his duties under this section.

(8) All meetings and records resulting from activities pursuant to this subsection shall be open to the public.

(h) Grant of exemption

(1) The Committee shall make a final determination whether or not to grant an exemption within 30 days after receiving the report of the Secretary pursuant to subsection (g)(5) of this section. The Committee shall grant an exemption from the requirements of subsection (a)(2) of this section for an agency

action if, by a vote of not less than five of its members voting in person -

(A) it determines on the record, based on the report of the Secretary, the record of the hearing held under subsection (g)(4) of this section and on such other testimony or evidence as it may receive, that -

- (i) there are no reasonable and prudent alternatives to the agency action;
- (ii) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;
- (iii) the action is of regional or national significance; and
- (iv) neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by subsection (d) of this section; and

(B) it establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned. Any final determination by the Committee under this subsection shall be considered final agency action for purposes of chapter

7 of title 5.

(2)(A) Except as provided in subparagraph (B), an exemption for an agency action granted under paragraph (1) shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action -

(i) regardless whether the species was identified in the biological assessment; and

(ii) only if a biological assessment has been conducted under subsection (c) of this section with respect to such agency action.

(B) An exemption shall be permanent under subparagraph (A) unless -

(i) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under subsection (a)(2) of this section or was not identified in any biological assessment conducted under subsection (c) of this section, and

(ii) the Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent.

If the Secretary makes a finding described in clause (i), the Committee shall meet with respect to the matter within 30 days after the date of the finding.

(i) Review by Secretary of State; violation of international treaty or other international obligation of United States

Notwithstanding any other provision of this chapter, the Committee shall be prohibited from considering for exemption any application made to it, if the Secretary of State, after a review of the proposed agency action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any application made under this section that the granting of any such exemption and the carrying out of such action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

(j) Exemption for national security reasons

Notwithstanding any other provision of this chapter, the Committee shall grant an exemption for any agency action if the Secretary of Defense finds that such exemption is necessary for reasons of national security.

(k) Exemption decision not considered major Federal action; environmental impact statement

An exemption decision by the Committee under this section shall not be a major Federal action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.): Provided, That an environmental impact statement which discusses the impacts upon endangered species or threatened species or their

critical habitats shall have been previously prepared with respect to any agency action exempted by such order.

(l) Committee order granting exemption; cost of mitigation and enhancement measures; report by applicant to Council on Environmental Quality

(1) If the Committee determines under subsection (h) of this section that an exemption should be granted with respect to any agency action, the Committee shall issue an order granting the exemption and specifying the mitigation and enhancement measures established pursuant to subsection (h) of this section which shall be carried out and paid for by the exemption applicant in implementing the agency action. All necessary mitigation and enhancement measures shall be authorized prior to the implementing of the agency action and funded concurrently with all other project features.

(2) The applicant receiving such exemption shall include the costs of such mitigation and enhancement measures within the overall costs of continuing the proposed action. Notwithstanding the preceding sentence the costs of such measures shall not be treated as project costs for the purpose of computing benefit-cost or other ratios for the proposed action. Any applicant may request the Secretary to carry out such mitigation and enhancement measures. The costs incurred by the Secretary in carrying out any such measures shall be paid by the applicant receiving the exemption. No later than one year after the granting of an exemption, the

exemption applicant shall submit to the Council on Environmental Quality a report describing its compliance with the mitigation and enhancement measures prescribed by this section. Such a report shall be submitted annually until all such mitigation and enhancement measures have been completed. Notice of the public availability of such reports shall be published in the Federal Register by the Council on Environmental Quality.

(m) Notice requirement for citizen suits not applicable

The 60-day notice requirement of section 1540(g) of this title shall not apply with respect to review of any final determination of the Committee under subsection (h) of this section granting an exemption from the requirements of subsection (a)(2) of this section.

(n) Judicial review

Any person, as defined by section 1532(13) of this title, may obtain judicial review, under chapter 7 of title 5, of any decision of the Endangered Species Committee under subsection (h) of this section in the United States Court of Appeals for (1) any circuit wherein the agency action concerned will be, or is being, carried out, or (2) in any case in which the agency action will be, or is being, carried out outside of any circuit, the District of Columbia, by filing in such court within 90 days after the date of issuance of the decision, a written petition for review. A copy of such petition shall be transmitted by the clerk of the court to the Committee and the Committee shall file in the court the record in the proceed-

ing, as provided in section 2112 of title 28. Attorneys designated by the Endangered Species Committee may appear for, and represent the Committee in any action for review under this subsection.

(o) Exemption as providing exception on taking of endangered species

Notwithstanding sections 1533(d) and 1538(a)(1)(B) and (C) of this title, sections 1371 and 1372 of this title, or any regulation promulgated to implement any such section -

(1) any action for which an exemption is granted under subsection (h) of this section shall not be considered to be a taking of any endangered species or threatened species with respect to any activity which is necessary to carry out such action; and

(2) any taking that is in compliance with the terms and conditions specified in a written statement provided under subsection (b)(4)(iv) of this section shall not be considered to be a prohibited taking of the species concerned.

(p) Exemptions in Presidentially declared disaster areas In any area which has been declared by the President to be a major disaster area under the Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), the President is authorized to make the determinations required by subsections (g) and (h) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 405 or 406 of the Disaster Relief and Emergency Assistance Act (42 U.S.C. 5171 or 5172), and which the

President determines (1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding any other provision of this section, the Committee shall accept the determinations of the President under this subsection. (16 U.S.C. 1536)

### **International cooperation**

#### **Sec. 8 (a) Financial assistance**

As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 1306 of title 31, use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.) or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation of any endangered species or threatened species listed by the Secretary pursuant to section 1533 of this title. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance

under this section, such currencies shall be used in preference to funds appropriated under the authority of section 1542 of this title.

#### **(b) Encouragement of foreign programs**

In order to carry out further the provisions of this chapter, the Secretary, through the Secretary of State, shall encourage -

(1) foreign countries to provide for the conservation of fish or wildlife and plants including endangered species and threatened species listed pursuant to section 1533 of this title;

(2) the entering into of bilateral or multilateral agreements with foreign countries to provide for such conservation; and

(3) foreign persons who directly or indirectly take fish or wildlife or plants in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out with such assistance as he may provide, conservation practices designed to enhance such fish or wildlife or plants and their habitat.

#### **(c) Personnel**

After consultation with the Secretary of State, the Secretary may -

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the conservation of fish or wildlife or

plants; and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife, or plant management, research and law enforcement and to render professional assistance abroad in such matters.

(d) Investigations

After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this chapter. (16 U.S.C. 1537)

### **Convention implementation**

**Sec. 8(A)** (a) Management Authority and Scientific Authority

The Secretary of the Interior (hereinafter in this section referred to as the “Secretary”) is designated as the Management Authority and the Scientific Authority for purposes of the Convention and the respective functions of each such Authority shall be carried out through the United States Fish and Wildlife Service.

(b) Management Authority functions

The Secretary shall do all things necessary and appropriate to carry out the functions of the Management Authority under the Convention.

(c) Scientific Authority functions; determinations

(1) The Secretary shall do all things

necessary and appropriate to carry out the functions of the Scientific Authority under the Convention.

(2) The Secretary shall base the determinations and advice given by him under Article IV of the Convention with respect to wildlife upon the best available biological information derived from professionally accepted wildlife management practices; but is not required to make, or require any State to make, estimates of population size in making such determinations or giving such advice.

(d) Reservations by the United States under Convention

If the United States votes against including any species in Appendix I or II of the Convention and does not enter a reservation pursuant to paragraph (3) of Article XV of the Convention with respect to that species, the Secretary of State, before the 90th day after the last day on which such a reservation could be entered, shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives, and to the Committee on the Environment and Public Works of the Senate, a written report setting forth the reasons why such a reservation was not entered.

(e) Wildlife preservation in Western Hemisphere

(1) The Secretary of the Interior (hereinafter in this subsection referred to as the “Secretary”), in cooperation with the Secretary of State, shall act on behalf of, and represent, the United States in all regards as required by the

Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (56 Stat. 1354, T.S. 982, hereinafter in this subsection referred to as the “Western Convention”). In the discharge of these responsibilities, the Secretary and the Secretary of State shall consult with the Secretary of Agriculture, the Secretary of Commerce, and the heads of other agencies with respect to matters relating to or affecting their areas of responsibility.

(2) The Secretary and the Secretary of State shall, in cooperation with the contracting parties to the Western Convention and, to the extent feasible and appropriate, with the participation of State agencies, take such steps as are necessary to implement the Western Convention. Such steps shall include, but not be limited to

(A) cooperation with contracting parties and international organizations for the purpose of developing personnel resources and programs that will facilitate implementation of the Western Convention;

(B) identification of those species of birds that migrate between the United States and other contracting parties, and the habitats upon which those species depend, and the implementation of cooperative measures to ensure that such species will not become endangered or threatened; and

(C) identification of measures that are necessary and appropriate to implement those provisions of the Western Convention which address the protec-

tion of wild plants.

(3) No later than September 30, 1985, the Secretary and the Secretary of State shall submit a report to Congress describing those steps taken in accordance with the requirements of this subsection and identifying the principal remaining actions yet necessary for comprehensive and effective implementation of the Western Convention.

(4) The provisions of this subsection shall not be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate resident fish or wildlife under State law or regulations. (16 U.S.C. 1537a)

### **Prohibited acts**

#### **Sec. 9 (a) Generally**

(1) Except as provided in sections 1535(g)(2) and 1539 of this title, with respect to any endangered species of fish or wildlife listed pursuant to section 1533 of this title it is unlawful for any person subject to the jurisdiction of the United States to -

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means

whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.

(2) Except as provided in sections 1535(g)(2) and 1539 of this title, with respect to any endangered species of plants listed pursuant to section 1533 of this title, it is unlawful for any person subject to the jurisdiction of the United States to -

(A) import any such species into, or export any such species from, the United States;

(B) remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass

law;

(C) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(D) sell or offer for sale in interstate or foreign commerce any such species; or (E) violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.

(b) Species held in captivity or controlled environment

(1) The provisions of subsections (a)(1)(A) and (a)(1)(G) of this section shall not apply to any fish or wildlife which was held in captivity or in a controlled environment on (A) December 28, 1973, or (B) the date of the publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 1533 of this title: Provided, That such holding and any subsequent holding or use of the fish or wildlife was not in the course of a commercial activity. With respect to any act prohibited by subsections (a)(1)(A) and (a)(1)(G) of this section which occurs after a period of 180 days from (i) December 28, 1973, or (ii) the date of publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection

(c) of section 1533 of this title, there shall be a rebuttable presumption that the fish or wildlife involved in such act is not entitled to the exemption contained in this subsection.

(2)(A) The provisions of subsection (a)(1) of this section shall not apply to -

(i) any raptor legally held in captivity or in a controlled environment on November 10, 1978; or

(ii) any progeny of any raptor described in clause (i); until such time as any such raptor or progeny is intentionally returned to a wild state.

(B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by regulation require as being reasonably appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.

(c) Violation of Convention

(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of

terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if -

(A) such fish or wildlife is not an endangered species listed pursuant to section 1533 of this title but is listed in Appendix II to the Convention,

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied,

(C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and

(D) such importation is not made in the course of a commercial activity, be presumed to be an importation not in violation of any provision of this chapter or any regulation issued pursuant to this chapter.

(d) Imports and exports

(1) In general

It is unlawful for any person, without first having obtained permission from the Secretary, to engage in business -

(A) as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (i) are not listed pursuant to section 1533 of this title as endangered species or threatened species, and (ii) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants; or

(B) as an importer or exporter of any amount of raw or worked African elephant ivory.

(2) Requirements Any person required to obtain permission under paragraph (1) of this subsection shall -

(A) keep such records as will fully and correctly disclose each importation or exportation of fish, wildlife, plants, or African elephant ivory made by him and the subsequent disposition made by him with respect to such fish, wildlife, plants, or ivory;

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his place of business, an opportunity to examine his inventory of imported fish, wildlife, plants, or African elephant ivory and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) Regulations

The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(4) Restriction on consideration of value or amount of African elephant ivory imported or exported

In granting permission under this subsection for importation or exportation of African elephant ivory, the Secretary shall not vary the requirements for

obtaining such permission on the basis of the value or amount of ivory imported or exported under such permission.

(e) Reports

It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (1) are not listed pursuant to section 1533 of this title as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this chapter or to meet the obligations of the Convention.

(f) Designation of ports

(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 1533 of this title as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary of the Interior. For the purpose of facilitating enforcement of this chapter and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and

change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons, if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 668cc-4(d) (Section 668cc-4 was repealed.) of this title, shall, if such designation is in effect on December 27, 1973, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(g) Violations

It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in his section. (16 U.S.C. 1538)

## Exceptions

### Sec. 10 (a) Permits

(1) The Secretary may permit, under such terms and conditions as he shall prescribe -

(A) any act otherwise prohibited by section 1538 of this title for scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental popula-

tions pursuant to subsection (j) of this section; or

(B) any taking otherwise prohibited by section 1538(a)(1)(B) of this title if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

(2)(A) No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefor submits to the Secretary a conservation plan that specifies -

(i) the impact which will likely result from such taking;

(ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;

(iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and (iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.

(B) If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that -

(i) the taking will be incidental;

(ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;

(iii) the applicant will ensure that adequate funding for the plan will be provided;

(iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (v) the measures, if any, required under subparagraph (A)(iv) will be met; and he has received such other assurances as he may require that the plan will be implemented, the Secretary shall issue the permit. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to, such reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.

(C) The Secretary shall revoke a permit issued under this paragraph if he finds that the permittee is not complying with the terms and conditions of the permit.

(b) Hardship exemptions

(1) If any person enters into a contract with respect to a species of fish or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 1533 of this title will cause undue economic hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 1538(a) of this title to the extent the Secretary deems appropriate if such

person applies to him for such exemption and includes with such application such information as the Secretary may require to prove such hardship; except that (A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary; (B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to December 28, 1973, shall expire in accordance with the terms of section 668cc-3 (Section 668cc-3 was repealed.) of this title; and (C) no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used in a commercial activity.

(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

(A) substantial economic loss resulting from inability caused by this chapter to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species;

(B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income

from the lawful taking of any listed species, which taking would be made unlawful under this chapter; or

(C) curtailment of subsistence taking made unlawful under this chapter by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) Notice and review

The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this subsection. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit. Information received by the Secretary as a part of any application

shall be available to the public as a matter of public record at every stage of the proceeding.

(d) Permit and exemption policy

The Secretary may grant exceptions under subsections (a)(1)(A) and (b) of this section only if he finds and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 1531 of this title.

(e) Alaska natives

(1) Except as provided in paragraph (4) of this subsection the provisions of this chapter shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by -

(A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or

(B) any non-native permanent resident of an Alaskan native village; if such taking is primarily for subsistence purposes. Non-edible byproducts of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the

taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

(2) Any taking under this subsection may not be accomplished in a wasteful manner.

(3) As used in this subsection -

(i) The term “subsistence” includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

(ii) The term “authentic native articles of handicrafts and clothing” means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-Native

Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this chapter. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 1373 of this title, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

(f) Pre-Act endangered species parts exemption; application and certification; regulation; validity of sales contract; separability; renewal of exemption; expiration of renewal certification

(1) As used in this subsection -

(A) The term “pre-Act endangered species part” means -

(i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or  
(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

(B) The term “scrimshaw product” means any art form which involves the substantial etching or engraving of designs upon, or the substantial

carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea. For purposes of this subsection, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving, or carving.

(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

(A) The prohibition on exportation from the United States set forth in section 1538(a)(1)(A) of this title.

(B) Any prohibition set forth in section 1538(a)(1)(E) or (F) of this title.

(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application -

(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species

part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify -

(A) any prohibition in section 1538(a) of this title which is exempted;

(B) the pre-Act endangered species parts to which the exemption applies;

(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate unless such exemption is renewed under paragraph (8); and

(D) any term or condition prescribed pursuant to paragraph (5)(A) or (B), or both, which the Secretary deems necessary or appropriate.

(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth -

(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that

applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection; to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this chapter. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 1533(f)(2)(A)(i) of this title.

(6)(A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 1538(a)(1)(F) of this title.

(B) In the event that this paragraph is held invalid, the validity of the remainder of this chapter, including the remainder of this subsection, shall not be affected.

(7) Nothing in this subsection shall be construed to -

(A) exonerate any person from any act committed in violation of para-

graphs (1)(A), (1)(E), or (1)(F) of section 1538(a) of this title prior to July 12, 1976; or (B) immunize any person from prosecution for any such act.

(8)(A)(i) <sup>3</sup> Any valid certificate of exemption which was renewed after October 13, 1982, and was in effect on March 31, 1988, shall be deemed to be renewed for a six-month period beginning on October 7, 1988. Any person holding such a certificate may apply to the Secretary for one additional renewal of such certificate for a period not to exceed 5 years beginning on October 7, 1988.

(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the previous certificate shall remain in effect during the period of the renewal.

(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.

(D) No person may, after January 31, 1984, sell or offer for sale in interstate or foreign commerce, any pre-Act finished scrimshaw product unless such person holds a valid certificate of exemption issued by the Secretary under this subsection, and unless such

product or the raw material for such product was held by such person on October 13, 1982.

(g) Burden of proof

In connection with any action alleging a violation of section 1538 of this title, any person claiming the benefit of any exemption or permit under this chapter shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.

(h) Certain antique articles; importation; port designation; application for return of articles

(1) Sections 1533(d) and 1538(a) and (c) of this title do not apply to any article which -

- (A) is not less than 100 years of age;
- (B) is composed in whole or in part of any endangered species or threatened species listed under section 1533 of this title;
- (C) has not been repaired or modified with any part of any such species on or after December 28, 1973; and
- (D) is entered at a port designated under paragraph (3).

(2) Any person who wishes to import an article under the exception provided by this subsection shall submit to the customs officer concerned at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation with the Secretary of the Interior, shall by regulation require as being necessary to establish that the

article meets the requirements set forth in paragraph (1)(A), (B), and (C).

(3) The Secretary of the Treasury, after consultation with the Secretary of the Interior, shall designate one port within each customs region at which articles described in paragraph (1)(A), (B), and (C) must be entered into the customs territory of the United States.

(4) Any person who imported, after December 27, 1973, and on or before November 10, 1978, any article described in paragraph (1) which -

(A) was not repaired or modified after the date of importation with any part of any endangered species or threatened species listed under section 1533 of this title;

(B) was forfeited to the United States before November 10, 1978, or is subject to forfeiture to the United States on such date of enactment, pursuant to the assessment of a civil penalty under section 1540 of this title; and

(C) is in the custody of the United States on November 10, 1978; may, before the close of the one-year period beginning on November 10, 1978, make application to the Secretary for return of the article. Application shall be made in such form and manner, and contain such documentation, as the Secretary prescribes. If on the basis of any such application which is timely filed, the Secretary is satisfied that the requirements of this paragraph are met with respect to the article concerned, the Secretary shall

return the article to the applicant and the importation of such article shall, on and after the date of return, be deemed to be a lawful importation under this chapter.

(i) Noncommercial transshipments

Any importation into the United States of fish or wildlife shall, if -

- (1) such fish or wildlife was lawfully taken and exported from the country of origin and country of reexport, if any;
- (2) such fish or wildlife is in transit or transshipment through any place subject to the jurisdiction of the United States en route to a country where such fish or wildlife may be lawfully imported and received;
- (3) the exporter or owner of such fish or wildlife gave explicit instructions not to ship such fish or wildlife through any place subject to the jurisdiction of the United States, or did all that could have reasonably been done to prevent transshipment, and the circumstances leading to the transshipment were beyond the exporter's or owner's control;
- (4) the applicable requirements of the Convention have been satisfied; and
- (5) such importation is not made in the course of a commercial activity, be an importation not in violation of any provision of this chapter or any regulation issued pursuant to this chapter while such fish or wildlife remains in the control of the United States Customs Service.

(j) Experimental populations

(1) For purposes of this subsection, the term "experimental population" means any population (including any offspring arising solely therefrom) authorized by the Secretary for release under paragraph (2), but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species.

(2)(A) The Secretary may authorize the release (and the related transportation) of any population (including eggs, propagules, or individuals) of an endangered species or a threatened species outside the current range of such species if the Secretary determines that such release will further the conservation of such species.

(B) Before authorizing the release of any population under subparagraph (A), the Secretary shall by regulation identify the population and determine, on the basis of the best available information, whether or not such population is essential to the continued existence of an endangered species or a threatened species.

(C) For the purposes of this chapter, each member of an experimental population shall be treated as a threatened species; except that -

- (i) solely for purposes of section 1536 of this title (other than subsection (a)(1) thereof), an experimental population determined under subparagraph (B) to be not essential to the continued existence of a species

shall be treated, except when it occurs in an area within the National Wildlife Refuge System or the National Park System, as a species proposed to be listed under section 1533 of this title; and

(ii) critical habitat shall not be designated under this chapter for any experimental population determined under subparagraph (B) to be not essential to the continued existence of a species.

(3) The Secretary, with respect to populations of endangered species or threatened species that the Secretary authorized, before October 13, 1982, for release in geographical areas separate from the other populations of such species, shall determine by regulation which of such populations are an experimental population for the purposes of this subsection and whether or not each is essential to the continued existence of an endangered species or a threatened species. (16 U.S.C. 1539)

<sup>3</sup> So in original. No cl. (ii) has been enacted.

## Penalties and enforcement

### Sec. 11 (a) Civil penalties

(1) Any person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates, any provision of this chapter, or any provision of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1)(A), (B), (C), (D), (E), or (F), (a)(2)(A), (B), (C),

or (D), (c), (d) (other than regulation relating to recordkeeping or filing of reports), (f) or (g) of section 1538 of this title, may be assessed a civil penalty by the Secretary of not more than \$25,000 for each violation. Any person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates, any provision of any other regulation issued under this chapter may be assessed a civil penalty by the Secretary of not more than \$12,000 for each such violation. Any person who otherwise violates any provision of this chapter, or any regulation, permit, or certificate issued hereunder, may be assessed a civil penalty by the Secretary of not more than \$500 for each such violation. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5. The Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(3) Notwithstanding any other provision of this chapter, no civil penalty shall be imposed if it can be shown by a preponderance of the evidence that the defendant committed an act based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species.

(b) Criminal violations

(1) Any person who knowingly violates any provision of this chapter, of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1)(A), (B), (C), (D), (E), or (F), (a)(2)(A), (B), (C), or (D), (c), (d) (other than a regulation relating to recordkeeping, or filing of reports), (f), or (g) of section 1538 of this title shall, upon conviction, be fined not more than \$50,000 or imprisoned for not more than one year, or both. Any person who knowingly violates any provision of any other regulation issued under this chapter shall, upon conviction, be fined not more than \$25,000 or imprisoned for not more than six months, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing a person to import or export fish, wildlife, or plants, or to operate a quarantine station for imported wildlife, or authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted of a criminal violation of this chapter or any regulation, permit, or certificate issued hereunder may immediately modify, suspend, or revoke each lease, license, permit, or other agreement. The Secretary shall also suspend for a period of up to one year, or cancel, any Federal hunting or fishing permits or stamps issued to any person who is convicted of a criminal violation of any provision of this chapter or any regulation, permit, or certificate issued hereunder. The United States shall not be liable for the payments of

any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any leases, licenses, permits, stamps, or other agreements pursuant to this section.

(3) Notwithstanding any other provision of this chapter, it shall be a defense to prosecution under this subsection if the defendant committed the offense based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual, from bodily harm from any endangered or threatened species.

(c) District court jurisdiction

The several district courts of the United States, including the courts enumerated in section 460 of title 28, shall have jurisdiction over any actions arising under this chapter. For the purpose of this chapter, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii.

(d) Rewards and incidental expenses

The Secretary or the Secretary of the Treasury shall pay, from sums received as penalties, fines, or forfeitures of property for any violation of this chapter or any regulation issued hereunder (1) a reward to any person who furnishes information which leads to an arrest, a criminal conviction, civil penalty assessment, or forfeiture of property for any violation of this chapter or any regulation issued hereunder. The amount of the reward, if any, is to be designated by the Secretary or the Secretary of the Treasury, as

appropriate. Any officer or employee of the United States or any State or local government who furnishes information or renders service in the performance of his official duties is ineligible for payment under this subsection, and (2) the reasonable and necessary costs incurred by any person in providing temporary care for any fish, wildlife, or plant pending the disposition of any civil or criminal proceeding alleging a violation of this chapter with respect to that fish, wildlife, or plant. Whenever the balance of sums received under this section and section 3375(d) of this title, as penalties or fines, or from forfeitures of property, exceed \$500,000, the Secretary of the Treasury shall deposit an amount equal to such excess balance in the cooperative endangered species conservation fund established under section 1535(i) of this title.

(e) Enforcement

(1) The provisions of this chapter and any regulations or permits issued pursuant thereto shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this chapter.

(2) The judges of the district courts of the United States and the United States magistrate judges may, within their respective jurisdictions, upon proper

oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this chapter and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, to enforce this chapter may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Such person may make arrests without a warrant for any violation of this chapter if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this chapter. Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or

item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary, but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this chapter, as the Secretary shall by regulation prescribe.

(4)(A) All fish or wildlife or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of this chapter, any regulation made pursuant thereto, or any permit or certificate issued hereunder shall be subject to forfeiture to the United States.

(B) All guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting, or importing of any fish or wildlife or plants in violation of this chapter, any regulation made pursuant thereto, or any permit or certificate issued thereunder shall be subject to forfeiture to the United States upon conviction of a criminal violation pursuant to subsection (b)(1) of this section.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs

laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this chapter, be exercised or performed by the Secretary or by such persons as he may designate.

(6) The Attorney General of the United States may seek to enjoin any person who is alleged to be in violation of any provision of this chapter or regulation issued under authority thereof.

(f) Regulations

The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this chapter, and charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this chapter including processing applications and reasonable inspections, and with the transfer, board, handling, or storage of fish or wildlife or plants and evidentiary items seized and forfeited under this chapter. All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and

chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) Citizen suits

(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf -

(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this chapter or regulation issued under the authority thereof; or

(B) to compel the Secretary to apply, pursuant to section 1535(g)(2)(B)(ii) of this title, the prohibitions set forth in or authorized pursuant to section 1533(d) or 1538(a)(1)(B) of this title with respect to the taking of any resident endangered species or threatened species within any State; or

(C) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under section 1533 of this title which is not discretionary with the Secretary. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, or to order the Secretary to perform such act or duty, as the case may be. In any civil suit commenced under subparagraph (B) the district court shall compel the Secretary to apply the prohibition sought if the court

finds that the allegation that an emergency exists is supported by substantial evidence.

(2)(A) No action may be commenced under subparagraph (1)(A) of this section -

- (i) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;
- (ii) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or
- (iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(B) No action may be commenced under subparagraph (1)(B) of this section -

- (i) prior to sixty days after written notice has been given to the Secretary setting forth the reasons why an emergency is thought to exist with respect to an endangered species or a threatened species in the State concerned; or
- (ii) if the Secretary has commenced and is diligently prosecuting action under section 1535(g)(2)(B)(ii) of this title to determine whether any such emergency exists.

(C) No action may be commenced under subparagraph (1)(C) of this

section prior to sixty days after written notice has been given to the Secretary; except that such action may be brought immediately after such notification in the case of an action under this section respecting an emergency posing a significant risk to the well-being of any species of fish or wildlife or plants.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(h) Coordination with other laws

The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this chapter with the administration of the

animal quarantine laws (21 U.S.C. 101-105, 111-135b, and 612-614) and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306). Nothing in this chapter or any amendment made by this chapter shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles and no proceeding or determination under this chapter shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this chapter shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930 (19 U.S.C. 1202 et seq.), including, without limitation, section 527 of that Act (19 U.S.C. 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country. (16 U.S.C. 1540)

### **Endangered plants**

**Sec. 12** The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species of plants which are now or may become endangered or threatened and (2) methods of adequately conserving such species, and to report to Congress, within one year after December 28, 1973, the results of such review including recom-

mendations for new legislation or the amendment of existing legislation. (16 U.S.C. 1541)

### **Authorization of appropriations**

**Sec. 15** (a) In general Except as provided in subsections (b), (c), and (d) of this section, there are authorized to be appropriated -

(1) not to exceed \$35,000,000 for fiscal year 1988, \$36,500,000 for fiscal year 1989, \$38,000,000 for fiscal year 1990, \$39,500,000 for fiscal year 1991, and \$41,500,000 for fiscal year 1992 to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this chapter;

(2) not to exceed \$5,750,000 for fiscal year 1988, \$6,250,000 for each of fiscal years 1989 and 1990, and \$6,750,000 for each of fiscal years 1991 and 1992 to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this chapter; and

(3) not to exceed \$2,200,000 for fiscal year 1988, \$2,400,000 for each of fiscal years 1989 and 1990, and \$2,600,000 for each of fiscal years 1991 and 1992, to enable the Department of Agriculture to carry out its functions and responsibilities with respect to the enforcement of this chapter and the Convention which pertain to the importation or exportation of plants.

(b) Exemptions

There are authorized to be appropriated to the Secretary to assist him and the Endangered Species Committee in carrying out their functions under sections <sup>9</sup> 1536(e), (g), and (h) of this title not to exceed \$600,000 for each of fiscal years 1988, 1989, 1990, 1991, and 1992.

(c) Convention implementation

There are authorized to be appropriated to the Department of the Interior for purposes of carrying out section 1537a(e) of this title not to exceed \$400,000 for each of fiscal years 1988, 1989, and 1990, and \$500,000 for each of fiscal years 1991 and 1992, and such sums shall remain available until expended. (16 U.S.C. 1542)

<sup>9</sup> So in original. Probably should be "section".

**Effective date**

**Sec. 16** This Act shall take effect on the date of its enactment (Dec. 28, 1973). (16 U.S.C. 1631 note)

**Construction with Marine Mammal Protection Act of 1972**

**Sec. 17** Except as otherwise provided in this chapter, no provision of this chapter shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.). (16 U.S.C. 1543)

**Annual cost analysis by Fish and Wildlife Service**

**Sec. 18** Notwithstanding section 3003 of Public Law 104-66 (31 U.S.C. 1113

note; 109 Stat. 734), on or before January 15, 1990, and each January 15 thereafter, the Secretary of the Interior, acting through the Fish and Wildlife Service, shall submit to the Congress an annual report covering the preceding fiscal year which shall contain -

(1) an accounting on a species by species basis of all reasonably identifiable Federal expenditures made primarily for the conservation of endangered or threatened species pursuant to this chapter; and

(2) an accounting on a species by species basis of all reasonably identifiable expenditures made primarily for the conservation of endangered or threatened species pursuant to this chapter by States receiving grants under section 1535 of this title. (16 U.S.C. 1544)

## Domestic Water Supply

May 28, 1940 (Ch. 220, 54 Stat. 224; 16 U.S.C. 552b to 552d)

**Sec. 2** Lands withdrawn under the provisions of sections 552a to 552d of this title shall be administered by the Secretary of Agriculture under such agreements for the protection of the watershed as he may make with the municipality concerned, and the Secretary of Agriculture is authorized, in addition to the rules and regulations adopted for the administration of the national forests, to adopt and prescribe such further rules and regulations as he considers necessary to effect the adequate protection of the watershed, including a rule or regulation forbidding persons other than forest officers and representatives of the municipality from going on the lands so reserved or making any use whatever thereof. (16 U.S.C. 552b)

**Sec. 3** Whenever national-forest lands are withdrawn under sections 552a to 552d of this title, and the municipality concerned objects to the utilization of the timber or other resources of lands withdrawn, and the Secretary of Agriculture agrees to withhold such resources from utilization, said municipality shall pay to the Forest Service annually an amount which the Secretary of Agriculture shall determine is necessary to reimburse the United States for the loss of net annual revenues which would be derived from the resources so withheld from disposition. (16 U.S.C. 552c)

**Sec. 4** Any violation of the regulations

issued under sections 552a to 552d of this title shall be punished as is provided in section 1853 of title 18. (16 U.S.C. 552d)

## Watershed Protection and Flood Prevention Act

**August 4, 1954 (Ch. 656, 68 Stat. 666; 16 U.S.C. 1001 to 1003, 1003a, 1004 to 1006, 33 U.S.C. 701b, 701b note, 16 U.S.C. 1006a, 1006b, 1007, 1001 note, 1008, 1010)**

### Declaration of policy

**Sec. 1** Erosion, floodwater, and sediment damages in the watersheds of the rivers and streams of the United States, causing loss of life and damage to property, constitute a menace to the national welfare; and it is the sense of Congress that the Federal Government should cooperate with States and their political subdivisions, soil or water conservation districts, flood prevention or control districts, and other local public agencies for the purpose of preventing such damages, of furthering the conservation, development, utilization, and disposal of water, and the conservation and utilization of land and thereby of preserving, protecting, and improving the Nation's land and water resources and the quality of the environment. (16 U.S.C. 1001)

### Definitions

**Sec. 2** For the purposes of this chapter, the following terms shall mean:

The "Secretary" - the Secretary of Agriculture of the United States. "Works of improvement" - any undertaking for -

- (1) flood prevention (including structural and land treatment measures),
- (2) the conservation, development, utilization, and disposal of water, or
- (3) the conservation and proper utiliza-

tion of land, in watershed or subwatershed area not exceeding two hundred and fifty thousand acres and not including any single structure which provides more than twelve thousand five hundred acre-feet of floodwater detention capacity, and more than twenty-five thousand acre-feet of total capacity. No appropriation shall be made for any plan involving an estimated Federal contribution to construction costs in excess of \$5,000,000, or which includes any structure which provides more than twenty-five hundred acre-feet of total capacity unless such plan has been approved by resolutions adopted by the appropriate committees of the Senate and House of Representatives: Provided, That in the case of any plan involving no single structure providing more than 4,000 acre-feet of total capacity the appropriate committees shall be the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives and in the case of any plan involving any single structure of more than 4,000 acre-feet of total capacity the appropriate committees shall be the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives, respectively. Each

project must contain benefits directly related to agriculture, including rural communities, that account for at least 20 percent of the total benefits of the project. A number of such subwatersheds when they are component parts of a larger watershed may be planned together when the local sponsoring organizations so desire.

“Local organization” - any State, political subdivision thereof, soil or water conservation district, flood prevention or control district, or combinations thereof, or any other agency having authority under State law to carry out, maintain and operate the works of improvement; or any irrigation or reservoir company, water users’ association, or similar organization having such authority and not being operated for profit that may be approved by the Secretary; or any Indian tribe or tribal organization, as defined in section 450b of title 25, having authority under Federal, State, or Indian tribal law to carry out, maintain, and operate the works of improvement. (16 U.S.C. 1002)

### **Assistance to local organizations**

**Sec. 3** In order to assist local organizations in preparing and carrying out plans for works of improvement, the Secretary is authorized, upon application of local organizations if such application has been submitted to, and not disapproved within 45 days by, the State agency having supervisory responsibility over programs provided for in this chapter, or by the Governor if there is no State agency

having such responsibility -

(1) to conduct such investigations and surveys as may be necessary to prepare plans for works of improvement;

(2) to prepare plans and estimates required for adequate engineering evaluation;

(3) to make allocations of costs to the various purposes to show the basis of such allocations and to determine whether benefits exceed costs;

(4) to cooperate and enter into agreements with and to furnish financial and other assistance to local organizations: Provided, That, for the land-treatment measures, the Federal assistance shall not exceed the rate of assistance for similar practices under existing national programs;

(5) to obtain the cooperation and assistance of other Federal agencies in carrying out the purposes of this section;

(6) to enter into agreements with landowners, operators, and occupiers, individually or collectively, based on conservation plans of such landowners, operators, and occupiers which are developed in cooperation with and approved by the soil and water conservation district in which the land described in the agreement is situated, to be carried out on such land during a period of not to exceed ten years, providing for changes in cropping systems and land uses and for the installation of soil and water conservation practices and measures needed to

conserve and develop the soil, water, woodland, wildlife, energy, and recreation resources of and enhance the water quality of lands within the area included in plans for works of improvement, as provided for in such plans, including watershed or subwatershed work plans in connection with the eleven watershed improvement programs authorized by section 13 of the Act of December 22, 1944 (58 Stat. 887), as amended and supplemented. Applications for assistance in developing such conservation plans shall be made in writing to the soil and water conservation district involved, and the proposed agreement shall be reviewed by such district. In return for such agreements by landowners, operators, and occupiers the Secretary shall agree to share the costs of carrying out those practices and measures set forth in the agreement for which he determines that cost sharing is appropriate and in the public interest. The portion of such costs, including labor, to be shared shall be that part which the Secretary determines is appropriate and in the public interest for the carrying out of the practices and measures set forth in the agreement, except that the Federal assistance shall not exceed the rate of assistance for similar practices and measures under existing national programs. The Secretary may terminate any agreement with a landowner, operator, or occupier by mutual agreement if the Secretary determines that such termination would be in the public interest, and may agree to such modifications of agreements, previously

entered into hereunder, as he deems desirable to carry out the purposes of this paragraph or to facilitate the practical administration of the agreements provided for herein. Notwithstanding any other provision of law, the Secretary, to the extent he deems it desirable to carry out the purposes of this paragraph, may provide in any agreement hereunder for (1) preservation for a period not to exceed the period covered by the agreement and an equal period thereafter of the cropland, crop acreage, and allotment history applicable to land covered by the agreement for the purpose of any Federal program under which such history is used as a basis for an allotment or other limitation on the production of any crop; or (2) surrender of any such history and allotments. (16 U.S.C. 1003)

### **Sec. 3(A) Easements**

The Secretary may provide cost share assistance to project sponsors to enable such sponsors to acquire perpetual wetland or floodplain conservation easements to perpetuate, restore and enhance the natural capability of wetlands and floodplains to retain excessive floodwaters, improve water quality and quantity, and provide habitat for fish and wildlife.

#### **(b) Amount**

The Secretary shall require that project sponsors of watershed projects provide up to 50 percent of the cost of acquiring easements under subsection (a) of this section. (16 U.S.C. 1003a)

### Conditions for Federal assistance

**Sec. 4** The Secretary shall require as a condition to providing Federal assistance for the installation of works of improvement that local organizations shall -

(1) acquire, or with respect to interests in land to be acquired by condemnation provide assurances satisfactory to the Secretary that they will acquire, without cost to the Federal Government from funds appropriated for the purposes of this chapter, such land, easements, or rights-of-way as will be needed in connection with works of improvement installed with Federal assistance: Provided, That when a local organization agrees to operate and maintain any reservoir or other area included in a plan for public fish and wildlife or recreational development, the Secretary shall be authorized to bear not to exceed one-half of the costs of (a) the land, easements, or rights-of-way acquired or to be acquired by the local organization for such reservoir or other area, and (b) minimum basic facilities needed for public health and safety, access to, and use of such reservoir or other area for such purposes: Provided further, That the Secretary shall be authorized to participate in recreational development in any watershed project only to the extent that the need therefor is demonstrated in accordance with standards established by him, taking into account the anticipated man-days of use of the projected recreational development and giving consideration to the availability within the region of existing water-based outdoor recreational develop-

ments: Provided further, That the Secretary shall be authorized to participate in not more than one recreational development in a watershed project containing less than seventy-five thousand acres, or two such developments in a project containing between seventy-five thousand and one hundred and fifty thousand acres, or three such developments in projects exceeding one hundred and fifty thousand acres: Provided further, That when the Secretary and a local organization have agreed that the immediate acquisition by the local organization of land, easements, or rights-of-way is advisable for the preservation of sites for works of improvement included in a plan from encroachment by residential, commercial, industrial, or other development, the Secretary shall be authorized to advance to the local organization from funds appropriated for construction of works of improvement the amounts required for the acquisition of such land, easements or rights-of-way; and, except where such costs are to be borne by the Secretary, such advance shall be repaid by the local organization, with interest, prior to construction of the works of improvement, for credit to such construction funds: Provided further, That the Secretary shall be authorized to bear an amount not to exceed one-half of the costs of the land, easements, or rights-of-way acquired or to be acquired by the local organization for mitigation of fish and wildlife habitat losses, and that such acquisition is not limited to the confines of the watershed project boundaries;

(2) assume (A) such proportionate share, as is determined by the Secretary to be equitable in consideration of national needs and assistance authorized for similar purposes under other Federal programs, of the costs of installing any works of improvement, involving Federal assistance (excluding engineering costs), which is applicable to the agricultural phases of the conservation, development, utilization, and disposal of water or for fish and wildlife development, recreational development, ground water recharge, water quality management, or the conservation and proper utilization of land: Provided, That works of improvement for water quality management shall consist primarily of water storage capacity in reservoirs for regulation of streamflow, except that any such storage and water releases shall not be provided as a substitute for adequate treatment or other methods of controlling waste at the source, and shall be consistent with standards and regulations adopted by the Water Resources Council on Federal cost sharing for water quality management, and (B) all of the cost of installing any portion of such works applicable to other purposes except that any part of the construction cost (including engineering costs) applicable to flood prevention and features relating thereto shall be borne by the Federal Government and paid for by the Secretary out of funds appropriated for the purposes of this chapter: Provided, That, in addition to and without limitation on the authority of the Secretary to make loans or advancements under section 1006a

of this title, the Secretary may pay for any storage of water for present or anticipated future demands or needs for municipal or industrial water included in any reservoir structure constructed or modified under the provisions of this chapter as hereinafter provided: Provided further, That the cost of water storage to meet future demands may not exceed 30 per centum of the total estimated cost of such reservoir structure and the local organization shall give reasonable assurances, and there is evidence, that such demands for the use of such storage will be made within a period of time which will permit repayment within the life of the reservoir structure of the cost of such storage: Provided further, That the Secretary shall determine prior to initiation of construction or modification of any reservoir structure including such water supply storage that there are adequate assurances by the local organization or by an agency of the State having authority to give such assurances, that the Secretary will be reimbursed the cost of water supply storage for anticipated future demands, and that the local organization will pay not less than 50 per centum of the cost of storage for present water supply demands: And provided further, That the cost to be borne by the local organization for anticipated future demands may be repaid within the life of the reservoir structure but in no event to exceed fifty years after the reservoir structure is first used for the storage of water for anticipated future water supply demands, except that (1) no reimburse-

ment of the cost of such water supply storage for anticipated future demands need be made until such supply is first used, and (2) no interest shall be charged on the cost of such water-supply storage for anticipated future demands until such supply is first used, but in no case shall the interest-free period exceed ten years. The interest rate used for purposes of computing the interest on the unpaid balance shall be determined in accordance with the provisions of section 1006a of this title.

(3) make arrangements satisfactory to the Secretary for defraying costs of operating and maintaining such works of improvement, in accordance with regulations presented by the Secretary of Agriculture;

(4) acquire, or provide assurance that landowners or water users have acquired, such water rights, pursuant to State law, as may be needed in the installation and operation of the work of improvement;

(5) obtain agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than 50 per centum of the land situated in the drainage area above each retention reservoir to be installed with Federal assistance; and

(6) submit a plan of repayment satisfactory to the Secretary for any loan or advancement made under the provisions of section 1006a of this title. (16 U.S.C. 1004)

### **Works of improvement**

**Sec. 5** (1) Engineering and other services; reimbursement; advances

At such time as the Secretary and the interested local organization have agreed on a plan for works of improvement, and the Secretary has determined that the benefits exceed the costs, and the local organization has met the requirements for participation in carrying out the works of improvement as set forth in section 1004 of this title, the local organization may secure engineering and other services, including the design, preparation of contracts and specifications, awarding of contracts, and supervision of construction, in connection with such works of improvement, by retaining or employing a professional engineer or engineers satisfactory to the Secretary or may request the Secretary to provide such services: Provided, That if the local organization elects to employ a professional engineer or engineers, the Secretary shall reimburse the local organization for the costs of such engineering and other services secured by the local organization as are properly chargeable to such works of improvement in an amount not to exceed the amount agreed upon in the plan for works of improvement or any modification thereof: Provided further, That the Secretary may advance such amounts as may be necessary to pay for such services, but such advances with respect to any works of improvement shall not exceed 5 per centum of the estimated installation cost of such works.

(2) Federal construction; request by local organization

Except as to the installation of works of improvement on Federal lands, the Secretary shall not construct or enter into any contract for the construction of any structure: Provided, That, if requested to do so by the local organization, the Secretary may enter into contracts for the construction of structures.

(3) Transmission of certain plans to Congress

Whenever the estimated Federal contribution to the construction costs of works of improvement in the plan for any watershed or subwatershed area shall exceed \$5,000,000 or the works of improvement include any structure having a total capacity in excess of twenty-five hundred acre-feet, the Secretary shall transmit a copy of the plan and the justification therefor to the Congress through the President.

(4) Transmission of certain plans and recommendations to Congress

Any plans for works of improvement involving an estimated Federal contribution to construction costs in excess of \$5,000,000 or including any structure having a total capacity in excess of twenty-five hundred acre-feet (a) which includes works of improvement for reclamation or irrigation, or which affects public or other lands or wildlife under the jurisdiction of the Secretary of the Interior, (b) which includes Federal assistance for goodwater<sup>1</sup> detention structures, (c) which includes features

which may affect the public health, or (d) which includes measures for control or abatement of water pollution, shall be submitted to the Secretary of the Interior, the Secretary of the Army, the Secretary of Health and Human Services, or the Administrator of the Environmental Protection Agency, respectively, for his views and recommendations at least thirty days prior to transmission of the plan to the Congress through the President. The views and recommendations of the Secretary of the Interior, the Secretary of the Army, the Secretary of Health and Human Services, and the Administrator of the Environmental Protection Agency, if received by the Secretary prior to the expiration of the above thirty-day period, shall accompany the plan transmitted by the Secretary to the Congress through the President.

(5) Rules and regulations

Prior to any Federal participation in the works of improvement under this chapter, the President shall issue such rules and regulations as he deems necessary or desirable to carry out the purposes of this chapter, and to assure the coordination of the work authorized under this chapter and related work of other agencies, including the Department of the Interior and the Department of the Army. (16 U.S.C. 1005)

<sup>1</sup> So in original. Probably should be "floodwater".

### Cooperative programs

**Sec. 6** The Secretary is authorized in

cooperation with other Federal and with States and local agencies to make investigations and surveys of the watershed of rivers and other waterways as a basis for the development of coordinated programs. In areas where the programs of the Secretary of Agriculture may affect public or other lands under the jurisdiction of the Secretary of the Interior, the Secretary of the Interior is authorized to cooperate with the Secretary of Agriculture in the planning and development of works or programs for such lands. (16 U.S.C. 1006)

**Supervision of Secretary of the Army; reclamation projects unaffected**

**Sec. 7** Federal investigations and improvements of rivers and other waterways for flood control and allied purposes shall be under the jurisdiction of and shall be prosecuted by the Department of the Army under the direction of the Secretary of the Army and supervision of the Chief of Engineers, except as otherwise provided by Act of Congress; and in his reports upon examinations and surveys, the Secretary of the Army shall be guided as to flood-control measures by the principles set forth in section 701a of this title in the determination of the Federal interests involved: Provided, That the foregoing grant of authority shall not interfere with investigations and river improvements incident to reclamation projects that may now be in progress or may be hereafter undertaken by the Bureau of Reclamation of the Interior Department pursuant to

any general or specific authorization of law. (33 U.S.C. 701b)

**Loans of advancements for financing local share of costs; repayment; interest; maximum amount**

**Sec. 8** The Secretary is authorized to make loans or advancements (a) to local organizations to finance the local share of costs of carrying out works of improvement provided for in this chapter, and (b) to State and local agencies to finance the local share of costs of carrying out works of improvement (as defined in section 1002 of this title) in connection with the eleven watershed improvement programs authorized by section 13 of the Act of December 22, 1944 (58 Stat. 887), as amended and supplemented: Provided, That the works of improvement in connection with said eleven watershed improvement programs shall be integral parts of watershed or subwatershed work plans agreed upon by the Secretary of Agriculture and the concerned State and local agencies. A loan or advance under this section shall be made under a contract or agreement that provides, under such terms and conditions as the Secretary considers appropriate, for the repayment of the loan or advance in not more than 50 years from the date when the principal benefits of the works of improvement first become available, with interest at a rate not to exceed the current market yield for outstanding municipal obligations with remaining periods to maturity comparable to the average maturity for the loan, adjusted to the nearest 1/8 of 1 percent. With respect

to any single plan for works of improvement, the amount of any such loan or advancement shall not exceed \$10,000,000. (16 U.S.C. 1006a)

### **Territorial application**

**Sec. 9** The provisions of this chapter shall be applicable to Hawaii, Alaska, Puerto Rico, and the Virgin Islands. (16 U.S.C. 1006b)

### **Authorization of appropriations**

**Sec. 10** There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this chapter, such sums to remain available until expended. No appropriation hereafter available for assisting local organizations in preparing and carrying out plans for works of improvement under the provisions of section 1003 of this title or clause (a) of section 1006a of this title shall be available for any works of improvement pursuant to this chapter or otherwise in connection with the eleven watershed improvement programs authorized by section 13 of the Act of December 22, 1944 (58 Stat. 887), as amended and supplemented, or for making loans or advancements to State and local agencies as authorized by clause (b) of section 1006a of this title. (16 U.S.C. 1007)

### **Short title**

**Sec. 11** Section 11 of act Aug. 4, 1954, as renumbered by act Aug. 7, 1956, Ch. 1027, Sec. 1(g), 70 Stat. 1088, provided that: "This Act may be cited as the 'Watershed Protection and Flood Preven-

tion Act'." (16 U.S.C. 1001 note)

### **Notification of Secretary of the Interior of approval of assistance; surveys and investigations; report and recommendations; consideration; cost of survey; investigation and reports**

**Sec. 12** When the Secretary approves the furnishing of assistance to a local organization in preparing a plan for works of improvement as provided for in section 1003 of this title:

(1) The Secretary shall so notify the Secretary of the Interior in order that the latter, as he desires, may make surveys and investigations and prepare a report with recommendations concerning the conservation and development of wildlife resources and participate, under arrangements satisfactory to the Secretary of Agriculture, in the preparation of a plan for works of improvement that is acceptable to the local organization and the Secretary of Agriculture.

(2) Full consideration shall be given to the recommendations contained in any such report of the Secretary of the Interior as he may submit to the Secretary of Agriculture prior to the time the local organization and the Secretary of Agriculture have agreed on a plan for works of improvement. The plan shall include such of the technically and economically feasible works of improvement for wildlife purposes recommended in the report by the Secretary of the Interior as are acceptable to, and

agreed to by, the local organization and the Secretary of Agriculture, and such report of the Secretary of the Interior shall, if requested by the Secretary of the Interior, accompany the plan for works of improvement when it is submitted to the Secretary of Agriculture for approval or transmitted to the Congress through the President.

(3) The cost of making surveys and investigations and of preparing reports concerning the conservation and development of wildlife resources shall be borne by the Secretary of the Interior out of funds appropriated to his Department. (16 U.S.C. 1008)

### **Data**

**Sec. 13** The Secretary shall collect and maintain data on a national and State by State basis concerning - (1) expenditures for the individual flood control and conservation measures for which assistance is provided under this chapter; and (2) the expected flood control or environmental (including soil erosion) benefits that will result from the implementation of such measures. (16 U.S.C. 1010)

## Federal Water Project Recreation Act

**July 9, 1965 (Pub. L. 89-72, 79 Stat. 213; 16 U.S.C. 4601-12 to 4601-17, 662, 4601-18 to 4601-21, 4601-5, 4601-12 note)**

### **Recreation and fish and wildlife benefits of Federal multiple-purpose water resource projects; Congressional declaration of policy**

**Sec. 1** It is the policy of the Congress and the intent of this part (a) in investigating and planning any Federal navigation, flood control, reclamation, hydroelectric, or multiple-purpose water resource project, full consideration shall be given to the opportunities, if any, which the project affords for outdoor recreation and for fish and wildlife enhancement and that, wherever any such project can reasonably serve either or both of these purposes consistently with the provisions of this part, it shall be constructed, operated, and maintained accordingly; (b) planning with respect to the development of the recreation potential of any such project shall be based on the coordination of the recreational use of the project area with the use of existing and planned Federal, State, or local public recreation developments; and (c) project construction agencies shall encourage non-Federal public bodies to administer project land and water areas for recreation and fish and wildlife enhancement purposes and operate, maintain, and replace facilities provided for those purposes unless such areas or facilities are included or proposed for inclusion within a national recreation area, or are appropriate for administration by a Federal agency as a

part of the national forest system, as a part of the public lands classified for retention in Federal ownership, or in connection with an authorized Federal program for the conservation and development of fish and wildlife. (16 U.S.C. 4601-12)

### **Non-Federal administration of project land and water areas**

**Sec. 2** (a) Allocation of costs

If, before authorization of a project, non-Federal public bodies indicate their intent in writing to agree to administer project land and water areas for recreation or fish and wildlife enhancement or for both of these purposes pursuant to the plan for the development of the project approved by the head of the agency having administrative jurisdiction over it and to bear not less than one-half the separable costs of the project allocated to recreation, and to bear one-quarter of such costs allocated to fish and wildlife enhancement and not less than one-half the costs of operation, maintenance, and replacement incurred therefor -

(1) the benefits of the project to said purpose or purposes shall be taken into account in determining the economic benefits of the project;

(2) costs shall be allocated to said purpose or purposes and to other purposes in a manner which will insure

that all project purposes share equitably in the advantages of multiple-purpose construction: Provided, That the costs allocated to recreation or fish and wildlife enhancement shall not exceed the lesser of the benefits from those functions or the costs of providing recreation or fish and wildlife enhancement benefits or reasonably equivalent use and location by the least costly alternative means; and

(3) not more than one-half the separable costs of the project allocated to recreation and exactly three-quarters of such costs allocated to fish and wildlife enhancement and all the joint costs of the project allocated to recreation and fish and wildlife enhancement shall be borne by the United States and be nonreimbursable. Projects authorized during the calendar year 1965 may include recreation and fish and wildlife enhancement on the foregoing basis without the required indication of intent. Execution of an agreement as aforesaid shall be a prerequisite to commencement of construction of any project to which this subsection is applicable.

(b) Non-Federal share of costs

The non-Federal share of the separable costs of the project allocated to recreation and fish and wildlife enhancement shall be borne by non-Federal interests, under either or both of the following methods as may be determined appropriate by the head of the Federal agency having jurisdiction over the project: (1) payment, or provision of lands, interests therein, or facilities for the project; or (2) repayment,

with interest at a rate comparable to that for other interest-bearing functions of Federal water resource projects, within fifty years of first use of project recreation or fish and wildlife enhancement facilities: Provided, That the source of repayment may be limited to entrance and user fees or charges collected at the project by non-Federal interests if the fee schedule and the portion of fees dedicated to repayment are established on a basis calculated to achieve repayment as aforesaid and are made subject to review and renegotiation at intervals of not more than five years. (16 U.S.C. 460l-13)

**Facilities of project modifications to be provided without written indication of intent**

**Sec. 3** (a) Other project purposes as justification; public health and safety requirement of minimum facilities at access points; basis for calculation of benefits; nonreimbursable costs

No facilities or project modifications which will furnish recreation or fish and wildlife enhancement benefits shall be provided in the absence of the indication of intent with respect thereto specified in section 460l-13(a) of this title unless (1) such facilities or modifications serve other project purposes and are justified thereby without regard to such incidental recreation or fish and wildlife enhancement benefits as they may have or (2) they are minimum facilities which are required for the public health and safety and are located at access points provided by roads existing at the time of project construction or constructed for the

administration and management of the project. Calculation of the recreation and fish and wildlife enhancement benefits in any such case shall be based on the number of visitor-days anticipated in the absence of recreation and fish and wildlife enhancement facilities or modifications except as hereinbefore provided and on the value per visitor-day of the project without such facilities or modifications. Project costs allocated to recreation and fish and wildlife enhancement on this basis shall be nonreimbursable.

(b) Preservation of recreation and fish and wildlife enhancement potential; execution of agreements within ten year period; disposition of lands in absence of such agreements, prohibition against uses conflicting with project purposes, and preference to uses promoting and not detracting from such potential

Notwithstanding the absence of an indication of intent as specified in section 460/-13(a) of this title, lands may be provided in connection with project construction to preserve the recreation and fish and wildlife enhancement potential of the project:

(1) If non-Federal public bodies execute an agreement after initial operation of the project (which agreement shall provide that the non-Federal public bodies will administer project land and water areas for recreation or fish and wildlife enhancement or both pursuant to the plan for the development of the project approved by the head of the agency having administrative jurisdiction over it and will bear not less than one-

half the costs of lands, facilities, and project modifications provided for recreation, and will bear one-quarter of such costs for fish and wildlife enhancement, and not less than one-half the costs of planning studies, and the costs of operation, maintenance, and replacement attributable thereto) the remainder of the costs of lands, facilities, and project modifications provided pursuant to this paragraph shall be nonreimbursable. Such agreement and subsequent development, however, shall not be the basis for any reallocation of joint costs of the project to recreation or fish and wildlife enhancement.

(2) If, within ten years after initial operation of the project, there is not an executed agreement as specified in paragraph (1) of this subsection, the head of the agency having jurisdiction over the project may utilize the lands for any lawful purpose within the jurisdiction of his agency, or may offer the land for sale to its immediate prior owner or his immediate heirs at its appraised fair market value as approved by the head of the agency at the time of offer or, if a firm agreement by said owner or his immediate heirs is not executed within ninety days of the date of the offer, may transfer custody of the lands to another Federal agency for use for any lawful purpose within the jurisdiction of that agency, or may lease the lands to a non-Federal public body, or may transfer the lands to the Administrator of General Services for disposition in accordance with the surplus property laws of the United States. In no case shall the lands

be used or made available for use for any purpose in conflict with the purposes for which the project was constructed, and in every case except that of an offer to purchase made, as hereinbefore provided, by the prior owner or his heirs preference shall be given to uses which will preserve and promote the recreation and fish and wildlife enhancement potential of the project or, in the absence thereof, will not detract from that potential.

(c) Expansion or modification of existing facilities

(1) Any recreation facility constructed under this part may be expanded or modified if -

(A) the facility is inadequate to meet recreational demands; and

(B) a non-Federal public body executes an agreement which provides that such public body -

(i) will administer the expanded or modified facilities pursuant to a plan for development for the project that is approved by the agency with administrative jurisdiction over the project; and

(ii) will bear not less than one-half of the planning and capital costs of such expansion or modification and not less than one-half of the costs of the operation, maintenance, and replacement attributable to the expansion of the facility.

(2) The Federal share of the cost of expanding or modifying a recreational facility described in paragraph (1) may

not exceed 50 percent of the total cost of expanding or modifying the facility. (16 U.S.C. 460l-14)

### **Lease of facilities and lands to non-Federal public bodies**

**Sec. 4** At projects, the construction of which has commenced or been completed as of July 9, 1965, where non-Federal public bodies agree to administer project land and water areas for recreation and fish and wildlife enhancement purposes and to bear the <sup>1</sup> not less than one-half the costs of operation, maintenance, and replacement of existing facilities serving those purposes, such facilities and appropriate project lands may be leased to non-Federal public bodies. (16 U.S.C. 460l-15)

<sup>1</sup> So in original. The word "the" probably should not appear.

### **Postauthorization development of projects without allocation or reallocation of costs**

**Sec. 5** Nothing herein shall be construed as preventing or discouraging postauthorization development of any project for recreation or fish and wildlife enhancement or both by non-Federal public bodies pursuant to agreement with the head of the Federal agency having jurisdiction over the project. Such development shall not be the basis for any allocation or reallocation of project costs to recreation or fish and wildlife enhancement. (16 U.S.C. 460l-16)

### **Miscellaneous provisions**

**Sec. 6(a)** (a) Project reports; outdoor recreation views; conformity to State comprehensive plan

The views of the Secretary of the Interior developed in accordance with section 4601-2 of this title, with respect to the outdoor recreation aspects shall be set forth in any report of any project or appropriate unit thereof within the purview of this part. Such views shall include a report on the extent to which the proposed recreation and fish and wildlife development conforms to and is in accord with the State comprehensive plan developed pursuant to section 4601-8(d) of this title.

(b) Omitted

(c) Migratory waterfowl refuges at Federal projects; expenditure limitation for acquisition of lands

Expenditures for lands or interests in lands hereafter acquired by project construction agencies for the establishment of migratory waterfowl refuges recommended by the Secretary of the Interior at Federal water resource projects, when such lands or interests in lands would not have been acquired but for the establishment of a migratory waterfowl refuge at the project, shall not exceed \$28,000,000: Provided, That the aforementioned expenditure limitation in this subsection shall not apply to the costs of mitigating damages to migratory waterfowl caused by such water resource project.

(d) Nonapplication to certain projects

This part shall not apply to the Tennessee

Valley Authority, but the Authority is authorized to recognize and provide for recreational and other public uses at any dams and reservoirs heretofore or hereafter constructed in a manner consistent with the promotion of navigation, flood control, and the generation of electrical energy, as otherwise required by law, nor to projects constructed under authority of the Small Reclamation Projects Act, as amended (43 U.S.C. 422a et seq.), or under authority of the Watershed Protection and Flood Prevention Act, as amended (16 U.S.C. 1001 et seq.).

(e) Nonapplication to certain other projects

Sections 4601-13, 4601-14, 4601-15, and 4601-16 of this title shall not apply to nonreservoir local flood control projects, beach erosion control projects, small boat harbor projects, hurricane protection projects, or to project areas or facilities authorized by law for inclusion within a national recreation area or appropriate for administration by a Federal agency as a part of the national forest system, as a part of the public lands classified for retention in Federal ownership, or in connection with an authorized Federal program for the conservation and development of fish and wildlife.

(f) Interpretation of “nonreimbursable”

As used in this part, the term “nonreimbursable” shall not be construed to prohibit the imposition of entrance, admission, and other recreation user fees or charges.

(g) Nonapplication of section 4601-9(a)(2)

to nonreimbursable costs of the United States Section 460I-9(a)(2) of this title shall not apply to costs allocated to recreation and fish and wildlife enhancement which are borne by the United States as a nonreimbursable project cost pursuant to section 460I-13(a) or section 460I-14(b)(1) of this title.

(h) Deposits in Treasury as miscellaneous receipts; deposits of revenue from conveyance of certain lands in Land and Water Conservation Fund

All payments and repayment by non-Federal public bodies under the provisions of this part shall be deposited in the Treasury as miscellaneous receipts, and revenue from the conveyance by deed, lease, or otherwise, of lands under section 460I-14(b)(2) of this title shall be deposited in the Land and Water Conservation Fund. (16 U.S.C. 460I-17)

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### **Authority of Secretary of the Interior**

**Sec. 7** (a) Provision of facilities, acquisition of lands, and provision for public use and enjoyment of project lands, facilities, and water areas in coordination with other project purposes; execution of agreements before providing lands, facilities, and project modifications

The Secretary is authorized, in conjunction with any reservoir heretofore constructed by him pursuant to the Federal reclamation laws or any reservoir which is otherwise under his control, except reservoirs within national wildlife refuges, to investigate, plan, construct, operate and maintain, or otherwise provide for public

outdoor recreation and fish and wildlife enhancement facilities, to acquire or otherwise make available such adjacent lands or interests therein as are necessary for public outdoor recreation or fish and wildlife use, and to provide for public use and enjoyment of project lands, facilities, and water areas in a manner coordinated with the other project purposes. Lands, facilities and project modifications for the purposes of this subsection may be provided only after an agreement in accordance with subsection (b) or (c) of section 460I-14 of this title has been executed.

(b) Agreements with government agencies to promote development and operation of lands or facilities for recreation and fish and wildlife enhancement purposes

The Secretary of the Interior is authorized to enter into agreements with Federal agencies or State or local public bodies for the administration of project land and water areas and the operation, maintenance, and replacement of facilities and to transfer project lands or facilities to Federal agencies or State or local public bodies by lease agreement or exchange upon such terms and conditions as will best promote the development and operation of such lands or facilities in the public interest for recreation and fish and wildlife enhancement purposes.

(c) Transfer of lands; consent of other Federal agencies to use of lands for recreation or fish and wildlife purposes; transfers to Secretary of Agriculture of forest lands; continuing administration of

lands and waters for other project purposes; prohibition against limitation of authority under existing provisions of law

No lands under the jurisdiction of any other Federal agency may be included for or devoted to recreation or fish and wildlife purposes under the authority of this section without the consent of the head of such agency; and the head of any such agency is authorized to transfer any such lands to the jurisdiction of the Secretary of the Interior for purposes of this section. The Secretary of the Interior is authorized to transfer jurisdiction over project lands within or adjacent to the exterior boundaries of national forests and facilities thereon to the Secretary of Agriculture for recreation and other national forest system purposes; and such transfer shall be made in each case in which the project reservoir area is located wholly within the exterior boundaries of a national forest unless the Secretaries of Agriculture and Interior jointly determine otherwise. Where any project lands are transferred hereunder to the jurisdiction of the Secretary of Agriculture, the lands involved shall become national forest lands: Provided, That the lands and waters within the flow lines of any reservoir or otherwise needed or used for the operation of the project for other purposes shall continue to be administered by the Secretary of the Interior to the extent he determines to be necessary for such operation. Nothing herein shall limit the authority of the Secretary of the Interior granted by existing provisions of law relating to recreation or fish and wildlife development in connection with

water resource projects or to disposition of public lands for such purposes. (16 U.S.C. 460/-18)

### **Feasibility reports**

**Sec. 8** Effective on and after July 1, 1966, neither the Secretary of the Interior nor any bureau nor any person acting under his authority shall engage in the preparation of any feasibility report under reclamation law with respect to any water resource project unless the preparation of such feasibility report has been specifically authorized by law, any other provision of law to the contrary notwithstanding. (16 U.S.C. 460/-19)

### **Construction of projects under certain laws with allocation to recreation and fish and wildlife enhancement exceeding allocation to other functions unauthorized exception**

**Sec. 9** Nothing contained in this part shall be taken to authorize or to sanction the construction under the Federal reclamation laws or under any Rivers and Harbors or Flood Control Act of any project in which the sum of the allocations to recreation and fish and wildlife enhancement exceeds the sum of the allocations to irrigation, hydroelectric power, municipal, domestic and industrial water supply, navigation, and flood control, except that this section shall not apply to any such project for the enhancement of anadromous fisheries, shrimp, or for the conservation of migratory birds protected by treaty, when each of the other functions of such a project has, of itself, a favorable

benefit-cost ratio. (16 U.S.C. 460l-20)

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**Land and water conservation fund;  
establishment; covering certain  
revenues and collections into fund**

**Sec. 11** During the period ending September 30, 2015, there shall be covered into the land and water conservation fund in the Treasury of the United States, which fund is hereby established and is hereinafter referred to as the “fund”, the following revenues and collections:

(a) Surplus property sales

All proceeds (except so much thereof as may be otherwise obligated, credited, or paid under authority of those provisions of law set forth in section 485(b)(e),<sup>2</sup> title 40, or the Independent Offices Appropriation Act, 1963 (76 Stat. 725) or in any later appropriation Act) hereafter received from any disposal of surplus real property and related personal property under the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Nothing in this part shall affect existing laws or regulations concerning disposal of real or personal surplus property to schools, hospitals, and States and their political subdivisions.

(b) Motorboat fuels tax

The amounts provided for in section 460l-11 of this title.

<sup>2</sup> So in original. Probably should be section “485(b)-(e)”.

## **Agricultural Credit Act, Emergency Flood Prevention**

**August 4, 1978 (Pub. L. 95-334, 92 Stat. 433; 16 u.S.C. 2203)**

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### **Undertaking of runoff retardation and soil-erosion preventive measures; cooperation with landowners and land users; criteria**

**Sec. 401** The Secretary of Agriculture is authorized to undertake emergency measures, including the purchase of floodplain easements, for runoff retardation and soil-erosion prevention, in cooperation with landowners and land users, as the Secretary deems necessary to safeguard lives and property from floods, drought, and the products of erosion on any watershed whenever fire, flood, or any other natural occurrence is causing or has caused a sudden impairment of that watershed. (16 U.S.C. 2203)

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Note- This is the principle legislation relating to functions of the Forest Service flood control work. In addition to this Act, the Secretary of Agriculture is authorized to conduct flood control measure under the Watershed Protection and Flood Prevention Act of August 4, 1954, to undertake emergency measure for runoff retardation and soil-erosion prevention by the Act of June 28, 1938, as amended and to initiate works of improvement on certain authorized watersheds under the Act of December 22, 1944.

## Food, Agriculture, Conservation, and Trade Act of 1990

November 28, 1990 (Pub. L. 101-624, 104 Stat. 3359)

### Subtitle B - Research and Education Chapter 2 – Specialized Research

#### Southern Forest Regeneration Program

**Sec. 1242** (a) Establishment. - The Secretary of Agriculture shall make a grant to a State for the establishment, within such State, of a center, to be known as the ‘Southern Forest Regeneration Center’ (hereafter referred to in this section as the ‘Center’), to study forest regeneration problems and forest productivity in the southern region of the United States.

(b) Duties of Center. - The Center shall study forest regeneration problems and forest productivity in the southern region of the United States, including -

- (1) nursery management concerns that will lead to improved seedling quality;
- (2) forest management practices that account for environmental stresses; and
- (3) the development of low-cost forest regeneration methods that provide options for wood products, species diversity, wildlife habitat, and production of clean air and water.

(c) Establishment of Other Programs. - The Secretary of Agriculture may establish other programs in other regions of the United States, or a comprehensive National program, to carry out the

purposes of this section as the Secretary determines appropriate.

(d) Authorization of Appropriations. - There are authorized to be appropriated such sums as may be necessary to carry out this section. (16 U.S.C. 1642 note)

#### Semiarid Agroforestry Research Center

**Sec. 1243** (a) Semiarid Agroforestry Research, Development, and Demonstration Center. - The Secretary of Agriculture shall establish at the Forestry Sciences Laboratory of the United States Forest Service, in Lincoln, Nebraska, a Semiarid Agroforestry Research, Development, and Demonstration Center (hereafter referred to in this section as the ‘Center’) and appoint a Director to manage and coordinate the program established at the Center under subsection (b).

(b) Program. - The Secretary shall establish a program at the Center and seek the participation of Federal or State governmental entities, land-grant colleges or universities, State agricultural experiment stations, State and private foresters, the National Arbor Day Foundation, and other nonprofit foundations in such program to conduct or assist research, investigations, studies, and surveys to -

- (1) develop sustainable agroforestry systems on semiarid lands that minimize

topsoil loss and water contamination and stabilize or enhance crop productivity;

(2) adapt, demonstrate, document, and model the effectiveness of agroforestry systems under different farming systems and soil or climate conditions;

(3) develop dual use agroforestry systems compatible with paragraphs (1) and (2) which would provide high-value forestry products for commercial sale from semiarid land;

(4) develop and improve the drought and pest resistance characteristics of trees for conservation forestry and agroforestry applications in semiarid regions, including the introduction and breeding of trees suited for the Great Plains region of the United States;

(5) develop technology transfer programs that increase farmer and public acceptance of sustainable agroforestry systems;

(6) develop improved windbreak and shelterbelt technologies for drought preparedness, soil and water conservation, environmental quality, and biological diversity on semiarid lands;

(7) develop technical and economic concepts for sustainable agroforestry on semiarid lands, including the conduct of economic analyses of the costs and benefits of agroforestry systems and the development of models to predict the economic benefits under soil or climate conditions;

(8) provide international leadership in the development and exchange of agroforestry practices on semiarid lands

worldwide;

(9) support research on the effects of agroforestry systems on semiarid lands in mitigating nonpoint source water pollution;

(10) support research on the design, establishment, and maintenance of tree and shrub plantings to regulate the deposition of snow along roadways; and

(11) conduct sociological, demographic, and economic studies as needed to develop strategies for increasing the use of forestry conservation and agroforestry practices.

(c) Information Collection and Dissemination. - The Secretary shall establish at the Center a program, to be known as the National Clearinghouse on Agroforestry Conservation and Promotion to -

(1) collect, analyze, and disseminate information on agroforestry conservation technologies and practices; and

(2) promote the use of such information by landowners and those organizations associated with forestry and tree promotion.

(d) Authorization of Appropriations. - There are authorized to be appropriated \$5,000,000 annually to carry out this section. (16 U.S.C. 1642 note)

### **Presidential Commission on State and Private Forests**

**Sec. 1245** (a) Establishment. - The President shall establish a Commission on State and Private Forests (hereafter in this section referred to as the 'Commis-

sion') which shall assess the status of the State and private forest lands of the United States, the problems affecting these lands, and the potential contribution of these lands to the renewable natural resource needs of the United States associated with their improved management and protection.

(b) **Composition.** - The Commission shall be composed of 25 members to be appointed by the President, including Federal, State, and local officials, timber industry representatives, nonindustrial private forest landowners, conservationists, and community leaders. No more than five members shall be appointed from any one State. Not fewer than 20 members shall be appointed by the President from nominations submitted by the following Members of Congress:

(1) The chairman of the Committee on Agriculture of the House of Representatives.

(2) The ranking minority member of the Committee on Agriculture of the House of Representatives.

(3) The chairman of the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(4) The ranking minority member of the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(c) **Vacancy.** - A vacancy on the Commission shall be filled by appointment by the President in the manner provided in subsection (b).

(d) **Chairperson.** - The Commission shall elect a chairperson from among the

members of the Commission by a majority vote.

(e) **Meetings.** - The Commission shall meet at the call of the chairperson or a majority of the members of the Commission.

(f) **Duties.** -

(1) **Study.** - The Commission shall conduct a study that shall include

(A) an assessment using existing inventories of the current status of the State and private forest lands of the United States, including -

(i) ownership status and past and future trends;

(ii) the production of timber and nontimber resources from such lands; and

(iii) landowner attitudes toward the protection and management of these lands;

(B) a review of the problems affecting the State and private forest lands of the United States, including -

(i) resource losses to insects, disease, fire, and damaging weather;

(ii) inadequate reforestation;

(iii) fragmentation and conversion of the forest land base; and

(iv) management options;

(C) constraints on, and opportunities for, providing multiresource outputs from forest lands;

(D) administrative and legislative recommendations for addressing the

problems and capitalizing on the potential of these lands for contributing to the renewable natural resource needs of the United States.

(2) Findings and recommendations. - On the basis of its study, the Commission shall make findings and develop recommendations for consideration by the President with respect to the future demands placed on State and private forests in meeting both commodity and noncommodity needs of the United States in anticipation of impending changes in the management of the national forests, especially with regard to timber harvest. This assessment should focus on the role of State and private forest lands and help to identify means of improving their contribution to meeting the timber and nontimber needs of the United States.

(3) Report. - The Commission shall submit to the President, not later than December 1, 1992, a report containing its findings and recommendations. The President shall submit the report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the report is authorized to be printed as a House Document.

(g) Operations in General. -

(1) Agency cooperation. - The heads of executive agencies, the General Accounting Office, the Office of Technology Assessment, and the Congressional Budget Office shall cooperate with the Commission.

(2) Compensation. - Members of the Commission shall serve without compensation for work on the Commission. While away from their homes or regular places of business in the performance of duties of the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service under section 5703 of title 5 of the United States Code.

(3) Director. - To the extent there are sufficient funds available to the Commission and subject to such rules as may be adopted by the Commission, the Commission, without regard to the provisions of title 5 of the United States Code governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to the classification and General Schedule pay rates, may -

(A) appoint and fix the compensation of a director; and

(B) appoint and fix the compensation of such additional personnel as the Commission determines necessary to assist it to carry out its duties and functions.

(4) Staff and services. - On the request of the Commission, the heads of executive agencies, the Comptroller General, and the Director of the Office of Technology Assessment may furnish the Commission with such office, personnel or support services as the head of the agency, or office, and the chairperson of

the Commission agree are necessary to assist the Commission to carry out its duties and functions. The Commission shall not be required to pay, or reimburse, any agency for office, personnel or support services provided by this subsection.

(5) Exemptions. -

(A) FACA. - The Commission shall be exempt from sections 7(d), 10(e), 10(f), and 14 of the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.).

(B) Title 5. - The Commission shall be exempt from the requirements of sections 4301 through 4305 of title 5 of the United States Code.

(h) Authorization of Appropriations and Spending Authority. -

(1) Authorization of appropriations. - There is authorized to be appropriated such sums as are necessary to implement this section.

(2) Spending authority. - Any spending authority (as defined in section 401 of the Congressional Budget Act of 1974 (2 U.S.C. 651)) provided in this title (see Short Title of 1990 Amendment note set out under section 2101 of this title) shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(i) Termination. - The Presidential Commission on State and Private Forests shall cease to exist 90 days following the submission of its report to the President. (16 U.S.C. 1601 note)

## **International Forest Products Trade Institute**

**Sec. 1247** (a) Establishment. - The Secretary of Agriculture may establish an International Forest Products Trade Institute (hereafter in this section referred to as the 'Institute').

(b) Mission. - The mission of the Institute will be to increase the competitive position of the forest industries of the northeastern United States as major producers of international forest products in order to increase domestic employment and stimulate rural development, and to provide a knowledgeable, objective analysis of global forest resource problems.

