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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

May 5, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #M-247

TO: Legislative Liaison Officer -

JUSTICE - Faith Burton - (202)514-2141 - 217
EPA - Thomas C. Roberts - (202)260-5414 - 326

FROM: RONALD K. PETERSON (for) Ronald K Peterson
Assistant Director for Legislative Reference

OMB CONTACT: Holly FITTER (395-3233)
Secretary's line (for simple responses): 395-6194
Richard MERTENS (395-6931)

SUBJECT: OMB Proposed Testimony on EPA Cabinet Legislation

DEADLINE: 3:00 PM May 5, 1993

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
J. Quinn
K. McGinty
L. Miller

LRM #M-247

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is simple (e.g., concur/no comment) we prefer that you respond by faxing us this response sheet. If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a secretary.

You may also respond by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please include the LRM number shown above, and the subject shown below.

TO: Holly FITTER (395-3233)
Office of Management and Budget
Fax Number: (202) 395-5691
Analyst/Attorney's Direct Number: (202) 395-3233
Branch-Wide Line (to reach secretary): (202) 395-6194

FROM: ____________________ (Date)

____________________ (Name)

____________________ (Agency)

____________________ (Telephone)

SUBJECT: OMB Proposed Testimony on EPA Cabinet Legislation

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No objection

_____ No comment

_____ See proposed edits on pages _____________

_____ Other: ____________________

FAX RETURN of _____ pages, attached to this response sheet

DRAFT

NOT FOR RELEASE UNTIL
DELIVERY MAY 6, 1993

STATEMENT

OF

ALLAN V. BURMAN

ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY

BEFORE THE

SUBCOMMITTEES ON

LEGISLATION AND NATIONAL SECURITY, AND

ENVIRONMENT, ENERGY, AND NATURAL RESOURCES

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

MAY 6, 1993

Messrs. Chairmen and Members of the Subcommittees:

I appreciate the opportunity to appear before you today and discuss the procurement reform provisions included in your legislation to elevate the Environmental Protection Agency (EPA) to cabinet status. The proposed legislation includes several Government-wide provisions to improve the Government's overall procurement practices as well as specific provisions applicable only to EPA. I will discuss each of the reforms in the order presented in the proposed legislation.

Inherently Governmental Functions

The Administration strongly supports the position included in the draft legislation that "Inherently governmental functions of an executive agency shall be performed only by officers or employees of the Government." For the Executive Branch, general guidance for carrying out this longstanding policy is found in Office of Management and Budget Circular No. A-76, "Performance of Commercial Activities." More detailed guidance is included in Office of Federal Procurement Policy (OFPP) Policy Letter 92-1 "Inherently Governmental Functions," issued by my office last September.

The purpose of OFPP Policy Letter 92-1 is to provide both Government and contractor officials with a "brighter line" test for determining which activities constitute inherently governmental functions and which activities so closely resemble such functions as to require tighter controls or special precautions. The policy was issued following an extensive (60 day) period of public comment and after consultation with the Congress, the General Accounting Office, the agencies and many private sector groups. Agencies are required to follow this guidance in determining the types of services that may be acquired by contract and those that must be performed by Federal officials.

A copy of Policy Letter 92-1 is appended to my statement. Appendix A provides an illustrative list of functions considered to be inherently governmental. These include, for example, determining Federal program priorities, directing Federal employees and awarding and terminating contracts. Appendix B of the policy letter highlights functions that may be performed by contractors but which require greater management attention. Examples of these include services in support of acquisition planning, feasibility studies and the development of draft regulations.

In addition to the above, Policy Letter 92-1 provides, as a matter of policy, that contractors are not to be used for drafting Congressional testimony, responses to Congressional correspondence or agency responses to audit reports from an Inspector General, the General Accounting Office or other Federal audit entity. This is to avoid any appearance of private influence with respect to such sensitive documents. Our main objective is to see that any final agency action complies with the laws and policies of the United States. These actions should reflect the independent conclusions of agency officials and not those of contractors who may have interests that are not in concert with the overall public interest and may be beyond the reach of management controls otherwise applicable to public employees.

Your legislation would amend the OFPP Act (41 U.S.C. 401 et seq.) by adding a new Section 29 to prohibit Federal agencies from contracting for inherently governmental functions. The approach you propose appears to parallel that of our policy letter, and we support the Subcommittees' objectives. We also very much appreciate the Subcommittees' willingness to address concerns we raised on preliminary drafts of the legislation. We would urge the Subcommittee, however, to consider dealing with this issue through regulation, or, failing that, to endorse through legislation the provisions of Policy Letter 92-1.

If the Subcommittees decide to proceed with a legislative approach to this issue, we have the following additional comments on the proposal as drafted. First, we recommend that paragraph (c)(1) Definitions in Section 29 be modified to substitute for the definition of advisory and assistance services the new statutory definition of "consulting services" that was included in Section 512 of the Labor, Health and Human Services, and Education Appropriation Act of 1993 (Public Law 102-394). This section required that the Office of Management and Budget include an object class for consulting services in the President's budget. The Section 512 definition states that consulting services include: (1) management and professional support services; (2) studies, analyses, and evaluations; (3) engineering and technical services (excluding engineering services such as automated data processing and architect and engineering contracts), and (4) research and development. This change would make agencies' implementation of these provisions consistent with OMB's implementation of Section 512.

With respect to Section 29(c)(2)(B), we recommend that the words "such functions as" be added after "includes" to make it clear that the subsequent items represent examples of inherently governmental functions and are not meant to be an all-inclusive list. This change would make this provision more consistent with our policy letter.

Organizational Conflicts of Interest

The proposed legislation would add a new Section 30 to the OFPP Act. This Section establishes contracting officer responsibilities regarding organizational conflicts of interests. I share your concerns that such conflicts be avoided, or if they can not be avoided that they be treated appropriately in the terms and conditions of Federal contracts. The approach taken in the proposed legislation is a reasonable one and in line with our previous policy letter on consultants and conflicts of interest and with previous legislation on this issue.

However, while I agree that Government officials should always be alert to the appearance of conflicts, I do not believe that "organizational conflicts of interest" should be defined based on an "appearance" of an unfair competitive advantage or impairment of objectivity. In most circumstances, any practice that appears suspect can be attacked or defended on the basis of the actual facts of the case. Given the subjectivity of the concept of an "appearance" of a conflict, I believe this concern should more appropriately be grounds for further investigation by agency officials.

Indirect Costs Under Executive Agency Contracts

We strongly support the Subcommittees' proposal to establish Government-wide provisions on disallowance of costs, contractor certification of allowable indirect costs, and penalties for including unallowable costs in covered settlement proposals. These provisions are substantially similar to draft legislation contained in our December 1992 Interagency SWAT Team Report. This report examined and assessed the contract administration and audit practices of twelve civilian agencies, including the Environmental Protection Agency. The SWAT project was undertaken as a result of evidence in Congressional hearings and Inspectors General reports indicating that civilian agency contractors were claiming unallowable costs. There was also concern that civilian agency controls over the management of cost-reimbursement contracts were inadequate, and that this was leading to the payment of unallowable costs included in certain contractor claims for reimbursement.

The Administration has developed a legislative proposal that is based on the draft legislation contained in the SWAT report. While existing law in this area only applies to Defense Department contractors, the Administration's proposal would apply penalties and certification requirements to civilian agency contractors as well. The Defense Contract Audit Agency (DCAA) estimates that as a result of the imposition of penalties in Defense contracts some $18 million will be collected by the Government. Given the problems identified in the SWAT team effort and in previous Congressional hearings, the Administration sees a clear need for these certification and penalty provisions to be implemented on a Government-wide basis.

Regarding the provisions of this section relating to specifically unallowable costs, the councils responsible for the Federal Acquisition Regulation are reviewing proposed changes to the current entertainment and employee morale expense provisions. Clearly, ambiguities in these provisions have led to abuses and they require tightening and clarification. However, for these changes, we would recommend that the notice and comment provisions of the regulatory process be followed before any final revision is adopted. This will allow all parties' views to be fully considered.

B

Department of Environment Reforms

Subtitle B of the Procurement Reform Title incorporates several reform measures that would apply to procurement actions by the proposed new Department of Environment. With regard to "umbrella" or task order contracts for advisory and assistance services, we support the intent of the Subcommittees to prohibit "contract shopping" and to ensure full and open competition for any contract resulting from or supplementing the work performed under the umbrella contract. The aforementioned SWAT Team report also cited instances where these types of contracts were being misused. Specific problems cited by the Agriculture and the Commerce SWAT Teams, for example, include concerns that such contracts were being awarded with inadequate or overly broad statements of work, no firm requirements and unspecified task and contract pricing, in effect resulting in sole source procurements. We would be pleased to work with the Subcommittees to see if appropriate language could be developed to deal with this issue on a Government-wide basis, as the Subcommittees have proposed to do for the contracting provisions already discussed. We agree with the Subcommittees' assessment that reforms are needed in this area.

Finally, I would like to bring to the Subcommittees' attention the limitation in Section 12 entitled "Inherently Governmental Functions of Department" regarding departmental regulations that would define inherently governmental functions. The definition as proposed in Section 12(c)(4) would include the preparation of contractual documents, including solicitations, specifications, statements of work, and contract orders. We believe agencies should have the discretion to contract for assistance in such services so long as the approval remains with a Federal official, the Federal official remains fully in charge of the process and the appropriate organizational conflict of interest procedures have been met. Our Policy Letter 92-1, provides for some contractor participation in these activities - subject to proper disclosure and control. We recommend that you provide similar latitude in your legislation.

Mr. Chairman, that concludes my formal testimony. I will be happy to answer any questions you or other members might have.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

May 24, 1993

LEGISLATIVE REFERRAL MEMORANDUM

Katie - Since Cottingham's gone, do you have views on this? I have shared w/ Chupka as well. Pdm

LRM #I-502

TO: Legislative Liaison Officer -

TREASURY - Richard S. Carro - (202)622-1146 - 228
AGRICULTURE - Marvin Shapiro - (202)720-1516 - 312
INTERIOR - Ralph Hill - (202)208-6706 - 329
CEA - Francine Obermiller - (202)395-5036 - 242
NEC - Sonia Mathews - (202)456-6722 - 429
EPA - Thomas C. Roberts - (202)260-5414 - 326
USTR - Fred Montgomery - (202)395-3475 - 223
STATE - Bill Keppler - (202)647-2137 - 225

Pam - What do they want to know. We should have known comment on this yet!!!

FROM: JAMES J. JUKES (for) Jim
Assistant Director for Legislative Reference

OMB CONTACT: Douglas STEIGER (395-3386)
Secretary's line (for simple responses): 395-3454

SUBJECT: OMB Request for Views RE: HR 1997, American Timber Supply and Manufacturing Incentives Act

DEADLINE: June 1, 1993

COMMENTS: This referral contains a letter from Rep. DeFazio to the President about this legislation. Note to Treasury: please provide your views in the form of a reply to Rep. DeFazio.

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
Randy Lyon
Mary Barth
Adam Hoffberg
Bruce Beard
Mark Weatherly
Rodney Bent
Bernie Martin
Holly Fitter
Katie McGinty

This is a standard request for views. We can put a stop to it if you want.

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

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You may **also respond** by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please **include** the LRM number shown above, and the **subject** shown below.

TO: Douglas STEIGER
Office of Management and Budget
Fax Number: (202) 395-3109
Analyst/Attorney's Direct Number: (202) 395-3386
Branch-Wide Line (to reach secretary): (202) 395-3454

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

SUBJECT: OMB Request for Views RE: HR 1997, American Timber Supply and Manufacturing Incentives Act

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No objection

_____ No comment

_____ See proposed edits on pages ______________

_____ Other: ______________________

_____ FAX RETURN of _____ pages, attached to this response sheet

018348

PETER A. DeFAZIO
4TH DISTRICT, OREGON

NATURAL RESOURCES
SUBCOMMITTEES
NATIONAL PARKS, FORESTS AND PUBLIC LANDS
ENERGY AND MINERAL RESOURCES
OVERSIGHT AND INVESTIGATIONS

PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEES
AVIATION
SURFACE TRANSPORTATION

SELECT COMMITTEE ON AGING
SUBCOMMITTEE
HUMAN SERVICES

Congress of the United States
House of Representatives

PLEASE RESPOND TO:
WASHINGTON OFFICE
☐ 1233 LONGWORTH HOUSE OFC. BLDG
WASHINGTON, DC 20515-3704
(202) 225-6416
HOME OFFICES
☐ 211 EAST 7TH AVENUE
EUGENE, OR 97401
(503) 465-6732
☐ 225 SOUTH 2D STREET
COOS BAY, OR 97420
(503) 269-2609
☐ 612 S.E. JACKSON ST
SUITE 9
P.O. BOX 2460
ROSEBURG, OR 97470
(503) 440-3523

93 MAY P2: 13

May 12, 1993

President Bill Clinton
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

The debate within the Northwest's congressional delegation over log exports reminds me of the story of The Emperor's New Clothes. When the Emperor paraded naked down the street one day, his subjects praised the splendor of his new garments. The only person with the audacity to say "He's naked" was a small child (who obviously lacked of some of the more important social graces). Whenever I mention log exports in a delegation meeting, I feel just like that child.

Because despite the severe shortage of timber for Northwest mills, the region continues to export between 20 and 25 percent of its total timber harvest in the form of raw logs. An additional but unknown percentage of the Northwest's timber supply is exported in the form of wood chips, cants for remanufacture and other minimally processed material. Almost no one seems to be willing to talk about it.

We know that federal timber sales will never again reach the levels common during the last decade. Measures to restrict or reduce the flood of log exports will not by themselves be sufficient to make up for the likely cutbacks in federal timber supplies. But every worker whose job we can save by diverting export timber into a domestic mill is one less worker who will need some form of public assistance.

During your campaign for office, you spoke out against certain tax subsidies enjoyed by log exporters. The most notable of those is the benefit available to some large corporations that sell their export logs through foreign sales corporations. As you know, Reps. Stark, Unsoeld and I have introduced legislation, H.R. 1542, to eliminate those benefits. Senator Baucus has introduced a similar bill in the Senate. Our legislation will save the taxpayers about $80 million a year.

We both agree that U.S. taxpayers should not be asked to subsidize the export of a raw material that is in short supply. However, no one can plausibly assert that eliminating these export subsidies will significantly reduce the volume of logs being exported from the Pacific Northwest.

I am writing to bring your attention to H.R. 1997, legislation I have introduced that could provide your administration with a moderate and credible strategy to reduce log exports and increase domestic timber supplies. H.R. 1997 uses the savings gained from eliminating the foreign sales corporation benefit for log exports to finance a reduction of up to 30 percent in the rate at which the capital gains from the sale of timber are taxed.

Based on revenue estimates from the Joint Committee on Taxation, the total cost to the Treasury of my bill would be about $38 million a year for the first five years. It is a modest investment that would repay itself many times over.

It is commonly estimated that 4 jobs are lost for every one million board feet of logs that are exported. In 1991, 2.2 billion board feet of raw logs were exported from Oregon and Washington. If the domestic timber processing incentive I am proposing diverts as little as 500 million board feet of timber into the domestic market, we will have saved about 2,000 jobs in the region. That equates to 2,000 fewer displaced workers in need of public assistance.

Northwest workers don't want welfare, they want jobs. A predictable and sustainable timber supply is the key to continued economic well-being for many of the Northwest's rural communities.

As I said, slowing or even stopping log exports will not be enough to make up for significant reductions in federal timber supplies. But we can't ignore the fact that nearly 25 percent of the Pacific Northwest's timber is exported each year to Asia. Put another way: scarce timber from Oregon and Washington is helping to supply 16,000 relatively inefficient mills in Japan, while many of the Pacific Northwest's 338 modern and efficient mills teeter on the brink of failure. I urge you to consider the merits of H.R. 1997.

Sincerely,

PETER DeFAZIO
Member of Congress

THE WHITE HOUSE

WASHINGTON

May 18, 1993

Dear Representative DeFazio:

Thank you for your letter regarding log exports. I appreciate your informing the President of your interest in this matter.

I have shared your letter with senior officials at the White House, and you will receive a response in the near future.

Once again, thank you for your letter. I look forward to hearing from you on other issues of importance.

With best wishes,

Sincerely,

Howard G. Paster
Assistant to the President
for Legislative Affairs

The Honorable Peter A. DeFazio
House of Representatives
Washington, D.C. 20515

103D CONGRESS
1ST SESSION

H. R. 1997

To amend the Internal Revenue Code of 1986 to provide incentives for domestic timber production and manufacturing, and to deny the benefits of certain export subsidies in the case of exports of unprocessed timber.

IN THE HOUSE OF REPRESENTATIVES

MAY 5, 1993

Mr. DEFAZIO introduced the following bill; which was referred to the Committee on Ways and Means

---

A BILL

To amend the Internal Revenue Code of 1986 to provide incentives for domestic timber production and manufacturing, and to deny the benefits of certain export subsidies in the case of exports of unprocessed timber.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "American Timber Supply and Manufacturing Incentives Act".

SEC. 2. INVESTMENT INCENTIVE FOR DOMESTIC TIMBER PRODUCTION.

(a) IN GENERAL.—Part I of subchapter P of chapter 1 of the Internal Revenue Code of 1986 (relating to treatment of capital gains) is amended by adding at the end the following new section:

"SEC. 1202. INVESTMENT INCENTIVE FOR DOMESTIC TIMBER PRODUCTION.

"(a) IN GENERAL.—At the election of any taxpayer who has qualified timber gain for any taxable year, there shall be allowed as a deduction from gross income an amount equal to the qualified percentage of such gain.

"(b) QUALIFIED TIMBER GAIN.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified timber gain' means the lesser of—

"(A) the net capital gain for the taxable year, or

"(B) the net capital gain for the taxable year determined by taking into account only gains and losses from qualified timber.

"(2) QUALIFIED TIMBER.—The term 'qualified timber' means any timber with respect to which the taxpayer has provided assurances (which are satisfactory to the Secretary) that substantially all of the

processing of the timber will occur within the United States.

"(c) QUALIFIED PERCENTAGE.—For purposes of this section, the term 'qualified percentage' means the percentage (not exceeding 30 percent) determined by multiplying—

"(1) 2 percent, by

"(2) the number of years in the holding period of the taxpayer with respect to the timber.

"(d) ESTATES AND TRUSTS.—In the case of an estate or trust, the deduction under subsection (a) shall be computed by excluding the portion (if any) of the gains for the taxable year from sales or exchanges of capital assets which, under sections 652 and 662 (relating to inclusions of amounts in gross income of beneficiaries of trusts), is includible by the income beneficiaries as gain derived from the sale or exchange of capital assets."

(b) COORDINATION WITH EXISTING LIMITATIONS.—

(1) Subsection (h) of section 1 of such Code (relating to maximum capital gains rate) is amended by inserting after "net capital gain" each place it appears the following; "(other than qualified timber gain with respect to which an election is made under section 1202)".

(2) Subsection (a) of section 1201 of such Code (relating to alternative tax for corporations) is amended by inserting after "net capital gain" each place it appears the following: "(other than qualified timber gain with respect to which an election is made under section 1202)".

(c) ALLOWANCE OF DEDUCTION IN COMPUTING ADJUSTED GROSS INCOME.—Subsection (a) of section 62 of such Code (relating to definition of adjusted gross income) is amended by adding at the end the following new paragraph:

"(14) INVESTMENT INCENTIVE FOR DOMESTIC TIMBER PRODUCTION.—The deduction allowed by section 1202."

(d) CONFORMING AMENDMENT.—The table of sections for part I of subchapter P of chapter 1 of such Code is amended by adding at the end the following new item:

"Sec. 1202. Investment incentive for domestic timber production."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or exchanges after the date of the enactment of this Act.

SEC. 3. APPLICATION OF PASSIVE LOSS LIMITATIONS TO TIMBER ACTIVITIES.

(a) DETERMINATION OF MATERIAL PARTICIPATION.—Subsection (h) of section 469 of the Internal Revenue Code of 1986 (defining material participation) is

amended by adding at the end the following new paragraph:

"(6) TREATMENT OF TIMBER ACTIVITIES.—

"(A) IN GENERAL.—A taxpayer shall be treated as materially participating in any timber activity for a taxable year if—

"(i) the taxpayer's participation in the activity for such year constitutes substantially all of the participation in the activity of all individuals for such year, other than individuals—

"(I) who are not owners of interests in the activity,

"(II) who are retained and compensated directly by the taxpayer, and

"(III) whose activities are subject to the oversight supervision, and control of the taxpayer, or

"(ii) based on all of the facts and circumstances, the taxpayer participates in the activity on a regular, continuous, and substantial basis during such year, except that for purposes of this clause—

"(I) the taxpayers shall not be required to participate in the activity for any minimum period of time during such year, and

"(II) the performance of services by individuals who are not owners of interests in the activity shall not be considered if the services are routinely provided by individuals specializing in such services and such services are subject to the oversight, supervision, and control of the taxpayer.

"(B) PARTNERS AND S CORPORATION SHAREHOLDERS.—Subject to paragraph (2), the determination of whether a partner or S corporation shareholder shall be treated as materially participating in any timber activity of the partnership or S corporation shall be based upon the combined participation of all of the partners or shareholders in the activity.

"(C) TIMBER ACTIVITY.—For purposes of this paragraph, the term 'timber activity' means the planting, cultivating, caring, cutting, or preparation (other than milling) for market, of trees."

"(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 4. DENIAL OF CERTAIN EXPORT SUBSIDIES.

(a) FOREIGN SALES CORPORATION.—Paragraph (2) of section 927(a) of the Internal Revenue Code of 1986 (relating to exclusion of certain property) is amended by striking "or" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", or", and by adding at the end thereof the following:

"(E) any unprocessed timber.

For purposes of subparagraph (E), the term 'unprocessed timber' has the same meaning as that given to it in the Customs and Trade Act of 1990 (104 Stat. 629)."

(b) DOMESTIC INTERNATIONAL SALE CORPORATIONS.—Paragraph (2) of section 993(c) of such Code (relating to exclusion of certain property) is amended by striking "or" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting, ", or", and by adding after subparagraph (D) the following:

"(E) any unprocessed timber.

For purposes of subparagraph (E), the term 'unprocessed timber' has the same meaning as that given to it in the Customs and Trade Act of 1990 (104 Stat. 629)."

(c) TITLE-PASSAGE RULE.—Subsection (b) of section 865 of such Code (relating to source rules for personal property sales) is amended by adding at the end thereof the following: "Notwithstanding the preceding sentence, any income from the sale of any unprocessed timber which is a softwood and was cut from an area in the United States shall be sourced in the United States and the rules of sections 862(a)(6) and 863(b) shall not apply to any such income. For purposes of the preceding sentence, the term "unprocessed timber" has the same meaning as that given to it in the Customs and Trade Act of 1990 (104 Stat. 629)."

(d) ELIMINATION OF DEFERRAL.—Subsection (d) of section 954 of such Code is amended by adding at the end thereof the following new paragraph:

"(4) SPECIAL RULE FOR CERTAIN TIMBER PRODUCTS.—For purposes of subsection (a)(2), the term 'foreign base company sales income' includes any income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with—

"(A) the sale of any unprocessed timber referred to in section 865(b), or

"(B) the milling of any such timber outside the United States.

Subpart G shall not apply to any amount treated as subpart F income by reason of this paragraph."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales, exchanges, or other dispositions after the date of the enactment of this Act.

○

THE WHITE HOUSE
WASHINGTON

File
Unsoeld
Amendments

Cotton -

URGENT! This bill may be incompatable with the forest plan. Can you review and offer suggestion to OMB on how to handle this? (Deadline June 7)

Pam

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

URGENT

June 4, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #M-350

TO: Legislative Liaison Officer -

AGRIC-CR - Robin Rorapaugh (all testimony) - (202)720-7095 - 230
COMMERCE - Michael A. Levitt - (202)482-3086 - 324
INTERIOR - Ralph Hill - (202)208-6706 - 329
JUSTICE - Faith Burton - (202)514-2141 - 217
LABOR - Robert A. Shapiro - (202)219-8201 - 330
STATE - Bill Keppler - (202)647-2137 - 225
CEA - Francine Obermiller - (202)395-5036 - 242
NEC - Sonia Mathews - (202)456-6722 - 429
USTR - Fred Montgomery - (202)395-3475 - 223

FROM: RONALD K. PETERSON (for) Ronald K Peterson
Assistant Director for Legislative Reference

OMB CONTACT: Craig CRUTCHFIELD (395-3857)
Secretary's line (for simple responses): 395-6194

SUBJECT: OMB Request for Views on Forest Resources Conservation and Shortage Relief Amendments of 1993

DEADLINE: 1:00 p.m. June 7, 1993

COMMENTS: The House Foreign Affairs Committee will likely mark up the attached draft bill next week. Please respond by the deadline.

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
C. Beebe
J. McDivitt
R. Saunders
M. Reed
J. Palmieri
R. Bart
D. Cottingham

Fax
17 pg

LRM #M-350

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is simple (e.g., concur/no comment) we prefer that you respond by faxing us this response sheet. If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a secretary.

You may also respond by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please include the LRM number shown above, and the subject shown below.

TO: Craig CRUTCHFIELD (395-3857)
Office of Management and Budget
Fax Number: (202) 395-5691
Analyst/Attorney's Direct Number: (202) 395-3857
Branch-Wide Line (to reach secretary): (202) 395-6194

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

SUBJECT: OMB Request for Views on Forest Resources Conservation and Shortage Relief Amendments of 1993

The following is the response of our agency to your request for views on the above-captioned subject:

_______ Concur

_______ No objection

_______ No comment

_______ See proposed edits on pages ____________

_______ Other: ______________________

_______ FAX RETURN of _____ pages, attached to this response sheet

F:\M\UNSOEL\UNSOEL.080 H.L.C.

103D CONGRESS
1ST SESSION

H. R. ____

IN THE HOUSE OF REPRESENTATIVES

Mrs. UNSOELD introduced the following bill; which was referred to the Committee on ____________

A BILL

To amend the Forest Resources Conservation and Shortage Relief Act of 1990 to permit States to adopt timber export programs, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Forest Resources Conservation and Shortage Relief Amendments Act of 1993".

SEC. 2. RESTRICTION ON EXPORTS OF UNPROCESSED TIMBER FROM STATE AND OTHER PUBLIC LANDS.

Section 491 of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620c) is amended—

(1) in subsection (a)—

(A) by striking "(e)" and inserting "(g)"; and

(B) by striking "in the amounts specified" and inserting "as provided";

(2) in subsection (b)—

(A) in paragraph (1)—

(i) by inserting ", notwithstanding any other provision of law," after "prohibit"; and

(ii) by striking "not later than 21 days after the date of the enactment of this Act" and inserting ", effective June 1, 1993";

(B) in paragraph (2)—

(i) by striking subparagraph (A) and inserting the following new subparagraph:

"(A) The Secretary of Commerce shall issue an order referred to in subsection (a) to prohibit, notwithstanding any other provision of law, the export of unprocessed timber originating from public lands, affective June 1, 1993. Such order shall not be effective after December 31, 1995.";

(ii) by striking subparagraphs (B) and (C); and

(iii) in subparagraph (D)—

(I) by redesignating such subparagraph as subparagraph (B); and

(II) by striking "total annual sales volume" and inserting "annual sales volume in that State of unprocessed timber originating from public lands";

(C) in paragraph (3)—

(i) by redesignating such paragraph as paragraph (4); and

(ii) by striking "States pursuant to this title" and inserting "the Secretary of Commerce pursuant to this title, State programs authorized under subsection (d)"; and

(D) by inserting after paragraph (2) the following new paragraph:

"(3) PROHIBITION ON SUBSTITUTION.—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 if—

"(A) such unprocessed timber would 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.";

(3) by redesignating subsections (e) through (j) as subsections (g) through (l), respectively; and

(4) by striking subsections (c) and (d) and inserting the following:

"(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 the date of the enactment of the Forest Resources Conservation and Shortage Relief Amendments Act of 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);

"(ii) administer the prohibitions consistent with 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).

"(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 this title.

"(d) AUTHORIZED STATE PROGRAMS.—

"(1) AUTHORIZATION OF NEW STATE PROGRAMS.—Notwithstanding subsection (c), 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); 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 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 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).