(c) Functions. - The Institute shall -

(1) emphasize the application of existing knowledge to the manufacturing and international marketing of forest products as well as conduct new research related to the competitiveness of the northeastern forest products industry;

(2) study and evaluate domestic and international forest, forest sector, agroforestry, development, economic, and trade policies;

(3) design, analyze and test technologically appropriate manufacturing, processing and marketing systems which are supportive of and consistent with forest policy and management strategies formulated by the Institute and which enhance opportunities for markets in forest products; and

(4) formulate and test management

strategies for -

- (A) United States forests, and
- (B) manufacturing facilities that promote ecologically sustainable use, and long-term management, of international forests.

(d) Authorization of Appropriations. - There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section. (16 U.S.C. 2112 note)

### **Subtitle C - America the Beautiful Act Of 1990**

**Sec. 1261** Short title. This subtitle may be cited as the ‘America the Beautiful Act of 1990’.

**Sec. 1262** Findings. Congress finds that -

- (1) trees and forests provide beauty and diversity to both rural and urban landscapes;
- (2) trees and forests protect the United States’s soil, water, and wetland resources by filtering runoff and preventing erosion;
- (3) trees and forests provide food and cover for many species of wildlife;
- (4) trees and forests provide shade, block winds, and add moisture to the air, thereby mitigating the urban ‘heat island’ effect and significantly reducing energy use;
- (5) trees and forests make important contributions to the environmental, social, and economic well-being of both rural and urban areas across the United States; and

(6) stewardship of trees and forests could be significantly enhanced by encouraging, promoting, and supporting partnerships and community service projects involving individuals, youth groups, organizations, businesses and governments at all levels.

**Sec. 1263** Purposes. The purposes of this subtitle are to -

- (1) authorize the President to designate a private nonprofit foundation as eligible for a one-time grant from the Secretary of Agriculture, to be used for promoting public awareness and a spirit of volunteerism, soliciting private sector contributions, and overseeing the use of these contributions to encourage tree planting projects in communities and urban areas;
- (2) promote the principles of basic forest stewardship through the nationwide planting, improvement, and maintenance of trees in order to increase reforestation, enhance the environmental and aesthetic qualities of the United States’s rural and urban areas, and reduce global carbon dioxide levels;
- (3) authorize the Secretary of Agriculture to provide increased financial and technical assistance to State forestry agencies and others, and enter into cost-sharing agreements with individuals, for the purpose of encouraging owners of nonindustrial private lands to plant and maintain trees and improve forests in rural areas; and
- (4) authorize the Secretary of Agriculture to provide increased financial and technical assistance to State forestry

agencies and others for the purpose of encouraging units of local government, civic groups, and individuals to plant and maintain trees and improve forests in communities and urban areas.

**Sec. 1264** Tree Planting Foundation.

(a) Purpose. - The purpose of this section is to authorize the President to designate a private nonprofit Foundation as eligible to receive a grant from the Department of Agriculture to be used -

(1) to provide grants, including matching grants, to qualifying nonprofit organizations (including youth groups), municipalities, counties, towns and townships for the implementation of programs to promote public awareness and a spirit of volunteerism in support of tree planting, maintenance, management, protection, and cultivation projects in rural areas, communities and urban areas throughout the United States;

(2) to solicit public and private sector contributions through the mobilization of individuals, businesses, governments, and community organizations with the goal of increasing the number of trees planted, maintained, managed, and protected in rural areas, communities and urban environments;

(3) to accept and administer public and private gifts and make grants, including matching grants, to encourage local participation, for the planting, maintenance, management, protection, and cultivation of trees; and

(4) to ensure that our descendants will be able to share their ancestors' pride

when referring to their land as 'America the Beautiful'.

(b) Authority. - The President is authorized to designate a private nonprofit organization (hereafter in this section referred to as the 'Foundation') as eligible to receive funds pursuant to subsections (d) and (e) upon determining that such organization can, consistent with its charter, carry out the purposes stated in subsection (a), and that the officers of such organization have the experience and expertise necessary to direct the activities of the organization. Nothing in this section shall be construed to make officers, employees, or members of the board of directors of the Foundation officers or employees of the United States. The Foundation shall be a private and nonprofit organization and not an agency or establishment of the United States.

(c) Implementation. - The Foundation shall carry out this section in accordance with the purposes stated in subsection (a).

(d) Funding. - For fiscal year 1991, the Secretary is authorized to make a grant of not to exceed \$25,000,000 to the Foundation.

(e) Use of Funds. - Funds made available pursuant to subsection (d) shall be granted to the Foundation by the Secretary to enable the Foundation to carry out the purposes specified in subsection (a).

(f) Interest. - Notwithstanding any other provision of law, the Foundation may hold funds made available pursuant to subsection (e) in interest-bearing accounts prior to the disbursement of the funds for

purposes specified in subsection (a) and may retain to carry out such purposes any interest earned on the deposits.

(g) Limitations on Uses of Funds. –

(1) In general. - The Foundation may use funds provided by this section only for making grants to qualified organizations, municipalities, counties, towns and townships for the implementation of projects and activities that are consistent with the purposes specified in subsection (a).

(2) Qualified organizations. - For the purposes of this section, qualified organizations shall consist of those organizations that meet the requirements of section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) and have demonstrated a capability to implement the project or activity for which the Foundation funds will be used.

(h) Compensation from Outside Sources. - An officer or employee of the Foundation may not receive any salary or other compensation for services rendered to the Foundation from any source other than the Foundation.

(i) Stock and Dividends. - The Foundation shall not issue any shares of stock or declare or pay any dividends.

(j) Lobbying. - The Foundation shall not engage in lobbying or propaganda for the purpose of influencing legislation and shall not participate or intervene in any political campaign on behalf of any candidate for public office.

(k) Salary; Travel and Expenses; Con-

licts of Interest. -

(1) Personal benefit from funds. - No part of the funds of the Foundation shall inure to the benefit of any board member, officer, or employee of the Foundation, except as salary or reasonable compensation for services or expenses.

(2) Travel and expense reimbursement. - Compensation for board members shall be limited to reimbursement for reasonable costs of travel and expenses.

(3) Conflicts of interest. - No director, officer, or employee of the Foundation shall participate, directly or indirectly, in the consideration or determination of any question before the Foundation affecting -

(A) the financial interests of the director, officer, or employee; or

(B) the interests of any corporation, partnership, entity, or organization in which such director, officer, or employee -

(i) is an officer, director, or trustee; or

(ii) has any direct or indirect financial interest.

(l) Records; Audits. - The Foundation shall ensure that -

(1) each recipient of assistance provided through the Foundation under this section maintains, for at least 5 years after the receipt of the assistance, separate accounts with respect to the assistance and such records as may be reasonably necessary to disclose fully -

(A) the amount and the disposition by the recipient of the proceeds of the assistance;

(B) the total cost of the project or undertaking in connection with which the assistance is given or used;

(C) the amount and nature of that portion of the cost of the project or undertaking supplied by other sources; and

(D) such other records as will facilitate an effective audit; and

(2) the Foundation and any duly authorized representative of the Foundation shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipient that are pertinent to assistance provided through the Foundation under this section.

(m) Audits. -

(1) Independent audits. - For the fiscal year in which the Foundation receives the grant awarded under subsection (e), and for the succeeding 5 fiscal years, the accounts of the Foundation shall be audited annually in accordance with generally accepted auditing standards by an independent certified public accountant or an independent licensed public accountant certified or licensed by a regulatory authority of a State or other political subdivision of the United States. The report of each such independent audit shall be included in the annual report required by subsection (n).

(2) Agency audits. - For the fiscal year

in which the Foundation receives the grant awarded under subsection (d), and for the succeeding 5 fiscal years, the financial transactions undertaken pursuant to this section by the Foundation may be audited by any agency designated by the President.

(n) Annual Reports. -

(1) In general. - Not later than 3 months after the conclusion of each fiscal year, the Foundation shall publish an annual report that includes a comprehensive and detailed report of the operations, activities, financial condition, and accomplishments of the Foundation under this subtitle during the fiscal year.

(2) Termination. - The obligation of the Foundation to publish annual reports pursuant to this subsection shall terminate after publication of the report incorporating the findings of the final audit in accordance with procedures required by subsection (l).

(o) Prohibition on Commercial Harvest. - Trees planted pursuant to a program receiving funds under this section may not be commercially harvested and sold for Christmas trees.

(p) Authorization of Appropriations. - There is authorized to be appropriated \$25,000,000 to be granted by the Secretary of Agriculture to the Foundation. All funds appropriated under this section may remain available until expended.

**Sec. 1265 Rural Tree Planting and Forest Management Program.**

The Secretary of Agriculture is authorized to establish a rural tree planting and

forest management program as a special component of the forest stewardship program and the stewardship incentive program established under sections 5 and 6 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2102) (16 U.S.C. 2103a, 2103b) (as amended by subtitle A). Such program shall terminate on December 31, 2001.

**Sec. 1266** Community Tree Planting and Improvement Program.

The Secretary of Agriculture is authorized to establish a community tree planting and improvement program as a special component of the urban and community forestry assistance program established under section 9 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2105) (as amended by section 1219). Such program shall terminate on December 31, 2001. (16 U.S.C. 2101 note)

**Emergency reforestation assistance**

**Sec. 1271** (a) In general

The Secretary of Agriculture is authorized to provide assistance under this section to eligible landowners who suffer destruction of 35 percent or more of a commercial tree stand due to damaging weather, related condition, or wildfire.

(b) Form of assistance

The assistance, if any, provided by the Secretary under this section shall consist of either -

- (1) reimbursement of up to 65 percent of the cost of reestablishing such tree stand damaged by the damaging

weather, related condition, or wildfire in excess of 35 percent mortality; or

- (2) at the discretion of the Secretary, provision of sufficient tree seedlings to reestablish such tree stand.

(c) Conditions

(1) Limitation on assistance

No person may receive an amount in excess of \$25,000 in any fiscal year, or an equivalent value in tree seedlings, under this section.

(2) Ineligibility A person who has qualifying gross revenues in excess of \$2,000,000 annually, as determined by the Secretary, shall not be eligible to receive any disaster payment or other benefits under this section. (3) Implementation In implementing this section, the Secretary shall issue regulations -

(A) defining the term person for the purposes of this section that shall conform, to the extent practicable, to the regulations defining the term person issued under section 1308 of title 7;

(B) prescribing such rules as the Secretary determines necessary to ensure a fair and reasonable application of the limitations established under this subsection; and

(C) ensuring that no person receives duplicative payments or assistance under this section, the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2101 et seq.), and the environmental quality incentives program established under chapter 4 of subtitle D of title XII of the Food Security Act

of 1985 (16 U.S.C. 3839aa et seq.), or other Federal program.

(d) Definitions

As used in this section -

(1) the term damaging weather includes drought, hail, excessive moisture, freeze, tornado, hurricane, excessive wind, or any combination thereof;

(2) the term eligible landowner means a person who -

(A) produces annual crops from trees for commercial purposes and owns 500 acres or less of such trees;

(B) owns 1,000 acres or less of private forest land; or

(C) owns more than 1,000 acres but less than 5,000 acres of private forest land if the Secretary, in the Secretary's discretion, determines the person eligible;

(3) the term qualifying gross revenues means -

(A) if a majority of the person's annual income is received from farming, ranching, and forestry operations, the gross revenue from the person's farming, ranching, and forestry operations; and

(B) if less than a majority of the person's annual income is received from farming, ranching, and forestry operations, the person's gross revenue from all sources;

(4) the term related condition includes insect infestations, disease, or other deterioration of a tree stand that is

accelerated or exacerbated by damaging weather;

(5) the term reestablish includes site preparation, reforestation of a damaged stand, and timber stand improvement practices, including thinning, prescribed burning, and other practices approved by the Secretary for reforestation;

(6) the term Secretary means the Secretary of Agriculture; and

(7) the term wildfire means any forest or range fire.

(e) Retroactive assistance

The Secretary shall use funds provided under this section to reimburse landowners for approved reforestation practices that were implemented before November 28, 1990. The Secretary shall not make reimbursements for reforestation practices that were implemented prior to September 1, 1989. (16 U.S.C. 2106a)

**Forestry rural revitalization**

**Sec. 2371** (a) Establishment of economic development and global marketing program

The Secretary of Agriculture, acting through the Extension Service and the Cooperative Extension System, and in consultation with the Forest Service, shall establish and implement educational programs and provide technical assistance to assist businesses, industries, and policymakers to create jobs, raise incomes, and increase public revenues in manners consistent with environmental concerns.

**(b) Activities**

Each program established under subsection (a) of this section shall -

- (1) transfer technologies to natural resource-based industries in the United States to make such industries more efficient, productive, and competitive;
- (2) assist businesses to identify global marketing opportunities, conduct business on an international basis, and market themselves more effectively; and
- (3) train local leaders in strategic community economic development.

**(c) Types of programs**

The Secretary of Agriculture shall establish specific programs under subsection (a) of this section to -

- (1) deliver educational services focused on community economic analysis, economic diversification, economic impact analysis, retention and expansion of existing commodity and noncommodity industries, amenity resource and tourism development, and entrepreneurship focusing on forest lands and rural communities;
- (2) use Cooperative Extension System databases and analytical tools to help communities diversify their economic bases, add value locally to raw forest product materials, and retain revenues by helping to develop local businesses and industries to supply forest products locally; and
- (3) use the full resources of the Cooperative Extension Service, including

land-grant universities and county offices, to promote economic development that is sustainable and environmentally sound. (7 U.S.C. 6601)

**Sec. 2372** This chapter may be cited as the 'National Forest-Dependent Rural Communities Economic Diversification Act of 1990'. (7 U.S.C. 6601 note)

**Findings and purpose****Sec. 2373 (a) Findings**

The Congress finds that -

- (1) the economic well-being of rural America is vital to our national growth and prosperity;
- (2) the economic well-being of many rural communities depends upon the goods and services that are derived from National Forest System land;
- (3) the economies of many of these communities suffer from a lack of industrial and business diversity;
- (4) this lack of diversity is particularly serious in communities whose economies are predominantly dependent on timber and recreation resources and where management decisions made on National Forest System land by Federal and private organizations may disrupt the supply of those resources;
- (5) the Forest Service has expertise and resources that could be directed to promote modernization and economic diversification of existing industries and services based on natural resources;
- (6) the Forest Service has the technical expertise to provide leadership, in

cooperation with other governmental agencies and the private sector, to assist rural communities dependent upon National Forest System land resources to upgrade existing industries and diversify by developing new economic activity in non-forest-related industries; and

(7) technical assistance, training, education, and other assistance provided by the Department of Agriculture can be targeted to provide immediate help to those rural communities in greatest need.

(b) Purposes

The purposes of this subchapter are -

(1) to provide assistance to rural communities that are located in or near National Forest System land and that are economically dependent upon natural resources or are likely to be economically disadvantaged by Federal or private sector land management practices;

(2) to aid in diversifying such communities' economic bases; and

(3) to improve the economic, social, and environmental well-being of rural America. (7 U.S.C. 6611)

## Definitions

**Sec. 2374** As used in this subchapter:

(1) The term action team means a rural natural resources and economic diversification action team established by the Secretary pursuant to section 6613(b) of this title.

(2) The term economically disadvantaged means economic hardship due to the loss of jobs or income (labor or proprietor) derived from forestry, the wood products industry, or related commercial enterprises such as recreation and tourism in the national forest.

(3) The term rural community means -

(A) any town, township, municipality, or other similar unit of general purpose local government, or any area represented by a not-for-profit corporation or institution organized under State or Federal law to promote broad based economic development, or unit of general purpose local government, as approved by the Secretary, that has a population of not more than 10,000 individuals, is located within a county in which at least 15 percent of the total primary and secondary labor and proprietor income is derived from forestry, wood products, and forest-related industries such as recreation, forage production, and tourism and that is located within the boundary, or within 100 miles of the boundary, of a national forest; or

(B) any county that is not contained within a Metropolitan Statistical Area as defined by the United States Office of Management and Budget, in which at least 15 percent of the total primary and secondary labor and proprietor income is derived from forestry, wood products, and forest-related industries such as recreation, forage production, and tourism and that is located within the boundary, or within 100 miles of

the boundary, of a national forest.

(4) The term Secretary means the Secretary of Agriculture. (7 U.S.C. 6612)

### **Rural natural resources and economic diversification action teams**

**Sec. 2375** (a) Requests for assistance

Economically disadvantaged rural communities may request assistance from the Secretary in identifying opportunities that will promote economic improvement and diversification and revitalization.

(b) Establishment

Upon request, the Secretary may establish rural natural resources and economic diversification action teams to prepare an action plan to provide technical assistance to economically disadvantaged communities. The action plan shall identify opportunities to promote economic diversification and enhance local economies now dependent upon National Forest System land resources. The action team may also identify opportunities to use value-added products and services derived from National Forest System land resources.

(c) Organization

The Secretary shall design and organize any action team established pursuant to subsection (b) of this section to meet the unique needs of the requesting rural community. Each action team shall be directed by an employee of the Forest Service and may include personnel from other agencies within the Department of Agriculture, from other Federal and State

departments and agencies, and from the private sector.

(d) Cooperation

In preparing action plans, the Secretary may cooperate with State and local governments, universities, private companies, individuals, and nonprofit organizations for procurement of services determined necessary or desirable.

(e) Eligibility

The Secretary shall ensure that no substantially similar geographical or defined local area in a State receives a grant for technical assistance to an economically disadvantaged community under this subchapter and a grant for assistance under a designated rural development program during any continuous five-year period.

(f) Approval

After reviewing requests under this section for financial and economic feasibility and viability, the Secretary shall approve and implement in accordance with section 6614 of this title those action plans that will achieve the purposes of this subchapter.

(g) Designated rural development program defined

In this section, the term designated rural development program means a program carried out under section 1924(b), 1926(a), or 1932(e) of this title for which funds are available at any time during the fiscal year. (7 U.S.C. 6613)

### **Action plan implementation**

**Sec. 2376** (a) In general

Action plans shall be implemented, insofar as practicable, to upgrade existing industries to use natural resources more efficiently and to expand the economic base of rural communities so as to alleviate or reduce their dependence on National Forest System land resources.

## (b) Assistance

To implement action plans, the Secretary may make grants and enter into cooperative agreements and contracts to provide necessary technical and related assistance. Such grants, cooperative agreements, and contracts may be with the affected rural community, State and local governments, universities, corporations, and other persons.

## (c) Limitation

The Federal contribution to the overall implementation of an action plan shall not exceed 80 percent of the total cost of the plan, including administrative and other costs. In calculating the Federal contribution, the Secretary shall take into account the fair market value of equipment, personnel, and services provided.

## (d) Available authority

The Secretary may use the Secretary's authority under the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2101 et seq.) and other Federal, State, and local governmental authorities in implementing action plans.

## (e) Consistency with forest plans

The implementation of action plans shall be consistent with land and resource

management plans. (7 U.S.C. 6614)

**Training and education****Sec. 2377** (a) Programs

In furtherance of an action plan, the Secretary may use the Extension Service and other appropriate agencies of the Department of Agriculture to develop and conduct education programs that assist businesses, elected or appointed officials, and individuals in rural communities to deal with the effects of a transition from being economically disadvantaged to economic diversification. These programs may include -

- (1) community economic analysis and strategic planning;
- (2) methods for improving and retooling enterprises now dependent on National Forest System land resources;
- (3) methods for expanding enterprises and creating new economic opportunities by emphasizing economic opportunities in other industries or services not dependent on National Forest System land resources; and
- (4) assistance in the evaluation, counseling, and enhancement of vocational skills, training in basic and remedial literacy skills, assistance in job seeking skills, and training in starting or operating a business enterprise.

## (b) Existing educational and training programs

Insofar as practicable, the Secretary shall use existing Federal, State, and private education resources in carrying out these

programs. (7 U.S.C. 6615)

### **Loans to economically disadvantaged rural communities**

#### **Sec. 2378** (a) In general

The Secretary, under such terms and conditions as the Secretary shall establish, may make loans to economically disadvantaged rural communities for the purposes of securing technical assistance and services to aid in the development and implementation of action plans, including planning for -

- (1) improving existing facilities in the community that may generate employment or revenue;
- (2) expanding existing infrastructure, facilities, and services to capitalize on opportunities to diversify economies now dependent on National Forest System land resources; and
- (3) supporting the development of new industries or commercial ventures unrelated to National Forest System land resources.

#### (b) Interest rates

The interest rates on a loan made pursuant to this section shall be as determined by the Secretary, but not in excess of the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturity of such loan, plus not to exceed 1 percent, as determined by the Secretary, and rounded to the nearest one-eighth of 1 percent. (7 U.S.C. 6616)

### **Authorization of appropriations and spending authority**

#### **Sec. 2379** (a) Authorization of appropriations

Except as provided in subsection (b) of this section, there are authorized to be appropriated -

- (1) an amount not to exceed 5 percent of the sum of -
  - (A) the sums received by the Secretary from sales of timber and other products of the forests; and
  - (B) user fees paid in connection with the use of forest lands; and
- (2) such additional sums as may be necessary to carry out the purposes of this subchapter.

#### (b) Limitation on authorization

Subsection (a) of this section shall not in any way affect payments to the States pursuant to section 500 of title 16.

#### (c) Spending authority

Any spending authority (as defined in section 651 of title 2) provided in this subchapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts. (7 U.S.C. 6617)

### **Global Climate Change Prevention Act of 1990**

**Sec. 2401** This title (enacting this chapter and amending sections 1601 and 1602 of Title 16, Conservation) may be cited as the 'Global Climate Change Prevention Act of 1990'. (7 U.S.C. 6701)

note)

### **Global Climate Change Program**

#### **Sec. 2402 (a) Establishment**

For the purpose of having within the Department of Agriculture a focal point for coordinating all issues of climate change, the Secretary of Agriculture (hereafter in this chapter referred to as the Secretary) shall establish a Global Climate Change Program (hereafter in this section referred to as the Program). The Secretary shall designate a director of the Program who shall be responsible to the Secretary for carrying out the duties specified in subsections (b) and (c) of this section.

#### **(b) General duties**

The Director shall -

- (1) coordinate policy analysis, long range planning, research, and response strategies relating to climate change issues;
- (2) provide liaison with other Federal agencies, through the Office of Science and Technology Policy, regarding issues of climate change;
- (3) inform the Department of scientific developments and policy issues relating to the effects of climate change on agriculture and forestry, including broader issues that affect the impact of climate change on the farms and forests of the United States;
- (4) recommend to the Secretary alternative courses of action with which to respond to such scientific developments

and policy issues; and

- (5) ensure that recognition of the potential for climate change is fully integrated into the research, planning, and decision-making processes of the Department.

#### **(c) Specific responsibilities**

The Director shall -

- (1) coordinate the global climate change studies required by section 6702 of this title;
- (2) provide, through such other agencies as the Secretary determines appropriate, competitive grants for research in climatology relating to the potential impact of climate change on agriculture;
- (3) coordinate the participation of the Department in interagency climate-related activities;
- (4) consult with the National Academy of Sciences and private, academic, State, and local groups with respect to climate research and related activities;
- (5) represent the Department to the Office of Science and Technology Policy and coordinate the activities of the Department in response to requirements of this chapter;
- (6) represent the Department on the Intergovernmental Panel on Climate Change; and
- (7) review all Department budget items relating to climate change issues, including specifically the research budget to be submitted by the Secretary to the Office of Science and Technology Policy and the Office of Manage-

ment and Budget. (7 U.S.C. 6701)

### **Study of global climate change, agriculture, and forestry**

#### **Sec. 2403 (a) Crops**

##### (1) In general

The Secretary shall study the effects of global climate change on agriculture and forestry. The study shall, at a minimum address -

(A) the effects of simultaneous increases in temperature and carbon dioxide on crops of economic significance;

(B) the effects of more frequent or more severe weather events on such crops;

(C) the effects of potential changes in hydrologic regimes on current crop yields;

(D) the economic effects of widespread and increased drought frequency in the south, midwest, and plains States; and

(E) changes in pest problems due to higher temperatures.

##### (2) Further studies

If the results of the study conducted under paragraph (1) warrant, the Secretary shall conduct further studies that address the means of mitigating the effects of global climate change on crops of economic significance that shall, at a minimum -

(A) identify whether climate change tolerance can be bred into these crops,

the amount of time necessary for any such breeding, and the effects on the income of farmers;

(B) evaluate existing genetic resource and breeding programs for crops for their ability to develop new varieties that can tolerate potential climate changes; and

(C) assess the potential for the development of crop varieties that are tolerant to climate changes and other environmental stresses, such as drought, pests, and salinity.

##### (b) Forests

The Secretary shall conduct a study on the emissions of methane, nitrous oxide, and hydrocarbons from tropical and temperate forests, the manner in which such emissions may affect global climate change; the manner in which global climate change may affect such emissions; and the manner in which such emissions may be reduced through management practices. The study shall, at a minimum -

(1) obtain measurements of nitrous oxide, methane, and nonmethane hydrocarbons from tropical and temperate forests;

(2) determine the manner in which the nitrous oxide, methane, and nonmethane hydrocarbon emissions from temperate and tropical forest systems will respond due to climate change; and

(3) identify and address alternative management strategies for temperate and tropical forests that may mitigate any negative effects of global climate

change.

(c) Reports

The Secretary shall submit reports of the studies conducted under subsections (a) and (b) of this section within 3 and 6 years, respectively, after November 28, 1990, to the Committee on Agriculture and the Committee on Science, Space, and Technology of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate. In addition, interim reports regarding such studies shall be provided by the Secretary to such Committees annually, with recommendations for actions which may be taken to mitigate the negative effects of global climate change and to adapt to global climate changes and related phenomena. (7 U.S.C. 6702)

**Office of International Forestry**

**Sec. 2405** (a) Establishment

The Secretary, acting through the Chief of the Forest Service, shall establish an Office of International Forestry within the Forest Service within six months after November 28, 1990.

(b) Deputy Chief designation

The Chief shall appoint a Deputy Chief for International Forestry.

(c) Duties

The Deputy Chief shall –

- (1) be responsible for the international forestry activities of the Forest Service;
- (2) coordinate the activities of the Forest Service in implementing the

provisions of this chapter; and

- (3) serve as Forest Service liaison to the director for the program established pursuant to section 6701 of this title.

(d) Authorization of appropriations

There are authorized to be appropriated for each of fiscal years 1996 through [Amended by Pub. L. 107-171, sec. 8102, 116 Stat. 475.] 2002 2007 such sums as are necessary to carry out this section. (7 U.S.C. 6704)

**Line item**

**Sec. 2406** The President's proposed budget to Congress for the first fiscal year beginning after November 28, 1990, and for each subsequent fiscal year shall specifically identify funds to be spent on Forest Service international cooperation and assistance. (7 U.S.C. 6705)

**Institutes of Tropical Forestry**

**Sec. 2407** The Secretary is authorized and directed to establish an Institute of Tropical Forestry in Puerto Rico and an Institute of Pacific Islands Forestry (hereafter in this section referred to as the Institutes). The Institutes shall conduct research on forest management and natural resources that shall include -

- (1) management and development of tropical forests;
- (2) the relationship between climate change and tropical forests;
- (3) threatened and endangered species;
- (4) recreation and tourism;
- (5) development of tropical forest

resources on a sustained yield basis;

(6) techniques to monitor the health and productivity of tropical forests;

(7) tropical forest regeneration and restoration; and

(8) the effects of tropical deforestation on biodiversity, global climate, wildlife, soils, and water. (7 U.S.C. 6706)

### **Urban forestry demonstration projects**

**Sec. 2409** The Secretary is authorized to undertake, through the Forest Service's Northeastern Area State and Private Forestry program, a study and pilot implementation project to demonstrate the benefits of retaining and integrating forests in urban development. The focus of such a study and implementation project should be to protect the environment and associated natural resource values, for current and future generations. (7 U.S.C. 6707)

### **Biomass energy demonstration projects**

**Sec. 2410** The Secretary, in consultation with the Secretary of Energy, may carry out projects that demonstrate the potential of short-rotation silvicultural methods to produce wood for electricity production and industrial energy needs. In carrying out such projects, the Secretary shall cooperate with private industries, Federal and State agencies, and other organizations. (7 U.S.C. 6708)

### **Interagency cooperation to maximize biomass growth**

**Sec. 2411** The Secretary may enter into an agreement with the Secretary of Defense to –

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## **Right of Eminent Domain**

**August 1, 1888 (Ch. 782, 25 Stat. 357; 40 U.S.C. 257)**

In every case in which the Secretary of the Treasury or any other officer of the Government has been, or hereafter shall be, authorized to procure real estate for the erection of a public building or for other public uses, he may acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so, and the Attorney General of the United States, upon every application of the Secretary of the Treasury, under this section and section 258 (Section 258 has been omitted.) of this title, or such other officer, shall cause proceedings to be commenced for condemnation within thirty days from receipt of the application at the Department of Justice. (40 U.S.C. 257)

## Renewable Resources Extension Act of 1978

**June 30, 1978 (Pub. L. 95–306, 92 Stat. 349; 16 U.S.C. 1671 note, 1671 to 1674, 1674a, 1674b, 1675, 1676, 1671)**

**Sec. 1** That this Act may be cited as the “Renewable Resources Extension Act of 1978”. (16 U.S.C. 1671 note)

### Finding

**Sec. 2** Congress finds that—

- (1) the extension program of the Department of Agriculture and the extension activities of each State provide useful and productive educational programs for private forest and range landowners and processors and consumptive and nonconsumptive users of forest and rangeland renewable resources, and these educational programs complement research and assistance programs conducted by the Department of Agriculture;
- (2) to meet national goals, it is essential that all forest and rangeland renewable resources (hereinafter in this Act referred to as “renewable resources”), including fish and wildlife, forage, outdoor recreation opportunities, timber, and water, be fully considered in designing educational programs for landowners, processors, and users;
- (3) more efficient utilization and marketing of renewable resources extend available supplies of such resources, provide products to consumers at prices less than they would otherwise be and promote reasonable returns on the investments of landowners, processors,

and users;

(4) trees and forests in urban areas improve the esthetic quality, reduce noise, filter impurities from the air and add oxygen to it, save energy by moderating temperature extremes, control wind and water erosion, and provide habitat for wildlife; and

(5) trees and shrubs used as shelterbelts protect farm lands from wind and water erosion, promote moisture accumulation in the soil, and provide habitat for wildlife. (16 U.S.C. 1671)

### Types of Programs; Eligible Colleges and Universities

**Sec. 3** (a) the Secretary of Agriculture (hereinafter in this Act referred to as the “Secretary”), under conditions the Secretary may prescribe and in cooperation with the State directors of cooperative extension service programs and eligible colleges and universities, shall—

- (1) provide educational programs that enable individuals to recognize, analyze, and resolve problems dealing with renewable resources, including forest- and range-based outdoor recreation opportunities, trees, and forests in urban areas, and trees and shrubs in shelterbelts;
- (2) use educational programs to disseminate the results of research on renewable resources;

(3) conduct educational programs that transfer the best available technology to those involved in the management and protection of forests and rangelands and the processing and use of their associated renewable resources;

(4) develop and implement educational programs that give special attention to the educational needs of small, private non-industrial forest landowners;

(5) develop and implement educational programs in range and fish and wildlife management;

(6) assist in providing continuing education programs for professionally trained individuals in fish and wildlife, forest, range, and watershed management and related fields;

(7) help forest and range landowners in securing technical and financial assistance to bring appropriate expertise to bear on their problems;

(8) help identify areas of needed research regarding renewable resources;

(9) in cooperation with State foresters or equivalent State officials, promote public understanding of the energy conservation, economic, social, environmental, and psychological values of trees and open space in urban and community area environments and expand knowledge of the ecological relationships and benefits of trees and related resources in urban and community environments; and

(10) conduct a comprehensive natural resource and environmental education

program for landowners and managers, public officials, and the public, with particular emphasis on youth.

(b) As used in this Act, the term “eligible colleges and universities” means colleges and universities eligible to be supported and maintained in whole or in part, with funds made available under the provisions of the Act of July 2, 1982 (12 Stat. 503–505, as amended; 7 U.S.C. 301–305, 307, 308), and the Act of August 30, 1890 (26 Stat. 417–419, as amended; 7 U.S.C. 321–326, 328), including Tuskegee Institute, and college and universities eligible for assistance under the Act of October 10, 1962 (76 Stat. 806–807, as amended; 16 U.S.C. 582a, 582a–1—582a–7).

(c) In implementing this section, all appropriate educational methods may be used, including, but not limited to, meetings, short courses, workshops, tours, demonstrations, publications, news releases, and radio and television programs. (16 U.S.C. 1672)

### **State Renewable Resources Extension Programs**

**Sec. 4** (a) The State director of cooperative extension programs (hereinafter in this Act referred to as the “State director”) and the administrative heads of extension for eligible colleges and universities in each State shall jointly develop by mutual agreement, a single comprehensive and coordinated renewable resources extension program in which the role of each eligible college and university is well defined. In meeting this responsibility, the State director and the administrative

heads of extension for eligible colleges and universities shall consult and seek agreement with the administrative technical representatives and the forestry representatives provided for by the Secretary in implementation of the Act of October 10, 1962 (76 Stat. 806–807, as amended; 16 U.S.C. 582a, 582a–1—582a–7), in the State. Each State’s renewable resources extension program shall be submitted to the Secretary annually. The National Agricultural Research, Extension, Education, and Economics Advisory Board established under section 1408 of the Food and Agriculture Act of 1977 shall review and make recommendations to the Secretary pertaining to programs conducted under this Act.

(b) The State director and the administrative heads of extension for eligible colleges and universities in each State shall encourage close cooperation between extension staffs at the county and State levels, and State and Federal research organizations dealing with renewable resources, State and Federal agencies that manage forests and rangelands and their associated renewable resources, State and Federal agencies that have responsibilities associated with the processing or use of renewable resources, and other agencies or organizations the State director and administrative heads of extension deem appropriate.

(c) Each State renewable resources extension program shall be administered and coordinated by the State director, except that, in States having colleges eligible to receive funds under the Act of

August 30, 1890 (26 Stat. 417–419, as amended; 7 U.S.C. 321–326, 328), including Tuskegee Institute, the State renewable resources extension program shall be administered by the State director and the administrative head or heads of extension for the college or colleges eligible to receive such funds.

(d) In meeting the provisions of this section, each State director and administrative heads of extension for eligible colleges and universities shall appoint and use one or more advisory committees comprised of forest and range landowners, professionally trained individuals in fish and wildlife, forest, range, and watershed management, and related fields, as appropriate, and other suitable persons.

(e) For the purposes of this Act, the term “State” means any one of the fifty States, the Commonwealth of Puerto Rico, Guam, the District of Columbia, and the Virgin Islands of the United States. (16 U.S.C. 1673)

### **National Renewable Resources Extension Program**

**Sec. 5** (a) The Secretary shall prepare a five-year plan for implementing this Act, which is to be called the “Renewable Resources Extension Program” and shall submit such plan to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate no later than the last day of the first half of the fiscal year ending September 30, 1980, and the last day of the first half of each fifth fiscal year thereafter. The

Renewable Resources Extension Program shall provide national emphasis and direction as well as guidance to State directors and administrative heads of extension for eligible colleges and universities in the development of their respective State renewable resources extension programs, which are to be appropriate in terms of the conditions, needs, and opportunities in each State. The Renewable Resources Extension Program shall contain, but not be limited to, brief outlines of general extension programs for fish and wildlife management (for both game and nongame species), range management, timber management (including brief outlines of general extension programs for timber utilization, timber harvesting, timber marketing, wood utilization, and wood products marketing) and watershed management (giving special attention to water quality protection), as well as brief outlines of general extension programs for recognition and enhancement of forest- and range-based outdoor recreation opportunities, for urban and community forestry activities, and for planting and management of trees and shrubs in shelterbelts, and give special attention to water quality protection and natural resource and environmental education for landowners and managers, public officials, and the public.

(b) In preparing the Renewable Resources Extension Program, the Secretary shall take into account the respective capabilities of private forests and rangelands for yielding renewable resources and the relative needs for such resources identified in the periodic Renewable Resource Assessment provided for in

section 3 of the Forest and Rangeland Renewable Resources Planning Act of 1974 and the periodic appraisal of land and water resources provided for in section 5 of the Soil and Water Resources Conservation Act of 1977.

(c) To provide information that will aid Congress in its oversight responsibilities and to provide accountability in implementing this Act, the Secretary shall prepare an annual report, which shall be furnished to Congress at the time of submission of each annual fiscal budget, beginning with the annual fiscal budget for the fiscal year ending September 30, 1981. The annual report shall set forth accomplishments of the Renewable Resources Extension Program, its strengths and weaknesses, recommendations for improvement, and costs of program administration, each with respect to the preceding fiscal year.

(d) To assist Congress and the public in evaluating the Renewable Resources Extension Program, the program shall include a review of activities undertaken in response to the preceding five-year plan and an evaluation of the progress made toward accomplishing the goals and objectives set forth in such preceding plan. Such review and evaluation shall be displayed in the program, for the Nation as a whole, and for each State. (16 U.S.C. 1674)

### **Expanded Programs**

**Sec. 5A** (a) In General.—The Secretary, acting through the Extension Service and the State cooperative extension services, and in consultation with State foresters or

equivalent State officials, school boards, and universities, shall expand forestry and natural resources education programs conducted under this Act for private forest owners and managers, public officials, youth, and the general public, and shall include guidelines for the transfer of technology.

(b) Activities.—

(1) In General.—In expanding the programs conducted under this Act, the Secretary shall ensure that activities are undertaken to promote policies and practices that enhance the health, vitality, productivity, economic value, and environmental attributes of the forest lands of the United States.

(2) Types.—The activities referred to in paragraph (1) shall include—

(A) demonstrating and teaching landowners and forest managers the concepts of multiple-use and sustainable natural resource management;

(B) conducting comprehensive environmental education programs that assist citizens to participate in environmentally positive activities such as tree planting, recycling, erosion prevention, and waste management; and

(C) educational programs and materials that will improve the capacity of schools, local governments and resource agencies to deliver forestry and natural resources information to young people, environmentally concerned citizens, and action groups. (16 U.S.C. 1674a)

### Sustainable Forestry Outreach

### Initiative

**Sec. 5B** The Secretary shall establish a program, to be known as the “Sustainable Forestry Outreach Initiative”, to educate landowners concerning the following:

(1) The value and benefits of practicing sustainable forestry.

(2) The importance of professional forestry advice in achieving sustainable forestry objectives.

(3) The variety of public and private sector resources available to assist the landowners in planning for and practicing sustainable forestry. (16 U.S.C. 1674b)

### Appropriations Authorization

**Sec. 6** There is authorized to be appropriated to carry out this Act \$30,000,000 for each of fiscal years 2002 through 2007. Generally, States shall be eligible for funds appropriated under this Act according to the respective capabilities of their private forests and rangelands for yielding renewable resources and relative needs for such resources identified in the periodic Renewable Resource Assessment provided for in section 3 of the Forest and Rangeland Renewable Resources Planning Act of 1974 and the periodic appraisal of land and water resources provided for in section 5 of the Soil and Water Resources Conservation Act of 1977. (16 U.S.C. 1675)

### Regulations and Coordination

**Sec. 7** The Secretary is authorized to issue such rules and regulations as the

Secretary deems necessary to implement the provisions of this Act and to coordinate this Act with title XIV of the Food and Agriculture Act of 1977. (16 U.S.C. 1676)

**Effective Date**

**Sec. 8** The provisions of this Act shall be effective for the period beginning October 1, 1978, and ending September 30, 2007. (16 U.S.C. 1671)

## Cooperative Forestry Assistance Act of 1978

**July 1, 1978 (Pub. L. 95-313, 92 Stat. 365; 16 U.S.C. 2101 note, 2101, 2102, 2103a, 2103c, 2104 to 2110, 1606, 1510, 2101 note, 2112 to 2114)**

### Findings, purpose, and policy

#### Sec. 2 (a) Findings

Congress finds that –

- (1) most of the productive forest land of the United States is in private, State, and local governmental ownership, and the capacity of the United States to produce renewable forest resources is significantly dependent on such non-Federal forest lands;
- (2) adequate supplies of timber and other forest resources are essential to the United States, and adequate supplies are dependent on efficient methods for establishing, managing, and harvesting trees and processing, marketing, and using wood and wood products;
- (3) nearly one-half of the wood supply of the United States comes from nonindustrial private timberlands and such percentage could rise with expanded assistance programs;
- (4) managed forest lands provide habitats for fish and wildlife, as well as aesthetics, outdoor recreation opportunities, and other forest resources;
- (5) the soil, water, and air quality of the United States can be maintained and improved through good stewardship of privately held forest resources;
- (6) insects and diseases affecting trees occur and sometimes create emergency conditions on all land, whether Federal or non-Federal, and efforts to prevent and control such insects and diseases often require coordinated action by both Federal and non-Federal land managers;
- (7) fires in rural areas threaten human lives, property, forests and other resources, and Federal-State cooperation in forest fire protection has proven effective and valuable;
- (8) trees and forests are of great environmental and economic value to urban areas;
- (9) managed forests contribute to improving the quality, quantity, and timing of water yields that are of broad benefit to society;
- (10) over half the forest lands of the United States are in need of some type of conservation treatment;
- (11) forest landowners are being faced with increased pressure to convert their forest land to development and other purposes;
- (12) increased population pressures and user demands are being placed on private, as well as public, landholders to provide a wide variety of products and services, including fish and wildlife habitat, aesthetic quality, and recreational opportunities;

(13) stewardship of privately held forest resources requires a long-term commitment that can be fostered through local, State, and Federal governmental actions;

(14) the Department of Agriculture, through the coordinated efforts of its agencies with forestry responsibilities, cooperating with other Federal agencies, State foresters, and State political subdivisions, has the expertise and experience to assist private landowners in achieving individual goals and public benefits regarding forestry;

(15) the products and services resulting from nonindustrial private forest land stewardship provide income and employment that contribute to the economic health and diversity of rural communities;

(16) sustainable agroforestry systems and tree planting in semiarid lands can improve environmental quality and maintain farm yields and income; and

(18) the same forest resource supply, protection, and management issues that exist in the United States are also present on an international scale, and the forest and rangeland renewable resources of the world are threatened by deforestation due to conversion to agriculture of lands better suited to other purposes, over-grazing, over-harvesting, and other causes which pose a direct adverse threat to people, the global environment, and the world economy.<sup>2</sup>

(b) Purpose

It is the purpose of this chapter to authorize the Secretary of Agriculture (hereafter in this chapter referred to as the "Secretary"), with respect to non-Federal forest lands in the United States, and forest lands in foreign countries, of the United States, to assist in –

- (1) the establishment of a coordinated and cooperative Federal, State, and local forest stewardship program for management of the non-Federal forest lands;
- (2) the encouragement of the production of timber;
- (3) the prevention and control of insects and diseases affecting trees and forests;
- (4) the prevention and control of rural fires;
- (5) the efficient utilization of wood and wood residues, including the recycling of wood fiber;
- (6) the improvement and maintenance of fish and wildlife habitat;
- (7) the planning and conduct of urban forestry programs;
- (8) broadening existing forest management, fire protection, and insect and disease protection programs on non-Federal forest lands to meet the multiple use objectives of landowners in an environmentally sensitive manner;
- (9) providing opportunities to private landowners to protect ecologically valuable and threatened non-Federal forest lands; and
- (10) strengthening educational, technical, and financial assistance programs

that provide assistance to owners of non-Federal forest lands in the United States, and forest lands in foreign countries.<sup>3</sup>

(c) Policy

It is the policy of Congress that it is in the national interest for the Secretary to work through and in cooperation with State foresters, or equivalent State officials, nongovernmental organizations, and the private sector in implementing Federal programs affecting non-Federal forest lands.

(d) Construction

This chapter shall be construed to complement the policies and direction under the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.). (16 U.S.C. 2101)

<sup>1</sup> 1990 - Pub. L. 101-624 amended section generally, substituting present provisions for provisions which set forth Congressional findings and declarations, and statements of purpose and national interest, and which related to application with forest and rangeland renewable resources provisions. See Codification note above.

<sup>2</sup> So in original. Probably should be “(17)”.

<sup>3</sup> So in original.

### Rural forestry assistance

**Sec. 3** (a) Assistance to forest landowners and others

The Secretary may provide financial, technical, educational, and related assis-

tance to State foresters or equivalent State officials, and State extension directors, to enable such officials to provide technical information, advice, and related assistance to private forest land owners and managers, vendors, forest resource operators, forest resource professionals, public agencies, and individuals to enable such persons to carry out activities that are consistent with the purposes of this chapter, including –

- (1) protecting, maintaining, enhancing, restoring, and preserving forest lands and the multiple values and uses that depend on such lands;
- (2) identifying, protecting, maintaining, enhancing, and preserving wildlife and fish species, including threatened and endangered species, and their habitats;
- (3) implementing forest management technologies;
- (4) selecting, producing, and marketing alternative forest crops, products and services from forest lands;
- (5) protecting forest land from damage caused by fire, insects, disease, and damaging weather;
- (6) managing the rural-land and urban-land interface to balance the use of forest resources in and adjacent to urban and community areas;
- (7) identifying and managing recreational forest land resources;
- (8) identifying and protecting the aesthetic character of forest lands;
- (9) protecting forest land from conver-

sion to alternative uses; and

(10) the management of resources of forest lands, including –

(A) the harvesting, processing, and marketing of timber and other forest resources and the marketing and utilization of wood and wood products;

(B) the conversion of wood to energy for domestic, industrial, municipal, and other uses;

(C) the planning, management, and treatment of forest land, including site preparation, reforestation, thinning, prescribed burning, and other silvicultural activities designed to increase the quantity and improve the quality of timber and other forest resources;

(D) ensuring that forest regeneration or reforestation occurs if needed to sustain long-term resource productivity;

(E) protecting and improving forest soil fertility and the quality, quantity, and timing of water yields; and

(F) encouraging the investment of a portion of the proceeds from the sale of timber or other forest resources in stewardship activities that preserve, protect, maintain, and enhance their forest land.

(b) State forestry assistance

The Secretary is authorized to provide financial, technical, and related assistance to State foresters, or equivalent State officials, to –

(1) develop genetically improved tree seeds;

(2) develop and contract for the development of field arboretums, greenhouses, and tree nurseries, in cooperation with a State, to facilitate production and distribution of tree seeds and seedlings in States where the Secretary determines that there is an inadequate capacity to carry out present and future reforestation needs;

(3) procure, produce, and distribute tree seeds and trees for the purpose of establishing forests, windbreaks, shelterbelts, woodlots, and other plantings;

(4) plant tree seeds and seedlings on non-Federal forest lands that are suitable for the production of timber, recreation, and for other benefits associated with the growing of trees;

(5) plan, organize, and implement measures on non-Federal forest lands, including thinning, prescribed burning, and other silvicultural activities designed to increase the quantity and improve the quality of trees and other vegetation, fish and wildlife habitat, and water yielded therefrom; and

(6) protect or improve soil fertility on non-Federal forest lands and the quality, quantity, and timing of water yields therefrom.

(c) Implementation

In implementing this section, the Secretary shall cooperate with other Federal, State, and local natural resource management agencies, universities and the private sector.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section. (16 U.S.C. 2102)

[Amended generally by Pub. L. 107-171, sec. 8002(b), 116 Stat. 468.]

“(b) Forest Land Enhancement Program.—The Cooperative Forestry

Assistance Act of 1978 is amended by inserting after section 3 (16

U.S.C. 2102) the following:

“SEC. 4. (NOTE: 16 U.S.C. 2103) FOREST LAND ENHANCEMENT PROGRAM.

“(a) Establishment.—

“(1) In general.—The Secretary of Agriculture shall establish a forest land enhancement program—

“(A) to provide financial assistance to State foresters; and

“(B) to encourage the long-term sustainability of nonindustrial private forest lands in the United States by assisting the owners of nonindustrial private forest lands, through State foresters, in more actively managing the nonindustrial private forest lands and related resources of those owners through the use of State, Federal, and private sector resource management expertise, financial assistance, and educational programs.

“(2) Coordination and consultation.—The Secretary, acting through State foresters, shall implement the program—

“(A) in coordination with the State

Forest Stewardship Coordinating Committees; and

“(B) in consultation with other Federal, State, and local natural resource management agencies, institutions of higher education, and a broad range of private sector interests.

“(b) Program Objectives.—In implementing the program, the Secretary shall target resources to achieve the following objectives:

“(1) Investing in practices to establish, restore, protect, manage, maintain, and enhance the health and productivity of the nonindustrial private forest lands in the United States for timber, habitat for flora and fauna, soil, water, and air quality, wetlands, and riparian buffers.

“(2) Ensuring that afforestation, reforestation, improvement of poorly stocked stands, timber stand improvement, practices necessary to improve seedling growth and survival, and growth enhancement practices occur where needed to enhance and sustain the long-term productivity of timber and nontimber forest resources to help meet future public demand for all forest resources and provide environmental benefits.

“(3) Reducing the risks and helping restore, recover, and mitigate the damage to forests caused by fire, insects, invasive species, disease, and damaging weather.

“(4) Increasing and enhancing carbon sequestration opportunities.

“(5) Enhancing implementation of

agroforestry practices.

“(6) Maintaining and enhancing the forest landbase and leverage State and local financial and technical assistance to owners that promote the same conservation and environmental values.

“(7) Preserving the aesthetic quality of nonindustrial private forest lands and providing opportunities for outdoor recreation.

“(c) State Priority Plan.—

“(1) Development.—The State Forester and State Forest Stewardship Coordinating Committee of a State shall jointly develop and submit to the Secretary a State priority plan that is intended to promote forest management objectives in that State.

“(2) (NOTE: Deadline) Report.—Not later than September 30, 2006, each State that implemented a State priority plan shall submit to the Secretary a report describing the status of all activities and practices funded under the program as of that date.

“(d) Owner Eligibility for Assistance.—

“(1) Eligibility criteria.—To be eligible for cost-share assistance under the program, an owner of nonindustrial private forest lands shall agree—

“(A) to develop and implement, in cooperation with a State forester, another State official, or a professional resources manager, a management plan that—

“(i) except as provided in paragraph (2) or (3), provides for the treatment

of not more than 1,000 acres of nonindustrial private forest lands;

“(ii) is approved by the State forester; and

“(iii) addresses site specific activities and practices; and

“(B) to implement approved activities and practices in a manner consistent with the management plan for a period of not less than 10 years, unless the State forester approves a modification to the plan.

“(2) Public benefit exception.—The Secretary may increase the acreage limitation specified in paragraph (1)(A)(i) to not more than 5,000 acres for an owner of nonindustrial private forest lands if the Secretary, in consultation with the State forester, determines that significant public benefits will accrue as a result of the provision of cost-share assistance under the program for the treatment of the additional acreage.

“(3) Plan development exception.—An owner may receive cost-share assistance under the program for the purpose of developing a management plan under subsection (e) that provides for the treatment of acreage in excess of the acreage limitations specified in paragraphs (1)(A)(i) and (2), except that the owner’s eligibility for cost-share assistance to implement approved activities and practices under the management plan remains subject to the acreage limitation specified in paragraph (1)(A)(i) or, if the Secretary makes the determination described in paragraph

(2), the acreage limitation specified in that paragraph.

“(e) Management Plan.—

“(1) Submission and content.—An owner of nonindustrial private forest lands that seeks to participate in the program shall submit to the State forester of the State in which the lands are located a management plan that—

“(A) identifies and describes projects and activities to be carried out by the owner to protect or enhance soil, water, air, range and aesthetic quality, recreation, timber, water, wetland, or fish and wildlife resources on the lands in a manner that is compatible with the objectives of the owner;

“(B) addresses any criteria established by the State and the applicable Committee; and

“(C) meets the other requirements of this section.

“(2) Lands covered.—At a minimum, the management plan shall apply to those portions of the nonindustrial private forest lands of the owner on which any project or activity funded under the program will be carried out. In a case in which a project or activity may affect acreage outside the portion of the land on which the project or activity is carried out, the management plan shall apply to all lands of the owner that are in forest cover and may be affected by the project or activity.

“(f) Approved Activities.—

“(1) State list.—The Secretary shall

develop for each State a list of approved forest activities and practices eligible for cost-share assistance that meets the purposes of

the program. The Secretary shall develop the list for a State in consultation with the State forester and the Committee for that State.

“(2) Types of activities.—Approved activities and practices under paragraph (1) may consist of activities and practices for the following purposes:

“(A) The establishment, management, maintenance, and restoration of forests for shelterbelts, windbreaks, aesthetic quality, and other conservation purposes.

“(B) The sustainable growth and management of forests for timber production.

“(C) The restoration, use, and enhancement of forest wetland and riparian areas.

“(D) The protection of water quality and watersheds through—

“(i) the planting of trees in riparian areas; and

“(ii) the enhanced management and maintenance of native vegetation on land vital to water quality.

“(E) The management, maintenance, restoration, or development of habitat for plants, fish, and wildlife.

“(F) The control, detection, monitoring, and prevention of the spread of invasive species and pests on nonindustrial private forest lands.

“(G) The restoration of nonindustrial private forest land affected by invasive species and pests.

“(H) The conduct of other management activities, such as the reduction of hazardous fuels, that reduce the risks to forests posed by, and that restore, recover, and mitigate the damage to forests caused by, fire or any other catastrophic event, as determined by

the Secretary.

“(I) The development of management plans;

“(J) The conduct of energy conservation and carbon sequestration activities.

“(K) The conduct of other activities approved by the Secretary, in consultation with the State forester and the appropriate Committees.

“(g) Reimbursement of Eligible Activities.—

“(1) In general.—In the case of an eligible owner that has an approved management plan, the Secretary shall share the cost of implementing the approved activities and practices that the Secretary determines are appropriate.

“(2) Rate.—The Secretary shall determine the appropriate reimbursement rate for cost-share payments under paragraph (1) and the schedule for making those payments.

“(3) Maximum cost share.—The Secretary shall not make cost-share

payments under this subsection to an owner in an amount in excess of 75 percent, or a lower percentage as determined by the State forester, of the total cost to the owner to implement the approved activities and practices under the management plan.

“(4) Aggregate payment limit.—The Secretary shall determine the maximum aggregate amount of cost-share payments that an owner may receive under the program.

“(5) Consultation.—The Secretary shall make determinations under this subsection in consultation with the State forester.

“(h) Recapture.—

“(1) In general.—The Secretary shall establish and implement a mechanism to recapture payments made to an owner in the event that the owner fails to implement an approved activity or practice specified in the management plan for which the owner received cost-share payments.

“(2) Additional remedy.—The remedy provided in paragraph (1) is in addition to any other remedy available to the Secretary.

“(i) Distribution of Cost-Share Funds.—The Secretary, acting through the State foresters, shall distribute funds available for cost sharing under the program only after giving appropriate consideration to the following factors:

“(1) The public benefits that would result from the distribution.

“(2) The total acreage of nonindustrial private forest lands in each State.

“(3) The potential productivity of those lands, as determined by the Secretary.

“(4) The number of owners eligible for cost sharing in each State.

“(5) The opportunities to enhance nontimber resources on those lands, including—

“(A) the protection of riparian buffers and forest wetland;

“(B) the preservation of fish and wildlife habitat;

“(C) the enhancement of soil, air, and water quality; and

“(D) the preservation of aesthetic quality and opportunities for outdoor recreation.

“(6) The anticipated demand for timber and nontimber resources in each State.

“(7) The need to improve forest health to minimize the damaging effects of catastrophic fire, insects, disease, or weather.

“(8) The need and demand for agroforestry practices in each State.

“(9) The need to maintain and enhance the forest landbase.

“(10) The need for afforestation, reforestation, and timber stand improvement.

“(j) Availability of Funds.—The Secretary shall use \$100,000,000 of funds of the Commodity Credit Corporation to carry out the Program during the period

beginning on the date of enactment of the Farm Security and Rural Investment Act of 2002 and ending on September 30, 2007.

“(k) Definitions.—In this section:

“(1) Nonindustrial private forest lands.—The term ‘nonindustrial private forest lands’ means rural lands, as determined by the Secretary, that—

“(A) have existing tree cover or are suitable for growing trees; and

“(B) are owned by any nonindustrial private individual, group, association, corporation, Indian tribe, or other private legal entity so long as the individual, group, association, corporation, tribe, or entity has definitive decision-making authority over the lands.

“(2) Committee.—The terms ‘State Forest Stewardship Coordinating Committee’ and ‘Committee’ means a State Forest Stewardship Coordinating Committee established under section 19(b).

“(3) Indian tribe.—The term ‘Indian tribe’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

“(4) Owner.—The term ‘owner’ means an owner of nonindustrial private forest land.

“(5) Program.—The term ‘program’ means the forest land enhancement program established by this section.

“(6) Secretary.—The term ‘Secretary’

means the Secretary of Agriculture.

“(7) State forester.—The term ‘State forester’ means the director or other head of a State Forestry Agency or equivalent State official.” (16 U.S.C. 2102)

## **Forest Stewardship Program**

### **Sec. 5 (a) Establishment**

The Secretary, in consultation with State foresters or equivalent State officials, shall establish a Forest Stewardship Program (hereafter referred to in this section as the “Program”) to encourage the long-term stewardship of nonindustrial private forest lands by assisting owners of such lands to more actively manage their forest and related resources by utilizing existing State, Federal, and private sector resource management expertise and assistance programs.

#### **(b) Goal**

The goal of the Program shall be to enter at least 25,000,000 acres of nonindustrial private forest lands in the Program by December 31, 1995.

#### **(c) “Nonindustrial private forest lands” defined**

For the purposes of this section, the term “nonindustrial private forest lands” means rural, as determined by the Secretary, lands with existing tree cover, or suitable for growing trees, and owned by any private individual, group, association, corporation, Indian tribe, or other private legal entity.

#### **(d) Implementation**

In carrying out the Program the Secretary, in consultation with State foresters or equivalent State officials, shall provide financial, technical, educational, and related assistance to State foresters or equivalent State officials, including assistance to help such State foresters or equivalent officials to provide financial assistance to other State and local natural resource entities, both public and private, and land-grant universities for the delivery of information and professional assistance to owners of nonindustrial private forest lands. Such information and assistance shall be directed to help such owners understand and evaluate alternative actions they might take, including –

- (1) managing and enhancing the productivity of timber, fish and wildlife habitat, water quality, wetlands, recreational resources, and the aesthetic value of forest lands;
- (2) investing in practices to protect, maintain, and enhance the resources identified in paragraph (1);
- (3) ensuring that afforestation, reforestation, improvement of poorly stocked stands, timber stand improvement, practices necessary to improve seedling growth and survival, and growth enhancement practices occur where needed to enhance and sustain the long-term productivity of timber and nontimber forest resources to help meet future public demand for all forest resources and provide the environmental benefits that result; and
- (4) protecting their forests from damage caused by fire, insects, disease, and

damaging weather.

(e) Eligibility

All nonindustrial private forest lands that are not in management under Federal, State, or private sector financial and technical assistance programs existing on November 28, 1990, are eligible for assistance under the Program. Nonindustrial private forest lands that are managed under such existing programs are eligible for assistance under the Program if forest management activities are expanded and enhanced and the landowner agrees to meet the requirements of this chapter.

(f) Duties of owners

To enter forest land into the Program, landowners shall –

(1) prepare and submit to the State forester or equivalent State official a forest stewardship plan that meets the requirements of this section and that –

(A) is prepared by a professional resource manager;

(B) identifies and describes actions to be taken by the landowner to protect soil, water, range, aesthetic quality, recreation, timber, water, and fish and wildlife resources on such land in a manner that is compatible with the objectives of the landowner; and

(C) is approved by the State forester, or equivalent State official; and

(2) agree that all activities conducted on such land shall be consistent with the stewardship plan.

(g) Stewardship recognition

The Secretary, in consultation with State foresters or equivalent State officials, is encouraged to develop an appropriate recognition program for landowners who practice stewardship management on their lands, with an appropriate, special recognition symbol and title.

(h) Authorization of appropriations

There are hereby authorized to be appropriated \$25,000,000 for each of the fiscal years 1991 through 1995, and such sums as may be necessary thereafter, to carry out this section. (16 U.S.C. 2103a)

### Forest Legacy Program

**Sec. 7 (a) Establishment and purpose**

The Secretary shall establish a program, to be known as the Forest Legacy Program, in cooperation with appropriate State, regional, and other units of government for the purposes of ascertaining and protecting environmentally important forest areas that are threatened by conversion to nonforest uses and, through the use of conservation easements and other mechanisms, for promoting forest land protection and other conservation opportunities. Such purposes shall also include the protection of important scenic, cultural, fish, wildlife, and recreational resources, riparian areas, and other ecological values.

(b) State and regional forest legacy programs

The Secretary shall exercise the authority under subsection (a) of this section in conjunction with State or regional programs that the Secretary deems consis-

tent with this section.

(c) Interests in land

In addition to the authorities granted under section 515 of this title and section 428a(a) of title 7, the Secretary may acquire from willing landowners lands and interests therein, including conservation easements and rights of public access, for Forest Legacy Program purposes. The Secretary shall not acquire conservation easements with title held in common ownership with any other entity.

(d) Implementation

(1) In general

Lands and interests therein acquired under subsection (c) of this section may be held in perpetuity for program and easement administration purposes as the Secretary may provide. In administering lands and interests therein under the program, the Secretary shall identify the environmental values to be protected by entry of the lands into the program, management activities which are planned and the manner in which they may affect the values identified, and obtain from the landowner other information determined appropriate for administration and management purposes.

(2) Initial programs

Not later than November 28, 1991, the Secretary shall establish a regional program in furtherance of the Northern Forest Lands Study in the States of New York, New Hampshire, Vermont, and Maine under Public Law 100-446. The Secretary shall establish additional

programs in each of the Northeast, Midwest, South, and Western regions of the United States, and the Pacific Northwest (including the State of Washington), on the preparation of an assessment of the need for such programs.

[Amended by Pub. L. 108-108, sec. 336, 117 Stat. 1313.]

(3) Transfer of forest legacy program land—

(A) In general.—

Subject to any terms and conditions that the Secretary may require (including the requirements described in subparagraph (B)), the Secretary may, at the request of the State of Vermont, convey to the State, by quitclaim deed, without consideration, any land or interest in land acquired in the State under the Forest Legacy Program.

(B) Requirements.—

In conveying land or an interest in land under subparagraph (A), the Secretary may require that—

(i) the deed conveying the land or interest in land include requirements for the management of the land in a manner that

(I) conserves the land or interest in land; and

(II) is consistent with any other Forest Legacy Program purposes for which the land or interest in land was acquired;

(ii) if the land or interest in land is subsequently sold, exchanged, or

otherwise disposed of by the State of Vermont, the State shall—

(I) reimburse the Secretary in an amount that is based on the current market value of the land or interest in land in proportion to the amount of consideration paid by the United States for the land or interest in land; or

(II) convey to the Secretary land or an interest in land that is equal in value to the land or interest in land conveyed.

(C) Disposition of funds.—

Amounts received by the Secretary under subparagraph (B)(ii) shall be credited to the Wildland Fire Management account, to remain available until expended.”.

(e) Eligibility

Not later than November 28, 1991, and in consultation with State Forest Stewardship Coordinating Committees established under section 2113(b) of this title and similar regional organizations, the Secretary shall establish eligibility criteria for the designation of forest areas from which lands may be entered into the Forest Legacy Program and subsequently select such appropriate areas. To be eligible, such areas shall have significant environmental values or shall be threatened by present or future conversion to nonforest uses. Of land proposed to be included in the Forest Legacy Program, the Secretary shall give priority to lands which can be effectively protected and managed, and which have important

scenic or recreational values; riparian areas; fish and wildlife values, including threatened and endangered species; or other ecological values.

(f) Application

For areas included in the Forest Legacy Program, an owner of lands or interests in lands who wishes to participate may prepare and submit an application at such time in such form and containing such information as the Secretary may prescribe. The Secretary shall give reasonable advance notice for the submission of all applications to the State forester, equivalent State official, or other appropriate State or regional natural resource management agency. If applications exceed the ability of the Secretary to fund them, priority shall be given to those forest areas having the greatest need for protection pursuant to the criteria described in subsection (e) of this section.

(g) State consent

Where a State has not approved the acquisition of land under section 515 of this title, the Secretary shall not acquire lands or interests therein under authority granted by this section outside an area of that State designated as a part of a program established under subsection (b) of this section.

(h) Forest management activities

(1) In general

Conservation easements or deed reservations acquired or reserved pursuant to this section may allow forest management activities, including timber management, on areas entered in the

Forest Legacy Program insofar as the Secretary deems such activities consistent with the purposes of this section.

(2) Assignment of responsibilities

For Forest Legacy Program areas, the Secretary may delegate or assign management and enforcement responsibilities over federally owned lands and interests in lands only to another governmental entity.

(i) Duties of owners

Under the terms of a conservation easement or other property interest acquired under subsection (b) <sup>4</sup> of this section, the landowner shall be required to manage property in a manner that is consistent with the purposes for which the land was entered in the Forest Legacy Program and shall not convert such property to other uses. Hunting, fishing, hiking, and similar recreational uses shall not be considered inconsistent with the purposes of this program.

(j) Compensation and cost sharing

(1) Compensation

The Secretary shall pay the fair market value of any property interest acquired under this section. Payments under this section shall be in accordance with Federal appraisal and acquisition standards and procedures.

(2) Cost sharing

In accordance with terms and conditions that the Secretary shall prescribe, costs for the acquisition of lands or interests therein or project costs shall be shared among participating entities

including regional organizations, State and other governmental units, landowners, corporations, or private organizations. Such costs may include, but are not limited to, those associated with planning, administration, property acquisition, and property management. To the extent practicable, the Federal share of total program costs shall not exceed 75 percent, including any in-kind contribution.

(k) Easements

(1) Reserved interest deeds

As used in this section, the term “conservation easement” includes an easement utilizing a reserved interest deed where the grantee acquires all rights, title, and interests in a property, except those rights, title, and interests that may run with the land that are expressly reserved by a grantor.

(2) Prohibitions on limitations

Notwithstanding any provision of State law, no conservation easement held by the United States or its successors or assigns under this section shall be limited in duration or scope or be defeasible by –

- (A) the conservation easement being in gross or appurtenant;
- (B) the management of the conservation easement having been delegated or assigned to a non-Federal entity;
- (C) any requirement under State law for re-recording or renewal of the easement; or
- (D) any future disestablishment of a

Forest Legacy Program area or other Federal project for which the conservation easement was originally acquired.

(3) Construction

Notwithstanding any provision of State law, conservation easements shall be construed to effect the Federal purposes for which they were acquired and, in interpreting their terms, there shall be no presumption favoring the conservation easement holder or fee owner.

(l) Optional State grants

(1) In general

The Secretary shall, at the request of a participating State, provide a grant to the State to carry out the Forest Legacy Program in the State.

(2) Administration

If a State elects to receive a grant under this subsection –

(A) the Secretary shall use a portion of the funds made available under subsection (m) of this section, as determined by the Secretary, to provide a grant to the State; and

(B) the State shall use the grant to carry out the Forest Legacy Program in the State, including the acquisition by the State of lands and interests in lands.

(m) Appropriation

There are authorized to be appropriated such sums as may be necessary to carry out this section. (16 U.S.C. 03c)

<sup>4</sup> So in original. Probably should be subsection “(c)”.

## Forest health protection

### Sec. 8 (a) In general

The Secretary may protect trees and forests and wood products, stored wood, and wood in use directly on the National Forest System and, in cooperation with others, on other lands in the United States, from natural and man-made causes, to –

- (1) enhance the growth and maintenance of trees and forests;
- (2) promote the stability of forest-related industries and employment associated therewith through the protection of forest resources;
- (3) aid in forest fire prevention and control;
- (4) conserve forest cover on watersheds, shelterbelts, and windbreaks;
- (5) protect outdoor recreation opportunities and other forest resources; and
- (6) extend timber supplies by protecting wood products, stored wood, and wood in use.

### (b) Activities

Subject to subsections (c), (d), and (e) of this section and to such other conditions the Secretary may prescribe, the Secretary may, directly on the National Forest System, in cooperation with other Federal departments on other Federal lands, and in cooperation with State foresters, or equivalent State officials, subdivisions of States, agencies, institutions, organiza-

tions, or individuals on non-Federal lands –

(1) conduct surveys to detect and appraise insect infestations and disease conditions and man-made stresses affecting trees and establish a monitoring system throughout the forests of the United States to determine detrimental changes or improvements that occur over time, and report annually concerning such surveys and monitoring;

(2) determine the biological, chemical, and mechanical measures necessary to prevent, retard, control, or suppress incipient, potential, threatening, or emergency insect infestations and disease conditions affecting trees;

(3) plan, organize, direct, and perform measures the Secretary determines necessary to prevent, retard, control, or suppress incipient, potential, threatening, or emergency insect infestations and disease epidemics affecting trees;

(4) provide technical information, advice, and related assistance on the various techniques available to maintain a healthy forest and in managing and coordinating the use of pesticides and other toxic substances applied to trees and other vegetation, and to wood products, stored wood, and wood in use;

(5) develop applied technology and conduct pilot tests of research results prior to the full-scale application of such technology in affected forests;

(6) promote the implementation of appropriate silvicultural or management techniques that may improve or protect the health of the forests of the United

States; and

(7) take any other actions the Secretary determines necessary to accomplish the objectives and purposes of this section.

(c) Consent of entity

Operations under this section to prevent, retard, control, or suppress insects or diseases affecting forests and trees on land not controlled or administered by the Secretary shall not be conducted without the consent, cooperation, and participation of the entity having ownership of or jurisdiction over the affected land.

(d) Contribution by entity

No money appropriated to implement this section shall be expended to prevent, retard, control, or suppress insects or diseases affecting trees on non-Federal land until the entity having ownership of or jurisdiction over the affected land contributes, or agrees to contribute, to the work to be done in the amount and in the manner determined appropriate by the Secretary.

(e) Allotments to other agencies

The Secretary may, in the Secretary's discretion, and out of any money appropriated to implement this section, make allocations to Federal agencies having jurisdiction over lands held or owned by the United States in the amounts the Secretary determines necessary to prevent, retard, control, or suppress insect infestations and disease epidemics affecting trees on those lands.

(f) Limitation on use of appropriations

(1) Removing dead trees

No amounts appropriated shall be used to –

(A) pay the cost of felling and removing dead or dying trees unless the Secretary determines that such actions are necessary to prevent the spread of a major insect infestation or disease epidemic severely affecting trees; or

(B) compensate for the value of any property injured, damaged, or destroyed by any cause.

(2) Insects and diseases affecting trees

The Secretary may procure materials and equipment necessary to prevent, retard, control, or suppress insects and diseases affecting trees without regard to section 5 of title 41, under whatever procedures the Secretary may prescribe, if the Secretary determines that such action is necessary and in the public interest.

(g) Partnerships

The Secretary, by contract or cooperative agreement, may provide financial assistance through the Forest Service to State foresters or equivalent State officials, and private forestry and other organizations, to monitor forest health and protect the forest lands of the United States. The Secretary shall require contribution by the non-Federal entity in the amount and in the manner determined appropriate. Such non-Federal share may be in the form of cash, services, or equipment, as determined appropriate by the Secretary.

(h) Authorization of appropriations

There are authorized to be appropriated

annually such sums as may be necessary to carry out subsections (a) through (g) of this section.

(i) Integrated pest management

(1) In general

Subject to the provisions of subsections (c) and (e) of this section, the Secretary shall, in cooperation with State foresters or equivalent State officials, subdivisions of States, or other entities on non-Federal lands (hereafter in this subsection referred to as the “cooperator”) –

(A) provide cost-share assistance to such cooperators who have established an acceptable integrated pest management strategy, as determined by the Secretary, that will prevent, retard, control, or suppress gypsy moth, southern pine beetle, spruce budworm infestations, or other major insect infestations in an amount no less than 50 percent nor greater than 75 percent of the cost of implementing such strategy; and

(B) upon request, assist the cooperator in the development of such integrated pest management strategy.

(2) Authorization of appropriations

There are hereby authorized to be appropriated annually \$10,000,000 to implement this subsection. (16 U.S.C. 2104)

### **Urban and community forestry assistance**

**Sec. 9 (a) Findings**

The Congress finds that –

(1) the health of forests in urban areas and communities, including cities, their suburbs, and towns, in the United States is on the decline;

(2) forest lands, shade trees, and open spaces in urban areas and communities improve the quality of life for residents;

(3) forest lands and associated natural resources enhance the economic value of residential and commercial property in urban and community settings;

(4) urban trees are 15 times more effective than forest trees at reducing the buildup of carbon dioxide and aid in promoting energy conservation through mitigation of the heat island effect in urban areas;

(5) tree plantings and ground covers such as low growing dense perennial turfgrass sod in urban areas and communities can aid in reducing carbon dioxide emissions, mitigating the heat island effect, and reducing energy consumption, thus contributing to efforts to reduce global warming trends;

(6) efforts to encourage tree plantings and protect existing open spaces in urban areas and communities can contribute to the social well-being and promote a sense of community in these areas; and

(7) strengthened research, education, technical assistance, and public information and participation in tree planting and maintenance programs for trees and complementary ground covers for urban and community forests are needed to provide for the protection and expansion

of tree cover and open space in urban areas and communities.

(b) Purposes

The purposes of this section are to –

(1) improve understanding of the benefits of preserving existing tree cover in urban areas and communities;

(2) encourage owners of private residences and commercial properties to maintain trees and expand forest cover on their properties;

(3) provide education programs and technical assistance to State and local organizations (including community associations and schools) in maintaining forested lands and individual trees in urban and community settings and identifying appropriate tree species and sites for expanding forest cover;

(4) provide assistance through competitive matching grants awarded to local units of government, approved organizations that meet the requirements of section 501(c)(3) of title 26, or other local community tree volunteer groups, for urban and community forestry projects;

(5) implement a tree planting program to complement urban and community tree maintenance and open space programs and to reduce carbon dioxide emissions, conserve energy, and improve air quality in addition to providing other environmental benefits;

(6) promote the establishment of demonstration projects in selected urban and community settings to illustrate the

benefits of maintaining and creating forest cover and trees;

(7) enhance the technical skills and understanding of sound tree maintenance and arboricultural practices including practices involving the cultivation of trees, shrubs and complementary ground covers, of individuals involved in the planning, development, and maintenance of urban and community forests and trees; and

(8) expand existing research and educational efforts intended to improve understanding of –

(A) tree growth and maintenance, tree physiology and morphology, species adaptations, and forest ecology,

(B) the value of integrating trees and ground covers,

(C) the economic, environmental, social, and psychological benefits of trees and forest cover in urban and community environments, and

(D) the role of urban trees in conserving energy and mitigating the urban heat island.

(c) General authority

The Secretary is authorized to provide financial, technical, and related assistance to State foresters or equivalent State officials for the purpose of encouraging States to provide information and technical assistance to units of local government and others that will encourage cooperative efforts to plan urban forestry programs and to plant, protect, and maintain, and utilize wood from, trees in

open spaces, greenbelts, roadside screens, parks, woodlands, curb areas, and residential developments in urban areas. In providing such assistance, the Secretary is authorized to cooperate with interested members of the public, including nonprofit private organizations. The Secretary is also authorized to cooperate directly with units of local government and others in implementing this section whenever the Secretary and the affected State forester or equivalent State official agree that direct cooperation would better achieve the purposes of this section.

(d) Program of education and technical assistance

The Secretary, in cooperation with State foresters and State extension directors or equivalent State officials and interested members of the public, including nonprofit private organizations, shall implement a program of education and technical assistance for urban and community forest resources. The program shall be designed to –

(1) assist urban areas and communities in conducting inventories of their forest resources, including inventories of the species, number, location, and health of trees in urban areas and communities, identifying opportunities for the establishment of plantings for the purposes of conserving energy, and determining the status of related resources (including fish and wildlife habitat, water resources, and trails);

(2) assist State and local organizations (including community associations and schools) in organizing and conducting

urban and community forestry projects and programs;

(3) improve education and technical support in –

(A) selecting tree species appropriate for planting in urban and community environments and for promotion of energy conservation;

(B) providing for proper tree planting, maintenance, and protection in urban areas and communities;

(C) protecting individual trees and preserving existing open spaces with or without tree cover; and

(D) identifying opportunities for expanding tree cover in urban areas and communities;

(4) assist in the development of State and local management plans for trees and associated resources in urban areas and communities; and

(5) increase public understanding of the energy conservation, economic, social, environmental, and psychological values of trees and open space in urban and community environments and expand knowledge of the ecological relationships and benefits of trees and related resources in these environments.

(e) Procurement of plant materials

The Secretary, in cooperation with State foresters or equivalent State officials, shall assist in identifying sources of plant materials and may procure or otherwise obtain such plant materials from public or private sources and may make such plant materials available to urban areas and

communities for the purpose of reforesting open spaces, replacing dead and dying urban trees, promoting energy conservation, and providing other environmental benefits through expanding tree cover in urban areas and communities.

(f) Challenge cost-share program

(1) In general

The Secretary shall establish an urban and community forestry challenge cost-share program. Funds or other support shall be provided under such program to eligible communities and organizations, on a competitive basis, for urban and community forestry projects. The Secretary shall annually make awards under the program in accordance with criteria developed in consultation with, and after consideration of recommendations received from, the National Urban and Community Forestry Advisory Council established under subsection (g) of this section. Each State forester or equivalent State official may make recommendations to the Secretary for awards under the program for project proposals in their State which meet such criteria. Awards shall be consistent with the cost-share requirements of this section.

(2) Cost-sharing

The Federal share of support for a project provided under this subsection may not exceed 50 percent of the support for that project and shall be provided on a matching basis. The non-Federal share of such support may be in the form of cash, services, or in-kind contributions.

## (g) Forestry Advisory Council

## (1) Establishment and purpose

The Secretary shall establish a National Urban and Community Forestry Advisory Council (hereafter in this section referred to as the “Council”) for the purpose of

- (A) developing a national urban and community forestry action plan;
- (B) evaluating the implementation of that plan; and
- (C) developing criteria for, and submitting recommendations with respect to, the urban and community forestry challenge cost-share program under subsection (f) of this section.

## (2) Composition and operation

## (A) Composition

The Council shall be composed of 15 members appointed by the Secretary, as follows:

- (i) 2 members representing national nonprofit forestry and conservation citizen organizations,
- (ii) 3 members, 1 each representing State, county, and city and town governments,
- (iii) 1 member representing the forest products, nursery, or related industries,
- (iv) 1 member representing urban forestry, landscape, or design consultants,
- (v) 2 members representing academic institutions with an expertise

in urban and community forestry activities,

(vi) 1 member representing State forestry agencies or equivalent State agencies,

(vii) 1 member representing a professional renewable natural resource or arboricultural society,

(viii) 1 member from the Extension Service,

(ix) 1 member from the Forest Service, and

(x) 2 members who are not officers or employees of any governmental body, 1 of whom is a resident of a community with a population of less than 50,000 as of the most recent census and both of whom have expertise and have been active in urban and community forestry.

## (B) Vacancy

A vacancy in the Council shall be filled in the manner in which the original appointment was made.

## (C) Chairperson

The Secretary shall select 1 member, from members appointed to the Council, who is not an officer or employee of the United States nor any State, county, city, or town government, who shall serve as the chairperson of the Council.

## (D) Terms

## (i) In general

Except as provided in clauses (ii) and (iii) of this paragraph, members

shall be appointed for terms of 3 years, and no member may serve more than 2 consecutive terms on the Council.

(ii) Staggered terms Of the members first appointed –

(I) 5, including the chairperson and 2 governmental employees, shall be appointed for a term of 3 years,

(II) 5, including 2 governmental employees, shall be appointed for a term of 2 years, and

(III) 5, including 2 governmental employees, shall be appointed for a term of 1 year, as designated by the Secretary at the time of appointment.

(iii) Continuation

Any member appointed to fill a vacancy occurring before the expiration of the term of the member's predecessor shall be appointed only for the remainder of such term. A member may serve after the expiration of the member's term until the member's successor has taken office.

(E) Compensation

(i) In general

Except as provided in clause (ii), members of the Council shall serve without pay, but may be reimbursed for reasonable costs incurred while in the actual performance of duties vested in the Council.

(ii) Federal officers and employees Members of the Council who are

full-time officers or employees of the United States shall receive no additional pay, allowances, or benefits by reason of their service on the Council.

(iii) Financial and administrative support The Secretary shall provide financial and administrative support for the Council.

(3) Urban and Community Forestry Action Plan

Within 1 year after November 28, 1990, and every 10 years thereafter, the Council shall prepare a National Urban and Community Forestry Action Plan. The plan shall include (but not be limited to) the following:

(A) An assessment of the current status of urban forest resources in the United States.

(B) A review of urban and community forestry programs and activities in the United States, including education and technical assistance activities conducted by the Department of Agriculture, and other Federal agencies, the State forestry organizations, private industry, private nonprofit organizations, community and civic organizations and interested others.

(C) Recommendations for improving the status of the Nation's urban and community forest resources, including education and technical assistance and modifications required in existing programs and policies of relevant Federal agencies.

(D) A review of urban and community

forestry research, including –

(i) a review of all ongoing research associated with urban and community forests, arboricultural practices, and the economic, social, and psychological benefits of trees and forest cover in urban and community environments being conducted by the Forest Service, other Federal agencies, and associated land grant colleges and universities;

(ii) recommendations for new and expanded research efforts directed toward urban and community forestry concerns; and

(iii) a summary of research priorities and an estimate of the funds needed to implement such research, on an annual basis, for the next 10 years.

(E) Proposed criteria for evaluating proposed projects under the urban and community forestry challenge cost share program under subsection (f) of this section, with special emphasis given to projects that would demonstrate the benefits of improved forest management (including the maintenance and establishment of forest cover and trees) in urban areas and communities.

(F) An estimate of the resources needed to implement the National Urban and Community Forestry Action Plan for the succeeding 10 fiscal years.

#### (4) Amendment of plan

The plan may be amended by a majority of the Council members. Such amendments shall be incorporated into the

Council's annual review of the plan submitted to the Secretary pursuant to paragraph (5) of this subsection.

#### (5) Review of plan

The Council shall submit the plan to the Secretary and the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate upon its completion. Beginning no later than one year after the plan is submitted and annually thereafter, the Council shall submit a review of the plan to the Secretary no later than December 31. The review shall consist of –

(A) the Council's assessment of prior year accomplishments in research, education, technical assistance, and related activities in urban and community forestry;

(B) the Council's recommendations for research, education, technical assistance, and related activities in the succeeding year; and

(C) the Council's recommendations for the urban and community forestry challenge cost share projects to be funded during the succeeding year. The review submitted to the Secretary shall be incorporated into the annual report required under section 1601(d) of this title.

#### (6) Detail of personnel

Upon request of the Council, the Secretary is authorized to detail, on a reimbursable basis, any of the personnel of the Department of Agriculture to the

Council to assist the Council in carrying out its duties under this chapter.

(h) Definitions

For the purposes of this section –

- (1) the term “Council” means the National Urban and Community Forestry Advisory Council established under subsection (g) of this section;
- (2) the term “plan” means the National Urban and Community Forestry Action Plan developed under subsection (g)(3) of this section; and
- (3) the term “urban and community area” includes cities, their suburbs, and towns.

(i) Authorization of appropriations

There are hereby authorized to be appropriated \$30,000,000 for each of the fiscal years 1991 through 1995, and such sums as may be necessary for each fiscal year thereafter, for the implementation of this section. (16 U.S.C. 2105)

**Rural fire prevention and control**

**Sec. 10** (a) Congressional findings

Congress finds that –

- (1) significant accomplishments have been made by the Secretary and cooperating States in the prevention and control of fires on forest lands and on nonforested watersheds for more than fifty years;
- (2) progress is being made by the Secretary and cooperating States and rural communities in the protection of human lives, agricultural crops and

livestock, property and other improvements, and natural resources from fires in rural areas;

- (3) notwithstanding the accomplishments and progress that have been made, fire prevention and control on rural lands and in rural communities are of continuing high priority to protect human lives, agricultural crops and livestock, property and other improvements, and natural resources;
- (4) the effective cooperative relationships between the Secretary and the States regarding fire prevention and control on rural lands and in rural communities should be retained and improved;
- (5) efforts in fire prevention and control in rural areas should be coordinated among Federal, State, and local agencies; and
- (6) in addition to providing assistance to State and local rural fire prevention and control programs, the Secretary should provide prompt and adequate assistance whenever a rural fire emergency overwhelms, or threatens to overwhelm, the firefighting capability of the affected State or rural area.

(b) Implementation of provisions

Notwithstanding the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et seq.) the Secretary is authorized, under whatever conditions the Secretary may prescribe, to –

- (1) cooperate with State foresters or equivalent State officials in developing systems and methods for the prevention,

control, suppression, and prescribed use of fires on rural lands and in rural communities that will protect human lives, agricultural crops and livestock, property and other improvements, and natural resources;

(2) provide financial, technical, and related assistance to State foresters or equivalent State officials, and through them to other agencies and individuals, for the prevention, control, suppression, and prescribed use of fires on non-Federal forest lands and other non-Federal lands;

(3) provide financial, technical, and related assistance to State foresters or equivalent State officials in cooperative efforts to organize, train, and equip local firefighting forces, including those of Indian tribes or other native groups, to prevent, control, and suppress fires threatening human lives, crops, livestock, farmsteads or other improvements, pastures, orchards, wildlife, rangeland, woodland, and other resources in rural areas. As used herein, the term "rural areas" shall have the meaning set out in the first clause of section 1926(a)(7) of title 7; and

(4) provide financial, technical, and related assistance to State foresters or equivalent State officials, and through them to other agencies and individuals, including rural volunteer fire departments, to conduct preparedness and mobilization activities, including training, equipping, and otherwise enabling State and local firefighting agencies to respond to requests for fire suppression

assistance.

(c) Encouragement of use of excess personal property by State and local fire forces receiving assistance; cooperation and assistance of Administrator of General Services

The Secretary, with the cooperation and assistance of the Administrator of General Services, shall encourage the use of excess personal property (within the meaning of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.)) by State and local fire forces receiving assistance under this section.

(d) Coordination of assistance with assistance of Secretary of Commerce under Federal fire prevention and control provisions

To promote maximum effectiveness and economy, the Secretary shall seek to coordinate the assistance the Secretary provides under this section with the assistance provided by the Secretary of Commerce under the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et seq.).

(e) Authorization of appropriations for implementation of provisions

(1) There are hereby authorized to be appropriated annually such sums as may be needed to implement paragraphs (1), (2), and (3) of subsection (b) of this section.

(2)(A) There are hereby authorized to be appropriated annually \$70,000,000 to carry out subsection (b)(4) of this section. Of the total amount appropri-

ated to carry out subsection (b)(4) of this section –

(i) one-half shall be available only for State foresters or equivalent State officials, and through them to other agencies and individuals, of which not less than \$100,000 shall be made available to each State; and

(ii) one-half shall be available only for rural volunteer fire departments.

(B) The Federal share of the cost of any activity carried out with funds made available pursuant to this paragraph may not exceed 50 percent of the cost of that activity. The non-Federal share for such activity may be in the form of cash, services, or in kind contributions.

(f) Special rural fire disaster fund; establishment, appropriations, etc.

There shall be established in the Treasury a special rural fire disaster fund that shall be immediately available to and used by the Secretary to supplement any other money available to carry out this section with respect to rural fire emergencies, as determined by the Secretary. The Secretary shall determine that State and local resources are fully used or will be fully used before expending money in the disaster fund to assist a State in which one or more rural fire emergencies exist. There are hereby authorized to be appropriated such sums as may be needed to establish and replenish the disaster fund established by this subsection.

(g) Definitions

As used in this section –

(1) the term “rural volunteer fire department” means any organized, not for profit, fire protection organization that provides service primarily to a community or city with a population of 10,000 or less or to a rural area, as defined by the Secretary, whose firefighting personnel is 80 percent or more volunteer, and that is recognized as a fire department by the laws of the State; and

(2) the term “mobilization” means any activity in which one firefighting organization assists another that has requested assistance. (16 U.S.C. 2106)

[New note added by Pub. L. 107-171, sec. 8003(a), 116 Stat. 473.]

### **Enhanced Community Fire Protection.**

‘SEC. 8003. (NOTE: 16 U.S.C. 2106c note) ENHANCED COMMUNITY FIRE PROTECTION.

(a) Findings.—Congress finds the following:

(1) The severity and intensity of wild-land fires has increased dramatically over the past few decades as a result of past fire and land management policies.

(2) The record 2000 fire season is a prime example of what can be expected if action is not taken.

(3) Wildland fires threaten not only the forested resources of the United States, but also the thousands of communities intermingled with the wildlands in the

wildland-urban interface.

(4) The National Fire Plan, if implemented to achieve appropriate priorities, is the proper, coordinated, and most effective means to address the issue of wildfires.

(5) While adequate authorities exist to tackle the wildfire issues at the landscape level on Federal lands, there is limited authority to take action on most private lands, and the largest threat to life and property exists on private lands.

(6) There is a significant Federal interest in enhancing community protection from wildfire.

(b) Enhanced Protection.—The Cooperative Forestry Assistance Act of 1978 is amended by inserting after section 10 (16 U.S.C. 2106) the following:

[New section added or section amended generally by Pub. L. 107-171, sec. 8003(b), 116 Stat. 473]

“SEC. 10A. (NOTE: 16 U.S.C. 2106c) ENHANCED COMMUNITY FIRE PROTECTION.

“(a) Cooperative Management Related to Wildfire Threats.—The Secretary may cooperate with State foresters and equivalent State officials in the management of lands in the United States for the following purposes:

“(1) Aid in wildfire prevention and control.

“(2) Protect communities from wildfire threats.

“(3) Enhance the growth and maintenance of trees and forests that promote

overall forest health.

“(4) Ensure the continued production of all forest resources, including timber, outdoor recreation opportunities, wildlife habitat, and clean water, through conservation of forest cover on watersheds, shelterbelts, and windbreaks.

“(b) Community and Private Land Fire Assistance Program.—

“(1) Establishment; purpose.—The Secretary shall establish a Community and Private Land Fire Assistance program (in this subsection referred to as the ‘Program’)—

“(A) to focus the Federal role in promoting optimal firefighting efficiency at the Federal, State, and local levels;

“(B) to augment Federal projects that establish landscape level protection from wildfires;

“(C) to expand outreach and education programs to homeowners and communities about fire prevention; and

“(D) to establish space around homes and property of private landowners that is defensible against wildfires.

“(2) Administration and implementation.—The Program shall be administered by the Forest Service and implemented through State foresters or equivalent State officials.

“(3) Components.—In coordination with existing authorities under this Act, the Secretary, in consultation with the State forester or equivalent State official, may undertake on non-Federal lands—

“(A) fuel hazard mitigation and prevention;

“(B) invasive species management;

“(C) multiresource wildfire planning;

“(D) community protection planning;

“(E) community and landowner education enterprises, including the program known as FIREWISE;

“(F) market development and expansion;

“(G) improved wood utilization; and

“(H) special restoration projects.

“(4) Consent required.—Program activities undertaken by the Secretary on non-Federal lands shall be undertaken only with the consent of the owner of the lands.

“(5) Considerations.—The Secretary shall use persons in the local community wherever possible to carry out projects under the Program.

“(c) Consultation.—In carrying out this section, the Secretary shall consult with the Administrator of the United States Fire Administration, the Director of the National Institute of Standards and Technology, and the heads of other Federal agencies, as necessary.

“(d) Authorization of Appropriations.—There are hereby authorized to be appropriated to the Secretary to carry out this section—

“(1) \$35,000,000 for each of fiscal years 2002 through 2007; and

“(2) such sums as are necessary for

fiscal years thereafter.”.

### **Financial, technical, and related assistance to States**

**Sec. 11** (a) Development of State organizations for protection and management of non-Federal forest lands; scope of assistance; request by officials

To aid in achieving maximum effectiveness in the programs and activities conducted under this chapter, the Secretary is authorized to provide financial, technical, and related assistance to State foresters or equivalent State officials for the development of stronger and more efficient State organizations that will enable them to fulfill better their responsibilities for the protection and management of non-Federal forest lands. Assistance under this subsection may include, but will not be limited to, assistance in matters related to organization management, program planning and management, budget and fiscal accounting services, personnel training and management, information services, and recordkeeping. Assistance under this subsection may be extended only upon request by State foresters or equivalent State officials.

(b) Assembly, analysis, display, and reporting of State forest resources data, resources planning, etc.; scope of assistance; other statutory provisions unaffected

To ensure that data regarding forest lands are available for and effectively presented in State and Federal natural resources planning, the Secretary is authorized to provide financial, technical,

and related assistance to State foresters or equivalent State officials in the assembly, analysis, display, and reporting of State forest resources data, in the training of State forest resources planners, and in participating in natural resources planning at the State and Federal levels. The Secretary shall restrict assistance under this subsection to the implementation of the forestry aspects of State and Federal natural resources planning conducted under other laws. This subsection shall not be construed, in any way whatsoever, as extending, limiting, amending, repealing, or otherwise affecting any other law or authority.

(c) Technology implementation program; scope of program; availability of funds; use of forest resources planning committees

To ensure that new technology is introduced, new information is integrated into existing technology, and forest resources research findings are promptly made available to State forestry personnel, private forest landowners and managers, vendors, forest operators, wood processors, public agencies, and individuals, the Secretary is authorized to carry out a program of technology implementation.

(1) In implementing this subsection, the Secretary is authorized to work through State foresters or equivalent State officials, and, if the State forester or equivalent State official is unable to deliver these services, the Secretary is authorized to act through appropriate United States Department of Agriculture agencies, subdivisions of States,

agencies, institutions, organizations, or individuals to –

(A) strengthen technical assistance and service programs of cooperators participating in programs under this chapter by applying research results and conducting pilot projects and field tests of management and utilization practices, equipment, and technologies, related to programs and activities authorized under this chapter;

(B) study the effects of tax laws, methods, and practices on forest management;

(C) develop and maintain technical information systems in support of programs and activities authorized under this chapter;

(D) test, evaluate, and seek registration of chemicals for use in implementing the programs and activities authorized under this chapter;

(E) conduct other activities, including training of State forestry personnel whom the Secretary deems necessary to ensure that the programs and activities authorized under this chapter are responsive to special problems, unique situations, and changing conditions.

(2) The Secretary may make funds available to cooperators under this chapter without regard to the provisions of section 3324(a) and (b) of title 31, which prohibits advances of public money.

(3) The Secretary shall use forest resources planning committees at

National and State levels in implementing this subsection.

(d) Authorization of appropriations

There are hereby authorized to be appropriated annually such sums as may be needed to implement this section. (16 U.S.C. 2107)

**Consolidation of payments**

**Sec. 12** (a) Request by State; excluded funds

To provide flexibility in funding activities authorized under this chapter, the Secretary may, upon the request of any State, consolidate the annual financial assistance payments to that State under this chapter, in lieu of functional cost sharing mechanisms, formulas, or agreements. However, consolidated payments shall not include money appropriated under section 2103 of this title or money from any special Treasury fund established under this chapter.

(b) State forest resources programs as basis

Consolidation of payments made under this section shall be based upon State forest resources programs developed by State foresters or equivalent State officials, and reviewed by the Secretary.

(c) Amount of payments

Consolidated payments to any State during any fiscal year shall not exceed the total amount of non-Federal funds expended within the State during that year to implement its State forest resources program. However, the Secretary may

make payments that exceed the non-Federal amount expended for selected activities under the program, if the total Federal expenditure during any fiscal year does not exceed the total non-Federal expenditure during that year under the State forest resources program.

(d) Certification requirement by State forester or equivalent State official for Federal payment

The Secretary may make consolidated payments on the certificate of the State forester or equivalent State official that the conditions for Federal payment have been met.

(e) Administration of consolidated payments program not to adversely affect, etc., other programs

The Secretary shall administer this section to ensure that the use of consolidated payments does not adversely affect or eliminate any program authorized under this chapter.

(f) Total annual amount of financial assistance to participating State; financial assistance for special projects not to be included in determining base amount

Subject to applicable appropriation Acts, the total annual amount of financial assistance to any participating State after July 1, 1978, shall not be less than the base amount of financial assistance provided to that State under all the provisions of law specified in section 2111 of this title during the fiscal year in which this chapter is enacted. However, financial assistance for special projects of two years or less duration shall not be in-

cluded in determining the base amount for any participating State. (16 U.S.C. 2108)

### General provisions

**Sec. 13** (a) Cooperative and coordinating requirements for implementation of programs, etc.

In implementing this chapter, the Secretary shall, to the maximum extent practicable –

- (1) work through, cooperate with, and assist State foresters or equivalent State officials;
- (2) encourage cooperation and coordination between State foresters or equivalent State officials and other State agencies that manage renewable natural resources;
- (3) use and encourage cooperators under this chapter to use, private agencies, consultants, organizations, firms, and individuals to furnish necessary materials and services; and
- (4) promote effectiveness and economy by coordinating the direct actions and assistance authorized under this chapter with related programs the Secretary administers, and with cooperative programs of other agencies.

(b) Availability of appropriations

Money appropriated under this chapter shall remain available until expended.

(c) Consultation requirements for implementation of programs, etc.

Requirements for the development of State forest resources programs and State participation in management assis-

tance, planning assistance, and technology implementation, the apportionment of funds among States participating under this chapter, the administrative expenses in connection with activities and programs under this chapter, and the amounts to be expended by the Secretary to assist non-State cooperators under this chapter, shall be determined by the Secretary in consultation with a committee of not less than five State foresters or equivalent State officials selected by a majority of the State foresters or equivalent State officials from States participating in programs under this chapter. However, the Secretary need not consult with such committee regarding funds to be expended under emergency conditions that the Secretary may determine.

(d) Definitions

For the purposes of this chapter –

- (1) The terms “United States” and “State” shall include each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the territories and possessions of the United States;
- (2) The term “forest resources” shall include esthetics, fish and wildlife, forage, outdoor recreation opportunities, timber, and water; and
- (3) The term “urban forestry” means the planning, establishment, protection, and management of trees and associated plants, individually, in small groups, or under forest conditions within cities,

their suburbs, and towns.

(e) Rules and regulations

The Secretary may prescribe rules and regulations, as the Secretary deems appropriate, to implement the provisions of this chapter.

(f) Granting, etc., authorities

The Secretary is authorized to make grants, agreements, contracts, and other arrangements the Secretary deems necessary to implement this chapter.

(g) Construction of statutory provisions

This chapter shall be construed as supplementing all other laws relating to the Department of Agriculture and shall not be construed as limiting or repealing any existing law or authority of the Secretary, except as specifically cited in section 2111 of this title.

(h) Additional assistance

In addition to the authority provided elsewhere in this chapter, the Secretary may provide assistance to other countries with respect to the activities described in paragraphs (1) through (10) of section 2102(b) of this title, paragraphs (1) through (5) of section 2104(b) of this title, and paragraphs (1) through (3) of section 2105(b) of this title. For the purposes of providing assistance to other countries under this subsection, the term “non-Federal forest land” shall mean any forest land and related renewable natural resources in such countries. In providing the assistance authorized under this subsection, the Secretary shall coordinate with other Federal officials, departments,

agencies, or international organizations, as the President may direct. The references to “State foresters or equivalent State officials” in this chapter shall not apply to the assistance provided by the Secretary to other countries under this subsection.<sup>5</sup> (16 U.S.C. 2109)

<sup>5</sup> Section 2104(b) of this title, referred to in subsec. (h), was in the original a reference to section 7(b), meaning section 7(b) of Pub. L. 95-313, which has been translated as reading section 8(b) of Pub. L. 95-313 as the probable intent of Congress. Section 7(b) of Pub. L. 95-313, which is classified to section 2103c of this title, does not contain pars. (1) to (5).

### Statement of limitation

**Sec. 14** This chapter shall not authorize the Federal Government to regulate the use of private land or to deprive owners of land of their rights to property or to income from the sale of property, unless such property rights are voluntarily conveyed or limited by contract or other agreement. This chapter does not diminish in any way the rights and responsibilities of the States and political subdivisions of States. (16 U.S.C. 2110)

### Budget requests by President for Forest Service activities

**Sec. 15** (a) Transmittal to Speaker of House and President of Senate of Assessment, Program and Statement of Policy used in framing requests; time for transmittal; implementation by President of programs established under Statement of Policy unless Statement subsequently disapproved by Congress; time for

disapproval

On the date Congress first convenes in 1976 and thereafter following each updating of the Assessment and the Program, the President shall transmit to the Speaker of the House of Representatives and the President of the Senate, when Congress convenes, the Assessment as set forth in section 1601 of this title and the Program as set forth in section 1602 of this title, together with a detailed Statement of Policy intended to be used in framing budget requests by that Administration for Forest Service activities for the five- or ten-year program period beginning during the term of such Congress for such further action deemed appropriate by the Congress. Following the transmission of such Assessment, Program, and Statement of Policy, the President shall, subject to other actions of the Congress, carry out programs already established by law in accordance with such Statement of Policy or any subsequent amendment or modification thereof approved by the Congress, unless, before the end of the first period of ninety calendar days of continuous session of Congress after the date on which the President of the Senate and the Speaker of the House are recipients of the transmission of such Assessment, Program, and Statement of Policy, either House adopts a resolution reported by the appropriate committee of jurisdiction disapproving the Statement of Policy. For the purpose of this subsection, the continuity of a session shall be deemed to be broken only by an adjournment sine die, and the days on which either House

is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of the ninety-day period. Notwithstanding any other provision of this subchapter, Congress may revise or modify the Statement of Policy transmitted by the President, and the revised or modified Statement of Policy shall be used in framing budget requests.

(b) Contents of requests to show extent of compliance of projected programs and policies with policies approved by Congress; requests not conforming to approved policies; expenditure of appropriations

Commencing with the fiscal budget for the year ending September 30, 1977, requests presented by the President to the Congress governing Forest Service activities shall express in qualitative and quantitative terms the extent to which the programs and policies projected under the budget meet the policies approved by the Congress in accordance with subsection (a) of this section. In any case in which such budget so presented recommends a course which fails to meet the policies so established, the President shall specifically set forth the reason or reasons for requesting the Congress to approve the lesser programs or policies presented. Amounts appropriated to carry out the policies approved in accordance with subsection (a) of this section shall be expended in accordance with the Congressional Budget and Impoundment Control Act of 1974.

(c) Annual evaluation report to Congress

of Program components; time of submission; status of major research programs; application of findings; status, etc., of cooperative forestry assistance programs and activities

For the purpose of providing information that will aid Congress in its oversight responsibilities and improve the accountability of agency expenditures and activities, the Secretary of Agriculture shall prepare an annual report which evaluates the component elements of the Program required to be prepared by section 1602 of this title which shall be furnished to the Congress at the time of submission of the annual fiscal budget commencing with the third fiscal year after August 17, 1974. With regard to the research component of the program, the report shall include, but not be limited to, a description of the status of major research programs, significant findings, and how these findings will be applied in National Forest System management and in cooperative State and private Forest Service programs. With regard to the cooperative forestry assistance part of the Program, the report shall include, but not be limited to, a description of the status, accomplishments, needs, and work backlogs for the programs and activities conducted under the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2101 et seq.).

(d) Required contents of annual evaluation report

These annual evaluation reports shall set forth progress in implementing the Program required to be prepared by section 1602 of this title, together with

accomplishments of the Program as they relate to the objectives of the Assessment. Objectives should be set forth in qualitative and quantitative terms and accomplishments should be reported accordingly. The report shall contain appropriate measurements of pertinent costs and benefits. The evaluation shall assess the balance between economic factors and environmental quality factors. Program benefits shall include, but not be limited to, environmental quality factors such as esthetics, public access, wildlife habitat, recreational and wilderness use, and economic factors such as the excess of cost savings over the value of foregoing benefits and the rate of return on renewable resources.

(e) Additional required contents of annual evaluation report

The reports shall indicate plans for implementing corrective action and recommendations for new legislation where warranted.

(f) Form of annual evaluation report The reports shall be structured for Congress in concise summary form with necessary detailed data in appendices. (16 U.S.C. 1606)

### **Other Federal programs**

**Sec. 16** (a) Repeal of statutory authorities

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(b) Force and effect of contracts and cooperative and other agreements under cooperative forestry programs executed under authority of repealed statutes

Contracts and cooperative and other agreements under cooperative forestry programs executed under authority of the Acts, or portions thereof, repealed under subsection (a) of this section shall remain in effect until revoked or amended by their own terms or under other provisions of law.

(c) Availability of funds appropriated under authority of repealed statutes for cooperative forestry assistance programs

Funds appropriated under the authority of the Acts, or portions thereof, repealed under subsection (a) of this section shall be available for expenditure for the programs authorized under this chapter. (16 U.S.C. 2111)

### **Effective date**

**Sec. 17.** formerly section 14, of Pub. L. 95-313, as renumbered Sec. 17 by Pub. L. 101-624, title XII, Sec. 1215(1), Nov. 28, 1990, 104 Stat. 3525, provided that: “The provisions of this Act shall become effective October 1, 1978.” (16 U.S.C. 2101 note)

### **Cooperative national forest products marketing program**

**Sec. 18** (a) Findings and purposes

(1) Findings Congress finds that –

(A) the health and vitality of the domestic forest products industry is important to the well-being of the economy of the United States;

(B) the domestic forest products industry has a significant potential for expansion in both domestic and foreign

markets;

(C) many small-sized to medium-sized forest products firms lack the tools that would enable them to meet the increasing challenge of foreign competition in domestic and foreign markets; and

(D) a new cooperative forest products marketing program will improve the competitiveness of the United States forest products industry.

(2) Purposes

The purposes of this section are to

(A) provide direct technical assistance to the United States forest products industry to improve marketing activities;

(B) provide cost-share grants to States to support State and regional forest products marketing programs; and

(C) target assistance to small-sized and medium-sized producers of solid wood and processed wood products, including pulp.

(b) Program authority

(1) In general

The Secretary shall establish a cooperative national forest products marketing program under this chapter that provides –

(A) technical assistance to States, landowners, and small-sized to medium-sized forest products firms on ways to improve domestic and foreign markets for forest products; and

(B) grants of financial assistance with

matching requirements to the States to assist in State and regional forest products marketing efforts targeted to aid small-sized to medium-sized forest products firms and private, nonindustrial forest landowners.

(2) Interstate cooperative agreements

Grant agreements shall encourage the establishment of interstate cooperative agreements by the States for the purpose of promoting the development of domestic and foreign markets for forest products.

(c) Limitations

(1) Cooperation with other Federal agencies

In carrying out this section, the Secretary shall cooperate with Federal departments and agencies to avoid the duplication of efforts and to increase program efficiency.

(2) Domestic program

The program authorized under this section shall be carried out within the United States and not be extended to Department of Agriculture activities in foreign countries.

(d) Authorization for appropriations

There are authorized to be appropriated \$5,000,000 for each of the fiscal years 1988 through 1991, to carry out this section.

(e) Program report

The Secretary shall report to Congress annually on the activities taken under the marketing program established under this

section. A final report including recommendations for program changes and the need and desirability of the reauthorization of this authority, and required levels of funding, shall be submitted to Congress not later than September 30, 1990. (16 U.S.C. 2112)

### **Federal, State, and local coordination and cooperation**

#### **Sec. 19 (a) Department of Agriculture Coordinating Committee**

(1) Establishment

The Secretary shall establish an intradepartmental committee, to be known as the "Forest Resource Coordinating Committee" (hereafter referred to in this section as the "Coordinating Committee"), to coordinate forestry activities.

(2) Composition

The Coordinating Committee shall be composed of representatives, appointed by the Secretary, from the Agricultural Research Service, Agricultural Stabilization and Conservation Service, Extension Service, Forest Service, and Soil Conservation Service.

(3) Chairperson

The Secretary shall designate the Chief of the Forest Service as chairperson.

(4) Duties

The Coordinating Committee shall

- (A) provide assistance in directing and coordinating actions of the Department of Agriculture that relate to educational, technical, and financial assistance concerning forest land to

private landowners;

(B) clarify individual agency responsibilities concerning forest land of each agency represented on the Committee; and

(C) advise the Secretary of intradepartmental differences regarding the implementation of this chapter, and any other Act related to the authority of the Secretary concerning non-Federal forest lands.

(b) State Coordinating Committees

(1) Establishment

(A) In general The Secretary, in consultation with the State forester or equivalent State official of each State, shall establish a State Forest Stewardship Coordinating Committee (hereafter referred to in this section as the “State Coordinating Committee”) for each such State.

(B) Composition The State Coordinating Committee shall be chaired and administered by the State forester, or equivalent State official, or the designee thereof, and shall be composed, to the extent practicable, of –

(i) representatives from the Forest Service, Soil Conservation Service, Agricultural Stabilization and Conservation Service, and Extension Service;

(ii) representatives, to be appointed by the State forester or equivalent State official, representative of –

- (I) local government;
- (II) consulting foresters;

(III) environmental organizations;

(IV) forest products industry;

(V) forest land owners;

(VI) land-trust organizations, if applicable in the State;

(VII) conservation organizations; and

(VIII) the State fish and wildlife agency; and

(iii) any other individuals determined appropriate by the Secretary.

(C) Terms

The members of the State Coordinating Committee appointed under subparagraph (B)(ii) shall serve 3-year terms, with the initial members serving staggered terms as determined by the State forester or equivalent State official, and may be reappointed for consecutive terms.

(D) Existing committees

Existing State forestry committees may be used to complement, formulate, or replace the State Coordinating Committees to avoid duplication of efforts if such existing committees are made up of membership that is similar to that described in subparagraph (B)(ii), and if such existing committees include landowners and the general public in their memberships.

(2) Duties

A State Coordinating Committee shall –

(A) consult with other Department of Agriculture and State committees that address State and private forestry

issues;

(B) make recommendations to the Secretary concerning the assignment of priorities and the coordination of responsibilities for the implementation of this chapter by the various Federal and State forest management agencies that take into consideration the mandates of each such agency;

(C) make recommendations to the State forester or equivalent State official concerning the development of a Forest Stewardship Plan under paragraph (3); and

(D) make recommendations to the Secretary concerning those forest lands that should be given priority for inclusion in the Forest Legacy Program established pursuant to section 2103c of this title.

(3) Forest Stewardship Plan The State forester or equivalent State official of each State, in consultation with the State Coordinating Committee of such State, shall develop a Forest Stewardship Plan that shall –

(A) provide baseline data on the forest resources of the State;

(B) outline threats to the forest resources of the State;

(C) describe economic and environmental opportunities that are linked with the forest resources of the State;

(D) address management problems, opportunities, and objectives associated with intermingled Federal, State, and private land ownership patterns

within the State; and

(E) make planning recommendations for Federal, State, and local implementation of this chapter.

(4) Other plans

Other State forest management plans may be used as the basis for or in lieu of establishing a plan for the State under paragraph (3) if such plans fully conform to the objectives of this section.

(5) Termination

The State Coordinating Committees shall not terminate.

(6) Rule of construction

Nothing in this section shall be construed to compel action by any State official. (16 U.S.C. 2113)

## Administration

**Sec. 20** (a) In general

The Secretary shall administer this chapter in accordance with regulations that the Secretary shall develop.

(b) Guidelines

The regulations promulgated under this chapter shall include guidelines for the administration of this chapter at the Federal and State levels and shall identify the measures and activities that are eligible for cost sharing under this chapter.

(c) Existing mechanisms

Existing mechanisms shall be used to the extent possible to make payments and deliver services to the landowner under

this chapter.

(d) Land grant universities

The Secretary, in consultation with State foresters or equivalent State officials, may provide assistance directly to other State and local natural resource management agencies and land grant universities in implementing this chapter in cases in which the State foresters or equivalent State officials are not able to make fund transfers to other State and local agencies. (16 U.S.C. 2114)

## **Alaska National Interest Lands Conservation Act**

**December 2, 1980 (Pub. L. 96-487, 94 Stat. 2488; 16 U.S.C. 3210)**

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### **Access by owner to nonfederally owned land**

Provided, That such owner comply with rules and regulations applicable to access across public lands. (16 U.S.C. 3210)

**Sec. 1313** (a) Reasonable use and enjoyment of land within boundaries of National Forest System

Notwithstanding any other provision of law, and subject to such terms and conditions as the Secretary of Agriculture may prescribe, the Secretary shall provide such access to nonfederally owned land within the boundaries of the National Forest System as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: Provided, That such owner comply with rules and regulations applicable to ingress and egress to or from the National Forest System.

(b) Reasonable use and enjoyment of land surrounded by public lands managed by Secretary

Notwithstanding any other provision of law, and subject to such terms and conditions as the Secretary of the Interior may prescribe, the Secretary shall provide such access to nonfederally owned land surrounded by public lands managed by the Secretary under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701-82) as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof:

## Granger-Thye Act

**April 24, 1950 (Ch. 97, 64 Stat. 82; 16 U.S.C. 571c, 504, 580c, 579a, 572, 490, 580d, 580e, 504a, 580f, 580g, 580h, 555, 580i, 557, 580j, 500, 580k, 580l, 581i-1)**

### **Erection of permanent facilities on land not owned by United States; long term leases**

**Sec. 1** Notwithstanding the provisions of existing law and without regard to section 255 of title 40, but within the limitations of cost otherwise applicable, appropriations of the Forest Service may be expended for the erection of buildings, lookout towers, and other structures on land owned by States, counties, municipalities, or other political subdivisions, corporations, or individuals: Provided, That prior to such erection there is obtained the right to use the land for the estimated life of or need for the structure, including the right to remove any such structure within a reasonable time after the termination of the right to use the land. (16 U.S.C. 571c)

### **Purchases of tree seeds, cones, forage plant seed, and nursery stock for national forests**

**Sec. 2** The provisions of section 5 of title 41 shall not apply to any purchase by the Forest Service of forest-tree seed or cones or of forage plant seed when the amount involved does not exceed \$10,000, nor to any purchase of forest-tree nursery stock when the amount involved does not exceed \$500, whenever, in the discretion of the Secretary of Agriculture, such method is in the public interest. (16

U.S.C. 504)

### **Purchases of experimental materials, special devices, test models, etc.**

**Sec. 3** The provisions of section 5 of title 41 shall not apply to purchases by the Forest Service of (1) materials to be tested or upon which experiments are to be made or (2) special devices, test models, or parts thereof, to be used (a) for experimentation to determine their suitability for or adaptability to accomplishment of the work for which designed or (b) in the designing or developing of new equipment: Provided, That not to exceed \$50,000 may be expended in any one fiscal year pursuant to this authority and not to exceed \$10,000 on any one item or purchase. (16 U.S.C. 580c)

### **Operation of aerial facilities and services**

**Sec. 4** The Forest Service by contract or otherwise may provide for procurement and operation of aerial facilities and services for the protection and management of the national forests and other lands administered by it, including the furnishing, at the airbase, of facilities, equipment, materials and the preparation, mixing and loading into aircraft, with authority to renew any contract for such purpose annually, not more than twice,

without additional advertising. (16 U.S.C. 579a)

**Cooperation between Secretary of Agriculture and public or private agencies in working land under State or private ownership**

**Sec. 5** (a) Payment of expenses by interested parties; work contemplated

The Secretary of Agriculture is authorized, where the public interest justifies, to cooperate with or assist public and private agencies, organizations, institutions, and persons in performing work on land in State, county, municipal, or private ownership, situated within or near a national forest, for which the administering agency, owner, or other interested party deposits in one or more payments a sufficient sum to cover the total estimated cost of the work to be done for the benefit of the depositor, for administration, protection, improvement, reforestation, and such other kinds of work as the Forest Service is authorized to do on lands of the United States: Provided, That the United States shall not be liable to the depositor or landowner for any damage incident to the performance of such work.

(b) Cooperation where national forests or lands are used by permittees

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

(c) Disposition and availability of moneys;

advancements; adjustments

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

equipment consumed or destroyed in excess of the furnishing party's proportionate share. (16 U.S.C. 572)

### **Deposits from timber purchasers to defray cost of disposing of debris**

**Sec. 6** Purchasers of national-forest timber may be required by the Secretary of Agriculture to deposit the estimated cost to the United States of disposing of brush and other debris resulting from their cutting operations, such deposits to be covered into the Treasury and constitute a special fund, which is appropriated and shall remain available until expended: Provided, That any deposits in excess of the amount expended for disposals shall be transferred to miscellaneous receipts, forest-reserve fund, to be credited to the receipts of the year in which such transfer is made. (16 U.S.C. 490)

### **Use of Forest Service structures or improvements and land by public and private agencies, etc.; terms**

**Sec. 7** The Secretary of Agriculture, under such regulations as he may prescribe and at rates and for periods not exceeding thirty years as determined by him, is authorized to permit the use by public and private agencies, corporations, firms, associations, or individuals, of structures or improvements under the administrative control of the Forest Service and land used in connection therewith: Provided, That as all or a part of the consideration for permits issued under this section, the Secretary may require the permittees at their expense to renovate, recondition, improve, and

maintain the structures and land to a satisfactory standard. (16 U.S.C. 580d)

### **Services furnished persons attending Forest Service demonstrations and users of national forest resources and recreational facilities; rate of charges; disposition of moneys**

**Sec. 8** The Secretary of Agriculture is authorized to furnish persons attending Forest Service demonstrations, and users of national forest resources and recreational facilities, with meals, lodging, bedding, fuel, and other services, where such facilities are not otherwise available, at rates approximating but not less than the actual or estimated cost thereof and to deposit all moneys received therefor to the credit of the appropriation from which the cost thereof is paid, or a similar appropriation current at the time the moneys are received: Provided, That such receipts obtained in excess of \$10,000 in any one fiscal year shall be deposited in the Treasury as miscellaneous receipts. (16 U.S.C. 580e)

### **Sale of forest-tree seed and nursery stock to States and political subdivisions; disposition of moneys; exchanges; limitation**

**Sec. 9** The Secretary of Agriculture is authorized, subject to such conditions as he may prescribe, to sell forest-tree seed and nursery stock to States and political subdivisions thereof and to public agencies of other countries, at rates not less than the actual or estimated cost to the United States of procuring or producing such seed or nursery stock, moneys

received from the sale thereof to be credited to the appropriation or appropriations of the Forest Service currently available for the procurement or production of seed or nursery stock at the time such moneys are deposited: Provided, That the Secretary of Agriculture may exchange with such public agencies forest-tree seed and nursery stock for forest-tree seed or nursery stock of the same or different species upon a determination that such exchange is in the interest of the United States and that the value of the property given in exchange does not exceed the value of the property received: Provided further, That no nursery stock shall be sold or exchanged under this section as ornamental or other stock for landscape planting of the types commonly grown by established commercial nurserymen. (16 U.S.C. 504a)

#### **Telephones for official use in private residences**

**Sec. 10** Notwithstanding the provisions of section 1348 of title 31, appropriations for the protection and management of the national forests and other lands administered by the Forest Service shall be available to pay for telephone service installed in residences of employees and of persons cooperating with the Forest Service who reside within or near such lands when such installation is determined by the Secretary of Agriculture to be needed in protecting such lands: Provided, That in addition to the monthly local service charge, the Government may pay only such tolls or other charges as are required strictly for the public business.

(16 U.S.C. 580f)

#### **Seeding leased range land; conditions and limitations**

**Sec. 11** Whenever such action is deemed to be in the public interest, the Secretary of Agriculture is authorized to pay from any appropriation available for the protection and management of the national forests all or any part of the cost of leasing, seeding, and protective fencing of public range land (other than national forest land) and privately owned land intermingled with or adjacent to national forest or other land administered by the Forest Service, if the use of the land to be seeded is controlled by the Forest Service under a lease or agreement which in the judgment of the Chief of the Forest Service gives the Forest Service control over the land for a sufficient period to justify such expenditures: Provided, That payment may not be made under authority of this section for the seeding of more than one thousand acres in any one private ownership: Provided further, That payment may not be made under authority of this section for the seeding of more than twenty-five thousand acres in any one fiscal year: Provided further, That the period of any lease under this authority may not exceed twenty years. (16 U.S.C. 580g)

#### **Range improvements from appropriated funds**

**Sec. 12** Of the moneys received from grazing fees by the Treasury from each national forest during each fiscal year

there shall be available at the end thereof when appropriated by Congress an amount equivalent to 2 cents per animal-month for sheep and goats and 10 cents per animal-month for other kinds of livestock under permit on such national forest during the calendar year in which the fiscal year begins, which appropriated amount shall be available until expended on such national forest, under such regulations as the Secretary of Agriculture may prescribe, for

- (1) artificial revegetation, including the collection or purchase of necessary seed;
- (2) construction and maintenance of drift or division fences and stock-watering places, bridges, corrals, driveways, or other necessary range improvements;
- (3) control of range-destroying rodents; or
- (4) eradication of poisonous plants and noxious weeds, in order to protect or improve the future productivity of the range. (16 U.S.C. 580h)

**Forest headquarters, ranger stations, dwellings, or other needed sites**

**Sec. 13** Where no suitable Government land is available for national forest headquarters, ranger stations, dwellings, or for other sites required for the effective conduct of the authorized activities of the Forest Service, the Secretary of Agriculture is authorized to purchase such lands out of the appropriation applicable to the purpose for which the land is to be

used, and to accept donations of land for any national forest or experimental purpose: Provided, That such lands may be acquired subject to such reservations and outstanding interests as the Secretary determines will not interfere with the purpose for which acquired: Provided further, That not to exceed \$50,000 may be expended in any one fiscal year pursuant to this authority. (16 U.S.C. 555)

**Acquisition of winter range, land, and helicopter landing site**

**Sec. 14** There are authorized to be appropriated -

- (a) such sums as may be necessary for the acquisition of parcels of land and interests in land in Sanders County, Montana, needed by the Forest Service to provide winter range for its saddle, pack, and draft animals;
- (b) not to exceed \$50,000 for the acquisition of additional land adjacent to the present site of the Forest Products Laboratory at Madison, Wisconsin; and
- (c) not to exceed \$25,000 for the acquisition of one helicopter landing site in southern California. Land acquired under this section may be subject to such reservations and outstanding interests as the Secretary of Agriculture determines will not interfere with the purpose for which acquired. (16 U.S.C. 580i)

**Employees of Forest Service; subsistence furnished to; personal equipment; supplies, and medical attention**

**Sec. 15** The Secretary of Agriculture is

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

### **Injury benefits for temporary employees**

**Sec. 16** Appropriations of the Forest Service chargeable with salaries and wages shall be available for payment to

temporary employees of the Forest Service for loss of time due to injury in official work at rates not in excess of those provided by subchapter I of chapter 81 of title 5, when the injured person is in need of immediate financial assistance to avoid hardship: Provided, That such payment shall not be made for a period in excess of fifteen days and the Secretary of Labor shall be notified promptly of the amount so paid, which amount shall be deducted from the amount, if any, otherwise payable by the Secretary of Labor to the employee on account of the injury, the amount so deducted by the Secretary of Labor to be paid to the Forest Service for deposit to the credit of the Forest Service appropriation from which the expenditure was made: Provided further, That when any person assisting in the suppression of forest fires or in other emergency work under the direction of the Forest Service, without compensation from the United States, pursuant to the terms of a contract, agreement, or permit, is injured in such work, the Forest Service may furnish hospitalization and other medical care, subsistence, and lodging for a period of not to exceed fifteen days during such disability, the cost thereof to be payable from the appropriation applicable to the work upon which the injury occurred, except that this proviso shall not apply when such person is within the purview of a State or other compensation act: Provided further, That determination by the Forest Service that payment is allowable under this section shall be final as to payments made hereunder, but such determination or payments with respect to employees shall not prevent the Secretary

of Labor from denying further payments should the Secretary of Labor determine that compensation is not properly allowable under the provisions of subchapter I of chapter 81 of title 5. (16 U.S.C. 580j)

**Payment and evaluation of receipts to State or Territory for schools and roads; moneys received; projections of revenues and estimated payments**

**Sec. 17** On and after May 23, 1908, twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State or Territory in which such national forest is situated, to be expended as the State or Territorial legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: Provided, That when any national forest is in more than one State or Territory or county the distributive share to each from the proceeds of such forest shall be proportional to its area therein. In sales of logs, ties, poles, posts, cordwood, pulpwood, and other forest products the amounts made available for schools and roads by this section shall be based upon the stumpage value of the timber. Beginning October 1, 1976, the term "moneys received" shall include all collections under the Act of June 9, 1930, and all amounts earned or allowed any purchaser of national forest timber and other forest products within such State as purchaser credits, for the construction of roads on the National Forest Transportation

System within such national forests or parts thereof in connection with any Forest Service timber sales contract. The Secretary of Agriculture shall, from time to time as he goes through his process of developing the budget revenue estimates, make available to the States his current projections of revenues and payments estimated to be made under the Act of May 23, 1908, as amended, or any other special Acts making payments in lieu of taxes, for their use for local budget planning purposes. (16 U.S.C. 500)

**Grazing advisory boards**

**Sec. 18** (a) Composition; election meetings

(1) To provide national forest grazing permittees means for the expression of their recommendations concerning the management and administration of national forest grazing lands, a local advisory board shall be constituted and elected as hereinafter provided for each national forest or administrative subdivision thereof, whenever a majority of the grazing permittees of such national forest or administrative subdivision so petitions the Secretary of Agriculture. Each elected local advisory board existing for such purpose on April 24, 1950, and recognized as such by the Department of Agriculture, shall continue to be the local advisory board for the unit or area it represents, until replaced by a local advisory board or boards constituted and elected as hereinafter provided.

(2) Each such local advisory board shall be constituted and elected under rules

and regulations, consistent herewith, now or hereafter approved by the Secretary of Agriculture, and shall be recognized by him as representing the grazing permittees of the national forest or administrative subdivision thereof for which such local advisory board has been constituted and elected.

(3) Each such local advisory board shall consist of not less than three nor more than twelve members, who shall be national forest grazing permittees in the area for which such board is constituted, elected, and recognized. In addition, a wildlife representative may be appointed as a member of each such board by the State game commission, or the corresponding public body of the State in which the advisory board is located, to advise on wildlife problems.

(4) Each such local advisory board shall meet at least once annually, at a time to be fixed by such board, and at such other time or times as its members may determine, or on the call of the chairman thereof or of the Secretary of Agriculture or his authorized representative.

(b) Advice and recommendations on matters within jurisdiction

Upon the request of any party affected thereby, the Secretary of Agriculture, or his duly authorized representative, shall refer to the appropriate local advisory board for its advice and recommendations any matter pertaining to (1) the modification of the terms, or the denial of a renewal of, or a reduction in, a grazing permit, or (2) the establishment or modifi-

cation of an individual or community allotment. In the event the Secretary of Agriculture, or his duly authorized representative, shall overrule, disregard, or modify any such recommendations, he, or such representative, shall furnish in writing to the local advisory board his reasons for such action.

(c) Notification by Secretary of Agriculture of intention to issue regulations; recommendations; written explanation of reasons for overruling

(1) At least thirty days prior to the issuance by the Secretary of Agriculture of any regulation under sections 490, 500, 504, 504a, 555, 557, 571c, 572, 579a, 580c to 580l, and 581 (Section 581 of this title, was repealed.) of this title or otherwise, with respect to the administration of grazing on national forest lands, or of amendments or additions to, or modifications in, any such regulation, which in his judgment would substantially modify existing policy with respect to grazing in national forests, or which would materially affect preferences of permittees in the area involved, the local advisory board for each area that will be affected thereby shall be notified of the intention to take such action. If as a result of this notice the Secretary of Agriculture shall receive any recommendation respecting the issuance of the proposed regulation and shall overrule, disregard, or modify any such regulations, he or his representative shall furnish in writing to the local advisory board his reasons for such action.

(2) Any such local advisory board may at any time recommend to the Secretary of Agriculture, or his representative, the issuance of regulations or instructions relating to the use of national forest lands, seasons of use, grazing capacity of such lands, and any other matters affecting the administration of grazing in the area represented by such board. (16 U.S.C. 580k)

authorized in accordance with such regulations as he may issue and when in his judgment such cooperative work will be stimulated or facilitated to make funds available to the cooperators without regard to the provisions of section 3324(a) and (b) of title 31, prohibiting advances of public moneys. (16 U.S.C. 581i-1)

### **Permits for grazing livestock on national forests**

**Sec. 19** The Secretary of Agriculture in regulating grazing on the national forests and other lands administered by him in connection therewith is authorized, upon such terms and conditions as he may deem proper, to issue permits for the grazing of livestock for periods not exceeding ten years and renewals thereof: Provided, That nothing herein shall be construed as limiting or restricting any right, title, or interest of the United States in any land or resources. (16 U.S.C. 580l)

### **Advance of funds for cooperative research**

**Sec. 20** For the purpose of fostering and stimulating participation with the Forest Service in forest, range, and watershed management research through investigations, experiments, tests, or such other means as he may deem advisable, and in order to aid in obtaining the fullest cooperation from States and other public and private agencies, organizations, institutions, and individuals, in effectuating such research the Secretary of Agriculture is

## Youth Conservation Corps Act of 1970

**August 13, 1970 (Pub. L. 91-378, 84 Stat. 794; 16 U.S.C. 1701 to 1706)**

### **Congressional declaration of policy and purpose**

**Sec. 101** The Congress finds that the Youth Conservation Corps has demonstrated a high degree of success as a pilot program wherein American youth, representing all segments of society, have benefited by gainful employment in the healthful outdoor atmosphere of the national park system, the national forest system, other public land and water areas of the United States and by their employment have developed, enhanced, and maintained the natural resources of the United States, and whereas in so doing the youth have gained an understanding and appreciation of the Nation's environment and heritage equal to one full academic year of study, it is accordingly the purpose of this subchapter to expand and make permanent the Youth Conservation Corps and thereby further the development and maintenance of the natural resources by America's youth, and in so doing to prepare them for the ultimate responsibility of maintaining and managing these resources for the American people. (16 U.S.C. 1701)

### **Establishment**

**Sec. 102** (a) Age of participants  
To carry out the purposes of this subchapter, there is established in the Department of the Interior and the Department of Agriculture a Youth Conservation

Corps (hereinafter in this subchapter referred to as the "Corps"). The Corps shall consist of young men and women who are permanent residents of the United States, its territories, possessions, trust territories, or Commonwealth of Puerto Rico who have attained age fifteen but have not attained age nineteen, and whom the Secretary of the Interior or the Secretary of Agriculture may employ without regard to the civil service or classification laws, rules, or regulations, for the purpose of developing, preserving, or maintaining the lands and waters of the United States.

(b) Equal employment opportunity and employment; term

The Corps shall be open to youth from all parts of the country of both sexes and youth of all social, economic, and racial classifications with all Corps members receiving compensation consistent with work accomplished, and with no person being employed as a member of the Corps for a term in excess of ninety days during any single year. (16 U.S.C. 1702)

### **Duties and functions of Secretary of the Interior and Secretary of Agriculture**

**Sec. 103** (a) Programs and projects; conditions of employment; regulations; use of facilities by educational institutions

In carrying out this subchapter, the

Secretary of the Interior and the Secretary of Agriculture shall -

- (1) determine the areas under their administrative jurisdictions which are appropriate for carrying out the programs using employees of the Corps;
- (2) determine with other Federal agencies the areas under the administrative jurisdiction of these agencies which are appropriate for carrying out programs using members of the Corps, and determine and select appropriate work and education programs and projects for participation by members of the Corps;
- (3) determine the rates of pay, hours, and other conditions of employment in the Corps, except that all members of the Corps shall not be deemed to be Federal employees other than for the purpose of chapter 171 of title 28, and chapter 81 of title 5.
- (4) provide for such transportation, lodging, subsistence, and other services and equipment as they may deem necessary or appropriate for the needs of members of the Corps in their duties:
- (5) promulgate regulation to insure the safety, health, and welfare of the Corps members; and
- (6) provide to the extent possible, that permanent or semipermanent facilities used as Corps camps be made available to local schools, school districts, State junior colleges and universities, and other education institutions for use as environmental/ecological education camps during periods of nonuse by the

Corps program. Costs for operations maintenance, and staffing of Corps camp facilities during periods of use by non-Corps programs as well as any liability for personal injury or property damage stemming from such use shall be the responsibility of the entity or organization using the facility and shall not be a responsibility of the Secretaries or the Corps.

(b) Use of unoccupied Federal facilities and equipment

Existing but unoccupied Federal facilities and surplus or unused equipment (or both), of all types including military facilities and equipment, shall be utilized for the purposes of the Corps, where appropriate and with the approval of the Federal agency involved. To minimize transportation costs, Corps members shall be employed on conservation projects as near to their places of residence as is feasible.

(c) Contracts for the operation of projects

The Secretary of the Interior and the Secretary of Agriculture may contract with any public agency or organization or any private nonprofit agency or organization which has been in existence for at least five years for the operation of any Youth Conservation Corps project. (16 U.S.C. 1703)

### Grants to States

**Sec. 104** (a) Projects for preservation of non-Federal public lands and waters; "States" defined

The Secretary of the Interior and the

Secretary of Agriculture shall jointly establish a program under which grants shall be made to States to assist them in meeting the cost of projects for the employment of young men and women to develop, preserve, and maintain non-Federal public lands and waters within the States. For purposes of this section, the term "States" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa.

(b) Application requirements for grants; approval by Secretaries

(1) No grant may be made under this section unless an application therefor has been submitted to, and approved by, the Secretary of the Interior and the Secretary of Agriculture. Such application shall be in such form, and submitted in such manner, as the Secretaries shall jointly by regulation prescribe, and shall contain-

(A) assurances satisfactory to the Secretaries that individuals employed under the project for which the application is submitted shall (i) have attained the age of fifteen but not attained the age of nineteen, (ii) be permanent residents of the United States or its territories, possessions, or the Trust Territory of the Pacific Islands, (iii) be employed without regard to the personnel laws, rules, and regulations applicable to full-time employees of the applicant, (iv) be employed for a period of not more than ninety days in any calendar year,

and (v) be employed without regard to their sex or social, economic, or racial classification; and

(B) such other information as the Secretaries may jointly by regulation prescribe.

(2) The Secretaries may approve applications which they determine (A) to meet the requirements of paragraph (1), and (B) are for projects which will further the development, preservation, or maintenance of non-Federal public lands or waters within the jurisdiction of the applicant.

(c) Limitation on the amount of grant

(1) The amount of any grant under this section shall be determined jointly by the Secretaries, except that no grant for any project may exceed 80 per centum of the cost (as determined by the Secretaries) of such project.

(2) Payments under grants under this section may be made in advance or by way of reimbursement and at such intervals and on such conditions as the Secretaries find necessary.

(d) Appropriation percentage

Thirty per centum of the sums appropriated under section 1706 of this title for any fiscal year shall be made available for grants under this section for such fiscal year. (16 U.S.C. 1704)

### Authorization of appropriations

**Sec. 106** There are authorized to be appropriated amounts not to exceed \$60,000,000 for each fiscal year, which

amounts shall be made available to the Secretary of the Interior and the Secretary of Agriculture to carry out the purposes of this subchapter. Notwithstanding any other provision of law, funds appropriated for any fiscal year to carry out this subchapter shall remain available for obligation and expenditure until the end of the fiscal year following the fiscal year for which appropriated. (16 U.S.C. 1706)

## Volunteers in the National Forests Act of 1972

May 18, 1972 (Pub. L. 92-300, 86 Stat. 147; 558a to 558d, 558a note)

### Volunteers in the National Forests Program

**Sec. 1** The Secretary of Agriculture (hereinafter referred to as the “Secretary”) is authorized to recruit, train, and accept without regard to the civil service<sup>1</sup> classification laws, rules, or regulations the services of individuals without compensation as volunteers for or in aid of interpretive functions, visitor services, conservation measures and development, or other activities in and related to areas administered by the Secretary through the Forest Service. In carrying out this section, the Secretary shall consider referrals of prospective volunteers made by the Corporation for National and Community Service. (16 U.S.C. 558a)

<sup>1</sup> So in original. The word “and” probably should appear after “civil service”.

### Incidental expenses of program volunteers

**Sec. 2** The Secretary is authorized to provide for incidental expenses, such as transportation, uniforms, lodging, and subsistence. (16 U.S.C. 558b)

### Employment status of volunteers

**Sec. 3** (a) Federal employee status

Except as otherwise provided in this section, a volunteer shall not be deemed a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to

hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(b) Tort claims

For the purpose of the tort claim provisions of title 28, a volunteer under sections 558a to 558d of this title shall be considered a Federal employee.

(c) Civil employees

For the purposes of subchapter I of chapter 81 of title 5, relating to compensation to Federal employees for work injuries, volunteers under sections 558a to 558d of this title shall be deemed civil employees of the United States within the meaning of the term “employee” as defined in section 8101 of title 5, and the provisions of that subchapter shall apply.

(d) Compensation for losses and damages

For the purposes of claims relating to damage to, or loss of, personal property of a volunteer incident to volunteer service, a volunteer under sections 558a to 558d of this title shall be considered a Federal employee, and the provisions of section 3721 of title 31 shall apply. (16 U.S.C. 558c)

### Authorization of appropriations

**Sec. 4** There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 558a to 558d of this title. (16 U.S.C. 558d)

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## National Forest Foundation Act

**November 16, 1990 (Pub. L. 101-59, 104 Stat. 2969; 16 U.S.C. 583j note, 583j to 583j-8)**

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### **Establishment and purposes of Foundation**

#### **Sec. 402 (a) Establishment**

There is established the National Forest Foundation (hereinafter referred to as the "Foundation") as a charitable and non-profit corporation domiciled in the District of Columbia.

#### **(b) Purposes**

The purposes of the Foundation are to –

- (1) encourage, accept, and administer private gifts of money, and of real and personal property for the benefit of, or in connection with, the activities and services of the Forest Service of the Department of Agriculture;
- (2) undertake and conduct activities that further the purposes for which units of the National Forest System are established and are administered and that are consistent with approved forest plans; and
- (3) undertake, conduct and encourage educational, technical and other assistance, and other activities that support the multiple use, research, cooperative forestry and other programs administered by the Forest Service.

#### **(c) Limitation and conflicts of interests**

- (1) The Foundation shall not participate

or intervene in a political campaign on behalf of any candidate for public office.

(2) No director, officer, or employee of the Foundation shall participate, directly or indirectly, in the consideration or determination of any question before the Foundation affecting -

(A) the financial interests of the director, officer, or employee; or

(B) the interests of any corporation partnership, entity, or organization in which such director, officer, or employee -

(i) is an officer, director, or trustee; or

(ii) has any direct or indirect financial interest. (16 U.S.C. 583j)

### **Board of Directors of Foundation**

#### **Sec. 403 (a) Establishment and membership**

The Foundation shall have a governing Board of Directors (hereinafter referred to as the "Board"), which shall consist of fifteen Directors, each of whom shall be a United States citizen. At the discretion of the Secretary of Agriculture, the Secretary may increase the number of Directors to not more than twenty. At all times, a majority of members of the Board shall be educated or have actual experience in natural or cultural resource

management, law, or research. To the extent practicable, members of the Board shall represent diverse points of view relating to natural and cultural resource issues. The Chief of the Forest Service shall be an ex officio nonvoting member of the Board.

(b) Appointment and terms

Within one year from November 16, 1990, the Secretary of Agriculture (hereinafter referred to as the “Secretary”) shall appoint the Directors of the Board. Directors shall be appointed for terms of six years; except that the Secretary, in making the initial appointments to the Board, shall appoint one-third each of the Directors to terms of two, four, and six years respectively. A vacancy on the Board shall be filled within sixty days of such vacancy in the manner in which the original appointment was made. No individual may serve more than twelve consecutive years as a Director.

(c) Chairman

The Chairman shall be elected by the Board from its members. A chairman shall serve for a two-year term, and may be re-elected to the post during his tenure as a Director.

(d) Quorum

A majority of the current voting membership of the Board shall constitute a quorum for the transaction of business.

(e) Meetings

The Board shall meet at the call of the Chairman at least once a year. If a Director misses three consecutive

regularly scheduled meetings, that individual may be removed from the Board by majority vote of the Board of Directors and that vacancy filled in accordance with subsection (b) of this section.

(f) Reimbursement of expenses

Voting members of the Board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of their duties for the Foundation. Such reimbursement may not exceed such amount as would be authorized under section 5703 of title 5 for the payment of expenses and allowances for individuals employed intermittently in the Federal Government service.

(g) General powers

The Board may complete the organization of the Foundation by appointing employees, adopting a constitution and bylaws consistent with the purposes of the Foundation and the provisions of this subchapter, and undertaking other such acts as may be necessary to function and to carry out the provisions of this subchapter.

(h) Officers and employees

Officers and employees may not be appointed until the Foundation has sufficient funds to pay for their services. Officers and employees of the Foundation shall be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification

and General Schedule pay rates. (16 U.S.C. 583j-1)

### **Corporate powers and obligations**

#### **Sec. 404** (a) In general

The Foundation –

- (1) shall have perpetual succession;
- (2) may conduct business throughout the several States, territories, and possessions of the United States and in foreign countries;
- (3) shall have its principal offices in the Washington, D.C. metropolitan area; and
- (4) shall at all times maintain a designated agent in the District of Columbia authorized to accept service of process for the Foundation.

#### (b) Notice and service of process

The serving of notice to, or service of process upon, the agent required under this paragraph, <sup>1</sup> or mailed to the business address of such agent, shall be deemed as service upon or notice to the Foundation.

#### (c) Seal

The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

#### (d) Powers

To carry out its purposes, the Foundation shall have, in addition to powers otherwise authorized under this subchapter, the usual powers of a corporation in the District of Columbia, including the power to –

(1) accept, receive, solicit, hold, administer and use any gift, devise, or bequest, either absolutely or in trust, or real or personal property or any income therefrom or other interest therein;

(2) acquire by donation, gift, devise, purchase or exchange any real or personal property or interest therein;

(3) unless otherwise required by the instrument of transfer, sell, donate, lease, invest, reinvest, retain or otherwise dispose of any property or income therefrom;

(4) borrow money and issue bonds, debentures, or other debt instruments;

(5) sue and be sued, and complain and defend itself in any court of competent jurisdiction (except that the Directors of the Board shall not be personally liable, except for gross negligence);

(6) enter into contracts or other arrangements with public agencies, private organizations, and persons and to make such payments as may be necessary to carry out the purposes thereof; and

(7) do any and all acts necessary and proper to carry out the purposes of the Foundation.

#### (e) Property

(1) The Foundation may acquire, hold and dispose of lands, waters, or other interests in real property by donation, gift, devise, purchase or exchange. For the purposes of this subchapter, an interest in real property shall include, but not be limited to, mineral and water

rights, rights of way, and easements appurtenant or in gross. A gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current or future interest therein is for the benefit of the Foundation.

(2) No lands or waters, or interests therein, that are owned by the Foundation and are determined by the Chief of the United States Forest Service to be valuable for purposes established in this subchapter shall be subject to condemnation by any State or political subdivision, or any agent or instrumentality thereof.

(3) The Foundation and any income or property received or owned by it, and all transactions relating to such income or property, shall be exempt from all Federal, State, and local taxation with respect thereto.

(4) Contributions, gifts, and other transfers made to or for the use of the Foundation shall be treated as contributions, gifts, or transfers to an organization exempt from taxation under section 501(c)(3) of title 26. (16 U.S.C. 583j-2)

<sup>1</sup> So in original. Probably should be “this section,”.

### **Administrative services and support**

#### **Sec. 405** (a) Startup funds

For purposes of assisting the Foundation in establishing an office and meeting initial administrative, project, and other startup expenses, the Secretary is authorized to

provide to the Foundation \$500,000, from funds appropriated pursuant to section 583j-8(a) of this title, per year for the two years beginning October 1, 1992. Such funds shall remain available to the Foundation until they are expended for authorized purposes.

#### (b) Matching funds

In addition to the startup funds provided under subsection (a) of this section, for a period of five years beginning October 1, 1992, the Secretary is authorized to provide matching funds for administrative and project expenses incurred by the Foundation as authorized by section 583j-8(b) of this title including reimbursement of expenses under section 583j-1 of this title, not to exceed then current Federal Government per diem rates.

#### (c) Administrative expenses

At any time, the Secretary may provide the Foundation use of Department of Agriculture personnel, facilities, and equipment, with partial or no reimbursement, with such limitations and on such terms and conditions as the Secretary shall establish. (16 U.S.C. 583j-3)

### **Volunteers**

**Sec. 406** The Secretary may accept, without regard to the civil service classification laws, rules and regulations, any director, officer, employee or agent of the Foundation as a volunteer for purposes of the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a through 558d; 86 Stat. 147). (16 U.S.C. 583j-4)

### **Audits and report requirements**

**Sec. 407** (a) Audits For purposes of section 10101 of title 36 the Foundation shall be treated as a corporation in part B of subtitle II of title 36.

(b) Annual reports

The Foundation shall,<sup>2</sup> transmit each year to Congress a report of its proceedings and activities of the previous year, including a full and complete statement of its receipts, expenditures, and investments. (16 U.S.C. 583j-5)

<sup>2</sup> So in original. The comma probably should not appear.

For the purposes of section 583j-3 of this title, during the five-year period beginning October 1, 1992, there are authorized to be appropriated \$1,000,000 annually to the Secretary of Agriculture to be made available to the Foundation to match, on a one-for-one basis, private contributions made to the Foundation. (16 U.S.C. 583j-8)

### **United States release from liability**

**Sec. 408** The United States shall not be liable for any debts, defaults, acts or omissions of the Foundation nor shall the full faith and credit of the United States extend to any obligations of the Foundation. (16 U.S.C. 583j-6)

### **Activities of Foundation and United States Forest Service**

**Sec. 409** The activities of the Foundation authorized under the provisions of this Act shall be supplemental to and shall not preempt any authority or responsibility of the United States Forest Service under any other provision of law. (16 U.S.C. 583j-7)

### **Authorization of appropriations**

**Sec. 410** (a) Startup funds

For the purposes of section 583j-3 of this title, there are authorized to be appropriated \$1,000,000.

(b) Matching funds

## Secure Rural Schools and Community Self-Determination Act of 2000

October 30, 2000 (Pub. L. 106–393, 114 Stat. 1607; 16 U.S.C. 500 note)

**Sec. 1** Short Title; Table of Contents.

(a) Short Title.—This Act may be cited as the “Secure Rural Schools and Community Self-Determination Act of 2000”.

(b) Table of Contents. [Omitted]

**Sec. 2.** Findings and Purposes.

(a) Findings.—The Congress finds the following:

(1) The National Forest System, which is managed by the United States Forest Service, was established in 1907 and has grown to include approximately 192,000,000 acres of Federal lands.

(2) The public domain lands known as revested Oregon and California Railroad grant lands and the reconveyed Coos Bay Wagon Road grant lands, which are managed predominantly by the Bureau of Land Management were returned to Federal ownership in 1916 and 1919 and now comprise approximately 2,600,000 acres of Federal lands.

(3) Congress recognized that, by its decision to secure these lands in Federal ownership, the counties in which these lands are situated would be deprived of revenues they would otherwise receive if the lands were held in private ownership.

(4) These same counties have expended public funds year after year to provide services, such as education, road construction and maintenance, search and rescue, law enforcement, waste removal, and fire protection, that directly benefit these Federal lands and people who use these lands.

(5) To accord a measure of compensation to the affected counties for the critical services they provide to both county residents and visitors to these Federal lands, Congress determined that the Federal Government should share with these counties a portion of the revenues the United States receives from these Federal lands.

(6) Congress enacted in 1908 and subsequently amended a law that requires that 25 percent of the revenues derived from National Forest System lands be paid to States for use by the counties in which the lands are situated for the benefit of public schools and roads.

(7) Congress enacted in 1937 and subsequently amended a law that requires that 75 percent of the revenues derived from the revested and reconveyed grant lands be paid to the counties in which those lands are situated to be used as are other county

funds, of which 50 percent is to be used as other county funds.

(8) For several decades primarily due to the growth of the Federal timber sale program, counties dependent on and supportive of these Federal lands received and relied on increasing shares of these revenues to provide funding for schools and road maintenance.

(9) In recent years, the principal source of these revenues, Federal timber sales, has been sharply curtailed and, as the volume of timber sold annually from most of the Federal lands has decreased precipitously, so too have the revenues shared with the affected counties.

(10) This decline in shared revenues has affected educational funding and road maintenance for many counties.

(11) In the Omnibus Budget Reconciliation Act of 1993, Congress recognized this trend and ameliorated its adverse consequences by providing an alternative annual safety net payment to 72 counties in Oregon, Washington, and northern California in which Federal timber sales had been restricted or prohibited by administrative and judicial decisions to protect the northern spotted owl.

(12) The authority for these particular safety net payments is expiring and no comparable authority has been granted for alternative payments to counties elsewhere in the United States that have suffered similar losses in shared revenues from the Federal lands and in

the funding for schools and roads those revenues provide.

(13) There is a need to stabilize education and road maintenance funding through predictable payments to the affected counties, job creation in those counties, and other opportunities associated with restoration, maintenance, and stewardship of Federal lands.

(14) Both the Forest Service and the Bureau of Land Management face significant backlogs in infrastructure maintenance and ecosystem restoration that are difficult to address through annual appropriations.

(15) There is a need to build new, and strengthen existing, relationships and to improve management of public lands and waters.

(b) Purposes.—The purposes of this Act are as follows:

(1) To stabilize payments to counties to provide funding for schools and roads that supplements other available funds.

(2) To make additional investments in, and create additional employment opportunities through, projects that improve the maintenance of existing infrastructure, implement stewardship objectives that enhance forest ecosystems, and restore and improve land health and water quality. Such projects shall enjoy broad-based support with objectives that may include, but are not limited to—

(A) road, trail, and infrastructure maintenance or obliteration;

- (B) soil productivity improvement;
  - (C) improvements in forest ecosystem health;
  - (D) watershed restoration and maintenance;
  - (E) restoration, maintenance and improvement of wildlife and fish habitat;
  - (F) control of noxious and exotic weeds; and
  - (G) reestablishment of native species.
- (3) To improve cooperative relationships among the people that use and care for Federal lands and the agencies that manage these lands.

### Sec. 3 Definitions.

In this Act:

- (1) Federal Lands.—The term “Federal lands” means—
- (A) lands within the National Forest System, as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)) exclusive of the National Grasslands and land utilization projects designated as National Grasslands administered pursuant to the Act of July 22, 1937 (7 U.S.C. 1010–1012); and
  - (B) such portions of the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands as are or may hereafter come under the jurisdiction of the Department of the Interior, which have heretofore or may hereafter be

classified as timberlands, and power-site lands valuable for timber, that shall be managed, except as provided in the former section 3 of the Act of August 28, 1937 (50 Stat. 875; 43 U.S.C. 1181c), for permanent forest production.

(2) Eligibility Period.—The term “eligibility period” means fiscal year 1986 through fiscal year 1999.

(3) Eligible County.—The term “eligible county” means a county that received 50-percent payments for one or more fiscal years of the eligibility period or a county that received a portion of an eligible State’s 25-percent payments for one or more fiscal years of the eligibility period. The term includes a county established after the date of the enactment of this Act so long as the county includes all or a portion of a county described in the preceding sentence.

(4) Eligible State.—The term “eligible State” means a State that received 25-percent payments for one or more fiscal years of the eligibility period.

(5) Full Payment Amount.—The term “full payment amount” means the amount calculated for each eligible State and eligible county under section 101.

(6) 25-Percent Payment.—The term “25-percent payment” means the payment to States required by the sixth paragraph under the heading of “FOREST SERVICE” in the Act of May 23, 1908 (35 Stat. 260; 16 U.S.C. 500), and section 13 of the Act of March 1, 1911 (36 Stat. 963; 16 U.S.C. 500).

(7) 50-Percent Payment.—The term “50-percent payment” means the payment that is the sum of the 50-percent share otherwise paid to a county pursuant to title II of the Act of August 28, 1937 (chapter 876; 50 Stat. 875; 43 U.S.C. 1181f), and the payment made to a county pursuant to the Act of May 24, 1939 (chapter 144; 53 Stat. 753; 43 U.S.C. 1181f–1 et seq.).

(8) Safety Net Payments.—The term “safety net payments” means the special payment amounts paid to States and counties required by section 13982 or 13983 of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66; 16 U.S.C. 500 note; 43 U.S.C. 1181f note).

**Sec. 4** Conforming Amendment. [Omitted]

**Title I—Secure Payments for States and Counties Containing Federal Lands (Endnote 1)**

**Sec. 101** Determination of Full Payment Amount for Eligible States and Counties.

(a) Calculation Required.—

(1) Eligible States.—For fiscal years 2001 through 2006, the Secretary of the Treasury shall calculate for each eligible State that received a 25-percent payment during the eligibility period an amount equal to the average of the three highest 25 percent payments and safety net payments made to that eligible State for the fiscal years of the eligibility period.

(2) Bureau of Land Management Counties.—For fiscal years 2001 through 2006, the Secretary of the Treasury shall calculate for each eligible county that received a 50-percent payment during the eligibility period an amount equal to the average of the three highest 50-percent payments and safety net payments made to that eligible county for the fiscal years of the eligibility period.

(b) Annual Adjustment.—For each fiscal year in which payments are required to be made to eligible States and eligible counties under this title, the Secretary of the Treasury shall adjust the full payment amount for the previous fiscal year for each eligible State and eligible county to reflect 50 percent of the changes in the consumer price index for rural areas (as published in the Bureau of Labor Statistics) that occur after publication of that index for fiscal year 2000.

**Sec. 102** Payments to States From National Forest System Lands for Use By Counties to Benefit Public Education and Transportation.

(a) Payment Amounts.—The Secretary of the Treasury shall pay an eligible State the sum of the amounts elected under subsection (b) by each eligible county for either—

(1) the 25-percent payment under the Act of May 23, 1908 (16 U.S.C. 500), and section 13 of the Act of March 1, 1911 (16 U.S.C. 500); or

(2) the full payment amount in place of the 25-percent payment.

(b) Election to Receive Payment Amount.—

(1) Election; Submission of Results.—The election to receive either the full payment amount or the 25-percent payment shall be made at the discretion of each affected county and transmitted to the Secretary by the Governor of a State.

(2) Duration of Election.—A county election to receive the 25-percent payment shall be effective for two fiscal years. When a county elects to receive the full payment amount, such election shall be effective for all the subsequent fiscal years through fiscal year 2006.

(3) Source of Payment Amounts.—The payment to an eligible State under this section for a fiscal year shall be derived from any revenues, fees, penalties, or miscellaneous receipts, exclusive of deposits to any relevant trust fund, or special accounts, received by the Federal Government from activities by the Forest Service on the Federal lands described in section 3(1)(A) and to the extent of any shortfall, out of any funds in the Treasury not otherwise appropriated.