"(C) EXISTING STATE PROGRAMS.—Not later than 30 days after the date of the enactment of the Forest Resources Conservation and Shortage Relief Amendments Act of 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 60-day period beginning on the date on which the Secretary of Commerce issues regulations under subsection (c), and that program shall during that 60-day period, apply in that State in lieu of the regulations issued under subsection (c). 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 any contract for the purchase of unprocessed timber from public lands entered into before October 24, 1990, except for contracts under which exports of unprocessed timber were permitted pursuant to an order of the Secretary of Commerce in effect under this section before October 29, 1992.

"(f) WESTERN RED CEDAR.—Nothing in this section shall be construed to supersede section 7(i) of the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)).".

SEC. 3. MONITORING AND ENFORCEMENT.

(a) MONITORING.—Section 492(a) of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620d(a)) is amended—

(1) paragraph (1), by striking "and" at the end of the paragraph;

(2) in paragraph (2), by striking the period at the end of the paragraph and inserting a semicolon; and

(3) by inserting at the end the following new paragraphs:

"(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 491(a), other than a State that is administering and enforcing a program under section 491(d), 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 491(a), other than a State that is administering and enforcing a program under section 491(d), shall, before completing the transfer—

"(A) provide to the recipient of the timber 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 the recipient—

"(i) a written acknowledgment of the notice; and

"(ii) a written agreement that the recipient of the timber will comply with the requirements 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 clauses (i) and (ii) of subparagraph (B).".

(b) CIVIL PENALTIES.—Section 492(c) of the Forest Resources Conservation and Shortage Relief Act of 1990—

(1) in paragraph (1)—

(A) by inserting "(A)" before "If the Secretary"; and

(B) by adding at the end the following:

"(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 491(a) 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 to the export of timber from a State that is administering and enforcing a program under section 491(d)."; and

(2) in paragraph (2)—

(A) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively;

(B) by inserting "(A)" before "If the Secretary"; and

(C) by adding at the end the following:

"(B)(i) Subject to clause (ii), if the Secretary 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 this title or any regulation issued under 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 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 to the export of timber from a State that is administering and enforcing a program under section 491(d).".

SEC. 4. SEVERABILITY.

If any provision of this Act or the amendments made by this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act and such amendments and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected by such invalidation.

SECTION-BY-SECTION SUMMARY
STATE LOG EXPORT BAN -- LEGISLATIVE FIX
JUNE 3, 1993

SECTION 1. SHORT TITLE
"Forest Resources Conservation and Shortage Relief Amendments Act of 1993"

SECTION 2. RESTRICTION ON EXPORTS OF UNPROCESSED STATE TIMBER (Amends Section 491 of PL 101-382; 16 USC 620c)

(a) EXPORT PROHIBITION.
Sec of Commerce shall issue orders to prohibit the export from the US of unprocessed timber originating from state and other public lands, as provided.

(b) SCHEDULE FOR STATE EXPORT PROHIBITION.
(1) States with annual sales of 400MBF or less: Sec shall issue order prohibiting export, effective date of enactment [or June 17, 1993, whichever occurs first].
(2) States with annual sales greater than 400MBF (i.e., WA):
(A) Sec shall issue order prohibiting export, effective October 23, 1992 (date Sec ordered 100% ban for WA). Order covers period beginning [on effective date/at issuance] and extending to December 31, 1995.
(B) For period beginning January 1, 1996, Sec shall issue order (not later than Sept 30, 1995) prohibiting export of the lesser of 400MBF or total annual sales volume (unprocessed public timber).
(3) Prohibition on substitution: orders issued under paragraph 1 or 2 shall also prohibit purchase of public timber, directly or indirectly, [unless there is an authorized state program pursuant subsection (d)] if:
(A) the timber would be used in substitution for exported unprocessed timber originating from private lands; or
(B) the purchaser, during the preceding 24-month period, exported unprocessed timber originating from public lands.
(4) Report to Congress by June 1, 1995 (by Com, Ag, Int) on effects of ban.

(c) FEDERAL PROGRAM.
(1) Administration by the Sec of Commerce:
(A)(i) General: Sec shall, [ASAPracticable after enactment]--
(I) determine species, grades, origin of unprocessed timber...
(II) administer the prohibitions consistent with this title; and
(III) ensure species, grades, ... prohibited from export is representative
(ii) Actions of Sec under (I) shall not apply in a state that has a State Program (under subsect d)
(B) Cooperation with other Agencies: Sec Com authorized to enter into agreements with fed and state agencies to assist the Sec in carrying out this title.

(2) Regulations:
(A) General: Sec shall issue regs [ASAP after enactment] to carry out this section.
(B) Exemption: Regs (under A) not apply if State Program (under sub d)

(d) AUTHORIZED STATE PROGRAMS.
(1) Authorization of New State Programs:
Governor of any state may submit a program to Sec for approval that:
(A) Implements Sec order prohibiting exports (under sub a).
(B) Ensures species, grades, origin ... representative
(2) Approval of State Programs:
(A) Program Approval: Not later than 30 days after submission of Gov's program, Sec shall approve unless Sec finds it will result in export of unprocessed timber in violation of this title and publishes finding in FR.
(B) State Program in Lieu of Federal Program: If Sec approves the program, Gov or such other state official as the Gov may designate may administer and enforce the program in lieu of Fed Program (sub c).
(C) Existing State Programs: Not later than 30 days after enactment, any State that had, before May 4, 93, issued regs under this old Act, may provide Sec with written notification that State has a program that was in effect on May 3, 93, and that meets the requirements for St Progs; notification may also serve as program for approval under paragraph (1). Upon such notification, that State may administer and enforce that program until the end of the 60-day period beginning on the date on which the Sec issues regs under subsect (c) (Fed Prog), and that program shall, during that 60-day period, apply in lieu of Fed Regs.

(e) PRIOR CONTRACTS.
Nothing in this section shall apply to any contract for the purchase of unprocessed timber from public lands entered into before Oct 23, 1992.

(f) WESTERN RED CEDAR.
Nothing in this section shall be construed to supersede sect 7(i) of the EAA of 1979.

(g) PRESIDENTIAL AUTHORITY.
President authorized, after notice and comment, to suspend provisions of this section if a panel of experts determines it violates GATT.

(h) REMOVAL OR MODIFICATIONS OF STATE RESTRICTIONS.
The President may remove or modify public log export restrictions in a state if tat state petitions for such a change and the President determines it is in the national economic interest to do so.

(i) EFFECT OF PRIOR FEDERAL LAW.
No prior federal law which imposes requirements with respect to the generation of revenue from state timberlands shall be construed to invalidate or affect state action under this title.

(j) SURPLUS TIMBER.
Certain grades and species of timber may by rule be determined to be surplus to domestic need; the relevant secretary may also by rule withdraw a

(k) SUSPENSION OF PROHIBITIONS.
Beginning Jan 1. 1998, and annually thereafter, the President may suspend the export prohibitions of this title (with 90 days notice to Congress) if the President finds the prohibitions no longer promote the purposes of this title.

(l) EXISTING AUTHORITY NOT AFFECTED.
Nothing in this title shall be construed to limit the authority of the President or the USTR to take action authorized by law to respond appropriately to any measures taken by a foreign government in connection with this title.

SECTION 3. MONITORING AND ENFORCEMENT (Section 492; 16 USC 620d)

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

SPECIAL

May 27, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-532

TO: Legislative Liaison Officer -

AGRICULTURE - Marvin Shapiro - (202)720-1516 - 312
COMMERCE - Michael A. Levitt - (202)482-3086 - 324
DEFENSE - Samuel T. Brick, Jr. - (703)697-1305 - 325
ENERGY - Bob Rabben - (202)586-6718 - 209
HUD - Edward J. Murphy, Jr. - (202)708-1793 - 215
INTERIOR - Ralph Hill - (202)208-6706 - 329
JUSTICE - Faith Burton - (202)514-2141 - 217
TREASURY - Richard S. Carro - (202)622-1146 - 228
CEA - Francine Obermiller - (202)395-5036 - 242
EPA - Thomas C. Roberts - (202)260-5414 - 326

FROM: RONALD K. PETERSON (for) Ronald K. Peterson
Assistant Director for Legislative Reference

OMB CONTACT: Holly FITTER (395-3233)
Secretary's line (for simple responses): 395-6194
Mark KRAMER (395-3445)

SUBJECT: OMB Request for Views RE: S 773, Voluntary Environmental Cleanup and Economic Redevelopment Act of 1993

DEADLINE: 1:00 PM June 2, 1993

COMMENTS: Please review S. 773 and provide significant agency comments within the specified timeframe. These comments will be provided to EPA which is preparing testimony on S. 773 to be given on June 17, 1993 before a subcommittee of the Senate Environment and Public Works Committee

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
B. Beard
R. Belzer
K. McGinty
B. Damus
C. Rasco

LRM #I-532

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is **simple** (e.g., concur/no comment) we prefer that you respond by **faxing** us this response sheet. If the response is **simple** and you prefer to call, please **call the branch-wide line** shown below (NOT the analyst's line) to leave a message with a secretary.

You may **also respond** by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please **include** the LRM number shown above, and the **subject** shown below.

TO: Holly FITTER
Office of Management and Budget
Fax Number: (202) 395-5691
Analyst/Attorney's Direct Number: (202) 395-3233
Branch-Wide Line (to reach secretary): (202) 395-6194

FROM: ____________________ (Date)

____________________ (Name)

____________________ (Agency)

____________________ (Telephone)

SUBJECT: OMB Request for Views RE: S 773, Voluntary Environmental Cleanup and Economic Redevelopment Act of 1993

The following is the response of our agency to your request for views on the above-captioned subject:

________ Concur

________ No objection

________ No comment

________ See proposed edits on pages ____________

________ Other: ____________________

________ FAX RETURN of _____ pages, attached to this response sheet

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

SPECIAL

May 24, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-503

TO: Legislative Liaison Officer -

AGRICULTURE - Marvin Shapiro - (202)720-1516 - 312
CORPS ENGINEERS - Susan Bond - (202)272-0030 - 239
COMMERCE - Michael A. Levitt - (202)482-3086 - 324
EPA - Thomas C. Roberts - (202)260-5414 - 326
INTERIOR - Ralph Hill - (202)208-6706 - 329
JUSTICE - Faith Burton - (202)514-2141 - 217
NEC - Sonia Mathews - (202)456-6722 - 429
TVA - Alan Carmichael - (202)479-4412 - 332
DEFENSE - Samuel T. Brick, Jr. - (703)697-1305 - 325
STATE - Bill Keppler - (202)647-2137 - 225

FROM: RONALD K. PETERSON (for) Ronald K. Peterson
Assistant Director for Legislative Reference

OMB CONTACT: MIKE GOAD (395-7301)
Secretary's line (for simple responses): 395-6194

SUBJECT: OMB Request for Views RE: S 823, National Wildlife Refuge System Management and Policy Act

DEADLINE: WEDNESDAY, June 2, 1993

COMMENTS: Please note that, on June 9, 1993, the Senate Subcommittee on Clean Water, Fisheries, and Wildlife will hold hearings on S 823 (attached). Please review and advise this office by the deadline if your agency has substantive concerns with this bill.

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
S. Cameron
K. McGinty

LRM #I-503

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is **simple** (e.g., concur/no comment) we prefer that you respond by **faxing** us this response sheet. If the response is **simple** and you prefer to call, please **call the branch-wide line** shown below (NOT the analyst's line) to leave a message with a secretary.

You may **also respond** by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please **include** the LRM number shown above, and the **subject** shown below.

TO: MIKE GOAD
Office of Management and Budget
Fax Number: (202) 395-5691
Analyst/Attorney's Direct Number: (202) 395-7301
Branch-Wide Line (to reach secretary): (202) 395-6194

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

SUBJECT: OMB Request for Views RE: S 823, National Wildlife Refuge System Management and Policy Act

The following is the response of our agency to your request for views on the above-captioned subject:

________ Concur

________ No objection

________ No comment

________ See proposed edits on pages ______________

________ Other: ______________________

________ FAX RETURN of _____ pages, attached to this response sheet

103D CONGRESS
1ST SESSION

S. 823

To amend the National Wildlife Refuge System Administration Act of 1966 to improve the management of the National Wildlife Refuge System, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 27 (legislative day, APRIL 19), 1993

Mr. GRAHAM (for himself, Mr. KOHL, Mr. DODD, Mr. SARBANES, Mr. WOFFORD, Mr. FEINGOLD, Mr. AKAKA, Mr. BUMPERS, Mr. LEAHY, Mr. DASCHLE, and Mr. SIMON) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

---

A BILL

To amend the National Wildlife Refuge System Administration Act of 1966 to improve the management of the National Wildlife Refuge System, and for other purposes.

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

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "National Wildlife Refuge System Management and Policy Act of 1993".

(b) REFERENCES.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or provision of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.)

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds and declares that—

(1) the National Wildlife Refuge System (referred to in this section as the "System") was established under the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.);

(2) the National Wildlife Refuge System Administration Act of 1966 consolidates the authorities related to lands, waters, and interests in the lands and waters administered by the Secretary of the Interior (referred to in this section as the "Secretary"), for the purpose of conservation of fish and wildlife;

(3) the System provides opportunities for individuals to participate in wildlife-oriented recreation, and to learn, understand, and appreciate the value of and need for conserving fish and wildlife, wild lands, and naturally productive ecological communities, types, and systems;

(4) the System is the only complex of Federal lands devoted primarily to preserving, restoring, and managing fish and wildlife and the habitats of fish and wildlife;

(5) National Wildlife Refuges provide habitat for many endangered and threatened species, and for species that may become endangered or threatened, as well as for other fish, wildlife, and plants;

(6) the well-being and abundance of the fish, wildlife, and plants would be diminished without the protected habitat;

(7) activities are occurring on a significant number of National Wildlife Refuges that result in harm to the fish and wildlife resources the System was designed to conserve; and

(8) improvements are needed in the administration and management of the System to ensure that sound and effective conservation programs for the System are developed, implemented, and enforced.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To reaffirm the provisions of the Act commonly known as the Refuge Recreation Act (16 U.S.C. 460k et seq.) that authorize the Secretary to permit compatible fish and wildlife-oriented public

recreation, such as hunting, fishing, and wildlife observation on refuges.

(2) To improve the administration and management of the System.

(3) To establish purposes for the System.

(4) To improve the compatibility determination process for National Wildlife Refuges.

(5) To establish comprehensive planning for the System and individual wildlife refuges of the System.

(6) To provide for interagency coordination in maintaining refuge resources.

SEC. 3. DEFINITIONS.

Section 5 (16 U.S.C. 668ee) is amended—

(1) by redesignating subsections (a) through (c) as subsections (g) through (i), respectively; and

(2) by inserting the following new subsections before subsection (g) (as so redesignated):

"(a) The term 'Director' as used in this Act means the Director of the United States Fish and Wildlife Service.

"(b) The terms 'fish', 'wildlife' and 'fish and wildlife' as used in this Act mean any native member of the animal kingdom in a wild, unconfined state, including the parts, products, or eggs of the animals.

"(c) The term 'plant' as used in this Act means any native member of the plant kingdom in a wild, unconfined state. The term shall include any plant community, seed, root, or other part thereof.

"(d) The term 'refuge' as used in this Act means a unit of the National Wildlife Refuge System, except that the term shall not include State-managed wildlife management areas (commonly known as 'coordination areas').

"(e) The term 'Secretary' as used in this Act means the Secretary of the Interior (except as the context implies otherwise).

"(f) The term 'System' as used in this Act means the National Wildlife Refuge System.".

SEC. 4. PURPOSES AND ADMINISTRATION OF THE SYSTEM.

Section 4(a) (16 U.S.C. 668dd(a)) is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (5) and (6), respectively;

(2) in paragraph (6), as so redesignated, by striking "paragraph (2)" and inserting "paragraph (5)"; and

(3) by inserting after paragraph (1) the following new paragraphs:

"(2) The purposes of the System are as follows:

"(A) To provide a national network of lands and waters with respect to which the size, variety, and location are designed to protect the wealth of fish, wildlife, and plants of this Nation and their habitats for present and future generations.

"(B) To provide healthy, naturally productive, and enduring food, water, and shelter to fish, wildlife, and plant communities and to ensure naturally diverse, healthy, and abundant populations of fish, wildlife, and plant species in perpetuity.

"(C) To serve in the fulfillment of international treaty obligations of the United States with respect to fish, wildlife, and plants, and their habitats.

"(3) If the Secretary finds that a conflict exists between any purpose set forth in the law or order that established a refuge and any purpose set forth in paragraph (2), the Secretary shall resolve the conflict in a manner that fulfills the purpose set forth in the law or order that established the refuge, and, to the extent possible, achieves all of the purposes set forth in paragraph (2).

"(4) In the administration of the System for the purposes described in paragraph (2), the Secretary, acting through the Director, shall—

"(A) ensure that the purposes of the System described in paragraph (2) and the purposes of each refuge are carried out;

"(B) protect the System and the components of the System from threats to the ecological integrity of the System and components;

"(C) to the extent authorized by law, ensure adequate water quantity and water quality to fulfill the purposes of the System and of each refuge; and

"(D) plan, propose, and direct the expansion of the System in a manner best designed to—

"(i) accomplish the purposes of the System and of each refuge in the System;

"(ii) protect and aid recovery of any species listed as endangered or threatened (and any species that is a candidate for the listing); and

"(iii) conserve other fish, wildlife, and plants, the habitats of the fish, wildlife, and plants, and other elements of natural diversity.".

SEC. 5. COMPATIBILITY STANDARDS AND PROCEDURES.

Section 4(d) (16 U.S.C. 668dd(d)), is amended by adding at the end the following new paragraphs:

"(3) Except as provided in paragraph (5), the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use unless the Secretary finds, in consultation with the Director, pursuant to paragraph (5), that the use is compatible with the purposes of the System and of the refuge. The Secretary shall make no determination of compatibility under this subparagraph, nor initiate a proposed new use or permit a proposed, continued, or expanded use, unless the Secretary—

"(A) states the time, location, manner, and purpose of the use;

"(B) evaluates the direct, indirect, and cumulative biological, ecological, and other effects that the Secretary determines to be appropriate for the use;

"(C) makes a determination, on the basis of the evaluation required under subparagraph (B) that the use will contribute to the fulfillment of the purposes of the System and the refuge or will not have a detrimental effect upon fulfillment of the purposes of the System or the refuge; and

"(D) makes a determination that funds are available for the development, operation, and maintenance of the use.

"(4) Unless the Secretary, in consultation with the Director, determines that there is sufficient information available to make a reasoned judgment that a proposed, continued, or expanded use of a refuge is compatible with the purposes of the System and the refuge, the Secretary shall not permit the use.

"(5)(A) Except as provided in subparagraph (B), any use of refuge system lands in effect on the date of enactment of this subparagraph, that, before such date, was determined to be compatible under this section or the Act entitled 'An Act to assure continued fish and wildlife benefits from the national fish and wildlife conservation areas by authorizing their appropriate incidental or secondary use for public recreation to the extent that such use is compatible with the primary purposes of such areas, and for other purposes' (commonly known as the 'Refuge Recreation Act') (16 U.S.C. 460k et seq.), may be continued pursuant to the terms and conditions of any special-use permits, and applicable law, for the period of time specified in the permit.

"(B) Not later than 5 years after the date of enactment of this subparagraph, any use described in subparagraph (A) shall cease. Any permit for the use shall be revoked unless the Secretary, in consultation with the Director of the United States Fish and Wildlife Service, makes a determination, pursuant to the procedures established under this section, that the use is compatible with the purposes of the System and the refuge.

"(6) The Secretary shall, acting through the Director, by regulation, establish and maintain a formal process governing determinations of whether an existing or proposed new use in a refuge is compatible or incompatible with the purposes of the System and the refuge. The regulations shall provide for the expedited consideration of uses that the Secretary considers to have little or no adverse effects on the purposes of the System or a refuge, and shall—

"(A) designate the refuge officer initially responsible for compatibility and incompatibility determinations;

"(B) describe the biological, ecological, and other criteria to be used in making the determinations;

"(C) require that the determinations be made in writing and based on the best available scientific information;

"(D) establish procedures that ensure an opportunity for public review and comment with respect to the determinations;

"(E) designate the officer who shall hear and rule on appeals from initial determinations; and

"(F) provide for the reevaluation of a compatibility determination on a periodic basis or whenever the conditions under which the use is permitted change.

"(7) Except as provided in paragraph (8), the head of each Federal agency that, with respect to a refuge, has an equivalent or secondary jurisdiction with the Department of the Interior, or that conducts activities within any refuge, shall, in consultation with the Secretary, ensure that any actions authorized, funded, or carried out in whole or in part by the agency will not impair the resources of the refuge or be incompatible with the purposes of either the System or the refuge (unless the action is specifically authorized by law).

"(8) The President may find, on a case-by-case basis, that, with respect to a refuge, it is in the paramount interest of the United States to exempt the head of a Federal agency described in paragraph (7) from carrying out the requirements of paragraph (7).".

SEC. 6. SYSTEM CONSERVATION PLANNING PROGRAM.

(a) IN GENERAL.—Section 4 (16 U.S.C. 668dd) is amended—

(1) by redesignating subsections (e) through (i) as subsections (g) through (k), respectively; and

(2) by inserting after subsection (d) the following new subsections:

"(e)(1) Not later than September 30, 1994, the Secretary shall prepare, and subsequently revise not less frequently than every 10 years after the date of preparation, a comprehensive plan for the System.

"(2) The plan described in paragraph (1) shall include—

"(A) relevant elements of recovery plans required under section 4(f), of the Endangered Species Act of 1973 (16 U.S.C. 1533(f));

"(B) relevant summaries and compilations of refuge plans developed under this section and the relevant elements of migratory bird management plans;

"(C) a strategy and standards for maintaining healthy and abundant wildlife populations in the System and in each refuge ecotype or ecosystem (including the protection of zones for dispersal, migration, and other fish and wildlife movements, and the conservation of species designated as candidates for listing pursuant to section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533));

"(D) strategies, developed cooperatively with agencies administering other Federal or State land systems, to enhance wildlife protection on national wildlife refuges and other land systems which collec-

tively form a national network of wildlife habitats; and

"(E) a plan and program for the acquisition of lands and waters, including water rights, necessary to achieve the purposes of the System and each refuge.

"(f)(1) Except with respect to refuge lands in Alaska (which shall be governed by refuge planning provisions of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.)), the Secretary shall prepare, and subsequently revise not less frequently than every 15 years after the date of preparation, a comprehensive conservation plan (referred to in this subsection as a 'plan') for each refuge or ecologically related complex of refuges (referred to in this subsection as a 'planning unit') in the System. The Secretary shall revise any plan at any time thereafter on a determination that conditions that affect a planning unit have changed significantly.

"(2) In developing each plan under this subsection, the Secretary shall identify and describe—

"(A) the purposes of the refuge and the purposes of the System applicable to the refuge or the individual refuges of the planning unit;

"(B) fish, wildlife, and plant populations and habitats of the planning unit (including at the time of the development of the plan, current, historical, and potentially restorable populations and habitats) and the seasonal (and other) dependence of migratory fish and wildlife species on the habitats and resources of interrelated units of the System;

"(C) archeological, cultural, ecological, geological, historical, paleontological, physiographic, and wilderness values of the planning unit;

"(D) areas within the planning unit that are suitable for use as administrative sites or visitor facilities or for visitor services;

"(E) significant problems, including water quantity and quality needs (within or without the boundaries of the refuge or complex) that may adversely affect the natural diversity, communities, health, or abundance of populations or habitats of fish, wildlife, and plants;

"(F) existing boundaries of each refuge in the planning unit in relation to ecosystem boundaries and wildlife dispersal and migration patterns; and

"(G) specific strategies, developed cooperatively with the heads of agencies administering other Federal and State lands, to enhance wildlife protection in the planning unit, and, to the extent practicable,

on other Federal and State lands proximate to the planning unit.

"(3) Each plan under this subsection shall—

"(A) designate each area within the planning unit according to the archeological, cultural, ecological, geological, historical, paleontological, physiographic, and wilderness values of the area;

"(B) specify the uses within each of the areas referred to in subparagraph (A) that may be compatible with the purposes of the refuge and the System and the funds and personnel that may be required to administer the uses;

"(C) specify programs for achieving the purposes described in paragraph (2)(A) and for conserving, restoring, and maintaining the resources and values identified and described under subparagraphs (B) and (C) of paragraph (2);

"(D) specify the approaches to be taken to avoid or overcome the problems identified in paragraph (2)(E) and estimate resource commitments required to implement the approaches;

"(E) specify opportunities that may be provided within the planning unit for compatible fish and wildlife related recreation, ecological research, environmental education, and interpretation of refuge resources and values;

"(F) except with respect to Alaska refuges studied pursuant to section 1317 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3205), review the suitability for designation as wilderness refuge lands not previously studied for designation as wilderness or designated as wilderness, and recommend to the President and Congress designation for the lands in accordance with subsections (c) and (d) of section 3 of the Wilderness Act (16 U.S.C. 1132 (c) and (d), respectively), including—

"(i) islands and areas of 200 acres or more immediately adjacent to wilderness areas (as designated at the time of the review);

"(ii) lands recommended (before the time of the review) for inclusion in the Wilderness Preservation System; and

"(iii) proposed land acquisitions by the Department of the Interior that the Secretary determines will, over time, be of an area of approximately 5,000 contiguous acres; and

"(G) identify the funds and personnel necessary to implement the strategies and administer the uses identified in this section.

"(4) In preparing each plan under this subsection, and any revision of the plan, the Secretary shall consult with such heads of Federal agencies and State departments and agencies as the Secretary determines to be appropriate.

"(5) Prior to the adoption of a plan under this subsection, the Secretary shall issue public notice of the draft proposed plan in the Federal Register, make copies of the plan available at each regional office of the United States Fish and Wildlife Service, and provide opportunity for public comment.

"(6)(A) By not later than 4 years after the date of enactment of this subsection, the Secretary shall, pursuant to this subsection, prepare and submit to the appropriate committees of Congress, plans for not less than one-third of the refuges in existence on the date of enactment of this subsection.

"(B) By not later than 7 years after the date of enactment of this subsection, the Secretary shall, pursuant to this subsection, prepare and submit to the appropriate committees of Congress, plans for not less than two-thirds of the refuges in existence on the date of enactment of this subsection.

"(C) By not later than 10 years after the date of enactment of this subsection, the Secretary shall, pursuant to this subsection, prepare and submit to the appropriate committees of Congress, plans for each refuge in existence on the date of enactment of this subsection.

"(D) With respect to any refuge established after the date of enactment of this subsection, the Secretary shall prepare a plan for the refuge not later than 2 years after the date of the establishment of the refuge.".

SEC. 7. ADMINISTRATION.

The Secretary of the Interior shall manage the refuges in the National Wildlife Refuge System in a manner consistent with any refuge conservation plans developed under section 4 of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd), as amended by this Act.

SEC. 8. REGULATIONS.

Except as otherwise required in this Act, the Secretary of the Interior shall—

(1) not later than 1 year after the date of enactment of this Act, propose regulations to carry out this Act and the amendments made by this Act; and

(2) not later than 18 months after the date of enactment of this Act, promulgate final regulations to carry out this Act and the amendments made by this Act.

SEC. 9. CONFORMING AMENDMENT.

Section 4 (16 U.S.C. 668dd) is amended by striking "Secretary of the Interior" each place it appears and inserting "Secretary".

SEC. 10. EMERGENCY POWER.

The Secretary of the Interior is authorized to suspend any activity conducted in any refuge in the National Wildlife Refuge System in the event of an emergency that constitutes an imminent danger to the health and safety of any wildlife population, or refuge, or to public health and safety.

SEC. 11. STATUTORY CONSTRUCTION.

Except as specifically provided in this Act or the amendments made by this Act, nothing in this Act or the amendments made by this Act shall be construed so as to alter or otherwise affect the act commonly known as the Refuge Recreation Act of 1962 (16 U.S.C. 460k et seq.), the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), or any other law or order establishing individual refuges in effect on the date of enactment of this Act.

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act and the amendments made by this Act.

DRAFT

[DRAFT Letter to Senator Kerry of the Senate Housing and Urban Affairs Subcommittee]

Dear Senator Kerry:

The Administration strongly supports S. 1405, the "National Flood Insurance Reform Act of 1993," and appreciates your efforts to address this complex and crucial subject. S. 1405 would strengthen participation in the National Flood Insurance Program (NFIP), which will provide more protection for flood-prone structures and lower Federal disaster assistance payments. The bill provides greater emphasis on, and incentives for, mitigation.

The Administration agrees with your goal of limiting Federal assistance that encourages development in high-risk erosion areas. We believe that the best way to achieve this goal is to rely on market forces by charging the full actuarial cost of such insurance. This could be accomplished voluntarily or through mandating the purchase of flood insurance for all structures in erosion hazard areas.