(c) Distribution and Expenditure of Payments.—

(1) Distribution Method.—A State that receives a payment under subsection (a) shall distribute the payment among all eligible counties in the State in accordance with the Act of May 23, 1908 (16 U.S.C. 500), and section 13 of

the Act of March 1, 1911 (36 Stat. 963; 16 U.S.C. 500).

(2) Expenditure Purposes.—Subject to subsection (d), payments received by a State under subsection (a) and distributed to eligible counties shall be expended as required by the laws referred to in paragraph (1).

(d) Expenditure Rules For Eligible Counties.—

(1) Allocations.—

(A) Use of Portion In Same Manner As 25-Percent Payments.—If an eligible county elects to receive its share of the full payment amount, not less than 80 percent, but not more than 85 percent, of the funds shall be expended in the same manner in which the 25-percent payments are required to be expended.

(B) Election As to Use of Balance.—An eligible county shall elect to do one or more of the following with the balance of the funds not expended pursuant to subparagraph (A):

(i) Reserve the balance for projects in accordance with title II.

(ii) Reserve the balance for projects in accordance with title III.

(iii) Return the balance to the General Treasury in accordance with section 402(b).

(2) Distribution of Funds.—

(A) Treatment of Title II Funds.—Funds reserved by an eligible county under paragraph (1)(B)(i) shall be deposited in a special account in the

Treasury of the United States and shall be available for expenditure by the Secretary of Agriculture, without further appropriation, and shall remain available until expended in accordance with title II.

(B) Treatment of Title III Funds.—Funds reserved by an eligible county under paragraph (1)(B)(ii) shall be available for expenditure by the county and shall remain available, until expended, in accordance with title III.

(3) Election.—

(A) In General.—An eligible county shall notify the Secretary of Agriculture of its election under this subsection not later than September 30 of each fiscal year. If the eligible county fails to make an election by that date, the county is deemed to have elected to expend 85 percent of the funds to be received under this section in the same manner in which the 25-percent payments are required to be expended, and shall remit the balance to the Treasury of the United States in accordance with section 402(b).

(B) Counties With Minor Distributions.—Notwithstanding any adjustment made pursuant to section 101(b) in the case of each eligible county to which less than \$100,000 is distributed for any fiscal year pursuant to subsection (c)(1), the eligible county may elect to expend all such funds in accordance with subsection (c)(2).

(e) Time For Payment.—The payment to an eligible State under this section for a fiscal year shall be made as soon as

practicable after the end of that fiscal year.

**Sec. 103.** Payments to Counties From Bureau of Land Management Lands For Use to Benefit Public Safety, Law Enforcement, Education, and Other Public Purposes.

(a) Payment.—The Secretary of the Treasury shall pay an eligible county either—

(1) the 50-percent payment under the Act of August 28, 1937 (43 U.S.C. 1181f), or the Act of May 24, 1939 (43 U.S.C. 1181f–1) as appropriate; or

(2) the full payment amount in place of the 50-percent payment.

(b) Election to Receive Full Payment Amount.—

(1) Election; Duration.—The election to receive the full payment amount shall be made at the discretion of the county. Once the election is made, it shall be effective for the fiscal year in which the election is made and all subsequent fiscal years through fiscal year 2006.

(2) Source of Payment Amounts.—The payment to an eligible county under this section for a fiscal year shall be derived from any revenues, fees, penalties, or miscellaneous receipts, exclusive of deposits to any relevant trust fund, or permanent operating funds, received by the Federal Government from activities by the Bureau of Land Management on the Federal lands described in section 3(1)(B) and to the extent of any shortfall, out of any funds in the Treasury not otherwise appropriated.

**(c) Expenditure Rules For Eligible Counties.—****(1) Allocations.—**

(A) Use of Portion In Same Manner As 50-Percent Payments.—Of the funds to be paid to an eligible county pursuant to subsection (a)(2), not less than 80 percent, but not more than 85 percent, of the funds distributed to the eligible county shall be expended in the same manner in which the 50-percent payments are required to be expended.

(B) Election As to Use of Balance.—An eligible county shall elect to do one or more of the following with the balance of the funds not expended pursuant to subparagraph (A):

- (i) Reserve the balance for projects in accordance with title II.
- (ii) Reserve the balance for projects in accordance with title III.
- (iii) Return the balance to the General Treasury in accordance with section 402(b).

**(2) Distribution of Funds.—**

(A) Treatment of Title II Funds.—Funds reserved by an eligible county under paragraph (1)(B)(i) shall be deposited in a special account in the Treasury of the United States and shall be available for expenditure by the Secretary of the Interior, without further appropriation, and shall remain available until expended in accordance with title II.

**(B) Treatment of Title III Funds.—**

Funds reserved by an eligible county under paragraph (1)(B)(ii) shall be available for expenditure by the county and shall remain available, until expended, in accordance with title III.

(3) Election.—An eligible county shall notify the Secretary of the Interior of its election under this subsection not later than September 30 of each fiscal year. If the eligible county fails to make an election by that date, the county is deemed to have elected to expend 85 percent of the funds received under subsection (a)(2) in the same manner in which the 50-percent payments are required to be expended and shall remit the balance to the Treasury of the United States in accordance with section 402(b).

(d) Time For Payment.—The payment to an eligible county under this section for a fiscal year shall be made as soon as practicable after the end of that fiscal year.

**Title II—Special Projects on Federal Lands****Sec. 201 Definitions.**

In this title:

(1) Participating County.—The term “participating county” means an eligible county that elects under section 102(d)(1)(B)(i) or 103(c)(1)(B)(i) to expend a portion of the Federal funds received under section 102 or 103 in accordance with this title.

(2) **Project Funds.**—The term “project funds” means all funds an eligible county elects under sections 102(d)(1)(B)(i) and 103(c)(1)(B)(i) to reserve for expenditure in accordance with this title.

(3) **Resource Advisory Committee.**—The term “resource advisory committee” means an advisory committee established by the Secretary concerned under section 205, or determined by the Secretary concerned to meet the requirements of section 205.

(4) **Resource Management Plan.**—The term “resource management plan” means a land use plan prepared by the Bureau of Land Management for units of the Federal lands described in section 3(1)(B) pursuant to section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) or a land and resource management plan prepared by the Forest Service for units of the National Forest System pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604).

(5) **Secretary Concerned.**—The term “Secretary concerned” means—

(A) the Secretary of Agriculture or the designee of the Secretary of Agriculture with respect to the Federal lands described in section 3(1)(A); and

(B) the Secretary of the Interior or the designee of the Secretary of the Interior with respect to the Federal lands described in section 3(1)(B).

**Sec. 202** General Limitation on Use of Project Funds.

Project funds shall be expended solely on projects that meet the requirements of this title. Project funds may be used by the Secretary concerned for the purpose of entering into and implementing cooperative agreements with willing Federal agencies, State and local governments, private and nonprofit entities, and landowners for protection, restoration and enhancement of fish and wildlife habitat, and other resource objectives consistent with the purposes of this title on Federal land and on non-Federal land where projects would benefit these resources on Federal land.

**Sec. 203** Submission of Project Proposals.

(A) **Submission of Project Proposals to Secretary Concerned.**—

(1) **Projects Funded Using Project Funds.**—Not later than September 30 for fiscal year 2001, and each September 30 thereafter for each succeeding fiscal year through fiscal year 2006, each resource advisory committee shall submit to the Secretary concerned a description of any projects that the resource advisory committee proposes the Secretary undertake using any project funds reserved by eligible counties in the area in which the resource advisory committee has geographic jurisdiction.

(2) **Projects Funded Using Other Funds.**—A resource advisory committee may submit to the Secretary concerned a description of any projects

that the committee proposes the Secretary undertake using funds from State or local governments, or from the private sector, other than project funds and funds appropriated and otherwise available to do similar work.

(3) **Joint Projects.**—Participating counties or other persons may propose to pool project funds or other funds, described in paragraph (2), and jointly propose a project or group of projects to a resource advisory committee established under section 205.

(b) **Required Description of Projects.**—In submitting proposed projects to the Secretary concerned under subsection (a), a resource advisory committee shall include in the description of each proposed project the following information:

- (1) The purpose of the project and a description of how the project will meet the purposes of this Act.
- (2) The anticipated duration of the project.
- (3) The anticipated cost of the project.
- (4) The proposed source of funding for the project, whether project funds or other funds.
- (5) Expected outcomes, including how the project will meet or exceed desired ecological conditions, maintenance objectives, or stewardship objectives, as well as an estimation of the amount of any timber, forage, and other commodities and other economic activity, including jobs generated, if any, anticipated as part of the project.

(6) A detailed monitoring plan, including funding needs and sources, that tracks and identifies the positive or negative impacts of the project, implementation, and provides for validation monitoring. The monitoring plan shall include an assessment of the following: Whether or not the project met or exceeded desired ecological conditions; created local employment or training opportunities, including summer youth jobs programs such as the Youth Conservation Corps where appropriate; and whether the project improved the use of, or added value to, any products removed from lands consistent with the purposes of this Act.

(7) An assessment that the project is to be in the public interest.

(c) **Authorized Projects.**—Projects proposed under subsection (a) shall be consistent with section 2(b).

**Sec. 204** Evaluation and Approval of Projects By Secretary Concerned.

(a) **Conditions For Approval of Proposed Project.**—The Secretary concerned may make a decision to approve a project submitted by a resource advisory committee under section 203 only if the proposed project satisfies each of the following conditions:

- (1) The project complies with all applicable Federal laws and regulations.
- (2) The project is consistent with the applicable resource management plan and with any watershed or subsequent plan developed pursuant to the resource

management plan and approved by the Secretary concerned.

(3) The project has been approved by the resource advisory committee in accordance with section 205, including the procedures issued under subsection (e) of such section.

(4) A project description has been submitted by the resource advisory committee to the Secretary concerned in accordance with section 203.

(5) The project will improve the maintenance of existing infrastructure, implement stewardship objectives that enhance forest ecosystems, and restore and improve land health and water quality.

(b) Environmental Reviews.—

(1) Payment of Review Costs.—

(A) Request For Payment By County.—The Secretary concerned may request the resource advisory committee submitting a proposed project to agree to the use of project funds to pay for any environmental review, consultation, or compliance with applicable environmental laws required in connection with the project. When such a payment is requested and the resource advisory committee agrees to the expenditure of funds for this purpose, the Secretary concerned shall conduct environmental review, consultation, or other compliance responsibilities in accordance with Federal law and regulations.

(B) Effect of Refusal to Pay.—If a resource advisory committee does not agree to the expenditure of funds under subparagraph (A), the project shall be deemed withdrawn from further consideration by the Secretary concerned pursuant to this title. Such a withdrawal shall be deemed to be a rejection of the project for purposes of section 207(c).

(c) Decisions of Secretary Concerned.—

(1) Rejection of Projects.—A decision by the Secretary concerned to reject a proposed project shall be at the Secretary's sole discretion. Notwithstanding any other provision of law, a decision by the Secretary concerned to reject a proposed project shall not be subject to administrative appeal or judicial review. Within 30 days after making the rejection decision, the Secretary concerned shall notify in writing the resource advisory committee that submitted the proposed project of the rejection and the reasons for rejection.

(2) Notice of Project Approval.—The Secretary concerned shall publish in the Federal Register notice of each project approved under subsection (a) if such notice would be required had the project originated with the Secretary.

(d) Source and Conduct of Project.—Once the Secretary concerned accepts a project for review under section 203, it shall be deemed a Federal action for all purposes.

(e) Implementation of Approved Projects.—

(1) Cooperation.—Notwithstanding chapter 63 of title 31, United States Code, using project funds the Secretary concerned may enter into contracts, grants, and cooperative agreements with States and local governments, private and nonprofit entities, and landowners and other persons to assist the Secretary in carrying out an approved project.

(2) Best Value Contracting.—For any project involving a contract authorized by paragraph (1) the Secretary concerned may elect a source for performance of the contract on a best value basis. The Secretary concerned shall determine best value based on such factors as:

(A) The technical demands and complexity of the work to be done.

(B) The ecological objectives of the project and the sensitivity of the resources being treated.

(C) The past experience by the contractor with the type of work being done, using the type of equipment proposed for the project, and meeting or exceeding desired ecological conditions.

(D) The commitment of the contractor to hiring highly qualified workers and local residents.

(3) Merchantable Material Contracting Pilot Program.—

(A) Establishment.—The Secretary concerned shall establish a pilot program to implement a certain percentage of approved projects

involving the sale of merchantable material using separate contracts for—

(i) the harvesting or collection of merchantable material; and

(ii) the sale of such material.

(B) Annual Percentages.—Under the pilot program, the Secretary concerned shall ensure that, on a nationwide basis, not less than the following percentage of all approved projects involving the sale of merchantable material are implemented using separate contracts:

(i) For fiscal year 2001, 15 percent.

(ii) For fiscal year 2002, 25 percent.

(iii) For fiscal year 2003, 25 percent.

(iv) For fiscal year 2004, 50 percent.

(v) For fiscal year 2005, 50 percent.

(vi) For fiscal year 2006, 50 percent.

(C) Inclusion in Pilot Program.—The decision whether to use separate contracts to implement a project involving the sale of merchantable material shall be made by the Secretary concerned after the approval of the project under this title.

(D) Assistance.—The Secretary concerned may use funds from any appropriated account available to the Secretary for the Federal lands to assist in the administration of projects conducted under the pilot program. The total amount obligated under this subparagraph may not exceed

\$1,000,000 for any fiscal year during which the pilot program is in effect.

(E) Review and Report.—Not later than September 30, 2003, the Comptroller General shall submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate, the Committee on Energy and Natural Resources of the Senate, the Committee on Agriculture of the House of Representatives, and the Committee on Resources of the House of Representatives a report assessing the pilot program. The Secretary concerned shall submit to such committees an annual report describing the results of the pilot program.

(f) Requirements For Project Funds.—The Secretary shall ensure that at least 50 percent of all project funds be used for projects that are primarily dedicated—

- (1) to road maintenance, decommissioning, or obliteration; or
- (2) to restoration of streams and watersheds.

**Sec. 205. Resource Advisory Committees.**

(A) Establishment and Purpose of Resource Advisory Committees.—

(1) Establishment.—The Secretary concerned shall establish and maintain resource advisory committees to perform the duties in subsection (b), except as provided in paragraph (4).

(2) Purpose.—The purpose of a resource advisory committee shall be to

improve collaborative relationships and to provide advice and recommendations to the land management agencies consistent with the purposes of this Act.

(3) Access to Resource Advisory Committees.—To ensure that each unit of Federal land has access to a resource advisory committee, and that there is sufficient interest in participation on a committee to ensure that membership can be balanced in terms of the points of view represented and the functions to be performed, the Secretary concerned may, establish resource advisory committees for part of, or one or more, units of Federal lands.

(4) Existing Advisory Committees.—Existing advisory committees meeting the requirements of this section may be deemed by the Secretary concerned, as a resource advisory committee for the purposes of this title. The Secretary of the Interior may deem a resource advisory committee meeting the requirements of subpart 1784 of part 1780 of title 43, Code of Federal Regulations, as a resource advisory committee for the purposes of this title.

(b) Duties.—A resource advisory committee shall—

- (1) review projects proposed under this title by participating counties and other persons;
- (2) propose projects and funding to the Secretary concerned under section 203;
- (3) provide early and continuous coordination with appropriate land

management agency officials in recommending projects consistent with purposes of this Act under this title; and

(4) provide frequent opportunities for citizens, organizations, tribes, land management agencies, and other interested parties to participate openly and meaningfully, beginning at the early stages of the project development process under this title.

(c) Appointment By The Secretary.—

(1) Appointment and Term.—The Secretary concerned, shall appoint the members of resource advisory committees for a term of 3 years beginning on the date of appointment. The Secretary concerned may reappoint members to subsequent 3-year terms.

(2) Basic Requirements.—The Secretary concerned shall ensure that each resource advisory committee established meets the requirements of subsection (d).

(3) Initial Appointment.—The Secretary concerned shall make initial appointments to the resource advisory committees not later than 180 days after the date of the enactment of this Act.

(4) Vacancies.—The Secretary concerned shall make appointments to fill vacancies on any resource advisory committee as soon as practicable after the vacancy has occurred.

(5) Compensation.—Members of the resource advisory committees shall not receive any compensation.

(d) Composition of Advisory Committee.—

(1) Number.—Each resource advisory committee shall be comprised of 15 members.

(2) Community Interests Represented.—Committee members shall be representative of the interests of the following three categories:

(A) five persons who—

(i) represent organized labor;

(ii) represent developed outdoor recreation, off highway vehicle users, or commercial recreation activities;

(iii) represent energy and mineral development interests;

(iv) represent the commercial timber industry; or

(v) hold Federal grazing permits, or other land use permits within the area for which the committee is organized.

(B) five persons representing—

(i) nationally recognized environmental organizations;

(ii) regionally or locally recognized environmental organizations;

(iii) dispersed recreational activities;

(iv) archaeological and historical interests; or

(v) nationally or regionally recognized wild horse and burro interest groups.

(C) five persons who—

- (i) hold State elected office or their designee;
- (ii) hold county or local elected office;
- (iii) represent American Indian tribes within or adjacent to the area for which the committee is organized;
- (iv) are school officials or teachers; or
- (v) represent the affected public at large.

(3) **Balanced Representation.**—In appointing committee members from the three categories in paragraph (2), the Secretary concerned shall provide for balanced and broad representation from within each category.

(4) **Geographic Distribution.**—The members of a resource advisory committee shall reside within the State in which the committee has jurisdiction and, to extent practicable, the Secretary concerned shall ensure local representation in each category in paragraph (2).

(5) **Chairperson.**—A majority on each resource advisory committee shall select the chairperson of the committee.

(e) **Approval Procedures.**—(1) Subject to paragraph (2), each resource advisory committee shall establish procedures for proposing projects to the Secretary concerned under this title. A quorum must be present to constitute an official meeting of the committee.

(2) A project may be proposed by a resource advisory committee to the Secretary concerned under section 203(a), if it has been approved by a majority of members of the committee from each of the three categories in subsection (d)(2).

(f) **Other Committee Authorities and Requirements.**—

(1) **Staff Assistance.**—A resource advisory committee may submit to the Secretary concerned a request for periodic staff assistance from Federal employees under the jurisdiction of the Secretary.

(2) **Meetings.**—All meetings of a resource advisory committee shall be announced at least one week in advance in a local newspaper of record and shall be open to the public.

(3) **Records.**—A resource advisory committee shall maintain records of the meetings of the committee and make the records available for public inspection.

**Sec. 206. Use of Project Funds.**

(A) **Agreement Regarding Schedule and Cost of Project.**—

(1) **Agreement Between Parties.**—The Secretary concerned may carry out a project submitted by a resource advisory committee under section 203(a) using project funds or other funds described in section 203(a)(2), if, as soon as practicable after the issuance of a decision document for the project and the exhaustion of all administrative appeals and judicial review of the

project decision, the Secretary concerned and the resource advisory committee enter into an agreement addressing, at a minimum, the following:

- (A) The schedule for completing the project.
- (B) The total cost of the project, including the level of agency overhead to be assessed against the project.
- (C) For a multiyear project, the estimated cost of the project for each of the fiscal years in which it will be carried out.
- (D) The remedies for failure of the Secretary concerned to comply with the terms of the agreement consistent with current Federal law.

(2) **Limited Use of Federal Funds.**—The Secretary concerned may decide, at the Secretary's sole discretion, to cover the costs of a portion of an approved project using Federal funds appropriated or otherwise available to the Secretary for the same purposes as the project.

(b) **Transfer of Project Funds.**—

(1) **Initial Transfer Required.**—As soon as practicable after the agreement is reached under subsection (a) with regard to a project to be funded in whole or in part using project funds, or other funds described in section 203(a)(2), the Secretary concerned shall transfer to the applicable unit of National Forest System lands or BLM District an amount of project funds equal to—

(A) in the case of a project to be completed in a single fiscal year, the total amount specified in the agreement to be paid using project funds, or other funds described in section 203(a)(2); or

(B) in the case of a multiyear project, the amount specified in the agreement to be paid using project funds, or other funds described in section 203(a)(2) for the first fiscal year.

(2) **Condition on Project Commencement.**—The unit of National Forest System lands or BLM District concerned, shall not commence a project until the project funds, or other funds described in section 203(a)(2) required to be transferred under paragraph (1) for the project, have been made available by the Secretary concerned.

(3) **Subsequent Transfers For Multiyear Projects.**—

For the second and subsequent fiscal years of a multiyear project to be funded in whole or in part using project funds, the unit of National Forest System lands or BLM District concerned shall use the amount of project funds required to continue the project in that fiscal year according to the agreement entered into under subsection (a). The Secretary concerned shall suspend work on the project if the project funds required by the agreement in the second and subsequent fiscal years are not available.

**Sec. 207 Availability of Project Funds.**

(A) **Submission of Proposed Projects to Obligate Funds.**—

By September 30 of each fiscal year through fiscal year 2006, a resource advisory committee shall submit to the Secretary concerned pursuant to section 203(a)(1) a sufficient number of project proposals that, if approved, would result in the obligation of at least the full amount of the project funds reserved by the participating county in the preceding fiscal year.

(b) Use Or Transfer of Unobligated Funds.—Subject to section 208, if a resource advisory committee fails to comply with subsection (a) for a fiscal year, any project funds reserved by the participating county in the preceding fiscal year and remaining unobligated shall be available for use as part of the project submissions in the next fiscal year.

(c) Effect of Rejection of Projects.—Subject to section 208, any project funds reserved by a participating county in the preceding fiscal year that are unobligated at the end of a fiscal year because the Secretary concerned has rejected one or more proposed projects shall be available for use as part of the project submissions in the next fiscal year.

(d) Effect of Court Orders.—If an approved project under this Act is enjoined or prohibited by a Federal court, the Secretary concerned shall return the unobligated project funds related to that project to the participating county or counties that reserved the funds. The returned funds shall be available for the county to expend in the same manner as the funds reserved by the county under

section 102(d)(1)(B)(i) or 103(c)(1)(B)(i), whichever applies to the funds involved.

**Sec. 208** Termination of Authority.

The authority to initiate projects under this title shall terminate on September 30, 2006. Any project funds not obligated by September 30, 2007, shall be deposited in the Treasury of the United States.

**Title III—County Projects**

**Sec. 301** Definitions.

In this title:

(1) Participating County.—The term “participating county” means an eligible county that elects under section 102(d)(1)(B)(ii) or 103(c)(1)(B)(ii) to expend a portion of the Federal funds received under section 102 or 103 in accordance with this title.

(2) County Funds.—The term “county funds” means all funds an eligible county elects under sections 102(d)(1)(B)(ii) and 103(c)(1)(B)(ii) to reserve for expenditure in accordance with this title.

**Sec. 302** Use of County Funds.

(a) Limitation on County Fund Use.—County funds shall be expended solely on projects that meet the requirements of this title. A project under this title shall be approved by the participating county only following a 45-day public comment period, at the beginning of which the county shall—

(1) publish a description of the proposed project in the publications of local record; and

(2) send the proposed project to the appropriate resource advisory committee established under section 205, if one exists for the county.

(b) Authorized Uses.—

(1) Search, Rescue, and Emergency Services.—An eligible county or applicable sheriff's department may use these funds as reimbursement for search and rescue and other emergency services, including fire fighting, performed on Federal lands and paid for by the county.

(2) Community Service Work Camps.—An eligible county may use these funds as reimbursement for all or part of the costs incurred by the county to pay the salaries and benefits of county employees who supervise adults or juveniles performing mandatory community service on Federal lands.

(3) Easement Purchases.—An eligible county may use these funds to acquire—

(A) easements, on a willing seller basis, to provide for nonmotorized access to public lands for hunting, fishing, and other recreational purposes;

(B) conservation easements; or

(C) both.

(4) Forest Related Educational Opportunities.—A county may use these funds to establish and conduct forest-related after school programs.

(5) Fire Prevention and County Planning.—A county may use these funds for—

(A) efforts to educate homeowners in fire-sensitive ecosystems about the consequences of wildfires and techniques in home siting, home construction, and home landscaping that can increase the protection of people and property from wildfires; and

(B) planning efforts to reduce or mitigate the impact of development on adjacent Federal lands and to increase the protection of people and property from wildfires.

(6) Community Forestry.—A county may use these funds towards non-Federal cost-share requirements of section 9 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2105).

**Sec. 303** Termination of Authority.

The authority to initiate projects under this title shall terminate on September 30, 2006. Any county funds not obligated by September 30, 2007 shall be available to be expended by the county for the uses identified in section 302(b).

**Title IV—Miscellaneous Provisions**

**Sec. 401** Authorization of Appropriations.

There are hereby authorized to be appropriated such sums as may be necessary to carry out this Act for fiscal years 2001 through 2006.

**Sec. 402** Treatment of Funds and Revenues.

(a) Relation to Other Appropriations.— Funds appropriated pursuant to the authorization of appropriations in section 401 and funds made available to a Secretary concerned under section 206 shall be in addition to any other annual appropriations for the Forest Service and the Bureau of Land Management.

(b) Deposit of Revenues and Other Funds.—All revenues generated from projects pursuant to title II, any funds remitted by counties pursuant to section 102(d)(1)(B)(iii) or section 103(c)(1)(B)(iii), and any interest accrued from such funds shall be deposited in the Treasury of the United States.

**Sec. 403** Regulations.

The Secretaries concerned may jointly issue regulations to carry out the purposes of this Act.

**Sec. 404** Conforming Amendments.  
[Omitted]

**(Endnote 1)** Section 751 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 (Public Law 107-76; 115 Stat. 739) provides as follows:

“(a) Temporary Use of Existing Payments to States Table. - Notwithstanding section 101(a)(1) of the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106-393; 16 U.S.C. 500 note), for the purpose of making the fiscal year 2001 payments under section 102 of such Act (set out in a note below) to eligible States and eligible counties, the full payment amount

for each eligible State and eligible county shall be deemed to be equal to the full payment amount calculated for that eligible State or eligible county in the Forest Service document entitled ‘P.L. 106-393, Secure Rural Schools and Community Self-Determination Act’ and dated July 31, 2001, subject to the adjustment required by section 101(b) of such Act.

“(b) Revision of Table. - For the purpose of making payments under section 102 of such Act (set out in a note below) to eligible States and eligible counties for fiscal years 2002 through 2006, as required by section 101(a)(1) of such Act, the Secretary of Agriculture shall revise the table referred to in subsection (a) to accurately reflect, to the maximum extent practicable, each eligible State’s and eligible county’s historic share of the 25-percent payments and safety net payments made for the fiscal years of the eligibility period.

“(c) Reporting Requirement. - Not later than March 1, 2002, the Secretary of Agriculture shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Agriculture of the House of Representatives a report containing the revisions made to the table referred to in subsection (a), as required by subsection (b).

“(d) Additional Eligible County Election. - Notwithstanding section 102(b)(2) of such Act (set out in a note below), if the revision pursuant to subsection (b) of the table referred to in subsection (a) results in a reduced full payment amount for an

eligible county that elected under section 102(b) of such Act to receive the full payment amount, the eligible county shall have a 90-day period, beginning on the date the revised table is first available to the public, during which to reconsider and change its election. The eligible county shall notify the Secretary of Agriculture of any change in its election before the end of such period. If an eligible county elects under this subsection to receive the 25-percent payment in place of the full payment amount, the election shall be effective for 1 year.

“(e) Treatment of Certain Mineral Leasing Receipts. - (1) An eligible county that elects under section 102(b) of such Act (set out in a note below) to receive its share of an eligible State’s full payment amount shall continue to receive its share of any payments made to that State from a lease for mineral resources issued by the Secretary of the Interior under the last paragraph under the heading ‘forest service.’ in the Act of March 4, 1917 (Chapter 179; 16 U.S.C. 520).

“(2) (Amended section 355(b) of Title 30, Mineral Lands and Mining.)

“(f) Definitions. - In this section, the terms ‘eligible State’, ‘eligible county’, ‘eligibility period’, ‘full payment amount’, ‘25-percent payment’, and ‘safety net payments’ have the meanings given such terms in section 3 of such Act (set out in a note below), and the term ‘such Act’ means the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106-393; 16 U.S.C. 500 note) (see Tables for classification).”

## McIntyre-Stennis Act

**October 10, 1962 (Pub. L. 87-788, 76 Stat. 806; 16 U.S.C. 582a, 582a-1 to 582a-7)**

### **Congressional findings**

**Sec. 1** It is recognized that research in forestry is the driving force behind progress in developing and utilizing the resources of the Nation's forest and related rangelands. The production, protection, and utilization of the forest resources depend on strong technological advances and continuing development of the knowledge necessary to increase the efficiency of forestry practices and to extend the benefits that flow from forest and related rangelands. It is recognized that the total forestry research efforts of the several State colleges and universities and of the Federal Government are more fully effective if there is close coordination between such programs, and it is further recognized that forestry schools are especially vital in the training of research workers in forestry. It is also recognized that the provisions of this subchapter are essential to assist in providing the research background that undergirds the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.), the Renewable Resources Extension Act of 1978 (16 U.S.C. 1671 et seq.), and the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2001 et seq.). (16 U.S.C. 582a)

### **Cooperation by Secretary of Agriculture with States; assistance:**

### **plans, eligible institutions and amount**

**Sec. 2** In order to promote research in forestry, the Secretary of Agriculture is authorized to cooperate with the several States for the purpose of encouraging and assisting them in carrying out programs of forestry research.

Such assistance shall be in accordance with plans to be agreed upon in advance by the Secretary and (a) land-grant colleges or agricultural experiment stations established under the Morrill Act of July 2, 1862, as amended (7 U.S.C. 301 et seq.), and the Hatch Act of March 2, 1887, as amended (7 U.S.C. 361a et seq.), and (b) other State-supported colleges and universities offering graduate training in the sciences basic to forestry and having a forestry school; however, an appropriate State representative designated by the State's Governor shall, in any agreement drawn up with the Secretary of Agriculture for the purposes of this subchapter, certify those eligible institutions of the State which will qualify for assistance and shall determine the proportionate amounts of assistance to be extended these certified institutions. If more than one institution within a State are certified as qualifying for assistance, then it shall be the responsibility of such institutions, in agreement with the Secretary, to develop complementary programs

of forestry research for the State. (16 U.S.C. 582a-1)

**Authorization of appropriations; other allotments and grants**

**Sec. 3** To enable the Secretary to carry out the provisions of this subchapter there are authorized to be appropriated such sums as the Congress may from time to time determine to be necessary but not exceeding in any one fiscal year one-half the amount appropriated for Federal forestry research conducted directly by the Department of Agriculture for the fiscal year preceding the year in which the budget is presented for such appropriation. Funds appropriated and made available to the States under this subchapter shall be in addition to allotments or grants that may be made under other authorizations. (16 U.S.C. 582a-2)

**Matching funds; reapportionment to other qualifying institutions; reductions**

**Sec. 4** The amount paid by the Federal Government to any State-certified institutions eligible for assistance under this subchapter shall not exceed during any fiscal year the amount available to and budgeted for expenditure by such college or university during the same fiscal year for forestry research from non-Federal sources, except that for the fiscal years ending June 30, 1971, and June 30, 1972, the matching funds requirement hereof shall not be applicable to the Virgin Islands and Guam, and sums authorized for such years for the Virgin Islands and Guam may be used to pay the

total cost of programs for forestry research. The Secretary is authorized to make such expenditures on the certificate of the appropriate official of the college or university having charge of the forestry research for which the expenditures as herein provided are to be made. If any or all of the colleges or universities certified for receipt of funds under this subchapter fails to make available and budget for expenditure for forestry research in any fiscal year sums at least as much as the amount for which it would be eligible for such year under this subchapter, the difference between the Federal funds available and the funds made available and budgeted for expenditure by the college or university shall be reapportioned by the Secretary to other eligible colleges or universities of the same State if there be any which qualify therefor and, if there be none, the Secretary shall reapportion such differences to the qualifying colleges and universities of other States participating in the forestry research program. If in any year the amount made available by a State from its own funds (including any revenue-sharing funds) to a State-certified institution eligible for assistance under this subchapter is reduced because of an increase in the allotment made available under this subchapter, the allotment of such State-certified institution from the next succeeding appropriation shall be reduced in an equivalent amount. The Secretary shall reapportion the amount of such reduction to other eligible colleges and universities of the same State if there be any that qualify therefor and, if there be none, the Secretary shall reapportion such amount

to the qualifying colleges and universities of other States participating in the forestry research program. (16 U.S.C. 582a-3)

**Regulations; advice and assistance; appointment, membership, etc., of council**

**Sec. 5** (a) Regulations and assistance

The Secretary shall prescribe such regulations as may be necessary to carry out this subchapter and to furnish such advice and assistance through a cooperative State forestry research unit in the Department as will best promote the purposes of this subchapter.

(b) Advisory council

The Secretary shall appoint a council of not fewer than sixteen members which shall be constituted to give representation to Federal and State agencies concerned with developing and utilizing the Nation's forest resources, the forest industries, the forestry schools of the State-certified eligible institutions, State agricultural experiment stations, and volunteer public groups concerned with forests and related natural resources. The council shall meet at least annually and shall submit a report to the Secretary on regional and national planning and coordination of forestry research within the Federal and State agencies, forestry schools, and the forest industries, and shall advise the Secretary on the apportionment of funds. The Secretary shall seek, at least once each year, the advice of the council to accomplish efficiently the purposes of this

subchapter. (16 U.S.C. 582a-4)

**Apportionments, advice, criteria, etc.**

**Sec. 6** Apportionments among participating States shall be determined by the Secretary after consultation with the council appointed under section 582a-4 of this title. In making such apportionments, consideration shall be given to pertinent factors including non-Federal expenditures for forestry research by State-certified eligible institutions, areas of non-Federal commercial forest land, and the volume of timber cut annually. Three per centum of such funds as may be appropriated shall be made available to the Secretary for administration of this subchapter. These administrative funds may be used for transportation of scientists who are not officers or employees of the United States to research meetings convened for purposes of assessing research opportunities or research planning. (16 U.S.C. 582a-5)

**Scope of forestry research**

**Sec. 7** The term "forestry research" as used in this subchapter shall include investigations relating to: (1) Reforestation and management of land for the production of crops of timber and other related products of the forest; (2) management of forest and related watershed lands to improve conditions of waterflow and to protect resources against floods and erosion; (3) management of forest and related rangeland for production of forage for domestic livestock and game and improvement of food and habitat for wildlife; (4) management of forest lands

for outdoor recreation; (5) protection of forest land and resources against fire, insects, diseases, or other destructive agents; (6) utilization of wood and other forest products; (7) development of sound policies for the management of forest lands and the harvesting and marketing of forest products; and (8) such other studies as may be necessary to obtain the fullest and most effective use of forest resources. (16 U.S.C. 582a-6)

**“State” defined**

**Sec. 8** The term “State” as used in this subchapter shall include Puerto Rico, the Virgin Islands, and Guam. (16 U.S.C. 582a-7)

## Forest and Rangeland Renewable Resources Research Act of 1978

June 30, 1978 (Pub. L. 95-307, 92 Stat. 353; 16 U.S.C. 1600 note, 1641 to 1647, 1649)

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### Findings and purpose

**Sec. 2** (a) Findings Congress finds the following:

- (1) Forests and rangeland, and the resources of forests and rangeland, are of strategic economic and ecological importance to the United States, and the Federal Government has an important and substantial role in ensuring the continued health, productivity, and sustainability of the forests and rangeland of the United States.
- (2) Over 75 percent of the productive commercial forest land in the United States is privately owned, with some 60 percent owned by small nonindustrial private owners. These 10,000,000 nonindustrial private owners are critical to providing both commodity and noncommodity values to the citizens of the United States.
- (3) The National Forest System manages only 17 percent of the commercial timberland of the United States, with over half of the standing softwoods inventory located on that land. Dramatic changes in Federal agency policy during the early 1990's have significantly curtailed the management of this vast timber resource, causing abrupt shifts in the supply of timber from public to private ownership. As a result of these shifts in supply, some 60 percent of total wood production in the United States is now coming from private forest land in the southern United States.
- (4) At the same time that pressures are building for the removal of even more land from commercial production, the Federal Government is significantly reducing its commitment to productivity-related research regarding forests and rangeland, which is critically needed by the private sector for the sustained management of remaining available timber and forage resources for the benefit of all species.
- (5) Uncertainty over the availability of the United States timber supply, increasing regulatory burdens, and the lack of Federal Government support for research is causing domestic wood and paper producers to move outside the United States to find reliable sources of wood supplies, which in turn results in a worsening of the United States trade balance, the loss of employment and infrastructure investments, and an increased risk of infestations of exotic pests and diseases from imported wood products.
- (6) Wood and paper producers in the United States are being challenged not only by shifts in Federal Government

policy, but also by international competition from tropical countries where growth rates of trees far exceed those in the United States. Wood production per acre will need to quadruple from 1996 levels for the United States forestry sector to remain internationally competitive on an ever decreasing forest land base.

(7) Better and more frequent forest inventoring and analysis is necessary to identify productivity-related forestry research needs and to provide forest managers with the current data necessary to make timely and effective management decisions.

(b) Relationship to other law

This subchapter shall be deemed to complement the policies and direction set forth in the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.).

(c) Purpose

It is the purpose of this subchapter to authorize the Secretary to expand research activities to encompass international forestry and natural resource issues on a global scale. (16 U.S.C. 1641)

**Investigations, experiments, tests, and other activities**

**Sec. 3 (a) Authorization; scope and purposes of activities**

The Secretary is authorized to conduct, support, and cooperate in investigations, experiments, tests, and other activities the Secretary deems necessary to obtain, analyze, develop, demonstrate, and

disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas. The activities conducted, supported, or cooperated in by the Secretary under this subchapter shall include, but not be limited to, the five major areas of renewable resource research identified in paragraphs (1) through (5) of this subsection.

(1) Renewable resource management research shall include, as appropriate, research activities related to managing, reproducing, planting, and growing vegetation on forests and rangelands for timber, forage, water, fish and wildlife, esthetics, recreation, wilderness, energy production, activities related to energy conservation, and other purposes, including activities for encouraging improved reforestation of forest lands from which timber has been harvested; determining the role of forest and rangeland management in the productive use of forests and rangelands, in diversified agriculture, and in mining, transportation, and other industries; and developing alternatives for the management of forests and rangelands that will make possible the most effective use of their multiple products and services.

(2) Renewable resource environmental research shall include, as appropriate, research activities related to understanding and managing surface and subsurface water flow, preventing and controlling erosion, and restoring damaged or disturbed soils on forest and rangeland watersheds; maintaining and improving wildlife and fish habitats;

managing vegetation to reduce air and water pollution, provide amenities, and for other purposes; and understanding, predicting, and modifying weather, climatic, and other environmental conditions that affect the protection and management of forests and rangelands.

(3) Renewable resource protection research shall include, as appropriate, research activities related to protecting vegetation and other forest and rangeland resources, including threatened and endangered flora and fauna, as well as wood and wood products in storage or use, from fires, insects, diseases, noxious plants, animals, air pollutants, and other agents through biological, chemical, and mechanical control methods and systems; and protecting people, natural resources, and property from fires in rural areas.

(4) Renewable resource utilization research shall include, as appropriate, research activities related to harvesting, transporting, processing, marketing, distributing, and utilizing wood and other materials derived from forest and rangeland renewable resources; recycling and fully utilizing wood fiber; producing and conserving energy; and testing forest products, including necessary fieldwork associated therewith.

(5) Renewable resource assessment research shall include, as appropriate, research activities related to developing and applying scientific knowledge and technology in support of the survey and analysis of forest and rangeland renewable resources described in subsection

(b) of this section.

(b) Development of periodic Renewable Resource Assessment through survey and analysis of conditions; implementation; authorization of appropriations

(1) To ensure the availability of adequate data and scientific information for development of the periodic Renewable Resource Assessment provided for in section 1601 of this title, the Secretary of Agriculture shall make and keep current a comprehensive survey and analysis of the present and prospective conditions of and requirements for renewable resources of the forests and rangelands of the United States and of the supplies of such renewable resources, including a determination of the present and potential productivity of the land, and of such other facts as may be necessary and useful in the determination of ways and means needed to balance the demand for and supply of these renewable resources, benefits, and uses in meeting the needs of the people of the United States. The Secretary shall conduct the survey and analysis under such plans as the Secretary may determine to be fair and equitable, and cooperate with appropriate officials of each State and, either through them or directly, with private or other entities.

(2) In implementing this subsection, the Secretary is authorized to develop and implement improved methods of survey and analysis of forest inventory information, for which purposes there are hereby authorized to be appropriated

annually \$10,000,000.

(c) Program of research and study relative to health and productivity of domestic forest ecosystems; advisory committee; reports

(1) The Secretary, acting through the United States Forest Service, shall establish not later than 180 days after October 24, 1988, a 10-year program (hereinafter in this subsection referred to as the "Program") to –

(A) increase the frequency of forest inventories in matters that relate to atmospheric pollution and conduct such surveys as are necessary to monitor long-term trends in the health and productivity of domestic forest ecosystems;

(B) determine the scope of the decline in the health and productivity of domestic forest ecosystems;

(C) accelerate and expand existing research efforts (including basic forest ecosystem research) to evaluate the effects of atmospheric pollutants on forest ecosystems and their role in the decline in domestic forest health and productivity;

(D) study the relationship between atmospheric pollution and other climatological, chemical, physical, and biological factors that may affect the health and productivity of domestic forest ecosystems;

(E) develop recommendations for solving or mitigating problems related to the effects of atmospheric pollution on the health and productivity of

domestic forest ecosystems;

(F) foster cooperation among Federal, State, and private researchers and encourage the exchange of scientific information on the effects of atmospheric pollutants on forest ecosystems among the United States, Canada, European nations, and other nations;

(G) support the long-term funding of research programs and related efforts to determine the causes of declines in the health and productivity of domestic forest ecosystems and the effects of atmospheric pollutants on the health and productivity of domestic forest ecosystems; and

(H) enlarge the Eastern Hardwood Cooperative by devoting additional resources to field analysis of the response of hardwood species to atmospheric pollution, and other factors that may affect the health and productivity of these ecosystems.

(2) The Secretary shall establish a committee to advise the Secretary in developing and carrying out the Program, which shall be composed of scientists with training and experience in various disciplines, including atmospheric, ecological, and biological sciences. Such scientists shall be selected from among individuals who are actively performing research for Federal or State agencies or for private industries, institutions, or organizations.

(3) The Secretary shall coordinate the Program with existing research efforts of Federal and State agencies and

private industries, institutions, or organizations.

(4) The Secretary shall submit to the President and to Congress the following reports:

(A) Not less than 30 days before establishing the Program, the Secretary shall submit an initial program report –

(i) discussing existing information about declining health and productivity of forest ecosystems on public and private lands in North America and Europe;

(ii) outlining the findings and status of all current research and monitoring efforts in North America and Europe on the causes and effects of atmospheric pollution on the health and productivity of forest ecosystems;

(iii) describing the Program; and

(iv) estimating the cost of implementing the Program for each fiscal year of its duration.

(B) Not later than January 15, 1990, and January 15 of each year thereafter, during which the Program is in operation following the year in which the initial program report is submitted, the Secretary shall submit an annual report –

(i) updating information about declining health and productivity of forest ecosystems on public and private lands in North America and Europe;

(ii) updating the findings and status of all current research and monitoring efforts in North America and Europe on the causes and effects of atmospheric pollution on the health and productivity of forest ecosystems, including efforts conducted under the Program;

(iii) recommending additional research and monitoring efforts to be undertaken under the Program to determine the effects of atmospheric pollution on the health and productivity of domestic forest ecosystems; and

(iv) recommending methods for solving or mitigating problems stemming from the effects of atmospheric pollution on the health and productivity of domestic forest ecosystems.

(C) Not later than 10 years after the date on which the initial program report is submitted, the Secretary shall submit a final report –

(i) reviewing existing information about declining health and productivity of forest ecosystems on public and private lands in North America and Europe;

(ii) reviewing the nature and findings of all research and monitoring efforts conducted under the Program and any other relevant research and monitoring efforts related to the effects of atmospheric pollution on forest ecosystem; and

(iii) making final recommendations

for solving or mitigating problems stemming from the effects of atmospheric pollution on the health and productivity of domestic forest ecosystems.

(d) High priority forestry and rangeland research and education

(1) In general

The Secretary may conduct, support, and cooperate in forestry and rangeland research and education that is of the highest priority to the United States and to users of public and private forest land and rangeland in the United States.

(2) Priorities

The research and education priorities include the following:

- (A) The biology of forest organisms and rangeland organisms.
- (B) Functional characteristics and cost-effective management of forest and rangeland ecosystems.
- (C) Interactions between humans and forests and rangeland.
- (D) Wood and forage as a raw material.
- (E) International trade, competition, and cooperation.

(3) Northeastern States research cooperative

At the request of the Governor of the State of Maine, New Hampshire, New York, or Vermont, the Secretary may cooperate with the northeastern States of New Hampshire, New York, Maine, and Vermont, land-grant colleges and

universities of those States, natural resources and forestry schools of those States, other Federal agencies, and other interested persons in those States to coordinate and improve ecological and economic research relating to agricultural research, extension, and education, including –

- (A) research on ecosystem health, forest management, product development, economics, and related fields;
- (B) research to assist those States and landowners in those States to achieve sustainable forest management;
- (C) technology transfer to the wood products industry of technologies that promote efficient processing, pollution prevention, and energy conservation;
- (D) dissemination of existing and new information to landowners, public and private resource managers, State forest citizen advisory committees, and the general public through professional associations, publications, and other information clearinghouse activities; and
- (E) analysis of strategies for the protection of areas of outstanding ecological significance or high biological diversity, and strategies for the provision of important recreational opportunities and traditional uses, including strategies for areas identified through State land conservation planning processes.

(e) Forest inventory and analysis

- (1) Program required

In compliance with other applicable provisions of law, the Secretary shall establish a program to inventory and analyze, in a timely manner, public and private forests and their resources in the United States.

(2) Annual State inventory

(A) In general

Not later than the end of each full fiscal year beginning after June 23, 1998, the Secretary shall prepare for each State, in cooperation with the State forester for the State, an inventory of forests and their resources in the State.

(B) Sample plots

For purposes of preparing the inventory for a State, the Secretary shall measure annually 20 percent of all sample plots that are included in the inventory program for that State.

(C) Compilation of inventory

On completion of the inventory for a year, the Secretary shall make available to the public a compilation of all data collected for that year from measurements of sample plots as well as any analysis made of the samples.

(3) 5-year reports

Not more often than every 5 full fiscal years after June 23, 1998, the Secretary shall prepare, publish, and make available to the public a report, prepared in cooperation with State foresters, that –

(A) contains a description of each State inventory of forests and their resources, incorporating all sample plot

measurements conducted during the 5 years covered by the report;

(B) displays and analyzes on a nationwide basis the results of the annual reports required by paragraph (2); and

(C) contains an analysis of forest health conditions and trends over the previous 2 decades, with an emphasis on such conditions and trends during the period subsequent to the immediately preceding report under this paragraph.

(4) National standards and definitions

To ensure uniform and consistent data collection for all forest land that is publicly or privately owned and for each State, the Secretary shall develop, in consultation with State foresters and Federal land management agencies not under the jurisdiction of the Secretary, and publish national standards and definitions to be applied in inventorying and analyzing forests and their resources under this subsection. The standards shall include a core set of variables to be measured on all sample plots under paragraph (2) and a standard set of tables to be included in the reports under paragraph (3).

(5) Protection for private property rights

The Secretary shall obtain authorization from property owners prior to collecting data from sample plots located on private property pursuant to paragraphs (2) and (3).

(6) Strategic plan

Not later than 180 days after June 23,

1998, the Secretary shall prepare and submit to Congress a strategic plan to implement and carry out this subsection, including the annual updates required by paragraph (2) and the reports required by paragraph (3), that shall describe in detail –

(A) the financial resources required to implement and carry out this subsection, including the identification of any resources required in excess of the amounts provided for forest inventorying and analysis in recent appropriations Acts;

(B) the personnel necessary to implement and carry out this subsection, including any personnel in addition to personnel currently performing inventorying and analysis functions;

(C) the organization and procedures necessary to implement and carry out this subsection, including proposed coordination with Federal land management agencies and State foresters;

(D) the schedules for annual sample plot measurements in each State inventory required by paragraph (2) within the first 5-year interval after June 23, 1998;

(E) the core set of variables to be measured in each sample plot under paragraph (2) and the standard set of tables to be used in each State and national report under paragraph (3); and

(F) the process for employing, in coordination with the Secretary of Energy and the Administrator of the

National Aeronautics and Space Administration, remote sensing, global positioning systems, and other advanced technologies to carry out this subsection, and the subsequent use of the technologies. (16 U.S.C. 1642)

### **Implementation of provisions**

**Sec. 4** (a) Establishment and maintenance of research facilities; acquisition, expenditures, etc., for property

In implementing this subchapter, the Secretary is authorized to establish and maintain a system of experiment stations, research laboratories, experimental areas, and other forest and rangeland research facilities. The Secretary is authorized, with donated or appropriated funds, to acquire by lease, donation, purchase, exchange, or otherwise, land or interests in land within the United States needed to implement this subchapter, to make necessary expenditures to examine, appraise, and survey such property, and to do all things incident to perfecting title thereto in the United States.

(b) Acceptance, holding, and administration of gifts, donations, and bequests; use and investment of gifts, proceeds, etc.; funding requirements

In implementing this subchapter, the Secretary is authorized to accept, hold, and administer gifts, donations, and bequests of money, real property, or personal property from any source not otherwise prohibited by law and to use such gifts, donations, and bequests to

(1) establish or operate any forest and rangeland research facility within the

United States, or

(2) perform any forest and rangeland renewable resource research activity authorized by this subchapter. Such gifts, donations, and bequests, or the proceeds thereof, and money appropriated for these purposes shall be deposited in the Treasury in a special fund. At the request of the Secretary, the Secretary of the Treasury may invest or reinvest any money in the fund that in the opinion of the Secretary is not needed for current operations. Such investments shall be in public debt securities with maturities suitable for the needs of the fund and bearing interest at prevailing market rates. There are hereby authorized to be expended from such fund such amounts as may be specified in annual appropriation Acts, which shall remain available until expended.

(c) Cooperation with international, Federal, State, and other governmental agencies, public and private agencies, etc.; funding requirements for contributions from cooperators

In implementing this subchapter, the Secretary may cooperate with international, Federal, State, and other governmental agencies, with public or private agencies, institutions, universities, and organizations, and with businesses and individuals in the United States and in other countries. The Secretary may receive money and other contributions from cooperators under such conditions as the Secretary may prescribe. Any money contributions received under this

subsection shall be credited to the applicable appropriation or fund to be used for the same purposes and shall remain available until expended as the Secretary may direct for use in conducting research activities authorized by this subchapter and in making refunds to contributors. (16 U.S.C. 1643)

### **Forestry and rangeland competitive research grants**

#### **Sec. 5 (a) Competitive grant authority**

In addition to any grants made under other laws, the Secretary is authorized to make competitive grants that will further research activities authorized by this subchapter to Federal, State, and other governmental agencies, public or private agencies, institutions, universities, and organizations, and businesses and individuals in the United States. In making these grants, the Secretary shall emphasize basic and applied research activities that are important to achieving the purposes of this subchapter, and shall obtain, through review by qualified scientists and other methods, participation in research activities by scientists throughout the United States who have expertise in matters related to forest and rangeland renewable resources. Grants under this section shall be made at the discretion of the Secretary under whatever conditions the Secretary may prescribe, after publicly soliciting research proposals, allowing sufficient time for submission of the proposals, and considering qualitative, quantitative, financial, administrative, and other factors that the Secretary deems important in judging,

comparing, and accepting the proposals. The Secretary may reject any or all proposals received under this section if the Secretary determines that it is in the public interest to do so.

(b) Emphasis on certain high priority forestry research

The Secretary may use up to 5 percent of the amounts made available for research under section 1642 of this title to make competitive grants regarding forestry research in the high priority research areas identified under section 1642(d) of this title.

(c) Emphasis on certain high priority rangeland research

The Secretary may use up to 5 percent of the amounts made available for research under section 1642 of this title to make competitive grants regarding rangeland research in the high priority research areas identified under section 1642(d) of this title.

(d) Priorities

In making grants under subsections (b) and (c) of this section, the Secretary shall give priority to research proposals under which –

- (1) the proposed research will be collaborative research organized through a center of scientific excellence;
- (2) the applicant agrees to provide matching funds (in the form of direct funding or in-kind support) in an amount equal to not less than 50 percent of the grant amount; and

- (3) the proposed research will be conducted as part of an existing private and public partnership or cooperative research effort and involves several interested research partners. (16 U.S.C. 1644)

### General provisions

#### Sec. 6 (a) Availability of funds to cooperators and grantees

The Secretary may make funds available to cooperators and grantees under this subchapter without regard to the provisions of section 3324(a) and (b) of title 31, which prohibits advances of public money.

#### (b) Coordination of cooperative aid and grants with other aid and grant authorities

To avoid duplication, the Secretary shall coordinate cooperative aid and grants under this subchapter with cooperative aid and grants the Secretary makes under any other authority.

#### (c) Dissemination of knowledge and technology developed from research activities; cooperation with specified entities

The Secretary shall use the authorities and means available to the Secretary to disseminate the knowledge and technology developed from research activities conducted under or supported by this subchapter. In meeting this responsibility, the Secretary shall cooperate, as the Secretary deems appropriate, with the entities identified in subsection (d)(3) of this section and with others.

#### (d) Additional implementative authorities

In implementing this subchapter, the Secretary, as the Secretary deems appropriate and practical, shall -

- (1) use, and encourage cooperators and grantees to use, the best available scientific skills from a variety of disciplines within and outside the fields of agriculture and forestry;
- (2) seek, and encourage cooperators and grantees to seek, a proper mixture of short-term and long-term research and a proper mixture of basic and applied research;
- (3) avoid unnecessary duplication and coordinate activities under this section among agencies of the Department of Agriculture and with other affected Federal departments and agencies, State agricultural experiment stations, State extension services, State foresters or equivalent State officials, forestry schools, and private research organizations; and
- (4) encourage the development, employment, retention, and exchange of qualified scientists and other specialists through postgraduate, postdoctoral, and other training, national and international exchange of scientists, and other incentives and programs to improve the quality of forest and rangeland renewable resources research.

(e) Construction of statutory provisions

This subchapter shall be construed as supplementing all other laws relating to the Department of Agriculture and shall not be construed as limiting or repealing any existing law or authority of the

Secretary except as specifically cited in this subchapter.

(f) Definitions

For the purposes of this subchapter, the terms "United States" and "State" shall include each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the territories and possessions of the United States. (16 U.S.C. 1645)

**Authorization of appropriations**

**Sec. 7** There are authorized to be appropriated annually such sums as may be needed to implement this subchapter. Funds appropriated under this subchapter shall remain available until expended. (16 U.S.C. 1646)

**Other Federal programs**

**Sec. 8** (a) Repeal of statutory authorities relating to investigation, experiments, and tests in reforestation and forest products

The Act of May 22, 1928, known as the McSweeney-McNary Act (45 Stat. 699-702, as amended; 16 U.S.C. 581, 581a, 581b-581i), is hereby repealed.

(b) Force and effect of cooperative and other agreements under repealed statutory authorities relating to investigation, etc., in reforestation and forest products

Contracts and cooperative and other agreements under the McSweeney-McNary Act shall remain in effect until revoked or amended by their own terms

or under other provisions of law.

(c) Issuance of rules and regulations for implementation of provisions and coordination with agricultural research, extension, and teaching provisions

The Secretary is authorized to issue such rules and regulations as the Secretary deems necessary to implement the provisions of this subchapter and to coordinate this subchapter with title XIV of the Food and Agriculture Act of 1977 (7 U.S.C. 3101 et seq.).

(d) Availability of funds appropriated under repealed statutory authorities relating to investigation, etc., in reforestation and forest products

Funds appropriated under the authority of the McSweeney-McNary Act shall be available for expenditure for the programs authorized under this subchapter. (16 U.S.C. 1647)

### **Forestry Student Grant Program**

#### **Sec. 10 (a) Establishment**

The Secretary shall establish a program, to be known as the "Forestry Student Grant Program" (hereafter referred to in this section as the "Program"), to provide assistance to expand the professional education of forestry, natural resources, and environmental scientists.

#### **(b) Student grants**

Under the Program the Secretary shall provide assistance for the establishment of a competitive grant fellowship program to assist graduate, and undergraduate minority and female, students attending

institutions having programs in forestry and natural resources.

#### **(c) Eligibility**

The Secretary shall ensure that students concentrating in the following studies shall be eligible for assistance under subsection (b) of this section:

- (1) Forestry.
- (2) Biology and forest organisms.
- (3) Ecosystem function and management.
- (4) Human-forest interaction.
- (5) International trade, competition, and cooperation.
- (6) Wood as a raw material.
- (7) Economics and policy.

#### **(d) Authorization of appropriations**

There are authorized to be appropriated such sums as may be necessary to carry out this section. (16 U.S.C. 1649)

## Food and Agriculture Act of 1977, the National Agricultural Research, Extension, and Teaching Policy Act Amendments of 1985

September 29, 1977 (Pub. L. 95-113, 91 Stat. 913; \*\*\*, 7 U.S.C. 3101 note, 3101, \*\*\*, 3103, 3125, \*\*\*, 3331 to 3333,

3336, \*\*\*)

### Subtitle A – Findings purpose and definitions

**Sec. 1401** of title XIV of Pub. L. 99-198 provided that: “This title may be cited as the ‘National Agricultural Research, Extension, and Teaching Policy Act Amendments of 1985’.” (7 U.S.C. 3101 note)

### Purposes of agricultural research, extension, and education

**Sec. 1402** The purposes of federally supported agricultural research, extension, and education are to –

- (1) enhance the competitiveness of the United States agriculture and food industry in an increasingly competitive world environment;
- (2) increase the long-term productivity of the United States agriculture and food industry while maintaining and enhancing the natural resource base on which rural America and the United States agricultural economy depend;
- (3) develop new uses and new products for agricultural commodities, such as alternative fuels, and develop new crops;

(4) support agricultural research and extension to promote economic opportunity in rural communities and to meet the increasing demand for information and technology transfer throughout the United States agriculture industry;

(5) improve risk management in the United States agriculture industry;

(6) improve the safe production and processing of, and adding of value to, United States food and fiber resources using methods that maintain the balance between yield and environmental soundness;

(7) support higher education in agriculture to give the next generation of Americans the knowledge, technology, and applications necessary to enhance the competitiveness of United States agriculture; and

(8) maintain an adequate, nutritious, and safe supply of food to meet human nutritional needs and requirements. (7 U.S.C. 3101)

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### Definitions

**Sec. 1404** When used in this chapter:

- (1) The term “Advisory Board” means the National Agricultural Research,

Extension, Education, and Economics Advisory Board.

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(8) Food and agricultural sciences. - The term "food and agricultural sciences" means basic, applied, and developmental research, extension, and teaching activities in food and fiber, agricultural, renewable natural resources, forestry, and physical and social sciences, including activities relating to the following:

- (A) Animal health, production, and well-being.
- (B) Plant health and production.
- (C) Animal and plant germ plasm collection and preservation.
- (D) Aquaculture.
- (E) Food safety.
- (F) Soil and water conservation and improvement.
- (G) Forestry, horticulture, and range management.
- (H) Nutritional sciences and promotion.
- (I) Farm enhancement, including financial management, input efficiency, and profitability.
- (J) Home economics.
- (K) Rural human ecology.
- (L) Youth development and agricultural education, including 4-H clubs.
- (M) Expansion of domestic and international markets for agricultural

commodities and products, including agricultural trade barrier identification and analysis.

(N) Information management and technology transfer related to agriculture.

(O) Biotechnology related to agriculture.

(P) The processing, distributing, marketing, and utilization of food and agricultural products.

(9) The term "Hispanic-serving institution" has the meaning given the term by section 1059c(b)(1) <sup>1</sup> of title 20.

(10) The term "land-grant colleges and universities" means those institutions eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503-505, as amended; 7 U.S.C. 301-305, 307 and 308), or the Act of August 30, 1890 (26 Stat. 417-419, as amended; 7 U.S.C. 321-326 and 328), including Tuskegee University.

(11) The term "Secretary" means the Secretary of Agriculture of the United States.

(12) The term "State" means any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, the Virgin Islands of the United States, and the District of Columbia.

(13) The term "State agricultural experiment stations" means those institutions eligible to receive funds

under the Act of March 2, 1887 (24 Stat. 440-442, as amended; 7 U.S.C. 361a-361i).

(14) Teaching and education. - The terms “teaching” and “education” mean formal classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and matters relating thereto (such as faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methodologies) conducted by colleges and universities offering baccalaureate or higher degrees.

(15) The term “cooperating forestry schools” means those institutions eligible to receive funds under the Act of October 10, 1962 (16 U.S.C. 582a et seq.), commonly known as the McIntire-Stennis Act of 1962.

(16) The term “State cooperative institutions” or “State cooperative agents” means institutions or agents designated by –

(A) the Act of July 2, 1862 (7 U.S.C. 301 et seq.), commonly known as the First Morrill Act;

(B) the Act of August 30, 1890 (7 U.S.C. 321 et seq.), commonly known as the Second Morrill Act, including Tuskegee University;

(C) the Act of March 2, 1887 (7 U.S.C. 361a et seq.), commonly known as the Hatch Act of 1887;

(D) the Act of May 8, 1914 (7 U.S.C. 341 et seq.), commonly known as the

Smith-Lever Act;

(E) the Act of October 10, 1962 (16 U.S.C. 582a et seq.), commonly known as the McIntire-Stennis Act of 1962; and

(F) subchapters V, VI, XI, and XII of this chapter.

(17) The term “sustainable agriculture” means an integrated system of plant and animal production practices having a site-specific application that will, over the long-term –

(A) satisfy human food and fiber needs;

(B) enhance environmental quality and the natural resource base upon which the agriculture economy depends;

(C) make the most efficient use of nonrenewable resources and on-farm resources and integrate, where appropriate, natural biological cycles and controls;

(D) sustain the economic viability of farm operations; and

(E) enhance the quality of life for farmers and society as a whole. (7 U.S.C. 3103)

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<sup>1</sup> Section 1059c of title 20, referred to in par. (9), was amended generally by Pub. L. 105-244, title III, Sec. 303(e), Oct. 7, 1998, 112 Stat. 1639, and, as so amended, no longer relates to Hispanic-serving institutions

**Subtitle B – Coordination and planning of agricultural research,**

### **extension and teaching**

#### **Responsibilities of Secretary and Department of Agriculture**

**Sec. 1405** The Department of Agriculture is designated as the lead agency of the Federal Government for agricultural research (except with respect to the biomedical aspects of human nutrition concerned with diagnosis or treatment of disease), extension, and teaching in the food and agricultural sciences, and the Secretary, in carrying out the Secretary's responsibilities, shall –

- (1) establish jointly with the Secretary of Health and Human Services procedures for coordination with respect to nutrition research in areas of mutual interest;
- (2) keep informed of developments in, and the Nation's need for, research, extension, teaching, and manpower development in the food and agricultural sciences and represent such need in deliberations within the Department of Agriculture, elsewhere within the executive branch of the United States Government, and with the several States and their designated land-grant colleges and universities, other colleges and universities, agricultural and related industries, and other interested institutions and groups;
- (3) coordinate all agricultural research, extension, and teaching activity conducted or financed by the Department of Agriculture and, to the maximum extent practicable, by other agencies of the executive branch of the United

States Government;

- (4) take the initiative in establishing coordination of State-Federal cooperative agricultural research, extension, and teaching programs, funded in whole or in part by the Department of Agriculture in each State, through the administrative heads of land-grant colleges and universities and the State directors of agricultural experiment stations and cooperative extension services, and other appropriate program administrators;
- (5) consult the Advisory Board and appropriate advisory committees of the Department of Agriculture in the formulation of basic policies, goals, strategies, and priorities for programs of agricultural research, extension, and teaching;
- (6) report (as a part of the Department of Agriculture's annual budget submissions) to the House Committee on Agriculture, the House Committee on Appropriations, the Senate Committee on Agriculture, Nutrition, and Forestry, and the Senate Committee on Appropriations actions taken or proposed to support the recommendations of the Advisory Board;
- (7) establish appropriate review procedures to assure that agricultural research projects are timely and properly reported and published and that there is no unnecessary duplication of effort or overlapping between agricultural research units;
- (8) establish Federal or cooperative multidisciplinary research teams on

major agricultural research problems with clearly defined leadership, budget responsibility, and research programs;

(9) in order to promote the coordination of agricultural research of the Department of Agriculture, conduct a continuing inventory of ongoing and completed research projects being conducted within or funded by the Department;

(10) coordinate all agricultural research, extension, and teaching activities conducted or financed by the Department of Agriculture with the periodic renewable resource assessment and program provided for in sections 1601 and 1602 of title 16 and the appraisal and program provided for in sections 2004 and 2005 of title 16;

(11) coordinate the efforts of States, State cooperative institutions, State extension services, the Advisory Board, and other appropriate institutions in assessing the current status of, and developing a plan for, the effective transfer of new technologies, including biotechnology, to the farming community, with particular emphasis on addressing the unique problems of small- and medium-sized farms in gaining information about those technologies; and

(12) establish appropriate controls with respect to the development and use of the application of biotechnology to agriculture. (7 U.S.C. 3121)

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### **Annual report of Secretary of Agriculture to President and**

### **Congress**

**Sec. 1410** The Secretary shall submit to the President and Congress by January 1 of each year a report on the Nation's agricultural research, extension, and teaching activities, and such report shall include –

(1) a review covering the following three categories of activities of the Department of Agriculture with respect to agricultural research, extension, and teaching activities and the relationship of these activities to similar activities of other departments and agencies of the Federal Government, the States, colleges and universities, and the private sector –

(A) a current inventory of such activities organized by statutory authorization and budget outlay;

(B) a current inventory of such activities organized by field of basic and applied science; and

(C) a current inventory of such activities organized by commodity and product category;

(2) any recommendations of the Advisory Board; and

(3) in the second and succeeding years, a five-year projection of national priorities with respect to agricultural research, extension, and teaching, taking into account both domestic and international needs. (7 U.S.C. 3125)

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### **Subtitle M – Rangeland Research**

### **Congressional statement of purpose**

**Sec. 1478** It is the purpose of this subchapter to promote the general welfare through improved productivity of the Nation's rangelands, which comprise 60 per centum of the land area of the United States. Most of these rangelands are unsuited for cultivation, but produce a great volume of forage that is inedible by humans but readily converted, through an energy efficient process, to high quality food protein by grazing animals. These native grazing lands are located throughout the United States and are important resources for major segments of the Nation's livestock industry. In addition to the many livestock producers directly dependent on rangelands, other segments of agriculture are indirectly dependent on range-fed livestock and on range-produced forage that can be substituted for grain in times of grain scarcity. Recent resource assessments indicate that forage production of rangeland can be increased at least 100 per centum through development and application of improved range management practices while simultaneously enhancing wildlife, watershed, recreational, and aesthetic values and reducing hazards of erosion and flooding. (7 U.S.C. 3331)

### **Program; development, purposes, scope, etc.**

**Sec. 1479** The Secretary may develop and implement a cooperative rangeland research program in coordination with the program carried out under the Renewable Resources Extension Act of 1978 (16 U.S.C. 1671 et seq.), to improve the

production and quality of desirable native forages or introduced forages which are managed in a similar manner to native forages for livestock and wildlife. The program shall include studies of:

- (1) management of rangelands and agricultural land as integrated systems for more efficient utilization of crops and waste products in the production of food and fiber;
- (2) methods of managing rangeland watersheds to maximize efficient use of water and improve water yield, water quality, and water conservation, to protect against onsite and offsite damage of rangeland resources from floods, erosion, and other detrimental influences, and to remedy unsatisfactory and unstable rangeland conditions;
- (3) revegetation and rehabilitation of rangelands including the control of undesirable species of plants; and
- (4) such other matters as the Secretary considers appropriate. (7 U.S.C. 3332)

### **Grants; eligible institutions; amounts**

**Sec. 1480** The Secretary may make grants to land-grant colleges and universities, State agricultural experiment stations, and to colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland research, as determined by the Secretary, to carry out rangeland research. Except in the case of Federal laboratories, this grant program shall be based on a matching formula of 50 per centum Federal and 50 per centum non-Federal funding. (7 U.S.C. 3333)

**Authorization of appropriations;  
allocation of funds**

**Sec. 1483** (a) There are authorized to be appropriated, to implement the provisions of this subchapter, such sums not to exceed \$10,000,000 for each of the fiscal years 1991 through [Amended by Pub. L. 107-171, sec. 7117, 116 Stat. 434] ~~2002~~ 2007.

(b) Funds appropriated under this section shall be allocated by the Secretary to eligible institutions for work to be done as mutually agreed upon between the Secretary and the eligible institution or institutions. (7 U.S.C. 3336)

## Foreign Operations Appropriations Act of 1990

November 5, 1990 (Pub. L. 101-513, 104 Stat. 2070; 16 U.S.C. 4501 note, 4501, 4502, 4503, 4503a to 4503d, 4504, 4505, 1641, 1643, 2101, 2109)

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### Forestry and related natural resource assistance

#### Sec. 602 (a) Focus of activities

To achieve the maximum impact from activities undertaken under the authority of this chapter, the Secretary shall focus such activities on the key countries which could have a substantial impact on emissions of greenhouse gases related to global warming.

#### (b) Authority for international forestry activities

In support of forestry and related natural resource activities outside of the United States and its territories and possessions, the Secretary of Agriculture may –

(1) provide assistance that promotes sustainable development and global environmental stability, including assistance for -

(A) conservation and sustainable management of forest land;

(B) forest plantation technology and tree improvement;

(C) rehabilitation of cutover lands, eroded watersheds, and areas damaged by wildfires or other natural disasters;

(D) prevention and control of insects, diseases, and other damaging agents;

(E) preparedness planning, training, and operational assistance to combat natural disasters;

(F) more complete utilization of forest products leading to resource conservation;

(G) range protection and enhancement; and

(H) wildlife and fisheries habitat protection and improvement;

(2) share technical, managerial, extension, and administrative skills related to public and private natural resource administration;

(3) provide education and training opportunities to promote the transfer and utilization of scientific information and technologies;

(4) engage in scientific exchange and cooperative research with foreign governmental, educational, technical and research institutions; and

(5) cooperate with domestic and international organizations that further international programs for the management and protection of forests, rangelands, wildlife and fisheries, and related natural resource activities.

## (c) Eligible countries

The Secretary shall undertake the activities described in subsection (b) of this section, in countries that receive assistance from the Agency for International Development only at the request, or with the concurrence, of the Administrator of the Agency for International Development. (16 U.S.C. 4501)

### **Tropical deforestation assessment and assistance**

**Sec. 603** In support of the Tropical Forestry Action Plan and to specifically address tropical deforestation and degradation, the Secretary may –

- (1) support and actively participate in global and regional meetings that seek to reform such Plan;
- (2) together with the United States Agency for International Development,<sup>1</sup> and other Federal agencies, provide technical assistance to tropical countries for the formulation of national forestry sector development strategies; and
- (3) cooperate with tropical countries on research, training, and technical programs aimed at implementing national forestry sector development strategies. (16 U.S.C. 4502)

<sup>1</sup> So in original. The comma probably should not appear.

### **Institute of Tropical Forestry in Puerto Rico**

#### **Sec. 604** (a) Expansion

The Secretary shall expand the capabilities of and construct additional facilities at

the Caribbean National Forest and Institute of Tropical Forestry in Puerto Rico, as the Secretary determines necessary to support the purpose of this chapter, and as funds are appropriated for such expansion and construction.

#### (b) Tropical forestry plans

Not later than 1 year after November 5, 1990, the Secretary shall prepare and submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate, the Committee on Agriculture of the House of Representatives, and to the Committees on Appropriations of the Senate and House of Representatives, a tropical forestry plan for the expansion and construction of additional facilities under subsection (a) of this section. Such plan shall include provisions for –

- (1) the construction or acquisition of a major center for education, interpretation, and appreciation of the benefits and methods of the intelligent management of tropical forests;
- (2) the acquisition or construction of facilities for housing and classroom instruction near the Caribbean National Forest/Luguillo Experimental Forest; and
- (3) the acquisition or construction of facilities for the study and recovery of endangered tropical wildlife, fish and plant species. (16 U.S.C. 4503)

### **Institute of Pacific Islands Forestry**

#### **Sec. 605** (a) Expansion

The Secretary shall expand the capabilities of and construct additional facilities,

as funds are appropriated for the expansion and construction, at –

- (1) the Institute of Pacific Islands Forestry; and
- (2) tropical forests in the State of Hawaii.

(b) Tropical forestry plan

(1) In general

Not later than 1 year after the date of receipt by the Secretary of the action plan required by section 5(b) <sup>2</sup> of the Hawaii Tropical Forest Recovery Act, the Secretary shall prepare and submit to the Committee on Agriculture and the Committee on Natural Resources of the House of Representatives, the Committee on Agriculture, Nutrition, and Forestry of the Senate, and to the Committees on Appropriations of the House of Representatives and Senate, a tropical forestry plan to expand the capabilities of and construct additional facilities under subsection (a) of this section.

(2) Elements

The plan shall provide for -

- (A) the establishment of a model center for research, demonstration, education, training, and outreach activities suitable for transferring scientific, technical, managerial, and administrative assistance to governmental and non-governmental organizations seeking to address problems associated with tropical forests within and outside the United States;
- (B) the acquisition or construction of

facilities for research, classroom instruction, and housing near an experimental tropical forest in the State of Hawaii;

(C) the acquisition or construction of facilities for the study and recovery of endangered tropical wildlife, fish, and plant species and the restoration of their habitats;

(D) the study of biological control of non-native species that degrade or destroy native forest ecosystems;

(E) achieving a better understanding of global climate change and the significance of achieving a reduction of greenhouse gases through research associated with the unique atmospheric conditions found in Hawaii and the Pacific Ocean;

(F) a review of the extent to which existing Federal forestry programs can be utilized to achieve the purposes of the plan; and

(G) the establishment of experimental tropical forests in the State of Hawaii as authorized by section 4503b of this title.

(3) Capability

In preparing elements of the plan that address paragraph (2)(F), the Secretary shall identify the capability of the plan -

- (A) to promote a greater understanding of tropical forest ecosystem processes, conservation biology, and biodiversity management;
- (B) to demonstrate the various benefits of maintaining a tropical forest

reserve system;

(C) to promote sound watershed and forest management;

(D) to develop compatible land uses adjacent to protected natural areas; and

(E) to develop new methods of reclaiming and restoring degraded lands. (16 U.S.C. 4503a)

<sup>2</sup> Section 5(b) of the Hawaii Tropical Forest Recovery Act, referred to in subsec. (b)(1), probably means section 4(b) of that Act, Pub. L. 102-574, which contains provisions regarding an action plan, and which is set out as a note below. Section 5 of that Act, which is set out as a note under section 4502a of this title, does not contain a subsec. (b).

## **Hawaii Experimental Tropical Forest**

### **Sec. 606** (a) Definitions

As used in this section:

(1) Forest

The term “Forest” means the Hawaii Experimental Tropical Forest.

(2) Governor

The term “Governor” means the Governor of Hawaii.

(3) Lands

The term “lands” means lands, waters, and interests in lands and waters.

(4) State

The term “State” means the State of Hawaii.

(b) Establishment and management

At the request of the Governor, the Secretary shall establish and administer within the State a Hawaii Experimental Tropical Forest. The Forest shall be managed as -

(1) a model of quality tropical forest management where harvesting on a sustainable yield basis can be demonstrated in balance with natural resource conservation;

(2) a site for research on tropical forestry, conservation biology, and natural resource management; and

(3) a center for demonstration, education, training, and outreach on tropical forestry, conservation biology, and natural resources research and management.

(c) Delineation of location of Forest

(1) Identification of lands

The Governor and the Secretary shall identify one or more suitable sites for the Forest in lands within the State. The identification of each site shall be based on scientific, ecological, administrative, and such other factors as the Governor and Secretary consider to be necessary or desirable to achieve the purposes of this section. Each site identified pursuant to the preceding sentence shall be of sufficient size and located so that the site can be effectively managed for Forest purposes.

(2) Exterior boundaries

The exterior boundaries of the Forest, including the boundaries of all sites identified for Forest purposes, shall be

delineated on an official map. The map shall be available for public inspection in the office of the Administrator of the Division of Forestry and Wildlife of the Department of Land and Natural Resources of the State. The Governor and the Secretary may from time to time, by mutual agreement, amend the official map to modify the boundaries of the Forest.

(d) Authorities of Secretary

(1) In general

To carry out the purposes of this section, the Secretary is authorized –

(A) to administer the Forest in cooperation with the Governor and affected State agencies;

(B) to make grants and enter into contracts and cooperative agreements with the Federal Government, the government of the State, local governments, corporations, nonprofit organizations and individuals;

(C) to exercise existing authority with respect to cooperative forestry and research for Forest purposes; and

(D) to issue necessary rules and regulations or apply existing rules and regulations applicable to areas administered by the Forest Service that are necessary or desirable to administer the Forest -

(i) for the purposes described in subsection (b) of this section;

(ii) to protect persons within the Forest; and

(iii) to preserve and protect the

resources in the Forest.

(2) Land acquisition

The authority in section 1643 of this title shall be available to the Secretary to carry out this section.

(3) Statutory construction

Nothing in this section is intended to affect the jurisdiction of the State, both civil and criminal, over any person within the Forest by reason of the establishment of the Forest under this section, except in the case of a penalty for an offense against the United States. (16 U.S.C. 4503b)

**Sec. 608** As used in this chapter (unless the context otherwise requires):

(1) Institutes of Tropical Forestry

The term “Institutes of Tropical Forestry” means the Institute of Tropical Forestry in Puerto Rico and the Institute of Pacific Islands Forestry established under section 6706 of title 7.

(2) Secretary

The term “Secretary” means the Secretary of Agriculture.

(3) State

The term “State” means each of the 50 States, Guam, American Samoa, the Republic of Palau (until the Compact of Free Association enters into effect), Puerto Rico, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands. (16 U.S.C. 4503D)

**Administrative provisions**

**Sec. 609** (a) Coordination of activities

The Secretary shall coordinate all activities outside of the United States under this chapter with other Federal officials, departments, agencies, and international organizations, as the President may require.

(b) Assistance

The Secretary may provide assistance, as determined appropriate by the Secretary to carry out this chapter, including technical and financial assistance, equipment, and facilities without reimbursement. (16 U.S.C. 4504)

**Authorization of appropriations**

**Sec. 610** There are authorized to be appropriated such sums as may be necessary to carry out this chapter. (16 U.S.C. 4505)

## Forest Highways

The USDA Forest Service authority for forest highways is derived from multiple laws. Included here are sections of the U. S. Code found in Title 23 that contain these authorities.

### **The Surface Transportation Extension Act of 2003**

**August 27, 1958 (Pub. L. 85-767, 72 Stat. 885)**

#### **Definitions and declaration of policy (23 U.S.C. 101)**

(a) Definitions. - In this title, the following definitions apply:

(1) Apportionment. - The term "apportionment" includes unexpended apportionments made under prior authorization laws.

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(3) Construction. - The term "construction" means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a highway, including bond costs and other costs relating to the issuance in accordance with section 122 of bonds or other debt financing instruments and costs incurred by the State in performing Federal-aid project related audits that directly benefit the Federal-aid highway program. Such term includes -

(A) locating, surveying, and mapping (including the establishment of temporary and permanent geodetic markers in accordance with specifications of

the National Oceanic and Atmospheric Administration of the Department of Commerce);

(B) resurfacing, restoration, and rehabilitation;

(C) acquisition of rights-of-way;

(D) relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

(E) elimination of hazards of railway grade crossings;

(F) elimination of roadside obstacles;

(G) improvements that directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and passenger loading and unloading areas; and

(H) capital improvements that directly facilitate an effective vehicle weight enforcement program, such as scales (fixed and portable), scale pits, scale installation, and scale houses.

(4) County. - The term "county" includes corresponding units of government under any other name in States that do not have county organizations and, in those States in which the county

government does not have jurisdiction over highways, any local government unit vested with jurisdiction over local highways.

(5) Federal-aid highway. - The term “Federal-aid highway” means a highway eligible for assistance under this chapter other than a highway classified as a local road or rural minor collector.

(6) Federal-aid system. - The term “Federal-aid system” means any of the Federal-aid highway systems described in section 103.

(7) Federal lands highway. - The term “Federal lands highway” means a forest highway, public lands highway, park road, parkway, refuge road, and Indian reservation road that is a public road.

(8) Forest development roads and trails. - The term “forest development roads and trails” means forest roads and trails under the jurisdiction of the Forest Service.

(9) Forest highway. - The term “forest highway” means a forest road under the jurisdiction of, and maintained by, a public authority and open to public travel.

(10) Forest road or trail. - The term “forest road or trail” means a road or trail wholly or partly within, or adjacent to, and serving the National Forest System that is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

(11) Highway. - The term “highway” includes - (A) a road, street, and

parkway; (B) a right-of-way, bridge, railroad-highway crossing, tunnel, drainage structure, sign, guardrail, and protective structure, in connection with a highway; and (C) a portion of any interstate or international bridge or tunnel and the approaches thereto, the cost of which is assumed by a State transportation department, including such facilities as may be required by the United States Customs and Immigration Services in connection with the operation of an international bridge or tunnel.

(12) Indian reservation road. - The term “Indian reservation road” means a public road that is located within or provides access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal Government, or Indian and Alaska Native villages, groups, or communities in which Indians and Alaskan Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.

(13) Interstate System. - The term “Interstate System” means the Dwight D. Eisenhower National System of Interstate and Defense Highways described in section 103(c).

(14) Maintenance. - The term “maintenance” means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utiliza-

tion of the highway.

(15) Maintenance area. - The term “maintenance area” means an area that was designated as a nonattainment area, but was later redesignated by the Administrator of the Environmental Protection Agency as an attainment area, under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

(16) National Highway System. - The term “National Highway System” means the Federal-aid highway system described in section 103(b).

(17) Operating costs for traffic monitoring, management, and control. - The term “operating costs for traffic monitoring, management, and control” includes labor costs, administrative costs, costs of utilities and rent, and other costs associated with the continuous operation of traffic control, such as integrated traffic control systems, incident management programs, and traffic control centers.

(18) Operational improvement. - The term “operational improvement” - (A) means (i) a capital improvement for installation of traffic surveillance and control equipment, computerized signal systems, motorist information systems, integrated traffic control systems, incident management programs, and transportation demand management facilities, strategies, and programs, and (ii) such other capital improvements to public roads as the Secretary may designate, by regulation; and

(B) does not include resurfacing, restoring, or rehabilitating improve-

ments, construction of additional lanes, interchanges, and grade separations, and construction of a new facility on a new location.

(19) Park road. - \*\*\*

(20) Parkway. - The term “parkway”, as used in chapter 2 of this title, means a parkway authorized by Act of Congress on lands to which title is vested in the United States.

(21) Project. - The term “project” means an undertaking to construct a particular portion of a highway, or if the context so implies, the particular portion of a highway so constructed or any other undertaking eligible for assistance under this title.

(22) Project agreement. - The term “project agreement” means the formal instrument to be executed by the State transportation department and the Secretary as required by section 106.

(23) Public authority. - The term “public authority” means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

(24) Public lands development roads and trails. - The term “public lands development roads and trails” means those roads and trails that the Secretary of the Interior determines are of primary importance for the development, protection, administration, and utilization of public lands and resources under the control of the Secretary of the Interior.

- (25) Public lands highway. - The term “public lands highway” means a forest road under the jurisdiction of and maintained by a public authority and open to public travel or any highway through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations under the jurisdiction of and maintained by a public authority and open to public travel.
- (26) Public lands highways. - The term “public lands highways” means those main highways through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations, which are on the Federal-aid systems.
- (27) Public road. - The term “public road” means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.
- (28) Refuge road. - \*\*\*
- (29) Rural areas. - The term “rural areas” means all areas of a State not included in urban areas.
- (30) Safety improvement project. - The term “safety improvement project” means a project that corrects or improves high hazard locations, eliminates roadside obstacles, improves highway signing and pavement marking, installs priority control systems for emergency vehicles at signalized intersections, installs or replaces emergency motorist aid call boxes, or installs traffic control or warning devices at locations with high accident potential.
- (31) Secretary. - The term “Secretary” means Secretary of Transportation.
- (32) State. - The term “State” means any of the 50 States, the District of Columbia, or Puerto Rico.
- (33) State funds. - The term “State funds” includes funds raised under the authority of the State or any political or other subdivision thereof, and made available for expenditure under the direct control of the State transportation department.
- (34) State transportation department. - The term “State transportation department” means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction.
- (35) Transportation enhancement activities. - The term “transportation enhancement activities” means, with respect to any project or the area to be served by the project, any of the following activities if such activity relates to surface transportation: provision of facilities for pedestrians and bicycles, provision of safety and educational activities for pedestrians and bicyclists, acquisition of scenic easements and scenic or historic sites, scenic or historic highway programs (including the provision of tourist and welcome center facilities), landscaping and other scenic beautification, historic preservation, rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals), preservation of abandoned railway corridors

(including the conversion and use thereof for pedestrian or bicycle trails), control and removal of outdoor advertising, archaeological planning and research, environmental mitigation to address water pollution due to highway runoff or reduce vehicle-caused wildlife mortality while maintaining habitat connectivity, and establishment of transportation museums.

(36) Urban area. - The term "urban area" means an urbanized area or, in the case of an urbanized area encompassing more than one State, that part of the urbanized area in each such State, or urban place as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall encompass, at a minimum, the entire urban place designated by the Bureau of the Census, except in the case of cities in the State of Maine and in the State of New Hampshire.

(37) Urbanized area. - The term "urbanized area" means an area with a population of 50,000 or more designated by the Bureau of the Census, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall encompass, at a minimum, the entire urbanized area within a State as designated by the Bureau of the Census.

(b) It is hereby declared to be in the national interest to accelerate the construction of the Federal-aid highway systems, including The Dwight D. Eisenhower System of Interstate and Defense Highways, since many of such highways, or portions thereof, are in fact inadequate to meet the needs of local and interstate commerce, for the national and civil defense. It is hereby declared that the prompt and early completion of The Dwight D. Eisenhower System of Interstate and Defense Highways, so named because of its primary importance to the national defense and hereafter referred to as the "Interstate System", is essential to the national interest and is one of the most important objectives of this Act. It is the intent of Congress that the Interstate System be completed as nearly as practicable over the period of availability of the forty years' appropriations authorized for the purpose of expediting its construction, reconstruction, or improvement, inclusive of necessary tunnels and bridges, through the fiscal year ending September 30, 1996, under section 108(b) of the Federal-Aid Highway Act of 1956 (70 Stat. 374), and that the entire system in all States be brought to simultaneous completion. Insofar as possible in consonance with this objective, existing highways located on an interstate route shall be used to the extent that such use is practicable, suitable, and feasible, it being the intent that local needs, to the extent practicable, suitable, and feasible, shall be given equal consideration with the needs of interstate commerce. It is further declared that since the Interstate System is now in the final phase of completion it

shall be the national policy that increased emphasis be placed on the construction and reconstruction of the other Federal-aid systems in accordance with the first paragraph of this subsection, in order to bring all of the Federal-aid systems up to standards and to increase the safety of these systems to the maximum extent.

(c) It is the sense of Congress that under existing law no part of any sums authorized to be appropriated for expenditure upon any Federal-aid system which has been apportioned pursuant to the provisions of this title shall be impounded or withheld from obligation, for purposes and projects as provided in this title, by any officer or employee in the executive branch of the Federal Government, except such specific sums as may be determined by the Secretary of the Treasury, after consultation with the Secretary of Transportation, are necessary to be withheld from obligation for specific periods of time to assure that sufficient amounts will be available in the Highway Trust Fund to defray the expenditures which will be required to be made from such fund.

(d) No funds authorized to be appropriated from the Highway Trust Fund shall be expended by or on behalf of any Federal department, agency, or instrumentality other than the Federal Highway Administration unless funds for such expenditure are identified and included as a line item in an appropriation Act and are to meet obligations of the United States heretofore or hereafter incurred under this title attributable to the construction of Federal-aid highways or highway plan-

ning, research, or development, or as otherwise specifically authorized to be appropriated from the Highway Trust Fund by Federal-aid highway legislation.

(e) It is the national policy that to the maximum extent possible the procedures to be utilized by the Secretary and all other affected heads of Federal departments, agencies, and instrumentalities for carrying out this title and any other provision of law relating to the Federal highway programs shall encourage the substantial minimization of paperwork and interagency decision procedures and the best use of available manpower and funds so as to prevent needless duplication and unnecessary delays at all levels of government. (23 U.S.C. 101)

**Aug. 27, 1958 (Pub. L. 85-767, 72 Stat. 898)**

**Federal share payable (23 U.S.C. 120)**

(a) Interstate System Projects. –

(1) In general. - Except as otherwise provided in this chapter, the Federal share payable on account of any project on the Interstate System (including a project to add high occupancy vehicle lanes and a project to add auxiliary lanes but excluding a project to add any other lanes) shall be 90 percent of the total cost thereof, plus a percentage of the remaining 10 percent of such cost in any State containing unappropriated and unreserved public lands and nontaxable Indian lands, individual and tribal, exceeding 5 percent of the total area of all lands therein, equal to the percentage

that the area of such lands in such State is of its total area; except that such Federal share payable on any project in any State shall not exceed 95 percent of the total cost of such project.

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(c) Increased Federal Share for Certain Safety Projects. - The Federal share payable on account of any project for traffic control signalization, safety rest areas, pavement marking, commuter carpooling and vanpooling, rail-highway crossing closure, or installation of traffic signs, traffic lights, guardrails, impact attenuators, concrete barrier endtreatments, breakaway utility poles, or priority control systems for emergency vehicles or transit vehicles at signalized intersections may amount to 100 percent of the cost of construction of such projects; except that not more than 10 percent of all sums apportioned for all the Federal-aid systems for any fiscal year in accordance with section 104 of this title shall be used under this subsection. In this subsection, the term "safety rest area" means an area where motor vehicle operators can park their vehicles and rest, where food, fuel, and lodging services are not available, and that is located on a segment of highway with respect to which the Secretary determines there is a shortage of public and private areas at which motor vehicle operators can park their vehicles and rest.

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(e) Emergency Relief. - The Federal share payable on account of any repair or

reconstruction provided for by funds made available under section 125 of this title on account of any project on a Federal-aid highway, including the Interstate System, shall not exceed the Federal share payable on a project on such system<sup>1</sup> as provided in subsections (a) and (b) of this section; except that (1) the Federal share payable for eligible emergency repairs to minimize damage, protect facilities, or restore essential traffic accomplished within 180 days after the actual occurrence of the natural disaster or catastrophic failure may amount to 100 percent of the costs thereof; and (2) the Federal share payable on account of any repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads may amount to 100 percent of the cost thereof. The total cost of a project may not exceed the cost of repair or reconstruction of a comparable facility. As used in this section with respect to bridges and in section 144 of this title, "a comparable facility" shall mean a facility which meets the current geometric and construction standards required for the types and volume of traffic which such facility will carry over its design life.

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(g) At the request of any State, the Secretary may from time to time enter into agreements with such State to reimburse the State for the Federal share of the costs of preliminary and construc-

tion engineering at an agreed percentage of actual construction costs for each project, in lieu of the actual engineering costs for such project. The Secretary shall annually review each such agreement to insure that such percentage reasonably represents the engineering costs actually incurred by such State.

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(k) Use of Federal Land Management Agency Funds. - Notwithstanding any other provision of law, the funds appropriated to any Federal land management agency may be used to pay the non-Federal share of the cost of any Federal-aid highway project the Federal share of which is funded under section 104.

(l) Use of Federal Lands Highways Program Funds. - Notwithstanding any other provision of law, the funds authorized to be appropriated to carry out the Federal lands highways program under section 204 may be used to pay the non-Federal share of the cost of any project that is funded under section 104 and that provides access to or within Federal or Indian lands. (23 U.S.C. 120)

<sup>1</sup> So in original. Probably should be "such highway"

### **Emergency relief (23 U.S.C. 125)**

(a) General Eligibility. -

Subject to this section and section 120, an emergency fund is authorized for expenditure by the Secretary for the repair or reconstruction of highways, roads, and trails, in any part of the United States, including Indian reservations, that the

Secretary finds have suffered serious damage as a result of -

(1) natural disaster over a wide area, such as by a flood, hurricane, tidal wave, earthquake, severe storm, or landslide; or

(2) catastrophic failure from any external cause.

(b) Restriction on Eligibility. - In no event shall funds be used pursuant to this section for the repair or reconstruction of bridges that have been permanently closed to all vehicular traffic by the State or responsible local official because of imminent danger of collapse due to a structural deficiency or physical deterioration.

(c) Funding. - Subject to the following limitations, there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as may be necessary to establish the fund authorized by this section and to replenish it on an annual basis:

(1) Not more than \$100,000,000 is authorized to be obligated in any 1 fiscal year commencing after September 30, 1980, to carry out the provisions of this section; except that, if in any fiscal year the total of all obligations under this section is less than the amount authorized to be obligated in such fiscal year, the unobligated balance of such amount shall remain available until expended and shall be in addition to amounts otherwise available to carry out this section each year.

(2) Pending such appropriation or replenishment, the Secretary may obligate from any funds heretofore or hereafter appropriated for obligation in accordance with this title, including existing Federal-aid appropriations, such sums as may be necessary for the immediate prosecution of the work herein authorized. Funds obligated under this paragraph shall be reimbursed from such appropriation or replenishment.

(d) The Secretary may expend funds from the emergency fund herein authorized for the repair or reconstruction of highways on Federal-aid highways in accordance with the provisions of this chapter: Provided, That (1) obligations for projects under this section, including those on highways, roads, and trails mentioned in subsection (e) of this section, resulting from a single natural disaster or a single catastrophic failure in a State shall not exceed \$100,000,000, and (2) the total obligations for projects under this section in any fiscal year in the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall not exceed \$20,000,000. Notwithstanding any provision of this chapter actual and necessary costs of maintenance and operation of ferryboats providing temporary substitute highway traffic service, less the amount of fares charged, may be expended from the emergency fund herein authorized on Federal-aid highways. Except as to highways, roads, and trails mentioned in subsection (e) of this section, no funds shall be so expended unless the Secretary has received an application therefor from

the State transportation department, and unless an emergency has been declared by the Governor of the State and concurred in by the Secretary, except that if the President has declared such emergency to be a major disaster for the purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) concurrence of the Secretary is not required.

(e) The Secretary may expend funds from the emergency fund herein authorized, either independently or in cooperation with any other branch of the Government, State agency, organization, or person, for the repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads, whether or not such highways, roads, or trails are Federal-aid highways.

(f) Treatment of Territories. - For purposes of this section, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall be considered to be States and parts of the United States, and the chief executive officer of each such territory shall be considered to be a Governor of a State. (23 U.S.C. 125)

#### **Authorizations (23 U.S.C. 201)**

The provision of this title shall apply to all unappropriated authorizations contained in prior Acts, and also to all unexpended appropriations heretofore made, providing for the expenditure of Federal funds on

the following classes of highways: Forest highways, forest development roads and trails, park road, parkways, Indian reservation roads, refuge roads, public lands highways, and defense access roads. All such authorizations and appropriations shall continue in full force and effect, but hereafter obligations entered into and expenditures made pursuant thereto shall be subject to the provisions of this title. (23 U.S.C. 201)

#### **Allocations (23 U.S.C. 202)**

(a) On October 1 of each fiscal year, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for forest development roads and trails according to the relative needs of the various national forests. Such allocation shall be consistent with the renewable resource and land use planning for the various national forests.

(b) On October 1 of each fiscal year, the Secretary shall allocate 34 percent of the sums authorized to be appropriated for such fiscal year for public lands highways among those States having unappropriated or unreserved public lands, nontaxable Indian lands or other Federal reservations, on the basis of need in such States, respectively, as determined by the Secretary upon application of the State transportation departments of the respective States. The Secretary shall give preference to those projects which are significantly impacted by Federal land and resource management activities which are proposed by a State which contains at least 3 percent of the total public lands in the Nation. The Secretary shall allocate

66 percent of the remainder of the authorization for public lands highways for each fiscal year as is provided in section 134 of the Federal-Aid Highway Act of 1987, and with respect to these allocations the Secretary shall give equal consideration to projects that provide access to and within the National Forest System, as identified by the Secretary of Agriculture through renewable resources and land use planning and the impact of such planning on existing transportation facilities. (23 U.S.C. 202)

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#### **Availability of funds (23 U.S.C. 203)**

Funds authorized for forest development roads and trails, public lands development roads and trails, park road, parkways, refuge roads, Indian reservation roads, and public lands highways shall be available for contract upon apportionment, or on October 1, of the fiscal year for which authorized if no apportionment is required. Any amount remaining unexpended for a period of three years after the close of the fiscal year for which authorized shall lapse. The Secretary of the Department charged with the administration of such funds is granted authority to incur obligations, approve projects, and enter into contracts under such authorizations and his action in doing so shall be deemed a contractual obligation of the United States for the payment of the cost thereof and such funds shall be deemed to have been expended when so obligated. Any funds heretofore or hereafter authorized for any fiscal year for forest development roads and trails, public lands

development roads and trails, park road, parkways, refuge roads, Indian roads, and public lands highways shall be deemed to have been expended if a sum equal to the total of the sums authorized for such fiscal year and previous fiscal years since and including the fiscal year ending June 30, 1955, shall have been obligated. Any of such funds released by payment of final voucher or modification of project authorizations shall be credited to the balance of unobligated authorizations and be immediately available for expenditure. Notwithstanding any other provision of law, the authorization by the Secretary of engineering and related work for a Federal lands highways program project, or the approval by the Secretary of plans, specifications, and estimates for construction of a Federal lands highways program project, shall be deemed to constitute a contractual obligation of the Federal Government to pay the Federal share of the cost of the project. (23 U.S.C. 203 )

**Federal Lands Highways Program  
(23 U.S.C. 204)**

(a) Establishment. -

(1) In general. - Recognizing the need for all Federal roads that are public roads to be treated under uniform policies similar to the policies that apply to Federal-aid highways, there is established a coordinated Federal lands highways program that shall apply to public lands highways, park roads and parkways, and Indian reservation roads and bridges.

(2) Transportation planning procedures. - In consultation with the Secretary of each appropriate Federal land manage-

ment agency, the Secretary shall develop, by rule, transportation planning procedures that are consistent with the metropolitan and statewide planning processes required under sections 134 and 135.

(3) Approval of transportation improvement program. - The transportation improvement program developed as a part of the transportation planning process under this section shall be approved by the Secretary.

(4) Inclusion in other plans. - All regionally significant Federal lands highways program projects - (A) shall be developed in cooperation with States and metropolitan planning organizations; and (B) shall be included in appropriate Federal lands highways program, State, and metropolitan plans and transportation improvement programs.

(5) Inclusion in state programs. - The approved Federal lands highways program transportation improvement program shall be included in appropriate State and metropolitan planning organization plans and programs without further action on the transportation improvement program.

(6) Development of systems. - The Secretary and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, develop by rule safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program.

(b) Funds available for public lands highways, park roads and parkways, and

Indian reservation roads shall be used by the Secretary and the Secretary of the appropriate Federal land management agency to pay for the cost of transportation planning, research, engineering, and construction of the highways, roads, and parkways, or of transit facilities within public lands, national parks, and Indian reservations. In connection with activities under the preceding sentence, the Secretary and the Secretary of the appropriate Federal land management agency may enter into construction contracts and other appropriate contracts with a State or civil subdivision of a State or Indian tribe. In the case of Indian reservation roads, Indian labor may be employed in such construction and improvement under such rules and regulations as may be prescribed by the Secretary of the Interior. No ceiling on Federal employment shall be applicable to construction or improvement of Indian reservation roads. Funds available for each class of Federal lands highways shall be available for any kind of transportation project eligible for assistance under this title that is within or adjacent to or provides access to the areas served by the particular class of Federal lands highways. The Secretary of Interior may reserve funds from the Bureau of Indian Affairs' administrative funds associated with the Indian reservation roads program to finance the Indian technical centers authorized under section 504(b).

(c) Before approving as a project on an Indian reservation road any project eligible for funds apportioned under section 104 or section 144 of this title in a

State, the Secretary must determine that the obligation of funds for such project is supplementary to and not in lieu of the obligation, for projects on Indian reservation roads, of a fair and equitable share of funds apportioned to such State under section 104 of this title. Notwithstanding any other provision of this title, Indian reservation roads under the jurisdiction of the Bureau of Indian Affairs of the Department of the Interior shall be eligible to expend not more than 15 percent funds<sup>2</sup> apportioned for Indian reservation roads from the Highway Trust Fund for the purpose of road sealing projects. The Bureau of Indian Affairs shall continue to retain responsibility, including annual funding request responsibility, for road maintenance programs on Indian reservations.

(d) Cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement, and any funds received from a State, county, or local subdivision shall be credited to appropriations available for the class of Federal lands highways to which such funds were contributed.

(e) Construction of each project shall be performed by contract awarded by competitive bidding, unless the Secretary or the Secretary of the appropriate Federal land management agency shall affirmatively find that, under the circumstances relating to such project, some other method is in the public interest. Notwithstanding the foregoing, the provisions of section 23 of the "Buy Indian" Act of June 25, 1910 (36 Stat. 891), and the provisions of section 7(b) of

the Indian Self-Determination and Education Assistance Act (88 Stat. 2205) shall apply to all funds administered by the Secretary of the Interior which are appropriated for the construction and improvement of Indian reservation roads.

(f) All appropriations for the construction and improvement of each class of Federal lands highways shall be administered in conformity with regulations and agreements jointly approved by the Secretary and the Secretary of the appropriate Federal land managing agency.

(g) The Secretary shall transfer to the Secretary of Agriculture from appropriations for forest highways such amounts as may be needed to cover necessary administrative expenses of the Forest Service in connection with forest highways.

(h) Eligible Projects. - Funds available for each class of Federal lands highways may be available for the following:

- (1) Transportation planning for tourism and recreational travel including the National Forest Scenic Byways Program, Bureau of Land Management Back Country Byways Program, National Trail System Program, and other similar Federal programs that benefit recreational development.
- (2) Adjacent vehicular parking areas.
- (3) Interpretive signage.
- (4) Acquisition of necessary scenic easements and scenic or historic sites.
- (5) Provision for pedestrians and bicycles.

(6) Construction and reconstruction of roadside rest areas including sanitary and water facilities.

(7) Other appropriate public road facilities such as visitor centers as determined by the Secretary.

(8) A project to build a replacement of the federally owned bridge over the Hoover Dam in the Lake Mead National Recreation Area between Nevada and Arizona.

(i) Transfers of Costs to Secretaries of Federal Land Management Agencies. -

(1) Administrative costs. - The Secretary shall transfer to the appropriate Federal land management agency from amounts made available for public lands highways such amounts as are necessary to pay necessary administrative costs of the agency in connection with public lands highways.

(2) Transportation planning costs. - The Secretary shall transfer to the appropriate Federal land management agency from amounts made available for public lands highways such amounts as are necessary to pay the cost to the agency to conduct necessary transportation planning for Federal lands, if funding for the planning is not otherwise provided under this section.

(j) Indian Reservation Roads Planning. - Up to 2 percent of funds made available for Indian reservation roads for each fiscal year shall be allocated to those Indian tribal governments applying for transportation planning pursuant to the provisions of the Indian Self-Determina-

tion and Education Assistance Act. The Indian tribal government, in cooperation with the Secretary of the Interior, and as appropriate, with a State, local government, or metropolitan planning organization, shall carry out a transportation planning process in accordance with subsection (a). Projects shall be selected by the Indian tribal government from the transportation improvement program and shall be subject to the approval of the Secretary of the Interior and the Secretary. (23 U.S.C. 204)

<sup>2</sup> So in original. Probably should be “of funds”.

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### **Forest development roads and trails (23 U.S.C. 205)**

(a) Funds available for forest development roads and trails shall be used by the Secretary of Agriculture to pay for the costs of construction and maintenance thereof, including roads and trails on experimental and other areas under Forest Service administration. In connection therewith, the Secretary of Agriculture may enter into contracts with a State or civil subdivision thereof, and issue such regulations as he deems advisable.

(b) Cooperation of States, counties, or other local subdivisions may be accepted but shall not be required by the Secretary of Agriculture.

(c) Construction estimated to cost \$50,000 or more per mile or \$50,000 or more per project for projects with a length of less than one mile, exclusive of

bridges and engineering, shall be advertised and let to contract. If such estimated cost is less than \$50,000 per mile or \$50,000 per project for projects with a length of less than one mile or if, after proper advertising, no acceptable bid is received or the bids are deemed excessive, the work may be done by the Secretary of Agriculture on his own account.

(d) Funds available for forest development roads and trails shall be available for adjacent vehicular parking areas and for sanitary, water, and fire control facilities. (23 U.S.C. 205)

### **Transportation Equity Act for the 21st Century**

**June 9, 1998 (Pub. L. 105-178, 112 Stat. 146)**

#### **Recreational trails program (23 U.S.C. 206)**

(a) Definitions. - In this section, the following definitions apply:

(1) Motorized recreation. - The term “motorized recreation” means off-road recreation using any motor-powered vehicle, except for a motorized wheelchair.

(2) Recreational trail. - The term “recreational trail” means a thoroughfare or track across land or snow, used for recreational purposes such as -

(A) pedestrian activities, including wheelchair use;

(B) skating or skateboarding;

- (C) equestrian activities, including carriage driving;
- (D) nonmotorized snow trail activities, including skiing;
- (E) bicycling or use of other human-powered vehicles;
- (F) aquatic or water activities; and
- (G) motorized vehicular activities, including all-terrain vehicle riding, motorcycling, snowmobiling, use of off-road light trucks, or use of other off-road motorized vehicles.

(b) Program. - In accordance with this section, the Secretary, in consultation with the Secretary of the Interior and the Secretary of Agriculture, shall carry out a program to provide and maintain recreational trails.

(c) State Responsibilities. - To be eligible for apportionments under this section -

- (1) the Governor of the State shall designate the State agency or agencies that will be responsible for administering apportionments made to the State under this section; and
- (2) the State shall establish a State recreational trail advisory committee that represents both motorized and nonmotorized recreational trail users, which shall meet not less often than once per fiscal year.

(d) Use of Apportioned Funds. -

- (1) In general. - Funds apportioned to a State to carry out this section shall be obligated for recreational trails and related projects that -

- (A) have been planned and developed under the laws, policies, and administrative procedures of the State; and
- (B) are identified in, or further a specific goal of, a recreational trail plan, or a statewide comprehensive outdoor recreation plan required by the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 et seq.), that is in effect.

(2) Permissible uses. - Permissible uses of funds apportioned to a State for a fiscal year to carry out this section include -

- (A) maintenance and restoration of existing recreational trails;
- (B) development and rehabilitation of trailside and trailhead facilities and trail linkages for recreational trails;
- (C) purchase and lease of recreational trail construction and maintenance equipment;
- (D) construction of new recreational trails, except that, in the case of new recreational trails crossing Federal lands, construction of the trails shall be -

- (i) permissible under other law;
- (ii) necessary and required by a statewide comprehensive outdoor recreation plan that is required by the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 et seq.) and that is in effect;
- (iii) approved by the administering agency of the State designated under subsection (c)(1); and

(iv) approved by each Federal agency having jurisdiction over the affected lands under such terms and conditions as the head of the Federal agency determines to be appropriate, except that the approval shall be contingent on compliance by the Federal agency with all applicable laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.);

(E) acquisition of easements and fee simple title to property for recreational trails or recreational trail corridors;

(F) payment of costs to the State incurred in administering the program, but in an amount not to exceed 7 percent of the apportionment made to the State for the fiscal year to carry out this section; and

(G) operation of educational programs to promote safety and environmental protection as those objectives relate to the use of recreational trails, but in an amount not to exceed 5 percent of the apportionment made to the State for the fiscal year.

(3) Use of apportionments. -

(A) In general. - Except as provided in subparagraphs (B), (C), and (D), of the apportionments made to a State for a fiscal year to carry out this section -

(i) 40 percent shall be used for recreational trail or related projects that facilitate diverse recreational trail use within a recreational trail corridor, trailside, or trailhead, regardless of whether the project is for diverse motorized use, for diverse nonmotorized use, or to accommodate both motorized and nonmotorized recreational trail use;

(ii) 30 percent shall be used for uses relating to motorized recreation; and

(iii) 30 percent shall be used for uses relating to nonmotorized recreation.

(B) Small state exclusion. - Any State with a total land area of less than 3,500,000 acres shall be exempt from the requirements of clauses (ii) and (iii) of subparagraph (A).

(C) Waiver authority. - A State recreational trail advisory committee established under subsection (c)(2) may waive, in whole or in part, the requirements of clauses (ii) and (iii) of subparagraph (A) if the State recreational trail advisory committee determines and notifies the Secretary that the State does not have sufficient projects to meet the requirements of clauses (ii) and (iii) of subparagraph (A).

(D) State administrative costs. - State administrative costs eligible for funding under paragraph (2)(F) shall be exempt from the requirements of subparagraph (A).

(4) Grants. -

(A) In general. - A State may use

funds apportioned to the State to carry out this section to make grants to private organizations, municipal, county, State, and Federal Government entities, and other government entities as approved by the State after considering guidance from the State recreational trail advisory committee established under subsection (c)(2), for uses consistent with this section.

(B) Compliance. - A State that makes grants under subparagraph (A) shall establish measures to verify that recipients of the grants comply with the conditions of the program for the use of grant funds.

(e) Environmental Benefit or Mitigation. - To the extent practicable and consistent with the other requirements of this section, a State should give consideration to project proposals that provide for the redesign, reconstruction, nonroutine maintenance, or relocation of recreational trails to benefit the natural environment or to mitigate and minimize the impact to the natural environment.

(f) Federal Share. -

(1) In general. - Subject to the other provisions of this subsection, the Federal share of the cost of a project under this section shall not exceed 80 percent.

(2) Federal agency project sponsor. - Notwithstanding any other provision of law, a Federal agency that sponsors a project under this section may contribute additional Federal funds toward the cost of a project, except that -

(A) the share attributable to the

Secretary of Transportation may not exceed 80 percent of the cost of a project under this section; and

(B) the share attributable to the Secretary and the Federal agency may not exceed 95 percent of the cost of a project under this section.

(3) Use of funds from federal programs to provide non-federal share. - Notwithstanding any other provision of law, the non-Federal share of the cost of the project may include amounts made available by the Federal Government under any Federal program that are - (A) expended in accordance with the requirements of the Federal program relating to activities funded and populations served; and (B) expended on a project that is eligible for assistance under this section.

(4) Programmatic non-federal share. - A State may allow adjustments to the non-Federal share of an individual project for a fiscal year under this section if the Federal share of the cost of all projects carried out by the State under the program (excluding projects funded under paragraph (2) or (3)) using funds apportioned to the State for the fiscal year does not exceed 80 percent.

(5) State administrative costs. - The Federal share of the administrative costs of a State under this subsection shall be determined in accordance with section 120(b).

(g) Uses Not Permitted. -

A State may not obligate funds appor-

tioned to carry out this section for –

- (1) condemnation of any kind of interest in property;
  - (2) construction of any recreational trail on National Forest System land for any motorized use unless -
    - (A) the land has been designated for uses other than wilderness by an approved forest land and resource management plan or has been released to uses other than wilderness by an Act of Congress; and
    - (B) the construction is otherwise consistent with the management direction in the approved forest land and resource management plan;
  - (3) construction of any recreational trail on Bureau of Land Management land for any motorized use unless the land -
    - (A) has been designated for uses other than wilderness by an approved Bureau of Land Management resource management plan or has been released to uses other than wilderness by an Act of Congress; and
    - (B) the construction is otherwise consistent with the management direction in the approved management plan; or
  - (4) upgrading, expanding, or otherwise facilitating motorized use or access to recreational trails predominantly used by nonmotorized recreational trail users and on which, as of May 1, 1991, motorized use was prohibited or had not occurred.
- (h) Project Administration. –

(1) Credit for donations of funds, materials, services, or new right-of-way.

(A) In general. - Nothing in this title or other law shall prevent a project sponsor from offering to donate funds, materials, services, or a new right-of-way for the purposes of a project eligible for assistance under this section. Any funds, or the fair market value of any materials, services, or new right-of-way, may be donated by any project sponsor and shall be credited to the non-Federal share in accordance with subsection (f).

(B) Federal project sponsors. - Any funds or the fair market value of any materials or services may be provided by a Federal project sponsor and shall be credited to the Federal agency's share in accordance with subsection (f).

(2) Recreational purpose. - A project funded under this section is intended to enhance recreational opportunity and is not subject to section 138 of this title or section 303 of title 49.

(3) Continuing recreational use. - At the option of each State, funds apportioned to the State to carry out this section may be treated as Land and Water Conservation Fund apportionments for the purposes of section 6(f)(3) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-8(f)(3)).

(4) Cooperation by private persons. -

(A) Written assurances. - As a condition of making available appor-

tionments for work on recreational trails that would affect privately owned land, a State shall obtain written assurances that the owner of the land will cooperate with the State and participate as necessary in the activities to be conducted.

(B) Public access. - Any use of the apportionments to a State to carry out this section on privately owned land must be accompanied by an easement or other legally binding agreement that ensures public access to the recreational trail improvements funded by the apportionments.

(i) Contract Authority. - Funds authorized to carry out this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1, except that the Federal share of the cost of a project under this section shall be determined in accordance with this section. (23 U.S.C. 206)

## **Federal-Aid Highway Act**

**August 13, 1973 (Pub. L. 93-87, 87 Stat. 362)**

### **Bicycle transportation and pedestrian walkways (23 U.S.C. 217)**

(a) Use of STP and Congestion Mitigation Program Funds. - Subject to project approval by the Secretary, a State may obligate funds apportioned to it under sections 104(b)(2) and 104(b)(3) of this title for construction of pedestrian walkways and bicycle transportation facilities and for carrying out nonconstruction

projects related to safe bicycle use.

(b) Use of National Highway System Funds. - Subject to project approval by the Secretary, a State may obligate funds apportioned to it under section 104(b)(1) of this title for construction of pedestrian walkways and bicycle transportation facilities on land adjacent to any highway on the National Highway System.

(c) Use of Federal Lands Highway Funds. - Funds authorized for forest highways, forest development roads and trails, public lands development roads and trails, park roads, parkways, Indian reservation roads, and public lands highways shall be available, at the discretion of the department charged with the administration of such funds, for the construction of pedestrian walkways and bicycle transportation facilities in conjunction with such trails, roads, highways, and parkways.

(d) State Bicycle and Pedestrian Coordinators. - Each State receiving an apportionment under sections 104(b)(2) and 104(b)(3) of this title shall use such amount of the apportionment as may be necessary to fund in the State department of transportation a position of bicycle and pedestrian coordinator for promoting and facilitating the increased use of nonmotorized modes of transportation, including developing facilities for the use of pedestrians and bicyclists and public education, promotional, and safety programs for using such facilities.

(e) Bridges. - In any case where a highway bridge deck being replaced or rehabilitated with Federal financial

participation is located on a highway on which bicycles are permitted to operate at each end of such bridge, and the Secretary determines that the safe accommodation of bicycles can be provided at reasonable cost as part of such replacement or rehabilitation, then such bridge shall be so replaced or rehabilitated as to provide such safe accommodations.

(f) Federal Share. - For all purposes of this title, construction of a pedestrian walkway and a bicycle transportation facility shall be deemed to be a highway project and the Federal share payable on account of such construction shall be determined in accordance with section 120(b).

(g) Planning and Design. -

(1) In general. - Bicyclists and pedestrians shall be given due consideration in the comprehensive transportation plans developed by each metropolitan planning organization and State in accordance with sections 134 and 135, respectively. Bicycle transportation facilities and pedestrian walkways shall be considered, where appropriate, in conjunction with all new construction and reconstruction of transportation facilities, except where bicycle and pedestrian use are not permitted.

(2) Safety considerations. - Transportation plans and projects shall provide due consideration for safety and contiguous routes for bicyclists and pedestrians. Safety considerations shall include the installation, where appropriate, and maintenance of audible traffic signals and audible signs at street crossings.

(h) Use of Motorized Vehicles. - Motorized vehicles may not be permitted on trails and pedestrian walkways under this section, except for -

- (1) maintenance purposes;
- (2) when snow conditions and State or local regulations permit, snowmobiles;
- (3) motorized wheelchairs;
- (4) when State or local regulations permit, electric bicycles; and
- (5) such other circumstances as the Secretary deems appropriate.

(i) Transportation Purpose. - No bicycle project may be carried out under this section unless the Secretary has determined that such bicycle project will be principally for transportation, rather than recreation, purposes.

(j) Definitions. - In this section, the following definitions apply:

- (1) Bicycle transportation facility. - The term "bicycle transportation facility" means a new or improved lane, path, or shoulder for use by bicyclists and a traffic control device, shelter, or parking facility for bicycles.
- (2) Electric bicycle. - The term "electric bicycle" means any bicycle or tricycle with a low-powered electric motor weighing under 100 pounds, with a top motor-powered speed not in excess of 20 miles per hour.
- (3) Pedestrian. - The term "pedestrian" means any person traveling by foot and any mobility-impaired person using a wheelchair.

(4) Wheelchair. - The term “wheelchair” means a mobility aid, usable indoors, and designed for and used by individuals with mobility impairments, whether operated manually or motorized. (23 U.S.C. 217)

## National Forest Roads and Trails Act

October 13, 1964 (Pub. L. 88-657, 78 Stat. 1089; 16 U.S.C. 532 to 538)

### **Roads and trails system; Congressional findings and declaration of policy**

**Sec. 1** The Congress hereby finds and declares that the construction and maintenance of an adequate system of roads and trails within and near the national forests and other lands administered by the Forest Service is essential if increasing demands for timber, recreation, and other uses of such lands are to be met; that the existence of such a system would have the effect, among other things, of increasing the value of timber and other resources tributary to such roads; and that such a system is essential to enable the Secretary of Agriculture (hereinafter called the Secretary) to provide for intensive use, protection, development, and management of these lands under principles of multiple use and sustained yield of products and services. (16 U.S.C. 532)

### **Grant of easements for road rights-of-way; authority of Secretary of Agriculture; regulations**

**Sec. 2** The Secretary is authorized, under such regulations as he may prescribe, subject to the provisions of sections 532 to 538 of this title, to grant permanent or temporary easements for specified periods or otherwise for road rights-of-way (1) over national forest lands and other lands administered by the Forest

Service, and (2) over any other related lands with respect to which the Department of Agriculture has rights under the terms of the grant to it. (16 U.S.C. 533)

### **Termination and cancellation of easements; notice; hearing**

**Sec. 3** An easement granted under sections 532 to 538 of this title may be terminated by consent of the owner of the easement, by condemnation, or after a five-year period of nonuse the Secretary may, if he finds the owner has abandoned the easement, make a determination to cancel it. Before the Secretary may cancel an easement for nonuse the owner of such easement must be notified of the determination to cancel and be given, upon his request made within sixty days after receipt of the notice, a hearing in accordance with such rules and regulations as may be issued by the Secretary. (16 U.S.C. 534)

### **Forest development roads; acquisition, construction, and maintenance; maximum economy; methods of financing; cost arrangements for construction standards; transfer of unused effective purchaser credit for road construction**

**Sec. 4** The Secretary is authorized to provide for the acquisition, construction, and maintenance of forest development

roads within and near the national forests and other lands administered by the Forest Service in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management thereof, and for utilization of the other resources thereof. Financing of such roads may be accomplished (1) by the Secretary utilizing appropriated funds, (2) by requirements on purchasers of national forest timber and other products, including provisions for amortization of road costs in contracts, (3) by cooperative financing with other public agencies and with private agencies or persons, or (4) by a combination of these methods: Provided, That where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of the national forest timber and other products shall not be required to bear that part of the costs necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriate. The Secretary is authorized, under such rules and regulations as he shall prescribe, to permit the transfer of unused effective purchaser credit for road construction earned after December 16, 1975, from one timber sale to a purchaser to another timber sale to the same purchaser within the same National Forest. (16 U.S.C. 535)

**Recording of instruments; furnishing**

**of instruments affecting public domain lands to Secretary of the Interior**

**Sec. 5** Copies of all instruments affecting permanent interests in land executed pursuant to sections 532 to 538 of this title shall be recorded in each county where the lands are located. Copies of all instruments affecting interests in lands reserved from the public domain shall be furnished to the Secretary of the Interior. (16 U.S.C. 536)

**Maintenance and reconstruction by road users; funds for maintenance and reconstruction; availability of deposits until expended, transfer of funds, and refunds**

**Sec. 6** The Secretary may require the user or users of a road under the control of the Forest Service, including purchasers of Government timber and other products, to maintain such roads in a satisfactory condition commensurate with the particular use requirements of each. Such maintenance to be borne by each user shall be proportionate to total use. The Secretary may also require the user or users of such a road to reconstruct the same when such reconstruction is determined to be necessary to accommodate such use. If such maintenance or reconstruction cannot be so provided or if the Secretary determines that maintenance or reconstruction by a user would not be practical, then the Secretary may require that sufficient funds be deposited by the user to provide his portion of such total maintenance or reconstruction. Deposits made to cover the maintenance or

reconstruction of roads are hereby made available until expended to cover the cost to the United States of accomplishing the purpose for which deposited: Provided, That deposits received for work on adjacent and overlapping areas may be combined when it is the most practicable and efficient manner of performing the work, and cost thereof may be determined by estimates: And provided further, That unexpended balances upon accomplishment of the purpose for which deposited shall be transferred to miscellaneous receipts or refunded. (16 U.S.C. 537)

**User fees fund for delayed payments to grantors**

**Sec. 7** Whenever the agreement under which the United States has obtained for the use of, or in connection with, the national forests and other lands administered by the Forest Service a right-of-way or easement for a road or an existing road or the right to use an existing road provides for delayed payments to the Government's grantor, any fees or other collections received by the Secretary for the use of the road may be placed in a fund to be available for making payments to the grantor. (16 U.S.C. 538)

## Federal Insecticide, Fungicide, and Rodenticide Act

June 25, 1947 (Ch. 125, 61 Stat. 163; 7 U.S.C. 136, 136a, 146a-1, 136c to 136w, 136w-1 to 136w-7, 136x, 136y)

### Definitions

**Sec. 2** For purposes of this subchapter -

(a) Active ingredient

The term “active ingredient” means -

- (1) in the case of a pesticide other than a plant regulator, defoliant, desiccant, or nitrogen stabilizer, an ingredient which will prevent, destroy, repel, or mitigate any pest;
- (2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof;
- (3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;
- (4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue; and
- (5) in the case of a nitrogen stabilizer, an ingredient which will prevent or hinder the process of nitrification, denitrification, ammonia volatilization, or urease production through action affecting soil bacteria.

(b) Administrator

The term “Administrator” means the Administrator of the Environmental Protection Agency.

(c) Adulterated

The term “adulterated” applies to any pesticide if -

- (1) its strength or purity falls below the professed standard of quality as expressed on its labeling under which it is sold;
- (2) any substance has been substituted wholly or in part for the pesticide; or
- (3) any valuable constituent of the pesticide has been wholly or in part abstracted.

(d) Animal

The term “animal” means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

(e) Certified applicator, etc.

(1) Certified applicator

The term “certified applicator” means any individual who is certified under section 136i of this title as authorized to use or supervise the use of any pesticide which is classified for restricted use. Any applicator who holds or applies registered pesticides, or uses dilutions of registered pesticides consistent with

subsection (ee) of this section, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served is not deemed to be a seller or distributor of pesticides under this subchapter.

(2) Private applicator

The term “private applicator” means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by the applicator or the applicator’s employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

(3) Commercial applicator

The term “commercial applicator” means an applicator (whether or not the applicator is a private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by paragraph (2).

(4) Under the direct supervision of a certified applicator

Unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such

certified applicator is not physically present at the time and place the pesticide is applied.

(f) Defoliant

The term “defoliant” means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(g) Desiccant

The term “desiccant” means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(h) Device

The term “device” means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

(i) District court

The term “district court” means a United States district court, the District Court of Guam, the District Court of the Virgin Islands, and the highest court of American Samoa.

(j) Environment

The term “environment” includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.

## (k) Fungus

The term “fungus” means any non-chlorophyll-bearing thallophyte (that is, any non-chlorophyll-bearing plant of a lower order than mosses and liverworts), as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals and those on or in processed food, beverages, or pharmaceuticals.

## (l) Imminent hazard

The term “imminent hazard” means a situation which exists when the continued use of a pesticide during the time required for cancellation proceeding would be likely to result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered or threatened by the Secretary pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

## (m) Inert ingredient

The term “inert ingredient” means an ingredient which is not active.

## (n) Ingredient statement

The term “ingredient statement” means a statement which contains -

- (1) the name and percentage of each active ingredient, and the total percentage of all inert ingredients, in the pesticide; and
- (2) if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elementary arsenic.

## (o) Insect

The term “insect” means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

## (p) Label and labeling

## (1) Label

The term “label” means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

## (2) Labeling

The term “labeling” means all labels and all other written, printed, or graphic matter -

(A) accompanying the pesticide or device at any time; or

(B) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Department of Health and Human Services, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides.

## (q) Misbranded

## (1) A pesticide is misbranded if -

(A) its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(B) it is contained in a package or other container or wrapping which does not conform to the standards established by the Administrator pursuant to section 136w(c)(3) of this title;

(C) it is an imitation of, or is offered for sale under the name of, another pesticide;

(D) its label does not bear the registration number assigned under section 136e of this title to each establishment in which it was produced;

(E) any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(F) the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under

section 136a(d) of this title, are adequate to protect health and the environment;

(G) the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 136a(d) of this title, is adequate to protect health and the environment; or

(H) in the case of a pesticide not registered in accordance with section 136a of this title and intended for export, the label does not contain, in words prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) as to render it likely to be noted by the ordinary individual under customary conditions of purchase and use, the following: "Not Registered for Use in the United States of America".

## (2) A pesticide is misbranded if -

(A) the label does not bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read) which is presented or displayed under customary conditions or purchase, except that a pesticide is not misbranded under this subparagraph if -

(i) The size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the

ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

(ii) the ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the Administrator;

(B) the labeling does not contain a statement of the use classification under which the product is registered;

(C) there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing -

(i) the name and address of the producer, registrant, or person for whom produced;

(ii) the name, brand, or trademark under which the pesticide is sold;

(iii) the net weight or measure of the content, except that the Administrator may permit reasonable variations; and

(iv) when required by regulation of the Administrator to effectuate the purposes of this subchapter, the registration number assigned to the pesticide under this subchapter, and the use classification; and

(D) the pesticide contains any substance or substances in quantities highly toxic to man, unless the label

shall bear, in addition to any other matter required by this subchapter -

(i) the skull and crossbones;

(ii) the word "poison" prominently in red on a background of distinctly contrasting color; and

(iii) a statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

(r) Nematode

The term "nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; may also be called nemas or eelworms.

(s) Person

The term "person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

(t) Pest

The term "pest" means

(1) any insect, rodent, nematode, fungus, weed, or

(2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 136w(c)(1) of this title.

(u) Pesticide

The term “pesticide” means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer, except that the term “pesticide” shall not include any article that is a “new animal drug” within the meaning of section 321(w)<sup>1</sup> of title 21, that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 321(x) of title 21 bearing or containing a new animal drug. The term “pesticide” does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 321 of title 21. For purposes of the preceding sentence, the term “critical device” includes any device which is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term “semi-critical device” includes any device which contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body.

(v) Plant regulator

The term “plant regulator” means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of

growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. Also, the term “plant regulator” shall not be required to include any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic, nonpoisonous in the undiluted packaged concentration.

(w) Producer and produce

The term “producer” means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide. The term “produce” means to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide. The dilution by individuals of formulated pesticides for their own use and according to the directions on registered labels shall not of itself result in such individuals being included in the definition of “producer” for the purposes of this subchapter.

(x) Protect health and the environment

The terms “protect health and the environment” and “protection of health and the environment” mean protection against any unreasonable adverse effects on the environment.

## (y) Registrant

The term “registrant” means a person who has registered any pesticide pursuant to the provisions of this subchapter.

## (z) Registration

The term “registration” includes reregistration.

## (aa) State

The term “State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa.

## (bb) Unreasonable adverse effects on the environment

The term “unreasonable adverse effects on the environment” means

- (1) any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or
- (2) a human dietary risk from residues that result from a use of a pesticide in or on any food inconsistent with the standard under section 346a of title 21. The Administrator shall consider the risks and benefits of public health pesticides separate from the risks and benefits of other pesticides. In weighing any regulatory action concerning a public health pesticide under this subchapter, the Administrator shall weigh any risks of the pesticide against the health risks such as the diseases transmitted by the vector to be controlled by the pesticide.

## (cc) Weed

The term “weed” means any plant which grows where not wanted.

## (dd) Establishment

The term “establishment” means any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.

## (ee) To use any registered pesticide in a manner inconsistent with its labeling

The term “to use any registered pesticide in a manner inconsistent with its labeling” means to use any registered pesticide in a manner not permitted by the labeling, except that the term shall not include (1) applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency, (2) applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or site specified on the labeling, unless the Administrator has required that the labeling specifically state that the pesticide may be used only for the pests specified on the labeling after the Administrator has determined that the use of the pesticide against other pests would cause an unreasonable adverse effect on the environment, (3) employing any method of application not prohibited by the labeling unless the labeling specifically states that the product may be applied only by the methods specified on the labeling, (4) mixing a pesticide or pesticides with a fertilizer when such

mixture is not prohibited by the labeling, (5) any use of a pesticide in conformance with section 136c, 136p, or 136v of this title, or (6) any use of a pesticide in a manner that the Administrator determines to be consistent with the purposes of this subchapter. After March 31, 1979, the term shall not include the use of a pesticide for agricultural or forestry purposes at a dilution less than label dosage unless before or after that date the Administrator issues a regulation or advisory opinion consistent with the study provided for in section 27(b) of the Federal Pesticide Act of 1978, which regulation or advisory opinion specifically requires the use of definite amounts of dilution.

(ff) Outstanding data requirement

(1) In general

The term “outstanding data requirement” means a requirement for any study, information, or data that is necessary to make a determination under section 136a(c)(5) of this title and which study, information, or data -

(A) has not been submitted to the Administrator; or

(B) if submitted to the Administrator, the Administrator has determined must be resubmitted because it is not valid, complete, or adequate to make a determination under section 136a(c)(5) of this title and the regulations and guidelines issued under such section.

(2) Factors

In making a determination under paragraph (1)(B) respecting a study, the Administrator shall examine, at a

minimum, relevant protocols, documentation of the conduct and analysis of the study, and the results of the study to determine whether the study and the results of the study fulfill the data requirement for which the study was submitted to the Administrator.

(gg) To distribute or sell

The term “to distribute or sell” means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver. The term does not include the holding or application of registered pesticides or use dilutions thereof by any applicator who provides a service of controlling pests without delivering any unapplied pesticide to any person so served.

(hh) Nitrogen stabilizer The term “nitrogen stabilizer” means any substance or mixture of substances intended for preventing or hindering the process of nitrification, denitrification, ammonia volatilization, or urease production through action upon soil bacteria. Such term shall not include -

(1) dicyandiamide;

(2) ammonium thiosulfate; or

(3) any substance or mixture of substances. - <sup>2</sup>

(A) that was not registered pursuant to section 136a of this title prior to January 1, 1992; and

(B) that was in commercial agronomic use prior to January 1, 1992, with

respect to which after January 1, 1992, the distributor or seller of the substance or mixture has made no specific claim of prevention or hindering of the process of nitrification, denitrification, ammonia volatilization<sup>3</sup> urease production regardless of the actual use or purpose for, or future use or purpose for, the substance or mixture. Statements made in materials required to be submitted to any State legislative or regulatory authority, or required by such authority to be included in the labeling or other literature accompanying any such substance or mixture shall not be deemed a specific claim within the meaning of this subsection.

(ii)<sup>4</sup>

(jj) Maintenance applicator

The term “maintenance applicator” means any individual who, in the principal course of such individual’s employment, uses, or supervises the use of, a pesticide not classified for restricted use (other than a ready to use consumer products pesticide); for the purpose of providing structural pest control or lawn pest control including janitors, general maintenance personnel, sanitation personnel, and grounds maintenance personnel. The term “maintenance applicator” does not include private applicators as defined in subsection (e)(2) of this section; individuals who use antimicrobial pesticides, sanitizers or disinfectants; individuals employed by Federal, State, and local governments or any political subdivisions thereof, or individuals who use pesticides not classi-

fied for restricted use in or around their homes, boats, sod farms, nurseries, greenhouses, or other noncommercial property.

(kk) Service technician

The term “service technician” means any individual who uses or supervises the use of pesticides (other than a ready to use consumer products pesticide) for the purpose of providing structural pest control or lawn pest control on the property of another for a fee. The term “service technician” does not include individuals who use antimicrobial pesticides, sanitizers or disinfectants; or who otherwise apply ready to use consumer products pesticides.

(ll) Minor use

The term “minor use” means the use of a pesticide on an animal, on a commercial agricultural crop or site, or for the protection of public health where -

(1) the total United States acreage for the crop is less than 300,000 acres, as determined by the Secretary of Agriculture; or

(2) the Administrator, in consultation with the Secretary of Agriculture, determines that, based on information provided by an applicant for registration or a registrant, the use does not provide sufficient economic incentive to support the initial registration or continuing registration of a pesticide for such use and -

(A) there are insufficient efficacious alternative registered pesticides available for the use;

(B) the alternatives to the pesticide use pose greater risks to the environment or human health;

(C) the minor use pesticide plays or will play a significant part in managing pest resistance; or

(D) the minor use pesticide plays or will play a significant part in an integrated pest management program. The status as a minor use under this subsection shall continue as long as the Administrator has not determined that, based on existing data, such use may cause an unreasonable adverse effect on the environment and the use otherwise qualifies for such status.

(mm) Antimicrobial pesticide

(1) In general

The term “antimicrobial pesticide” means a pesticide that -

(A) is intended to -

(i) disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms; or

(ii) protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime; and

(B) in the intended use is exempt from, or otherwise not subject to, a tolerance under section 346a of title 21 or a food additive regulation under section 348 of title 21.

(2) Excluded products

The term “antimicrobial pesticide” does not include

(A) a wood preservative or antifouling paint product for which a claim of pesticidal activity other than or in addition to an activity described in paragraph (1) is made;

(B) an agricultural fungicide product; or

(C) an aquatic herbicide product.

(3) Included products

The term “antimicrobial pesticide” does include any other chemical sterilant product (other than liquid chemical sterilant products exempt under subsection (u) of this section), any other disinfectant product, any other industrial microbiocide product, and any other preservative product that is not excluded by paragraph (2).

(nn) Public health pesticide

The term “public health pesticide” means any minor use pesticide product registered for use and used predominantly in public health programs for vector control or for other recognized health protection uses, including the prevention or mitigation of viruses, bacteria, or other microorganisms (other than viruses, bacteria, or other microorganisms on or in living man or other living animal) that pose a threat to public health.

(oo) Vector

The term “vector” means any organism capable of transmitting the causative agent of human disease or capable of producing human discomfort or injury,

including mosquitoes, flies, fleas, cockroaches, or other insects and ticks, mites, or rats. (7 U.S.C. 136)

<sup>1</sup> Section 321 of title 21, referred to in subsec. (u), was subsequently amended, and subsecs. (w) and (x) of section 321 no longer define the terms “new animal drug” and “animal feed”, respectively. However, such terms are defined elsewhere in that section.

<sup>2</sup> So in original. Period probably should not appear.

<sup>3</sup> So in original. Probably should be followed by “, or”.

<sup>4</sup> So in original. No subsec. (ii) was enacted.

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### **Use of restricted use pesticides; applicators**

#### **Sec. 11 (a) Certified producer.—**

(1) Federal certification.—In any State for which a State plan for applicator certification has not been approved by the Administrator, the Administrator, in consultation with the Governor of such State, shall conduct a program for the certification of applicators of pesticides. Such program shall conform to the requirements imposed upon the States under the provisions of subsection (a)(2) of this section and shall not require private applicators to take any examination to establish competency in the use of pesticides. Prior to the implementation of the program, the Administrator shall publish in the Federal Register for review and comment a summary of the

Federal plan for applicator certification and shall make generally available within the State copies of the plan. The Administrator shall hold public hearings at one or more locations within the State if so requested by the Governor of such State during the thirty days following publication of the Federal Register notice inviting comment on the Federal plan. The hearings shall be held within thirty days following receipt of the request from the Governor. In any State in which the Administrator conducts a certification program, the Administrator may require any person engaging in the commercial application, sale, offering for sale, holding for sale, or distribution of any pesticide one or more uses of which have been classified for restricted use to maintain such records and submit such reports concerning the commercial application, sale, or distribution of such pesticide as the Administrator may be regulation prescribe. Subject to paragraph (2), the Administrator shall prescribe standards for the certification of applicators of pesticides. Such standards shall provide that to be certified, an individual must be determined to be competent with respect to the use and handling of pesticides, or to the use and handling of the pesticide or class of pesticides covered by such individual’s certification. The certification standard for a private applicator shall, under a State plan submitted for approval, be deemed fulfilled by the applicator completing a certification form. The Administrator shall further assure that such form contains adequate information and affirmations to carry

out the intent of this Act, and may include in the form an affirmation that the private applicator has completed a training program approved by the Administrator so long as the program does not require the private applicator to take, pursuant to a requirement prescribed by the Administrator, any examination to establish competency in the use of the pesticide. The Administrator may require any pesticide dealer participating in a certification program to be licensed under a State licensing program approved by the Administrator.

(2) State certification.—If any State, at any time, desires to certify applicators of pesticides, the Governor of such State shall submit a State plan for such purpose. The Administrator shall approve the plan submitted by any State, or any modification thereof, if such plan in the Administrator's judgment—

(A) designates a State agency as the agency responsible for administering the plan throughout the State;

(B) contains satisfactory assurances that such agency has or will have the legal authority and qualified personnel necessary to carry out the plan;

(C) gives satisfactory assurances that the State will de-vote adequate funds to the administration of the plan;

(D) provides that the State agency will make such re-ports to the Administrator in such form and containing such information as the Administrator may from time to time require; and

(E) contains satisfactory assurances that State standards for the certification of applicators of pesticides conform with those standards prescribed by the Administrator under paragraph (1). Any State certification program under this section shall be maintained in accordance with the State plan approved under this section.

(b) State plans.—If the Administrator rejects a plan submitted under subsection (a)(2), the Administrator shall afford the State submitting the plan due notice and opportunity for hearing before so doing. If the Administrator approves a plan submitted under subsection (a)(2), then such State shall certify applicators of pesticides with respect to such State. Whenever the Administrator determines that a State is not administering the certification program in accordance with the plan approved under this section, the Administrator shall so notify the State and provide for a hearing at the request of the State, and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such plan.

(c) Instruction in integrated pest management techniques.—Standards prescribed by the Administrator for the certification of applicators of pesticides under subsection (a), and the State plans submitted to the Administrator under subsection (a), shall include provisions for making instructional materials concerning integrated pest management techniques available to individuals at their request in accordance with the provisions of section 23(c) of this Act, but such plans may not

require that any individual receive instruction concerning such techniques or be shown to be competent with respect to the use of such techniques. The Administrator and States implementing such plans shall provide that all interested individuals are notified of the availability of such instructional materials.

(d) In general.—No regulations prescribed by the Administrator for carrying out the provisions of this Act shall require any private applicator to maintain any records or file any reports or other documents.

(e) Separate standards.—When establishing or approving standards for licensing or certification, the Administrator shall establish separate standards for commercial and private applicators. (7 U.S.C. 136i)

### Unlawful acts

**Sec. 12** (a) In general.—

(1) Except as provided by subsection (b), it shall be unlawful for any person in any State to distribute or sell to any person—

(A) any pesticide that is not registered under section 3 or whose registration has been canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this Act;

(B) any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connec-

tion with its registration under section 3;

(C) any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under section 3;

(D) any pesticide which has not been colored or discolored pursuant to the provisions of section 25(c)(5);

(E) any pesticide which is adulterated or misbranded; or

(F) any device which is misbranded.

(2) It shall be unlawful for any person—

(A) to detach, alter, deface, or destroy, in whole or in part, any labeling required under this Act;

(B) to refuse to—

(i) prepare, maintain, or submit any records required by or under section 5, 7, 8, 11, or 19;

(ii) submit any reports required by or under section 5, 6, 7, 8, 11, or 19; or

(iii) allow any entry, inspection, copying of records, or sampling authorized by this Act;

(C) to give a guaranty or undertaking provided for in subsection (b) which is false in any particular, except that a person who receives and relies upon a guaranty authorized under subsection (b) may give a guaranty to the same effect, which guaranty shall contain, in addition to the person's own name and address, the name and address of

the person residing in the United States from whom the person received the guaranty or undertaking;

(D) to use for the person's own advantage or to reveal, other than to the Administrator, or officials or employees of the Environmental Protection Agency or other Federal executive agencies, or to the courts, or to physicians, pharmacists, and other qualified persons, needing such information for the performance of their duties, in accordance with such directions as the Administrator may prescribe, any information acquired by authority of this Act which is confidential under this Act;

(E) who is a registrant, wholesaler, dealer, retailer, or other distributor to advertise a product registered under this Act for restricted use without giving the classification of the product assigned to it under section 3;

(F) to distribute or sell, or to make available for use, or to use, any registered pesticide classified for restricted use for some or all purposes other than in accordance with section 3(d) and any regulations thereunder, except that it shall not be unlawful to sell, under regulations issued by the Administrator, a restricted use pesticide to a person who is not a certified applicator for application by a certified applicator;

(G) to use any registered pesticide in a manner inconsistent with its labeling;

(H) to use any pesticide which is under an experimental use permit

contrary to the provisions of such permit;

(I) to violate any order issued under section 13;

(J) to violate any suspension order issued under section 3(c)(2)(B), 4, or 6;

(K) to violate any cancellation order issued under this Act or to fail to submit a notice in accordance with section 6(g);

(L) who is a producer to violate any of the provisions of section 7;

(M) to knowingly falsify all or part of any application for registration, application for experimental use permit, any information submitted to the Administrator pursuant to section 7, any records required to be maintained pursuant to this Act, any report filed under this Act, or any information marked as confidential and submitted to the Administrator under any provision of this Act;

(N) who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by this Act;

(O) to add any substance to, or take any substance from, any pesticide in a manner that may defeat the purpose of this Act;

(P) to use any pesticide in tests on human beings unless such human beings (i) are fully informed of the nature and purposes of the test and of any physical and mental health consequences which are reasonably fore-

seeable there from, and (ii) freely volunteer to participate in the test;

(Q) to falsify all or part of any information relating to the testing of any pesticide (or any ingredient, metabolite, or degradation product thereof), including the nature of any protocol, procedure, substance, organism, or equipment used, observation made, or conclusion or opinion formed, submitted to the Administrator, or that the person knows will be furnished to the Administrator or will become a part of any records required to be maintained by this Act;

(R) to submit to the Administrator data known to be false in support of a registration; or

(S) to violate any regulation issued under section 3(a) or 19.

(b) Exemptions.—The penalties provided for a violation of paragraph (1) of subsection (a) shall not apply to—

(1) any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom the person purchased or received in good faith the pesticide in the same unbroken package, to the effect that the pesticide was lawfully registered at the time of sale and delivery to the person, and that it complies with the other requirements of this Act, and in such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of this Act;

(2) any carrier while lawfully shipping, transporting, or delivering for shipment any pesticide or device, if such carrier upon request of any officer or employee duly designated by the Administrator shall permit such officer or employee to copy all of its records concerning such pesticide or device;

(3) any public official while engaged in the performance of the official duties of the public official;

(4) any person using or possessing any pesticide as provided by an experimental use permit in effect with respect to such pesticide and such use or possession; or

(5) any person who ships a substance or mixture of substances being put through tests in which the purpose is only to determine its value for pesticide purposes or to determine its toxicity or other properties and from which the user does not expect to receive any benefit in pest control from its use. (7 U.S.C. 136j)

### **Stop sale, use, removal, and seizure**

**Sec. 13** (a) Stop, sale, etc., orders.—Whenever any pesticide or device is found by the Administrator in any State and there is reason to believe on the basis of inspection or tests that such pesticide or device is in violation of any of the provisions of this Act, or that such pesticide or device has been or is intended to be distributed or sold in violation of any such provisions, or when the registration of the pesticide has been canceled by a final order or has been

suspended, the Administrator may issue a written or printed “stop sale, use, or removal” order to any person who owns, controls, or has custody of such pesticide or device, and after receipt of such order no person shall sell, use, or remove the pesticide or device described in the order except in accordance with the provisions of the order.

(b) Seizure.—Any pesticide or device that is being transported or, having been transported, remains unsold or in original unbroken packages, or that is sold or offered for sale in any State, or that is imported from a foreign country, shall be liable to be proceeded against in any district court in the district where it is found and seized for confiscation by a process in rem for condemnation if—

(1) in the case of a pesticide—

(A) it is adulterated or misbranded;

(B) it is not registered pursuant to the provisions of section 3;

(C) its labeling fails to bear the information required by this Act;

(D) it is not colored or discolored and such coloring or discoloring is required under this Act; or

(E) any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration;

(2) in the case of a device, it is misbranded; or

(3) in the case of a pesticide or device, when used in accordance with the

requirements imposed under this Act and as directed by the labeling, it nevertheless causes unreasonable adverse effects on the environment. In the case of a plant regulator, defoliant, or desiccant, used in accordance with the label claims and recommendations, physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when such effects are the purpose for which the plant regulator, defoliant, or desiccant was applied.

(c) Disposition after condemnation.—If the pesticide or device is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs, shall be paid into the Treasury of the United States, but the pesticide or device shall not be sold contrary to the provisions of this Act or the laws of the jurisdiction in which it is sold. On payment of the costs of the condemnation proceedings and the execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be sold or otherwise disposed of contrary to the provisions of the Act or the laws of any jurisdiction in which sold, the court may direct that such pesticide or device be delivered to the owner thereof. The proceedings of such condemnation cases shall conform, as near as may be to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

(d) Court costs, etc.—When a decree of condemnation is entered against the pesticide or device, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide or device. (7 U.S.C. 136k)

## Penalties

### Sec. 14 (a) Civil penalties

#### (1) In general

Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

#### (2) Private applicator

Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or uses dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

#### (3) Hearing

No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in the county, parish, or incorporated city of the residence of the person charged.

#### (4) Determination of penalty

In determining the amount of the penalty, the Administrator shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation. Whenever the Administrator finds that the violation occurred despite the exercise of due care or did not cause significant harm to health or the environment, the Administrator may issue a warning in lieu of assessing a penalty.

#### (5) References to Attorney General

In case of inability to collect such civil penalty or failure of any person to pay all, or such portion of such civil penalty as the Administrator may determine, the Administrator shall refer the matter to the Attorney General, who shall recover such amount by action in the appropriate United States district court.

### (b) Criminal penalties

#### (1) In general

(A) Any registrant, applicant for a registration, or producer who knowingly violates any provision of this subchapter shall be fined not more than \$50,000 or imprisoned for not

more than 1 year, or both.

(B) Any commercial applicator of a restricted use pesticide, or any other person not described in subparagraph (A) who distributes or sells pesticides or devices, who knowingly violates any provision of this subchapter shall be fined not more than \$25,000 or imprisoned for not more than 1 year, or both.

(2) Private applicator Any private applicator or other person not included in paragraph (1) who knowingly violates any provision of this subchapter shall be guilty of a misdemeanor and shall on conviction be fined not more than \$1,000, or imprisoned for not more than 30 days, or both.

(3) Disclosure of information Any person, who, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 136a of this title, shall be fined not more than \$10,000, or imprisoned for not more than three years, or both.

(4) Acts of officers, agents, etc. When construing and enforcing the provisions of this subchapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed. (7 U.S.C. 136l)

## Indemnities

### Sec. 15 (a) General indemnification

#### (1) In general

Except as otherwise provided in this section, if -

(A) the Administrator notifies a registrant under section 136d(c)(1) of this title that the Administrator intends to suspend a registration or that an emergency order of suspension of a registration under section 136d(c)(3) of this title has been issued;

(B) the registration in question is suspended under section 136d(c) of this title, and thereafter is canceled under section 136d(b), 136d(d), or 136d(f) of this title; and

(C) any person who owned any quantity of the pesticide immediately before the notice to the registrant under subparagraph (A) suffered losses by reason of suspension or cancellation of the registration; the Administrator shall make an indemnity payment to the person.

#### (2) Exception

Paragraph (1) shall not apply if the Administrator finds that the person -

(A) had knowledge of facts that, in themselves, would have shown that the pesticide did not meet the requirements of section 136a(c)(5) of this title for registration; and

(B) continued thereafter to produce the pesticide without giving timely notice of such facts to the Administrator.

#### (3) Report

If the Administrator takes an action

under paragraph (1) that requires the payment of indemnification, the Administrator shall report to the Committee on Agriculture of the House of Representatives, the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate on -

- (A) the action taken that requires the payment of indemnification;
- (B) the reasons for taking the action;
- (C) the estimated cost of the payment; and
- (D) a request for the appropriation of funds for the payment.

#### (4) Appropriation

The Administrator may not make a payment of indemnification under paragraph (1) unless a specific line item appropriation of funds has been made in advance for the payment.

#### (b) Indemnification of end users, dealers, and distributors

##### (1) End users

If -

- (A) the Administrator notifies a registrant under section 136d(c)(1) of this title that the Administrator intends to suspend a registration or that an emergency order of suspension of a registration under section 136d(c)(3) of this title has been issued;
- (B) the registration in question is suspended under section 136d(c) of this title, and thereafter is canceled under section 136d(b), 136d(d), or

136d(f) of this title; and

(C) any person who, immediately before the notice to the registrant under subparagraph (A), owned any quantity of the pesticide for purposes of applying or using the pesticide as an end user, rather than for purposes of distributing or selling it or further processing it for distribution or sale, suffered a loss by reason of the suspension or cancellation of the pesticide;

the person shall be entitled to an indemnity payment under this subsection for such quantity of the pesticide.

#### (2) Dealers and distributors

(A) Any registrant, wholesaler, dealer, or other distributor (hereinafter in this paragraph referred to as a "seller") of a registered pesticide who distributes or sells the pesticide directly to any person not described as an end user in paragraph (1)(C) shall, with respect to any quantity of the pesticide that such person cannot use or resell as a result of the suspension or cancellation of the pesticide, reimburse such person for the cost of first acquiring the pesticide from the seller (other than the cost of transportation, if any), unless the seller provided to the person at the time of distribution or sale a notice, in writing, that the pesticide is not subject to reimbursement by the seller.

##### (B) If -

- (i) the Administrator notifies a registrant under section 136d(c)(1)

of this title that the Administrator intends to suspend a registration or that an emergency order of suspension of a registration under section 136d(c)(3) of this title has been issued;

(ii) the registration in question is suspended under section 136d(c) of this title, and thereafter is canceled under section 136d(b), 136d(d), or 136d(f) of this title;

(iii) any person who, immediately before the notice to the registrant under clause (i) -

(I) had not been notified in writing by the seller, as provided under subparagraph (A), that any quantity of the pesticide owned by such person is not subject to reimbursement by the seller in the event of suspension or cancellation of the pesticide; and

(II) owned any quantity of the pesticide for purposes of -

- (aa) distributing or selling it; or
- (bb) further processing it for distribution or sale directly to an end user;

suffered a loss by reason of the suspension or cancellation of the pesticide; and

(iv) the Administrator determines on the basis of a claim of loss submitted to the Administrator by the person, that the seller -

(I) did not provide the notice specified in subparagraph (A) to

such person; and

(II) is and will continue to be unable to provide reimbursement to such person, as provided under subparagraph (A), for the loss referred to in clause (iii), as a result of the insolvency or bankruptcy of the seller and the seller's resulting inability to provide such reimbursement; the person shall be entitled to an indemnity payment under this subsection for such quantity of the pesticide.

(C) If an indemnity payment is made by the United States under this paragraph, the United States shall be subrogated to any right that would otherwise be held under this paragraph by a seller who is unable to make a reimbursement in accordance with this paragraph with regard to reimbursements that otherwise would have been made by the seller.

### (3) Source

Any payment required to be made under paragraph (1) or (2) shall be made from the appropriation provided under section 1304 of title 31.

### (4) Administrative settlement

An administrative settlement of a claim for such indemnity may be made in accordance with the third paragraph of section 2414 of title 28 and shall be regarded as if it were made under that section for purposes of section 1304 of title 31.

### (c) Amount of payment

#### (1) In general

The amount of an indemnity payment under subsection (a) or (b) of this section to any person shall be determined on the basis of the cost of the pesticide owned by the person (other than the cost of transportation, if any) immediately before the issuance of the notice to the registrant referred to in subsection (a)(1)(A), (b)(1)(A), or (b)(2)(B)(i) of this section, except that in no event shall an indemnity payment to any person exceed the fair market value of the pesticide owned by the person immediately before the issuance of the notice.

(2) Special rule

Notwithstanding any other provision of this subchapter, the Administrator may provide a reasonable time for use or other disposal of the pesticide. In determining the quantity of any pesticide for which indemnity shall be paid under this section, proper adjustment shall be made for any pesticide used or otherwise disposed of by the owner. (7 U.S.C. 136m)

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### **Exemption of Federal and State agencies**

**Sec. 18** The Administrator may, at the Administrator's discretion, exempt any Federal or State agency from any provision of this Act if the Administrator determines that emergency conditions exist which require such exemption. The Administrator, in determining whether or not such emergency conditions exist, shall consult with the Secretary of Agriculture

and the Governor of any State concerned if they request such determination. (7 U.S.C. 136p)

## Federal Water Pollution Control Act

**June 30, 1948 (Ch. 758, 62 Stat. 1155; 33 U.S.C. 1251 to 1263, 1265 to 1270, 1281 to 1299, 1311 to 1326, 1328 to 1330, 1341 to 1345, 1361 to 1371, 1251 note, 1372 to 1377, 1251 note, 1381 to 1387)**

### **Title I - Research and Related Programs**

#### **Congressional declaration of goals and policy**

**Sec. 101** (a) Restoration and maintenance of chemical, physical and biological integrity of Nation's waters; national goals for achievement of objective

The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this chapter -

- (1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985:
- (2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983:
- (3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited:
- (4) it is the national policy that Federal financial assistance be provided to

construct publicly owned waste treatment works:

(5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State:

(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans; and

(7) it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this chapter to be met through the control of both point and nonpoint sources of pollution.