The Administration prefers to build upon current law and other provisions in S. 1405 to require flood insurance at actuarial rates for any new construction or substantial extensions of existing structures. Relying on insurance premiums to accomplish the goal of reducing development in high-risk areas has two attractions. First, it clearly forces the policyholder to pay the full cost of this Federal benefit, thus eliminating any Federal subsidy. Second, it does not deny insurance for new construction for existing property owners, but forces them to pay the full cost. We believe this approach is preferable to that in S. 1405.

The Administration would appreciate the opportunity to work with you and the Committee to strengthen the NFIP. We believe the suggested revisions to S. 1405 will help to discourage unwise development in erosion hazard areas, thereby reducing, over the long run, government expenditures for disaster relief. We look forward to working with you as S. 1405 continues through the legislative process.

[To be jointly signed by Commerce and FEMA.]

3 PAGES

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

September 21, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-1298

TO: Legislative Liaison Officer -

COMMERCE - Michael A. Levitt - (202)482-3086 - 324
INTERIOR - Danny Consenstein - (202)208-6706 - 329
JUSTICE - Sheila F. Anthony - (202)514-2141 - 217
TREASURY - Richard S. Carro - (202)622-1146 - 228
CEA - Francine Obermiller - (202)395-5036 - 242
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EPA - Thomas C. Roberts - (202)260-5414 - 326
FEMA - Spence W. Perry - (202)646-4105 - 327
NEC - Sonia Mathews - (202)456-6722 - 429

FROM: JAMES J. JUKES (for) J Weinberg for Jim Jukes
Assistant Director for Legislative Reference

OMB CONTACT: Jeffrey WEINBERG (395-3457)
Secretary's line (for simple responses): 395-3454

SUBJECT: Proposed Report RE: S 1405, National Flood Insurance Reform Act

DEADLINE: NOON September 22, 1993

COMMENTS: S 1405 is expected to be marked up on Tuesday, Sept. 28th.

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
Howard Paster
Katie McGinty/Will Stelle
Ken Ryder
Steve Redburn
Chris Heiser
Jim Jordan
Ken Schwartz
Cora Beebe
Jeff Payne
Ron Cogswell
Bruce Long
Jennifer Palmieri
Margaret Shaw
Paul Carey

OFFICE OF MANAGEMENT AND BUDGET
WATER RESOURCES BRANCH
Telecopier Cover Sheet
Fax Number 202-395-4652 / Office Number 202-395-4590

Date: September 23, 1993

Please deliver the following page(s) to:

Bob Stearns	DOD/CORPS
✓ Oleta Fitzgerald	USDA
Richard Krimm	FEMA
Michele Altemus	DOI/FWS
David Davis	EPA/OWOW
Michael Huerta	DOT

cc:	Katie McGinty	WH/OEP
	William Stelle	WH/OEP
	T.J. Glauthier	OMB
	Chris Edley	OMB
	Kathi Way	DPD
	Brian Burke	DPC
	Mark Schaefer	OSTP
	Ron Cogswell	OMB
	Bruce Long	OMB
	Mark Weatherly	OMB
	Stuart Kasdin	OMB
	Scott Cameron	OMB
	Chris Heiser	OMB
	Kevin Neyland	OMB

Attached is draft SCS guidance -- policy for repair of levees -- as promised at the Task Force meeting yesterday. You may provide additional copies of the draft guidance to others in your organization who may have an interest. Please review the draft guidance and provide your comments **by noon Friday** to either Bruce Long or Jim Kazel (202-395-4590, fax 202-395-4652).

Nine pages are attached.

Will —
Please let me know your comments so my files will be complete. I imagine you'll need to call them yourself on this one. Thanks Troy

DRAFT

Issue:

Policies and procedures to determine jurisdiction, eligibility and priorities for the repair of levees under the Emergency Supplemental Appropriations for Relief from the Major, Widespread Flooding in the Midwest Act of 1993.

Background:

In 1986 the Soil Conservation Service (SCS) and the United States Army Corps of Engineers (USACE) agreed in a Memorandum of Agreement (MOA), Appendix J, Emergency Watershed Program, National Watersheds Manual, to coordinate their activities as they relate to emergency assistance in the restoration of water control facilities damaged by flood. This included the several levees damaged by the recent Midwest flood. One of the areas of agreement in the MOA was that the main stem levees would be the responsibility of the USACE. In the case of the current Midwest flood this would include the Upper Mississippi River and its major river tributaries. In a like manner the small watersheds up stream of the main stem levees would be the responsibility of SCS.

In implementing this MOA we have agreed with the USACE that we will not assist with the repair of main stem levees unless the USACE or the local levee sponsors request SCS to do so, and then only after SCS consults with the USACE and becomes fully aware of all the issues involving the levee. SCS will consult with and consider input from all of the Agencies on the State Disaster Field Office (DSO) levee team before making a decision. SCS will advise USACE and the DFO levee team of the compelling reasons for their decision to repair or not to repair a main stem levee. USACE will use a similar process for non-main stem levees that they may be asked to work on.

The Emergency Supplemental Appropriations for Relief from the Major, Widespread Flooding in the Midwest Act of 1993 states, "Provided further, that if the Secretary determines that the cost of land and levee restoration exceeds the fair market value of an affected cropland, the secretary may use sufficient amounts from funds provided under this head to accept bids from willing sellers to enroll such cropland inundated by the Midwest floods of 1993 in any of the affected states in the Wetlands Reserve Program as authorized by Sub-chapter C of Chapter 1 of Subtitle D of Title XII of the Food Security Act of 1985 (16 U.S.C. 3837)." Page 6 of the Senate Committee on Appropriations Report on the Act states, "In addition, the request would allow the Secretary of Agriculture to accept bids from willing sellers to enroll cropland into the Wetlands Reserve Program if the cost of restoring the cropland and rebuilding levees exceeds the fair market value of the affected cropland".

It is important that the approach the levee review team uses to suggest non-structural alternatives is one that will not be misunderstood by the owner and will have the best chance of acceptance, particularly by the owner who has been denied Federal assistance to repair a levee. If a member of the levee review team believes that a levee repair project is a candidate for a non-structural alternative, the entire team should consider that matter prior to, or immediately after, the responsible agency conducts the initial inspection of the levee with the owner. The team leader, or his designee, should inquire about the owner's interest in an alternative at the earliest possible time, explaining the advantages of such an approach. Before contacting the owner, the relevant agency must be sure that the program it is suggesting is authorized and funded, where appropriate. With the full participation of the owner, the levee review team will examine whether the owner is an eligible applicant for the proposed alternative(s). The owner should be provided all relevant information and literature regarding the alternative(s) and the levee review team should make itself available for additional meetings with the owner if requested. The levee review team must follow-up with the owner regarding alternatives and relevant information must be entered into the levee database. The levee review team members will continue to advise and assist landowners who wish to pursue construction, with the approval of the levee district or landowner, to allow for application and decision on non-structural alternatives.

Disputes among team members may arise concerning any aspect of levee repair coordination process. The DFO team should make every effort to resolve disputes among themselves. If the team is unable to resolve differences, the FCO should mediate the issue. The FCO may consult with the Interagency Levee Rehabilitation Task Force in Washington before mediating the issue.

Since many of the damaged levees protect improvements, such as transportation facilities, utilities, homes, commercial and industrial property, etc., besides cropland, these improvements must be taken into consideration when determining whether or not to repair a damaged levee. Therefore, it is not possible to determine if a specific levee will be repaired based solely on the most cost-effective approach for the reclamation and further protection of cropland.

Recommended Policies:

1. Levees will be eligible for repair when:
   - A. There is a potential for loss of life.
   - B. The potential damage to improvements other

than cropland, such as transportation facilities, utilities, homes, commercial and industrial property, exceeds the cost of levee repair.

C. The potential damage to improvements other than cropland and the fair market value of the cropland which does not need reclamation exceeds the cost of levee repair.

2. Levees will not be eligible for repair when the cost of the levee repair and the cost of cropland reclamation exceeds the fair market value of all cropland and the potential damages to other improvements such as transportation, facilities, utilities, homes, commercial and industrial properties unless there is a danger of loss of life.

3. Fair market value for cropland to be used for comparison with reclamation cost will be determined based on post-flood as if reclaimed conditions.

4. Cropland reclamation cost will include all individual, corporate, and governmental expenditures or values for the following items:

A. Cost to remove or replace material within a field.

B. Cost of disposal or borrow areas.

C. Cost to mix material in a field.

D. Cost to repair field roads, stream crossings, fences, conservation practices, and any other farm infrastructure.

E. Cost to restore drainage facilities.

F. Cost to restore fertility.

G. Technical assistance.

5. Levee repair cost will include all individual, corporate, and governmental expenditures or values for the following items:

A. Cost of construction.

B. Cost of disposal or borrow areas.

C. Technical assistance.

6. Environmental and wetlands.

The requirements of Part 509.32 of the National Watersheds Manual, the guidelines contained in the August 23, 1993, memorandum from OMB and the White House Office of Environmental Policy, and any applicable federal, state, or local regulations will be followed. This is to include 404 and FSA requirements. Wetland and cultural resource determinations will be made on all tracts on which construction will take place. This determination will be made during the original field review of the site and will be considered before assistance is provided.

7. Priority Rating System

To establish the priority for determining assistance each state shall have a priority ranking system. Suggested evaluation elements are:

A. Risk to life or property ---------------------- 50
   1. Loss of Life -------------------------- 50
   2. Property only ------------------------- 10

B. Past Performance of Sponsors ------------------ 10
   1. Fulfilled all local responsibilities in a timely manner or have not sponsored past project ---------------- 10
   2. Fulfilled most local responsibilities in a timely manner ---- 5
   3. Did not fulfill some local responsibilities ---------------------- 0

C. Past record of sponsors' O&M ------------------- 10

1. Have taken advantage of past programs ------------------------------ 10
2. Have performed normal O&M -------------- 5
3. Have not performed O&M ---------------- 0

D. Economic defensibility ------------------------ 10

1. Value of property at risk is equal to or greater than ten times the cost of repair -------------------------------- 10
2. Value of property at risk is equal to or greater than five times the cost of repair ------------------------------ 5
3. Value of property at risk is equal to or greater than the cost of repair -------- 1

E. Environmental impact ---------------------------- 10

1. None ---------------------------------- 10
2. Slight ---------------------------------- 7
3. Moderate ------------------------------- 3
4. Major ---------------------------------- 0

F. Local rules and regulations --------------------- 10

1. In place, good enforcement ------------ 10
2. In place, lax enforcement ------------- 5
3. None in place -------------------------- 0

Total possible -- 100

8. Timetables

A. Levee Repair

(1) All requests for assistance must be received by November 15, 1993

(2) Damage survey reports which will include a wetland determination must be completed by November 30, 1993.

(3) Determine eligibility for repair by December 1, 1993.

(4) Priority listing for eligible sites must be Completed by December 15, 1993.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

September 29, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-1356

TO: Legislative Liaison Officer -

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NASA - Jeff Lawrence - (202)358-1948 - 219
NEC - Sonia Mathews - (202)456-6722 - 429
NSC - William H. Itoh - (202)395-3723 - 249
TRANSPORTATION - Tom Herlihy - (202)366-4687 - 326

FROM: RONALD K. PETERSON (for) Ronald K. Peterson
Assistant Director for Legislative Reference

OMB CONTACT: MIKE GOAD (395-7301)
Secretary's line (for simple responses): 395-6194

SUBJECT: Congressional Draft Bill RE: S 823, National Wildlife Refuge System Management and Policy Act

DEADLINE: 12:00 NOON, WEDNESDAY, October 6, 1993

COMMENTS: The attached may be offered as a substitute amendment to S. 823. Please review and advise if the substitute amendment addresses the concerns of your agency.

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
S. Cameron
L. Haber
J. Palmieri
H. Paster
K. McGinty

Preliminary Discussion Draft 9/28/93

AMENDMENT NO. ____ Calendar No. ____

Purpose: To provide a complete substitute.

IN THE SENATE OF THE UNITED STATES—103d Cong., 1st Sess.

S. 823

To amend the National Wildlife Refuge System Administration Act of 1966 to improve the management of the National Wildlife Refuge System, and for other purposes.

Referred to the Committee on ________________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. GRAHAM

Viz:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "National Wildlife Refuge System Management and Policy Act of 1993".

(b) REFERENCES.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or provision of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.).

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the National Wildlife Refuge System (referred to in this section as the "System") was established under the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.);

(2) such Act consolidates the authorities related to lands, waters, and interests in the lands and waters, administered by the Secretary of the Interior (referred to in this section as the "Secretary"), that promote the conservation of fish and wildlife;

(3) the System provides opportunities for individuals to participate in wildlife-oriented recreation, and to learn, understand, and appreciate the value of and need for conserving fish and wildlife, wild lands, and productive ecological communities, types, and systems;

(4) the System is the only complex of Federal lands devoted primarily to preserving, restoring, and managing fish and wildlife and the habitats of fish and wildlife;

DRAFT

(5) national wildlife refuges provide habitat for many endangered and threatened species, and for species that may become endangered or threatened, as well as for other fish, wildlife, and plants;

(6) the well-being and abundance of fish, wildlife, and plants would be diminished without the protected habitat of the System;

(7) activities are occurring on a significant number of national wildlife refuges that result in harm to the fish, wildlife, and plant resources that the System was designed to conserve;

(8) improvements are needed in the administration and management of the System to ensure that sound and effective conservation programs for the System are developed, implemented, and enforced;

(9) proper management of the System is part of and should be integrated with nationwide efforts to manage Federal trust fish and wildlife resources; and

(10) the protection and enhancement of the ecological integrity of the System and components of the System require effective coordination, interaction, and cooperation with entities other than the United States Fish and Wildlife Service.

(b) PURPOSES.—The purposes of this Act are—

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(1) to reaffirm the provisions of Public Law 87–714 (commonly known as the "Refuge Recreation Act") (16 U.S.C. 460k et seq.) that authorize the Secretary to permit compatible fish and wildlife-oriented public recreation, such as hunting, fishing, and wildlife observation, on refuges;

(2) to improve the administration and management of the System;

(3) to establish purposes for the System;

(4) to improve the compatibility determination process for the System;

(5) to enhance comprehensive planning for the System and individual wildlife refuges of the System; and

(6) to provide for interagency coordination in conserving refuge resources.

SEC. 3. DEFINITIONS.

(a) IN GENERAL.—Section 5 (16 U.S.C. 668ee) is amended—

(1) by redesignating subsection (a) as subsection (d);

(2) by redesignating subsection (b) as subsection (k);

(3) by redesignating subsection (c) as subsection (i) and moving such subsection to appear

DRAFT

after subsection (d) (as redesignated by paragraph (1));

(4) by inserting before subsection (d) (as redesignated by paragraph (1)) the following new subsections:

"(a) The term 'Coordination Area' as used in this Act means a wildlife management area that has been withdrawn from the public domain or acquired by the Federal Government and subsequently made available to a State by—

"(1) a cooperative agreement between the United States Fish and Wildlife Service and a State fish and wildlife agency entered into pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.); or

"(2) a long-term lease or agreement entered into pursuant to the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1000 et seq.).

"(b) The term 'Director' as used in this Act means the Director of the United States Fish and Wildlife Service.

"(c) The terms 'fish', 'wildlife', and 'fish and wildlife' as used in this Act mean any wild member of the animal kingdom whether alive or dead, and regardless of whether

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the member was bred, hatched, or born in captivity, including a part, product, egg, or offspring of the member.";

(5) by inserting before subsection (i) (as redesignated and moved by paragraph (3)) the following new subsections:

"(e) The term 'plant' as used in this Act means any member of the plant kingdom in a wild, unconfined state, including any plant community, seed, root, or other part of a plant.

"(f) The term 'purposes of the refuge' as used in this Act means the purposes that are specified in—

"(1) the Act establishing or authorizing the establishment of an individual unit of the System; and

"(2) any administrative order or action that is used in the acquisition of land and the establishment of the unit.

"(g) The term 'refuge' as used in this Act means a unit of the National Wildlife Refuge System, except that the term does not include a Coordination Area.

"(h) The term 'Secretary' as used in this Act means the Secretary of the Interior (except as the context implies otherwise)."; and

(6) by inserting before subsection (k) (as redesignated by paragraph (2)) the following new subsection:

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"(j) The term 'System' as used in this Act means the National Wildlife Refuge System.".

(b) CONFORMING AMENDMENT.—Section 4 (16 U.S.C. 668dd) is amended by striking "Secretary of the Interior" each place it appears and inserting "Secretary".

SEC. 4. PURPOSES AND ADMINISTRATION OF THE SYSTEM.

Section 4(a) (16 U.S.C. 668dd(a)) is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (7) and (8), respectively;

(2) in clause (i) of paragraph (8) (as so redesignated), by striking "paragraph (2)" and inserting "paragraph (7)"; and

(3) by inserting after paragraph (1) the following new paragraphs:

"(2) The overall mission of the System is to provide a national network of lands and waters with a size, variety, and location that contribute to the protection of fish, wildlife, and plants of the United States, and the habitats of the fish, wildlife, and plants, for the benefit of present and future generations.

"(3) The purposes of the System are—

"(A) to provide productive and enduring food, water, and shelter to fish, wildlife, and plant communities and to ensure in perpetuity managed and naturally diverse populations of fish, wildlife, and

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plants and the ecological processes that sustain the populations;

"(B) to preserve, restore, and enhance species of fish, wildlife, and plants that are listed as threatened or endangered or are candidates for listing under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533);

"(C) to perpetuate migratory bird populations and anadromous or interjurisdictional fish resources;

"(D) to fulfill the international treaty obligations of the United States with respect to fish, wildlife, and plants, and the habitats of fish, wildlife, and plants; and

"(E) to provide wildlife oriented environmental education with respect to each refuge that is compatible with the purposes for which the refuge was established.

"(4) In administering the System for the purposes described in paragraph (3), the Secretary, acting through the Director, shall ensure that the System provides opportunity for wildlife-oriented recreation that is compatible with the purposes of the System.

"(5) If the Secretary finds that a conflict exists between the purposes of a refuge and any purpose set forth

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in paragraph (3), the Secretary shall resolve the conflict in a manner that fulfills the purposes of the refuge.

"(6) In administering the System for the purposes described in paragraph (3), the Secretary, acting through the Director, shall ensure that each refuge in the System is managed in such a manner as will preserve the refuge for the benefit of future generations. To the extent authorized by law, the Secretary shall—

"(A) protect each individual refuge and the System from threats to the ecological integrity of the refuge and the System;

"(B) assist in the maintenance of adequate water quantity and water quality to fulfill the purposes of the System and the purposes of each refuge; and

"(C) plan, propose, and direct the expansion of the System in the manner that is best designed to accomplish the purposes of the System and the purposes of each refuge and to contribute to the conservation of the ecosystems of the United States.".

SEC. 5. COMPATIBILITY STANDARDS AND PROCEDURES.

Section 4(d) (16 U.S.C. 668dd(d)) is amended by adding at the end the following new paragraphs:

"(3)(A) The Secretary shall, by regulation, establish a process to govern determinations of the compatibility of

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uses over which the Secretary has jurisdiction with the purposes of the refuge and the purposes of the System. The Secretary shall use the process to make determinations of compatibility required under this Act.

"(B) Not later than 18 months after the date of enactment of this paragraph, final regulations establishing the process referred to in subparagraph (A) shall be issued that shall—

"(i) with respect to each determination of compatibility, require that the time, location, manner, and purpose of the use be specified;

"(ii) include a description of the biological and ecological criteria to be used in making compatibility determinations, and the method by which both direct and indirect effects of a use will be considered;

"(iii) require that the compatibility determinations be made in writing and be based on the best available scientific information and the best professional judgment of the manager of the refuge;

"(iv) define a compatible use as a use that will not have a detrimental effect on the fulfillment of the purposes of the System or the refuge;

"(v) with respect to each recreational use not directly related to the primary purposes and functions of the refuge, require that a determination be

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made that funds are available for the development, management, or maintenance of the use pursuant to Public Law 87–714 (commonly known as the 'Refuge Recreation Act') (16 U.S.C. 460k et seq.);

"(vi) require reevaluation of all then current uses not less than biennially to ensure that the uses remain compatible with the purposes of the refuge and the System;

"(vii) provide for the elimination or modification of each then current incompatible use as soon as practicable after the determination that the use is not compatible;

"(viii) provide for the expedited consideration of each minor use that is likely to have no detrimental effect on the fulfillment of the purposes of the refuge or the System; and

"(ix) provide an opportunity for public review and comment on each use that has not been considered during public involvement associated with the development of a refuge plan.

"(4) To the maximum extent practicable, each Federal agency shall minimize and mitigate the adverse effects on the resources of a refuge that result from actions that the agency authorizes, funds, or carries out with respect to the resources.

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"(5) In the case of a refuge, or a portion of a refuge, primary jurisdiction over which is held by a Federal agency other than the United States Fish and Wildlife Service, the provisions of this Act relating to determinations of compatibility shall not apply to an action authorized, funded, or carried out by the agency.

"(6)(A) Except as provided in paragraph (7)(B) or by other law or agreement between an agency described in paragraph (5) and the Secretary, the provisions of this Act relating to determinations of compatibility shall not apply to an activity of a Federal agency within the airspace over a refuge.

"(B) Except as provided in paragraph (7)(B), not later than 1 year after the date of enactment of this paragraph, the Administrator of the Federal Aviation Administration and the Secretary of Defense shall enter into 1 or more agreements with the Secretary to ensure that public and agency use of airspace over each refuge is conducted in a manner that is designed to minimize the adverse effects of the use on the resources of the refuge.

"(7)(A) In consultation with the Secretary, the Secretary of Defense shall ensure that any activity authorized, funded, or carried out, in whole or in part, by any agency of the Department of Defense on the ground at the Cabeza Prieta National Wildlife Refuge in Arizona or

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the Desert National Wildlife Range in Nevada is compatible with the purposes of the System and the refuge.

"(B)(i) Not later than 1 year after the date of enactment of this paragraph, the Secretary of Defense shall enter into an agreement with the Secretary establishing procedures for review by the Secretary of all proposed and then current military uses of the airspace over the Cabeza Prieta National Wildlife Refuge and the Desert National Wildlife Range.

"(ii) If the Secretary determines, based on the best professional judgment as determined by the Secretary and available scientific data, that any then current or proposed military use of the airspace is likely to adversely impact refuge resources or the purposes of the System and the refuge, the Secretary shall recommend practicable measures to the Secretary of Defense to reasonably mitigate all adverse impacts of the use.

"(iii) Except as provided in subparagraph (C), a use of the airspace subject to recommendations under clause (ii) may not occur except pursuant to terms and conditions mutually acceptable to the Secretary and the Secretary of Defense.

"(C) If the President determines with respect to a refuge that it is in the paramount interest of the United States, in order to provide for the common defense and

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security, to exempt the Secretary of Defense from carrying out a recommendation of the Secretary made pursuant to subparagraph (B)(ii), the President may grant the exemption.".

SEC. 6. SYSTEM CONSERVATION PLANNING PROGRAM.

(a) IN GENERAL.—Section 4 (16 U.S.C. 668dd) is amended—

(1) by redesignating subsections (e) through (i) as subsections (g) through (k), respectively; and

(2) by inserting after subsection (d) the following new subsections:

"(e)(1) Not later than September 30, 1994, the Secretary shall prepare and publish in the Federal Register, and subsequently revise not less frequently than 10 years after the date of initial publication and every 10 years thereafter, a comprehensive plan for the System (referred to in this subsection as the 'System plan').

"(2) The System plan shall—

"(A) contain an analysis of various management alternatives for the System; and

"(B) set forth a strategy for maintaining healthy and abundant fish, wildlife, and plant populations in the System, including a conservation strategy for such endangered, threatened, and candidate species for listing under section 4 of the Endangered

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Species Act of 1973 (16 U.S.C. 1533) as are located on lands or waters within the System.

"(3) The Secretary shall manage the System in a manner consistent with the System plan.

"(f)(1)(A) Except with respect to refuge lands in Alaska (which shall be governed by the refuge planning provisions of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.)), the Secretary shall prepare and publish in the Federal Register, and subsequently revise not less frequently than 15 years after the date of initial publication and every 15 years thereafter, a comprehensive conservation plan (referred to in this subsection as a 'conservation plan') for each refuge, ecologically related complex, or administratively related complex of refuges (referred to in this subsection as a 'planning unit') in the System.

"(B) The Secretary shall manage each planning unit in a manner consistent with the conservation plan for the unit and shall revise a conservation plan at any time if the Secretary determines that conditions that affect a planning unit have changed significantly.

"(2) In developing each conservation plan under this subsection, the Secretary, acting through the Director, shall identify and describe—

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"(A) the purposes of each refuge that is the subject of the conservation plan and the purposes of the System;

"(B) the distribution, migration patterns, and abundance of fish, wildlife, and plant populations and the diversity of habitats and natural communities within a planning unit;

"(C) the ecological relationship between the planning unit and surrounding lands managed by entities other than the United States Fish and Wildlife Service;

"(D) the archaeological and cultural values of the planning unit;

"(E) such areas within the planning unit as are suitable for use as administrative sites or visitor facilities and the relationship between the areas and sensitive fish, wildlife, and plant habitats within the planning unit;

"(F) significant problems, including problems relating to water quantity and quality, that may affect the diversity, natural communities, health, or abundance of populations or habitats of fish, wildlife, and plants within the planning unit and the specific actions necessary to avoid or overcome the problems;

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"(G)(i) then current or potential allowed uses within the planning unit;

"(ii) the preferred location of the uses based on the avoidance of sensitive habitat; and

"(iii) an analysis of the compatibility of the uses with the purposes of the System and each refuge that is the subject of the conservation plan;

"(H) then current or proposed strategies to manage and enhance fish, wildlife, and plant populations and the habitats of the populations within the planning unit, including strategies to promote the conservation and recovery of species that are listed as threatened or endangered, or candidates for the listings, under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533);

"(I) the anticipated funds and staffing necessary to carry out the strategies and administer the uses proposed in the conservation plan; and

"(J) the opportunities that the planning unit would provide for fish- and wildlife-oriented recreation, ecological research, environmental education, and interpretation of the resources and values of the planning unit.

"(3)(A) Except with respect to refuges in Alaska reviewed pursuant to section 1317 of the Alaska National

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Interest Lands Conservation Act (16 U.S.C. 3205), in carrying out this section, the Secretary shall—

"(i) review the suitability for designation as wilderness such refuge lands (including lands described in subparagraph (B)) as were not previously studied for designation as wilderness or designated as wilderness; and

"(ii) recommend to the President and Congress designation for the lands in accordance with subsections (c) and (d) of section 3 of the Wilderness Act (16 U.S.C. 1132).

"(B) The lands referred to in subparagraph (A) include—

"(i) islands and areas of 200 acres or more immediately adjacent to wilderness areas (as designated at the time of the review);

"(ii) lands recommended (before the time of the review) for inclusion in the Wilderness Preservation System established under such Act; and

"(iii) proposed land acquisitions by the Department of the Interior that the Secretary determines will, over time, be of an area of approximately 5,000 contiguous acres.

"(4) In preparing each conservation plan under this subsection, and any revision of a conservation plan, the

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Secretary, acting through the Director, shall, to the maximum extent practicable, consult with other adjacent or potentially affected Federal, State, and private landowners as well as affected State conservation agencies.

"(5)(A) In accordance with subparagraph (B), the Secretary shall develop and implement a process to ensure an opportunity for active public involvement in the preparation of conservation plans under this subsection.

"(B) Prior to the adoption of each conservation plan, the Secretary shall issue public notice of the draft proposed conservation plan, make copies of the conservation plan available at the affected field and regional offices of the United States Fish and Wildlife Service, and provide opportunity for public comment.

"(6) Not later than 1 year after the date of enactment of this paragraph, the Secretary shall—

"(A) evaluate all refuge plans in existence on the date of enactment of this paragraph to determine if the plans satisfy this subsection; and

"(B) prepare and submit to the appropriate committees of Congress—

"(i) a list of acceptable plans; and

"(ii) a proposed schedule for the revision of existing refuge plans or development of new conservation plans under which conservation

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plans for all refuges and planning units will be completed not later than 10 years after the date of enactment of this paragraph.

"(7) With respect to any refuge established after the date of enactment of this paragraph, the Secretary shall prepare a conservation plan for the refuge or planning unit not later than 2 years after the Secretary has determined that sufficient land has been acquired to warrant comprehensive planning.".