(b) Congressional recognition, preservation, and protection of primary responsibilities and rights of States

It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to

consult with the Administrator in the exercise of his authority under this chapter. It is the policy of Congress that the States manage the construction grant program under this chapter and implement the permit programs under sections 1342 and 1344 of this title. It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.

(c) Congressional policy toward Presidential activities with foreign countries

It is further the policy of Congress that the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, reduction, and elimination of pollution in their waters and in international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.

(d) Administrator of Environmental Protection Agency to administer chapter

Except as otherwise expressly provided in this chapter, the Administrator of the Environmental Protection Agency (hereinafter in this chapter called "Administra-

tor") shall administer this chapter.

(e) Public participation in development, revision, and enforcement of any regulation, etc.

Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.

(f) Procedures utilized for implementing chapter

It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

(g) Authority of States over water

It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this chapter. It is the further policy of Congress that nothing in this chapter shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall cooperate with State and local agencies to

develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources. (33 U.S.C. 1251)

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### **Research, investigations, training, and information**

#### **Sec. 104**

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(l) Collection and dissemination of scientific knowledge on effects and control of pesticides in water

(1) The Administrator shall, after consultation with appropriate local, State, and Federal agencies, public and private organizations, and interested individuals, as soon as practicable but not later than January 1, 1973, develop and issue to the States for the purpose of carrying out this chapter the latest scientific knowledge available in indicating the kind and extent of effects on health and welfare which may be expected from the presence of pesticides in the water in varying quantities. He shall revise and add to such information whenever necessary to reflect developing scientific knowledge.

(2) The President shall, in consultation with appropriate local, State, and Federal agencies, public and private organizations, and interested individuals, conduct studies and investigations of methods to control the release of pesticides into the environment which study shall include examination of the persistency of pesticides in the water

environment and alternatives thereto.

The President shall submit reports, from time to time, on such investigations to Congress together with his recommendations for any necessary legislation.

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(n) Comprehensive studies of effects of pollution on estuaries and estuarine zones

(1) The Administrator shall, in cooperation with the Secretary of the Army, the Secretary of Agriculture, the Water Resources Council, and with other appropriate Federal, State, interstate, or local public bodies and private organizations, institutions, and individuals, conduct and promote, and encourage contributions to, continuing comprehensive studies of the effects of pollution, including sedimentation, in the estuaries and estuarine zones of the United States on fish and wildlife, on sport and commercial fishing, on recreation, on water supply and water power, and on other beneficial purposes. Such studies shall also consider the effect of demographic trends, the exploitation of mineral resources and fossil fuels, land and industrial development, navigation, flood and erosion control, and other uses of estuaries and estuarine zones upon the pollution of the waters therein.

(2) In conducting such studies, the Administrator shall assemble, coordinate, and organize all existing pertinent information on the Nation's estuaries and estuarine zones; carry out a program of investigations and surveys to supplement existing information in representative estuaries and estuarine

zones; and identify the problems and areas where further research and study are required.

(3) [Amended by Pub. L. 107-303, sec. 302(b)(1), 116 Stat. 2361.] (2) Applicability.—The (NOTE: 33 U.S.C. 1254 note) Federal Water Pollution Control Act (33 U.S.C. 1254(n)(3)) shall be applied and administered on and after the date of enactment of this Act as if the amendments made by subsections (a), (b), (c), and (d) of section 501 of the Federal Reports Elimination Act of 1998 (Public Law 105-362; 112 Stat. 3283) had not been enacted. For the purpose of this subsection, the term “estuarine zones” means an environmental system consisting of an estuary and those transitional areas which are consistently influenced or affected by water from an estuary such as, but not limited to, salt marshes, coastal and intertidal areas, bays, harbors, lagoons, inshore waters, and channels, and the term “estuary” means all or part of the mouth of a river or stream or other body of water having unimpaired natural connection with open sea and within which the sea water is measurably diluted with fresh water derived from land drainage.

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(p) Agricultural pollution

In carrying out the provisions of subsection (a) of this section the Administrator shall, in cooperation with the Secretary of Agriculture, other Federal agencies, and the States, carry out a comprehensive study and research program to determine

new and improved methods and the better application of existing methods of preventing, reducing, and eliminating pollution from agriculture, including the legal, economic, and other implications of the use of such methods. (33 U.S.C. 1254)

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**Federal facilities pollution control**

**Sec. 313** (a) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement, whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees

under any law or rule of law. Nothing in this section shall be construed to prevent any department, agency, or instrumentality of the Federal Government, or any officer, agent, or employee thereof in the performance of his official duties, from removing to the appropriate Federal district court any proceeding to which the department, agency, or instrumentality or officer, agent, or employee thereof is subject pursuant to this section, and any such proceeding may be removed in accordance with section 1441 et seq. of title 28. No officer, agent, or employee of the United States shall be personally liable for any civil penalty arising from the performance of his official duties, for which he is not otherwise liable, and the United States shall be liable only for those civil penalties arising under Federal law or imposed by a State or local court to enforce an order or the process of such court. The President may exempt any effluent source of any department, agency, or instrumentality in the executive branch from compliance with any such a requirement if he determines it to be in the paramount interest of the United States to do so; except that no exemption may be granted from the requirements of section 1316 or 1317 of this title. No such exemptions shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the

President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting such exemption. In addition to any such exemption of a particular effluent source, the President may, if he determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vessels, vehicles, or other classes or categories of property, and access to such property, which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature. The President shall reconsider the need for such regulations at three-year intervals.

(b)(1) The Administrator shall coordinate with the head of each department, agency, or instrumentality of the Federal Government having jurisdiction over any property or facility utilizing federally owned wastewater facilities to develop a program of cooperation for utilizing wastewater control systems utilizing those innovative treatment processes and techniques for which guidelines have been promulgated under section 1314(d)(3) of this title. Such program shall include an inventory of property and facilities which could utilize such processes and techniques.

(2) Construction shall not be initiated for facilities for treatment of wastewater at

any Federal property or facility after September 30, 1979, if alternative methods for wastewater treatment at such property or facility utilizing innovative treatment processes and techniques, including but not limited to methods utilizing recycle and reuse techniques and land treatment are not utilized, unless the life cycle cost of the alternative treatment works exceeds the life cycle cost of the most cost effective alternative by more than 15 per centum. The Administrator may waive the application of this paragraph in any case where the Administrator determines it to be in the public interest, or that compliance with this paragraph would interfere with the orderly compliance with conditions of a permit issued pursuant to section 1342 of this title. (33 U.S.C. 1323)

### **Clean lakes**

**Sec. 314** (a) Establishment and scope of program

(1) State program requirements

Each State on a biennial basis shall prepare and submit to the Administrator for his approval –

(A) an identification and classification according to eutrophic condition of all publicly owned lakes in such State;

(B) a description of procedures, processes, and methods (including land use requirements), to control sources of pollution of such lakes;

(C) a description of methods and procedures, in conjunction with

appropriate Federal agencies, to restore the quality of such lakes;

(D) methods and procedures to mitigate the harmful effects of high acidity, including innovative methods of neutralizing and restoring buffering capacity of lakes and methods of removing from lakes toxic metals and other toxic substances mobilized by high acidity;

(E) a list and description of those publicly owned lakes in such State for which uses are known to be impaired, including those lakes which are known not to meet applicable water quality standards or which require implementation of control programs to maintain compliance with applicable standards and those lakes in which water quality has deteriorated as a result of high acidity that may reasonably be due to acid deposition; and

(F) an assessment of the status and trends of water quality in lakes in such State, including but not limited to, the nature and extent of pollution loading from point and nonpoint sources and the extent to which the use of lakes is impaired as a result of such pollution, particularly with respect to toxic pollution. (33 U.S.C. 1324)

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### **Nonpoint source management programs**

**Sec. 319** (a) State assessment reports

(1) Contents

The Governor of each State shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval, a report which -

(A) identifies those navigable waters within the State which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of this chapter;

(B) identifies those categories and subcategories of nonpoint sources or, where appropriate, particular nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

(C) describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source; and

(D) identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters,

including but not limited to those programs which are receiving Federal assistance under subsections (h) and (i) of this section.

(2) Information used in preparation

In developing the report required by this section, the State (A) may rely upon information developed pursuant to sections 1288, 1313(e), 1314(f), 1315(b), and 1324 of this title, and other information as appropriate, and (B) may utilize appropriate elements of the waste treatment management plans developed pursuant to sections 1288(b) and 1313 of this title, to the extent such elements are consistent with and fulfill the requirements of this section.

(b) State management programs

(1) In general

The Governor of each State, for that State or in combination with adjacent States, shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval a management program which such State proposes to implement in the first four fiscal years beginning after the date of submission of such management program for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters.

(2) Specific contents

Each management program proposed for implementation under this subsection shall include each of the following:

(A) An identification of the best

management practices and measures which will be undertaken to reduce pollutant loadings resulting from each category, subcategory, or particular nonpoint source designated under paragraph (1)(B), taking into account the impact of the practice on ground water quality.

(B) An identification of programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of the best management practices by the categories, subcategories, and particular nonpoint sources designated under subparagraph (A).

(C) A schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (B), and (ii) implementation of the best management practices identified in subparagraph (A) by the categories, subcategories, or particular nonpoint sources designated under paragraph (1)(B). Such schedule shall provide for utilization of the best management practices at the earliest practicable date.

(D) A certification of the attorney general of the State or States (or the chief attorney of any State water pollution control agency which has independent legal counsel) that the laws of the State or States, as the case may be, provide adequate

authority to implement such management program or, if there is not such adequate authority, a list of such additional authorities as will be necessary to implement such management program. A schedule and commitment by the State or States to seek such additional authorities as expeditiously as practicable.

(E) Sources of Federal and other assistance and funding (other than assistance provided under subsections (h) and (i) of this section) which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.

(F) An identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with the program prepared under this subsection; for the purposes of this subparagraph, identification shall not be limited to the assistance programs or development projects subject to Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes

and objectives of the State's nonpoint source pollution management program.

(3) Utilization of local and private experts

In developing and implementing a management program under this subsection, a State shall, to the maximum extent practicable, involve local public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

(4) Development on watershed basis

A State shall, to the maximum extent practicable, develop and implement a management program under this subsection on a watershed-by-watershed basis within such State.

(c) Administrative provisions

(1) Cooperation requirement

Any report required by subsection (a) of this section and any management program and report required by subsection (b) of this section shall be developed in cooperation with local, substate regional, and interstate entities which are actively planning for the implementation of nonpoint source pollution controls and have either been certified by the Administrator in accordance with section 1288 of this title, have worked jointly with the State on water quality management planning under section 1285(j) of this title, or have been designated by the State legislative body or Governor as water quality management planning agencies for their geographic areas.

(2) Time period for submission of reports and management programs

Each report and management program shall be submitted to the Administrator during the 18-month period beginning on February 4, 1987.

(d) Approval or disapproval of reports and management programs

(1) Deadline Subject to paragraph (2), not later than 180 days after the date of submission to the Administrator of any report or management program under this section (other than subsections (h), (i), and (k) of this section), the Administrator shall either approve or disapprove such report or management program, as the case may be. The Administrator may approve a portion of a management program under this subsection. If the Administrator does not disapprove a report, management program, or portion of a management program in such 180-day period, such report, management program, or portion shall be deemed approved for purposes of this section.

(2) Procedure for disapproval

If, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies and other interested persons, the Administrator determines that -

- (A) the proposed management program or any portion thereof does not meet the requirements of subsection (b)(2) of this section or is not likely to satisfy, in whole or in part, the goals and requirements of this chapter;
- (B) adequate authority does not exist,

or adequate resources are not available, to implement such program or portion;

(C) the schedule for implementing such program or portion is not sufficiently expeditious; or

(D) the practices and measures proposed in such program or portion are not adequate to reduce the level of pollution in navigable waters in the State resulting from nonpoint sources and to improve the quality of navigable waters in the State; the Administrator shall within 6 months of the receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall thereupon have an additional 3 months to submit its revised management program and the Administrator shall approve or disapprove such revised program within three months of receipt.

### (3) Failure of State to submit report

If a Governor of a State does not submit the report required by subsection (a) of this section within the period specified by subsection (c)(2) of this section, the Administrator shall, within 30 months after February 4, 1987, prepare a report for such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (a) of this section. Upon completion of the requirement of the preceding sentence and after notice and opportunity for comment, the Administrator shall report to Congress on his actions pursuant to this section.

(e) Local management programs; technical assistance

If a State fails to submit a management program under subsection (b) of this section or the Administrator does not approve such a management program, a local public agency or organization which has expertise in, and authority to, control water pollution resulting from nonpoint sources in any area of such State which the Administrator determines is of sufficient geographic size may, with approval of such State, request the Administrator to provide, and the Administrator shall provide, technical assistance to such agency or organization in developing for such area a management program which is described in subsection (b) of this section and can be approved pursuant to subsection (d) of this section. After development of such management program, such agency or organization shall submit such management program to the Administrator for approval. If the Administrator approves such management program, such agency or organization shall be eligible to receive financial assistance under subsection (h) of this section for implementation of such management program as if such agency or organization were a State for which a report submitted under subsection (a) of this section and a management program submitted under subsection (b) of this section were approved under this section. Such financial assistance shall be subject to the same terms and conditions as assistance provided to a State under subsection (h) of this section.

(f) Technical assistance for States

Upon request of a State, the Administrator may provide technical assistance to such State in developing a management program approved under subsection (b) of this section for those portions of the navigable waters requested by such State.

(g) Interstate management conference

(1) Convening of conference; notification; purpose

If any portion of the navigable waters in any State which is implementing a management program approved under this section is not meeting applicable water quality standards or the goals and requirements of this chapter as a result, in whole or in part, of pollution from nonpoint sources in another State, such State may petition the Administrator to convene, and the Administrator shall convene, a management conference of all States which contribute significant pollution resulting from nonpoint sources to such portion. If, on the basis of information available, the Administrator determines that a State is not meeting applicable water quality standards or the goals and requirements of this chapter as a result, in whole or in part, of significant pollution from nonpoint sources in another State, the Administrator shall notify such States. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification, whether or not the State which is not meeting such standards requests such conference. The purpose of such conference shall be to develop

an agreement among such States to reduce the level of pollution in such portion resulting from nonpoint sources and to improve the water quality of such portion. Nothing in such agreement shall supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws. This subsection shall not apply to any pollution which is subject to the Colorado River Basin Salinity Control Act (43 U.S.C. 1571 et seq.). The requirement that the Administrator convene a management conference shall not be subject to the provisions of section 1365 of this title.

(2) State management program requirement

To the extent that the States reach agreement through such conference, the management programs of the States which are parties to such agreements and which contribute significant pollution to the navigable waters or portions thereof not meeting applicable water quality standards or goals and requirements of this chapter will be revised to reflect such agreement. Such management programs shall be consistent with Federal and State law.

(h) Grant program

(1) Grants for implementation of management programs

Upon application of a State for which a report submitted under subsection (a) of this section and a management program submitted under subsection (b) of this section is approved under this section,

the Administrator shall make grants, subject to such terms and conditions as the Administrator considers appropriate, under this subsection to such State for the purpose of assisting the State in implementing such management program. Funds reserved pursuant to section 1285(j)(5) of this title may be used to develop and implement such management program.

(2) Applications

An application for a grant under this subsection in any fiscal year shall be in such form and shall contain such other information as the Administrator may require, including an identification and description of the best management practices and measures which the State proposes to assist, encourage, or require in such year with the Federal assistance to be provided under the grant.

(3) Federal share

The Federal share of the cost of each management program implemented with Federal assistance under this subsection in any fiscal year shall not exceed 60 percent of the cost incurred by the State in implementing such management program and shall be made on condition that the non-Federal share is provided from non-Federal sources.

(4) Limitation on grant amounts

Notwithstanding any other provision of this subsection, not more than 15 percent of the amount appropriated to carry out this subsection may be used to make grants to any one State, including any grants to any local public agency or

organization with authority to control pollution from nonpoint sources in any area of such State.

(5) Priority for effective mechanisms

For each fiscal year beginning after September 30, 1987, the Administrator may give priority in making grants under this subsection, and shall give consideration in determining the Federal share of any such grant, to States which have implemented or are proposing to implement management programs which will

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(A) control particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities;

(B) implement innovative methods or practices for controlling nonpoint sources of pollution, including regulatory programs where the Administrator deems appropriate;

(C) control interstate nonpoint source pollution problems; or

(D) carry out ground water quality protection activities which the Administrator determines are part of a comprehensive nonpoint source pollution control program, including research, planning, ground water assessments, demonstration programs, enforcement, technical assistance, education, and training to protect ground water quality from nonpoint sources of pollution. (33 U.S.C. 1329)

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## **National pollutant discharge elimination system**

### **Sec. 402** (a) Permits for discharge of pollutants

(1) Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title, upon condition that such discharge will meet either (A) all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title, or (B) prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter.

(2) The Administrator shall prescribe conditions for such permits to assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.

(3) The permit program of the Administrator under paragraph (1) of this subsection, and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder under subsection (b) of this section.

(4) All permits for discharges into the navigable waters issued pursuant to section 407 of this title shall be deemed

to be permits issued under this subchapter, and permits issued under this subchapter shall be deemed to be permits issued under section 407 of this title, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this chapter.

(5) No permit for a discharge into the navigable waters shall be issued under section 407 of this title after October 18, 1972. Each application for a permit under section 407 of this title, pending on October 18, 1972, shall be deemed to be an application for a permit under this section. The Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objectives of this chapter to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted him by the preceding sentence only during the period which begins on October 18, 1972, and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 1314(i)(2) of this title, or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section, whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such permit shall be subject to such conditions as the Administrator determines are necessary to carry out the provisions of this chapter. No such permit shall issue if the Admin-

istrator objects to such issuance. (33 U.S.C. 1342)

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### **Permits for dredged or fill material**

**Sec. 404** (a) Discharge into navigable waters at specified disposal sites

The Secretary may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites. Not later than the fifteenth day after the date an applicant submits all the information required to complete an application for a permit under this subsection, the Secretary shall publish the notice required by this subsection.

(b) Specification for disposal sites

Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary (1) through the application of guidelines developed by the Administrator, in conjunction with the Secretary, which guidelines shall be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zone, and the ocean under section 1343(c) of this title, and (2) in any case where such guidelines under clause (1) alone would prohibit the specification of a site, through the application additionally of the economic impact of the site on navigation and anchorage.

(c) Denial or restriction of use of defined areas as disposal sites

The Administrator is authorized to prohibit

the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.

(d) "Secretary" defined

The term "Secretary" as used in this section means the Secretary of the Army, acting through the Chief of Engineers. (33 U.S.C. 1344)

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## Clean Air Act

**July 14, 1955 (Pub. L. 360, 69 Stat. 322; 42 U.S.C. 7602, 7506, 7491, 7475, 7474, 7472, 7470, 7418, 7416, 7410, 7401, 7403)**

### **Title I – Programs and Activities**

#### **Part A – Air Quality and Emission Limitation**

#### **Congressional findings and declaration of purpose**

##### **Sec. 101 (a) Findings**

The Congress finds –

- (1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States:
- (2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation:
- (3) that air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local governments; and

(4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.

##### **(b) Declaration**

The purposes of this subchapter are –

- (1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population:
- (2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution:
- (3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and
- (4) to encourage and assist the development and operation of regional air pollution prevention and control programs.

##### **(c) Pollution prevention**

A primary goal of this chapter is to encourage or otherwise promote reasonable Federal, State, and local governmental actions, consistent with the provisions of this chapter, for pollution prevention.

(42 U.S.C. 7401)

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**Research, investigation, training,  
and other activities**

**Sec. 103** (a) Research and development program for prevention and control of air pollution

The Administrator shall establish a national research and development program for the prevention and control of air pollution and as part of such program shall –

(1) conduct, and promote the coordination and acceleration of, research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution:

(2) encourage, cooperate with, and render technical services and provide financial assistance to air pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals in the conduct of such activities:

(3) conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency with a view to recommending a solution of such problem, if he is requested to do so by such agency or if, in his judgment, such problem may affect any community or communities in a State other than that in which the source of the matter causing or contrib-

uting to the pollution is located:

(4) establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research, and

(5) conduct and promote coordination and acceleration of training for individuals relating to the causes, effects, extent, prevention, and control of air pollution.

(b) Authorized activities of Administrator in establishing research and development program

In carrying out the provisions of the preceding subsection the Administrator is authorized to –

(1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities:

(2) cooperate with other Federal departments and agencies, with air pollution control agencies, with other public and private agencies, institutions, and organizations, and with any industries involved, in the preparation and conduct of such research and other activities:

(3) make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, for purposes stated in subsection (a)(1) of

this section:

(4) contract with public or private agencies, institutions, and organizations, and with individuals, without regard to section 3324(a) and (b) of title 31 and section 5 of title 41:

(5) establish and maintain research fellowships, in the Environmental Protection Agency and at public or nonprofit private educational institutions or research organizations:

(6) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying air quality and other information pertaining to air pollution and the prevention and control thereof:

(7) develop effective and practical processes, methods, and prototype devices for the prevention or control of air pollution; and

(8) construct facilities, provide equipment, and employ staff as necessary to carry out this chapter. In carrying out the provisions of subsection (a) of this section, the Administrator shall provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications and make grants to such agencies, to other public or nonprofit private agencies, institutions, and organizations for the purposes stated in subsection (a)(5) of this section. Reasonable fees may be charged for such

training provided to persons other than personnel of air pollution control agencies but such training shall be provided to such personnel of air pollution control agencies without charge.

(c) Air pollutant monitoring, analysis, modeling, and inventory research

In carrying out subsection (a) of this section, the Administrator shall conduct a program of research, testing, and development of methods for sampling, measurement, monitoring, analysis, and modeling of air pollutants. Such program shall include the following elements:

(1) Consideration of individual, as well as complex mixtures of, air pollutants and their chemical transformations in the atmosphere.

(2) Establishment of a national network to monitor, collect, and compile data with quantification of certainty in the status and trends of air emissions, deposition, air quality, surface water quality, forest condition, and visibility impairment, and to ensure the comparability of air quality data collected in different States and obtained from different nations.

(3) Development of improved methods and technologies for sampling, measurement, monitoring, analysis, and modeling to increase understanding of the sources of ozone precursors, <sup>1</sup> ozone formation, ozone transport, regional influences on urban ozone, regional ozone trends, and interactions of ozone with other pollutants. Emphasis shall be placed on those techniques which -

- (A) improve the ability to inventory emissions of volatile organic compounds and nitrogen oxides that contribute to urban air pollution, including anthropogenic and natural sources;
  - (B) improve the understanding of the mechanism through which anthropogenic and biogenic volatile organic compounds react to form ozone and other oxidants; and
  - (C) improve the ability to identify and evaluate region-specific prevention and control options for ozone pollution.
- (4) Submission of periodic reports to the Congress, not less than once every 5 years, which evaluate and assess the effectiveness of air pollution control regulations and programs using monitoring and modeling data obtained pursuant to this subsection.

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(e) Ecosystem research

In carrying out subsection (a) of this section, the Administrator, in cooperation, where appropriate, with the Under Secretary of Commerce for Oceans and Atmosphere, the Director of the Fish and Wildlife Service, and the Secretary of Agriculture, shall conduct a research program to improve understanding of the short-term and long-term causes, effects, and trends of ecosystems damage from air pollutants on ecosystems. Such program shall include the following elements:

- (1) Identification of regionally representative and critical ecosystems for

research.

- (2) Evaluation of risks to ecosystems exposed to air pollutants, including characterization of the causes and effects of chronic and episodic exposures to air pollutants and determination of the reversibility of those effects.

- (3) Development of improved atmospheric dispersion models and monitoring systems and networks for evaluating and quantifying exposure to and effects of multiple environmental stresses associated with air pollution.

- (4) Evaluation of the effects of air pollution on water quality, including assessments of the short-term and long-term ecological effects of acid deposition and other atmospherically derived pollutants on surface water (including wetlands and estuaries) and groundwater.

- (5) Evaluation of the effects of air pollution on forests, materials, crops, biological diversity, soils, and other terrestrial and aquatic systems exposed to air pollutants.

- (6) Estimation of the associated economic costs of ecological damage which have occurred as a result of exposure to air pollutants. Consistent with the purpose of this program, the Administrator may use the estuarine research reserves established pursuant to section 1461 of title 16 to carry out this research.

- (j) Continuation of national acid precipitation assessment program

- (1) The acid precipitation research

program set forth in the Acid Precipitation Act of 1980 (42 U.S.C. 8901 et seq.) shall be continued with modifications pursuant to this subsection.

(2) The Acid Precipitation Task Force shall consist of the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of the Interior, the Secretary of Agriculture, the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the National Aeronautics and Space Administration, and such additional members as the President may select. The President shall appoint a chairman for the Task Force from among its members within 30 days after November 15, 1990.

(3) The responsibilities of the Task Force shall include the following:

(A) Review of the status of research activities conducted to date under the comprehensive research plan developed pursuant to the Acid Precipitation Act of 1980 (42 U.S.C. 8901 et seq.), and development of a revised plan that identifies significant research gaps and establishes a coordinated program to address current and future research priorities. A draft of the revised plan shall be submitted by the Task Force to Congress within 6 months after November 15, 1990. The plan shall be available for public comment during the 60 day period after its submission, and a final plan shall be submitted by the President to the Congress within 45 days after the close of the comment period.

(B) Coordination with participating Federal agencies, augmenting the agencies' research and monitoring efforts and sponsoring additional research in the scientific community as necessary to ensure the availability and quality of data and methodologies needed to evaluate the status and effectiveness of the acid deposition control program. Such research and monitoring efforts shall include, but not be limited to -

(i) continuous monitoring of emissions of precursors of acid deposition;

(ii) maintenance, upgrading, and application of models, such as the Regional Acid Deposition Model, that describe the interactions of emissions with the atmosphere, and models that describe the response of ecosystems to acid deposition; and

(iii) analysis of the costs, benefits, and effectiveness of the acid deposition control program.

(C) Publication and maintenance of a National Acid Lakes Registry that tracks the condition and change over time of a statistically representative sample of lakes in regions that are known to be sensitive to surface water acidification.

(D) Submission every two years of a unified budget recommendation to the President for activities of the Federal Government in connection with the research program described in this subsection.

(E) Beginning in 1992 and biennially thereafter, submission of a report to Congress describing the results of its investigations and analyses. The reporting of technical information about acid deposition shall be provided in a format that facilitates communication with policymakers and the public. The report shall include -

- (i) actual and projected emissions and acid deposition trends;
- (ii) average ambient concentrations of acid deposition precursors <sup>2</sup> and their transformation products;
- (iii) the status of ecosystems (including forests and surface waters), materials, and visibility affected by acid deposition;
- (iv) the causes and effects of such deposition, including changes in surface water quality and forest and soil conditions;
- (v) the occurrence and effects of episodic acidification, particularly with respect to high elevation watersheds; and
- (vi) the confidence level associated with each conclusion to aid policymakers in use of the information.

(F) Beginning in 1996, and every 4 years thereafter, the report under subparagraph (E) shall include -

- (i) the reduction in deposition rates that must be achieved in order to prevent adverse ecological effects; and

(ii) the costs and benefits of the acid deposition control program created by subchapter IV-A of this chapter. (42 U.S.C. 7403)

<sup>1</sup> So in original. Probably should be “precursors,”.

<sup>2</sup> So in original. Probably should be “with”.

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### **State implementation plans for national primary and secondary ambient air quality standards**

**Sec. 110** (a) Adoption of plan by State; submission to Administrator; content of plan; revision; new sources; indirect source review program; supplemental or intermittent control systems

(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 7409 of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national ambient air quality secondary

standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph. (42 U.S.C. 7410)

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### **Retention of State authority**

**Sec. 116** Except as otherwise provided in sections 1857c-10(c), (e), and (f) (as in effect before August 7, 1977), 7543, 7545(c)(4), and 7573 of this title (pre-empting certain State regulation of moving sources) nothing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 7411 or section 7412 of this title, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section. (42 U.S.C. 7416)

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### **Control of pollution from Federal facilities**

#### **Sec. 118 (a) General compliance**

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, and each officer, agent, or employee thereof, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner, and to the same extent as any nongovernmental entity. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever), (B) to any requirement to pay a fee or charge imposed by any State or local agency to defray the costs of its air pollution regulatory program, (C) to the exercise of any Federal, State, or local administrative authority, and (D) to any process and sanction, whether enforced in Federal, State, or local courts, or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law. No officer, agent, or employee of the United States shall be personally liable for any civil penalty for which he is not otherwise liable.

#### **(b) Exemption**

The President may exempt any emission

source of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so, except that no exemption may be granted from section 7411 of this title, and an exemption from section 7412 of this title may be granted only in accordance with section 7412(i)(4) of this title. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. In addition to any such exemption of a particular emission source, the President may, if he determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vehicles, or other classes or categories of property which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature. The President shall reconsider the need for such regulations at three-year intervals. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each

such exemption.

(c) Government vehicles

Each department, agency, and instrumentality of executive, legislative, and judicial branches of the Federal Government shall comply with all applicable provisions of a valid inspection and maintenance program established under the provisions of subpart 2 of part D of this subchapter or subpart 3 of part D of this subchapter except for such vehicles that are considered military tactical vehicles.

(d) Vehicles operated on Federal installations

Each department, agency, and instrumentality of executive, legislative, and judicial branches of the Federal Government having jurisdiction over any property or facility shall require all employees which operate motor vehicles on the property or facility to furnish proof of compliance with the applicable requirements of any vehicle inspection and maintenance program established under the provisions of subpart 2 of part D of this subchapter or subpart 3 of part D of this subchapter for the State in which such property or facility is located (without regard to whether such vehicles are registered in the State). The installation shall use one of the following methods to establish proof of compliance- (42 U.S.C. 7418)

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**Part C- Prevention of Significant Deterioration of Air Quality**

**Congressional declaration of purpose**

**Sec. 160** The purposes of this part are as follows:

- (1) to protect public health and welfare from any actual or potential adverse effect which in the Administrator's judgment may reasonably be anticipated<sup>3</sup> to occur from air pollution or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air<sup>4</sup>, notwithstanding attainment and maintenance of all national ambient air quality standards;
- (2) to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value;
- (3) to insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources;
- (4) to assure that emissions from any source in any State will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for any other State; and
- (5) to assure that any decision to permit increased air pollution in any area to which this section applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decisionmaking process. (42 U.S.C. 7470)

<sup>3</sup> So in original. Probably should be

“anticipated”.

<sup>4</sup> So in original. Section was enacted without an opening parenthesis.

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### **Initial classifications**

**Sec. 162** (a) Areas designated as class I

Upon the enactment of this part, all-

- (1) international parks,
- (2) national wilderness areas which exceed 5,000 acres in size,
- (3) national memorial parks which exceed 5,000 acres in size, and
- (4) national parks which exceed six thousand acres in size, and which are in existence on August 7, 1977, shall be class I areas and may not be redesignated. All areas which were redesignated as class I under regulations promulgated before August 7, 1977, shall be class I areas which may be redesignated as provided in this part. The extent of the areas designated as Class I under this section shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990.

(b) Areas designated as class II

All areas in such State designated pursuant to section 7407(d) of this title as attainment or unclassifiable which are not established as class I under subsection (a) of this section shall be class II areas unless redesignated under section 7474 of this title. (42 U.S.C. 7472)

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### Area redesignation

**Sec. 164** (a) Authority of States to redesignate areas

Except as otherwise provided under subsection (c) of this section, a State may redesignate such areas as it deems appropriate as class I areas. The following areas may be redesignated only as class I or II:

(1) an area which exceeds ten thousand acres in size and is a national monument, a national primitive area, a national preserve, a national recreation area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore, and

(2) a national park or national wilderness area established after August 7, 1977, which exceeds ten thousand acres in size. The extent of the areas referred to in paragraph <sup>5</sup> (1) and (2) shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990. Any area (other than an area referred to in paragraph (1) or (2) or an area established as class I under the first sentence of section 7472(a) of this title) may be redesignated by the State as class III if –

(A) such redesignation has been specifically approved by the Governor of the State, after consultation with the appropriate Committees of the legislature if it is in session or with the leadership of the legislature if it is not

in session (unless State law provides that such redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area so redesignated enact legislation (including for such units of local government resolutions where appropriate) concurring in the State's redesignation;

(B) such redesignation will not cause, or contribute to, concentrations of any air pollutant which exceed any maximum allowable increase or maximum allowable concentration permitted under the classification of any other area; and

(C) such redesignation otherwise meets the requirements of this part. Subparagraph (A) of this paragraph shall not apply to area redesignations by Indian tribes.

(b) Notice and hearing; notice to Federal land manager; written comments and recommendations; regulations; disapproval of redesignation

(1)(A) Prior to redesignation of any area under this part, notice shall be afforded and public hearings shall be conducted in areas proposed to be redesignated and in areas which may be affected by the proposed redesignation. Prior to any such public hearing a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation shall be prepared and made available for public inspection and prior to any such redesignation, the

description and analysis of such effects shall be reviewed and examined by the redesignating authorities.

(B) Prior to the issuance of notice under subparagraph (A) respecting the redesignation of any area under this subsection, if such area includes any Federal lands, the State shall provide written notice to the appropriate Federal land manager and afford adequate opportunity (but not in excess of 60 days) to confer with the State respecting the intended notice of redesignation and to submit written comments and recommendations with respect to such intended notice of redesignation. In redesignating any area under this section with respect to which any Federal land manager has submitted written comments and recommendations, the State shall publish a list of any inconsistency between such redesignation and such recommendations and an explanation of such inconsistency (together with the reasons for making such redesignation against the recommendation of the Federal land manager).

(C) The Administrator shall promulgate regulations not later than six months after August 7, 1977, to assure, insofar as practicable, that prior to any public hearing on redesignation of any area, there shall be available for public inspection any specific plans for any new or modified major emitting facility which may be permitted to be constructed and operated only if the area in question is designated or redesignated as class

### III.

(2) The Administrator may disapprove the redesignation of any area only if he finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of this section or is inconsistent with the requirements of section 7472(a) of this title or of subsection (a) of this section. If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.

#### (c) Indian reservations

Lands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated only by the appropriate Indian governing body. Such Indian governing body shall be subject in all respect to the provisions of subsection (e) of this section.

#### (d) Review of national monuments, primitive areas, and national preserves

The Federal Land Manager shall review all national monuments, primitive areas, and national preserves, and shall recommend any appropriate areas for redesignation as class I where air quality related values are important attributes of the area. The Federal Land Manager shall report such recommendations, within <sup>6</sup> supporting analysis, to the Congress and the affected States within one year after August 7, 1977. The Federal Land Manager shall consult with the appropriate States before making such recommendations.

(e) Resolution of disputes between State and Indian tribes

If any State affected by the redesignation of an area by an Indian tribe or any Indian tribe affected by the redesignation of an area by a State disagrees with such redesignation of any area, or if a permit is proposed to be issued for any new major emitting facility proposed for construction in any State which the Governor of an affected State or governing body of an affected Indian tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this part within the affected State or tribal reservation, the Governor or Indian ruling body may request the Administrator to enter into negotiations with the parties involved to resolve such dispute. If requested by any State or Indian tribe involved, the Administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the parties involved do not reach agreement, the Administrator shall resolve the dispute and his determination, or the results of agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of such plan. In resolving such disputes relating to area redesignation, the Administrator shall consider the extent to which the lands involved are of sufficient size to allow effective air quality management or have air quality related values of such an area. (42 U.S.C. 7474)

<sup>5</sup> So in original. Probably should be “paragraphs”.

<sup>6</sup> So in original. Probably should be “with”.

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### **Preconstruction requirements**

**Sec. 165** (a) Major emitting facilities on which construction is commenced

No major emitting facility on which construction is commenced after August 7, 1977, may be constructed in any area to which this part applies unless –

- (1) a permit has been issued for such proposed facility in accordance with this part setting forth emission limitations for such facility which conform to the requirements of this part:

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(d) Action taken on permit applications; notice; adverse impact on air quality related values; variance; emission limitations

- (1) Each State shall transmit to the Administrator a copy of each permit application relating to a major emitting facility received by such State and provide notice to the Administrator of every action related to the consideration of such permit.

(2)(A) The Administrator shall provide notice of the permit application to the Federal Land Manager and the Federal official charged with direct responsibility for management of any lands within a class I area which may be affected by emissions from the proposed facility.

(B) The Federal Land Manager and the Federal official charged with direct

responsibility for management of such lands shall have an affirmative responsibility to protect the air quality related values (including visibility) of any such lands within a class I area and to consider, in consultation with the Administrator, whether a proposed major emitting facility will have an adverse impact on such values.

(C)(i) In any case where the Federal official charged with direct responsibility for management of any lands within a class I area or the Federal Land Manager of such lands, or the Administrator, or the Governor of an adjacent State containing such a class I area files a notice alleging that emissions from a proposed major emitting facility may cause or contribute to a change in the air quality in such area and identifying the potential adverse impact of such change, a permit shall not be issued unless the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur dioxide will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area.

(ii) In any case where the Federal Land Manager demonstrates to the satisfaction of the State that the emissions from such facility will have an adverse impact on the air quality-related values (including visibility) of such lands, notwithstanding the fact that the change in air quality resulting from emissions from such facility will not cause or contribute to concentrations which

exceed the maximum allowable increases for a class I area, a permit shall not be issued.

(iii) In any case where the owner or operator of such facility demonstrates to the satisfaction of the Federal Land Manager, and the Federal Land Manager so certifies, that the emissions from such facility will have no adverse impact on the air quality-related values of such lands (including visibility), notwithstanding the fact that the change in air quality resulting from emissions from such facility will cause or contribute to concentrations which exceed the maximum allowable increases for class I areas, the State may issue a permit.

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(D)(i) In any case where the owner or operator of a proposed major emitting facility who has been denied a certification under subparagraph (C)(iii) demonstrates to the satisfaction of the Governor, after notice and public hearing, and the Governor finds, that the facility cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of twenty-four hours or less applicable to any class I area and, in the case of Federal mandatory class I areas, that a variance under this clause will not adversely affect the air quality related values of the area (including visibility), the Governor, after consideration of the Federal Land Manager's recom-

mentation (if any) and subject to his concurrence, may grant a variance from such maximum allowable increase. If such variance is granted, a permit may be issued to such source pursuant to the requirements of this subparagraph.

(ii) In any case in which the Governor recommends a variance under this subparagraph in which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the President. The President may approve the Governor's recommendation if he finds that such variance is in the national interest. No Presidential finding shall be reviewable in any court. The variance shall take effect if the President approves the Governor's recommendations. The President shall approve or disapprove such recommendation within ninety days after his receipt of the recommendations of the Governor and the Federal Land Manager. (42 U.S.C. 7475)

### **Visibility protection for Federal class I areas**

**Sec. 169A** (a) Impairment of visibility; list of areas; study and report

(1) Congress hereby declares as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.

(2) Not later than six months after August 7, 1977, the Secretary of the Interior in consultation with other Federal land managers shall review all mandatory class I Federal areas and identify those where visibility is an important value of the area. From time to time the Secretary of the Interior may revise such identifications. Not later than one year after August 7, 1977, the Administrator shall, after consultation with the Secretary of the Interior, promulgate a list of mandatory class I Federal areas in which he determines visibility is an important value.

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### **(c) Exemptions**

(1) The Administrator may, by rule, after notice and opportunity for public hearing, exempt any major stationary source from the requirement of subsection (b)(2)(A) of this section, upon his determination that such source does not or will not, by itself or in combination with other sources, emit any air pollutant which may reasonably be anticipated to cause or contribute to a significant impairment of visibility in any mandatory class I Federal area.

(2) Paragraph (1) of this subsection shall not be applicable to any fossil-fuel fired powerplant with total design capacity of 750 megawatts or more, unless the owner or operator of any such plant demonstrates to the satisfaction of the Administrator that such powerplant is located at such distance from all areas listed by the Administrator under subsection (a)(2) of this

section that such powerplant does not or will not, by itself or in combination with other sources, emit any air pollutant which may reasonably be anticipated to cause or contribute to significant impairment of visibility in any such area.

(3) An exemption under this subsection shall be effective only upon concurrence by the appropriate Federal land manager or managers with the Administrator's determination under this subsection.

(d) Consultations with appropriate Federal land managers

Before holding the public hearing on the proposed revision of an applicable implementation plan to meet the requirements of this section, the State (or the Administrator, in the case of a plan promulgated under section 7410(c) of this title) shall consult in person with the appropriate Federal land manager or managers and shall include a summary of the conclusions and recommendations of the Federal land managers in the notice to the public.

(e) Buffer zones

In promulgating regulations under this section, the Administrator shall not require the use of any automatic or uniform buffer zone or zones.

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(g) Definitions

For the purpose of this section –

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(5) the term “mandatory class I Federal areas” means Federal areas which may

not be designated as other than class I under this part:

(6) the terms “visibility impairment” and “impairment of visibility” shall include reduction in visual range and atmospheric discoloration; and

(7) the term “major stationary source” means the following types of stationary sources with the potential to emit 250 tons or more of any pollutant: fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (thermal dryers), kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than 250 million British thermal units per hour heat input, petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels, taconite ore processing facilities, glass fiber processing plants, charcoal production facilities. (42 U.S.C. 7491)

#### **Part D- Plan Requirement for Nonattainment Areas**

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### **Limitations on certain Federal assistance**

#### **Sec. 176** (a) and (b) Repealed

(c) Activities not conforming to approved or promulgated plans

(1) No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to an implementation plan after it has been approved or promulgated under section 7410 of this title. No metropolitan planning organization designated under section 134 of title 23, shall give its approval to any project, program, or plan which does not conform to an implementation plan approved or promulgated under section 7410 of this title. The assurance of conformity to such an implementation plan shall be an affirmative responsibility of the head of such department, agency, or instrumentality. (42 U.S.C. 7506)

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### **Title III - General**

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#### **Definitions**

**Sec. 302** When used in this chapter -

(i) The term "Federal land manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands. (42 U.S.C 7602)

## National Environmental Policy Act of 1969

**January 1, 1970 (Pub. L. 91-190, 83 Stat. 852; 42 U.S.C. 4321 note, 4321, 4331 to 4335, 4342 to 4346, 4346a, 4346b, 4347)**

**Sec. 1** That this Act may be cited as the ‘National Environmental Policy Act of 1969’. (42 U.S.C. 4321 note)

### **Congressional declaration of purpose**

**Sec. 2** 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. (42 U.S.C. 4321)

### **Congressional declaration of national environmental policy**

**Sec. 101** (a) The Congress, recognizing the profound impact of man’s activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the

Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this 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. (42 U.S.C. 4331)

**Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts**

**Sec. 102** The Congress authorizes and directs that, to the fullest extent possible:

(1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this 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 state-wide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by subchapter II of this chapter. (42 U.S.C. 4332)

### **Conformity of administrative procedures to national environmental policy**

**Sec. 103** All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this 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. (42 U.S.C. 4333)

### **Other statutory obligations of agencies**

**Sec. 104** 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. (42 U.S.C. 4334)

### **Efforts supplemental to existing authorizations**

**Sec. 105** The policies and goals set forth in this chapter are supplementary to those

set forth in existing authorizations of Federal agencies. (42 U.S.C. 4335)

**Sec. 201** Omitted

### **Establishment; membership; Chairman; appointments**

**Sec. 202** There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in 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. (42 U.S.C. 4342)

### **Employment of personnel, experts and consultants**

**Sec. 203** (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. (42 U.S.C. 4343)

### **Duties and functions**

**Sec. 204** It shall be the duty and function of the Council -

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 4341 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. (42 U.S.C. 4344)

### **Consultation with Citizens' Advisory Committee on Environmental Quality and other representatives**

**Sec. 205** 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. (42 U.S.C. 4345)

#### **Tenure and compensation of members**

**Sec. 206** Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV or 2 the Executive Schedule Pay Rates (5 U.S.C. 5315). (42 U.S.C. 4346)

#### **Travel reimbursement by private organizations and Federal, State, and local governments**

**Sec. 207** The Council may accept reimbursements from any private non-profit 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. (42 U.S.C. 4346a)

#### **Expenditures in support of international activities**

**Sec. 208** The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries. (42 U.S.C. 4346b)

#### **Authorization of appropriations**

**Sec. 209** There are authorized to be appropriated to carry out the provisions of this 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. (42 U.S.C. 4347)

## Federal Noxious Weed Act of 1974

**January 3, 1975 (Pub. L. 93-629, 104 Stat. 3611; 7 U.S.C. 2801 note, 2814)**

That this Act may be cited as the 'Federal Noxious Weed Act of 1974'. (7 U.S.C. 2801 note)

### Management of undesirable plants on Federal lands

#### (a) Duties of agencies

Each Federal agency shall -

- (1) designate an office or person adequately trained in the management of undesirable plant species to develop and coordinate an undesirable plants management program for control of undesirable plants on Federal lands under the agency's jurisdiction;
- (2) establish and adequately fund an undesirable plants management program through the agency's budgetary process;
- (3) complete and implement cooperative agreements with State agencies regarding the management of undesirable plant species on Federal lands under the agency's jurisdiction; and
- (4) establish integrated management systems to control or contain undesirable plant species targeted under cooperative agreements.

#### (b) Environmental impact statements

In the event an environmental assessment or environmental impact statement is required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et

seq.) to implement plant control agreements, Federal agencies shall complete such assessments or statements within 1 year after the requirement for such assessment or statement is ascertained.

#### (c) Cooperative agreements with State agencies

##### (1) In general

Federal agencies, as appropriate, shall enter into cooperative agreements with State agencies to coordinate the management of undesirable plant species on Federal lands.

##### (2) Contents of plan

A cooperative agreement entered into pursuant to paragraph (1) shall -

- (A) prioritize and target undesirable plant species or group of species to be controlled or contained within a specific geographic area;
- (B) describe the integrated management system to be used to control or contain the targeted undesirable plant species or group of species; and
- (C) detail the means of implementing the integrated management system, define the duties of the Federal agency and the State agency in prosecuting that method, and establish a timeframe for the initiation and completion of the tasks specified in the integrated management system.

## (d) Exception

A Federal agency is not required under this section to carry out programs on Federal lands unless similar programs are being implemented generally on State or private lands in the same area.

## (e) Definitions

As used in this section:

## (1) Cooperative agreement

The term “cooperative agreement” means a written agreement between a Federal agency and a State agency entered into pursuant to this section.

## (2) Federal agency

The term “Federal agency” means a department, agency, or bureau of the Federal Government responsible for administering or managing Federal lands under its jurisdiction.

## (3) Federal lands

The term “Federal lands” means lands managed by or under the jurisdiction of the Federal Government.

## (4) Integrated management system

The term “integrated management systems” means a system for the planning and implementation of a program, using an interdisciplinary approach, to select a method for containing or controlling an undesirable plant species or group of species using all available methods, including -

- (A) education;
- (B) preventive measures;
- (C) physical or mechanical methods;

(D) biological agents;

(E) herbicide methods;

(F) cultural methods; and

(G) general land management practices such as manipulation of livestock or wildlife grazing strategies or improving wildlife or livestock habitat.

## (5) Interdisciplinary approach

The term “interdisciplinary approach” means an approach to making decisions regarding the containment or control of an undesirable plant species or group of species, which -

(A) includes participation by personnel of Federal or State agencies with experience in areas including weed science, range science, wildlife biology, land management, and forestry; and

(B) includes consideration of -

- (i) the most efficient and effective method of containing or controlling the undesirable plant species;
- (ii) scientific evidence and current technology;
- (iii) the physiology and habitat of a plant species; and (iv) the economic, social, and ecological consequences of implementing the program.

## (6) State agencies

The term “State agency” means a State department of agriculture, or other State agency or political subdivision thereof, responsible for the administration or implementation of undesirable plants laws of a State.

## (7) Undesirable plant species

The term “undesirable plants” means plant species that are classified as undesirable, noxious, harmful, exotic, injurious, or poisonous, pursuant to State or Federal law. Species listed as endangered by the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall not be designated as undesirable plants under this section and shall not include plants indigenous to an area where control measures are to be taken under this section.

manage noxious weeds in an area if a majority of landowners in that area agree to participate in a noxious weed management program.

## (g) Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary in each of fiscal years 1991 through 1995 to carry out this section. (7 U.S.C. 2814)

## (f) Coordination

## (1) In general

The Secretary of Agriculture and the Secretary of the Interior shall take such actions as may be necessary to coordinate Federal agency programs for control, research, and educational efforts associated with Federal, State, and locally designated noxious weeds.

## (2) Duties

The Secretary, in consultation with the Secretary of the Interior, shall -

(A) identify regional priorities for noxious weed control;

(B) incorporate into existing technical guides regionally appropriate technical information; and

(C) disseminate such technical information to interested State, local, and private entities.

## (3) Cost share assistance

The Secretary may provide cost share assistance to State and local agencies to

## Clarke-McNary Act

**June 7, 1924 (Ch. 348, 43 Stat. 654; 16 U.S.C. 568, 515, 569, 570, 499, 505)**

### **Cooperation by Secretary of Agriculture with States in establishing, etc., wood lots, shelter belts, windbreaks, etc.; limitation on expenditure; authorization of appropriations**

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

provisions of this section. (16 U.S.C. 568)

### **Examination, location, and purchase of forested, cut-over, or denuded lands; consent of State legislature to acquisition of land by the United States**

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

### **Donations to United States of lands for timber purposes**

**Sec. 7** To enable owners of lands chiefly valuable for the growing of timber crops to donate or devise such lands to the United States in order to assure future timber supplies for the agricultural and other industries of the State or for other national forest purposes, the Secretary of Agriculture is authorized, in his discretion,

to accept on behalf of the United States title to any such land so donated or devised, subject to such reservations by the donor of the present stand of merchantable timber or of mineral or other rights for a period not exceeding twenty years as the Secretary of Agriculture may find to be reasonable and not detrimental to the purposes of this section, and to pay out of any moneys appropriated for the general expenses of the Forest Service the cost of recording deeds or other expenses incident to the examination and acceptance of title. Any lands to which title is so accepted shall be in units of such size or so located as to be capable of economical administration as national forests either separately or jointly with other lands acquired under this section, or jointly with an existing national forest. All lands to which title is accepted under this section shall, upon acceptance of title, become national forest lands, subject to all laws applicable to lands acquired under the Act of March 1, 1911, and amendments thereto. In the sale of timber from national forest lands acquired under this section preference shall be given to applicants who will furnish the products desired therefrom to meet the necessities of citizens of the United States engaged in agriculture in the States in which such national forest is situated. All property, rights, easements, and benefits authorized by this section to be retained by or reserved to owners of lands donated or devised to the United States shall be subject to the tax laws of the States where such lands are located. (16 U.S.C. 569)

**Ascertainment by Secretary of Agriculture of public lands valuable for stream-flow protection and report thereof**

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

**Disposal of money received by or on account of Forest Service; refund of excess and moneys erroneously collected; receipts from permits**

**Sec. 9** All money received by or on account of the Forest Service for timber, or from any other source of national-forest revenue, including moneys received from sale of products from or for the use of lands in national forests created under section 471(b) (repealed) of this title, and moneys received on account of permits for hunting, fishing, or camping on lands acquired under authority of sections 513 to 517 and 521 of this title, shall be covered into the Treasury of the United States as a miscellaneous receipt and

there is hereby appropriated and made available as the Secretary of Agriculture may direct out of any funds in the Treasury not otherwise appropriated, so much as may be necessary to make refunds to depositors of money heretofore or hereafter deposited by them to secure the purchase price on the sale of any products or for the use of any land or resources of the national forests in excess of amounts found actually due from them to the United States and also so much as may be necessary to refund or pay over to the rightful claimants such sums as may be found by the Secretary of Agriculture to have been erroneously collected for the use of any lands, or for timber or other resources sold from lands located within, but not a part of, the national forests, or for alleged illegal acts done upon such lands, which acts are subsequently found to have been proper and legal. (16 U.S.C. 499)

**Use of national forests established on land reserved for purposes of national defense; maintenance available**

Where a national forest is established under section 471(b) of this title on land previously reserved for the Army or Navy for purposes of national defense the land shall remain subject to the unhampered use of the Department of the Army or Navy Department for said purposes and nothing in this section or section 471(b) of this title shall be construed to relinquish the authority over such lands for purposes of national defense now vested in the department for which the lands were

formerly reserved. Any moneys available for the maintenance, improvement, protection, construction of highways and general administration of the national forests shall be available for expenditure on national forests created under this section. (16 U.S.C. 505)

## **Smokey Bear Act**

**May 23, 1952 (Ch. 327, 66 Stat. 92; 18 U.S.C. 711, 16 U.S.C. 580p-2)**

### **“Smokey Bear” character or name**

**Sec. 2** Whoever, except as authorized under rules and regulations issued by the Secretary of Agriculture after consultation with the Association of State Foresters and the Advertising Council, knowingly and for profit manufactures, reproduces, or uses the character “Smokey Bear”, originated by the Forest Service, United States Department of Agriculture, in cooperation with the Association of State Foresters and the Advertising Council for use in public information concerning the prevention of forest fires, or any facsimile thereof, or the name “Smokey Bear” shall be fined under this title or imprisoned not more than six months, or both. (18 U.S.C. 711)

### **Deposit of fees collected under regulations relating to “Smokey Bear”; availability**

**Sec. 3** The Secretary of Agriculture shall deposit into a special account to be available for furthering the nationwide forest-fire prevention campaign all fees collected under regulations promulgated by him relating to “Smokey Bear”. (16 U.S.C. 580p-2)

# Soil and Water Resources Conservation Act of 1977

November 18, 1977 (Pub. L. 95-192, 91 Stat. 1407; 16 U.S.C. 2001 note, 2001 to 2009)

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## Congressional findings

**Sec. 2** The Congress finds that:

- (1) There is a growing demand on the soil, water, and related resources of the Nation to meet present and future needs.
- (2) The Congress, in its concern for sustained use of the resource base,<sup>1</sup> of the United States, has ensured that the Department of Agriculture possesses information, technical expertise, and a delivery system for providing assistance to land users with respect to conservation and use of soils; plants; woodlands; watershed protection and flood prevention; the conservation, development, utilization, and disposal of water; animal husbandry; fish and wildlife management; recreation; community development; and related resource uses.
- (3) Resource appraisal is basic to effective soil and water conservation. Since individual and governmental decisions concerning soil and water resources often transcend administrative boundaries and affect other programs and decisions, a coordinated appraisal and program framework are essential. (16 U.S.C. 2001)

<sup>1</sup> So in original. The comma probably

should not appear.

## Definitions

**Sec. 3** As used in this chapter:

- (1) The term “Secretary” means the Secretary of Agriculture.
- (2) The term “soil, water, and related resources” means those resources which come within the scope of the programs administered and participated in by the Secretary of Agriculture.
- (3) The term “soil and water conservation program” means a set of guidelines for attaining the purposes of this chapter. (16 U.S.C. 2002)

## Congressional policy and declaration of purpose

**Sec. 4** (a) Responsiveness to long-term needs

In order to further the conservation of soil, water, and related resources, it is declared to be the policy of the United States and purpose of this chapter that the conduct of programs administered by the Secretary of Agriculture for the conservation of such resources shall be responsive to the long-term needs of the Nation, as determined under the provisions of this chapter.

(b) Full utilization of cooperative arrange-

ments with State agencies

Recognizing that the arrangements under which the Federal Government cooperates with State soil and water conservation agencies and other appropriate State natural resource agencies such as those concerned with forestry and fish and wildlife and, through conservation districts, with other local units of government and land users, have effectively aided in the protection and improvement of the Nation's basic resources, including the restoration and maintenance of resources damaged by improper use, it is declared to be the policy of the United States that these arrangements and similar cooperative arrangements should be utilized to the fullest extent practicable to achieve the purpose of this chapter consistent with the roles and responsibilities of the non-Federal agencies, landowners and land users.

(c) Attainment of policies and purposes

The Secretary shall promote the attainment of the policies and purposes expressed in this chapter by –

- (1) appraising on a continuing basis the soil, water, and related resources of the Nation;
- (2) developing and updating periodically a program for furthering the conservation, protection, and enhancement of the soil, water, and related resources of the Nation consistent with the roles and program responsibilities of other Federal agencies and State and local governments; and
- (3) providing to Congress and the public,

through reports, the information developed pursuant to paragraphs (1) and (2) of this subsection, and by providing Congress with an annual evaluation report as provided in section 2006 of this title. (16 U.S.C. 2003)

### **Continuing appraisal of soil, water, and related resources**

#### **Sec. 5 (a) Data**

In recognition of the importance of and need for obtaining and maintaining information on the current status of soil, water, and related resources, the Secretary is authorized and directed to carry out a continuing appraisal of the soil, water, and related resources of the Nation. The appraisal shall include, but not be limited to –

- (1) data on the quality and quantity of soil, water, and related resources, including fish and wildlife habitats;
- (2) data on the capability and limitations of those resources for meeting current and projected demands on the resource base;
- (3) data on the changes that have occurred in the status and condition of those resources resulting from various past uses, including the impact of farming technologies, techniques, and practices;
- (4) data on current Federal and State laws, policies, programs, rights, regulations, ownerships, and their trends and other considerations relating to the use, development, and conservation of soil, water, and related resources;

(5) data on the costs and benefits of alternative soil and water conservation practices; and

(6) data on alternative irrigation techniques regarding their costs, benefits, and impact on soil and water conservation, crop production, and environmental factors.

(b) Collection of data

The appraisal shall utilize data collected under this chapter and pertinent data and information collected by the Department of Agriculture and other Federal, State, and local agencies and organizations. The Secretary shall establish an integrated system capable of using combinations of resource data to determine the quality and capabilities for alternative uses of the resource base and to identify areas of local, State, and National concerns and related roles pertaining to soil and water conservation, resource use and development, and environmental improvement.

(c) Public participation

The appraisal shall be made in cooperation with conservation districts, State soil and water conservation agencies, and other appropriate citizen groups, and local and State agencies under such procedures as the Secretary may prescribe to insure public participation.

(d) Completion dates

The Secretary shall conduct four comprehensive appraisals under this section, to be completed by December 31, 1979, December 31, 1986, December 31, 1995, and December 31, 2005, respectively. The Secretary may make such additional

interim appraisals as the Secretary considers appropriate. (16 U.S.C. 2004)

### **Soil and water conservation program**

#### **Sec. 6 (a) Program development**

The Secretary is hereby authorized and directed to develop in cooperation with and participation by the public through conservation districts, State and national organizations and agencies, and other appropriate means, a national soil and water conservation program (hereinafter called the "program") to be used as a guide in carrying out the activities of the Secretary which assist landowners and land users, at their request, in furthering soil and water conservation on the private and non-Federal lands of the Nation. The program shall set forth direction for future soil and water conservation efforts of the United States Department of Agriculture based on the current soil, water, and related resource appraisal developed in accordance with section 2004 of this title, taking into consideration both the long- and short-term needs of the Nation, the landowners, and the land users, and the roles and responsibilities of Federal, State, and local governments in such conservation efforts. The program shall also include but not be limited to –

(1) analysis of the Nation's soil, water, and related resource problems;

(2) analysis of existing Federal, State, and local government authorities and adjustments needed;

(3) an evaluation of the effectiveness of the soil and water conservation ongoing programs and the overall progress being

achieved by Federal, State, and local programs and the landowners and land users in meeting the soil and water conservation objectives of this chapter;

(4) identification and evaluation of alternative methods for the conservation, protection, environmental improvement, and enhancement of soil and water resources, in the context of alternative time frames, and a recommendation of the preferred alternatives and the extent to which they are being implemented;

(5) investigation and analysis of the practicability, desirability, and feasibility of collecting organic waste materials, including manure, crop and food wastes, industrial organic waste, municipal sewage sludge, logging and wood-manufacturing residues, and any other organic refuse, composting, or similarly treating such materials, transporting and placing such materials onto the land to improve soil tilth and fertility. The analysis shall include the projected cost of such collection, transportation, and placement in accordance with sound locally approved soil and water conservation practices;

(6) analysis of the Federal and non-Federal inputs required to implement the program;

(7) analysis of costs and benefits of alternative soil and water conservation practices; and

(8) investigation and analysis of alternative irrigation techniques regarding their costs, benefits, and impact on soil and water conservation, crop production,

and environmental factors.

(b) Completion dates

The initial program shall be completed not later than December 31, 1979, and program updates shall be completed by December 31, 1987, December 31, 1997, and December 31, 2007, respectively. (16 U.S.C. 2005)

### Reports to Congress

**Sec. 7** (a) Appraisal, program, and detailed statement of policy when Congress convenes

(1) At the time Congress convenes in 1980, 1987, 1996, and 2006, the President shall transmit to the Speaker of the House of Representatives and the President of the Senate the appraisal developed under section 2004 of this title and completed prior to the end of the previous year.

(2) At the time Congress convenes in 1980, 1988, 1998, and 2008, the President shall transmit to the Speaker of the House of Representatives and the President of the Senate the initial program or updated program developed under section 2005 of this title and completed prior to the end of the previous year, together with a detailed statement of policy regarding soil and water conservation activities of the United States Department of Agriculture.

(b) Annual report accompanying budget covering program effectiveness

The Secretary, during budget preparation for fiscal year 1982 and annually thereafter

ter during the period this chapter is in effect, shall prepare and transmit to the Congress, through the President, a report to accompany the budget which evaluates the program's effectiveness in attaining the purposes of this chapter. The report, prepared in concise summary form with appropriate detailed appendices, shall contain pertinent data from the current resource appraisal required to be prepared by section 2004 of this title, shall set forth the progress in implementing the program required to be developed by section 2005 of this title, and shall contain appropriate measurements of pertinent costs and benefits. The evaluation shall assess the balance between economic factors and environmental quality factors. The report shall also indicate plans for implementing action and recommendations for new legislation where warranted. (16 U.S.C. 2006)

#### **Authorization of appropriations**

**Sec. 8** There are authorized to be appropriated such funds as may be necessary to carry out the purposes of this chapter. (16 U.S.C. 2007)

#### **Utilization of available information and data**

**Sec. 9** In the implementation of this chapter, the Secretary shall utilize information and data available from other Federal, State, and local governments, and private organizations and he shall coordinate his actions with the resource appraisal and planning efforts of other Federal agencies and avoid unnecessary duplication and overlap of planning and

program efforts. (16 U.S.C. 2008)

#### **Termination of program**

**Sec. 10** The provisions of this chapter shall terminate on December 31, 2008. (16 U.S.C. 2009)

## Disposition of Receipts from National Forest Revenues

March 4, 1907 (Ch. 2907, 34 Stat. 1270, as amended; 16 U.S.C. 499)

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### **Disposal of money received by or on account of Forest Service; refund of excess and moneys erroneously collected; receipts from permits.**

All money received by or on account of the Forest Service for timber, or from any other source of national-forest revenue, including moneys received from sale of products from or for the use of lands in national forests created under section 471(b)<sup>1</sup> of this title, and moneys received on account of permits for hunting, fishing, or camping on lands acquired under authority of sections 513 to 517 and 521 of this title, shall be covered into the Treasury of the United States as a miscellaneous receipt and there is hereby appropriated and made available as the Secretary of Agriculture may direct out of any funds in the Treasury not otherwise appropriated, so much as may be necessary to make refunds to depositors of money heretofore or hereafter deposited by them to secure the purchase price on the sale of any products or for the use of any land or resources of the national forests in excess of amounts found actually due from them to the United States and also so much as may be necessary to refund or pay over to the rightful claimants such sums as may be

found by the Secretary of Agriculture to have been erroneously collected for the use of any lands, or for timber or other resources sold from lands located within, but not a part of, the national forests, or for alleged illegal acts done upon such lands, which acts are subsequently found to have been proper and legal. (16 U.S.C. 499)

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<sup>1</sup> Section 471(b) of this title, referred to in text, was repealed by section 704(a) of Pub. L. 94-579, title VII, Oct. 21, 1976, 90 Stat. 2792.

## **Roads and Trails (10 Percent) Fund**

**March 4, 1913 (Ch. 145, 37 Stat. 843; 16 U.S.C. 501, 502)**

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### **Expenditures from receipts for roads and trails; cooperation with State authorities; evaluation of receipts**

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

## Cooperative Funds

**June 30, 1914 (Ch. 131, 38 Stat. 430, as amended; 16 U.S.C. 504, 498, 674, 500)**

### **Purchases of tree seeds, cones, forage plant seed, and nursery stock for national forests**

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

### **Cooperative work agreements: disposal of moneys received; refund of excess; payment from appropriation; conflict of interest**

On or after June 30, 1914, all moneys received as contributions toward cooperative work in forest investigations, or the protection, management, and improvement of the National Forest System, shall be covered into the Treasury and shall constitute a special fund, which is appropriated and made available until expended, as the Secretary of Agriculture may direct, for the payment of the expenses of said investigations, protection, management, or improvements by the Forest Service, and for refunds to the contributors of amounts heretofore or hereafter paid in by them in excess of their share of the cost of said investiga-

tions, protection, management, or improvements. Payment for work undertaken pursuant to this section may be made from any appropriation of the Forest Service that is available for similar work if a written agreement so provides and reimbursement will be provided by a cooperator in the same fiscal year as the expenditure by the Forest Service. A reimbursement received from a cooperator that covers the proportionate share of the cooperator of the cost of the work shall be deposited to the credit of the appropriation of the Forest Service from which the payment was initially made or, if the appropriation is no longer available, to the credit of an appropriation of the Forest Service that is available for similar work. The Secretary of Agriculture shall establish written rules that establish criteria to be used to determine whether the acceptance of contributions of money under this section would adversely affect the ability of an officer or employee of the Department of Agriculture to carry out a duty or program of the officer or employee in a fair and objective manner or would compromise, or appear to compromise, the integrity of the program, officer, or employee. The Secretary of Agriculture shall establish written rules that protect the interests of the Forest Service in cooperative work agreements. (16 U.S.C. 498)

### **Payment and evaluation of receipts**

**to State or Territory for schools and roads; moneys received; projections of revenues and estimated payments**

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

estimated to be made under the Act of May 23, 1908, as amended, or any other special Acts making payments in lieu of taxes, for their use for local budget planning purposes. (16 U.S.C. 500)

## **Brush Removal Fund**

**August 11, 1916 (Ch. 313, 39 Stat. 462; 16 U.S.C. 490)**

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### **Deposits from timber purchasers to defray cost of disposing of debris**

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

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## Knutson-Vandenburg Act

June 9, 1930 (Ch. 416, 46 Stat. 527; 16 U.S.C. 576, 576a,

### 576b)

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

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

**Sec. 3** The Secretary of Agriculture may, when in his judgment such action will be in the public interest, require any purchaser of national-forest timber to make deposits of money in addition to the payments for the timber, to cover the cost to the United States of (1) planting (including the production or purchase of young trees), (2) sowing with tree seeds (including the collection or purchase of

such seeds), (3) cutting, destroying, or otherwise removing undesirable trees or other growth, on the national-forest land cut over by the purchaser, in order to improve the future stand of timber, or (4) protecting and improving the future productivity of the renewable resources of the forest land on such sale area, including sale area improvement operations, maintenance and construction, reforestation and wildlife habitat management. Such deposits shall be covered into the Treasury and shall constitute a special fund, which is appropriated and made available until expended, to cover the cost to the United States of such tree planting, seed sowing, and forest improvement work, as the Secretary of Agriculture may direct: Provided, That any portion of any deposit found to be in excess of the cost of doing said work shall, upon the determination that it is so in excess, be transferred to miscellaneous receipts, forest reserve fund, as a national-forest receipt of the fiscal year in which such transfer is made: Provided further, That the Secretary of Agriculture is authorized, upon application of the Secretary of the Interior, to furnish seedlings and/or young trees for replanting of burned-over areas in any national park. (16 U.S.C. 576b)

## **Supplemental National Forest Reforestation Fund**

**September 18, 1972 (Pub. L. 92-421, 86 Stat. 678; 16 U.S.C. 576c, 576d)**

**Sec. 1** Notwithstanding any other provision of law, the Secretary of Agriculture shall establish a “Supplemental National Forest Reforestation Fund”, and transfer to that fund beginning with the fiscal year, commencing July 1, 1972, and ending on September 30, 1987, such amounts as may be appropriated therefor. There is hereby authorized to be appropriated for such purpose for each of the fiscal years during such period the sum of \$65,000,000. (16 U.S.C. 576c)

**Sec. 2** Moneys transferred to the National Forest Reforestation Fund under the provisions of sections 576c to 576e (Section 576e repealed) of this title shall be available to the Secretary of Agriculture, for expenditure upon appropriation, for the purpose of supplementing programs of tree planting and seeding of national forest lands determined by the Secretary to be in need of reforestation. Such moneys shall be available until expended, and shall be provided without prejudice to appropriations or funds available from other sources for the same purposes, including those available pursuant to section 576b of this title. (16 U.S.C. 576d)

## Cooperative Funds and Deposits

**December 12, 1975 (Pub. L. 94-148, 89 Stat. 804; 16 U.S.C. 565a-1 – 561a-3)**

### **Cooperative agreements between Secretary of Agriculture and public or private agencies, organizations, institutions, and persons covering Forest Service programs; authority; funding**

**Sec. 1** To facilitate the administration of the programs and activities of the Forest Service, the Secretary is authorized to negotiate and enter into cooperative agreements with public or private agencies, organizations, institutions, or persons to construct, operate, and maintain cooperative pollution abatement equipment and facilities, including sanitary landfills, water systems, and sewer systems; to engage in cooperative manpower and job training and development programs; to develop and publish cooperative environmental education and forest history materials; and to perform forestry protection, including fire protection, timber stand improvement, debris removal, and thinning of trees. The Secretary may enter into aforesaid agreements when he determines that the public interest will be benefited and that there exists a mutual interest other than monetary considerations. In such cooperative arrangements, the Secretary is authorized to advance or reimburse funds to cooperators from any Forest Service appropriation available for similar kinds of work or by furnishing or sharing materials, supplies, facilities, or equipment

without regard to the provisions of section 3324(a) and (b) of title 31, relating to the advance of public moneys. (16 U.S.C. 565a-1)

[Amendment: Pub. L. 108-7, sec. 321, 117 Stat. 274]

Until September 30, 2005, the authority of the Secretary of Agriculture to enter into an agreement under the first section of Public Law 94-148 (16 U.S.C. 565a-1) for a purpose described in such section includes the authority to use that legal instrument when the principal purpose of the resulting relationship is to the mutually significant benefit of the Forest Service and the other party or parties to the agreement, including nonprofit entities. An agreement entered into under this section shall not be subject to Public Law 95-224, Federal Grant and Cooperative Agreement Act (1977). 16 U.S.C. 565a-1

### **Federal employee status of cooperators**

**Sec. 2** In any agreement authorized by section 565a-1 of this title, cooperators and their employees may perform cooperative work under supervision of the Forest Service in emergencies or otherwise as mutually agreed to, but shall not be deemed to be Federal employees other than for the purposes of chapter 171 of title 28 and chapter 81 of title 5. (16 U.S.C. 565a-2)

**Agreements otherwise authorized by law**

**Sec. 3** Nothing in sections 565a-1 to 565a-3 of this title shall be construed as limiting or modifying the authority of the Secretary to enter into cooperative agreements otherwise authorized by law. (16 U.S.C. 565a-3)

## Reforestation Tax Incentives and Trust Fund

October 14, 1980 (Pub. L. 96-451, 94 Stat. 1989)

### Title III

#### Amortization of reforestation expenditures

##### Sec. 301(a) (a) Allowance of deduction

In the case of any qualified timber property with respect to which the taxpayer has made (in accordance with regulations prescribed by the Secretary) an election under this subsection, the taxpayer shall be entitled to a deduction with respect to the amortization of the amortizable basis of qualified timber property based on a period of 84 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the amortizable basis at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such amortizable basis at the end of the month shall be computed without regard to the amortization deduction for such month. The 84-month period shall begin on the first day of the first month of the second half of the taxable year in which the amortizable basis is acquired.

##### (b) Limitations

###### (1) Maximum dollar amount

The aggregate amount of amortizable basis acquired during the taxable year which may be taken into account under subsection (a) for such taxable year

shall not exceed \$10,000 (\$5,000 in the case of a separate return by a married individual (as defined in section 7703)).

##### (2) Allocation of dollar limit

(A) Controlled group For purposes of applying the dollar limitation under paragraph (1) -

(i) all component members of a controlled group shall be treated as one taxpayer, and

(ii) the Secretary shall, under regulations prescribed by him, apportion such dollar limitation among the component members of such controlled group. For purposes of the preceding sentence, the term "controlled group" has the meaning assigned to it by section 1563(a), except that the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in section 1563(a)(1).

##### (B) Partnerships and corporations

In the case of a partnership, the dollar limitation contained in paragraph (1) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

(3) Section not to apply to trusts This section shall not apply to trusts.

## (4) Estates

The benefit of the deduction for amortization provided by this section shall be allowed to estates in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiary and the fiduciary under regulations prescribed by the Secretary. Any amount so apportioned to a beneficiary shall be taken into account for purposes of determining the amount allowable as a deduction under this section to such beneficiary.

## (c) Definitions and special rule

For purposes of this section -

## (1) Qualified timber property

The term “qualified timber property” means a woodlot or other site located in the United States which will contain trees in significant commercial quantities and which is held by the taxpayer for the planting, cultivating, caring for, and cutting of trees for sale or use in the commercial production of timber products.

## (2) Amortizable basis

The term “amortizable basis” means that portion of the basis of the qualified timber property attributable to reforestation expenditures.

## (3) Reforestation expenditures

## (A) In general

The term “reforestation expenditures” means direct costs incurred in connection with forestation or reforestation by planting or artificial or natural

seeding, including costs -

- (i) for the preparation of the site;
- (ii) of seeds or seedlings; and
- (iii) for labor and tools, including depreciation of equipment such as tractors, trucks, tree planters, and similar machines used in planting or seeding.

## (B) Cost-sharing programs

Reforestation expenditures shall not include any expenditures for which the taxpayer has been reimbursed under any governmental reforestation cost-sharing program unless the amounts reimbursed have been included in the gross income of the taxpayer.

## (4) Basis allocation

If the amount of the amortizable basis acquired during the taxable year of all qualified timber property with respect to which the taxpayer has made an election under subsection (a) exceeds the amount of the limitation under subsection (b)(1), the taxpayer shall allocate that portion of such amortizable basis with respect to which a deduction is allowable under subsection (a) to each such qualified timber property in such manner as the Secretary may by regulations prescribe.

## (d) Life tenant and remainderman

In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. (26

U.S.C. 194)

### **Adjusted gross income defined**

#### **Sec. 301(b)** (a) General rule

For purposes of this subtitle, the term “adjusted gross income” means, in the case of an individual, gross income minus the following deductions:

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#### (11) Reforestation expenses

The deduction allowed by section 194 (23 U.S.C. 194)

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### **Gain from dispositions of certain depreciable property**

#### **Sec. 301(c)(1)** (a) General rule

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#### (8) Timber property

In determining, under subsection (a)(2), the recomputed basis of property with respect to which a deduction under section 194 was allowed for any taxable year, the taxpayer shall not take into account adjustments under section 194 to the extent such adjustments are attributable to the amortizable basis of the taxpayer acquired before the 10th taxable year preceding the taxable year in which gain with respect to the property is recognized.

(c) Adjustments to basis The Secretary shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subsection (a).

(d) Application of section

This section shall apply notwithstanding any other provision of this subtitle. (26 U.S.C. 1245)

### **Motion for Reconsideration of Findings or Opinion**

**Sec. 301(c)(2)** Any motion for reconsideration of an opinion or findings of fact, with or without a new or further trial, shall be filed within 30 days after a written opinion or the pages of the transcript that contain findings of fact or opinion stated orally pursuant to Rule 152 (or a written summary thereof) have been served, unless the Court shall otherwise permit. (26prec.161)

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### **Energy credit; reforestation credit**

#### **Sec. 302(a)** (a) Energy credit

#### (1) In general

For purposes of section 46, the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during such taxable year.

#### (2) Energy percentage

##### (A) In general

The energy percentage is 10 percent.

##### (B) Coordination with rehabilitation credit

The energy percentage shall not apply to that portion of the basis of any property which is attributable to qualified rehabilitation expenditures.

## (3) Energy property

For purposes of this subpart, the term “energy property” means any property -

(A) which is -

(i) equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, or

(ii) equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613(e)(2)), but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage,

(B)(i) the construction, reconstruction, or erection of which is completed by the taxpayer, or

(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer,

(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and

(D) which meets the performance and quality standards (if any) which -

(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy), and

(ii) are in effect at the time of the acquisition of the property. The term “energy property” shall not include any property which is public utility property (as defined in section

46(f)(5) as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(4) Special rule for property financed by subsidized energy financing or industrial development bonds

(A) Reduction of basis

For purposes of applying the energy percentage to any property, if such property is financed in whole or in part by -

(i) subsidized energy financing, or

(ii) the proceeds of a private activity bond (within the meaning of section 141) the interest on which is exempt from tax under section 103, the amount taken into account as the basis of such property shall not exceed the amount which (but for this subparagraph) would be so taken into account multiplied by the fraction determined under subparagraph (B).