SEC. 7. EMERGENCY POWER.

The Secretary of the Interior is authorized to suspend any activity conducted in a refuge in the National Wildlife Refuge System in the event of an emergency that constitutes an imminent danger to the health and safety of any wildlife population or refuge, or to public health and safety.

SEC. 8. STATUTORY CONSTRUCTION.

Except as specifically provided in this Act or the amendments made by this Act, nothing in this Act or the amendments made by this Act shall be construed so as to alter or otherwise affect—

(1) Public Law 87–714 (commonly known as the "Refuge Recreation Act") (16 U.S.C. 460k et seq.);

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(2) the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.);

(3) the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.); or

(4) any other law or order establishing individual refuges in effect on the date of enactment of this Act.

SEC. 9. REGULATIONS.

Except as otherwise required in this Act, the Secretary of the Interior shall—

(1) not later than 1 year after the date of enactment of this Act, propose regulations to carry out this Act and the amendments made by this Act; and

(2) not later than 18 months after the date of enactment of this Act, promulgate final regulations to carry out this Act and the amendments made by this Act.

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SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act and the amendments made by this Act.

URGENT

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

URGENT

November 8, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-1638

TO: Legislative Liaison Officer -

AGRIC-CR - Hal Gross (all testimony) - (202)720-7095 - 230
COMMERCE - Michael A. Levitt - (202)482-3086 - 324
USTR - Fred Montgomery - (202)395-3475 - 223
LABOR - Robert A. Shapiro - (202)219-8201 - 330
TREASURY - Richard S. Carro - (202)622-1146 - 228
STATE - Julia C. Norton - (202)647-4463 - 225
NSC - William H. Itoh - (202)395-3723 - 249
NEC - Sonyia Matthews - (202)456-6722 - 429
ENERGY - Bob Rabben - (202)586-6718 - 209
EPA - Thomas C. Roberts - (202)260-5414 - 326
HHS - Frances White - (202)690-7760 - 328
INTERIOR - Danny Consenstein - (202)208-6706 - 329
JUSTICE - Sheila F. Anthony - (202)514-2141 - 217
TRANSPORTATION - Tom Herlihy - (202)366-4687 - 226
CEA - Francine Obermiller - (202)395-5036 - 242
SBA - Christine Swedin - (202)205-6702 - 315
GSA - William R. Ratchford - (202)501-0563 - 237

FROM: RONALD K. PETERSON (for) Ronald K. Peterson
Assistant Director for Legislative Reference

OMB CONTACT: Annette ROONEY (395-7300)
Secretary's line (for simple responses): 395-6194

SUBJECT: Proposed Statement of Administration Policy
RE: HR 3450, North American Free Trade Agreement Implementation Act of 1993

DEADLINE: NOON, WEDNESDAY November 10, 1993

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:

K. Kizer	J. Palmieri
B. Tuccillo	L. Fernandez
D. Heath	H. Paster
L. Matlack	K. McGinty
P. Young	M. Foley
A. Stigile	B. Anderson
G. Adams	B. Dowes
D. DuSault	

FAX 4 pgs

November 8, 1993
(House Rules)

H.R. 3450 - North American Free Trade Agreement
Implementation Act
(Rostenkowski (D) IL and Archer (R) TX)

The Administration strongly supports H.R. 3450, which will implement the North American Free Trade Agreement (NAFTA) as entered into on December 17, 1992 by the United States, Canada, and Mexico.

For decades, the United States has enjoyed a bipartisan consensus on behalf of a free and open trading system. Administrations of both parties have negotiated, and Congresses have approved, agreements that lower tariffs and expand opportunities for American workers and American firms to export their products overseas. The result has been economic growth and more jobs here at home.

With the end of the Cold War and the growing significance of the global economy, we have to expand our access to foreign markets to give our workers and companies, which are increasingly dependent on trade, new opportunities. Our ability to tear down trade barriers around the world, and our resistance to the temptation to retreat behind trade barriers, are the keys to our future economic success.

NAFTA will create a tariff free zone from the Canadian Arctic to the Mexican Tropics that will be the largest market in the world -- more than 370 million consumers and over $6.5 trillion of production. By eliminating Mexican tariffs, which are two and a half times larger than U.S. tariffs, as well as non-tariff barriers, it will level the playing field for U.S. workers. It will increase U.S. exports, creating an estimated 200,000 jobs by 1995.

Mexico is a rapidly growing country with an expanding middle class and a large pent-up demand for goods. U.S. companies are poised to take advantage of the market of 90 million people. NAFTA ensures that Mexico's reforms of recent years will take root, and then flower.

NAFTA is accompanied by supplemental agreements, which the United States, Mexico, and Canada signed on September 14. These help ensure that increased trade does not come at the cost of our workers or the border environment. Never before has a trade agreement provided for such comprehensive arrangements to raise the living standards of workers or to improve the environmental quality of an entire region. This makes NAFTA not only a stimulus for economic growth, but a force for social good.

America is a Nation built on hope and renewal. By approving this agreement, Congress will honor that tradition and prepare us for the challenges that face us today -- and tomorrow.

Pay-As-You-Go Scoring

H.R. 3450 would affect receipts and direct spending; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act (OBRA) of 1990. OMB's preliminary scoring estimate of this bill are presented in the table below. Final scoring of this legislation may deviate from this estimate. If H.R. 3450 were enacted, final OMB scoring estimates would be published within 5 days of enactment, as required by OBRA. The cumulative effects of all enacted legislation on direct spending and receipts will be reported at the end of the Congressional session, as required by OBRA.

[PAYGO TABLE TO BE ADDED]

* * * * *

McGinty

SPECIAL

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

October 18, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-1465

TO: Legislative Liaison Officer -

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INTERIOR - Danny Consenstein - (202)208-6706 - 329
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GSA - William R. Ratchford - (202)501-0563 - 237
NEC - Sonia Mathews - (202)456-6722 - 429
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SBA - Christine Swedin - (202)205-6702 - 315

FROM: RONALD K. PETERSON (for) Ronald K. Peterson
Assistant Director for Legislative Reference

OMB CONTACT: **Holly FITTER (395-3233)**
Secretary's line (for simple responses): 395-6194
Pam BARR (395-5852)

SUBJECT: OMB Request for Views RE: S 1547, Safe Drinking Water Act Amendments of 1993

DEADLINE: **10:00 AM October 22, 1993**

COMMENTS: S 1547 is printed in Part II of the October 14, 1993, Congressional Record beginning on page S 13496. Please review the bill and provide comments which will be shared with EPA. EPA will be testifying on the bill before the Senate Environment and Public Works Committee within the next two weeks.

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

FAX 2 pgs

cc:
A. Fraas
A. Kolaian
S. Redburn
H. Paster
K. McGinty
C. Walden/B. Burke
C. Sloan
B. Damus

contingent upon the appellant prevailing.

Under section 5904(d), an attorney has the distinct benefit of receiving the fee for representation directly from VA out of any retroactive benefit award the appellant receives. In a successful case, the attorney is assured of actually receiving payment of the fee, and relieved of having to confront any collection difficulties. However, the benefit comes with a price; the statute requires that any agreement calling for this direct payment must provide that the fee is to be paid on a contingency basis. In other words, the appellant must prevail in order for the attorney to receive payment.

In the Smith case, however, the court held that the statutory provision applied even though the fee agreement in that case required the appellant to pay a fixed fee and also provided that an amount would be paid directly by VA out of any retroactive award the appellant might receive. Thus, the agreement did not provide for a true contingency fee, but rather a hybrid fee—a partially fixed, partially contingent fee. A true contingency fee agreement does not require payment of any fixed fee.

Mr. President, section 5 would amend section 5904(d) to clarify that if a fee agreement requires direct payment to the attorney from VA, the total amount of the fee must be contingent upon whether or not the appellant's claim is successfully resolved.

CONCLUSION

Mr. President, this legislation would allow the Court of Veterans Appeals to fulfill more effectively its responsibility under the VJRA and ease certain unnecessary restrictions on potential appellants. I intend to bring this legislation before the committee at a mark up later this month and look forward to working with my colleagues on the Senate and House Veterans' Affairs Committees on this measure. I pledge to do all I can to see it enacted as soon as possible. I urge all of my Senate colleagues to support this bill.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1546

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Court of Veterans Appeals Improvement Act of 1993".

SEC. 2. CONFIRMATION OF CHIEF JUDGE.

Section 7253(b) of title 38, United States Code, is amended by striking out "The judges" and inserting in lieu thereof "The chief judge and the associate judges".

SEC. 3. MAILING OF NOTICES OF APPEAL TO THE COURT OF VETERANS APPEALS.

(a) IN GENERAL.—Section 7266(a) of title 38, United States Code, is amended to read as follows:

"(a)(1) In order to obtain review by the Court of Veterans Appeals of a final decision of the Board of Veterans' Appeals, a person adversely affected by such decision shall file a notice of appeal with the Court within 120 days after the date on which notice of the decision is mailed pursuant to section 7104(e) of this title.

"(2) An appellant shall file a notice of appeal under this section by delivering or mailing the notice to the Court.

"(3) A notice of appeal shall be deemed to be received by the Court as follows:

"(A) On the date of receipt by the Court, if the notice is delivered.

"(B) On the date of the United States Post Service postmark stamped on the cover in which the notice is posted, if the notice is mailed.

"(4) For a notice of appeal mailed to the Court to be deemed to be received under paragraph (3)(B) on a particular date, the United States Postal Service postmark on the cover in which the notice is posted must be legible. The Court shall determine the legibility of any such postmark and the Court's determination as to legibility shall be final and not subject to review by any other Court.".

(b) APPLICATION.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to notices of appeal that are delivered or mailed to the United States Court of Veterans Appeals on or after that date.

SEC. 4. AVAILABILITY OF REVIEW BY COURT OF VETERANS APPEALS.

(a) AVAILABILITY.—Section 402 of the Veterans' Judicial Review Act (38 U.S.C. 7251 note) is amended by striking out "in which a notice of disagreement" and all that follows through the end of the section and inserting in lieu thereof "in which the Board of Veterans' Appeals makes a final decision under section 7104 of title 38, United States Code, on or after November 18, 1988.".

(b) EFFECTIVE DATE.—(1) The amendment made by subsection (a) shall take effect as of November 18, 1988, and apply to cases in which the Board of Veterans' Appeals makes a final decision under section 7104 of title 38, United States Code, on or after that date.

(2)(A) Notwithstanding paragraph (1), a person referred to in subparagraph (B) shall be entitled to obtain review by the Court of Veterans Appeals of a final decision referred to in clause (ii) of that subparagraph if the person files a notice of appeal with the Court of Veterans Appeals with respect to that decision not later than 180 days after the notification date referred to in subparagraph (C).

(B) Subparagraph (A) applies to a person who—

(i) filed a notice of disagreement with the Board of Veterans' Appeals before November 18, 1988; and

(ii) received a final decision by the Board on the matter subject to the notice of disagreement on or after such date.

(C) The Secretary of Veterans Affairs shall, to the maximum extent practicable, notify each person referred to in subparagraph (B) of the eligibility of the person to file a notice of appeal with the Court under subparagraph (A). The date of such notification shall be deemed to be—

(i) the date of such notification, in the case of actual notification; or

(ii) the date of the postmark stamped on the cover in which the notification is posted, if the notice is mailed.

SEC. 5. CLARIFICATION OF PAYMENT OF ATTORNEY FEES UNDER CONTINGENT FEE AGREEMENTS.

Section 5904(d)(2)(A) of title 38, United States Code, is amended to read as follows:

"(A) A fee agreement referred to in paragraph (1) of this subsection is one under which the total amount of the fee payable to the attorney (i) is to be paid to the attorney by the Secretary directly from any past-due benefits awarded on the basis of the claim, and (ii) is contingent on whether or not the matter is resolved in a manner favorable to the claimant.".●

By Mr. BAUCUS:

S. 1547. A bill to reauthorize and amend title XIV of the Public Health Service Act, commonly known as the Safe Drinking Water Act, and for other purposes; to the Committee on Environment and Public Works.

SAFE DRINKING WATER ACT AMENDMENTS OF 1993

Mr. BAUCUS. Mr. President, today I introduce legislation that will revise and improve the Safe Drinking Water Act.

Safe drinking water is a fundamental right. For nearly two decades, the Safe Drinking Water Act has guaranteed this right to the people, while guiding Federal, State, and local officials in their efforts to provide clean and pure water.

PROBLEMS WITH SAFE DRINKING WATER ACT

In the past several years, however, serious problems with the law have surfaced. On one hand, it is not effective enough in guaranteeing water safety. People continue to get sick from unsanitary water. This occurs in both small rural towns and large cities, like Milwaukee.

At the same time, it is imposing a regulatory burden on State and local officials that many find overwhelms their financial and technical resources. And compounding this problem, the Safe Drinking Water Act does not provide Federal financial aid to communities.

COMPLIANCE PROBLEMS IN SMALL COMMUNITIES

The horns of the dilemma are sharpest for small drinking water systems. While systems serving under 3,300 people serve only a small proportion of our people, they make up about 87 percent of the 58,000 community water systems in our country.

For example, of the roughly 900 community water systems in Montana, some 400 serve fewer than 125 people. Small systems usually cannot take advantage of the economies of scale in treatment technology. And since there is no Federal financial assistance to go with the regulations, improvements in small systems make household water rates rocket skyward like Old Faithful.

Further, many State and local officials argue that on top of the financial burden the Safe Drinking Water Act imposes, the drinking water program has become a regulatory and administrative quagmire. Monitoring standards are too complicated for many system operators. States lack the money and trained personnel to effectively manage the program.

And unnecessary requirements, such as the stipulation that EPA regulate 25 new contaminants every 3 years, means that EPA, the States, and the water systems cannot always devote their money and people to the problems they know are the worst.

Mr. President, we have ignored these problems for so long that the drinking water program is threatened with collapse. We cannot let that happen. We must have a truly effective way to protect our drinking water supply, and the bill I am introducing today is an effort to give us one.

REFORMS TO EASE COMPLIANCE AND REDUCE REGULATORY BURDEN

First, we will reduce the regulatory burden the law has created, paying special attention to small communities.

For example, the bill eliminates the requirement that EPA set drinking water standards for 25 new contaminants every 3 years. Instead, it directs EPA to review the health effects of a limited number of unregulated contaminants in drinking water, and regulate them only when they pose a public health problem. And it will reduce monitoring requirements for many systems that do not detect contaminants.

Second, the bill makes the States true working partners with EPA, and gives them the resources and the authority to do the job. It also puts more emphasis on preventing contamination of drinking water in the first place, and makes enforcement more effective and consistent with other environmental laws.

Third, a financial base for drinking water projects is critical. Safe drinking water will never be a reality for many communities unless there is adequate Federal funding. Thus, my bill establishes drinking water loan funds, building on the administration's request and our experience with the Clean Water Act's revolving loan funds. It authorizes $600 million in fiscal year 1994 and $1 billion annually in future years.

The bill also includes a new element to let States forgive repayment of loans where that is necessary to assure that household costs do not exceed 1.5 percent of median household income.

SPECIAL PROVISIONS FOR SMALL COMMUNITIES

The bill also has provisions that will help small communities provide safe drinking water. It gives States the authority and resources to work with small water systems on their unique problems. States would prepare overall plans to manage drinking water systems serving fewer than 3,000 people.

Each State would then work with the small system on specific compliance program to help them develop ways to consolidate with neighboring systems or find better sources of raw water. If those actions are not practical, the program would let them use treatment technology geared to small system needs.

The ultimate objective is to provide safe drinking water for all communities, even if financial or management limitations mean that it may take a little longer for some systems.

RADON PILOT PROGRAM

Finally, the bill proposes a new approach to radon in drinking water. This can pose a serious health threat. But most radon comes into a home from soil gas, not drinking water. Therefore, it seems well suited to integrated risk management.

The bill sets two standards for radon. The first is as close to the no-health-effect level as possible. The second is equivalent to exposure from outside air. A State drinking water system could choose to meet the second standard if it implemented a program to reduce radon in indoor air.

This proposal will be the starting point for a constructive discussion of alternative approaches to public health regulation. It is a good faith effort to respond to the special public health challenge posed by radon gas. It will test whether flexibility to attain the greatest degree of public health protection at the lowest cost will work on the ground.

CONCLUSION

The current Safe Drinking Water Act has problems which demand immediate attention. It does not allow for needed flexibility and does not provide any financial assistance to those whose job it is to supply safe water.

The result is that communities are falling out of compliance and citizens are not guaranteed that their water is safe to drink. These problems are too important for business as usual. Therefore, I plan to hold hearings on this bill later this month. And I will do all I can to report it to the full Senate this fall.

This effort must be based on consensus. That is the only way to achieve timely changes in the law and the financial aid many systems need to assure safe drinking water. I look forward to working with my colleagues, in particular Senator CHAFEE as ranking Republican on the Environment and Public Works Committee, and the administration, as the bill moves ahead.

Mr. President, I ask unanimous consent that a detailed summary of the bill and a copy of the bill be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1547

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "Safe Drinking Water Act Amendments of 1993".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

(c) REFERENCES TO TITLE XIV OF THE PUBLIC HEALTH SERVICE ACT.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title XIV of the Public Health Service Act (commonly known as the "Safe Drinking Water Act") (42 U.S.C. 300f et seq.).

SEC. 2. FINDINGS.

Congress finds that—

(1) safe drinking water is essential to the protection of public health;

(2) the Federal Government needs to assist communities in the financing of drinking water treatment and related projects;

(3) small drinking water systems need additional technical assistance and information from State and Federal agencies in the development and implementation of coordinated plans for the provision of safe and affordable drinking water;

(4) the existing process for the assessment and regulation of additional drinking water contaminants needs to be improved and revised to provide for more extensive participation from interested parties;

(5) States play a central role in the implementation of safe drinking water programs and States need increased financial resources to ensure the prompt and effective development and implementation of drinking water programs; and

(6) there is substantial noncompliance with requirements of title XIV of the Public Health Service Act (commonly known as the "Safe Drinking Water Act") (42 U.S.C. 300f et seq.) and Federal and State agencies need additional authorities to ensure the implementation of the Act.

SEC. 3. STATE REVOLVING LOAN FUNDS.

(a) ESTABLISHMENT OF STATE LOAN FUNDS.—The title is amended by adding at the end the following:

"PART G—RESERVED

"PART H—STATE REVOLVING LOAN FUNDS

"SEC. 1481. GENERAL AUTHORITY.

"(a) CAPITALIZATION GRANT AGREEMENTS.—The Administrator shall offer to enter into an agreement with each State to make capitalization grants to the State pursuant to section 1482 (referred to in this part as a 'capitalization grants') to establish a drinking water treatment State revolving loan fund (referred to in this part as a 'State loan fund').

"(b) REQUIREMENTS OF AGREEMENTS.—An agreement entered into pursuant to this section shall establish, to the satisfaction of the Administrator, that—

"(1) the State has established a State loan fund that complies with the requirements of this part;

"(2) the State loan fund will be administered by an instrumentality of the State that has the powers and authorities that are required to operate the State loan fund in accordance with this part;

"(3) the State will deposit the capitalization grants into the State loan fund;

"(4) the State will deposit all loan repayments received, and interest earned on the amounts deposited into the State loan fund under this part, into the State loan fund;

"(5) the State will deposit into the State loan fund an amount equal to at least 20 percent of the total amount of each capitalization grant to be made to the State on or before the date on which the grant is made to the State;

"(6) the State will use funds in the State loan fund in accordance with an intended use plan prepared pursuant to section 1484(b);

"(7) the State has in effect legal authority adequate to prevent the formation of nonviable public water systems beginning not later than January 1, 1996; and

"(8) the State and loan recipients that receive funds that the State makes available from the State loan fund will use accounting, audit, and fiscal procedures that conform to generally accepted accounting standards, as determined by the Administrator.

"(c) ADMINISTRATION OF STATE LOAN FUNDS.—

"(1) IN GENERAL.—The authority to establish assistance priorities and carry out oversight and related activities (other than financial administration) with respect to financial assistance provided with amounts deposited into the State loan fund shall remain with the State agency that has primary responsibility for the administration of the State program pursuant to section 1413(a).

"(2) FINANCIAL ADMINISTRATION.—A State may combine the financial administration of the State loan fund pursuant to this part with the financial administration of a State water pollution control revolving fund established by the State pursuant to title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) if the Administrator determines that the grants to be provided to the State under this part, together with loan repayments and interest deposited into the State loan fund pursuant to this part, will be segregated and used solely for the purposes specified in this part.

"SEC. 1482. CAPITALIZATION GRANTS.

"(a) GENERAL AUTHORITY.—The Administrator may make grants to capitalize State loan funds to a State that has entered into an agreement pursuant to section 1481.

"(b) FORMULA FOR ALLOTMENT OF FUNDS.—

"(1) IN GENERAL.—Subject to subsection (c), funds made available to carry out this part shall be allotted to States that have entered into an agreement pursuant to section 1481 in accordance with a formula that is the same as the formula used to distribute public water system supervision grant funds under section 1443 for fiscal year 1994.

"(2) OTHER JURISDICTIONS.—Each formula established pursuant to paragraph (1) shall reserve not less than 0.5 percent of the amounts made available to carry out this part for a fiscal year for providing capitalization grants to jurisdictions, other than Indian Tribes, referred to in subsection (e).

"(c) RESERVATION OF FUNDS.—

"(1) INDIAN TRIBES.—

"(A) IN GENERAL.—For each fiscal year, prior to the allotment of funds made available to carry out this part, the Administrator shall reserve 1 percent of the funds for providing financial assistance to Indian Tribes pursuant to subsection (e).

"(B) USE OF FUNDS.—Funds reserved pursuant to subparagraph (A) shall be used to address the most significant threats to public health associated with public water systems that serve Indian Tribes, as determined by the Administrator in consultation with the Commissioner of Indian Affairs.

"(C) NEEDS ASSESSMENT.—The Administrator, in consultation with the Commissioner of Indian Affairs, shall, in accordance with a schedule that is consistent with the needs survey for assessments conducted pursuant to section 1485(c), prepare a biennial survey and assess the needs of drinking water treatment facilities to serve Indian Tribes, including an evaluation of the public water systems that pose the most significant threats to public health.

"(2) PUBLIC HEALTH EMERGENCIES.—

"(A) IN GENERAL.—For each fiscal year, prior to the allotment of funds made available to carry out this part pursuant to subsection (b), the Administrator shall reserve 1 percent of the funds to provide financial assistance to respond to public health emergencies under section 1442(b).

"(B) ALLOTMENT OF UNUSED FUNDS.—On the last day of each fiscal year, the Administrator shall allot any funds that were reserved pursuant to subparagraph (A) but not expended in the fiscal year to the States on the basis of the same ratio as is applicable to sums allotted under subsection (b).

"(d) ALLOTMENT PERIOD.—

"(1) PERIOD OF AVAILABILITY FOR FINANCIAL ASSISTANCE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the sums allotted to a State pursuant to subsection (b) for a fiscal year shall be available to the State for obligation during the fiscal year for which the sums are authorized and during the following fiscal year.

"(B) FUNDS MADE AVAILABLE FOR FISCAL YEAR 1994.—The sums allotted to a State pursuant to subsection (b) from funds that are made available by appropriations for fiscal year 1994 shall be available to the State for obligation during each of fiscal years 1994 through 1996.

"(2) REALLOTMENT OF UNOBLIGATED FUNDS.—The amount of any allotment that is not obligated by a State by the last day of the period of availability established by paragraph (1) shall be immediately reallotted by the Administrator on the basis of the same ratio as is applicable to sums allotted under subsection (b). None of the funds reallotted by the Administrator shall be reallotted to any State that has not obligated all sums allotted to the State pursuant to this section during the period that the sums were available for obligation.

"(e) DIRECT GRANTS.—The Administrator is authorized to make grants for the improvement of public water systems of Indian Tribes, the District of Columbia, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the Republic of Palau, pending ratification of the Compact of Free Association (formerly part of the Trust Territory of the Pacific Islands).

"SEC. 1483. ELIGIBLE ASSISTANCE.

"(a) IN GENERAL.—The amounts deposited into a State loan fund, including any amounts equal to the amounts of loan repayments and interest earned on the amounts deposited, may be used by the State to carry out projects that are consistent with this section.

"(b) PROJECTS ELIGIBLE FOR ASSISTANCE.—The amounts deposited into a State loan fund shall be used only for providing financial assistance for—

"(1) capital expenditures for a project that will facilitate compliance with national primary drinking water regulations issued pursuant to section 1412;

"(2) capital expenditures for a project that will facilitate the consolidation of public water systems or the use of an alternative source of water supply;

"(3) capital expenditures for a project that will upgrade drinking water supply, treatment, and distribution systems;

"(4) capital expenditures for a project that will facilitate water conservation;

"(5) capital expenditures for a project that will implement a local or State source water protection program under section 1427 or 1428;

"(6) providing capital for loans by a drinking water system or State to low-income customers of a drinking water system for mitigation of radon in the air indoors;

"(7) the purchase of land that is necessary for a treatment facility; and

"(8) capital expenditures for the development of a drinking water system to replace a private drinking water supply if the water poses a significant threat to public health.

"(c) ELIGIBLE PUBLIC WATER SYSTEMS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a State loan fund may provide financial assistance only to community water systems and public and nonprofit noncommunity water systems.

"(2) PRIVATELY OWNED SYSTEMS.—Before providing financial assistance to a privately owned system pursuant to this paragraph, the State shall ensure that the assistance is secured with an appropriate amount and type of financial collateral.

"(d) TYPES OF ASSISTANCE.—Except as otherwise limited by State law, the amounts deposited into a State loan fund under this section may be used only—

"(1) to make loans, on the condition that—

"(A) the interest rate for each loan is less than or equal to the market interest rate, including an interest free loan;

"(B) annual principal and interest payments on each loan will commence not later than 1 year after the completion of the project for which the loan was made and each loan will be fully amortized not later than 20 years after the completion of the project;

"(C) the recipient of each loan will establish a dedicated source of revenue for the repayment of the loan; and

"(D) the State loan fund will be credited with all payments of principal and interest on each loan;

"(2) to buy or refinance the debt obligation of a municipality or an intermunicipal or interstate agency within the State at an interest rate that is less than or equal to the market interest rate;

"(3) to guarantee, or purchase insurance for, a local obligation if the guarantee or purchase would improve credit market access or reduce the interest rate applicable to the obligation;

"(4) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of the bonds will be deposited into the State loan fund;

"(5) as a source of revenue or security for the payment of interest on a local obligation, if the payment from the State loan fund does not reduce the effective interest rate of the obligation by more than 2.5 percentage points; and

"(6) to earn interest on the amounts deposited into the State loan fund.

"(e) CONSISTENCY WITH PLANNING REQUIREMENTS.—

"(1) IN GENERAL.—Beginning with fiscal year 1996, no loan or other financial assistance shall be provided from a State loan fund for any project that serves a public water system serving fewer than 3,300 individuals and that is not recommended in a State drinking water supply plan for small drinking water systems approved pursuant to section 1415(a).

"(2) CONSISTENCY WITH COMPLIANCE PROGRAM.—No loan or other financial assistance shall be provided from a State loan fund for a project that serves a public water system that serves fewer than 3,300 individuals if the project is not consistent with a small system compliance program developed pursuant to section 1415(b), if any.

"(f) ASSISTANCE FOR DISADVANTAGED COMMUNITIES.—

"(1) DEFINITION OF DISADVANTAGED COMMUNITY.—As used in this subsection, the term 'disadvantaged community' means the service area of a public water system with respect to which the average annual residential drinking water charges for a user of the system (referred to in this subsection as 'average annual residential user charges') is an amount greater than 1.5 percent of the median household income for the service area or will be an amount greater than 1.5 percent of the median household income for the service area if no subsidy is provided to the system pursuant to this subsection.

"(2) LOAN SUBSIDY.—Notwithstanding subsection (d)(1), in any case in which the State makes a loan pursuant to subsection (d)(1) to a disadvantaged community or to a community that the State expects to become a disadvantaged community as the result of a proposed project, the State may forgive an amount of the principal of the loan not to exceed the amount of forgiveness required to ensure that the average annual residential drinking water user charges for the service area of the public water system that is the subject of the loan do not exceed 1.5 percent of the median household income for the service area.

"(3) TOTAL AMOUNT OF SUBSIDIES.—For each fiscal year, the total amount of loan subsidies made by a State pursuant to paragraph (2) may not exceed 20 percent of the balance of the fund, calculated on the first day of the fiscal year.

"SEC. 1484. STATE LOAN FUND ADMINISTRATION.

"(a) ADMINISTRATION, PLANNING, AND TECHNICAL ASSISTANCE.—Each State that has a State loan fund is authorized to expend from the State loan fund a reasonable amount—

"(1) not to exceed 4 percent of the capitalization grant made to the State, for the costs of the administration of the State loan fund; and

"(2) not to exceed the greater of $500,000 or 10 percent of the capitalization grant made to the State, for technical and financial management assistance to public water systems that serve fewer than 3,300 individuals, including assistance for—

"(A) the development of small public water system management plans pursuant to section 1415(a); and

"(B) the development of small system compliance programs under section 1415(b).

"(b) INTENDED USE PLANS.—

"(1) IN GENERAL.—After providing for public review and comment, each State that has entered into a capitalization agreement pursuant to this part shall, prior to receiving a capitalization grant under section 1482, prepare a plan that identifies the intended uses of the amounts deposited into the State loan fund of the State.

"(2) CONTENTS.—An intended use plan shall include—

"(A) a list of the projects to be assisted in the first fiscal year that begins after the date of the plan, including a description of the project, the terms of financial assistance, and the size of the community served;

"(B) a description of all projects for which a public water system sought financial assistance for the fiscal year and the annual user charges of the system;

"(C) the criteria and methods established for the distribution of funds;

"(D) a description of projects expected to be assisted in the 2 fiscal years following the fiscal year for which a list was prepared under subparagraph (A); and

"(E) a description of the financial status of the State loan fund and the short-term and long-term goals of the State loan fund.

"(3) USE OF FUNDS.—An intended use plan shall provide, to the extent practicable, that first priority for the use of funds be given to public water systems that are in violation of a national primary drinking water regulation and in which residential water system rates are the highest percentage of median household income.

"(4) CONSOLIDATION.—An intended use plan shall ensure that no assistance under this part for a project other than the consolidation of public water systems is provided to a public water system for which consolidation is identified as a goal in a small public water system management plan developed pursuant to section 1415(a) or otherwise determined by the Administrator to be appropriate.

"SEC. 1485. STATE LOAN FUND MANAGEMENT.

"(a) IN GENERAL.—Not later than 1 year after the date of enactment of this part, and annually thereafter, the Administrator shall conduct such reviews and audits as the Administrator considers appropriate, or require each State to have the reviews and audits independently conducted, in accordance with the single audit requirements of chapter 75 of title 31, United States Code.

"(b) STATE REPORTS.—Not later than 1 year after the date of enactment of this part, and annually thereafter, each State that administers a State loan fund shall publish and submit to the Administrator a report on the activities of the State under this part, including the findings of the most recent audit of the State loan fund.

"(c) DRINKING WATER NEEDS SURVEY AND ASSESSMENT.—Not later than 2 years after the date of enactment of this part, and every 4 years thereafter, the Administrator shall submit to Congress a survey and assessment of the needs for facilities in each State eligible for assistance under this part. The survey and assessment conducted pursuant to this subsection shall—

"(1) identify the needs for projects or facilities eligible for assistance under this part on the date of the assessment (other than refinancing for a project pursuant to section 1483(d)(2));

"(2) identify the needs for eligible facilities over the 20-year period following the date of the assessment;

"(3) identify the population served by each public water system that has a project eligible for assistance; and

"(4) include such other information as the Administrator determines to be appropriate.

"(d) EVALUATION.—The Administrator shall conduct an evaluation of the effectiveness of the State loan funds through fiscal year 1996. The evaluation shall be submitted to Congress at the same time as the President submits to Congress, pursuant to section 1108 of title 31, United States Code, an appropriations request for fiscal year 1998 relating to the budget of the Environmental Protection Agency.

"SEC. 1486. ENFORCEMENT.

"The failure or inability of any public water system to receive funds under this part or any other loan or grant program, or any delay in obtaining the funds, shall not alter the obligation of the system to comply in a timely manner with all applicable drinking water standards and requirements of this Act.

"SEC. 1487. LABOR STANDARDS.

"(a) IN GENERAL.—The Administrator shall take such action as is necessary to ensure that all laborers and mechanics employed by contractors or subcontractors of treatment works for which financial assistance is provided under this part shall be paid wages at rates not less than the prevailing rates for the same type of work on similar construction in the immediate locality, as determined by the Secretary of Labor in accordance with the Act entitled 'An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes', approved March 3, 1931 (commonly known as the 'Davis-Bacon Act') (40 U.S.C. 276a et seq.).

"(b) AUTHORITY AND FUNCTIONS.—With respect to the labor standards described in subsection (a), the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 Fed. Reg. 3176) and section 2 of the Act of June 13, 1934 (48 Stat. 948, chapter 482; 40 U.S.C. 276c).

"SEC. 1488. REGULATIONS AND GUIDANCE.

"The Administrator shall publish such guidance and issue such regulations as are necessary to carry out this part, including guidance and regulations to ensure that—

"(1) each State commits and expends funds from State loan funds in accordance with the requirements of this part and applicable Federal and State laws; and

"(2) the States and eligible public water systems that receive funds under this part use accounting, audit, and fiscal procedures that conform to generally accepted accounting standards.

"SEC. 1489. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Environmental Protection Agency to carry out this part $600,000,000 for fiscal year 1994 and $1,000,000,000 for each of fiscal years 1995 through 2000.".

(b) DEFINITIONS.—Section 1401 (42 U.S.C. 300f) is amended—

(1) in paragraph (14), by adding at the end the following new sentence: "The term includes any Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)).''; and

(2) by adding at the end the following new paragraphs:

"(15) The term 'community water system' means a public water system that—

"(A) serves at least 15 service connections used by year-round residents of the area served by the system; or

"(B) regularly serves at least 25 year-round residents.

"(16) The term 'noncommunity water system' means a public water system that is not a community water system.

"(17) The term 'nonviable public water system'—

"(A) means a public water system that the Governor of a State determines is unlikely to attain compliance with the requirements of this Act on a sustained basis; but

"(B) does not include a public water system that the Governor determines will substantially improve existing conditions that pose a threat to public health.".

SEC. 4. NATIONAL DRINKING WATER REGULATIONS.

(a) IDENTIFICATION OF CONTAMINANTS.—Paragraph (3) of section 1412(b) (42 U.S.C. 300g-1(b)(3)) is amended to read as follows:

"(3)(A) The Administrator may publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for any contaminant that the Administrator determines may have any adverse effect on human health and that is known or anticipated to occur in public water systems in a concentration or frequency that indicates a public health concern. The Administrator shall not be required to complete action under subparagraph (B), (C), or (D) prior to promulgating a national primary drinking water regulation for a contaminant.

"(B)(i) Not later than 3 years after the date of enactment of the Safe Drinking Water Act Amendments of 1993, the Administrator shall publish in the Federal Register a list and assessment of not fewer than 15 unregulated contaminants that, on the basis of the adverse health effects that may result from the contaminants and the occurrence of the contaminants in public water systems, the Administrator determines present the greatest public health concern. Not later than 3 years after the date of publication of an initial list pursuant to this clause, and every 3 years thereafter, the Administrator shall publish, pursuant to this clause, a list and assessment of not fewer than 7 contaminants. At the time of the identification of any contaminant pursuant to this subparagraph, the Administrator shall identify such additional research concerning health effects as is necessary to ensure appropriate control of the contaminant.

"(ii) Not later than 1 year prior to publication of a list pursuant to this subparagraph, the Administrator shall publish in the Federal Register a proposed list and a summary of information concerning the health effects and occurrence of contaminants proposed to be listed pursuant to this subparagraph and any contaminants considered for inclusion on the list established under this subparagraph that the Administrator has not proposed to be listed.

"(iii) Not later than 180 days after publishing a proposed list pursuant to clause (ii), the Administrator, in conjunction with the National Drinking Water Advisory Council, shall hold a public hearing to hear comments on the list of contaminants proposed pursuant to clause (ii). The Council shall submit to the Administrator a report recommending any changes to the proposed list along with any dissenting views of members of the Council. Each hearing conducted pursuant to this clause shall be open to the public and each person submitting comments on the list proposed pursuant to clause (ii) shall be invited to attend the hearing.

"(C)(i) Not later than 2 years after a contaminant has been listed pursuant to subparagraph (B), the Administrator shall publish a health assessment for the contaminant that contains a summary of the research on the adverse health effects that are likely as a result of the occurrence of the contaminant in public water systems.

"(ii) The Administrator may, after providing notice in the Federal Register, delay the date of publication of the health assessment required under clause (i) for a period not to exceed 2 years, if the Administrator determines that additional research is necessary to fully determine the adverse health effects that may result from the contaminant.

"(iii) Each health assessment required under clause (i) shall be reviewed by the Science Advisory Board established under section 8 of the Environmental Research, Development, and Demonstration Authorization Act of 1978 (42 U.S.C. 4365) prior to publication.

"(D)(i) At the time a health assessment for a contaminant is published under subparagraph (C), the Administrator shall—

"(I) propose a maximum contaminant level goal and a national primary drinking water regulation for the contaminant; or

"(II) publish a determination that the contaminant does not meet the criteria established in subparagraph (A) and a national primary drinking water regulation for the contaminant will not be proposed.

"(ii) A determination published pursuant to clause (i)(II) shall be considered to be a final agency action for purposes of section 1448.

"(E) Not later than 18 months after the date on which the Administrator proposes a national primary drinking water regulation for a contaminant pursuant to subparagraph (D), the Administrator shall publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for the contaminant.

"(F) The Administrator shall publish a health advisory pursuant to subsection (f) for any contaminant listed under subparagraph (B) for which the Administrator determines, pursuant to subparagraph (D)(i)(II), that a national primary drinking water regulation is not necessary not later than 1 year after the date of the determination.

"(G) To ensure adequate occurrence data for purposes of this paragraph, the Administrator shall establish a data base on the occurrence of unregulated contaminants in public water systems and shall ensure that the data base is available to the public in readily accessible form. Information in the data base shall include—

"(i) such monitoring information on unregulated contaminants collected by public water systems that serve more than 10,000 individuals as is required by the Administrator;

"(ii) monitoring information from representative sampling among public water systems that serve fewer than 10,000 individuals collected by the Administrator or by the States; and

"(iii) such other monitoring information collected from public water systems as the Administrator shall require.

"(H)(i) Except as provided in clause (ii), if in a petition signed by 7 or more Governors of States, the Governors request the Administrator to publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for a contaminant, the Administrator shall publish the goal and promulgate the regulation not later than the date that is 2 years after the receipt of the petition.

"(ii) The Administrator shall not be required to carry out clause (i) with respect to a contaminant if, prior to the date specified in clause (i), the Administrator publishes a determination in the Federal Register that—

"(I) the contaminant does not result in adverse effects on human health as the result of the presence of the contaminant in public water systems; or

"(II) the concentration or frequency of occurrence of the contaminant in public water systems does not constitute a public health concern.

"(iii) A determination by the Administrator not to promulgate a national primary drinking water regulation for a contaminant pursuant to clause (ii) shall be considered to be a final agency action for purposes of section 1448.".

(b) DRINKING WATER STANDARD REVIEW AND COMPLIANCE PERIODS.—

(1) REVIEW PERIOD.—The first and second sentences of section 1412(b)(9) (42 U.S.C. 300g-1(b)(9)) are each amended by striking "3" each place it appears and inserting "6".

(2) COMPLIANCE PERIOD.—The first sentence of section 1412(b)(10) (42 U.S.C. 300g-1(b)(10)) is amended by striking all after "effect" and inserting "on a date to be determined by the Administrator that shall be not later than 3 years after the date of promulgation of the regulations.".

(3) EXTENSION.—Section 1416(b)(2) (42 U.S.C. 300g-5(b)(2)) is amended—

(A) in subparagraph (A), by striking all after "but" and inserting the following: "not later than 2 years after the date of granting of the exemption if the appropriate official of the public water system establishes, to the satisfaction of the State, that—

"(i)(I) the system cannot meet the standard without capital improvements and the improvements cannot be completed within the compliance period specified in section 1412(b)(10);

"(II) in the case of a system that needs financial assistance for the necessary improvements, the system has obtained the assistance, or the needed financial assistance is identified in an intended use plan developed pursuant to section 1484(b) and the assistance is reasonably likely to be available within the period of the exemption; or

"(III) the appropriate official of the system has entered into an enforceable agreement to consolidate with another public water system or the system is scheduled to be consolidated with another system pursuant to a small system compliance program developed pursuant to section 1415(b) within the period of the exemption; and

"(ii) the appropriate officials of the system are taking all practicable steps to meet the standard."; and

(B) by striking subparagraphs (B) and (C).

(4) SMALL SYSTEM COMPLIANCE PROGRAMS.—

(A) Subsections (a) and (b) of section 1416 (42 U.S.C. 300g-5 (a) and (b)) are amended by inserting "or an approved small system compliance program requirement" after "treatment technique requirement" each place it appears.

(B) Section 1416(a) (42 U.S.C. 300g-5(a)) is amended by striking "or from both".

(c) MONITORING REQUIREMENTS.—

(1) IN GENERAL.—Section 1412(b) (42 U.S.C. 300g-1(b)) is amended by adding at the end the following new paragraph:

"(12)(A) The Administrator may modify a national primary drinking water regulation promulgated under this section to remove the monitoring requirements for public water systems that have not detected the contaminant that is the subject of the regulation if the systems subject to the requirements have completed at least 2 rounds of monitoring and—

"(i) the contaminant has been detected in fewer than 5 percent of all of the public water systems and the contaminant level exceeds the maximum contaminant level for the contaminant in fewer than 0.5 percent of all of the public water systems; or

"(ii) the contaminant has not been detected at a level exceeding 75 percent of the maximum contaminant level for the contaminant in any of the public water systems.

"(B) The Administrator may modify a national primary drinking water regulation to remove the monitoring requirements applicable to public water systems with surface water supplies or to systems with ground water supplies, if the systems meet the conditions described in subparagraph (A).

"(C) Nothing in this paragraph is intended to be interpreted, construed, or applied to limit the authority of the Administrator or a State to maintain drinking water monitoring requirements for a specific public water system or to take enforcement action with respect to the elements of a national primary drinking water regulation other than the monitoring requirements.".

(2) SMALL SYSTEM MONITORING.—Section 1445(a)(1) (42 U.S.C. 300j-4(a)(1)) is amended—

(A) by designating the first and second sentences as subparagraphs (A) and (B), respectively; and

(B) by adding at the end the following new subparagraph:

"(C) With respect to monitoring requirements for cancer causing contaminants, the Administrator or a State that has primary enforcement responsibility pursuant to section 1413(a) may modify the requirements to provide that any public water system that serves a population of fewer than 10,000 individuals shall not be required to conduct additional quarterly monitoring for a specific contaminant if monitoring for any 1 quarter conducted after the date of enactment of this subparagraph for the contaminant fails to detect the presence of the contaminant in the water supplied by the public water system.".

(d) HEALTH ADVISORIES.—Section 1412 (42 U.S.C. 300g–1) is amended by adding at the end the following new subsection:

"(f)(1) The Administrator may publish a health advisory consisting of scientific documents describing the probable health effects of a contaminant for which no maximum contaminant level or treatment technique has been established under a primary drinking water standard.

"(2) A health advisory published under this subsection shall provide background and related information to drinking water professionals in a form that will assist the professionals in the safe and effective operation of public water systems.

"(3) A health advisory published under this subsection shall not be enforceable under this Act.

"(4) Subsection (e) shall not apply to a health advisory published under this subsection.

"(5) A health advisory published under this subsection shall not be subject to review by the Office of Management and Budget.".

(e) SUBSTITUTION OF SULFATE.—Section 1412(b)(2) (42 U.S.C. 300g–1(b)(2)) is amended by adding at the end the following new subparagraph:

"(E) Notwithstanding any requirement for the Administrator to take action by the date specified in subparagraph (B), the Administrator may, not later than 1 year after the date of enactment of this subparagraph, publish regulations pursuant to this paragraph for a contaminant in lieu of sulfate if the Administrator determines that the regulation of the contaminant in lieu of sulfate will result in greater protection of public health.".

SEC. 8. SMALL PUBLIC WATER SYSTEMS.

(a) IN GENERAL.—

(1) SMALL SYSTEM MANAGEMENT.—Section 1415 (42 U.S.C. 300g–4) is amended to read as follows:

"SEC. 1415. SMALL PUBLIC WATER SYSTEMS.

"(a) SMALL SYSTEM MANAGEMENT PLANS.—

"(1) IN GENERAL.—Each State with primary enforcement responsibility pursuant to section 1413 shall, not later than October 1, 1997, and every 3 years thereafter, submit to the Administrator a State drinking water supply plan for the effective and coordinated management of public water systems that serve fewer than 3,300 individuals.

"(2) REQUIREMENTS FOR PLANS.—Each plan submitted pursuant to this subsection shall, with respect to public water systems that serve fewer than 3,300 individuals—

"(A) identify each system and describe the characteristics of the system, including the treatment provided to drinking water and any protection of the drinking water source;

"(B) identify each system that has an exemption granted pursuant to section 1416;

"(C) describe projected population changes in the service area of each system during the 20-year period beginning on the date of submission of the plan and identify each system for which a substantially increased supply of water or treatment of water will be needed;

"(D) establish criteria for identifying a nonviable system and identify each system that meets the criteria;

"(E) identify opportunities for physical and administrative consolidation of systems to improve drinking water quality and reduce user cost, including a ranking of systems giving the highest priority to the consolidation of nonviable public water systems;

"(F) identify opportunities for the development of alternative supplies of raw water;

"(G) establish criteria for assessing the financial capability of systems for the purposes of determining management options under paragraph (6);

"(H) identify financing needs of systems and assess the extent to which these needs will be met by State loan funds established under part H; and

"(I) identify opportunities for more cost-effective monitoring of drinking water, including compositing of samples and testing by a State laboratory.

"(3) IDENTIFICATION BY STATE.—On the basis of the review and assessment of the status and condition of small water systems pursuant to paragraph (2), the State shall as part of the plan identify, for each system that is in violation of (or is expected to violate) a maximum contaminant level, 1 of the following management approaches:

"(A) Compliance with the maximum contaminant level, based on a finding that the system has the financial and management capacity to comply with the maximum contaminant level, taking into account the availability of financial assistance through a State drinking water loan fund or the Rural Development Administration.

"(B) The development of an individualized compliance program that implements consolidation, alternative water supply, alternative small system technology, or other system restructuring pursuant to subsection (b).

"(4) RANK AND SCHEDULE FOR COMPLIANCE PROGRAMS.—With respect to systems for which a compliance program is to be developed, each State plan shall—

"(A) rank systems, giving priority to systems with respect to which drinking water poses the greatest threat to public health;

"(B) specify a schedule for the development of not less than ½ of compliance programs not later than the date that is 5 years after the date of submittal of the plan; and

"(C) specify a schedule for the development of all compliance programs not later than the date that is 10 years after the date of submittal of the plan.

"(5) COMPLIANCE WITH MAXIMUM CONTAMINANT LEVELS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), each system that is required to comply with a maximum contaminant level shall comply by the date that is 3 years after the date of approval of the plan submitted pursuant to this subsection.

"(B) REDUCED PERIOD OF COMPLIANCE.—If the period of compliance established under a drinking water regulation is less than 3 years, the period of compliance under subparagraph (A) shall be the period specified in the drinking water regulation.

"(6) PUBLIC HEARINGS CONCERNING PLANS.—Each State shall provide for public review and comment on plans submitted pursuant to this subsection and shall, at a minimum, provide for a public hearing on the plan not later than 90 days prior to the submission of the plan to the Administrator.

"(7) REVIEW OF PLANS.—

"(A) IN GENERAL.—The Administrator shall review each plan submitted pursuant to this subsection. Not later than 90 days after receipt of the plan, the Administrator shall approve or disapprove the plan.

"(B) PLAN APPROVAL.—The Administrator shall approve a plan if the plan is consistent with the requirements of the subsection. If the Administrator disapproves a plan, the disapproval shall specify necessary modifications or revisions to the plan. The State shall make the modifications or revisions not later than 30 days after receipt of notice of the disapproval.

"(C) FAILURE TO MODIFY PLAN.—If a State fails to make modifications or revisions to a plan pursuant to subparagraph (B), the Administrator may withhold from the State from funds made available to the State pursuant to section 1484(a)(2), such sums as the Administrator determines to be appropriate.

"(D) The approval of a plan pursuant to this paragraph shall not constitute a necessary condition for consolidation of public water systems.

"(b) SMALL SYSTEM COMPLIANCE PROGRAMS.—

"(1) IN GENERAL.—Each State shall, in cooperation with small public water systems identified pursuant to subsection (a)(3)(B), develop compliance programs for the systems to ensure the effective management and operation of the systems.

"(2) GOALS FOR COMPLIANCE PROGRAMS.—

"(A) IN GENERAL.—Each compliance program referred to in paragraph (1) shall provide for compliance with maximum contaminant levels to the maximum extent practicable.

"(B) SMALL SYSTEM TECHNOLOGY.—A compliance program may provide for small system technology identified in guidance issued pursuant to section 1412(b)(13) if the technology provides the greatest degree of public health protection consistent with the financial and management capability of the system. In determining the financial and management capability of a system, the appropriate official of a State shall take into consideration the expected availability of financial assistance through a State drinking water loan fund or the Rural Development Administration and the cost savings associated with reasonably available opportunities for physical or administrative consultation.

"(C) PROHIBITION.—A compliance program may not provide for small system technology that would result in an unreasonable risk to public health.

"(3) REQUIREMENTS FOR COMPLIANCE PROGRAMS.—Each compliance program developed by a State for a small public water system pursuant to this subsection shall—

"(A) describe the system characteristics, source of raw water, service area, compliance history, and financial condition;

"(B) identify options for the effective management and operation of the system including—

"(i) the consolidation of the system in physical or administrative terms;

"(ii) the development of alternative sources of raw water; and

"(iii) the treatment of an existing or alternative source of raw water, including a treatment identified in small system technology guidance;

"(C) identify measures needed to ensure the long-term quality of a source of raw water;

"(D) identify administrative and management requirements necessary to ensure the effective operation of the system;

"(E) select a final option from among options identified in subparagraph (B);

"(F) include a financial plan that is sufficient to ensure the implementation of the compliance program; and

"(G) include such engineering designs and specifications as are necessary to commence the implementation of the compliance program.

"(4) SCHEDULE FOR IMPLEMENTATION.—Each compliance program developed pursuant to this subsection shall be implemented as expeditiously as practicable, but not later than 3 years after the date of submittal of the compliance program to the Administrator.

"(5) PUBLIC PARTICIPATION.—Each State or public water system shall provide for public participation in the development of a compliance program under this subsection and shall, at a minimum, provide for a public hearing to hear comments on any option selected pursuant to paragraph (3)(E).

"(6) REVIEW BY ADMINISTRATOR.—Each State shall provide a copy of each compliance program to the Administrator on completion of the program. The Administrator may disapprove a compliance program if the program is not consistent with the requirements of this Act or poses an unreasonable risk to public health. If the Administrator disapproves a compliance program for a public water system, the system shall comply with maximum contaminant levels not later than 3 years after the date of the disapproval.".

(2) CONFORMING AMENDMENTS.—

(A) Section 1411 (42 U.S.C. 300g) is amended by striking "sections 1415 and 1416" and inserting "section 1416".

(B) Section 1412(b) (42 U.S.C. 300g-1(b)) is amended—

(i) in paragraph (7)(A), by striking ", but the Administrator may grant a variance from any specified treatment technique in accordance with section 1415(a)(3)";

(ii) in paragraph (7)(C)(ii), by striking "In lieu of the provisions of section 1415 the" and inserting "The"; and

(iii) in paragraph (8), by striking the second and third sentences.

(C) Section 1448(b) (42 U.S.C. 300j-7(b)) is amended by striking "a variance or exemption under section 1415 or 1416" and inserting "an exemption under section 1416".

(b) SMALL SYSTEM TECHNOLOGY GUIDANCE.—

(1) IN GENERAL.—Section 1412(b) (42 U.S.C. 300g1(b), as amended by section 4(c), is further amended by adding at the end the following new paragraph:

"(13)(A) At the same time as the Administrator publishes a national primary drinking water regulation pursuant to this section, the Administrator shall publish guidance describing various treatment technologies associated with the contaminant that is the subject of regulations and that are appropriate for systems serving fewer than 3,300 individuals.

"(B) The guidance published pursuant to this paragraph shall identify the effectiveness of the technology, the cost of the technology, and any other characteristics of the technology that the Administrator determines to be relevant. The Administrator shall include in the guidance low-cost technologies and may include technologies that may not result in attainment of a maximum contaminant level.

"(C) The Administrator may not include in the guidance published under this paragraph any technology that would pose an unreasonable risk to public health.".

(2) EXISTING REGULATIONS.—Not later than 2 years after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall issue small system technology guidance for contaminants regulated by drinking water regulations published at 54 Fed. Reg. 27486 on June 29, 1989, 56 Fed. Reg. 3526 on January 30, 1991, 56 Fed. Reg. 30266 on July 1, 1991, and 57 Fed. Reg. 31776 on July 17, 1992, under title XIV of the Public Health Service Act (42 U.S.C. 300f et seq.).

(3) EXTENSIONS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, no public water system serving fewer than 3,300 individuals shall be required to comply with any maximum contaminant level or treatment technology specified in a regulation identified in paragraph (2) until the date that is—

(i) the termination date of the compliance period established in State small system management plan developed pursuant to section 1415(a)(5) of title XIV of the Public Health Service Act (as amended by section 5); or

(ii) the end of the compliance period established in a small system compliance program pursuant to section 1415(b)(4) of such title (as amended by section 5).

(B) EXCEPTION TO EXTENSION.—The extension provided by subparagraph (A) shall not apply to any public water system that—

(i) is in compliance with a maximum contaminant level;

(ii) has installed treatment technology to comply with a maximum contaminant level; or

(iii) is subject to a court order to comply with a maximum contaminant level.

(C) ADDITIONAL EXCEPTION.—The extension provided by subparagraph (A) shall not apply to any contaminant addressed in the regulations referred to in paragraph (2) (except for the regulations referred to in subparagraph (D)) if the contaminant was regulated prior to 1986.

(D) APPLICABILITY OF REGULATIONS.—In the case of regulations published at 54 Fed. Reg. 27486 on June 29, 1989, the extension provided by subparagraph (A) shall only apply to noncommunity public water systems.

SEC. 6. ENFORCEMENT OF DRINKING WATER REGULATIONS.

(a) IN GENERAL.—Part G of the title (as amended by section 3) is further amended to read as follows:

"PART G—ENFORCEMENT

"SEC. 1471. PROTECTION OF PUBLIC WATER SYSTEMS AND GENERAL PROHIBITION OF CONTAMINATION OF DRINKING WATER SOURCES.

"(a) GENERAL PROHIBITION ON CONTAMINATION.—Notwithstanding any other provision of this title, the failure to comply with any applicable requirement of this title, any regulation promulgated pursuant to part B or E, or any requirement imposed pursuant to part B or E shall be unlawful.

"(b) DEFINITION.—As used in this part, the term 'applicable requirement of this title' means—

"(1) a requirement of section 1412, 1414, 1415, 1416, 1417, 1419, 1428, 1445, 1447, 1463, 1464, or 1471;

"(2) a regulation promulgated pursuant to a section referred to in clause (1);

"(3) a requirement imposed pursuant to a section referred to in clause (1); or

"(4) any requirement of, or permit issued, under—

"(A) an applicable State program for which the Administrator has made a determination that the requirements of section 1413 have been satisfied; or

"(B) an applicable State program approved pursuant to any other provision of part B.

"SEC. 1472. CIVIL ENFORCEMENT.

"(a) IN GENERAL.—

"(1) ACTIONS BY THE ADMINISTRATOR.—Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person—

"(A) has violated any applicable requirement of this title; or

"(B) has failed to comply with any order issued under part B by the Administrator or by a State with primary enforcement authority pursuant to section 1413 or by a State pursuant to a program approved pursuant to any other provision of part B,

the Administrator shall issue an order requiring the person to comply with the requirement, regulation, schedule, permit or State order pursuant to this subsection, issue a penalty order assessing an administrative penalty pursuant to subsection (c), commence a civil action in accordance with subsection (d), or notify the person and the State of the finding.