(B) Determination of fraction

For purposes of subparagraph (A), the fraction determined under this subparagraph is 1 reduced by a fraction -

(i) the numerator of which is that portion of the basis of the property which is allocable to such financing or proceeds, and

(ii) the denominator of which is the basis of the property.

(C) Subsidized energy financing

For purposes of subparagraph (A), the

term “subsidized energy financing” means financing provided under a Federal, State, or local program a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy.

(5) Certain progress expenditure rules made applicable

Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this subsection.

(b) Reforestation credit

(1) In general

For purposes of section 46, the reforestation credit for any taxable year is 10 percent of the portion of the amortizable basis of any qualified timber property which was acquired during such taxable year and which is taken into account under section 194 (after the application of section 194(b)(1)).

(2) Definitions

For purposes of this subpart, the terms “amortizable basis” and “qualified timber property” have the respective meanings given to such terms by section 194. (26 U.S.C. 48)

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### **Reforestation Trust Fund**

**Sec. 303** (a) Establishment; source of funds

There is established in the Treasury of the

United States a trust fund, to be known as the Reforestation Trust Fund (hereinafter in this section referred to as the “Trust Fund”), consisting of such amounts as are transferred to the Trust Fund under subsection (b)(1) of this section and any interest earned on investment of amounts in the Trust Fund under subsection (c)(2) of this section.

(b) Transfer of certain tariff receipts to Trust Fund; fiscal year limitation; quarterly transfers; adjustment of estimates

(1) Subject to the limitation in paragraph (2), the Secretary of the Treasury shall transfer to the Trust Fund an amount equal to the sum of the tariffs received in the Treasury after January 1, 1989, under headings 4401 through 4412 and subheadings 4418.50.00, 4418.90.20, 4420.10.00, 4420.90.80, 4421.90.10 through 4421.90.20, and 4421.90.70 of chapter 44, subheadings 6808.00.00 and 6809.11.00 of chapter 68 and subheading 9614.10.00 of chapter 96 of the Harmonized Tariff Schedule of the United States.

(2) The Secretary shall not transfer more than \$30,000,000 to the Trust Fund for any fiscal year.

(3) The amounts required to be transferred to the Trust Fund under paragraph (1) shall be transferred at least quarterly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the Treasury. Proper adjustment shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the

amounts required to be transferred.

(c) Report to Congress; printing as House and Senate document; investments; sale and redemption of obligations; credits for Trust Fund

(1) It shall be the duty of the Secretary of the Treasury to hold the Trust Fund, and (after consultation with the Secretary of Agriculture) to report to the Congress each year on the financial condition and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next fiscal year. Such report shall be printed as both a House and Senate document of the session of the Congress to which the report is made.

(2)(A) It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired

(i) on original issue at the issue price, or

(ii) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of special obligations exclusively to the Trust Fund. Such special

obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the Public Debt; except that where such average rate is not a multiple of one-eighth of 1 percent, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

(B) Any obligation acquired by the Trust Fund (except special obligations issued exclusively to the Trust Fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

(C) The interest on, and the proceeds from the sale or redemption of, any obligations held in Trust Fund shall be credited to and form a part of the Trust Fund.

(d) Obligations from Trust Fund

The Secretary of Agriculture is on and after December 19, 1985, authorized to

obligate such sums as are available in the Trust Fund (including any amounts not obligated in previous fiscal years) for -

(1) reforestation and timber stand improvement as specified in section 1601(d) of this title and other forest stand improvement activities to enhance forest health and reduce hazardous fuel loads of forest stands in the National Forest System; and

(2) properly allocable administrative costs of the Federal Government for the activities specified above. (16 U.S.C. 1606a)

## Census of Agriculture Act of 1997

(Previously known as the Department of Agriculture Organic Act of 1956)

**August 3, 1956 (Ch. 950, 70 Stat. 1032; 7 U.S.C. 2201 note, 21 U.S.C. 114a, 114c, 7 U.S.C. 2233, 2228, 16 U.S.C. 590n, 590k, 7 U.S.C. 1392, 1766, 1040, 1516, 428a, 2229, 16 U.S.C. 579b)**

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### **Funds available for expenses of advisory committees**

**Sec. 4** Funds available for carrying out the activities of the Department of Agriculture shall be available for expenses of advisory committees, including travel expenses in accordance with the provisions of section 5703 of title 5. (7 U.S.C. 2233)

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### **Acquisition of land; options**

**Sec. 11 (a)** The Department of Agriculture is authorized to acquire land, or interest therein, by purchase, exchange or otherwise, as may be necessary to carry out its authorized work: Provided, That no acquisition shall be made under this authority unless provision is made therefor in the applicable appropriation or other law.

(b) Appropriations for the Department of Agriculture which are available for the purchase of land may be expended for options to purchase land: Provided, That not to exceed \$1 may be expended for each option to purchase any particular tract or tracts of land unless otherwise provided in appropriation or other law. (7 U.S.C. 428a)

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### **Working capital fund; establishment; availability; transfer; capitalization; advanced payments**

**Sec. 13** There is established a working capital fund which shall be available without fiscal year limitation for expenses necessary, including the purchase or construction of buildings and improvements within the limitations thereon set forth in the appropriations for the Forest Service, for furnishing supply and equipment services in support of programs of the Forest Service. The Secretary of Agriculture is authorized to transfer to the fund, without reimbursement, and to capitalize in the fund at fair and reasonable values, such receivables, inventories, equipment, and other assets as he may determine, and assume the liabilities in connection with such assets: Provided, That the fund shall be credited with advance payments in connection with firm orders and reimbursements from appropriations and funds of the Forest Service, other departmental and Federal agencies, and from other sources, as authorized by law, at rates approximately equal to the cost of furnishing the facilities and service. (16 U.S.C. 579b)

## Disaster Mitigation Act of 2000

May 22, 1974 (Pub. L. 93-288, 88 Stat. 143; 42 U.S.C. 5121 note, 5121, 5122, 5131, 5132, 5141, 5143, 5144, 5147 to 5164, 5170, 5170a to 5170c, 5171 to 5175, 5177, 5179 to 5183, 31 U.S.C. 1264, 1264 note, 42 U.S.C. 5184 to 5189, 5189a, 5189b, 3231 to 3235, 5195, 5196, 5196a to 5196d, \*\*\*)

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### Congressional findings and declarations

**Sec. 101** (a) The Congress hereby finds and declares that -

- (1) because disasters often cause loss of life, human suffering, loss of income, and property loss and damage; and
- (2) because disasters often disrupt the normal functioning of governments and communities, and adversely affect individuals and families with great severity; special measures, designed to assist the efforts of the affected States in expediting the rendering of aid, assistance, and emergency services, and the reconstruction and rehabilitation of devastated areas, are necessary.

(b) It is the intent of the Congress, by this chapter, to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters by -

- (1) revising and broadening the scope of existing disaster relief programs;
- (2) encouraging the development of

comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and by local governments;

(3) achieving greater coordination and responsiveness of disaster preparedness and relief programs;

(4) encouraging individuals, States, and local governments to protect themselves by obtaining insurance coverage to supplement or replace governmental assistance;

(5) encouraging hazard mitigation measures to reduce losses from disasters, including development of land use and construction regulations; and

(6) providing Federal assistance programs for both public and private losses sustained in disasters. <sup>1</sup> (42 U.S.C. 5121)

<sup>1</sup> So in original. Probably should be followed by a period.

### Definitions

**Sec. 102** As used in this chapter -

- (1) Emergency. - "Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supple-

ment State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

(2) Major disaster. - “Major disaster” means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(3) “United States” means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(4) “State” means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(5) “Governor” means the chief executive of any State.

(6) Local government. - The term “local government” means -

(A) a county, municipality, city, town, township, local public authority, school

district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(B) an Indian tribe or authorized tribal organization, or Alaska Native village or organization; and

(C) a rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State.

(7) “Federal agency” means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

(8) Public facility. - “Public facility” means the following facilities owned by a State or local government:

(A) Any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility.

(B) Any non-Federal-aid street, road, or highway.

(C) Any other public building, structure, or system, including those used for educational, recreational, or cultural purposes.

(D) Any park.

(9) Private nonprofit facility. - "Private nonprofit facility" means private nonprofit educational, utility, irrigation, emergency, medical, rehabilitational, and temporary or permanent custodial care facilities (including those for the aged and disabled), other private nonprofit facilities which provide essential services of a governmental nature to the general public, and facilities on Indian reservations as defined by the President. (42 U.S.C. 5122)

### **Federal and State disaster preparedness programs**

**Sec. 201** (a) Utilization of services of other agencies

The President is authorized to establish a program of disaster preparedness that utilizes services of all appropriate agencies and includes -

- (1) preparation of disaster preparedness plans for mitigation, warning, emergency operations, rehabilitation, and recovery;
- (2) training and exercises;
- (3) postdisaster critiques and evaluations;
- (4) annual review of programs;
- (5) coordination of Federal, State, and local preparedness programs;
- (6) application of science and technology;
- (7) research.

(b) Technical assistance for the develop-

ment of plans and programs

The President shall provide technical assistance to the States in developing comprehensive plans and practicable programs for preparation against disasters, including hazard reduction, avoidance, and mitigation; for assistance to individuals, businesses, and State and local governments following such disasters; and for recovery of damaged or destroyed public and private facilities.

(c) Grants to States for development of plans and programs

Upon application by a State, the President is authorized to make grants, not to exceed in the aggregate to such State \$250,000, for the development of plans, programs, and capabilities for disaster preparedness and prevention. Such grants shall be applied for within one year from May 22, 1974. Any State desiring financial assistance under this section shall designate or create an agency to plan and administer such a disaster preparedness program, and shall, through such agency, submit a State plan to the President, which shall -

- (1) set forth a comprehensive and detailed State program for preparation against and assistance following, emergencies and major disasters, including provisions for assistance to individuals, businesses, and local governments; and
- (2) include provisions for appointment and training of appropriate staffs, formulation of necessary regulations and procedures and conduct of required exercises.

(d) Grants for improvement, maintenance, and updating of State plans

The President is authorized to make grants not to exceed 50 per centum of the cost of improving, maintaining and updating State disaster assistance plans, including evaluations of natural hazards and development of the programs and actions required to mitigate such hazards; except that no such grant shall exceed \$50,000 per annum to any State. (42 U.S.C. 5131)

### **Disaster warnings**

**Sec. 202** (a) Readiness of Federal agencies to issue warnings to State and local officials The President shall insure that all appropriate Federal agencies are prepared to issue warnings of disasters to State and local officials.

(b) Technical assistance to State and local governments for effective warnings

The President shall direct appropriate Federal agencies to provide technical assistance to State and local governments to insure that timely and effective disaster warning is provided.

(c) Warnings to governmental authorities and public endangered by disaster

The President is authorized to utilize or to make available to Federal, State, and local agencies the facilities of the civil defense communications system established and maintained pursuant to section 5196(c) of this title or any other Federal communications system for the purpose of providing warning to governmental authorities and the civilian population in areas endan-

gered by disasters.

(d) Agreements with commercial communications systems for use of facilities

The President is authorized to enter into agreements with the officers or agents of any private or commercial communications systems who volunteer the use of their systems on a reimbursable or nonreimbursable basis for the purpose of providing warning to governmental authorities and the civilian population endangered by disasters. (42 U.S.C. 5132)

### **Waiver of administrative conditions**

**Sec. 301** Any Federal agency charged with the administration of a Federal assistance program may, if so requested by the applicant State or local authorities, modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster. (42 U.S.C. 5141)

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### **Emergency support teams**

**Sec. 303** The President shall form emergency support teams of Federal personnel to be deployed in an area affected by a major disaster or emergency. Such emergency support teams shall assist the Federal coordinating officer in carrying out his responsibilities pursuant to this chapter. Upon request of the President, the head of any Federal agency is directed to detail to temporary

duty with the emergency support teams on either a reimbursable or nonreimbursable basis, as is determined necessary by the President, such personnel within the administrative jurisdiction of the head of the Federal agency as the President may need or believe to be useful for carrying out the functions of the emergency support teams, each such detail to be without loss of seniority, pay, or other employee status. (42 U.S.C. 5144)

### **Reimbursement of Federal agencies**

**Sec. 304** Federal agencies may be reimbursed for expenditures under this chapter from funds appropriated for the purposes of this chapter. Any funds received by Federal agencies as reimbursement for services or supplies furnished under the authority of this chapter shall be deposited to the credit of the appropriation or appropriations currently available for such services or supplies. (42 U.S.C. 5147)

### **Nonliability of Federal Government**

**Sec. 305** The Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of this chapter. (42 U.S.C. 5148)

### **Performance of services**

**Sec. 306** (a) Utilization of services or facilities of State and local governments

In carrying out the purposes of this

chapter, any Federal agency is authorized to accept and utilize the services or facilities of any State or local government, or of any agency, office, or employee thereof, with the consent of such government.

(b) Appointment of temporary personnel, experts, and consultants; acquisition, rental, or hire of equipment, services, materials and supplies

In performing any services under this chapter, any Federal agency is authorized -

(1) to appoint and fix the compensation of such temporary personnel as may be necessary, without regard to the provisions of title 5 governing appointments in competitive service;

(2) to employ experts and consultants in accordance with the provisions of section 3109 of such title, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates; and

(3) to incur obligations on behalf of the United States by contract or otherwise for the acquisition, rental, or hire of equipment, services, materials, and supplies for shipping, drayage, travel, and communications, and for the supervision and administration of such activities. Such obligations, including obligations arising out of the temporary employment of additional personnel, may be incurred by an agency in such amount as may be made available to it by the President. (42 U.S.C. 5149)

### **Use of local firms and individuals**

**Sec. 307** In the expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster or emergency. This section shall not be considered to restrict the use of Department of Defense resources in the provision of major disaster assistance under this chapter. (42 U.S.C. 5150)

#### **Nondiscrimination in disaster assistance**

**Sec. 308** (a) Regulations for equitable and impartial relief operations

The President shall issue, and may alter and amend, such regulations as may be necessary for the guidance of personnel carrying out Federal assistance functions at the site of a major disaster or emergency. Such regulations shall include provisions for insuring that the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status.

(b) Compliance with regulations as prerequisite to participation by other bodies in relief operations

As a condition of participation in the distribution of assistance or supplies under

this chapter or of receiving assistance under this chapter, governmental bodies and other organizations shall be required to comply with regulations relating to nondiscrimination promulgated by the President, and such other regulations applicable to activities within an area affected by a major disaster or emergency as he deems necessary for the effective coordination of relief efforts. (42 U.S.C. 5151)

#### **Use and coordination of relief organizations**

**Sec. 309** (a) In providing relief and assistance under this chapter, the President may utilize, with their consent, the personnel and facilities of the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations, in the distribution of medicine, food, supplies, or other items, and in the restoration, rehabilitation, or reconstruction of community services housing and essential facilities, whenever the President finds that such utilization is necessary.

(b) The President is authorized to enter into agreements with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations under which the disaster relief activities of such organizations may be coordinated by the Federal coordinating officer whenever such organizations are engaged in providing relief during and after a major disaster or emergency. Any such agreement shall include provisions

assuring that use of Federal facilities, supplies, and services will be in compliance with regulations prohibiting duplication of benefits and guaranteeing nondiscrimination promulgated by the President under this chapter, and such other regulation as the President may require. (42 U.S.C. 5152)

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### **Duplication of benefits**

#### **Sec. 312 (a) General prohibition**

The President, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as a result of a major disaster or emergency, shall assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.

#### **(b) Special rules**

##### **(1) Limitation**

This section shall not prohibit the provision of Federal assistance to a person who is or may be entitled to receive benefits for the same purposes from another source if such person has not received such other benefits by the time of application for Federal assistance and if such person agrees to repay all duplicative assistance to the agency providing the Federal assistance.

#### **(2) Procedures**

The President shall establish such procedures as the President considers necessary to ensure uniformity in preventing duplication of benefits.

#### **(3) Effect of partial benefits**

Receipt of partial benefits for a major disaster or emergency shall not preclude provision of additional Federal assistance for any part of a loss or need for which benefits have not been provided.

#### **(c) Recovery of duplicative benefits**

A person receiving Federal assistance for a major disaster or emergency shall be liable to the United States to the extent that such assistance duplicates benefits available to the person for the same purpose from another source. The agency which provided the duplicative assistance shall collect such duplicative assistance from the recipient in accordance with chapter 37 of title 31, relating to debt collection, when the head of such agency considers it to be in the best interest of the Federal Government.

#### **(d) Assistance not income**

Federal major disaster and emergency assistance provided to individuals and families under this chapter, and comparable disaster assistance provided by States, local governments, and disaster assistance organizations, shall not be considered as income or a resource when determining eligibility for or benefit levels under federally funded income assistance or resource-tested benefit programs. (42 U.S.C. 5155)

### Standards and reviews

**Sec. 313** The President shall establish comprehensive standards which shall be used to assess the efficiency and effectiveness of Federal major disaster and emergency assistance programs administered under this chapter. The President shall conduct annual reviews of the activities of Federal agencies and State and local governments in major disaster and emergency preparedness and in providing major disaster and emergency assistance in order to assure maximum coordination and effectiveness of such programs and consistency in policies for reimbursement of States under this chapter. (42 U.S.C. 5156)

### Penalties

#### **Sec. 314** (a) Misuse of funds

Any person who knowingly misapplies the proceeds of a loan or other cash benefit obtained under this chapter shall be fined an amount equal to one and one-half times the misapplied amount of the proceeds or cash benefit.

#### (b) Civil enforcement

Whenever it appears that any person has violated or is about to violate any provision of this chapter, including any civil penalty imposed under this chapter, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in an appropriate United States district court.

#### (c) Referral to Attorney General

The President shall expeditiously refer to the Attorney General for appropriate

action any evidence developed in the performance of functions under this chapter that may warrant consideration for criminal prosecution.

#### (d) Civil penalty

Any individual who knowingly violates any order or regulation issued under this chapter shall be subject to a civil penalty of not more than \$5,000 for each violation. (42 U.S.C. 5157)

### Availability of materials

**Sec. 315** The President is authorized, at the request of the Governor of an affected State, to provide for a survey of construction materials needed in the area affected by a major disaster on an emergency basis for housing repairs, replacement housing, public facilities repairs and replacement, farming operations, and business enterprises and to take appropriate action to assure the availability and fair distribution of needed materials, including, where possible, the allocation of such materials for a period of not more than one hundred and eighty days after such major disaster. Any allocation program shall be implemented by the President to the extent possible, by working with and through those companies which traditionally supply construction materials in the affected area. For the purposes of this section “construction materials” shall include building materials and materials required for repairing housing, replacement housing, public facilities repairs and replacement, and for normal farm and business operations. (42 U.S.C. 5158)

### Protection of environment

**Sec. 316** An action which is taken or assistance which is provided pursuant to section 5170a, 5170b, 5172, 5173, or 5192 of this title, including such assistance provided pursuant to the procedures provided for in section 5189 of this title, which has the effect of restoring a facility substantially to its condition prior to the disaster or emergency, shall not be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852) (42 U.S.C. 4321 et seq.). Nothing in this section shall alter or affect the applicability of the National Environmental Policy Act of 1969 to other Federal actions taken under this chapter or under any other provisions of law. (42 U.S.C. 5159)

### Recovery of assistance

#### Sec. 317 (a) Party liable

Any person who intentionally causes a condition for which Federal assistance is provided under this chapter or under any other Federal law as a result of a declaration of a major disaster or emergency under this chapter shall be liable to the United States for the reasonable costs incurred by the United States in responding to such disaster or emergency to the extent that such costs are attributable to the intentional act or omission of such person which caused such condition. Such action for reasonable costs shall be brought in an appropriate United States district court.

#### (b) Rendering of care

A person shall not be liable under this section for costs incurred by the United States as a result of actions taken or omitted by such person in the course of rendering care or assistance in response to a major disaster or emergency. (42 U.S.C. 5160)

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### Advance of non-Federal share

#### Sec. 319 (a) In general

The President may lend or advance to an eligible applicant or a State the portion of assistance for which the State is responsible under the cost-sharing provisions of this chapter in any case in which -

(1) the State is unable to assume its financial responsibility under such cost-sharing provisions -

(A) with respect to concurrent, multiple major disasters in a jurisdiction, or

(B) after incurring extraordinary costs as a result of a particular disaster; and

(2) the damages caused by such disasters or disaster are so overwhelming and severe that it is not possible for the applicant or the State to assume immediately their financial responsibility under this chapter. (42 U.S.C. 5162)

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### Limitation on use of sliding scales

**Sec. 320** No geographic area shall be precluded from receiving assistance under this chapter solely by virtue of an

arithmetic formula or sliding scale based on income or population. (42 U.S.C. 5163)

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### **Procedure for declaration**

**Sec. 401** All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As part of such request, and as a prerequisite to major disaster assistance under this chapter, the Governor shall take appropriate response action under State law and direct execution of the State's emergency plan. The Governor shall furnish information on the nature and amount of State and local resources which have been or will be committed to alleviating the results of the disaster, and shall certify that, for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will comply with all applicable cost-sharing requirements of this chapter. Based on the request of a Governor under this section, the President may declare under this chapter that a major disaster or emergency exists. (42 U.S.C. 5170)

### **General Federal assistance**

**Sec. 402** In any major disaster, the President may -

(1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance efforts;

(2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;

(3) provide technical and advisory assistance to affected State and local governments for -

(A) the performance of essential community services;

(B) issuance of warnings of risks and hazards;

(C) public health and safety information, including dissemination of such information;

(D) provision of health and safety measures; and

(E) management, control, and reduction of immediate threats to public health and safety; and

(4) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance. (42 U.S.C. 5170a)

### **Essential assistance**

**Sec. 403** (a) In general

Federal agencies may on the direction of the President, provide assistance essential

to meeting immediate threats to life and property resulting from a major disaster, as follows:

(1) Federal resources, generally Utilizing, lending, or donating to State and local governments Federal equipment, supplies, facilities, personnel, and other resources, other than the extension of credit, for use or distribution by such governments in accordance with the purposes of this chapter.

(2) Medicine, food, and other consumables Distributing or rendering through State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations medicine, food, and other consumable supplies, and other services and assistance to disaster victims.

(3) Work and services to save lives and protect property Performing on public or private lands or waters any work or services essential to saving lives and protecting and preserving property or public health and safety, including -

(A) debris removal;

(B) search and rescue, emergency medical care, emergency mass care, emergency shelter, and provision of food, water, medicine, and other essential needs, including movement of supplies or persons;

(C) clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services;

(D) provision of temporary facilities for schools and other essential community services;

(E) demolition of unsafe structures which endanger the public;

(F) warning of further risks and hazards;

(G) dissemination of public information and assistance regarding health and safety measures;

(H) provision of technical advice to State and local governments on disaster management and control; and

(I) reduction of immediate threats to life, property, and public health and safety.

(4) Contributions Making contributions to State or local governments or owners or operators of private nonprofit facilities for the purpose of carrying out the provisions of this subsection.

(b) Federal share

The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of such assistance.

(c) Utilization of DOD resources

(1) General rule

During the immediate aftermath of an incident which may ultimately qualify for assistance under this subchapter or subchapter IV-A of this chapter, the Governor of the State in which such incident occurred may request the President to direct the Secretary of Defense to utilize the resources of the Department of Defense for the purpose

of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property. If the President determines that such work is essential for the preservation of life and property, the President shall grant such request to the extent the President determines practicable. Such emergency work may only be carried out for a period not to exceed 10 days.

(2) Rules applicable to debris removal

Any removal of debris and wreckage carried out under this subsection shall be subject to section 5173(b) of this title, relating to unconditional authorization and indemnification for debris removal.

(3) Expenditures out of disaster relief funds

The cost of any assistance provided pursuant to this subsection shall be reimbursed out of funds made available to carry out this chapter.

(4) Federal share

The Federal share of assistance under this subsection shall be not less than 75 percent.

(5) Guidelines Not later than 180 days after November 23, 1988, the President shall issue guidelines for carrying out this subsection. Such guidelines shall consider any likely effect assistance under this subsection will have on the availability of other forms of assistance under this chapter.

(6) Definitions For purposes of this

section -

(A) Department of Defense The term “Department of Defense” has the meaning the term “department” has under section 101 of title 10.

(B) Emergency work The term “emergency work” includes clearance and removal of debris and wreckage and temporary restoration of essential public facilities and services. (42 U.S.C. 5170b)

### **Hazard mitigation**

**Sec. 404** (a) In general

The President may contribute up to 75 percent of the cost of hazard mitigation measures which the President has determined are cost-effective and which substantially reduce the risk of future damage, hardship, loss, or suffering in any area affected by a major disaster. Such measures shall be identified following the evaluation of natural hazards under section 5165 of this title and shall be subject to approval by the President. Subject to section 5165 of this title, the total of contributions under this section for a major disaster shall not exceed 15 percent of the estimated aggregate amount of grants to be made (less any associated administrative costs) under this chapter with respect to the major disaster.

(b) Property acquisition and relocation assistance

(1) General authority

In providing hazard mitigation assistance under this section in connection with flooding, the Director of the Federal

Emergency Management Agency may provide property acquisition and relocation assistance for projects that meet the requirements of paragraph (2).

(2) Terms and conditions

An acquisition or relocation project shall be eligible to receive assistance pursuant to paragraph (1) only if -

(A) the applicant for the assistance is otherwise eligible to receive assistance under the hazard mitigation grant program established under subsection (a) of this section; and

(B) on or after December 3, 1993, the applicant for the assistance enters into an agreement with the Director that provides assurances that -

(i) any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;

(ii) no new structure will be erected on property acquired, accepted or from which a structure was removed under the acquisition or relocation program other than -

(I) a public facility that is open on all sides and functionally related to a designated open space;

(II) a rest room; or

(III) a structure that the Director approves in writing before the commencement of the construction of the structure; and

(iii) after receipt of the assistance, with respect to any property acquired, accepted or from which a structure was removed under the acquisition or relocation program -

(I) no subsequent application for additional disaster assistance for any purpose will be made by the recipient to any Federal entity; and

(II) no assistance referred to in subclause (I) will be provided to the applicant by any Federal source.

(3) Statutory construction Nothing in this subsection is intended to alter or otherwise affect an agreement for an acquisition or relocation project carried out pursuant to this section that was in effect on the day before December 3, 1993.

(c) Program administration by States

(1) In general

A State desiring to administer the hazard mitigation grant program established by this section with respect to hazard mitigation assistance in the State may submit to the President an application for the delegation of the authority to administer the program.

(2) Criteria

The President, in consultation and coordination with States and local governments, shall establish criteria for the approval of applications submitted under paragraph (1). The criteria shall include, at a minimum -

(A) the demonstrated ability of the State to manage the grant program

under this section;

(B) there being in effect an approved mitigation plan under section 5165 of this title; and

(C) a demonstrated commitment to mitigation activities.

(3) Approval

The President shall approve an application submitted under paragraph (1) that meets the criteria established under paragraph (2).

(4) Withdrawal of approval

If, after approving an application of a State submitted under paragraph (1), the President determines that the State is not administering the hazard mitigation grant program established by this section in a manner satisfactory to the President, the President shall withdraw the approval.

(5) Audits

The President shall provide for periodic audits of the hazard mitigation grant programs administered by States under this subsection. (42 U.S.C. 5170c)

### **Federal facilities**

**Sec. 405** (a) Repair, reconstruction, restoration, or replacement of United States facilities

The President may authorize any Federal agency to repair, reconstruct, restore, or replace any facility owned by the United States and under the jurisdiction of such agency which is damaged or destroyed by any major disaster if he determines that such repair, reconstruction, restoration, or

replacement is of such importance and urgency that it cannot reasonably be deferred pending the enactment of specific authorizing legislation or the making of an appropriation for such purposes, or the obtaining of congressional committee approval.

(b) Availability of funds appropriated to agency for repair, reconstruction, restoration, or replacement of agency facilities

In order to carry out the provisions of this section, such repair, reconstruction, restoration, or replacement may be begun notwithstanding a lack or an insufficiency of funds appropriated for such purpose, where such lack or insufficiency can be remedied by the transfer, in accordance with law, of funds appropriated to that agency for another purpose.

(c) Steps for mitigation of hazards

In implementing this section, Federal agencies shall evaluate the natural hazards to which these facilities are exposed and shall take appropriate action to mitigate such hazards, including safe land-use and construction practices, in accordance with standards prescribed by the President. (42 U.S.C. 5171)

### **Repair, restoration, and replacement of damaged facilities**

**Sec. 406** (a) Contributions

(1) In general

The President may make contributions -

(A) to a State or local government for the repair, restoration, reconstruction, or replacement of a public facility

damaged or destroyed by a major disaster and for associated expenses incurred by the government; and

(B) subject to paragraph (3), to a person that owns or operates a private nonprofit facility damaged or destroyed by a major disaster for the repair, restoration, reconstruction, or replacement of the facility and for associated expenses incurred by the person.

(2) Associated expenses

For the purposes of this section, associated expenses shall include -

(A) the costs of mobilizing and employing the National Guard for performance of eligible work;

(B) the costs of using prison labor to perform eligible work, including wages actually paid, transportation to a worksite, and extraordinary costs of guards, food, and lodging; and

(C) base and overtime wages for the employees and extra hires of a State, local government, or person described in paragraph (1) that perform eligible work, plus fringe benefits on such wages to the extent that such benefits were being paid before the major disaster.

(3) Conditions for assistance to private nonprofit facilities

(A) In general

The President may make contributions to a private nonprofit facility under paragraph (1)(B) only if -

(i) the facility provides critical

services (as defined by the President) in the event of a major disaster; or (ii) the owner or operator of the facility -

(I) has applied for a disaster loan under section 636(b) of title 15; and

(II)(aa) has been determined to be ineligible for such a loan; or

(bb) has obtained such a loan in the maximum amount for which the Small Business Administration determines the facility is eligible.

(B) Definition of critical services

In this paragraph, the term “critical services” includes power, water (including water provided by an irrigation organization or facility), sewer, wastewater treatment, communications, and emergency medical care.

(4) Notification to Congress

Before making any contribution under this section in an amount greater than \$20,000,000, the President shall notify -

(A) the Committee on Environment and Public Works of the Senate;

(B) the Committee on Transportation and Infrastructure of the House of Representatives;

(C) the Committee on Appropriations of the Senate; and

(D) the Committee on Appropriations of the House of Representatives.

(b) Federal share

(1) Minimum Federal share

Except as provided in paragraph (2), the Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of repair, restoration, reconstruction, or replacement carried out under this section.

(2) Reduced Federal share

The President shall promulgate regulations to reduce the Federal share of assistance under this section to not less than 25 percent in the case of the repair, restoration, reconstruction, or replacement of any eligible public facility or private nonprofit facility following an event associated with a major disaster -

(A) that has been damaged, on more than one occasion within the preceding 10-year period, by the same type of event; and

(B) the owner of which has failed to implement appropriate mitigation measures to address the hazard that caused the damage to the facility.

(c) Large in-lieu contributions

(1) For public facilities

(A) In general

In any case in which a State or local government determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing any public facility owned or controlled by the State or local government, the State or local government may elect to receive, in lieu of a contribution under subsection (a)(1)(A) of this section, a contribution in an amount equal to 75 percent of

the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

(B) Areas with unstable soil

In any case in which a State or local government determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing any public facility owned or controlled by the State or local government because soil instability in the disaster area makes repair, restoration, reconstruction, or replacement infeasible, the State or local government may elect to receive, in lieu of a contribution under subsection (a)(1)(A) of this section, a contribution in an amount equal to 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

(C) Use of funds

Funds contributed to a State or local government under this paragraph may be used -

(i) to repair, restore, or expand other selected public facilities;

(ii) to construct new facilities; or

(iii) to fund hazard mitigation measures that the State or local government determines to be necessary to meet a need for governmental services and functions in the area affected by the major disaster.

**(D) Limitations**

Funds made available to a State or local government under this paragraph may not be used for -

- (i) any public facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)); or
- (ii) any uninsured public facility located in a special flood hazard area identified by the Director of the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).

**(2) For private nonprofit facilities****(A) In general**

In any case in which a person that owns or operates a private nonprofit facility determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing the facility, the person may elect to receive, in lieu of a contribution under subsection (a)(1)(B) of this section, a contribution in an amount equal to 75 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

**(B) Use of funds**

Funds contributed to a person under this paragraph may be used -

- (i) to repair, restore, or expand other selected private nonprofit facilities

owned or operated by the person;

- (ii) to construct new private nonprofit facilities to be owned or operated by the person; or

- (iii) to fund hazard mitigation measures that the person determines to be necessary to meet a need for the person's services and functions in the area affected by the major disaster.

**(C) Limitations**

Funds made available to a person under this paragraph may not be used for -

- (i) any private nonprofit facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)); or
- (ii) any uninsured private nonprofit facility located in a special flood hazard area identified by the Director of the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).

**(d) Flood insurance****(1) Reduction of Federal assistance**

If a public facility or private nonprofit facility located in a special flood hazard area identified for more than 1 year by the Director pursuant to the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) is damaged or destroyed, after the 180th day following November 23, 1988, by flooding in a major disaster and such facility is not covered on the

date of such flooding by flood insurance, the Federal assistance which would otherwise be available under this section with respect to repair, restoration, reconstruction, and replacement of such facility and associated expenses shall be reduced in accordance with paragraph (2).

(2) Amount of reduction

The amount of a reduction in Federal assistance under this section with respect to a facility shall be the lesser of -

(A) the value of such facility on the date of the flood damage or destruction, or

(B) the maximum amount of insurance proceeds which would have been payable with respect to such facility if such facility had been covered by flood insurance under the National Flood Insurance Act of 1968 on such date.

(3) Exception

Paragraphs (1) and (2) shall not apply to a private nonprofit facility which is not covered by flood insurance solely because of the local government's failure to participate in the flood insurance program established by the National Flood Insurance Act.

(4) Dissemination of information

The President shall disseminate information regarding the reduction in Federal assistance provided for by this subsection to State and local governments and the owners and operators of private nonprofit facilities who may be

affected by such a reduction.

(e) Eligible cost

(1) Determination

(A) In general

For the purposes of this section, the President shall estimate the eligible cost of repairing, restoring, reconstructing, or replacing a public facility or private nonprofit facility -

(i) on the basis of the design of the facility as the facility existed immediately before the major disaster; and

(ii) in conformity with codes, specifications, and standards (including floodplain management and hazard mitigation criteria required by the President or under the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.)) applicable at the time at which the disaster occurred.

(B) Cost estimation procedures

(i) In general

Subject to paragraph (2), the President shall use the cost estimation procedures established under paragraph (3) to determine the eligible cost under this subsection.

(ii) Applicability

The procedures specified in this paragraph and paragraph (2) shall apply only to projects the eligible cost of which is equal to or greater than the amount specified in section 5189 of this title.

(2) Modification of eligible cost

## (A) Actual cost greater than ceiling percentage of estimated cost

In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is greater than the ceiling percentage established under paragraph (3) of the cost estimated under paragraph (1), the President may determine that the eligible cost includes a portion of the actual cost of the repair, restoration, reconstruction, or replacement that exceeds the cost estimated under paragraph (1).

## (B) Actual cost less than estimated cost

(i) Greater than or equal to floor percentage of estimated cost In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is less than 100 percent of the cost estimated under paragraph (1), but is greater than or equal to the floor percentage established under paragraph (3) of the cost estimated under paragraph (1), the State or local government or person receiving funds under this section shall use the excess funds to carry out cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster.

(ii) Less than floor percentage of estimated cost In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is less than the

floor percentage established under paragraph (3) of the cost estimated under paragraph (1), the State or local government or person receiving assistance under this section shall reimburse the President in the amount of the difference.

## (C) No effect on appeals process

Nothing in this paragraph affects any right of appeal under section 5189a of this title.

## (3) Expert panel

## (A) Establishment

Not later than 18 months after October 30, 2000, the President, acting through the Director of the Federal Emergency Management Agency, shall establish an expert panel, which shall include representatives from the construction industry and State and local government.

## (B) Duties

The expert panel shall develop recommendations concerning -

- (i) procedures for estimating the cost of repairing, restoring, reconstructing, or replacing a facility consistent with industry practices; and
- (ii) the ceiling and floor percentages referred to in paragraph (2).

## (C) Regulations

Taking into account the recommendations of the expert panel under subparagraph (B), the President shall promulgate regulations that establish -

- (i) cost estimation procedures

described in subparagraph (B)(i); and

(ii) the ceiling and floor percentages referred to in paragraph (2).

(D) Review by President

Not later than 2 years after the date of promulgation of regulations under subparagraph (C) and periodically thereafter, the President shall review the cost estimation procedures and the ceiling and floor percentages established under this paragraph.

(E) Report to Congress

Not later than 1 year after the date of promulgation of regulations under subparagraph (C), 3 years after that date, and at the end of each 2-year period thereafter, the expert panel shall submit to Congress a report on the appropriateness of the cost estimation procedures.

(4) Special rule

In any case in which the facility being repaired, restored, reconstructed, or replaced under this section was under construction on the date of the major disaster, the cost of repairing, restoring, reconstructing, or replacing the facility shall include, for the purposes of this section, only those costs that, under the contract for the construction, are the owner's responsibility and not the contractor's responsibility. (42 U.S.C. 5172)

**Debris removal**

**Sec. 407** (a) Presidential authority

The President, whenever he determines it to be in the public interest, is authorized -

(1) through the use of Federal departments, agencies, and instrumentalities, to clear debris and wreckage resulting from a major disaster from publicly and privately owned lands and waters; and

(2) to make grants to any State or local government or owner or operator of a private nonprofit facility for the purpose of removing debris or wreckage resulting from a major disaster from publicly or privately owned lands and waters.

(b) Authorization by State or local government; indemnification agreement

No authority under this section shall be exercised unless the affected State or local government shall first arrange an unconditional authorization for removal of such debris or wreckage from public and private property, and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the Federal Government against any claim arising from such removal.

(c) Rules relating to large lots

The President shall issue rules which provide for recognition of differences existing among urban, suburban, and rural lands in implementation of this section so as to facilitate adequate removal of debris and wreckage from large lots.

(d) Federal share

The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of debris and

wreckage removal carried out under this section. (42 U.S.C. 5173)

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### **Food coupons and distribution**

**Sec. 412** (a) Persons eligible; terms and conditions

Whenever the President determines that, as a result of a major disaster, low-income households are unable to purchase adequate amounts of nutritious food, he is authorized, under such terms and conditions as he may prescribe, to distribute through the Secretary of Agriculture or other appropriate agencies coupon allotments to such households pursuant to the provisions of the Food Stamp Act of 1964 (P.L. 91-671; 84 Stat. 2048) (7 U.S.C. 2011 et seq.) and to make surplus commodities available pursuant to the provisions of this chapter.

(b) Duration of assistance; factors considered

The President, through the Secretary of Agriculture or other appropriate agencies, is authorized to continue to make such coupon allotments and surplus commodities available to such households for so long as he determines necessary, taking into consideration such factors as he deems appropriate, including the consequences of the major disaster on the earning power of the households, to which assistance is made available under this section.

(c) Food Stamp Act provisions unaffected

Nothing in this section shall be construed as amending or otherwise changing the

provisions of the Food Stamp Act of 1964 (7 U.S.C. 2011 et seq.) except as they relate to the availability of food stamps in an area affected by a major disaster. (42 U.S.C. 5179)

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### **Community disaster loans**

**Sec. 417(a)(b)** (a) In general

The President is authorized to make loans to any local government which may suffer a substantial loss of tax and other revenues as a result of a major disaster, and has demonstrated a need for financial assistance in order to perform its governmental functions.

(b) Amount

The amount of any such loan shall be based on need, shall not exceed 25 per centum of the annual operating budget of that local government for the fiscal year in which the major disaster occurs, and shall not exceed \$5,000,000.

(c) Repayment

(1) Cancellation

Repayment of all or any part of such loan to the extent that revenues of the local government during the three full fiscal year period following the major disaster are insufficient to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operation character shall be cancelled.

(2) Condition on continuing eligibility

A local government shall not be eligible for further assistance under this section

during any period in which the local government is in arrears with respect to a required repayment of a loan under this section.

(d) Effect on other assistance

Any loans made under this section shall not reduce or otherwise affect any grants or other assistance under this chapter. (42 U.S.C. 5184)

### **Emergency communications**

**Sec. 418** The President is authorized during, or in anticipation of, an emergency or major disaster to establish temporary communications systems and to make such communications available to State and local government officials and other persons as he deems appropriate. (42 U.S.C. 5185)

### **Emergency public transportation**

**Sec. 419** The President is authorized to provide temporary public transportation service in an area affected by a major disaster to meet emergency needs and to provide transportation to governmental offices, supply centers, stores, post offices, schools, major employment centers, and such other places as may be necessary in order to enable the community to resume its normal pattern of life as soon as possible. (42 U.S.C. 5186)

### **Fire management assistance**

(a) In general

The President is authorized to provide assistance, including grants, equipment, supplies, and personnel, to any State or local government for the mitigation,

management, and control of any fire on public or private forest land or grassland that threatens such destruction as would constitute a major disaster.

(b) Coordination with State and tribal departments of forestry

In providing assistance under this section, the President shall coordinate with State and tribal departments of forestry.

(c) Essential assistance

In providing assistance under this section, the President may use the authority provided under section 5170b of this title.

(d) Rules and regulations

The President shall prescribe such rules and regulations as are necessary to carry out this section. (42 U.S.C. 5187)

### **Timber sale contracts**

(a) Cost-sharing arrangement

Where an existing timber sale contract between the Secretary of Agriculture or the Secretary of the Interior and a timber purchaser does not provide relief from major physical change not due to negligence of the purchaser prior to approval of construction of any section of specified road or of any other specified development facility and, as a result of a major disaster, a major physical change results in additional construction work in connection with such road or facility by such purchaser with an estimated cost, as determined by the appropriate Secretary, (1) of more than \$1,000 for sales under one million board feet, (2) of more than \$1 per thousand board feet for sales of

one to three million board feet, or (3) of more than \$3,000 for sales over three million board feet, such increased construction cost shall be borne by the United States.

(b) Cancellation of authority

If the appropriate Secretary determines that damages are so great that restoration, reconstruction, or construction is not practical under the cost-sharing arrangement authorized by subsection (a) of this section, he may allow cancellation of a contract entered into by his Department notwithstanding contrary provisions therein.

(c) Public notice of sale

The Secretary of Agriculture is authorized to reduce to seven days the minimum period of advance public notice required by section 476 (Section 476 repealed) of title 16, in connection with the sale of timber from national forests, whenever the Secretary determines that (1) the sale of such timber will assist in the construction of any area of a State damaged by a major disaster, (2) the sale of such timber will assist in sustaining the economy of such area, or (3) the sale of such timber is necessary to salvage the value of timber damaged in such major disaster or to protect undamaged timber.

(d) State grants for removal of damaged timber; reimbursement of expenses limited to salvage value of removed timber

The President, when he determines it to be in the public interest, is authorized to make grants to any State or local govern-

ment for the purpose of removing from privately owned lands timber damaged as a result of a major disaster, and such State or local government is authorized upon application, to make payments out of such grants to any person for reimbursement of expenses actually incurred by such person in the removal of damaged timber, not to exceed the amount that such expenses exceed the salvage value of such timber. (42 U.S.C. 5188)

### **Simplified procedure**

If the Federal estimate of the cost of -

- (1) repairing, restoring, reconstructing, or replacing under section 5172 of this title any damaged or destroyed public facility or private nonprofit facility,
- (2) emergency assistance under section 5170b or 5192 of this title, or
- (3) debris removed under section 5173 of this title, is less than \$35,000, the President (on application of the State or local government or the owner or operator of the private nonprofit facility) may make the contribution to such State or local government or owner or operator under section 5170b, 5172, 5173, or 5192 of this title, as the case may be, on the basis of such Federal estimate. Such \$35,000 amount shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor. (42 U.S.C. 5189)

### **Appeals of assistance decisions**

(a) Right of appeal

Any decision regarding eligibility for, from, or amount of assistance under this subchapter may be appealed within 60 days after the date on which the applicant for such assistance is notified of the award or denial of award of such assistance.

(b) Period for decision

A decision regarding an appeal under subsection (a) of this section shall be rendered within 90 days after the date on which the Federal official designated to administer such appeals receives notice of such appeal.

(c) Rules

The President shall issue rules which provide for the fair and impartial consideration of appeals under this section. (42 U.S.C. 5189a)

**Date of eligibility; expenses incurred before date of disaster**

Eligibility for Federal assistance under this subchapter shall begin on the date of the occurrence of the event which results in a declaration by the President that a major disaster exists; except that reasonable expenses which are incurred in anticipation of and immediately preceding such event may be eligible for Federal assistance under this chapter. (42 U.S.C. 5189b)

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**Authorization of appropriations for defense conversion activities**

(a) In general

In addition to amounts made available

under section 3231 of this title, there are authorized to be appropriated such sums as are necessary to carry out section 3149(c)(1) of this title, to remain available until expended.

(b) Pilot projects

Funds made available under subsection (a) of this section may be used for activities including pilot projects for privatization of, and economic development activities for, closed or realigned military or Department of Energy installations. (42 U.S.C. 3232)

**Authorization of appropriations for disaster economic recovery activities**

(a) In general

In addition to amounts made available under section 3231 of this title, there are authorized to be appropriated such sums as are necessary to carry out section 3149(c)(2) of this title, to remain available until expended.

(b) Federal share

The Federal share of the cost of activities funded with amounts made available under subsection (a) of this section shall be up to 100 percent. (42 U.S.C. 3233)

**Declaration of policy**

The purpose of this subchapter is to provide a system of emergency preparedness for the protection of life and property in the United States from hazards and to vest responsibility for emergency preparedness jointly in the Federal Government and the States and their political subdivisions. The Congress

recognizes that the organizational structure established jointly by the Federal Government and the States and their political subdivisions for emergency preparedness purposes can be effectively utilized to provide relief and assistance to people in areas of the United States struck by a hazard. The Federal Government shall provide necessary direction, coordination, and guidance, and shall provide necessary assistance, as authorized in this subchapter so that a comprehensive emergency preparedness system exists for all hazards. (42 U.S.C. 5195)

### Definitions

#### (a) Definitions

For purposes of this subchapter only:

##### (1) Hazard

The term “hazard” means an emergency or disaster resulting from -

- (A) a natural disaster; or
- (B) an accidental or man-caused event.

##### (2) Natural disaster

The term “natural disaster” means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, or other catastrophe in any part of the United States which causes, or which may cause, substantial damage or injury to civilian property or persons.

##### (3) Emergency preparedness

The term “emergency preparedness” means all those activities and measures

designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard. Such term includes the following:

(A) Measures to be undertaken in preparation for anticipated hazards (including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel, the conduct of research, the procurement and stockpiling of necessary materials and supplies, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and, when appropriate, the non-military evacuation of the civilian population).

(B) Measures to be undertaken during a hazard (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities, the evacuation of personnel to shelter areas, the control of traffic and panic, and the control and use of lighting and civil communications).

(C) Measures to be undertaken following a hazard (including activities for fire fighting, rescue, emergency medical, health and sanitation services, monitoring for specific dangers of special weapons, unexploded bomb

reconnaissance, essential debris clearance, emergency welfare measures, and immediately essential emergency repair or restoration of damaged vital facilities).

(4) Organizational equipment

The term “organizational equipment” means equipment determined by the Director to be necessary to an emergency preparedness organization, as distinguished from personal equipment, and of such a type or nature as to require it to be financed in whole or in part by the Federal Government. Such term does not include those items which the local community normally uses in combating local disasters, except when required in unusual quantities dictated by the requirements of the emergency preparedness plans.

(5) Materials

The term “materials” includes raw materials, supplies, medicines, equipment, component parts and technical information and processes necessary for emergency preparedness.

(6) Facilities

The term “facilities”, except as otherwise provided in this subchapter, includes buildings, shelters, utilities, and land.

(7) Director

The term “Director” means the Director of the Federal Emergency Management Agency.

(8) Neighboring countries

The term “neighboring countries”

includes Canada and Mexico.

(9) United States and States

The terms “United States” and “States” includes <sup>2</sup> the several States, the District of Columbia, and territories and possessions of the United States.

(10) State

The term “State” includes interstate emergency preparedness authorities established under section 5196(h) of this title.

(b) Cross reference

The terms “national defense” and “defense”, as used in the Defense Production Act of 1950 (50 U.S.C. App. 2061 et seq.), includes emergency preparedness activities conducted pursuant to this subchapter. (42 U.S.C. 5195a)

<sup>2</sup> So in original. Probably should be “include”.

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### **Use of funds to prepare for and respond to hazards**

Funds made available to the States under this subchapter may be used by the States for the purposes of preparing for hazards and providing emergency assistance in response to hazards. Regulations prescribed to carry out this section shall authorize the use of emergency preparedness personnel, materials, and facilities supported in whole or in part through contributions under this subchapter for emergency preparedness activities and measures related to hazards. (42 U.S.C. 5196d)

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# Federal Advisory Committee Act

October 6, 1972 (Pub. L. 92-463, 86 Stat. 770; 5 U.S.C. Appendix 2 Sections 1-15)

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## Sec. 2 Findings and purpose

(a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.

(b) The Congress further finds and declares that -

(1) the need for many existing advisory committees has not been adequately reviewed;

(2) new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary;

(3) advisory committees should be terminated when they are no longer carrying out the purposes for which they were established;

(4) standards and uniform procedures should govern the establishment, operation, administration, and duration of advisory committees;

(5) the Congress and the public should be kept informed with respect to the

number, purpose, membership, activities, and cost of advisory committees; and

(6) the function of advisory committees should be advisory only, and that all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved.

## Sec. 3 Definitions

For the purpose of this Act -

(1) The term "Administrator" means the Administrator of General Services.

(2) The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is -

(A) established by statute or reorganization plan, or

(B) established or utilized by the President, or

(C) established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) any committee that is composed wholly of full-time, or permanent part-time, officers or

employees of the Federal Government, and (ii) any committee that is created by the National Academy of Sciences or the National Academy of Public Administration.

(3) The term “agency” has the same meaning as in section 551(1) of title 5, United States Code.

(4) The term “Presidential advisory committee” means an advisory committee which advises the President.

#### **Sec. 4 Applicability; restrictions**

(a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.

(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by - (1) the Central Intelligence Agency; or (2) the Federal Reserve System.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

#### **Sec. 5 Responsibilities of Congressional committees; review; guidelines**

(a) In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each such standing committee shall take appropriate action to obtain the enactment of legislation necessary to carry out the purpose of this subsection.

(b) In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. Any such legislation shall -

(1) contain a clearly defined purpose for the advisory committee;

(2) require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee;

(3) contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;

(4) contain provisions dealing with authorization of appropriations, the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the standing committee determines the provisions of section 10 of this Act to be inadequate; and

(5) contain provisions which will assure that the advisory committee will have adequate staff (either supplied by an agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) To the extent they are applicable, the guidelines set out in subsection (b) of this section shall be followed by the President, agency heads, or other Federal officials in creating an advisory committee.

### **Sec. 6 Responsibilities of the President; report to Congress; annual report to Congress; exclusion**

(a) The President may delegate responsibility for evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees.

(b) Within one year after a Presidential

advisory committee has submitted a public report to the President, the President or his delegate shall make a report to the Congress stating either his proposals for action or his reasons for inaction, with respect to the recommendations contained in the public report.

(c) The President shall, not later than December 31 of each year, make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding fiscal year. The report shall contain the name of every advisory committee, the date of and authority for its creation, its termination date or the date it is to make a report, its functions, a reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, the dates of its meetings, the names and occupations of its current members, and the total estimated annual cost to the United States to fund, service, supply, and maintain such committee. Such report shall include a list of those advisory committees abolished by the President, and in the case of advisory committees established by statute, a list of those advisory committees which the President recommends be abolished together with his reasons therefor. The President shall exclude from this report any information which, in his judgment, should be withheld for reasons of national security, and he shall include in such report a statement that such information is excluded.

### **Sec. 7 Responsibilities of the Administrator of General Services; Committee Management**

**Secretariat, establishment; review; recommendations to President and Congress; agency cooperation; performance guidelines; uniform pay guidelines; travel expenses; expense recommendations**

(a) The Administrator shall establish and maintain within the General Services Administration a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

(b) The Administrator shall, immediately after October 6, 1972, institute a comprehensive review of the activities and responsibilities of each advisory committee to determine –

- (1) whether such committee is carrying out its purpose;
- (2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;
- (3) whether it should be merged with other advisory committees; or
- (4) whether it should be abolished. The Administrator may from time to time request such information as he deems necessary to carry out his functions under this subsection. Upon the completion of the Administrator's review he shall make recommendations to the President and to either the agency head or the Congress with respect to action he believes should be taken. Thereafter, the Administrator shall carry out a similar review annually. Agency heads shall cooperate with the Administrator in

making the reviews required by this subsection.

(c) The Administrator shall prescribe administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provide advice, assistance, and guidance to advisory committees to improve their performance. In carrying out his functions under this subsection, the Administrator shall consider the recommendations of each agency head with respect to means of improving the performance of advisory committees whose duties are related to such agency.

(d)(1) The Administrator, after study and consultation with the Director of the Office of Personnel Management, shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives appropriate recognition to the responsibilities and qualifications required and other relevant factors. Such regulations shall provide that –

- (A) no member of any advisory committee or of the staff of any advisory committee shall receive compensation at a rate in excess of the rate specified for GS-18 of the General Schedule under section 5332 of title 5, United States Code;
- (B) such members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section

5703 of title 5, United States Code, for persons employed intermittently in the Government service; and

(C) such members -

(i) who are blind or deaf or who otherwise qualify as handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794)), and

(ii) who do not otherwise qualify for assistance under section 3102 of title 5, United States Code, by reason of being an employee of an agency (within the meaning of section 3102(a)(1) of such title 5), may be provided services pursuant to section 3102 of such title 5 while in performance of their advisory committee duties.

(2) Nothing in this subsection shall prevent -

(A) an individual who (without regard to his service with an advisory committee) is a full-time employee of the United States, or

(B) an individual who immediately before his service with an advisory committee was such an employee, from receiving compensation at the rate at which he otherwise would be compensated (or was compensated) as a full-time employee of the United States.

(e) The Administrator shall include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees, including the expenses for publication of reports

where appropriate.

### **Sec. 8 Responsibilities of agency heads; Advisory Committee Management Officer, designation**

(a) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Administrator under section 7 and section 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory committee within its jurisdiction.

(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall -

(1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;

(2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and

(3) carry out, on behalf of that agency, the provisions of section 552 of title 5, United States Code, with respect to such reports, records, and other papers.

### **Sec. 9 Establishment and purpose of advisory committees; publication in Federal Register; charter: filing, contents, copy**

(a) No advisory committee shall be established unless such establishment is -

(1) specifically authorized by statute or

by the President; or

(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Administrator, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with (1) the Administrator, in the case of Presidential advisory committees, or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

(A) the committee's official designation;

(B) the committee's objectives and the scope of its activity;

(C) the period of time necessary for the committee to carry out its purposes;

(D) the agency or official to whom the committee reports;

(E) the agency responsible for providing the necessary support for the committee;

(F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;

(G) the estimated annual operating costs in dollars and man-years for such committee;

(H) the estimated number and frequency of committee meetings;

(I) the committee's termination date, if less than two years from the date of the committee's establishment; and

(J) the date the charter is filed. A copy of any such charter shall also be furnished to the Library of Congress.

**Sec. 10 Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance**

(a)(1) Each advisory committee meeting shall be open to the public.

(2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Administrator shall prescribe regulations to provide for other types of public notice to insure

that all interested persons are notified of such meeting prior thereto.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Administrator may prescribe.

(b) Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

(c) Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

(d) Subsections (a)(1) and (a)(3) of this section shall not apply to any portion of an advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code. Any

such determination shall be in writing and shall contain the reasons for such determination. If such a determination is made, the advisory committee shall issue a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of title 5, United States Code.

(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee.

### **Sec. 11 Availability of transcripts; “agency proceeding”**

(a) Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

(b) As used in this section “agency

proceeding” means any proceeding as defined in section 551(12) of title 5, United States Code.

**Sec. 12 Fiscal and administrative provisions; record-keeping; audit; agency support services**

(a) Each agency shall keep records as will fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. The General Services Administration, or such other agency as the President may designate, shall maintain financial records with respect to Presidential advisory committees. The Comptroller General of the United States, or any of his authorized representatives, shall have access, for the purpose of audit and examination, to any such records.

(b) Each agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential advisory committees, such services may be provided by the General Services Administration.

**Sec. 13 Responsibilities of Library of Congress; reports and background papers; depository**

Subject to section 552 of title 5, United States Code, the Administrator shall provide for the filing with the Library of

Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Librarian of Congress shall establish a depository for such reports and papers where they shall be available to public inspection and use.

**Sec. 14 Termination of advisory committees; renewal; continuation**

(a)(1) Each advisory committee which is in existence on the effective date of this Act shall terminate not later than the expiration of the two-year period following such effective date unless -

(A) in the case of an advisory committee established by the President or an officer of the Federal Government, such advisory committee is renewed by the President or that officer by appropriate action prior to the expiration of such two-year period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(2) Each advisory committee established after such effective date shall terminate not later than the expiration of the two-year period beginning on the date of its establishment unless -

(A) in the case of an advisory committee established by the President or an officer of the Federal Government such advisory committee is renewed by the President or such officer by appropriate action prior to the end of such period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(b)(1) Upon the renewal of any advisory committee, such advisory committee shall file a charter in accordance with section 9(c).

(2) Any advisory committee established by an Act of Congress shall file a charter in accordance with such section upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

(3) No advisory committee required under this subsection to file a charter shall take any action (other than preparation and filing of such charter) prior to the date on which such charter is filed.

(c) Any advisory committee which is renewed by the President or any officer of the Federal Government may be continued only for successive two-year periods by appropriate action taken by the President or such officer prior to the date on which such advisory committee would otherwise terminate.

### **Sec. 15 Requirements relating to the National Academy of Sciences and the National Academy of Public Administration**

(a) In General. - An agency may not use any advice or recommendation provided by the National Academy of Sciences or National Academy of Public Administration that was developed by use of a committee created by that academy

under an agreement with an agency, unless -

(1) the committee was not subject to any actual management or control by an agency or an officer of the Federal Government;

(2) in the case of a committee created after the date of the enactment of the Federal Advisory Committee Act Amendments of 1997, the membership of the committee was appointed in accordance with the requirements described in subsection (b)(1); and

(3) in developing the advice or recommendation, the academy complied with -

(A) subsection (b)(2) through (6), in the case of any advice or recommendation provided by the National Academy of Sciences; or

(B) subsection (b)(2) and (5), in the case of any advice or recommendation provided by the National Academy of Public Administration.

(b) Requirements. - The requirements referred to in subsection (a) are as follows:

(1) The Academy shall determine and provide public notice of the names and brief biographies of individuals that the Academy appoints or intends to appoint to serve on the committee. The Academy shall determine and provide a reasonable opportunity for the public to comment on such appointments before they are made or, if the Academy determines such prior comment is not practicable, in the period immediately following the appointments. The Acad-

emy shall make its best efforts to ensure that (A) no individual appointed to serve on the committee has a conflict of interest that is relevant to the functions to be performed, unless such conflict is promptly and publicly disclosed and the Academy determines that the conflict is unavoidable, (B) the committee membership is fairly balanced as determined by the Academy to be appropriate for the functions to be performed, and (C) the final report of the Academy will be the result of the Academy's independent judgment. The Academy shall require that individuals that the Academy appoints or intends to appoint to serve on the committee inform the Academy of the individual's conflicts of interest that are relevant to the functions to be performed.

(2) The Academy shall determine and provide public notice of committee meetings that will be open to the public.

(3) The Academy shall ensure that meetings of the committee to gather data from individuals who are not officials, agents, or employees of the Academy are open to the public, unless the Academy determines that a meeting would disclose matters described in section 552(b) of title 5, United States Code. The Academy shall make available to the public, at reasonable charge if appropriate, written materials presented to the committee by individuals who are not officials, agents, or employees of the Academy, unless the Academy determines that making material available would disclose matters described in that section.

(4) The Academy shall make available to the public as soon as practicable, at reasonable charge if appropriate, a brief summary of any committee meeting that is not a data gathering meeting, unless the Academy determines that the summary would disclose matters described in section 552(b) of title 5, United States Code. The summary shall identify the committee members present, the topics discussed, materials made available to the committee, and such other matters that the Academy determines should be included.

(5) The Academy shall make available to the public its final report, at reasonable charge if appropriate, unless the Academy determines that the report would disclose matters described in section 552(b) of title 5, United States Code. If the Academy determines that the report would disclose matters described in that section, the Academy shall make public an abbreviated version of the report that does not disclose those matters.

(6) After publication of the final report, the Academy shall make publicly available the names of the principal reviewers who reviewed the report in draft form and who are not officials, agents, or employees of the Academy.

(c) Regulations. - The Administrator of General Services may issue regulations implementing this section.

## Food and Agriculture Act of 1977, Department of Agriculture Advisory Committees

September 29, 1977 (Pub. L. 95-113, 91 Stat. 913; 7 U.S.C. 2281 to 2286)

### Title XVIII – Department of Agriculture advisory committee

#### Congressional declaration of purpose

**Sec. 1801** The purposes of this chapter are to -

- (1) require strict financial and program accounting by advisory committees of the Department of Agriculture;
- (2) assure balance and objectivity in the membership of such advisory committees; and
- (3) prevent the formation or continuation of unnecessary advisory committees by the Department of Agriculture. (7 U.S.C. 2281)

#### Definitions

**Sec. 1802** When used in this chapter -

- (1) the term “Secretary” means the Secretary of Agriculture of the United States;
- (2) the term “Department of Agriculture” means the United States Department of Agriculture; and
- (3) the term “advisory committee” means any committee, board, commission, council, conference, panel, task force, or other similar group, or any

subcommittee or other subgroup thereof that is established or utilized by the Department of Agriculture in the interest of obtaining advice or recommendations for the President or the Department of Agriculture, except that such term excludes any committee which (A) is composed wholly of full-time officers or employees of the Federal Government, (B) is established by statute or reorganization plan, or (C) is established by the President. (7 U.S.C. 2282)

#### Membership on advisory committees

**Sec. 1803** (a) Simultaneous service

No person other than an officer or employee of the Department of Agriculture may serve simultaneously on more than one advisory committee, unless authorized by the Secretary.

(b) Service by more than one officer or employee of corporation or non-Federal entity

Not more than one officer or employee of any corporation or other non-Federal entity, including all subsidiaries and affiliates thereof, may serve on the same advisory committee at any one time, unless authorized by the Secretary.

(c) Maximum length

No person other than an officer or employee of the Department of Agriculture may serve for more than six consecutive years on an advisory committee, unless authorized by the Secretary. (7 U.S.C. 2283)

(5) does not serve or has ceased to serve an essential public function. (7 U.S.C. 2286)

### **Budget prohibitions**

**Sec. 1805** No advisory committee may expend funds in excess of its estimated annual operating costs by more than 10 per centum or \$500, whichever is greater, until it provides the Secretary with an explanation of the need for the additional expenditure and the Secretary approves such additional expenditure. (7 U.S.C. 2285)

### **Termination of committees**

**Sec. 1806** The Secretary shall terminate any advisory committee upon a finding that any such advisory committee -

(1) has expended funds in excess of its estimated annual operating costs by more than 10 per centum or \$500, whichever is greater, without the prior approval of the Secretary pursuant to the provisions of section 2285 of this title;

(2) has failed to file all reports required under the provisions of the Federal Advisory Committee Act or this chapter;

(3) has failed to meet for two consecutive years;

(4) is responsible for functions that otherwise would be or should be performed by Federal employees; or

## Permits for Public Buildings and Other Public Works

September 3, 1954 (Ch. 1255, 68 Stat. 1146; 43 U.S.C. 931c, 931d)

**Permits, leases, or easements; authorization to grant; payment; limitation**

any department or agency of the Government of the United States to grant permits, leases, easements, or rights-of-way. (43 U.S.C. 931d)

**Sec. 1** The head of any department or agency of the Government of the United States having jurisdiction over public lands and national forests, except national parks and monuments, of the United States is authorized to grant permits, leases, or easements, in return for the payment of a price representing the fair market value of such permit, lease, or easement, to be fixed by such head of such department or agency through appraisal, for a period not to exceed thirty years from the date of any such permit, lease, or easement to States, counties, cities, towns, townships, municipal corporations, or other public agencies for the purpose of constructing and maintaining on such lands public buildings or other public works. In the event such lands cease to be used for the purpose for which such permit, lease, or easement was granted, the same shall thereupon terminate. (43 U.S.C. 931c)

**Additional authority of department or agency head**

**Sec. 2** The authority conferred by section 931c of this title shall be in addition to, and not in derogation of any authority heretofore conferred upon the head of

## Facilitate and Simplify Work of Forest Service and to Promote Reforestation

March 3, 1925 (Ch. 457, 43 Stat. 1132; 16 U.S.C. 572, 557, 555)

### Cooperation between Secretary of Agriculture and public or private agencies in working land under State or private ownership

**Sec. 1** (a) Payment of expenses by interested parties; work contemplated

The Secretary of Agriculture is authorized, where the public interest justifies, to cooperate with or assist public and private agencies, organizations, institutions, and persons in performing work on land in State, county, municipal, or private ownership, situated within or near a national forest, for which the administering agency, owner, or other interested party deposits in one or more payments a sufficient sum to cover the total estimated cost of the work to be done for the benefit of the depositor, for administration, protection, improvement, reforestation, and such other kinds of work as the Forest Service is authorized to do on lands of the United States: Provided, That the United States shall not be liable to the depositor or land-owner for any damage incident to the performance of such work.

(b) Cooperation where national forests or lands are used by permittees

Cooperation and assistance on the same basis as that authorized in subsection (a) of this section is authorized also in the

performance of any such kinds of work in connection with the occupancy or use of the national forests or other lands administered by the Forest Service.

(c) Disposition and availability of moneys; advancements; adjustments

Moneys deposited under this section shall be covered into the Treasury and shall constitute a special fund, which is made available until expended for payment of the cost of work performed by the Forest Service and for refunds to depositors of amounts deposited by them in excess of their share of said cost: Provided, That when deposits are received for a number of similar types of work on adjacent or overlapping areas, or on areas which in the aggregate are determined to cover a single work unit, they may be expended on such combined areas for the purposes for which deposited, in which event refunds to the depositors of the total amount of the excess deposits involved will be made on a proportionate basis: Provided further, That when so provided by written agreement payment for work undertaken pursuant to this section may be made from any Forest Service appropriation available for similar types of work, and reimbursement received from said agencies, organizations, institutions, or persons covering their proportionate share of the cost and the funds received

as reimbursement shall be deposited to the credit of the Forest Service appropriation from which initially paid or to appropriations for similar purposes currently available at the time of deposit: Provided further, That when by the terms of a written agreement either party thereto furnishes materials, supplies, equipment, or services for fire emergencies in excess of its proportionate share, adjustment may be made by reimbursement or by replacement in kind of supplies, materials, and equipment consumed or destroyed in excess of the furnishing party's proportionate share. (16 U.S.C. 572)

**Sec. 2-3 Repealed**

**Employees of Forest Service; subsistence furnished to; personal equipment; supplies, and medical attention**

**Sec. 4** The Secretary of Agriculture is authorized to furnish subsistence to employees of the Forest Service, to purchase personal equipment and supplies for them, and to make deductions therefor from moneys appropriated for salary payments or otherwise due such employees. He is also authorized, in his discretion, to provide out of moneys appropriated for the general expenses of the Forest Service medical attention for employees of the Forest Service located at isolated situations, including the moving of such employees to hospitals or other places where medical assistance is available, and in case of death to remove the bodies of deceased employees to the nearest place where they can be prepared for shipment or for burial: Provided,

That when a transient without permanent residence, or any other person while away from his place of residence, is temporarily employed by the Forest Service and while so employed becomes disabled because of injury or illness not attributable to official work, he may be provided hospitalization and other necessary medical care, subsistence, and lodging for a period of not to exceed fifteen days during such disability, the cost thereof to be payable from any funds available to the Forest Service applicable to the work for which such person is employed. (16 U.S.C. 557)

**Forest headquarters, ranger stations, dwellings, or other needed sites**

**Sec. 5** Where no suitable Government land is available for national forest headquarters, ranger stations, dwellings, or for other sites required for the effective conduct of the authorized activities of the Forest Service, the Secretary of Agriculture is authorized to purchase such lands out of the appropriation applicable to the purpose for which the land is to be used, and to accept donations of land for any national forest or experimental purpose: Provided, That such lands may be acquired subject to such reservations and outstanding interests as the Secretary determines will not interfere with the purpose for which acquired: Provided further, That not to exceed \$50,000 may be expended in any one fiscal year pursuant to this authority. (16 U.S.C. 555)

## **Damage to Private Property and Search and Rescue**

**May 27, 1930 (Ch. 337, 46 Stat. 387; 16 U.S.C. 574, 575)**

### **Damages caused private property in protection, administration, and improvement of national forests; reimbursement**

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

### **Search for lost persons, and transportation of sick, injured, or dead persons, within national forests; authorization to incur expense**

**Sec. 3** The Secretary of Agriculture is authorized in cases of emergency to incur such expenses as may be necessary in searching for persons lost in the national forests and in transporting persons seriously ill, injured, or who die within the national forests to the nearest place where the sick or injured person, or the body, may be transferred to interested parties or local authorities. (16 U.S.C. 575)

## Department of Agriculture Organic Act of 1944

September 21, 1944 (Ch. 412, Title II, 58 Stat. 736; 16 U.S.C. 559a, 554b, 580a, 580, 579a, 554c, 568 note, 572a, 527, 500, 501, 526)

### **Reward for information leading to arrest and conviction for violating laws and regulations**

**Sec. 201** The Secretary of Agriculture may pay rewards from appropriations available for the protection and management of the national forests, under such regulations as he may prescribe, for information leading to the arrest and conviction for violation of the laws and regulations relating to fires in or near national forests, or for the unlawful taking of, or injury to, Government property. (16 U.S.C. 559a)

### **Medical care for employees engaged in hazardous work; notification and transportation of employees**

**Sec. 202** Appropriations for the Forest Service shall be available for medical supplies and services and other assistance necessary for the immediate relief of artisans, laborers, and other employees engaged in any hazardous work under the Forest Service, and for expenses of notifying employees of the death or serious illness of close relatives and, in such cases where no public transportation is available, for transporting the employees to a point where public transportation is available. (16 U.S.C. 554b)

### **Sale and distribution of supplies, equipment, and materials to other Government activities and to cooperating State and private agencies; reimbursement**

**Sec. 203** The Forest Service may sell and distribute supplies, equipment, and materials to other Government activities and to State and private agencies who cooperate with the Forest Service in fire control under terms of written cooperative agreements, the cost of such supplies, equipment, and materials, including the cost of supervision, transportation, warehousing, and handling, to be reimbursed to appropriations current at the time additional supplies, equipment, and materials are procured for warehouse stocks. (16 U.S.C. 580a)

### **Use of Forest Service appropriations for repair, etc. of equipment; rental of fire control equipment to non-Federal agencies**

**Sec. 204** Appropriations for the work of the Forest Service available for the operation, repair, maintenance, and replacement of motor and other equipment may be reimbursed for use of such equipment on projects of the Forest Service chargeable to other appropriations, or on work of other Federal agencies, when requested by such agencies,

reimbursement to be made from appropriations applicable to the work on which used at rental rates fixed by the Chief Forester based on the actual or estimated cost of operation, repair, maintenance, depreciation, and equipment management control, and credited to appropriations currently available at the time adjustment is effected. The Forest Service may also rent equipment for fire-control purposes to State, county, private, or other non-Federal agencies cooperating with the Forest Service in fire control under the terms of written cooperative agreements, the amount collected for such rental to be credited to appropriations currently available at the time payment is received. (16 U.S.C. 580)

#### **Operation of aerial facilities and services**

**Sec. 205** The Forest Service by contract or otherwise may provide for procurement and operation of aerial facilities and services for the protection and management of the national forests and other lands administered by it, including the furnishing, at the airbase, of facilities, equipment, materials and the preparation, mixing and loading into aircraft, with authority to renew any contract for such purpose annually, not more than twice, without additional advertising. (16 U.S.C. 579a)

#### **Care of employees' graves**

**Sec. 206** Appropriations for the Forest Service shall be available within such limitations as may be prescribed therein for the expenses of properly caring for

the graves of persons who have lost their lives as a result of fighting fires while employed by the Forest Service. (16 U.S.C. 554c)

#### **Contributions by States, etc.**

**Sec. 208** No part of any appropriation which is available for carrying out the Cooperative Farm Forestry Act (16 U.S.C. 568b) (repealed) and sections 4 and 5 of the Clarke-McNary Act (16 U.S.C. 567 (repealed), 568) shall be expended in any State or Territory unless the State or Territory, or local subdivision thereof, or individuals, or associations contribute a sum equal to that to be allotted therefrom by the Government or make contributions other than money deemed by the Secretary to be the value equivalent thereof. (16 U.S.C. 568 note)

#### **Appropriations available for 3 years**

**Sec. 209** Appropriations for carrying out the Cooperative Farm Forestry Act (16 U.S.C. 568b) (repealed) and sections 4 and 5 of the Clarke-McNary Act (16 U.S.C. 567 (repealed), 568) and Acts supplementary thereto allocated for the production or procurement of nursery stock by any Federal agency, or funds appropriated to any Federal agency for allocation to cooperating States for the production or procurement of nursery stock, shall remain available for expenditure for not more than three fiscal years. (16 U.S.C. 568 note)

#### **Cooperation between Secretary of**

### **Agriculture and public or private agencies in working land under State or private ownership**

**Sec. 210** The Forest Service may accept money from timber purchasers for deposit into the Treasury in the trust account, "Forest Service cooperative fund", which moneys are made available for scaling services requested by purchasers in addition to those required by the Forest Service, and for refunds of amounts deposited in excess of the cost of such work. (16 U.S.C. 572a)

### **Use of Forest Service funds for administration of certain lands**

**Sec. 211** The Forest Service may expend funds available for national forest protection and management for the administration of lands under contract for purchase or for the acquisition of which condemnation proceedings have been instituted under the Act of March 1, 1911, and the Act of June 7, 1924, and lands transferred to the Forest Service for administration. (16 U.S.C. 527)

### **Payment and evaluation of receipts to State or Territory for schools and roads; moneys received; projections of revenues and estimated payments**

**Sec. 212** On and after May 23, 1908, twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State or Territory in which such national forest is situated, to be

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

### **Expenditures from receipts for roads**

**and trails; cooperation with State authorities; evaluation of receipts**

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

**Establishment and protection of water rights**

**Sec. 213** There are authorized to be appropriated for expenditure by the Forest Service such sums as may be necessary for the investigation and establishment of water rights, including the purchase thereof or of lands or interests in lands or rights-of-way for use and protection of water rights necessary or beneficial in connection with the administration and public use of the national forests. (16 U.S.C. 526)

## Department of Agriculture Organic Act of 1944, Uses of Appropriated Funds

September 21, 1944 (Ch. 412, Title VII, 58 Stat. 741; 7 U.S.C. 2255, 1605, 2256, 2257, 2250, 2258, 2232, 2231, 2225, 2249)

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### Inspections, analyses, and tests for other Government departments and agencies; reimbursement

**Sec. 702(a)** The head of any department or independent establishment of the Government requiring inspections, analyses, and tests of food and other products, within the scope of the functions of the Department of Agriculture and which that Department is unable to perform within the limits of its appropriations, may, with the approval of the Secretary, transfer to the Department for direct expenditure such sums as may be necessary for the performance of such work. (7 U.S.C. 2256)

### Interchangeability of funds for miscellaneous expenses and general expenses

**Sec. 702(b)** Not to exceed 7 per centum of the amounts appropriated for any fiscal year for the miscellaneous expenses of the work of any bureau, division, or office of the Department of Agriculture shall be available interchangeably for expenditures on the objects included within the general expenses of such bureau, division, or office, but no more than 7 per centum shall be added to any one item of appropriation except in cases of extraordinary

emergency. (7 U.S.C. 2257)

### Construction and repair of buildings and public improvements

**Sec. 703** The Department of Agriculture is authorized to erect, alter, and repair such buildings and other public improvements as may be necessary to carry out its authorized work: Provided, That no building or improvement shall be erected or altered under this authority unless provision is made therefor in the applicable appropriation and the cost thereof is not in excess of limitations prescribed therein. (7 U.S.C. 2250)

### Purchase of newspapers

**Sec. 704** The Department of Agriculture is authorized to subscribe for such newspapers as may be necessary to carry out its authorized work: Provided, That purchases under this authority shall not be made unless provision is made therefor in the applicable appropriation and the cost thereof is not in excess of limitations prescribed therein. (7 U.S.C. 2258)

### Stenographic reporting service

**Sec. 705(b)** The Department of Agriculture is authorized to contract for stenographic reporting services. (7 U.S.C. 2232)

**Official expenses of employees stationed abroad**

**Sec. 705(c)** Employees of the Department of Agriculture stationed abroad may, with the approval of the Secretary of Agriculture, enter into leases for official quarters, for periods not exceeding one year, and may pay rent, telephone, subscriptions to publications, and other charges incident to the conduct of their offices and the discharge of their duties, in advance, in any foreign country where custom or practice requires payment in advance. (7 U.S.C. 2231)

**Employment of temporary personnel**

**Sec. 706(a)** The Department of Agriculture may employ persons or organizations, on a temporary basis, by contract or otherwise: Provided, That no expenditures for such temporary employment shall be made unless provision is made therefor in the applicable appropriation and the cost thereof is not in excess of limitations prescribed therein. (7 U.S.C. 2225)

**Amount and character of cooperation**

**Sec. 711** Unless otherwise provided by the Department of Agriculture Organic Act of 1944 or by other statute, the measure and character of cooperation authorized by said Act on the part of the Federal Government and on the part of the cooperator shall be such as may be prescribed by the Secretary, unless otherwise provided for in the applicable appropriation. (7 U.S.C. 2249)

## Forest Service Omnibus Act of 1958

June 20 , 1958 (Pub. L. 85-464, 72 Stat. 216; 16 U.S.C. 502, 556c, 556b, 554b, 565b, 580f, 579c, 556, 555)

### **Rental of property for Forest Service; forage, care, and housing of animals; storage of vehicles and other equipment; pack stock; loss, damage, or destruction of horses, vehicles, and other equipment**

**Sec. 1** The Secretary of Agriculture is authorized, under such regulations as he may prescribe:

- (a) To hire or rent property from employees of the Forest Service for the use of that Service whenever the public interest will be promoted thereby.
- (b) To provide forage, care, and housing for animals, and storage for vehicles and other equipment obtained by the Forest Service for the use of that service from employees.
- (c) To contract with public and private agencies, corporations, firms, associations, or individuals to train, provide forage, care, and housing for, and to work pack stock owned and held in reserve by the Forest Service for fire emergency purposes and as all or part of the consideration therefor to permit such contractors to use the stock for their own purposes during the periods of nonuse by the Forest Service.
- (d) To reimburse owners for loss, damage, or destruction of horses, vehicles, and other equipment obtained by the Forest Service for the use of that service

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

### **Reimbursement of employees for property losses resulting from fires, floods, or other casualties**

**Sec. 2** Funds available to the Forest Service may be used in amounts not exceeding \$100 in any single claim, for reimbursing employees of the Forest Service for loss of or damage to clothing and other personal effects resulting from fires, floods, or other casualties at or near the place in which such property is temporarily stored during services of the employees in connection with such casualties. (16 U.S.C. 556c)

### **Advances of public moneys to Forest Service for fighting forest fires in emergency cases**

**Sec. 3** Funds available to the Forest Service may be used, in accordance with

regulations prescribed by the Secretary of Agriculture for expenses of transporting automobiles of employees of that Service between points in Alaska in connection with transfers of official stations of such employees to meet the needs of the Service. (16 U.S.C. 556b)

**Medical care for employees engaged in hazardous work; notification and transportation of employees**

**Sec. 4** Appropriations for the Forest Service shall be available for medical supplies and services and other assistance necessary for the immediate relief of artisans, laborers, and other employees engaged in any hazardous work under the Forest Service, and for expenses of notifying employees of the death or serious illness of close relatives and, in such cases where no public transportation is available, for transporting the employees to a point where public transportation is available. (16 U.S.C. 554b)

**Transfer of fire lookout towers and other improvements for fire control to States, political subdivisions or agencies; reversion**

**Sec. 5** The Secretary of Agriculture is authorized, subject to such conditions as he may prescribe, to transfer, without reimbursement or at such prices and upon such terms as he may impose, to States and political subdivisions or agencies thereof fire lookout towers and other structures or improvements used by the Forest Service for fire prevention or suppression purposes, and the land used in connection therewith if such land is

outside national forest boundaries, when they are no longer needed by the Forest Service for such purposes but are of value to the State or political subdivision or agency thereof in its fire protection system: Provided, That if any property so transferred is not put to use for the purpose for which it was transferred within two years from the date of transfer, or if, within fifteen years from the date of transfer, any such property should cease to be used for the purpose for which it was transferred for a period of two years, title thereto shall revert to and immediately revest in the United States. (16 U.S.C. 565b)

**Telephones for official use in private residences**

**Sec. 6** Notwithstanding the provisions of section 1348 of title 31, appropriations for the protection and management of the national forests and other lands administered by the Forest Service shall be available to pay for telephone service installed in residences of employees and of persons cooperating with the Forest Service who reside within or near such lands when such installation is determined by the Secretary of Agriculture to be needed in protecting such lands: Provided, That in addition to the monthly local service charge, the Government may pay only such tolls or other charges as are required strictly for the public business. (16 U.S.C. 580f)

**Availability of funds received from forfeitures, judgments, compromises, or settlements**

**Sec. 7** Any moneys received by the United States with respect to lands under the administration of the Forest Service (1) as a result of the forfeiture of a bond or deposit by a permittee or timber purchaser for failure to complete performance of improvement, protection, or rehabilitation work required under the permit or timber sale contract or (2) as a result of a judgment, compromise, or settlement of any claim, involving present or potential damage to lands or improvements, shall be covered into the Treasury and are hereby appropriated and made available until expended to cover the cost to the United States of any improvement, protection, or rehabilitation work on lands under the administration of the Forest Service rendered necessary by the action which led to the forfeiture, judgment, compromise, or settlement: Provided, That any portion of the moneys so received in excess of the amount expended in performing the work necessitated by the action which led to their receipt shall be transferred to miscellaneous receipts. (16 U.S.C. 579c)

**Appropriations for Forest Service; use for transportation or traveling expenses; preparation or publication of newspaper or magazine articles**

**Sec. 8** No part of any funds appropriated for the Forest Service shall be used to pay the transportation or traveling expenses of any forest officer or agent except he be traveling on business

directly connected with the Forest Service and in furtherance of the works, aims, and objects specified and authorized by law; nor shall any such funds be paid or used for the purpose of paying for, in whole or in part, the preparation or publication of any newspaper or magazine article, but this shall not prevent the giving out to all persons, without discrimination, including newspapers and magazine writers and publishers, of any facts or official information of value to the public: Provided, That this prohibition shall not apply to scientific or technical articles prepared for or published in scientific publications. (16 U.S.C. 556)

**Forest headquarters, ranger stations, dwellings, or other needed sites**

**Sec. 9** Where no suitable Government land is available for national forest headquarters, ranger stations, dwellings, or for other sites required for the effective conduct of the authorized activities of the Forest Service, the Secretary of Agriculture is authorized to purchase such lands out of the appropriation applicable to the purpose for which the land is to be used, and to accept donations of land for any national forest or experimental purpose: Provided, That such lands may be acquired subject to such reservations and outstanding interests as the Secretary determines will not interfere with the purpose for which acquired: Provided further, That not to exceed \$50,000 may be expended in any one fiscal year pursuant to this authority. (16 U.S.C. 555)

## **National Forest System Federal Enforcement of Local Laws Act**

**August 10, 1971 (Pub. L. 92-82, 85 Stat. 303; 16 U.S.C. 551a)**

The Secretary of Agriculture, in connection with the administration and regulation of the use and occupancy of the national forests and national grasslands, is authorized to cooperate with any State or political subdivision thereof, on lands which are within or part of any unit of the national forest system, in the enforcement or supervision of the laws or ordinances of a State or subdivision thereof. Such cooperation may include the reimbursement of a State or its subdivision for expenditures incurred in connection with activities on national forest system lands. This section shall not deprive any State or political subdivision thereof of its right to exercise civil and criminal jurisdiction, within or on lands which are a part of the national forest system. (16 U.S.C. 551a)

## Americans with Disabilities Act of 1990

**July 26, 1990 (Pub. L. 101-336, 104 Stat. 328; 42 U.S.C. 12101 note, 12101, 12102, 12111, 12112, 12113, 12115 to 12118, 12111 note, 12131 to 12134, 12131 note, 12141 to 12150, 12141 note, 12161 to 12165, 12161 note, 12181 to 12189, 12181 note, 47 U.S.C. 225, 152, 221, 611, 42 U.S.C. 12201 to 12211, 29 U.S.C. 706, 42 U.S.C. 12212, 12213)**

### Findings and purpose

#### Sec. 2 (a) Findings

The Congress finds that –

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose

It is the purpose of this chapter -

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities. (42 U.S.C. 12101)

## Definitions

**Sec. 3** As used in this chapter:

(1) Auxiliary aids and services

The term "auxiliary aids and services" includes -

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) Disability

The term "disability" means, with respect to an individual -

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) State

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands. (42 U.S.C. 12102)

## Definitions

### TITLE I—Employment

**Sec. 101** As used in this subchapter:

(1) Commission

The term “Commission” means the Equal Employment Opportunity Commission established by section 2000e-4 of this title.