"(2) ORDERS.—If, during the period beginning on the date that is 31 days after the Administrator provides notice to the State of the finding the State has not commenced appropriate enforcement action, the Administrator shall—

"(A) issue an order requiring the person to comply with the requirement, regulation, schedule, or permit pursuant to this subsection;

"(B) issue a penalty order proposing an administrative penalty pursuant to subsection (c); or

"(C) or commence a civil action in accordance with subsection (d).

"(3) COMPLIANCE.—Compliance with a requirement of a small system compliance program carried out pursuant to section 1415(b), an exemption issued pursuant to section 1416, or any schedule or requirement imposed pursuant to section 1415(b) or 1416 shall, for the purposes of this section, be considered as compliance with section 1412.

"(b) ADMINISTRATIVE COMPLIANCE ORDERS.—

"(1) SERVICE.—If a compliance order or notice under subsection (a) is issued to a corporation, a copy of the compliance order or notice shall be served on any appropriate corporate officers.

"(2) REQUIREMENTS.—A compliance order issued under subsection (a) shall—

"(A) be served by personal service;

"(B) state with reasonable specificity the nature of the violation; and

"(C) specify a reasonable time for compliance that takes into account the nature of the violation.

"(c) ADMINISTRATIVE PENALTY ORDERS.—

"(1) VIOLATIONS.—

"(A) IN GENERAL.—If the Administrator makes a finding pursuant to subsection (a) that a person (other than a Federal agency) has violated a requirement referred to in subsection (a)(1)(A) or has failed to comply with an order referred to in subsection (a)(1)(B), the Administrator may issue a penalty order assessing a class I civil penalty or a class II civil penalty under this subsection against the person.

"(B) CLASS II CIVIL PENALTY.—If the Administrator makes a finding pursuant to subsection (a), that a Federal agency has violated a requirement referred to in subsection (a)(1)(A) or has failed to comply with an order referred to in subsection (a)(1)(B), the Administrator may issue a penalty order assessing a class II civil penalty under this subsection against the Federal agency.

"(C) CLASS I ASSESSMENT PROCEDURES.—Before issuing an order assessing a class I civil penalty under this subsection, the Administrator shall provide the person to be assessed the penalty with written notice of the proposal of the Administrator to issue the order and the opportunity to, not later than 30 days after the date of receipt of the notice, request a hearing on the proposed order. The hearing shall not be subject to sections 555 and 556 of title 5, United States Code. The hearing shall provide a reasonable opportunity for the person to be heard and present evidence.

"(D) CLASS II assessment procedures.—

"(i) IN GENERAL.—Before issuing an order assessing a class II civil penalty under this subsection, the Administrator shall—

"(I) act in the same manner for, and in accordance with the same provisions of law applicable to, the assessment and collection of civil penalties after notice and opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code;

"(II) provide public notice of, and reasonable opportunity to comment on, the proposal to issue the order; and

"(III) in the case of a request for a hearing by the appropriate official of a Federal agency that is the subject of a proposed penalty order, give prompt public notice of the request.

"(ii) PROCEDURES.—The Administrator may issue rules for discovery procedures in class II hearings under this subsection. Any person who comments on a proposed assessment of a class II penalty under this subsection shall be given notice of any hearing held under this section and of the order assessing the penalty. In any hearing concerning a class II penalty held pursuant to this subsection, the person shall be provided a reasonable opportunity to be heard and present evidence.

"(2) CLASSES OF PENALTIES.—

"(A) CLASS I.—A class I civil penalty assessed under paragraph (1) shall be in an amount not to exceed $10,000 per day per violation, except that the maximum amount of a class I civil penalty referred to in the preceding sentence shall not exceed $25,000. A class I penalty order issued pursuant to subsection (c), other than an order issued upon consent, shall become final not later than 30 days after the order is issued. An order issued upon consent pursuant to this subsection shall become final on the issuance of the order.

"(B) CLASS II.—A class II civil penalty assessed under paragraph (1) shall be in an amount not to exceed $10,000 per day per violation, except that the maximum amount of a class II civil penalty assessed under paragraph (1) shall not exceed $200,000. A class II penalty order issued pursuant to subsection (c), other than an order issued upon consent, shall become final unless, not later than 30 days after the order is issued along with written notice of an opportunity to request a hearing, the person who is the subject of the order requests a hearing.

"(3) DETERMINING AMOUNT.—In determining the amount of a penalty assessed under this subsection, the Administrator shall take into account the seriousness of each violation, the economic benefit (if any) resulting from the violation, any history of similar violations including violations that are not part of the then current action, any good-faith efforts to comply with applicable requirements before the initiation of the action, the economic impact of the penalty on the violator, and such other matters as justice may require.

"(4) EFFECT OF ORDER.—

"(A) LIMITATION ON ACTIONS UNDER OTHER SECTIONS.—An action taken by the Administrator under this subsection shall not affect or limit the authority of the Administrator to carry out the enforcement of this title; except that any violation—

"(i) with respect to which the Administrator has commenced and is diligently prosecuting a penalty action under this subsection; or

"(ii) for which the Administrator has issued a final order not subject to further judicial review and the violator has paid a penalty assessed under this subsection,

shall not also be the subject of a civil penalty action under subsection (d) or, in the case of a class II civil penalty, under section 1449.

"(B) APPLICABILITY OF LIMITATION WITH RESPECT TO CITIZEN SUITS.—The limitations described in subparagraph (A) concerning civil penalty actions carried out pursuant to section 1449 shall not apply with respect to any violation with respect to which—

"(i) a civil action under section 1449 has been filed prior to commencement of a penalty action under this subsection, or

"(ii) notice of an alleged violation of this title has been given in accordance with section 1449 prior to the commencement of an action carried out pursuant to this subsection and an action is filed pursuant to section 1449 with respect to the alleged violation before the date that is 120 days after the date that the notice is given.

"(5) EFFECT OF ACTION ON COMPLIANCE.—No action by the Administrator under this subsection shall affect the obligation of any person to comply with—

"(A) any requirement of section 1471 or any other provision of this title;

"(B) any regulation promulgated pursuant to this title;

"(C) any schedule or other requirement imposed pursuant to this title; and

"(D) any requirement of or permit issued under—

"(i) an applicable State program for which the Administrator has made a determination that the requirements of section 1413 are satisfied; or

"(ii) an applicable State program approved pursuant to any other provision of this title or any order issued by the Administrator pursuant to this title.

"(6) JUDICIAL REVIEW.—

"(A) IN GENERAL.—Any person against whom a penalty order is issued under this subsection, except upon consent, may obtain review of the order—

"(i) in the case of the assessment of a class I civil penalty, in the United States District Court for the District of Columbia Circuit or in the district court in the district in which the violation is alleged to have occurred; or

"(ii) in the case of the assessment of a class II civil penalty, in the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which the person resides or transacts business,

by filing a notice of appeal with the court during the 30-day period beginning on the date the penalty order becomes final and simultaneously sending a copy of the notice by certified mail to the Administrator and the Attorney General. The Administrator shall promptly file in such court a certified copy of the record on which the order was issued. The court shall not set aside or remand the order unless the court finds that there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or that the assessment by the Administrator of the penalty constitutes an abuse of discretion. The court may not impose an additional civil penalty for the violation that is the subject of the assessment by the Administrator unless the court finds that the assessment constitutes an abuse of discretion by the Administrator.

"(B) JUDICIAL REVIEW.—Notwithstanding section 1448(a)(2), a class I penalty order issued under subsection (c) shall be subject to judicial review only under subparagraph (A)(i).

"(7) COLLECTION.—If any person fails to pay an assessment of a civil penalty—

"(A) after the order making the assessment has become final, or

"(B) after an action brought under paragraph (6) a court has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be). In the action, the validity, amount, and appropriateness of the penalty shall not be subject to judicial review.

"(8) SUBPOENAS.—The Administrator may, in connection with administrative proceedings under this subsection or in connection with investigations conducted pursuant to this title, issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served to any person, the district court of the United States for any district in which the person is found, resides, or transacts business, on application by the United States and after notice to the person, shall have jurisdiction to issue an order requiring the person to appear and give testimony before an administrative law judge or the Administrator or to appear and produce documents before an administrative law judge or the Administrator (or both). A failure to obey an order of the court issued pursuant to the preceding sentence may be punished by the court as a contempt of the court.

"(d) CIVIL ACTIONS.—

"(1) IN GENERAL.—A civil action commenced by the Administrator pursuant to this section shall be for appropriate relief, including a permanent or temporary injunction against any person who—

"(A) has violated any applicable requirement of this title; or

"(B) has failed to comply with any order issued under this title by the Administrator or by a State with primary enforcement authority pursuant to section 1413.

"(2) JURISDICTION.—An action under this subsection may be brought in the district court of the United States for the district in which the defendant is located, resides, or is doing business, and the court shall have jurisdiction to restrain any applicable violation and to require compliance with a requirement referred to in subparagraph (A). The court may enter such judgment as the protection of public health requires.

"(3) PENALTIES.—Any person who—

"(A) has violated any applicable requirement of this title; or

"(B) has failed to comply with any order issued under this title by the Administrator or by a State with primary enforcement authority pursuant to section 1413,

shall be subject to a civil judicial penalty in an amount not to exceed $25,000 per day for each violation.

"(4) DETERMINATION OF AMOUNT OF PENALTY.—In determining the amount of a civil penalty assessed pursuant to paragraph (3), the court shall consider the seriousness of each violation, the economic benefit (if any) resulting from the violation, any history of similar violations including violations that are not part of the then current action, any good-faith efforts to comply with applicable requirements before the initiation of the civil action, the economic impact of the penalty on the violator, and such other matters as justice may require.

"(e) STATUTORY CONSTRUCTION.—Nothing in this section is intended to be construed to limit the authority of the Administrator to take enforcement action against a Federal agency under any other provision of this title.

"SEC. 1473. CRIMINAL ENFORCEMENT.

"(a) NEGLIGENT VIOLATIONS.—Any person who negligently violates any applicable requirement of this title shall, upon conviction, be punished by a fine or imprisonment for a period of not more than 1 year (or both), as provided in title 18, United States Code.

"(b) KNOWING VIOLATIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), any person who knowingly—

"(A) violates any applicable requirement of this title; or

"(B) has failed to comply with any order issued pursuant to section 1431,

shall, upon conviction, be punished by a fine or imprisonment for a period of not more than 5 years (or both), as provided in title 18, United States Code.

"(2) MULTIPLE CONVICTIONS.—With respect to a violation committed by a person after a first conviction of the person for any violation specified in paragraph (1), the maximum punishment for the person upon conviction shall be doubled with respect the amount of a fine and the length of imprisonment.

"(c) KNOWING ENDANGERMENT.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a person who knowingly—

"(A) violates any applicable requirement of this title;

"(B) fails to comply with any order issued pursuant to section 1431; and

"(C) in the course or connection with the act of the violation places any other person in imminent danger of death or serious bodily injury,

shall, upon conviction, be punished by a fine or imprisonment for a period of not more than 15 years (or both), as provided in title 18, United States Code.

"(2) ADDITIONAL PROVISIONS.—

"(A) KNOWING CONDUCT.—For the purposes of this subsection—

"(i) in determining whether a defendant who is an individual knew that the conduct of the defendant placed another person in imminent danger of death or serious bodily injury—

"(I) the defendant is responsible only for actual awareness or actual belief that the defendant possessed; and

"(II) knowledge possessed by a person other than the defendant but not by the defendant may not be attributed to the defendant,

except that in proving the possession by the defendant of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield the defendant from relevant information; and

"(ii) it is an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

"(I) an occupation, a business, or a profession; or

"(II) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

"(B) PREPONDERANCE OF EVIDENCE.—A defense referred to in subparagraph (A)(ii) may be established pursuant to subparagraph (A) by a preponderance of the evidence.

"(C) DEFINITIONS.—As used in this subsection:

"(i) IMMINENT DANGER.—The term 'imminent danger' means the existence of a condition or combination of conditions that could reasonably be expected to cause death or serious bodily injury unless the condition (or combination of conditions) is remedied.

"(ii) SERIOUS BODILY INJURY.—The term 'serious bodily injury' means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

"(d) FALSE STATEMENTS; MONITORING.—

"(1) IN GENERAL.—Any person who knowingly—

"(A) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file any notice, application, record, report, plan, or other document filed or required to be maintained pursuant to part B or E (regardless of whether the Administrator or a State enforces the requirements);

"(B) fails to make a report required under part B or E; or

"(C) falsifies, tampers with, renders inaccurate, fails to install, maintain, or utilize any monitoring device or monitoring or treatment method required to be maintained or carried under part B or E (including any regulation or order issued by the Administrator or any State pursuant to this title),

shall, upon conviction, be punished by a fine or imprisonment for a period of not more than 2 years (or both), as provided in title 18, United States Code.

"(2) MULTIPLE CONVICTIONS.—With respect to a violation committed by a person after a first conviction of the person for any violation of part B or E, the maximum punishment specified in paragraph (1) shall be doubled with respect to the amount of a fine and the length of imprisonment. With respect to a violation committed by a person who carries out an illegal activity that is punishable under this section with respect to which the purpose is to conceal or cover up a violation of part B or E, the maximum punishment specified in paragraph (1) shall be doubled with respect to the amount of a fine and the length of imprisonment.

"SEC. 1474. EFFECT OF ENFORCEMENT ACTION ON COMPLIANCE WITH OTHER APPLICABLE LAWS AND REGULATIONS.

"No action by the Administrator or any other official of the Federal Government pursuant to this title is intended to have any effect on the obligation of any person to comply with each law (including each regulation), permit term, or other requirement that applies to the person pursuant to Federal law.

"SEC. 1475. STATE AUTHORITY TO ADOPT OR ENFORCE LAWS.

"Nothing in this title is intended to diminish any authority of a State or political subdivision of a State to adopt or enforce any law (including any regulation) concerning drinking water regulation or public water systems, except that no State or local law referred to in this section may relieve any person of any requirement that is applicable to the person under this title.

"SEC. 1476. CONSOLIDATION INCENTIVE.

"(a) IN GENERAL.—An owner or operator of a public water system may submit to the State in which the system is located (if the State has primary enforcement responsibility pursuant to section 1413) or to the Administrator (if the State does not have primary enforcement responsibility) a plan for—

"(1) the physical consolidation of the system with 1 or more other systems;

"(2) the consolidation of significant management and administrative functions of the system with 1 or more other systems; or

"(3) the transfer of ownership of the system to a private entity that may reasonably be expected to improve drinking water quality.

"(b) REQUIREMENTS FOR PLANS.—A plan submitted pursuant to this subsection shall—

"(1) specify a schedule of steps related to the consolidation or transfer of ownership that shall be completed not later than 2 years after the date of submission of the plan;

"(2) describe such measures as are necessary to ensure that the public water system will consistently meet the requirements of this Act; and

"(3) describe any then current violation or any anticipated future violation of this Act.

"(c) REVIEW OF PLAN.—

"(1) IN GENERAL.—The State shall review a plan submitted pursuant to this subsection and shall approve each plan that is consistent with the requirements of this Act.

"(2) APPROVAL BY ADMINISTRATOR.—The State shall provide an approved plan to the Administrator. The plan shall be considered to be approved by the Administrator unless the Administrator disapproves the plan not later than 90 days after receiving the plan.

"(3) WITHDRAWAL OF APPROVAL.—The State or the Administrator may withdraw the approval of a plan on the basis of a substantial failure by an owner or operator to comply with a schedule established under paragraph (2).

"(d) CONSEQUENCES OF APPROVAL.—If the State and the Administrator have approved a plan pursuant to subsection (c)—

"(1) no enforcement action conducted pursuant to this part shall be commenced prior to the completion date specified in the schedule established pursuant to subsection (b)(1); and

"(2) any violation identified in the approved plan shall not be the subject of an enforcement action conducted pursuant to this part prior to termination of the schedule.".

(b) PUBLIC NOTICE AND NOTICE TO STATE.—Section 1414 (42 U.S.C. 300g-3) is amended—

(1) by striking subsections (a) and (b);

(2) by redesignating subsection (c) as subsection (a);

(3) in subsection (a) (as so redesignated)—

(A) in the first sentence—

(i) in paragraph (1), by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(ii) in paragraph (2), by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(iii) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(iv) by inserting "(1)" after "(c)"; and

(B) by striking the second sentence and all that follows through the end of the subsection and inserting the following new paragraph:

"(2)(A) The Administrator shall, by regulation, prescribe the form, manner, and frequency for giving notice under this subsection.

"(B) Regulations issued under this subsection shall specify notification procedures for each violation that has the potential to cause serious adverse effects on human health. Each notice of a violation provided under this subparagraph shall—

"(i) be distributed as soon as practicable after the violation, but not later than 24 hours after the violation;

"(ii) be provided to appropriate broadcast media;

"(iii) be published in a newspaper of general circulation serving the area not later than 1 day after the distribution of a notice pursuant to clause (i), or the date of publication of the next issue of the newspaper;

"(iv) provide a clear and readily understandable explanation of—

"(I) the violation;

"(II) any potential adverse effects on human health;

"(III) the steps that the public water system is taking to correct the violation; and

"(IV) the necessity of seeking alternative water supplies until the violation is corrected; and

"(v) be provided to the State agency that has primary enforcement responsibility pursuant to section 1413 and to the Administrator.

"(C) Notice of violations other than violations identified under subparagraph (B) shall be—

"(i) provided not less frequently than annually and published in a newspaper of general circulation serving the area; and

"(ii) provided to the State agency that has primary enforcement responsibility pursuant to section 1413 and to the Administrator.

"(D) Not later than January 1, 1996, and annually thereafter, each State that has primary enforcement responsibility pursuant to section 1413 shall publish an annual report on public water system compliance in the State and submit the report to the Administrator.

"(E) Not later than July 1, 1996, and annually thereafter, the Administrator shall submit to Congress an annual report summarizing and evaluating reports submitted by States pursuant to subparagraph (D) and making recommendations concerning the resources needed to improve compliance with this title.";

(4) by redesignating subsection (d) as subsection (b); and

(5) by striking subsections (e) through (g).

(c) TECHNICAL AMENDMENTS.—

(1) Section 1416(b)(3) is amended by striking "1414" and inserting "1472 or 1473".

(2) Section 1463 (42 U.S.C. 300j-23) is amended by striking subsections (c) and (d).

(3) Section 1441 (42 U.S.C. 300j) is amended—

(A) by striking subsection (e); and

(B) by redesignating subsection (f) as subsection (e).

(d) STATUTORY CONSTRUCTION.—Nothing in this section is intended to alter any administrative proceedings for enforcement (including administrative proceedings for the issuance and enforcement of orders) initiated before the date of enactment of this section (including the procedures applicable to the enforcement proceedings in effect on the day before the date of enactment of this section).

SEC. 7. CONTROL OF LEAD IN DRINKING WATER.

(a) FITTINGS AND FIXTURES.—Section 1417 (42 U.S.C. 300g-6) is amended by adding at the end the following new subsection:

"(e) LEAD PLUMBING FITTINGS AND FIXTURES.—

"(1) IN GENERAL.—Not later than 2 years after the date of enactment of this subsection, the Administrator shall issue regulations to establish a health-effects based performance standard that establishes minimal leaching levels of lead from new plumbing pipes, fittings, and fixtures that convey drinking water.

"(2) CONSEQUENCES OF FAILURE TO MEET REQUIREMENTS.—If the requirements of paragraph (1) are not met—

"(A) by the date that is 4 years after the date of enactment of this subsection, no person may import, manufacture, process, or distribute in commerce a plumbing fitting or fixture that contains more than 7 percent lead by dry weight;

"(B) by the date that is 5 years after the date of enactment of this subsection, no person may import, manufacture, process, or distribute in commerce a plumbing fitting or fixture that contains more than 6 percent lead by dry weight;

"(C) by the date that is 6 years after the date of enactment of this subsection, no person may import, manufacture, process, or distribute in commerce a plumbing fitting or fixture that contains more than 5 percent lead by dry weight; or

"(D) by the date that is 7 years after the date of enactment of this subsection, no person may import, manufacture, process, or distribute in commerce a plumbing fitting or fixture that contains more than 4 percent lead by dry weight.".

(b) ENFORCEMENT.—Section 1417(a) (42 U.S.C. 300g-6(a)) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A)—

(i) by striking "Any" and inserting "No person shall use any"; and

(ii) by striking "which is used"; and

(B) in the matter following subparagraph (B), by striking "shall be" and inserting "which is not"; and

(2) in paragraph (2)(A), by inserting after "Each" the following: "owner or operator of a".

SEC. 8. RADON IN DRINKING WATER AND INDOOR AIR.

(a) RADON IN DRINKING WATER.—Part B (42 U.S.C. 300g et seq.) is amended by adding at the end the following new section:

"SEC. 1418. RADON IN DRINKING WATER.

"(a) REGULATIONS FOR RADON IN DRINKING WATER.—Notwithstanding any other provision of this Act or any other Federal law, on the date that is 1 year after the date of enactment of this section, the Administrator shall promulgate national primary drinking water regulations for radon.

"(b) RADON STANDARD.—

"(1) MAXIMUM CONTAMINANT LEVEL.—The regulations promulgated pursuant to subsection (a) shall specify a maximum contaminant level goal and a maximum contaminant level determined pursuant to section 1412(b).

"(2) ALTERNATIVE PROGRAM.—Notwithstanding the requirements of section 1412(b), the regulations promulgated pursuant to subsection (a) shall—

"(A) specify an alternative contaminant level that poses a health risk that is equivalent to the health risk associated with the national average radon level in outdoor air, taking into consideration risks from inhalation, ingestion of radon in drinking water, and episodic uses of drinking water;

"(B) specify a period of compliance of 3 years; and

"(C) specify minimum conditions for alternative compliance programs carried out pursuant to subsection (c).

"(c) ALTERNATIVE COMPLIANCE PROGRAMS.—

"(1) IN GENERAL.—A public water system may comply with the alternative contaminant level specified in subsection (b)(2) if the system is—

"(A) implementing an alternative compliance program approved pursuant to this subsection; or

"(B) located in a State that is implementing a program to reduce radon in indoor air and is receiving State grant assistance for the program pursuant to section 306 of the Toxic Substances Control Act (15 U.S.C. 2666).

"(2) PROGRAM SUBMITTAL AND REVIEW.—

"(A) SUBMITTAL OF PROGRAM.—The appropriate official of a public water system referred to in paragraph (1) that proposes to carry out an alternative compliance program referred to in such paragraph shall submit a program to the State agency that has primary enforcement responsibility pursuant to section 1413 or another appropriate State agency designated by the Governor, not later than 18 months after the date of promulgation of the regulations under subsection (a).

"(B) PUBLIC REVIEW AND COMMENT.—The appropriate official of the public water system shall provide opportunity for public review and comment on the program prior to the submittal of the program to the State pursuant to subparagraph (A) and shall provide to the State a summary of public comments concerning the program.

"(C) REVIEW BY STATE.—

"(i) IN GENERAL.—Not later than 180 days after the date of submittal of the program, the appropriate official of the State shall review and approve the program if the program is consistent with the requirements of this section.

"(ii) REVIEW BY ADMINISTRATOR.—The Administrator shall, at the request of a State, review and approve a program submitted to the State pursuant to this subparagraph.

"(3) EDUCATIONAL MATERIAL.—Each alternative compliance program referred to in paragraph (1)(A) shall provide for the distribution to each residential customer, not later than 1 year after the approval by the State of the program and every 5 years thereafter, educational material concerning radon that describes—

"(A) the health threats posed by radon;

"(B) the sources of radon (including soil gas and drinking water);

"(C) the level of radon in the drinking water provided by the public water system that is the subject of the program;

"(D) measures to reduce the levels of radon in the air indoors; and

"(E) radon testing and mitigation services offered by—

"(i) the public water system; and

"(ii) persons who do business in the service area and who are certified by the Administrator as proficient in conducting radon testing or mitigation.

"(4) TESTING FOR RADON IN INDOOR AIR.—

"(A) IN GENERAL.—Each alternative compliance program referred to in paragraph (1)(A) shall provide for testing of radon in indoor air in not less than 50 percent of the residences of residential customers served by the public water system as expeditiously as practicable, but not later than 5 years after the date of approval of an alternative compliance program pursuant to this subsection.

"(B) REQUIREMENT FOR TESTING.—Testing for radon in indoor air conducted pursuant to this paragraph shall be conducted by a person certified as proficient in conducting testing for radon in air by the Administrator.

"(5) NOTIFICATION.—Each public water system with a program approved by a State under this subsection shall notify each person who is certified by the Administrator as proficient in radon mitigation and known to provide radon mitigation services in the service area of the system of the approval of the program, the service area of the system, and the obligation to report, pursuant to subsection (d), to the public water system any radon mitigation projects in the service area.

"(6) RADON NEW CONSTRUCTION STANDARDS.—Each program developed pursuant to this section shall include the adoption, prior to submittal of the program, of enforceable mechanisms requiring compliance with radon new home construction standards established by the Administrator pursuant to section 304 of the Toxic Substances Control Act (15 U.S.C. 2664) for each new home to be served by the public water system that is the subject of the program beginning on the date that is 2 years after the date of adoption of the mechanisms.

"(7) ASSESSMENT AND EVALUATION.—

"(A) SUBMITTAL OF ASSESSMENTS.—Each public water system with a program approved by a State pursuant to this subsection shall provide an assessment and evaluation of program implementation to the State not later than 5 years after the date of approval of the program, and every 5 years thereafter.

"(B) PROGRAM DISAPPROVAL.—In any case in which a State or the Administrator determines that a public water system has not fully complied with the requirements of this subsection, the State or the Administrator shall—

"(i) notify the public water system of the determination; and

"(ii) disapprove the alternative compliance program not later than 1 year after providing notice pursuant to clause (i), unless the system takes sufficient corrective action.

"(C) COMPLIANCE.—A public water system for which an alternative compliance program is disapproved shall comply with the maximum contaminant level for radon (as determined by the regulations promulgated under subsection (a)) not later than 3 years after the date of disapproval by the Administrator.

"(8) ROLE OF STATE.—

"(A) PROGRAM RESPONSIBILITIES.—A State may assume some or all of the responsibilities of carrying out an alternative compliance program approved pursuant to this subsection.

"(B) PROHIBITION.—No Federal grant assistance provided to a State pursuant to title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) may be used to carry out alternative compliance programs for public water systems.

"(d) NOTICE OF RADON MITIGATION.—

"(1) IN GENERAL.—Each person who is—

"(A) certified by the Administrator as proficient in radon mitigation; and

"(B) notified by a public water system pursuant to subsection (c)(7),

shall provide the public water system with a notice of any work conducted at a residence within the service area of the public water system.

"(2) SUSPENSION OF CERTIFICATION.—If the Administrator finds that a person who is certified by the Administrator as proficient in radon mitigation has failed to comply with this subsection, the Administrator may suspend the certification of the person.

"(e) REPORT.—

"(1) IN GENERAL.—Not later than 7 years after the date of enactment of this subsection, the Administrator shall submit a report to Congress that assesses and evaluates the implementation of the regulations promulgated pursuant to subsection (a).

"(2) CONTENTS OF REPORT.—The report shall—

"(A) identify the number of public water systems that are in violation of a maximum contaminant level or alternative contaminant level established pursuant to the regulations;

"(B) identify the number of programs of public water systems approved by a State pursuant to this subsection and the number of States receiving grant assistance under section 306 of the Toxic Substances Control Act (15 U.S.C. 2666);

"(C) evaluate the implementation of the public water system and State programs; and

"(D) estimate the overall change in radon exposure attained as a result of alternative compliance programs and State radon programs.

"(f) RESIDENTIAL CUSTOMER DEFINED.—As used in this section, the term 'residential customer' means a customer of a public water system that occupies a residence other than an apartment located above the first story of a building.".

(b) RADON TESTING AT TIME OF HOME SALE.—

(1) IN GENERAL.—Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) is amended by adding at the end the following new section:

"SEC. 312. RADON TESTING AT TIME OF HOME SALE.

"(a) PROHIBITION.—Notwithstanding any other provision of law, beginning on the date that is 60 days after the date on which the Administrator issues regulations pursuant to subsection (b), no Federal agency shall provide a loan, loan guarantee, or other financial assistance relating to the financing of a residence located in an area identified by the Administrator as a high-risk radon area unless the sale of the residence is conducted in compliance with the regulations issued pursuant to subsection (b).

"(b) REGULATIONS.—Not later than 2 years after the date of enactment of this section, the Administrator shall issue regulations requiring testing for radon in indoor air at the time of sale of a residence located in a high-risk radon area.

"(c) TESTING.—The regulations issued pursuant to subsection (b) shall specify minimum standards and methods for radon tests and shall require that individuals conducting testing and test devices be certified by the Administrator pursuant to section 305. The regulations shall identify procedures to prevent tampering with test devices.

"(d) REPORTING.—The regulations issued pursuant to subsection (b) shall require that, not later than 10 days prior to the date of purchase of a residence, a person who proposes to purchase the residence shall be provided with—

"(1) the results of any radon test of the residence; and

"(2) background information on the health threat posed by radon.

"(e) HIGH-RISK RADON AREAS.—The regulations promulgated pursuant to subsection (b) shall describe high-risk radon areas identified by the Administrator pursuant to this title.

"(f) RESIDENCES.—The regulations issued pursuant to subsection (b) shall define the types of residential structures for which tests for radon are required.

"(g) EXISTING TEST.—The regulations issued pursuant to subsection (b) shall provide that, in any case in which a radon test has been conducted for a residence pursuant to the regulations, no additional retesting is required.

"(h) PREEXISTING TESTS.—The regulations issued pursuant to subsection (b) shall provide that any radon test conducted prior to the date of promulgation of the regulations shall be considered to meet the requirements of a test for radon for the purposes of the regulations if the test was conducted in a manner that is substantially comparable to a test conducted in accordance with the requirements of subsection (c).

"(i) FEDERAL AGENCY DEFINED.—As used in this section, the term 'Federal agency' means an Executive agency, as defined in section 105 of title 5, United States Code, and includes the Postal Service and any agency of the legislative or judicial branch of the Federal Government, and any federally chartered secondary mortgage institution.".

(2) CONFORMING AMENDMENT.—The table of contents in section 1 of the Toxic Substances Control Act (15 U.S.C. prec. 2601) is amended by inserting after the item relating to section 311 the following new item:

"Sec. 312. Radon testing at time of home sale."

SEC. 9. POINT OF USE DEVICES.

Part B (42 U.S.C. 300g et seq.), as amended by section 8, is further amended by adding at the end the following new section:

"SEC. 1419. POINT OF USE DEVICES.

"(a) IN GENERAL.—The Administrator shall establish a program to determine the effectiveness of water treatment devices designed to—

"(1) remove contaminants installed in a residence at the point of water use; and

"(2) ensure that consumers are provided with appropriate information about the devices at the time of sale.

"(b) SUBMISSION OF INFORMATION BY MANUFACTURERS.—Not later than 1 year after the date of enactment of this section, the Administrator shall issue regulations requiring each manufacturer of a water treatment device intended to be installed at the point of water use to submit to the Administrator such information on the effectiveness and functions of the device as the Administrator determines is necessary to carry out this section.

"(c) PROVISION OF INFORMATION TO CONSUMERS.—Not later than 3 years after the date of enactment of this section, the Administrator shall issue regulations establishing minimum requirements for information to be provided to consumers prior to the purchase of water treatment devices installed at the point of water use, including—

"(1) the efficiency of removal of contaminants or classes of contaminants, including the efficiency of a device compared to other comparable devices;

"(2) the period of effectiveness of the device and the rate of degradation of treatment efficiency, if any; and

"(3) those contaminants for which the Administrator has published a national drinking water standard under section 1412 that are not removed from drinking water by the device.".

SEC. 10. DRINKING WATER SUPPLY PROTECTION.

(a) IN GENERAL.—Section 1427 (42 U.S.C. 300h-6) is amended—

(1) by striking the section heading and inserting the following new section heading:

"SEC. 1427. DRINKING WATER SUPPLY PROTECTION AREAS.";

(2) by striking subsections (a) and (b) and inserting the following new subsections:

"(a) PURPOSE.—The purpose of this section is to support and assist the establishment of programs for the protection of water supply areas.

"(b) DEFINITION OF SUPPLY PROTECTION AREA.—As used in this section, the term 'water supply protection area' means an area that contains ground water or surface water that—

"(1) is the principal source of supply to a public water system;

"(2) if contaminated, would create a significant hazard to public health; and

"(3) satisfies the criteria established pursuant to subsection (d).";

(3) in subsection (c)—

(A) in the first sentence—

(i) by striking "State";

(ii) by striking "critical aquifer" and inserting "water supply"; and

(iii) by striking "selection of such area for a demonstration program" and inserting "approval of an application for the designation of the area"; and

(B) by striking the last sentence;

(4) in subsection (d)—

(A) in the matter preceding paragraph (1), by striking "1986" and inserting "1993";

(B) by striking "critical aquifer" each place it appears and inserting "water supply";

(C) by striking "aquifer" each place it appears and inserting "water supply"; and

(D) by striking "ground" each place it appears;

(5) in subsection (e)—

(A) by striking "demonstration";

(B) in paragraph (1), by striking "critical aquifer" and inserting "water supply"; and

(C) by striking "critical" each place it appears;

(6) in subsection (f)—

(A) by striking "ground" each place it appears and inserting "drinking";

(B) by striking "underground" each place it appears;

(C) by striking "critical" each place it appears; and

(D) by adding at the end of the subsection the following new paragraph:

"(3) A comprehensive management plan developed pursuant to this subsection may also propose modifications of otherwise applicable monitoring requirements of national primary drinking water regulations. Any proposal made in the plan for alternative monitoring requirements shall identify specific pollution prevention measures to be implemented that allow for an alternative monitoring program.";

(7) by striking subsection (g) and inserting the following new subsection:

"(g) ACTIVITIES INVOLVING FEDERAL AGENCIES.—

"(1) FEDERAL AGENCY ACTIVITIES.—In the case of a water supply protection area within a State for which an application is approved pursuant to subsection (i), each activity or development project carried out by a Federal agency within the area shall be carried out in a manner that is, to the maximum extent practicable, consistent with the approved application and plan referred to in subsection (e)(2).

"(2) FEDERAL LICENSEE AND PERMITTEE ACTIVITIES.—In the case of a water supply protection area for which an application is approved pursuant to subsection (i), each applicant for a required Federal license or permit to conduct an activity within the area shall provide in the application to the licensing or permitting agency a certification from the planning entity that the proposed activity is consistent with the comprehensive management plan of the applicant.

"(3) PRESIDENTIAL EXEMPTION.—The President may exempt any Federal project or development project from the requirements of this subsection if the President determines that the exemption is in the paramount interest of the United States.";

(8) by striking subsections (i) and (j) and inserting the following new subsections:

"(i) APPROVAL OR DISAPPROVAL.—

"(1) IN GENERAL.—Not later than 120 days after the receipt of an application under this section, the Administrator shall approve or disapprove the application.

"(2) DETERMINATION BY THE ADMINISTRATOR.—The Administrator shall approve or disapprove an application on the basis of a determination that—

"(A) the water supply protection area meets the criteria established under subsection (d);

"(B) the application meets the requirements described in subsection (e); and

"(C) there are adequate legal authorities and financial resources to ensure effective implementation of the comprehensive management plan required under subsection (e)(5).

"(3) SUBMISSION TO THE GOVERNOR.—If the Administrator disapproves an application, the Administrator shall submit to the Governor a written explanation of the reasons for the disapproval of the application.

"(4) RESUBMISSION OF APPLICATIONS.—An applicant may modify and resubmit any application that is disapproved.

"(j) GRANTS.—

"(1) IN GENERAL.—The Administrator may make grants to applicants that propose to develop an application pursuant to subsection (c).

"(2) CONDITIONS FOR GRANTS.—A grant made pursuant to this subsection shall be made on the conditions that—

"(A) the applicant provides not less than 20 percent of the costs of developing the application; and

"(B) a grant to an applicant is made for not more than 3 consecutive years."; and

(9) in subsection (n)—

(A) in the first sentence—

(i) by striking "carry out this section" and inserting "make grants pursuant to subsection (j)"; and

(ii) by inserting after "$17,500,000" the following:

"1992-2000 .... $20,000,000.";

and

(B) by striking the last sentence.

(b) CONFORMING AMENDMENT.—Section 1424 (42 U.S.C. 300h-3) is amended by striking subsection (e).

(c) STATE WATER SUPPLY PROTECTION PROGRAM.—Section 1428 (42 U.S.C. 300h-7) is amended—

(1) by striking the section heading and inserting the following new section heading:

"SEC. 1428. STATE PROGRAMS TO PROTECT WATER SUPPLY AREAS.";

(2) in subsection (a)—

(A) by striking "wellhead" each place it appears and inserting "water supply"; and

(B) by striking "well" each place it appears and inserting "source";

(3) in subsections (b) and (c), by striking "wellhead" each place it appears and inserting "water supply";

(4) by striking subsection (d) and inserting the following new subsection:

"(d) PROGRAM REVISION.—

"(1) SUBMISSION.—The Governor of a State may submit to the Administrator a new or revised program to protect water supply areas within the jurisdiction of the State from contaminants that may have adverse effects on human health.

"(2) APPROVAL BY THE ADMINISTRATOR.—The Administrator shall approve a new or revised water supply protection program submitted pursuant to this subsection if—

"(A) the program is consistent with the requirements of paragraphs (1) through (6) of subsection (a);

"(B) the program was developed in accordance with the public participation requirements of subsection (b);

"(C) the State has enacted such legal authority as is sufficient to protect drinking water within each water supply area in the State in accordance with this section; and

"(D) the legal authorities established under subparagraph (C) are reasonably likely to be implemented.

"(3) DEFINITION OF LEGAL AUTHORITY.—As used in this subsection, the term 'legal authority' means a State statute, county or municipal ordinance, or other enforceable authority that is sufficient to prevent the location of new sources of contaminants identified pursuant to subsection (a)(3) within each water supply area in the State and to control the release of contaminants from existing sources within the water supply area, including such penalties for violations of the authority as the Administrator determines to be adequate.";

(5) subsection (e) is amended to read as follows:

"(e) WATER SUPPLY PROTECTION AREA DEFINED.—As used in this section, the term 'water supply protection area' means the surface and subsurface area surrounding a water supply, including a surface water source or wellhead area, that supplies a public water system through which contaminants are reasonably likely to move toward and reach the water supply.";

(6) subsection (g) is amended by—

(A) striking the first sentence; and

(B) striking "wells" and inserting "supplies";

(7) in subsection (h)—

(A) by striking "(h) FEDERAL AGENCIES.—Each" and inserting the following:

"(h) ACTIVITIES INVOLVING FEDERAL AGENCIES.—

"(1) FEDERAL AGENCY ACTIVITIES.—Each";

(B) by striking "The President may" and inserting the following:

"(3) PRESIDENTIAL EXEMPTION.—The President may";

(C) by inserting after paragraph (1) (as so designated) the following new paragraph:

"(2) FEDERAL LICENSEE AND PERMITTEE ACTIVITIES.—In the case of a water supply area within a State for which a program is approved pursuant to subsection (d), each applicant for a required Federal license or permit to conduct an activity within the area shall provide in the application to the licensing or permitting agency a certification from the State that the proposed activity complies with the enforceable policies of the program of the State and that the activity will be conducted in accordance with the approved program."; and

(D) in paragraph (1) (as so designated) by inserting after "a State program" the following: "approved pursuant to subsection (d)"; and

(8) in subsection (k)—

(A) by striking the first sentence and inserting the following new sentence: "For each fiscal year, the Administrator may make a grant to a State with a program approved pursuant to subsection (d) to carry out the program. The amount of each grant may not exceed 50 percent of the costs of carrying out the program."; and

(B) by adding at the end the following:

"1992-2000 .... $20,000,000.".

(d) FEDERAL WATER POLLUTION CONTROL ACT GRANT ELIGIBILITY.—Section 319(h) of the Federal Water Pollution Control Act (33 U.S.C. 1329(h)) is amended by adding at the end the following new paragraph:

"(13) WATER SUPPLY PROTECTION AREAS.—Notwithstanding any other provision of this section, funds made available to carry out this subsection may be used to carry out a project consistent with a water supply protection area comprehensive plan approved pursuant to section 1427(i) of title XIV of the Public Health Service Act (commonly known as the 'Safe Drinking Water Act') (42 U.S.C. 300h-6(i)) or a State water supply protection program approved pursuant to section 1428(d) of such Act. The funds shall be used in the same manner as provided for use of funds under this section, and be subject to the conditions that apply under this section.".

SEC. 11. EMERGENCY POWERS.

Section 1431 (42 U.S.C. 300i) is amended to read as follows:

"SEC. 1431. ACTIONS AUTHORIZED AGAINST IMMINENT AND SUBSTANTIAL ENDANGERMENT TO HEALTH OR AN UNDERGROUND SOURCE OF DRINKING WATER.

"Notwithstanding any other provision of this title, the Administrator, on receipt of information that a contaminant that is present in or is likely to enter a public water system or an underground source of drinking water may present an imminent and substantial endangerment to the health of individuals, and after providing notice to appropriate State and local officials, may take such actions as the Administrator may consider necessary in order to protect the health of the individuals. The actions that the Administrator may take may include—

"(1) issuing such orders as may be necessary to protect the health of individuals who are or may be users of the public water system (including travelers) or to restore or protect the public water system, including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment; and

"(2) commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.".

SEC. 12. TAMPERING WITH PUBLIC WATER SYSTEMS.

(a) TAMPERING.—Section 1432(a) (42 U.S.C. 300i-1(a)) is amended to read as follows:

"(a) TAMPERING.—No person shall tamper with, attempt to tamper with, or make a threat to tamper with a public water system.".

(b) TAMPER DEFINED.—Section 1432(d) (42 U.S.C. 300i-1(d)) is amended to read as follows:

"(d) TAMPER DEFINED.—As used in this section, the term 'tamper' means—

"(1) the introduction or addition of—

"(A) any element, compound, solution, or substance designated as a hazardous substance pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9602);

"(B) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (42 U.S.C. 6921);

"(C) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act (33 U.S.C. 1317(a)); or

"(D) any imminently hazardous chemical substance or mixture, with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act (15 U.S.C. 2606),

into a public water system so as to endanger public health except if the introduction is by an employee or authorized agent of a public water system and is carried out in conjunction with the normal duties of the employee or agent for the purposes of treatment of water or as a requirement for compliance with any Federal, State, or local law (including any regulation), or in response to a public health emergency; or

"(2) the interference with the proper operation or function of a public water system if the person who causes the interference is recklessly indifferent to the harm that the interference may cause to any person; or

"(3) removing water from a public water system through a pipe or device outside the public water system and returning water to the public water system, except in any case in which a pipe or device is totally within the control of 1 or more public water systems.".

SEC. 12. DRINKING WATER RESEARCH, EDUCATION, AND CERTIFICATION.

Section 1442 (42 U.S.C. 300j-1) is amended—

(1) by redesignating paragraph (3) of subsection (b) as paragraph (3) of subsection (d) and moving such paragraph to appear after paragraph (2) of subsection (d);

(2) by striking subsection (b) (as so amended);

(3) by redesignating subparagraph (B) of subsection (a)(2) as subsection (b) and moving such subsection to appear after subsection (a);

(4) in subsection (a)—

(A) by striking paragraph (2) (as so amended) and inserting the following new paragraph:

"(2) In carrying out this title, the Administrator is authorized to—

"(A) collect and make available information pertaining to research, investigations, and demonstrations with respect to providing a dependably safe supply of drinking water, together with appropriate recommendations in connection with the information; and

"(B) make available research facilities of the Agency to appropriate public authorities, institutions, and individuals engaged in studies and research relating to this title."; and

(B) by adding at the end the following new paragraph:

"(12) There are authorized to be appropriated to carry out this subsection $20,000,000 for each of fiscal years 1994 through 2000.";

(5) in the first sentence of subsection (c), by striking "eighteen months after the date of enactment of this subsection" and inserting "2 years after the date of enactment of the Safe Drinking Water Act Amendments of 1993, and every 5 years thereafter";

(6) in subsection (d) (as amended by paragraph (1))—

(A) in paragraph (1), by striking ", and" at the end and inserting a semicolon;

(B) in paragraph (2), by striking the period at the end and inserting "; and";

(C) by adding after paragraph (3) (as redesignated by paragraph (1)) the following new paragraph:

"(4) develop and maintain a system for forecasting the supply of, and demand for, various professional occupational categories and other occupational categories needed for the protection and treatment of drinking water in each region of the United States."; and

(D) by adding at the end the following new sentence: "There are authorized to be appropriated to carry out this subsection $10,000,000 for each of fiscal years 1994 through 2000.";

(7) by striking subsection (e) and inserting the following new subsection:

"(e)(1) The Chief Operator of a public water system and any laboratory conducting tests pursuant to this Act, and such additional personnel as may be designated by the Administrator, shall be required to be certified as proficient pursuant to this section by a State that has a certification program that is approved by the Administrator.

"(2) The requirement referred to in paragraph (1) shall become effective on the date that is 4 years after the date of enactment of the Safe Drinking Water Act Amendments of 1993, unless—

"(A) the State extends the effective date pursuant to paragraph (3); or

"(B) the State has proposed to develop a small system compliance program for the system, in which case the effective date shall be the date that is 3 years after the date of completion of the compliance program.

"(3) The State may extend the effective date of the requirement referred to in paragraph (1) for a period of not to exceed 3 years on a system-specific basis if the Administrator determines that, with respect to a system, adequate opportunity to seek certification did not exist during the period described in paragraph (2).

"(4) Each certification of proficiency issued by the appropriate official of a State under this section shall be granted to the individual that receives the certification and shall not be granted to the public water system where the individual is employed.

"(5) A certification of proficiency issued under this section shall be effective during the 5-year period beginning on the date of certification. An individual may be recertified on termination of the 5-year period (and on termination of each subsequent 5-year period) if the individual complies with inservice training and related education requirements for the certification.

"(6) Nothing in this section is intended to be construed to prevent a State from requiring more frequent certification than is specified in paragraph (5).

"(7) Not later than 1 year after the date of the Safe Drinking Water Act Amendments of 1993, the Administrator shall publish guidelines specifying minimum standards for certification of the proficiency of operators and other appropriate personnel by a State pursuant to this subsection.

"(8) Not later than 2 years after the date of enactment of the Safe Drinking Water Act Amendments of 1993, the Administrator shall publish a public water systems operator's manual that describes essential knowledge and skills of—

"(A) a Chief Operator; and

"(B) such additional personnel as the Administrator determines appropriate to receive operator proficiency certification.

"(9)(A) Beginning on the date of publication of the guidelines under paragraph (7), the Governor of a State may submit to the Administrator, in such form as the Administrator may require, a certification program under this section.

"(B) The Administrator shall review and approve or disapprove a program submitted pursuant to this paragraph not later than 90 days after the submittal of the application. The Administrator shall approve the application on the basis of a determination that—

"(i) the State certification program will be consistent with the guidelines published pursuant to subsection (b);

"(ii) the State has committed to implement the program by not later than 1 year after the date of approval of the application; and

"(iii) the State agrees to provide to the Administrator such information concerning the program as the Administrator may request.

"(C) In any case in which the Administrator disapproves a program, the Administrator shall provide to the State a written statement of the reasons for disapproval. The State may, not later than 90 days after receipt of the statement of the Administrator, submit to the Administrator such modifications to the application as may be necessary. Not later than 30 days after receipt of the revised application, the Administrator shall approve or disapprove the revised application.

"(D) A State may establish a certification requirement in addition to the requirements established pursuant to this section."; and

(8) in subsection (g) by amending the third sentence by striking "1987–1991" and inserting "1994–2000".

SEC. 14. STATE DRINKING WATER PROGRAM FUNDING.

(a) PUBLIC WATER SYSTEM SUPERVISION PROGRAM.—Section 1443(a) (42 U.S.C. 300j-2(a)) is amended—

(1) in paragraph (3)—

(A) by striking "A grant" and inserting "(A) Except as provided in subparagraph (B), a grant"; and

(B) by adding at the end the following new subparagraph:

"(B) For fiscal year 1997, and each fiscal year thereafter, a grant made under paragraph (1) shall cover not more than 50 percent of the costs of the grant recipient (as determined under regulations of the Administrator) in carrying out, during the 1-year period beginning on the date the grant is made, a public water system supervision program. A State may use funds collected as a result of a fee program established under section 1444(a) to match Federal assistance only to the extent that the funds are in excess of amounts provided by the State pursuant to subparagraph (A) for fiscal year 1994.";

(2) in paragraph (7), by adding at the end a period and the following new flush sentence: "For the purpose of making grants under paragraph (1), there are authorized to be appropriated such sums as are necessary for each of fiscal years 1992 and 1993 and $100,000,000 for each of fiscal years 1994 through 2000."; and

(3) by adding at the end the following new paragraph:

"(8) If the Administrator assumes the primary enforcement responsibility of a State water system supervision program, the Administrator may reserve from funds made available pursuant to this subsection, an amount equal to the amount that would otherwise have been provided to the State pursuant to this subsection. The Administrator shall use the funds reserved pursuant to this paragraph, in combination with fees collected pursuant to section 1444, in such manner as to ensure the full and effective administration of a public water system supervision program in the State.".

(b) STATE GROUND WATER PROTECTION GRANTS.—Section 1443 (42 U.S.C. 300j-2) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection:

"(c)(1) The Administrator may make a grant to a State for the development and implementation of a State program to ensure the coordinated and comprehensive protection of ground water resources within the State.

"(2) Not later than 1 year after the date of enactment of the Safe Drinking Water Act Amendments of 1993, and annually thereafter, the Administrator shall publish guidance that establishes procedures for application for State ground water protection program assistance and that identifies key elements of State ground water protection programs.

"(3)(A) The Administrator shall award grants to States that submit an application that is approved by the Administrator. The Administrator shall determine the amount of a grant awarded pursuant to this paragraph on the basis of an assessment of the extent of ground water resources in the State and the likelihood that awarding the grant will result in sustained and reliable protection of ground water quality.

"(B) The Administrator may also award a grant pursuant to this paragraph for innovative programs for prevention of ground water contamination proposed by a State.

"(C) The Administrator shall, at a minimum, ensure that, for each fiscal year, not less than 1 percent of funds made available to the Administrator by appropriations to carry out this subsection are allocated to each State that submits an application that is approved by the Administrator pursuant to this subsection.

"(D) The Administrator may not award a grant under this subsection to a person who is not a State.

"(E) No grant awarded by the Administrator may be used for a project to remediate ground water contamination.

"(4) The awarding of grants by the Administrator pursuant to this paragraph shall be coordinated with the awarding of grants pursuant to section 319(i) of the Federal Water Pollution Control Act (33 U.S.C. 1329(i)) and the awarding of other Federal grant assistance that provides funding for programs related to ground water protection.

"(5) The amount of a grant awarded pursuant to paragraph (1) shall not exceed 50 percent of the eligible costs of carrying out the ground water protection program that is the subject of the grant (as determined by the Administrator) for the 1-year period beginning on the date that the grant is awarded. The State shall pay a State share to cover the costs of the ground water protection program from State funds in an amount not less than 50 percent of the cost of conducting the program.

"(6) Not later than 3 years after the date of enactment of the Safe Drinking Water Act Amendments of 1993, and every 3 years thereafter, the Administrator shall evaluate the State ground water protection programs that are the subject of grants awarded pursuant to this subsection and report to Congress on the status of ground water quality in the United States and the effectiveness of State programs for ground water protection.

"(7) There are authorized to be appropriated to the Environmental Protection Agency $20,000,000 for each of fiscal years 1994 through 2000.".

(c) STATE DRINKING WATER PROGRAM FUNDING.—Section 1413(a) (42 U.S.C. 300g-2(a)) is amended—

(1) in paragraph (4), by striking "and" at the end;

(2) in paragraph (5), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(6) is providing funding that, in combination with Federal grant assistance received pursuant to section 1443(a), is sufficient to ensure the full and effective administration of the public water system supervision program of the State.".

(d) FEDERAL FEE PROGRAM.—Section 1444 (42 U.S.C. 300j-3) is amended to read as follows:

"SEC. 1444. FEDERAL DRINKING WATER PROGRAM FEE.

"(a) ESTABLISHMENT.—

"(1) GENERAL AUTHORITY.—The Administrator shall establish a Federal program for the collection of fees from public water systems in a State to support the costs of administration of the public water system supervision program in the State. Beginning on the first day of fiscal year 1997, the Administrator shall collect fees under this section with respect to a State if the State does not have primary enforcement responsibility for public water systems within the State pursuant to section 1413(a).

"(2) AMOUNT OF FEES.—If the Administrator is authorized to collect fees under paragraph (1), the Administrator shall assess each public water system of the State that serves more than 3,300 individuals. The amount of a fee collected pursuant to the preceding sentence shall be not greater than $0.005 per 100 gallons of water billed by a system, and shall, in combination with Federal grant funds reserved by the Administrator that otherwise would have been provided to the State, is sufficient to ensure the full and effective administration of the public water system supervision program of the State.

"(b) PUBLIC DRINKING WATER SYSTEM SUPERVISION FUND.—

"(1) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the 'Public Drinking Water System Supervision Fund' (referred to in this paragraph as the 'Fund'), consisting of—

"(A) such amounts as are appropriated to the Fund under paragraph (2); and

"(B) any interest earned on investment of amounts in the Fund under paragraph (4).

"(2) TRANSFERS TO FUND.—There are appropriated to the Fund amounts equivalent to amounts collected as fees, and interest on the fees, and received in the Treasury under this section.

"(3) EXPENDITURES FROM FUND.—On request by the Administrator, the Secretary of the Treasury shall transfer from the Fund to the Administrator such amounts as the Administrator determines are necessary to carry out the activities for which fees are collected under this section.

"(4) INVESTMENT OF FUNDS.—

"(A) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary, required to meet then current withdrawals. Investments may be made only in interest-bearing obligations of the United States.

"(B) ACQUISITION OF OBLIGATIONS.—For the purpose of investments, obligations may be acquired—

"(i) on original issue at the issue price; or

"(ii) by purchase of outstanding obligations at the market price.

"(C) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

"(D) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

"(5) TRANSFERS OF AMOUNTS.—

"(A) IN GENERAL.—The amounts required to be transferred to the Fund under this paragraph shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the Treasury.

"(B) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(c) STATE LOAN FUNDS.—

"(1) IN GENERAL.—For any fiscal year for which the amounts made available to the Administrator from the Fund established under subsection (b) are less than the total amount deposited in the Fund during the preceding fiscal year, the Administrator may reserve from funds made available pursuant to section 1489 the difference between the amounts.

"(2) USE OF FUNDS.—The Administrator may use the amount reserved pursuant to paragraph (1) for the administration of the public water system supervision program of States for which fees were collected pursuant to subsection (a) during the preceding fiscal year.".

SEC. 15. RECORDS AND INSPECTIONS.

(a) IN GENERAL.—

(1) RECORDS.—Subparagraphs (A) and (B) of section 1445(a)(1) (42 U.S.C. 300j-4(a)(1)) are amended to read as follows:

"(A) Each person who (as determined by the Administrator)—

"(i) is a supplier of water;

"(ii) is or may be otherwise subject to a primary drinking water regulation prescribed pursuant to section 1412 or an order issued pursuant to section 1441;

"(iii) is or may be subject to any other provision of part B or this part; or

"(iv) is a grantee,

shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require to assist the Administrator in carrying out the activities described in subparagraph (B).

"(B) The activities described in this subparagraph are as follows:

"(i) Issuing regulations pursuant to this title.

"(ii) Determining whether a person has acted or is acting in compliance with part B or this part.

"(iii) Determining the injunctive or penalty relief appropriate for any violation of part B or this part.

"(iv) Administering a program of financial assistance under this title.

"(v) Evaluating the health risks of unregulated contaminants and advising the public of the risks.

"(vi) Carrying out any other responsibility of the Administrator under this title."

(2) FACTORS FOR CONSIDERATION.—Section 1445(a)(1) (42 U.S.C. 300j-4(a)(1)), as amended by section 4(c)(2), is further amended by adding at the end the following new subparagraph:

"(D) In requiring the owner or operator of a public water system to conduct monitoring pursuant to this subsection, the Administrator may take into consideration the size of the population served by the public water system and the contaminants likely to be found in the drinking water of the public water system.".

(b) AUTHORIZATION.—Section 1445(a)(8) (42 U.S.C. 300j-4(a)(8)) is amended by striking "$30,000,000 in the fiscal year ending September 30, 1987" and inserting "$35,000,000 for each of fiscal years 1994 through 2000".