(2) Covered entity

The term “covered entity” means an employer, employment agency, labor organization, or joint labor-management committee.

(3) Direct threat

The term “direct threat” means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(4) Employee

The term “employee” means an individual employed by an employer. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(5) Employer

(A) In general

The term “employer” means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this subchapter, an

employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) Exceptions

The term “employer” does not include -

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of title 26.

(6) Illegal use of drugs

(A) In general

The term “illegal use of drugs” means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 801 et seq.). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) Drugs

The term “drug” means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(7) Person, etc.

The terms “person”, “labor organization”, “employment agency”, “commerce”, and “industry affecting commerce”, shall have the same meaning given such terms in section 2000e of this title.

(8) Qualified individual with a disability

The term “qualified individual with a disability” means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer’s judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation

The term “reasonable accommodation” may include -

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for

individuals with disabilities.

(10) Undue hardship

(A) In general

The term “undue hardship” means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered

In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include -

(i) the nature and cost of the accommodation needed under this chapter;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question

to the covered entity. (42 U.S.C. 12111)

## **Discrimination**

### **Sec. 102 (a) General rule**

No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

### **(b) Construction**

As used in subsection (a) of this section, the term “discriminate” includes –

- (1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;
- (2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity’s qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);
- (3) utilizing standards, criteria, or methods of administration -

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Covered entities in foreign countries

(1) In general

It shall not be unlawful under this section for a covered entity to take any action that constitutes discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

(2) Control of corporation

(A) Presumption

If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be engaged in by such employer.

(B) Exception

This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(C) Determination

For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on -

- (i) the interrelation of operations;
- (ii) the common management;
- (iii) the centralized control of labor relations; and
- (iv) the common ownership or financial control, of the employer and the corporation.

(d) Medical examinations and inquiries

(1) In general

The prohibition against discrimination as referred to in subsection (a) of this section shall include medical examinations and inquiries.

(2) Preemployment

(A) Prohibited examination or inquiry

Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) Acceptable inquiry

A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related

functions.

(3) Employment entrance examination

A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if -

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that -

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this chapter shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this subchapter.

(4) Examination and inquiry

(A) Prohibited examinations and inquiries

A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) Acceptable examinations and inquiries

A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) Requirement

Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3). (42 U.S.C. 12112)

## Defenses

### Sec. 103 (a) In general

It may be a defense to a charge of discrimination under this chapter that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown

to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this subchapter.

(b) Qualification standards

The term “qualification standards” may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) Religious entities

(1) In general

This subchapter shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) Religious tenets requirement

Under this subchapter, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

(d) List of infectious and communicable diseases

(1) In general

The Secretary of Health and Human Services, not later than 6 months after July 26, 1990, shall -

(A) review all infectious and communicable diseases which may be transmitted through handling the food

supply;

(B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

(C) publish the methods by which such diseases are transmitted; and

(D) widely disseminate such information regarding the list of diseases and their modes of transmissibility<sup>1</sup> to the general public.

Such list shall be updated annually.

(2) Applications

In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services under paragraph (1), and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(3) Construction

Nothing in this chapter shall be construed to preempt, modify, or amend any State, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of

transmissibility<sup>1</sup> published by the Secretary of Health and Human Services. (42 U.S.C. 12113)

<sup>1</sup> So in original. Probably should be “transmissibility”.

### **Illegal use of drugs and alcohol**

#### **Sec. 104** (a) Qualified individual with a disability

For purposes of this subchapter, the term “qualified individual with a disability” shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

#### (b) Rules of construction

Nothing in subsection (a) of this section shall be construed to exclude as a qualified individual with a disability an individual who –

- (1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;
- (2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or
- (3) is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in

paragraph (1) or (2) is no longer engaging in the illegal use of drugs.

#### (c) Authority of covered entity

A covered entity –

- (1) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;
- (2) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;
- (3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);
- (4) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and
- (5) may, with respect to Federal regulations regarding alcohol and the illegal use of drugs, require that -
  - (A) employees comply with the standards established in such regulations of the Department of Defense, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of

employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Defense);

(B) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(C) employees comply with the standards established in such regulations of the Department of Transportation, if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Transportation).

(d) Drug testing

(1) In general

For purposes of this subchapter, a test to determine the illegal use of drugs shall not be considered a medical examination.

(2) Construction

Nothing in this subchapter shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(e) Transportation employees

Nothing in this subchapter shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to -

(1) test employees of such entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing subsection (c) of this section. (42 U.S.C. 12114)

**Posting notices**

**Sec. 105** Every employer, employment agency, labor organization, or joint labor-management committee covered under this subchapter shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this chapter, in the manner prescribed by section 2000e-10 of this title. (42 U.S.C. 12115)

**Regulations**

**Sec. 106** Not later than 1 year after July 26, 1990, the Commission shall issue regulations in an accessible format to carry out this subchapter in accordance with subchapter II of chapter 5 of title 5. (42 U.S.C. 12116)

### **Enforcement**

**Sec. 107** (a) Powers, remedies, and procedures

The powers, remedies, and procedures set forth in sections 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9 of this title shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment.

(b) Coordination

The agencies with enforcement authority for actions which allege employment discrimination under this subchapter and under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) shall develop procedures to ensure that administrative complaints filed under this subchapter and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this subchapter and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms

(similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this subchapter and Rehabilitation Act of 1973 not later than 18 months after July 26, 1990. (42 U.S.C. 12117)

### **Effective date**

**Sec. 108** This title (enacting this subchapter) shall become effective 24 months after the date of enactment (July 26, 1990). (42 U.S.C. 12111 note)

## **TITLE II—Public services**

### **Subtitle A—Prohibition Against Discrimination and Other Generally Applicable Provisions**

#### **Definitions**

**Sec. 201** As used in this subchapter:

(1) Public entity

The term “public entity” means -

- (A) any State or local government;
- (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and
- (C) the National Railroad Passenger

Corporation, and any commuter authority (as defined in section 24102(4) of title 49).<sup>2</sup>

(2) Qualified individual with a disability

The term “qualified individual with a disability” means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. (42 U.S.C. 12131)

<sup>2</sup> Section 24102 of title 49, referred to in par. (1)(C), was subsequently amended, and section 24102(4) no longer defines “commuter authority”. However, such term is defined elsewhere in that section.

### **Discrimination**

**Sec. 202** Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. (42 U.S.C. 12132)

### **Enforcement**

**Sec. 203** The remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132

of this title. (42 U.S.C. 12133)

### **Regulations**

**Sec. 204** (a) In general

Not later than 1 year after July 26, 1990, the Attorney General shall promulgate regulations in an accessible format that implement this part. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 12143, 12149, or 12164 of this title.

\*\*\* (42 U.S.C. 12134)

### **Effective date**

**Sec. 205** (a) General Rule. - Except as provided in subsection (b), this subtitle (subtitle A (Sec. 201-205) of title II of Pub. L. 101-336, enacting this part) shall become effective 18 months after the date of enactment of this Act (July 26, 1990).

(b) Exception. - Section 204 (section 12134 of this title) shall become effective on the date of enactment of this Act. (42 U.S.C. 12131 note)

### **Subtitle B—Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory**

#### **Part I—Public Transportation Other Than by Aircraft or Certain Rail Operations**

### **Definitions**

**Sec. 221** As used in this subpart:

## (1) Demand responsive system

The term “demand responsive system” means any system of providing designated public transportation which is not a fixed route system.

## (2) Designated public transportation

The term “designated public transportation” means transportation (other than public school transportation) by bus, rail, or any other conveyance (other than transportation by aircraft or intercity or commuter rail transportation (as defined in section 12161 of this title)) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

## (3) Fixed route system

The term “fixed route system” means a system of providing designated public transportation on which a vehicle is operated along a prescribed route according to a fixed schedule.

## (4) Operates

The term “operates”, as used with respect to a fixed route system or demand responsive system, includes operation of such system by a person under a contractual or other arrangement or relationship with a public entity.

## (5) Public school transportation

The term “public school transportation” means transportation by schoolbus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

## (6) Secretary

The term “Secretary” means the Secretary of Transportation. (42 U.S.C. 12141)

**Public entities operating fixed route systems****Sec. 222 (a) Purchase and lease of new vehicles**

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system to purchase or lease a new bus, a new rapid rail vehicle, a new light rail vehicle, or any other new vehicle to be used on such system, if the solicitation for such purchase or lease is made after the 30th day following July 26, 1990, and if such bus, rail vehicle, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

**(b) Purchase and lease of used vehicles**

Subject to subsection (c)(1) of this section, it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system to purchase or lease, after the 30th day following July 26, 1990, a used vehicle for use on such system unless such entity makes demonstrated good faith efforts to purchase or lease a used vehicle for use on such system that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

## (c) Remanufactured vehicles

## (1) General rule

Except as provided in paragraph (2), it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system -

(A) to remanufacture a vehicle for use on such system so as to extend its usable life for 5 years or more, which remanufacture begins (or for which the solicitation is made) after the 30th day following July 26, 1990; or

(B) to purchase or lease for use on such system a remanufactured vehicle which has been remanufactured so as to extend its usable life for 5 years or more, which purchase or lease occurs after such 30th day and during the period in which the usable life is extended; unless, after remanufacture, the vehicle is, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

## (2) Exception for historic vehicles

## (A) General rule

If a public entity operates a fixed route system any segment of which is included on the National Register of Historic Places and if making a vehicle of historic character to be used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the

public entity only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of paragraph (1) and which do not significantly alter the historic character of such vehicle.

## (B) Vehicles of historic character defined by regulations

For purposes of this paragraph and section 12148(b) of this title, a vehicle of historic character shall be defined by the regulations issued by the Secretary to carry out this subsection. (42 U.S.C. 12142)

**Paratransit as a complement to fixed route service****Sec. 223 (a) General rule**

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system (other than a system which provides solely commuter bus service) to fail to provide with respect to the operations of its fixed route system, in accordance with this section, paratransit and other special transportation services to individuals with disabilities, including individuals who use wheelchairs, that are sufficient to provide to such individuals a level of service (1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or (2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services

provided to individuals without disabilities using such system.

(b) Issuance of regulations

Not later than 1 year after July 26, 1990, the Secretary shall issue final regulations to carry out this section.

(c) Required contents of regulations

(1) Eligible recipients of service

The regulations issued under this section shall require each public entity which operates a fixed route system to provide the paratransit and other special transportation services required under this section -

(A)(i) to any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment) and without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities;

(ii) to any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time (or within a reasonable period of such time) when such a vehicle is not

being used to provide designated public transportation on the route; and

(iii) to any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system;

(B) to one other individual accompanying the individual with the disability; and

(C) to other individuals, in addition to the one individual described in subparagraph (B), accompanying the individual with a disability provided that space for these additional individuals is available on the paratransit vehicle carrying the individual with a disability and that the transportation of such additional individuals will not result in a denial of service to individuals with disabilities. For purposes of clauses (i) and (ii) of subparagraph (A), boarding or disembarking from a vehicle does not include travel to the boarding location or from the disembarking location.

(2) Service area

The regulations issued under this section shall require the provision of paratransit and special transportation services required under this section in the service area of each public entity which operates a fixed route system, other than any portion of the service area in which the public entity solely provides commuter bus service.

## (3) Service criteria

Subject to paragraphs (1) and (2), the regulations issued under this section shall establish minimum service criteria for determining the level of services to be required under this section.

## (4) Undue financial burden limitation

The regulations issued under this section shall provide that, if the public entity is able to demonstrate to the satisfaction of the Secretary that the provision of paratransit and other special transportation services otherwise required under this section would impose an undue financial burden on the public entity, the public entity, notwithstanding any other provision of this section (other than paragraph (5)), shall only be required to provide such services to the extent that providing such services would not impose such a burden.

## (5) Additional services

The regulations issued under this section shall establish circumstances under which the Secretary may require a public entity to provide, notwithstanding paragraph (4), paratransit and other special transportation services under this section beyond the level of paratransit and other special transportation services which would otherwise be required under paragraph (4).

## (6) Public participation

The regulations issued under this section shall require that each public entity which operates a fixed route system hold a public hearing, provide an opportunity for public comment, and consult

with individuals with disabilities in preparing its plan under paragraph (7).

## (7) Plans

The regulations issued under this section shall require that each public entity which operates a fixed route system -

(A) within 18 months after July 26, 1990, submit to the Secretary, and commence implementation of, a plan for providing paratransit and other special transportation services which meets the requirements of this section; and

(B) on an annual basis thereafter, submit to the Secretary, and commence implementation of, a plan for providing such services.

## (8) Provision of services by others

The regulations issued under this section shall -

(A) require that a public entity submitting a plan to the Secretary under this section identify in the plan any person or other public entity which is providing a paratransit or other special transportation service for individuals with disabilities in the service area to which the plan applies; and

(B) provide that the public entity submitting the plan does not have to provide under the plan such service for individuals with disabilities.

## (9) Other provisions

The regulations issued under this section shall include such other provisions and requirements as the Secretary determines are necessary to carry out the

objectives of this section.

(d) Review of plan

(1) General rule

The Secretary shall review a plan submitted under this section for the purpose of determining whether or not such plan meets the requirements of this section, including the regulations issued under this section.

(2) Disapproval

If the Secretary determines that a plan reviewed under this subsection fails to meet the requirements of this section, the Secretary shall disapprove the plan and notify the public entity which submitted the plan of such disapproval and the reasons therefor.

(3) Modification of disapproved plan

Not later than 90 days after the date of disapproval of a plan under this subsection, the public entity which submitted the plan shall modify the plan to meet the requirements of this section and shall submit to the Secretary, and commence implementation of, such modified plan.

(e) "Discrimination" defined

As used in subsection (a) of this section, the term "discrimination" includes -

(1) a failure of a public entity to which the regulations issued under this section apply to submit, or commence implementation of, a plan in accordance with subsections (c)(6) and (c)(7) of this section;

(2) a failure of such entity to submit, or

commence implementation of, a modified plan in accordance with subsection (d)(3) of this section;

(3) submission to the Secretary of a modified plan under subsection (d)(3) of this section which does not meet the requirements of this section; or

(4) a failure of such entity to provide paratransit or other special transportation services in accordance with the plan or modified plan the public entity submitted to the Secretary under this section.

(f) Statutory construction

Nothing in this section shall be construed as preventing a public entity -

(1) from providing paratransit or other special transportation services at a level which is greater than the level of such services which are required by this section,

(2) from providing paratransit or other special transportation services in addition to those paratransit and special transportation services required by this section, or

(3) from providing such services to individuals in addition to those individuals to whom such services are required to be provided by this section. (42 U.S.C. 12143)

**Public entity operating a demand responsive system**

**Sec. 224** If a public entity operates a demand responsive system, it shall be considered discrimination, for purposes of

section 12132 of this title and section 794 of title 29, for such entity to purchase or lease a new vehicle for use on such system, for which a solicitation is made after the 30th day following July 26, 1990, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service such system provides to individuals without disabilities. (42 U.S.C. 12144)

### **Temporary relief where lifts are unavailable**

#### **Sec. 225** (a) Granting

With respect to the purchase of new buses, a public entity may apply for, and the Secretary may temporarily relieve such public entity from the obligation under section 12142(a) or 12144 of this title to purchase new buses that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates to the satisfaction of the Secretary –

- (1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;
- (2) the unavailability from any qualified manufacturer of hydraulic, electromechanical, or other lifts for such new buses;
- (3) that the public entity seeking temporary relief has made good faith efforts

to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

- (4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

#### (b) Duration and notice to Congress

Any relief granted under subsection (a) of this section shall be limited in duration by a specified date, and the appropriate committees of Congress shall be notified of any such relief granted.

#### (c) Fraudulent application

If, at any time, the Secretary has reasonable cause to believe that any relief granted under subsection (a) of this section was fraudulently applied for, the Secretary shall –

- (1) cancel such relief if such relief is still in effect; and
- (2) take such other action as the Secretary considers appropriate. (42 U.S.C. 12145)

### **New facilities**

**Sec. 226** For purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity to construct a new facility to be used in the provision of designated public transportation services unless such facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. (42

U.S.C. 12146)

### **Alterations of existing facilities**

#### **Sec. 227 (a) General rule**

With respect to alterations of an existing facility or part thereof used in the provision of designated public transportation services that affect or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for a public entity to fail to make such alterations (or to ensure that the alterations are made) in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations. Where the public entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

#### **(b) Special rule for stations**

##### **(1) General rule**

For purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity that provides designated public transportation to fail, in accordance with the provisions of this subsection, to make key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

##### **(2) Rapid rail and light rail key stations**

###### **(A) Accessibility**

Except as otherwise provided in this paragraph, all key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 3-year period beginning on July 26, 1990.

###### **(B) Extension for extraordinarily expensive structural changes**

The Secretary may extend the 3-year period under subparagraph (A) up to a 30-year period for key stations in a rapid rail or light rail system which stations need extraordinarily expensive structural changes to, or replacement of, existing facilities; except that by the last day of the 20th year following July 26, 1990, at least 2/3 of such key

stations must be readily accessible to and usable by individuals with disabilities.

(3) Plans and milestones

The Secretary shall require the appropriate public entity to develop and submit to the Secretary a plan for compliance with this subsection -

(A) that reflects consultation with individuals with disabilities affected by such plan and the results of a public hearing and public comments on such plan, and

(B) that establishes milestones for achievement of the requirements of this subsection. (42 U.S.C. 12147)

**Public transportation programs and activities in existing facilities and one car per train rule**

**Sec. 228** (a) Public transportation programs and activities in existing facilities

(1) In general

With respect to existing facilities used in the provision of designated public transportation services, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for a public entity to fail to operate a designated public transportation program or activity conducted in such facilities so that, when viewed in the entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

(2) Exception

Paragraph (1) shall not require a public entity to make structural changes to existing facilities in order to make such facilities accessible to individuals who use wheelchairs, unless and to the extent required by section 12147(a) of this title (relating to alterations) or section 12147(b) of this title (relating to key stations).

(3) Utilization

Paragraph (1) shall not require a public entity to which paragraph (2) applies, to provide to individuals who use wheelchairs services made available to the general public at such facilities when such individuals could not utilize or benefit from such services provided at such facilities.

(b) One car per train rule

(1) General rule

Subject to paragraph (2), with respect to 2 or more vehicles operated as a train by a light or rapid rail system, for purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity to fail to have at least 1 vehicle per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 5-year period beginning on the effective date of this section.

(2) Historic trains

In order to comply with paragraph (1) with respect to the remanufacture of a vehicle of historic character which is to be used on a segment of a light or rapid

rail system which is included on the National Register of Historic Places, if making such vehicle readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity which operates such system only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of section 12142(c)(1) of this title and which do not significantly alter the historic character of such vehicle. (42 U.S.C. 12148)

### **Regulations**

#### **Sec. 229** (a) In general

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this subpart (other than section 12143 of this title).

\*\*\* (42 U.S.C. 12149)

### **Interim accessibility requirements**

**Sec. 230** If final regulations have not been issued pursuant to section 12149 of this title, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the

building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under sections 12146 and 12147 of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations. (42 U.S.C. 12150)

### **Effective date**

#### **Sec. 231** (a) General Rule

Except as provided in subsection (b), this part (part I (Sec. 221-231) of subtitle B of title II of Pub. L. 101-336, enacting this subpart) shall become effective 18 months after the date of enactment of this Act (July 26, 1990).

#### (b) Exception

Sections 222, 223 (other than subsection (a)), 224, 225, 227(b), 228(b), and 229 (sections 12142, 12143(b) to (f), 12144, 12145, 12147(b), 12148(b), and 12149 of this title) shall become effective on the date of enactment of this Act. (42 U.S.C. 12141 note)

## **Part II—Public Transportation by Intercity and Commuter Rail**

### **Definitions**

**Sec. 241** As used in this subpart:

(1) Commuter authority

The term “commuter authority” has the meaning given such term in section 24102(4) of title 49.<sup>3</sup>

(2) Commuter rail transportation

The term “commuter rail transportation” has the meaning given the term “commuter rail passenger transportation” in section 24102(5) of title 49.

(3) Intercity rail transportation

The term “intercity rail transportation” means transportation provided by the National Railroad Passenger Corporation.

(4) Rail passenger car

The term “rail passenger car” means, with respect to intercity rail transportation, single-level and bi-level coach cars, single-level and bi-level dining cars, single-level and bi-level sleeping cars, single-level and bi-level lounge cars, and food service cars.

(5) Responsible person

The term “responsible person” means -

(A) in the case of a station more than 50 percent of which is owned by a public entity, such public entity;

(B) in the case of a station more than 50 percent of which is owned by a private party, the persons providing intercity or commuter rail transportation to such station, as allocated on an equitable basis by regulation by the Secretary of Transportation; and

(C) in a case where no party owns more than 50 percent of a station, the persons providing intercity or commuter rail transportation to such station and the owners of the station, other than private party owners, as allocated on an equitable basis by regulation by the Secretary of Transportation.

(6) Station

The term “station” means the portion of a property located appurtenant to a right-of-way on which intercity or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but such term does not include flag stops. (42 U.S.C. 12161)

<sup>3</sup> Section 24102 of title 49, referred to in pars. (1) and (2), was subsequently amended, and pars. (4) and (5) of section 24102 no longer define “commuter authority” and “commuter rail passenger transportation”, respectively. However, such terms are defined elsewhere in that section.

**Intercity and commuter rail actions considered discriminatory**

**Sec. 242** (a) Intercity rail transportation

(1) One car per train rule It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides intercity rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 12164 of this title, as soon as practicable, but in no event later than 5 years after July 26, 1990.

(2) New intercity cars

(A) General rule

Except as otherwise provided in this subsection with respect to individuals who use wheelchairs, it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation, and for which a solicitation is made later than 30 days after July 26, 1990, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(B) Special rule for single-level passenger coaches for individuals who use wheelchairs

Single-level passenger coaches shall be required to -

- (i) be able to be entered by an

individual who uses a wheelchair;

- (ii) have space to park and secure a wheelchair;

- (iii) have a seat to which a passenger in a wheelchair can transfer, and a space to fold and store such passenger's wheelchair; and

- (iv) have a restroom usable by an individual who uses a wheelchair, only to the extent provided in paragraph (3).

(C) Special rule for single-level dining cars for individuals who use wheelchairs

Single-level dining cars shall not be required to -

- (i) be able to be entered from the station platform by an individual who uses a wheelchair; or

- (ii) have a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger.

(D) Special rule for bi-level dining cars for individuals who use wheelchairs

Bi-level dining cars shall not be required to -

- (i) be able to be entered by an individual who uses a wheelchair;

- (ii) have space to park and secure a wheelchair;

- (iii) have a seat to which a passenger in a wheelchair can transfer, or a space to fold and store such passenger's wheelchair; or

(iv) have a restroom usable by an individual who uses a wheelchair.

(3) Accessibility of single-level coaches

(A) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides intercity rail transportation to fail to have on each train which includes one or more single-level rail passenger coaches -

(i) a number of spaces -

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than one-half of the number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one-half of the number of single-level rail passenger coaches in such train, as soon as practicable, but in no event later than 5 years after July 26, 1990; and

(ii) a number of spaces -

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than the total number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs

(to accommodate individuals who wish to transfer to coach seats) equal to not less than the total number of single-level rail passenger coaches in such train, as soon as practicable, but in no event later than 10 years after July 26, 1990.

(B) Location

Spaces required by subparagraph (A) shall be located in single-level rail passenger coaches or food service cars.

(C) Limitation

Of the number of spaces required on a train by subparagraph (A), not more than two spaces to park and secure wheelchairs nor more than two spaces to fold and store wheelchairs shall be located in any one coach or food service car.

(D) Other accessibility features

Single-level rail passenger coaches and food service cars on which the spaces required by subparagraph (A) are located shall have a restroom usable by an individual who uses a wheelchair and shall be able to be entered from the station platform by an individual who uses a wheelchair.

(4) Food service

(A) Single-level dining cars

On any train in which a single-level dining car is used to provide food service -

(i) if such single-level dining car was purchased after July 26, 1990, table service in such car shall be provided

to a passenger who uses a wheelchair if -

- (I) the car adjacent to the end of the dining car through which a wheelchair may enter is itself accessible to a wheelchair;
- (II) such passenger can exit to the platform from the car such passenger occupies, move down the platform, and enter the adjacent accessible car described in subclause (I) without the necessity of the train being moved within the station; and
- (III) space to park and secure a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to remain in a wheelchair), or space to store and fold a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to transfer to a dining car seat); and
- (ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

Unless not practicable, a person providing intercity rail transportation shall place an accessible car adjacent to the end of a dining car described in clause (i) through which an individual who uses a wheelchair may enter.

#### (B) Bi-level dining cars

On any train in which a bi-level dining car is used to provide food service -

- (i) if such train includes a bi-level lounge car purchased after July 26, 1990, table service in such lounge car shall be provided to individuals who use wheelchairs and to other passengers; and
- (ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

#### (b) Commuter rail transportation

##### (1) One car per train rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides commuter rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 12164 of this title, as soon as practicable, but in no event later than 5 years after July 26, 1990.

##### (2) New commuter rail cars

###### (A) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a

person to purchase or lease any new rail passenger cars for use in commuter rail transportation, and for which a solicitation is made later than 30 days after July 26, 1990, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(B) Accessibility

For purposes of section 12132 of this title and section 794 of title 29, a requirement that a rail passenger car used in commuter rail transportation be accessible to or readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, shall not be construed to require -

- (i) a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger;
- (ii) space to fold and store a wheelchair; or
- (iii) a seat to which a passenger who uses a wheelchair can transfer.

(c) Used rail cars

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease a used rail passenger car for use in intercity or commuter rail transportation, unless such person makes demonstrated good faith efforts to

purchase or lease a used rail car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(d) Remanufactured rail cars

(1) Remanufacturing

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to remanufacture a rail passenger car for use in intercity or commuter rail transportation so as to extend its usable life for 10 years or more, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(2) Purchase or lease

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease a remanufactured rail passenger car for use in intercity or commuter rail transportation unless such car was remanufactured in accordance with paragraph (1).

(e) Stations

(1) New stations

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to build a new station for use in intercity

or commuter rail transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(2) Existing stations

(A) Failure to make readily accessible

(i) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a responsible person to fail to make existing stations in the intercity rail transportation system, and existing key stations in commuter rail transportation systems, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(ii) Period for compliance

(I) Intercity rail

All stations in the intercity rail transportation system shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after July 26, 1990.

(II) Commuter rail

Key stations in commuter rail transportation systems shall be

made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after July 26, 1990, except that the time limit may be extended by the Secretary of Transportation up to 20 years after July 26, 1990, in a case where the raising of the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

(iii) Designation of key stations

Each commuter authority shall designate the key stations in its commuter rail transportation system, in consultation with individuals with disabilities and organizations representing such individuals, taking into consideration such factors as high ridership and whether such station serves as a transfer or feeder station. Before the final designation of key stations under this clause, a commuter authority shall hold a public hearing.

(iv) Plans and milestones

The Secretary of Transportation shall require the appropriate person to develop a plan for carrying out this subparagraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of

this subparagraph.

(B) Requirement when making alterations

(i) General rule

It shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, with respect to alterations of an existing station or part thereof in the intercity or commuter rail transportation systems that affect or could affect the usability of the station or part thereof, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the station are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations.

(ii) Alterations to a primary function area

It shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, with respect to alterations that affect or could affect the usability of or access to an area of the station containing a primary function, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the altered area, are readily

accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(C) Required cooperation

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for an owner, or person in control, of a station governed by subparagraph (A) or (B) to fail to provide reasonable cooperation to a responsible person with respect to such station in that responsible person's efforts to comply with such subparagraph. An owner, or person in control, of a station shall be liable to a responsible person for any failure to provide reasonable cooperation as required by this subparagraph. Failure to receive reasonable cooperation required by this subparagraph shall not be a defense to a claim of discrimination under this chapter. (42 U.S.C. 12162)

**Conformance of accessibility standards**

**Sec. 243** Accessibility standards included in regulations issued under this subpart shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance

Board under section 12204(a) of this title. (42 U.S.C. 12163)

### **Regulations**

**Sec. 244** Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this subpart. (42 U.S.C. 12164)

### **Interim accessibility requirements**

#### **Sec. 245** (a) Stations

If final regulations have not been issued pursuant to section 12164 of this title, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities as required under section 12162(e) of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities prior to issuance of the final

regulations.

#### (b) Rail passenger cars

If final regulations have not been issued pursuant to section 12164 of this title, a person shall be considered to have complied with the requirements of section 12162(a) through (d) of this title that a rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 12204(a) of this title) governing accessibility of such cars, to the extent that such laws and regulations are not inconsistent with this subpart and are in effect at the time such design is substantially completed. (42 U.S.C. 12165)

### **Effective date**

#### **Sec. 246** (a) General Rule

Except as provided in subsection (b), this part (part II (Sec. 241-246) of subtitle B of title II of Pub. L. 101-336, enacting this subpart) shall become effective 18 months after the date of enactment of this Act (July 26, 1990).

#### (b) Exception

Sections 242 and 244 (sections 12162 and 12164 of this title) shall become effective on the date of enactment of this Act. (42 U.S.C. 12161 note)

## **TITLE III—Public accommodations and services operated by private entities**

## Definitions

**Sec. 301** As used in this subchapter:

### (1) Commerce

The term “commerce” means travel, trade, traffic, commerce, transportation, or communication -

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

### (2) Commercial facilities

The term “commercial facilities” means facilities -

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce. Such term shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 12162 of this title or covered under this subchapter, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

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### (3) Demand responsive system

The term “demand responsive system” means any system of providing transportation of individuals by a vehicle, other than a system which is a fixed route system.

### (4) Fixed route system

The term “fixed route system” means a system of providing transportation of individuals (other than by aircraft) on which a vehicle is operated along a prescribed route according to a fixed schedule.

### (5) Over-the-road bus

The term “over-the-road bus” means a bus characterized by an elevated passenger deck located over a baggage compartment.

### (6) Private entity

The term “private entity” means any entity other than a public entity (as defined in section 12131(1) of this title).

### (7) Public accommodation

The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce -

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public

gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

#### (8) Rail and railroad

The terms “rail” and “railroad” have the meaning given the term “railroad” in section 20102(1) of title 49.

#### (9) Readily achievable

The term “readily achievable” means easily accomplishable and able to be

carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include -

(A) the nature and cost of the action needed under this chapter;

(B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

#### (10) Specified public transportation

The term “specified public transportation” means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

#### (11) Vehicle

The term “vehicle” does not include a rail passenger car, railroad locomotive,

railroad freight car, railroad caboose, or a railroad car described in section 12162 of this title or covered under this subchapter. (42 U.S.C. 12181)

<sup>4</sup> The Fair Housing Act of 1968, referred to in par. (2), probably means the Fair Housing Act, title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I of chapter 45 (Sec. 3601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

### **Prohibition of discrimination by public accommodations**

#### **Sec. 302 (a) General rule**

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

#### **(b) Construction**

##### **(1) General prohibition**

##### **(A) Activities**

##### **(i) Denial of participation**

It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or

benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

##### **(ii) Participation in unequal benefit**

It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

##### **(iii) Separate benefit**

It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

##### **(iv) Individual or class of individuals**

For purposes of clauses (i) through (iii) of this subparagraph, the term "individual or class of individuals" refers to the clients or customers of the covered public accommodation

that enters into the contractual, licensing or other arrangement.

(B) Integrated settings

Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) Opportunity to participate

Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) Administrative methods

An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration -

- (i) that have the effect of discriminating on the basis of disability; or
- (ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) Association

It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or

association.

(2) Specific prohibitions

(A) Discrimination

For purposes of subsection (a) of this section, discrimination includes -

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would

fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

#### (B) Fixed route system

##### (i) Accessibility

It shall be considered discrimination for a private entity which operates a fixed route system and which is not subject to section 12184 of this title to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on such system, for which a solicitation is made after the 30th day following the effective date of this subparagraph, that is not readily

accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

##### (ii) Equivalent service

If a private entity which operates a fixed route system and which is not subject to section 12184 of this title purchases or leases a vehicle with a seating capacity of 16 passengers or less (including the driver) for use on such system after the effective date of this subparagraph that is not readily accessible to or usable by individuals with disabilities, it shall be considered discrimination for such entity to fail to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

#### (C) Demand responsive system

For purposes of subsection (a) of this section, discrimination includes -

(i) a failure of a private entity which operates a demand responsive system and which is not subject to section 12184 of this title to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities; and

(ii) the purchase or lease by such

entity for use on such system of a vehicle with a seating capacity in excess of 16 passengers (including the driver), for which solicitations are made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(D) Over-the-road buses

(i) Limitation on applicability

Subparagraphs (B) and (C) do not apply to over-the-road buses.

(ii) Accessibility requirements

For purposes of subsection (a) of this section, discrimination includes (I) the purchase or lease of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title by a private entity which provides transportation of individuals and which is not primarily engaged in the business of transporting people, and (II) any other failure of such entity to comply with such regulations.

(3) Specific construction

Nothing in this subchapter shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advan-

tages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term “direct threat” means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services. (42 U.S.C. 12182)

**New construction and alterations in public accommodations and commercial facilities**

**Sec. 303** (a) Application of term

Except as provided in subsection (b) of this section, as applied to public accommodations and commercial facilities, discrimination for purposes of section 12182(a) of this title includes –

(1) a failure to design and construct facilities for first occupancy later than 30 months after July 26, 1990, that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this subchapter; and

(2) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the

facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) Elevator

Subsection (a) of this section shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities. (42 U.S.C. 12183)

**Prohibition of discrimination in specified public transportation services provided by private entities**

**Sec. 304** (a) General rule

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

(b) Construction

For purposes of subsection (a) of this section, discrimination includes

(1) the imposition or application by a<sup>5</sup> entity described in subsection (a) of this section of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the specified public transportation services provided by the entity, unless such criteria can be shown to be necessary for the provision of the services being offered;

(2) the failure of such entity to -

(A) make reasonable modifications consistent with those required under section 12182(b)(2)(A)(ii) of this title;

(B) provide auxiliary aids and services consistent with the requirements of section 12182(b)(2)(A)(iii) of this title; and

(C) remove barriers consistent with the requirements of section 12182(b)(2)(A) of this title and with the requirements of section 12183(a)(2) of this title;

(3) the purchase or lease by such entity of a new vehicle (other than an automobile, a van with a seating capacity of

less than 8 passengers, including the driver, or an over-the-road bus) which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; except that the new vehicle need not be readily accessible to and usable by such individuals if the new vehicle is to be used solely in a demand responsive system and if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(4)(A) the purchase or lease by such entity of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title; and

(B) any other failure of such entity to comply with such regulations; and

(5) the purchase or lease by such entity of a new van with a seating capacity of less than 8 passengers, including the driver, which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section that is not readily accessible to or usable by individuals with disabilities, including individuals who use wheelchairs; except that the new van need not be readily accessible to and usable by such individuals if the entity can demonstrate that the system for

which the van is being purchased or leased, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(6) the purchase or lease by such entity of a new rail passenger car that is to be used to provide specified public transportation, and for which a solicitation is made later than 30 days after the effective date of this paragraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

(7) the remanufacture by such entity of a rail passenger car that is to be used to provide specified public transportation so as to extend its usable life for 10 years or more, or the purchase or lease by such entity of such a rail car, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Historical or antiquated cars

(1) Exception

To the extent that compliance with subsection (b)(2)(C) or (b)(7) of this section would significantly alter the historic or antiquated character of a historical or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in violation of any rule, regulation, standard, or order issued by the Secretary of Transportation under the Federal Railroad Safety Act of 1970, such compliance shall not be required.

**(2) Definition**

As used in this subsection, the term “historical or antiquated rail passenger car” means a rail passenger car -

(A) which is not less than 30 years old at the time of its use for transporting individuals;

(B) the manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(C) which -

(i) has a consequential association with events or persons significant to the past; or

(ii) embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed. (42 U.S.C. 12184)

<sup>5</sup> So in original. Probably should be “an”.

**Study****Sec. 305 (a) Purposes**

The Office of Technology Assessment shall undertake a study to determine -

(1) the access needs of individuals with disabilities to over-the-road buses and over-the-road bus service; and

(2) the most cost-effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities, particularly individuals who use wheelchairs, through all forms of boarding options.

\*\*\*

**(d) Deadline**

The study required by subsection (a) of this section, along with recommendations by the Office of Technology Assessment, including any policy options for legislative action, shall be submitted to the President and Congress within 36 months after July 26, 1990. If the President determines that compliance with the regulations issued pursuant to section 12186(a)(2)(B) of this title on or before the applicable deadlines specified in section 12186(a)(2)(B) of this title will result in a significant reduction in intercity over-the-road bus service, the President shall extend each such deadline by 1 year.

\*\*\* (42 U.S.C. 12185)

**Regulations****Sec. 306 (a) Transportation provisions****(1) General rule**

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections <sup>6</sup> 12182(b)(2)(B) and (C) of this title and to carry out section 12184 of this title (other than subsection (b)(4)).

\*\*\* (42 U.S.C. 12186)

<sup>6</sup> So in original. Probably should be “section”.

**Exemptions for private clubs and religious organizations**

**Sec. 307** The provisions of this subchapter shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of

1964 (42 U.S.C. 2000-a(e)) (42 U.S.C. 2000a et seq.) or to religious organizations or entities controlled by religious organizations, including places of worship. (42 U.S.C. 12187)

## Enforcement

### Sec. 308 (a) In general

#### (1) Availability of remedies and procedures

The remedies and procedures set forth in section 2000a-3(a) of this title are the remedies and procedures this subchapter provides to any person who is being subjected to discrimination on the basis of disability in violation of this subchapter or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 12183 of this title. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this subchapter does not intend to comply with its provisions.

#### (2) Injunctive relief

In the case of violations of sections 12182(b)(2)(A)(iv) and section <sup>1</sup> 12183(a) of this title, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this subchapter. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent

required by this subchapter.

### (b) Enforcement by Attorney General

#### (1) Denial of rights

##### (A) Duty to investigate

##### (i) In general

The Attorney General shall investigate alleged violations of this subchapter, and shall undertake periodic reviews of compliance of covered entities under this subchapter.

##### (ii) Attorney General certification

On the application of a State or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a public hearing at which persons, including individuals with disabilities, are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this chapter for the accessibility and usability of covered facilities under this subchapter. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this chapter.

##### (B) Potential violation

If the Attorney General has reasonable cause to believe that -

(i) any person or group of persons is engaged in a pattern or practice of discrimination under this subchapter; or

(ii) any person or group of persons has been discriminated against under this subchapter and such discrimination raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

(2) Authority of court

In a civil action under paragraph (1)(B), the court -

(A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this subchapter -

(i) granting temporary, preliminary, or permanent relief;

(ii) providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and

(iii) making facilities readily accessible to and usable by individuals with disabilities;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount -

(i) not exceeding \$50,000 for a first

violation; and

(ii) not exceeding \$100,000 for any subsequent violation.

(3) Single violation

For purposes of paragraph (2)(C), in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(4) Punitive damages

For purposes of subsection (b)(2)(B) of this section, the term “monetary damages” and “such other relief” does not include punitive damages.

(5) Judicial consideration

In a civil action under paragraph (1)(B), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this chapter by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability. (42 U.S.C. 12188)

<sup>1</sup> So in original. The word “section” probably should not appear.

## Examinations and courses

**Sec. 309** Any person that offers exami-

nations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals. (42 U.S.C. 12189)

### **Effective date**

#### **Sec. 310** (a) General Rule.

Except as provided in subsections (b) and (c), this title (enacting this subchapter) shall become effective 18 months after the date of the enactment of this Act (July 26, 1990). (42 U.S.C. 12181 note)

## **TITLE IV—Telecommunications**

### **Telecommunications services for hearing-impaired and speech-impaired individuals**

#### **Sec. 401(a)** (a) Definitions

As used in this section –

##### (1) Common carrier or carrier

The term “common carrier” or “carrier” includes any common carrier engaged in interstate communication by wire or radio as defined in section 153 of this title and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 152(b) and 221(b) of this title.

##### (2) TDD

The term “TDD” means a Telecommunications Device for the Deaf, which is a machine that employs graphic com-

munication in the transmission of coded signals through a wire or radio communication system.

##### (3) Telecommunications relay services

The term “telecommunications relay services” means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

##### (b) Availability of telecommunications relay services

###### (1) In general

In order to carry out the purposes established under section 151 of this title, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

## (2) Use of general authority and remedies

For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this subchapter with respect to any common carrier engaged in interstate communication. Any violation of this section by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of this chapter by a common carrier engaged in interstate communication.

## (c) Provision of services

Each common carrier providing telephone voice transmission services shall, not later than 3 years after July 26, 1990, provide in compliance with the regulations prescribed under this section, throughout the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with such regulations –

(1) with respect to intrastate telecommunications relay services in any State that does not have a certified program under subsection (f) of this section and with respect to interstate telecommuni-

cations relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the Commission's regulations under subsection (d) of this section; or

(2) with respect to intrastate telecommunications relay services in any State that has a certified program under subsection (f) of this section for such State, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under subsection (f) of this section for such State.

## (d) Regulations

## (1) In general

The Commission shall, not later than 1 year after July 26, 1990, prescribe regulations to implement this section, including regulations that –

(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

(B) establish minimum standards that shall be met in carrying out subsection (c) of this section;

(C) require that telecommunications relay services operate every day for 24 hours per day;

(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the

time of day, and the distance from point of origination to point of termination;

(E) prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services;

(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

(G) prohibit relay operators from intentionally altering a relayed conversation.

## (2) Technology

The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with section 157(a) of this title, the use of existing technology and do not discourage or impair the development of improved technology.

## (3) Jurisdictional separation of costs

### (A) In general

Consistent with the provisions of section 410 of this title, the Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

### (B) Recovering costs

Such regulations shall generally provide that costs caused by interstate telecommunications relay services

shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. In a State that has a certified program under subsection (f) of this section, a State commission shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of this section.

## (e) Enforcement

### (1) In general

Subject to subsections (f) and (g) of this section, the Commission shall enforce this section.

### (2) Complaint

The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

## (f) Certification

### (1) State documentation

Any State desiring to establish a State program under this section shall submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services and the procedures and remedies available for enforcing any requirements imposed by the State program.

### (2) Requirements for certification

After review of such documentation, the Commission shall certify the State

program if the Commission determines that -

(A) the program makes available to hearing-impaired and speech-impaired individuals, either directly, through designees, through a competitively selected vendor, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets or exceeds the requirements of regulations prescribed by the Commission under subsection (d) of this section; and

(B) the program makes available adequate procedures and remedies for enforcing the requirements of the State program.

(3) Method of funding

Except as provided in subsection (d) of this section, the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

(4) Suspension or revocation of certification

The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a State whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this section, to ensure continuity of telecommunications relay services.

(g) Complaint

(1) Referral of complaint

If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) of this section is in effect, the Commission shall refer such complaint to such State.

(2) Jurisdiction of Commission

After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if -

(A) final action under such State program has not been taken on such complaint by such State -

(i) within 180 days after the complaint is filed with such State; or

(ii) within a shorter period as prescribed by the regulations of such State; or

(B) the Commission determines that such State program is no longer qualified for certification under subsection (f) of this section. (47 U.S.C. 225)

**Application of chapter**

**Sec. 401(b)(1)** (a) The provisions of this chapter shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the

United States in such communication or such transmission of energy by radio, and to the licensing and regulating of all radio stations as hereinafter provided; but it shall not apply to persons engaged in wire or radio communication or transmission in the Canal Zone, or to wire or radio communication or transmission wholly within the Canal Zone. The provisions of this chapter shall apply with respect to cable service, to all persons engaged within the United States in providing such service, and to the facilities of cable operators which relate to such service, as provided in subchapter V-A.

(b) Except as provided in sections 223 through 227 of this title, inclusive, and section 332 of this title, and subject to the provisions of section 301 of this title and subchapter V-A of this chapter, nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities, located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly

controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) of this subsection would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections 201 to 205 of this title shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4) of this subsection. (47 U.S.C. 152)

### **Consolidations and mergers of telephone companies**

**Sec. 401(b)(2)** (a) Repealed

(b) State jurisdiction over services

Subject to the provisions of sections 225 and 301 of this title, nothing in this chapter shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire, mobile, or point-to-point radio telephone exchange service, or any combination thereof, even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority.

(c) Determination of property used in interstate toll service

For the purpose of administering this chapter as to carriers engaged in wire telephone communication, the Commission may classify the property of any such carrier used for wire telephone

communication, and determine what property of said carrier shall be considered as used in interstate or foreign telephone toll service. Such classification shall be made after hearing, upon notice to the carrier, the State commission (or the Governor, if the State has no State commission) of any State in which the property of said carrier is located, and such other persons as the Commission may prescribe.

(d) Valuation of property

In making a valuation of the property of any wire telephone carrier the Commission, after making the classification authorized in this section, may in its discretion value only that part of the property of such carrier determined to be used in interstate or foreign telephone toll service. (47 U.S.C. 221)

**Closed-captioning of public service announcements**

**Sec. 402** Any television public service announcement that is produced or funded in whole or in part by any agency or instrumentality of Federal Government shall include closed captioning of the verbal content of such announcement. A television broadcast station licensee –

(1) shall not be required to supply closed captioning for any such announcement that fails to include it; and

(2) shall not be liable for broadcasting any such announcement without transmitting a closed caption unless the licensee intentionally fails to transmit the closed caption that was included with the announcement. (47 U.S.C. 611)

**TITLE V—Miscellaneous provisions**

**Construction**

**Sec. 501** (a) In general

Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) Relationship to other laws

Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter. Nothing in this chapter shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by subchapter I of this chapter, in transportation covered by subchapter II or III of this chapter, or in places of public accommodation covered by subchapter III of this chapter.

(c) Insurance

Subchapters I through III of this chapter and title IV of this Act shall not be construed to prohibit or restrict –

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such

risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance. Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of subchapter <sup>7</sup> I and III of this chapter.

(d) Accommodations and services

Nothing in this chapter shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept. (42 U.S.C. 12201)

<sup>7</sup> So in original. Probably should be “subchapters”.

### State immunity

**Sec. 502** A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in <sup>8</sup>Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies

both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State. (42 U.S.C. 12202)

<sup>8</sup> So in original. Probably should be “subchapters”.

### Prohibition against retaliation and coercion

#### Sec. 503 (a) Retaliation

No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

#### (b) Interference, coercion, or intimidation

It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

#### (c) Remedies and procedures

The remedies and procedures available under sections 12117, 12133, and 12188 of this title shall be available to aggrieved persons for violations of subsections (a) and (b) of this section, with respect to subchapter I, subchapter II and subchapter III of this chapter, respectively. (42

U.S.C. 12203)

### **Regulations by Architectural and Transportation Barriers Compliance Board**

#### **Sec. 504** (a) Issuance of guidelines

Not later than 9 months after July 26, 1990, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of subchapters II and III of this chapter.

\*\*\* (42 U.S.C. 12204)

#### **Attorney's fees**

**Sec. 505** In any action or administrative proceeding commenced pursuant to this chapter, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual. (42 U.S.C. 12205)

#### **Technical assistance**

##### **Sec. 506** (a) Plan for assistance

###### (1) In general

Not later than 180 days after July 26, 1990, the Attorney General, in consultation with the Chair of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chair of the Architectural and Transportation Barriers Compliance Board, and the Chairman of the Federal Communica-

tions Commission, shall develop a plan to assist entities covered under this chapter, and other Federal agencies, in understanding the responsibility of such entities and agencies under this chapter.

###### (2) Publication of plan

The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with subchapter II of chapter 5 of title 5 (commonly known as the Administrative Procedure Act).

###### (b) Agency and public assistance

The Attorney General may obtain the assistance of other Federal agencies in carrying out subsection (a) of this section, including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

###### (c) Implementation

###### (1) Rendering assistance

Each Federal agency that has responsibility under paragraph (2) for implementing this chapter may render technical assistance to individuals and institutions that have rights or duties under the respective subchapter or subchapters of this chapter for which such agency has responsibility.

###### (2) Implementation of subchapters

###### (A) Subchapter I

The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance developed under subsection (a) of this

section, for subchapter I of this chapter.

(B) Subchapter II

(i) Part A

The Attorney General shall implement such plan for assistance for part A of subchapter II of this chapter.

(ii) Part B

The Secretary of Transportation shall implement such plan for assistance for part B of subchapter II of this chapter.

(C) Subchapter III

The Attorney General, in coordination with the Secretary of Transportation and the Chair of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for subchapter III of this chapter, except for section 12184 of this title, the plan for assistance for which shall be implemented by the Secretary of Transportation.

(D) Title IV

The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(3) Technical assistance manuals

Each Federal agency that has responsibility under paragraph (2) for implementing this chapter shall, as part of its implementation responsibilities, ensure the availability and provision of appro-

priate technical assistance manuals to individuals or entities with rights or duties under this chapter no later than six months after applicable final regulations are published under subchapters I, II, and III of this chapter and title IV.

(d) Grants and contracts

(1) In general

Each Federal agency that has responsibility under subsection (c)(2) of this section for implementing this chapter may make grants or award contracts to effectuate the purposes of this section, subject to the availability of appropriations. Such grants and contracts may be awarded to individuals, institutions not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual (including educational institutions), and associations representing individuals who have rights or duties under this chapter. Contracts may be awarded to entities organized for profit, but such entities may not be the recipients or <sup>9</sup> grants described in this paragraph.

(2) Dissemination of information

Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this chapter and to provide information and technical assistance about techniques for effective compliance with this chapter.

(e) Failure to receive assistance

An employer, public accommodation, or

other entity covered under this chapter shall not be excused from compliance with the requirements of this chapter because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section. (42 U.S.C. 12206)

<sup>9</sup> So in original. Probably should be “of”.

### **Federal wilderness areas**

#### **Sec. 507 (a) Study**

The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.).

#### **(b) Submission of report**

Not later than 1 year after July 26, 1990, the National Council on Disability shall submit the report required under subsection (a) of this section to Congress.

#### **(c) Specific wilderness access**

##### **(1) In general**

Congress reaffirms that nothing in the Wilderness Act (16 U.S.C. 1131 et seq.) is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act no agency is required to provide any form of special

treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.

#### **(2) “Wheelchair” defined**

For purposes of paragraph (1), the term “wheelchair” means a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area. (42 U.S.C. 12207)

### **Transvestites**

**Sec. 508** For the purposes of this chapter, the term “disabled” or “disability” shall not apply to an individual solely because that individual is a transvestite. (42 U.S.C. 12208)

### **Instrumentalities of Congress**

**Sec. 509** The General Accounting Office, the Government Printing Office, and the Library of Congress shall be covered as follows:

#### **(1) In general**

The rights and protections under this chapter shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

#### **(2) Establishment of remedies and procedures by instrumentalities**

The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1).

### (3) Report to Congress

The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

### (4) Definition of instrumentalities

For purposes of this section, the term “instrumentality of the Congress” means the following:<sup>10</sup> the General Accounting Office, the Government Printing Office, and the Library of Congress.<sup>10</sup>

### (5) Enforcement of employment rights

The remedies and procedures set forth in section 2000e-16 of this title shall be available to any employee of an instrumentality of the Congress who alleges a violation of the rights and protections under sections 12112 through 12114 of this title that are made applicable by this section, except that the authorities of the Equal Employment Opportunity Commission shall be exercised by the chief official of the instrumentality of the Congress.

### (6) Enforcement of rights to public services and accommodations

The remedies and procedures set forth in section 2000e-16 of this title shall be available to any qualified person with a disability who is a visitor, guest, or patron of an instrumentality of Congress and who alleges a violation of the rights and protections under sections 12131 through 12150 of this title or section 12182 or 12183 of this title that are

made applicable by this section, except that the authorities of the Equal Employment Opportunity Commission shall be exercised by the chief official of the instrumentality of the Congress.

### (7) Construction

Nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel Act of 1980 and regulations promulgated pursuant to that Act. (42 U.S.C. 12209)

<sup>10</sup> So in original. The comma probably should not appear.

## Illegal use of drugs

### Sec. 510 (a) In general

For purposes of this chapter, the term “individual with a disability” does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

#### (b) Rules of construction

Nothing in subsection (a) of this section shall be construed to exclude as an individual with a disability an individual who –

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs; however, nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

(c) Health and other services

Notwithstanding subsection (a) of this section and section 12211(b)(3) of this title, an individual shall not be denied health services, or services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

(d) "Illegal use of drugs" defined

(1) In general

The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 801 et seq.). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(2) Drugs

The term "drug" means a controlled substance, as defined in schedules I

through V of section 202 of the Controlled Substances Act (21 U.S.C. 812). (42 U.S.C. 12210)

## Definitions

### Sec. 511 (a) Homosexuality and bisexuality

For purposes of the definition of "disability" in section 12102(2) of this title, homosexuality and bisexuality are not impairments and as such are not disabilities under this chapter.

(b) Certain conditions

Under this chapter, the term "disability" shall not include –

- (1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
- (2) compulsive gambling, kleptomania, or pyromania; or
- (3) psychoactive substance use disorders resulting from current illegal use of drugs. (42 U.S.C. 12211)

## Allotment percentage

**Sec. 512 (a)(1)** For purposes of section 730 of this title, the allotment percentage for any State shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States, except that -

- (A) the allotment percentage shall in no case be more than 75 per centum

or less than 33 1/3 per centum; and

(B) the allotment percentage for the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands shall be 75 per centum.

(2) The allotment percentages shall be promulgated by the Secretary between October 1 and December 31 of each even-numbered year, on the basis of the average of the per capita incomes of the States and of the United States for the three most recent consecutive years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the 2 fiscal years in the period beginning on the October 1 next succeeding such promulgation.

(3) The term “United States” means (but only for purposes of this subsection) the 50 States and the District of Columbia.

(b) The population of the several States and of the United States shall be determined on the basis of the most recent data available, to be furnished by the Department of Commerce by October 1 of the year preceding the fiscal year for which funds are appropriated pursuant to statutory authorizations. (29 U.S.C. 706)

### **Alternative means of dispute resolution**

**Sec. 513** Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, concilia-

tion, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under this chapter. (42 U.S.C. 12212)

### **Severability**

**Sec. 514** Should any provision in this chapter be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the chapter, and such action shall not affect the enforceability of the remaining provisions of the chapter. (42 U.S.C. 12213)



## THE ORIGINS OF NATIONAL FORESTS

National Forests established under the **Weeks Act** are in **bold** typeface. Those National Forests established as reserves from the public domain are in normal type.

Alabama	R-8AL	Davy Crockett	R-8 TX
<b>Allegheny</b>	<b>R-8 PA</b>	<b>De Soto</b>	<b>R-8 MS</b>
Angeles	R-5 CA	Deerlodge	R-1 MT
<b>Angelina</b>	<b>R-8 TX</b>	Delta	R-8 MS
Apache	R-3 AZ, NM	Deschutes	R-6 OR
<b>Apalachicola</b>	<b>R-8 FL</b>	Dixie	R-3 UT
Arapaho	R-2 CO	Eldorado	R-5 CA, NV
Ashley	R-4 UT, WY	<b>Finger Lakes</b>	<b>R-9 NY</b>
Beaverhead	R-1 MT	Fishlake	R-4 UT
<b>Bienville</b>	<b>R-8 MS</b>	Flathead	R-1 MT
Bighorn	R-2 WY	<b>Francis Marion</b>	<b>R-8 SC</b>
Bitterroot	R-1 ID, MT	Fremont	R-6 OR
Black Hills	R-2 SD, WY	Gallatin	R-1 MT
Boise	R-4 ID	George Washington	R-8 VA, WV
Bridger	R-4 WY	Gifford Pinchot	R-6 WA
Cache	R-4 ID, UT	Gila	R-3 NM
Caribbean	R-8 PR	Grand Mesa	R-2 CO
Caribou	R-4 ID, Ut, WY	<b>Green Mountain</b>	<b>R-9 VT</b>
Carson	R-3 NM	Gunnison	R-2 CO
Challis	R-3 ID	Helena	R-1 MT
(Oconee-) Chattahoochee	R-8 GA	Hiawatha	R-9 MI
Chequamegon	R-9 WI	Holly Springs	R-8 MS
Cherokee	R-8 NC, TN	Homochitto	R-8 MS
<b>Choctawhatchee</b>	<b>R-8 FL</b>	<b>Hoosier</b>	<b>R-9 IN</b>
Chugach	R-10 AK	Humboldt (-Toiyabe)	R-4 NV
Chippewa	R-9 MN	Huron	R-9 MI
Cibola	R-3 NM	Inyo	R-5 CA, NV
<b>Clark, see Mark Twain</b>		<b>Jefferson</b>	<b>R-8 KY, VA, WV</b>
Clearwater	R-1 ID	Kaibab	R-3 AZ
Cleveland	R-5 CA	Kaniksu	R-1 ID, MT, WA
Coconino	R-3 AZ	<b>Kisatchie</b>	<b>R-8 LA</b>
Coeur D'alene	R-1 ID	Klamath	R-5 CA, OR
Colville	R-6 WA	Kootenai	R-1 ID, MT
<b>Conecuh</b>	<b>R-8 AL</b>	Lassen	R-5 CA
Coronado	R-3 AZ, NM	Lewis & Clark	R-1, MT
<b>Croatan</b>	<b>R-8 NC</b>	Lincoln	R-3 NM
Custer	R-1 MT, SD	Lolo	R-1 MT
Daniel Boone	R-8 KY	Los Padres	R-5 CA

Luquillo, see Caribbean		Sawtooth	R-4 ID, UT
Malheur	R-6 OR	Sequoia	R-5 CA
Manistee	R-9 MI	Shasta	R-5 CA
Manti-LaSal	R-4 CO, UT	<b>Shawnee</b>	<b>R-9 IL</b>
<b>Mark Twain</b>	<b>R-9 MO</b>	Shoshone	R-2 WY
Medicine Bow	R-2 WY	Sierra	R-5 CA
Mendocino	R-5 CA	Siskiyou	R-6 CA, OR
Minnesota, see Chippewa		Sitgreaves	R-3 AZ
Modoc	R-5 CA	Siuslaw	R-6 OR
<b>Monongahela</b>	<b>R-9 WV</b>	Six River	R-5 CA
Mt. Baker	R-6 WA	Snoqualmie	R-6 WA
Mt. Hood	R-6 OR	<b>(Ozark-) St. Francis</b>	<b>R-8 AR</b>
<b>Nantahala</b>	<b>R-8 NC</b>	St. Joe	R-1 ID
Nebraska	R-2 NE	Stanislaus	R-5 CA
Nez Perce	R-1 ID	<b>Sumter</b>	<b>R-8 SC</b>
<b>Nicolet</b>	<b>R-9 WI</b>	Superior	R-9 MN
<b>Ocala</b>	<b>R-8 FL</b>	Tahoe	R-5 CA
Ochoco	R-6 OR	<b>Talladega</b>	<b>R-8 AL</b>
<b>Oconee (-Chattahoochee)</b>	<b>R-8 GA</b>	Targhee	R-4 ID, WY
Okanogan	R-6 WA	Teton	R-4 WY
Olympic	R-6 WA	Tombigbee	R-8 MS
<b>Osceola</b>	<b>R-8 FL</b>	Tongass	R-10 AK
Ottawa	R-9 MI	Tonto	R-3 AZ
Ouachita	R-8 AR, OK	(Humboldt-) Toiyabe	R-4 CA, NV
<b>(Ozark-) St. Francis</b>	<b>R-8 AR</b>	Trinity	R-5 CA
Payette	R-4 ID	<b>Tuskegee</b>	<b>R-8 AL</b>
Pike	R-2 CO	Uinta	R-4 UT
<b>Pisgah</b>	<b>R-8 NC</b>	Umatilla	R-6 OR, WA
Plumas	R-5 CA	Umpqua	R-6 OR
Prescott	R-3 AZ	<b>Unaka, transferred to multiple forests</b>	
Rio Grande	R-2 CO	Uncompahgre	R-2 CO
Rogue River	R-6 CA, OR	<b>Uwharrie</b>	<b>R-8 NC</b>
Roosevelt	R-2 CO	Wallowa	R-6 ID, OR
Routt	R-2 WY	Wasatch	R-4 UT, WY
<b>Sabine</b>	<b>R-8 TX</b>	<b>Wayne</b>	<b>R-8 OH</b>
Salmon	R-4 ID	Wenatchee	R-6 WA
<b>Sam Houston</b>	<b>R-8 TX</b>	<b>White Mountain</b>	<b>R-8 ME, NH</b>
Samuel R. McKelvie	R-2 NE	White River	R-2 CO
San Bernardino	R-5 CA	Whitman	R-6 OR
San Isabel	R-2 CO	Willamette	R-6 OR
San Juan	R-2 CO	<b>William B. Bankhead</b>	<b>R-8 AL</b>
Santa Fe	R-3 NM	Winema	R-6 OR

## National Grasslands

Figures in the table are derived from the Forest Service publication, Land Areas of the National Forest System, January 1997.

<b>National Grassland</b>	<b>Acreage</b>	<b>State(s)</b>
Black Kettle	31,286	OK, TX
Buffalo Gap	597,178	SD
Butte Valley	18,425	CA
Caddo	17,873	TX
Cedar River	6,717	ND
Cimarron	108,175	KS
Comanche	435,359	CO
Crooked River	111,348	OR
Curlew	47,756	ID
Fort Pierre	115,997	SD
Grand River	154,981	SD
Kiowa	136,417	NM
Little Missouri	1,028,045	ND
Lyndon B. Johnson	20,309	TX
McClellan Creek	1,449	TX
Oglala	94,480	NE
Pawnee	93,060	CO
Rita Blanca	92,989	OK, TX
Sheyenne	70,268	ND
Thunder Basin	560,166	WY

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## Additional Resources

### THOMAS

Administered by the Library of Congress, THOMAS has an enormous amount of information including: (1) past and present legislation; (2) the congressional record; (3) committee information; (4) explanations of the legislative process; (5) summaries of congressional activity; and (6) historical documents. Access this data at: <http://thomas.loc.gov/>

### Committee Reports

Committee reports are issued for each bill that has been approved by the committee before it goes to the full House or Senate for a vote. The report includes: (1) the committee's findings and recommendations; (2) a statement about the new budget authority or an increase or decrease in revenues or tax expenditures that the bill may effect; and (3) a cost estimate and comparison prepared by the Congressional Budget Office. This information can be useful to better understand the thinking behind the adoption of the bill.

### Congressional Record

The *Congressional Record* is the official record of the proceedings and debates of the United States Congress. It is published daily when Congress is in session. *GPO Access* contains Congressional Record volumes from 1994 to the present. Find this information at [www.gpoaccess.gov/cri/index.html](http://www.gpoaccess.gov/cri/index.html)

### Code of Federal Regulations

The Code of Federal Regulations (CFR) is the codification of the rules and regulations from the executive departments and agencies of the Federal government. It is divided into 50 titles that represent broad subject areas. Find the CFR at: [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html)

### The Federal Register

The Federal Register is the official daily publication for rules, proposed rules, and notices of Federal agencies and organizations. It also includes executive orders and other presidential documents. The Federal Register world wide web address is [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html)

### **Forest Service Manual and Handbook**

The Forest Service Manual contains legal authorities, policies and guidance for Forest Service line officers and staff.

The Forest Service Handbooks provide specialized guidance and instruction for carrying out the direction issued in the handbooks. Both of these documents can be found on the Forest Service web site at: [www.fs.fed.us/im/directives/](http://www.fs.fed.us/im/directives/)

### **Office of Management and Budget**

The Office of Management and Budget (OMB) assists the President to prepare the federal budget and to supervise other executive branch agencies. A major task of OMB is to evaluate the effectiveness of agency programs, policies, and procedures, and to coordinate and set priorities across the agencies. To find out more about what OMB does see their web site at [www.whitehouse.gov/omb](http://www.whitehouse.gov/omb)

## Glossary

### A

**Act** a bill or measure passed by one or both houses of Congress signifying that it is the act of at least one body of the Congress.

**Amendment** a change or addition to an existing law or rule.

**Appropriation** the setting aside of funds for a designated purpose (e.g., Cooperative Fire Protection received an appropriation of \$30,493,000 for fiscal year 2003)

### B

**Bill** a proposed law, to be debated and voted on.

**Budget reconciliation** legislation making changes to existing law (such as entitlements under Social Security or Medicare) so that it conforms to numbers in the budget resolution.

**Budget resolution** the first step in the annual budget process. This resolution must be agreed to by the House and Senate. It is not signed by the President and does not have the effect of law. It does set out the targets and assumptions that will guide Congress as it passes the annual appropriations and other budget bills.

### C

**Calendar** a group of bills or proposals to be discussed or considered in a legislative committee or on the floor of the House or Senate.

**Caucus** a meeting of a political party, usually to appoint representatives to party positions.

**Cloture** the formal end to a debate or filibuster in the Senate requiring a three-fifths vote.

**Congressional Record** a document published by the Government Printing Office recording all debates, votes, and discussions taking place in the Congress; available for free inspection at all government document repositories, some major libraries, and on the web at [www.gpoaccess.gov/crecord/index.html](http://www.gpoaccess.gov/crecord/index.html)

**Compilation** a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship.

## E

**Enrolled bill** the final, certified bill sent to the President; House and Senate versions of a bill must match exactly in order to be enrolled.

**Executive orders** are official documents by which the President provides instructions to executive departments and agencies. An executive order may be used to reassign functions among executive branch agencies. It may adopt guidelines, rules of conduct, or rules of procedure for government employees or units of government. It can also establish an advisory body or task force.

**Executive session** a congressional meeting closed to the public (and the media).

## F

**Federal land** land owned and administered by the federal government, including National Parks and National Forests

**Filibuster** a tactic used to delay or stop a vote on a bill by making long floor speeches and debates.

**Fiscal year** a financial term referring to any twelve-month period, usually to set a budget. The federal government's fiscal year begins October 1.

**Forest Service Manual** contains legal authorities, objectives, policies, responsibilities, instructions, and guidance for Forest Service line officers and primary staff to plan and execute assigned programs and activities.

**Forest Service Handbooks** are the principal source of specialized guidance and instruction for carrying out the direction issued in the handbooks. Some handbooks include significant procedural direction needed by line officers and/or primary staff officers; examples include Handbooks on land management planning, appeals, litigation, and environmental analysis. Handbooks may also incorporate external directives (such as the Federal Property Management Regulations in FSH 6409.31) with related USDA and Forest Service directive supplements.

## H

**Hearings** are meeting at which testimony (sworn statements like those given in court) is given before a congressional committee. Hearing usually begin with opening statements from the committee members, followed by testimony from invited witnesses and conclude with a question and answer period.

## L

**Law** an act or bill which has become part of the legal code through passage by Congress and approval by the President (or via congressional override).

## M

**Majority leader** the leader of the majority party in either the House or the Senate.

**Mark-up** action by a congressional committee to amend and/or approve a bill; following mark-up the bill is “reported” out of committee and is ready for consideration by the entire House or Senate.

**Minority leader** the leader of the minority party in either the House or the Senate.

**Moratorium** a legislative action which prevents a federal agency from taking a specific action or implementing a specific law.

## O

**Omnibus spending bill** a bill combining the appropriations for several federal agencies.

## P

**Private law** a bill that affects a specified individual or a private entity rather than the population at large is called a private bill.

**President of the Senate** is the Vice President of the United States

**President pro tempore** the Constitution provides for a president pro tempore to preside over the Senate in the absence of the Vice President.

**Proclamations** are general announcements of policy, usually used for ceremonial or commemorative purposes, or to declare a state of emergency or to implement a major trade agreement.

**Public land** land owned in common by all, represented by the government (town, county, state, or federal).

**Public law** a public bill is one that affects the public generally.

## Q

**Quorum** minimum number of people who must be present before a specified event can commence (for Congress to vote, at least half the members must be present).

## R

**Ranking member** the lead member of a congressional committee from the minority party, usually chosen on the basis of seniority.

**Recess** ending a legislative session with a set time to reconvene.

**Resolution** a formal statement from Congress.

**Roll call vote** each individual members' vote is recorded and available for public record.

## S

**Speaker** the leader of the House of Representatives, who controls debate and the order of discussion; chosen by vote of the majority party.

**State land** land owned and administered by the state in which it is located.

## T

**Table** an action taken to halt debate on a bill.

## V

**Veto** a presidential action rejecting an act as passed by the U.S. Congress. The President can also effect a "pocket veto" by holding an unsigned act past the signing period.

**Voice vote** a vote where members vote by saying either "yes" or "no" together. There is no recorded vote.

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