(c) INSPECTIONS.—Subsections (b) and (c) of section 1445 (42 U.S.C. 300j-4 (b) and (c)) are amended to read as follows:

"(b)(1) The Administrator, or the authorized representative of the Administrator (including an authorized contractor acting as a representative of the Administrator), on presentation of appropriate credentials to any person who is or may be subject to—

"(i) a national primary drinking water regulation prescribed pursuant to section 1412;

"(ii) any requirement to monitor an unregulated contaminant pursuant to subsection (a); or

"(iii) any other requirement of part B or E, or to a person in charge of any of the property of a person referred to in clause (i), (ii), or (iii) (or the senior employee present at the site), is authorized to enter any establishment, facility, or other property of a person referred to in clause (i), (ii), or (iii).

"(2) The Administrator or an authorized representative of the Administrator may enter an establishment, facility, or other property pursuant to paragraph (1)—

"(A) in order to determine whether a person has acted or is acting in compliance with part B or this part, including for this purpose, inspecting, at reasonable times, of records, files, papers, processes, controls, and facilities; or

"(B) in order to test any feature of a public water system, including the raw water source of the system.

"(3) The Administrator or the Comptroller General of the United States (or any authorized representative designated by the Administrator or the Comptroller General of the United States) shall have access for the purpose of audit and examination of any record, report, or information of a person or grantee that—

"(A) is required to be maintained under subsection (a); or

"(B) is pertinent to any financial assistance provided pursuant to this title.

"(c) Any person, who is subject to any provision of part B or this part (including a person that the Administrator determines may be subject to a requirement of part B or this part), shall—

"(1) comply with the requirements of subsection (a);

"(2) allow the Administrator or the authorized representative of the Administrator to enter and make determinations and test and take samples pursuant to paragraph (1) and (2) of subsection (b); and

"(3) allow the Administrator, the Comptroller General of the United States or authorized representative of the Administrator or the Comptroller General of the United States to have access to, audit, and examine records, reports, and information pursuant to subsection (b)(3).".

(d) DRINKING WATER COOLERS.—Section 1445 (42 U.S.C. 300j-4) is amended by adding at the end the following new subsection:

"(f) INFORMATION REGARDING DRINKING WATER COOLERS.—The Administrator may use the authorities of this section in carrying out part F. With respect to the application of this section to persons subject to part F, a person who manufactures, imports, sells, or distributes drinking water coolers or component parts of drinking water in interstate commerce shall be considered a supplier of water.".

SEC. 16. FEDERAL AGENCIES.

Subsections (a) and (b) of section 1447 (42 U.S.C. 300j-6 (a) and (b)) are amended to read as follows:

"(a)(1) Each Federal agency shall be subject to, and comply with, all Federal, State, interstate and local substantive and procedural requirements, administrative authorities, and process and sanctions respecting the provision of safe drinking water in the same manner, and to the same extent, as any nongovernmental entity is subject to, and shall comply with, the requirements, authorities, and process and sanctions.

"(2) The Federal, State, interstate, and local substantive and procedural requirements, administrative authority, and process and sanctions referred to in paragraph (1) include all administrative orders and all civil and administrative penalties or fines, regardless of whether the penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations.

"(3) The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any requirement, administrative authority, or process or sanction referred to in paragraph (2) (including any injunctive relief, administrative order or civil or administrative penalty or fine referred to in paragraph (2), or reasonable service charge). The reasonable service charges referred to in this paragraph include fees or charges assessed in connection with the processing, issuance, renewal or amendment of permits, variances, or exemptions, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local safe drinking water regulatory program.

"(4) No agent, employee, or officer of the United States shall be personally liable for any civil penalty under this subsection with respect to any act or omission within the scope of the official duties of the agent, employee, or officer.

"(5) An agent, employee, or officer of the United States shall be subject to a criminal sanction (including a fine or imprisonment under this subsection). No department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to a sanction referred to in the preceding sentence.

"(b)(1) The President may waive compliance with subsection (a) by any department, agency, or instrumentality in the executive branch if the President determines waiving compliance with such subsection to be in the paramount interest of the United States.

"(2) No waiver described in paragraph (1) shall be granted due to the lack of an appropriation unless the President has specifically requested the appropriation as part of the budgetary process and Congress has failed to make available the requested appropriation.

"(3) A waiver under this subsection shall be for a period of not to exceed 1 year, but an additional waiver may be granted for a period of not to exceed 1 year on the termination of a waiver if the President reviews the waiver and makes a determination that it is in the paramount interest of the United States to grant an additional waiver.

"(4) Not later than January 31 of each year, the President shall report to Congress on each waiver granted pursuant to this subsection during the preceding calendar year, together with the reason for granting the waiver.".

SEC. 17. CITIZEN'S CIVIL ACTION.

(a) IN GENERAL.—Subsections (a) through (c) of section 1449 (42 U.S.C. 300j-8 (a) through (c)) are amended to read as follows:

"(a)(1) Except as provided in subsection (b), any person may commence a civil action on behalf of the person—

"(A) against any person (including a Federal agency, to the extent permitted by sections 1447 and 1472) who is alleged to have violated (if there is evidence that the alleged violation has been repeated by the person) or to be in violation of any requirement of part B or this part (including any regulation issued pursuant to this title);

"(B) against any Federal agency that is alleged to have violated (if there is evidence that the alleged violation has been repeated by the person) or to be in violation of any order issued under this title by the Administrator;

"(C) against any Federal agency that fails to pay a penalty assessed by the Administrator pursuant to section 1472(c)(1)(B) within 1 year after the effective date of the final order; and

"(D) against the Administrator, if a failure of the Administrator to perform any act or duty under this title that is not discretionary with the Administrator is alleged.

"(2) Each United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce in an action brought under this subsection any requirement under this title (including any requirement under a regulation issued under this title) or any order issued under this title by the Administrator to a Federal agency. The enforcement by the court may include ordering—

"(A) the Federal agency to pay the penalty assessed pursuant to section 1472(c)(1)(B), or order relief pursuant to section 1428; and

"(B) the Administrator to perform an act or duty described in paragraph (1)(D), and to impose any appropriate civil penalties pursuant to section 1472.

"(b)(1) No civil action may be commenced—

"(A) under subsection (a)(1) concerning a violation of a requirement prescribed under this title (including any requirement under a regulation issued under this title)—

"(i) prior to the termination of the 60-day period beginning on the date the plaintiff gives notice of the violation to—

"(I) the Administrator;

"(II) any alleged violator of the requirement; and

"(III) the State in which the violation occurs, or has occurred;

"(ii) if the Administrator, or the Attorney General, has commenced and is diligently prosecuting, a civil action in a court of the United States to require compliance with the requirement, except that in any such action in a court of the United States any person may intervene as a matter of right;

"(iii) if a State has commenced prior to the notification required by this subsection, and is diligently prosecuting, a civil action in a court of the United States to require compliance with the requirement, except that in any such action in a court of the United States any person may intervene as a matter of right; or

"(iv) if the Administrator has commenced, and is diligently prosecuting, an action pursuant to section 1472(a) against a Federal agency, or with respect to which the Administrator has issued a final order and the violator has paid a penalty pursuant to section 1472(c); or

"(B) under subsection (a)(1)(D), before the termination of the 60-day period beginning on the date the plaintiff gives notice of the action to the Administrator.

"(2) The notice required by this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

"(c) In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right at any time in the proceedings. A judgment in an action brought pursuant to this section to which the United States is not a party shall not have any binding effect upon the United States.".

(b) SERVICE OF COMPLAINT.—Section 1449 (42 U.S.C. 300j-8) is amended by adding at the end the following new subsection:

"(f) Whenever any action is brought under this section in a court of the United States, the plaintiff shall serve a copy of the complaint on the Attorney General and the Administrator. No consent judgment shall be entered in an action in which the United States is not a party during the 45-day period beginning on the date of receipt of a copy of a proposed consent judgment by the Attorney General and the Administrator. A judgment in an action under this section to which the United States is not a party shall not have a binding effect on the United States.".

SEC. 18. OTHER AMENDMENTS.

(a) DEFINITION OF PUBLIC WATER SYSTEM.—Section 1401(4) (42 U.S.C. 300f(4)) is amended by adding at the end the following new sentence: "The term does not include any noncommunity water system that does not provide water for human consumption if bottled water is provided for human consumption, and there are posted such signs prohibiting the drinking of water from the system as the Administrator determines are appropriate.".

(b) ANNUAL REPORT.—Section 1450 (42 U.S.C. 300j-9) is amended by striking subsection (h).

(c) STATE PRIMARY ENFORCEMENT RESPONSIBILITY.—Section 1413(a) (42 U.S.C. 300g-2(a)), as amended by section 14(c), is further amended by striking paragraph (1) and inserting the following new paragraph:

"(1) has adopted drinking water regulations that are no less stringent than the national primary drinking water regulations promulgated by the Administrator under subsections (a) and (b) of section 1412 not later than 2 years after the promulgation of the national regulations by the Administrator;".

(d) JUDICIAL REVIEW.—Section 1448(a) (42 U.S.C. 300j-7(a)) is amended—

(1) in paragraph (2), by inserting "final" after "any other"; and

(2) in the second sentence, by striking "or issuance of the order" and inserting "or any other final Agency action".

(e) REPORT TO CONGRESS ON PRIVATE DRINKING WATER.—Section 1450 (42 U.S.C. 300j-9) is amended by adding at the end the following new subsection:

"(j) The Administrator shall conduct a study to determine the extent and seriousness of contamination of private sources of drinking water that are not regulated under this Act. Not later than 3 years after the date of enactment of this subsection, the Administrator shall submit to Congress a report that includes the findings of the study and recommendations by the Administrator concerning responses to any problems identified under the study.".

SUMMARY—SAFE DRINKING WATER ACT AMENDMENTS OF 1993

TITLE

This Act may be cited as the "Safe Drinking Water Act Amendments of 1993".

FINDINGS

The Congress finds that State and local governments need financial and technical assistance in complying with the requirements of the Safe Drinking Water Act and that the Act needs to be reviewed and revised to reduce the regulatory burden on drinking water systems, especially small systems, while assuring safe drinking water.

STATE LOAN FUNDS

(a) General Authority.—The Administrator may enter into a capitalization grant agreement with a State where a State establishes a loan fund and agrees to conditions including providing a 20% State match, use of loans in compliance with an intended use plan, enactment of authority to prevent the establishment of new nonviable systems, and proper financial management.

The authority to establish priorities for loans is to remain with the State agency implementing the drinking water program. A State may consolidate management of drinking water and clean water loan funds provided that funding remains separate.

(b) Capitalization Grants.—The Administrator may make capitalization grants to States with capitalization grant agreements starting in FY 1994. Funds are to be allocated pursuant to the PWSS grant formula. In addition, 1% is reserved for Indian tribes and 1% is reserved for public health emergencies. Indian tribes, territories, and the District of Columbia may receive direct grants.

(c) Eligible Assistance.—Projects eligible to receive loan assistance are capital expenditures for:

Compliance with national primary drinking water regulations;

Consolidation of systems and use of an alternative source of water supply;

Water conservation;

Construction and restoration of drinking water supply, treatment, and distribution systems;

Projects to implement a plan for protection of water supplies;

Assistance to drinking water systems for providing loans to low income customers to mitigate radon in indoor air;

Purchase of land needed for a treatment facility but not land for source proection; and

Replacement of private wells where they present a significant health threat.

Drinking water systems eligible for assistance are community water systems (whether publicly or privately owned) and public and nonprofit noncommunity water systems. Types of assistance are:

Loans (provided that interest rates do not exceed market rates, that repayments start 1 year after project completion, that there will be a dedicated source of revenue, and that repayment is made in 20 years);

Refinancing of an obligation incurred before the date of enactment;

Guarantee of a market loan or purchase insurance for such a loan;

A source of revenue or security for a State obligation related to the loan fund; and

A source of revenue or security for the payment of interest on a local obligation provided that the payment from the fund does not reduce the effective interest rate of the obligation by more than 2.5%.

No loan or other assistance is to be made to a small system (i.e. under 3,300 persons) after 1998 unless it is consistent with a State plan for small drinking water systems and a small system compliance program if such a program has been developed.

The State may assist disadvantaged communities through forgiveness of loan principal. A disadvantaged community is any community where an average residential user is paying or is expected to pay rates greater than 1.5% of median household income. The amount of loan forgiveness is limited to the amount needed to keep drinking water rates below 1.5% of median household income. The total amount of the loan subsidy in a fiscal year may not exceed 20% of the balance of the fund.

(d) Administration.—Each State may reserve up to 4% of the capitalization grant for administration of the fund. A State may also reserve the greater of $500,000 or 10% of the State capitalization grant for technical and financial management assistance, including development of compliance programs, for systems serving fewer than 3,300 persons.

Each State is to develop an intended use plan for the fund on an annual basis. The plan is to establish a priority list for projects and assess the financial condition of the fund. The plan is to provide that first priority be given to systems needing to comply with national primary drinking water regulations and for which the residential user rates are the highest percentage of median household income. Also, no assistance is to be given to a system for which consolidation is expected except to facilitate the consolidation.

(e) Loan Fund Management.—The Administrator is to provide for annual audits of funds. States are to report activities of the fund on an annual basis. The Administrator is to conduct a drinking water needs assessment for all eligible projects within one year and every four years thereafter. The Administrator is to submit to Congress an evaluation of the loan funds in early 1998.

(f) Labor Standards.—The requirements of the Davis Bacon Act shall apply to any project funded by State loan funds.

(g) Authorization.—There is authorized to be appropriated $600 million in FY 94 and $1 billion in each fiscal year 1995–2000.

NATIONAL DRINKING WATER REGULATIONS

(a) Identification of Contaminants.—General authority is established to promulgate drinking water standards for contaminants that may have any adverse effect on human health and that are known or anticipated to occur in public water systems in a concentration or frequency that indicates a public health concern.

Within three years of the date of enactment, the Administrator is to identify not fewer than 15 unregulated contaminants which pose the greatest threat to public health and for which a drinking water standard may be developed. Within three years of the initial identification, and every three years thereafter, the Administrator is to identify an additional seven contaminants.

The Administrator is to propose contaminants for identification one year prior to identification. Six months after proposal of contaminants, the Administrator and the National Drinking Water Advisory Council are to hold a public hearing on the proposed contaminants. The Council is to submit recommended changes to the Administrator.

Two years after the identification of a contaminant the Administrator is to publish a health assessment of the contaminant. A health assessment may be delayed 2 years if additional health effects research is needed and shall be reviewed by the Science Advisory Board.

At the time the health assessment is published, the Administrator shall either propose a drinking water standard or determine not to propose a standard. If a standard is proposed, a final standard is to be promulgated within 18 months of the health assessment/proposed standard. A nonenforceable health advisory is to be published for any contaminant for which no standard is promulgated.

The Administrator is to develop a data base of information on the occurrence of unregulated contaminants in drinking water. To reduce monitoring burdens, the Administrator is to collect monitoring information from only a representative sample of such systems.

In response to a petition from 7 Governors for the development of a standard for a contaminant, the Administrator shall publish a drinking water standard for a contaminant not considered in the listing process unless the Administrator determines that the standard does not meet the criteria for establishment of a standard.

(b) Drinking water Standard Compliance and Review.—The Administrator is to set compliance deadlines in each drinking water regulation at a period of not more than 36 months, rather than 18 months as in current law.

In addition, authority for exemptions/extensions of compliance schedules is clarified and the period of an exemption is changed from 3 to 2 years.

The Administrator is to review existing drinking water standards not less than every 6 years, rather than 3 years as in current law.

(c) Monitoring Requirements.—The Administrator may modify a drinking water regulation to remove monitoring requirements for systems not detecting a contaminant if the contaminant is detected in less than 5% of systems and exceeds the standard in less than 0.5% of systems or the contaminant has not been found at a level exceeding 75% of the standard.

For systems serving less than 10,000 persons, the Administrator or the State may waive the requirement to conduct quarterly monitoring if a contaminant is not detected in an initial test.

(d) Health Advisories.—The Administrator is authorised to publish health advisories on contaminants not subject to a drinking water standard in order to provide timely information to assure the safe and effective operation of a public water system.

(e) Sulfate.—The Administrator is authorized not to regulate sulfate if another contaminant is regulated in place of sulfate.

SMALL PUBLIC WATER SYSTEMS

(a) State Small System Management Plans.—Each State is to develop a plan by October 1997 and every three years thereafter for the coordinated management of public water systems serving less than 3,300 persons.

States may use up to $500,000 or 10% of drinking water loan funds each year to develop State small system plans and individual compliance programs called for in the plans.

Key elements of plans include:

Establish criteria for determining when systems are not viable and identify nonviable systems;

Identify opportunities for physical and management consolidation of systems;

Identify alternative sources of water supply; and

Identify financing needs of small systems.

Based on review and assessment of the status and condition of small water systems, the State is to include in the plan the assignment of each system not expected to comply with drinking water regulations to one of two groups:

Systems with which the State will work to develop an individualized compliance program implementing consolidation, alternative water supply, alternative small system technology, or other system restructuring;

Systems which are to comply with the maximum contaminant level for a specific regulation (e.g. do not need a compliance program because they have the financial and management capacity to meet the maximum contaminant level, taking into account funding from State loan funds and the Rural Development Administration).

The plan is to list systems in priority order based on the public health risk caused by drinking water contaminants found in each system. The plan is also to include a schedule for the development of the first one-third of all compliance programs over the following five year period and development of all compliance programs within 10 years.

In the case of systems which are to meet a maximum contaminant level, the system is to be in compliance within the compliance period established in the regulation beginning from the date of final approval of the plan.

States are to provide for public review and comment on the plans and the Administrator shall review and approve the plans.

(b) Small System Compliance Program.—States are to work with individual systems to develop small system compliance programs.

A compliance program is to determine and design a specific program for system consolidation or development of raw water supply (including a financial plan and engineering designs and plans) and may also identify measures needed to assure the long-term effective management of the system.

Programs are to provide for compliance with maximum contaminant levels to the extent practicable and may provide for the implementation of small system technology identified in guidance published by the Administrator. A compliance program is to provide for small system technology which provides the greatest protection of public health consistent with the financial and management capability of the system, taking into account funding from the State loan funds and the Rural Development Administration. A compliance program shall not provide for small systems technology which would result in an unreasonable risk to public health.

Compliance programs are to be implemented not less than three years after the date of approval of the program. States may grant a 2 year extension to finish implementation of a program.

Compliance programs are to be considered at a public hearing and the Administrator may disapprove a program which is not consistent with the Act or which poses a threat to public health.

(c) Small System Technology Guidance.—The Administrator is to publish small system technology guidance in conjunction with any drinking water regulation. Guidance is to identify various small system technologies and the effectiveness and cost of each technology.

In addition, within two years of the date of enactment, the Administrator is to publish guidance on small system technology for compliance with Phase II, Phase V, or Surface Water Treatment regulations. In the case of a small system not in compliance with such regulations, compliance is stayed until the date which is:

No more than three years after the date of submittal of a State small system plan; or

The compliance date established in a compliance program.

The extended compliance period applies only to noncommunity systems in the case of the Surface Water Treatment Rule.

ENFORCEMENT

A new Part is added to the Act consolidating and streamlining enforcement functions and creating the following enforcement powers consistent with other environmental statutes.

(a) General Prohibition of Contamination.—A failure to comply with any provision of this title is unlawful. This authority is consistent with authority of the Clean Water Act.

(b) Civil Enforcement.—The amendment would provide consistent administrative enforcement authority for violations of the Act. Administrative enforcement authority is similar to that provided in the Clean Water Act and includes compliance only orders and administrative penalty authority of up to $10,000 per day with a cap of $200,000. In addition, consistent civil judicial enforcement authority for key provisions of the Act is provided at $25,000 per day per violation.

(c) Criminal Enforcement.—The amendment would provide consistent penalties for criminal violations of key provisions of the Act and make the provisions consistent with the criminal enforcement provisions of the Clean Water Act.

(d) Consolidation Initiative.—In order to encourage the physical and administrative consolidation of systems, a system may seek protection from penalties for an existing compliance problems or expected problems for a period of 2 years after consolidation or sale. The consolidation or sale must be outlined in a plan approved by the State and the Administrator.

(e) Public Notice and Notice to State.—The requirements for public notice of violations of drinking water regulations with the potential to have an adverse effect on health are strengthened. Reporting of violations which are less significant is reduced from quarterly to annually. States are to provide annual reports on compliance to the Administrator and the Administrator is to provide a summary of the State reports to the Congress.

CONTROL OF LEAD IN DRINKING WATER

Within two years of the date of enactment of this Act, the Administrator is to issue regulations to establish performance standards for maximum leaching levels of lead from new pipes and fixtures that convey drinking water. Lead leaching levels are to be reduced from 7% four years after the date of enactment to 4% seven years after the date of enactment. In addition, a violation of the ban on use of lead solder is made an enforceable violation of the Act.

RADON IN DRINKING WATER

The Administrator is to promulgate a drinking water regulation for radon not later than 12 months after the date of enactment. The regulation is to specify a maximum contaminant level goal and maximum contaminant level based on existing authorities of the Act.

In addition, the regulation is to specify an alternative contaminant level for radon in drinking water at a level at which the risks equal to the risk associated with radon in outdoor air, after consideration of the risks of ingestion and episodic uses of drinking water. A drinking water system may comply with the alternative contaminant level if;

The system implements an alternative compliance program to reduce radon in the air indoors; or

The system is located in a State with is implementing an indoor air radon program and is receiving grant assistance under the Indoor Radon Abatement Act.

Minimum radon reduction measures to be implemented under an alternative compliance program are;

Distribution of radon educational material to all customers;

Testing of radon in indoor air for not less than 50% of residential dwellings within five years of program approval;

A commitment to require that new homes connected to the water system comply with new construction radon prevention standards beginning two years after program approval.

Alternative compliance programs are to be approved by the State. Systems are to provide assessments to program implementation to the State every five years and the State may withdraw approval of a program not being implemented. The Administrator is to submit a report to Congress evaluating radon programs not later than 7 years after the date of enactment.

Beginning two years after the date of enactment, no Federal agency or other entity is to assist in the financing of a residence located in a high risk radon area, as determined by the Administrator, unless a radon test has been completed for the residence and the prospective buyer has been notified of the results of the test. Retesting of residences is not required.

POINT OF USE DEVICES

The Administrator is to establish a program to determine the effectiveness of point of use drinking water treatment devices. The Administrator is provided with authority to request data on treatment of devices and to require provision of information to consumers on device effectiveness.

DRINKING WATER SUPPLY PROTECTION

The existing sole source aquifer and wellhead protection programs are expanded to provide protection of sources of drinking water, including surface water sources.

Drinking water systems are authorized to develop applications for the designation of a water supply protection area. The application is to describe the area, designate a planning entity, include a hydrological assessment, and provide a comprehensive plan for the management of the area, including a schedule for implementation of protection measures.

A State may develop a statewide program of measures to complement local efforts to protect water supplies. The existing authority for development of State wellhead protection plans (which expired in 1989) is renewed and expanded to cover surface water sources. State programs are to include specific, new legal authority for protection of water supplies in State.

Public water systems and States are given several incentives to develop water supply protection programs.

A public water system or State source protection plan may propose modifications to drinking water monitoring requirements. Proposed monitoring modifications are to be justified by pollution prevention measures called for in source protection programs.

Once a public water system or State source protection program is approved, all Federal agency activities and other activities requiring a license or permit are to be carried out in a manner consistent with the program. A Presidential exemption is provided.

In addition, State drinking water loan funds and funds made available for implementation of State nonpoint pollution control plans under section 319 of the Clean Water Act may be used to support implementation of source protection programs.

An authorization of $20 million is provided for grants to drinking water systems for development of source protection programs; a 20% match is required. An authorization of $20 million is provided for grants to States for development of State source protection programs; a 50% match is required.

EMERGENCY POWERS

The requirement that the Administrator find that a State or local authority has not acted to protect the health of persons and the requirement to consult with State and local authorities prior to emergency action are eliminated. The Administrator is required to notify State and local authorities prior to emergency action are eliminated. The Administrator is required to notify State and local official before taking emergency action.

TAMPERING WITH PUBLIC WATER SYSTEMS

Existing prohibitions on tampering with public water systems are revised to reflect consolidated enforcement authority. In addition, the definition of tampering is expanded to clarify contaminants and the circumstances under which addition of pollutants to drinking water constitutes tampering and to provide that use of drinking water in other devices (i.e., "cross-connections") is tampering.

DRINKING WATER RESEARCH, EDUCATION, AND CERTIFICATION

The general research authorities are clarified and an authorization of $20 million is provided.

Existing authority for making grants to assist in emergency situations relating to water systems is retained but the funding authorization is deleted and replaced by authority for the Administration to reserve 1% of loan funds for emergencies. Funds are to be reallotted to State loan funds if not used.

A report to Congress on the long term availability of drinking water supply, submitted in 1988, is to be revised two years after enactment of these amendments and every five years thereafter.

Various authorities relating to education and training are consolidated and a new authorization of $10 million per year is added for this purpose.

New authority is established for the approval by the Administrator of State programs for certification of operators of public water systems. Each year is to have a certified operator 4 years after the date of enactment or 3 years after the date of completion of a small system compliance program, whichever is later. EPA is to publish guidelines setting minimum standards for certification within one year of enactment.

The existing authority for assistance to small public water systems is retained and the authorization is extended to the year 2000 at the existing level of $10 million.

STATE DRINKING WATER PROGRAM FUNDING

The authorization for State grants for management of drinking water programs is increased from $40 million to $100 million for each year to the year 2000 and the State match for Federal grant funds is increased in FY 97 and thereafter from 25% to 50%.

In addition, new authority is established for grants to States for development of ground water protection programs. The Administrator is to establish application procedures and key elements of State programs in annual guidance. States are to provide a 50% match for grant funds. An authorization of $20 million per year is provided.

Each State implementing a drinking water program is to ensure sufficient funding for the effective administration of the program. Where grant funds are not sufficient to administer the program effectively, the State is to provide additional funds from State fees or other sources.

Beginning in fiscal year 1997, the Administrator is to assume implementation of a drinking water program in any State where the program is not effectively implemented or adequately funded. The Administrator may use State grant funds to implement the program in a State and may collect fees from drinking water systems in the State to provide additional funds as are needed. A Federal fee shall apply to each drinking water systems in the State serving more than 3,300 persons and shall not exceed one-half cent per hundred gallons of water provided.

Federal fees are to be deposited into a special fund in the Treasury. In any year in which sufficient funds for Federal program implementation are not appropriated from the fund, the Administrator may use up to 5% of the funds appropriated for the State drinking water loan funds for program implementation.

RECORDS AND INSPECTIONS

Existing authority for monitoring and inspections is clarified. Existing authorization of $30 million to carry out monitoring is extended to the year 2000. Authorities related to inspections are revised to eliminate the requirement to provide written notice to a system and to a primacy State of an inspection, to indicate that contractors may be authorized representatives of the Administrator, and to clarify the requirement that a person in charge of a water system be present at an inspection.

FEDERAL AGENCIES

The Federal facilities provision of the Act is amended to clearly waive the United States' sovereign immunity and to allow citizens and States to seek penalties for all violations of the Act by Federal facilities.

Existing authority for a Presidential exemption to compliance is expanded to cover any Federal agency, rather than just the Department of Defense. A waiver is limited to one year with a one year extension. Lack of appropriation is not a basis for a waiver unless the President requested the funding. The Administrator is to provide annual reports to the Congress.

CITIZEN'S CIVIL ACTION

The existing authority for citizen suits for violations of the Act is expanded to include penalties and strengthened. The prohibition against suits in the case of past violations is revised to allow suits where there is evidence that the violation has been repeated.

Citizens are authorized to bring suit in cases where a Federal agency is not complying with the Act or fails to pay a penalty under the Act and where the Administrator fails to perform a nondiscretionary duty. Conditions for commencement of citizen's actions are specified.

OTHER AMENDMENTS

The definition of public water systems is amended to clarify that the term does not include noncommunity water systems which do not provide water for human consumption if bottled water is provided for human consumption and signs are posted prohibiting the drinking of water from the system.

A requirement in section 1450 for an annual report on the activities of the Administrator to implement the Act is deleted.

States are allowed 2 years, rather than 18 months as under current law, to adopt drinking water regulations no less stringent than those established by the Administrator.

Judicial review authorities are clarified to eliminate preenforcement review of administrative orders.

The Administrator is to conduct a study of the extent and seriousness of contamination of private sources of drinking water not regulated under this Act and, within 3 years of the date of enactment, provide a report to the Congress describing the findings of the study and recommendations for needed actions.

ADDITIONAL COSPONSORS

S. 289

At the request of Mr. REID, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 289, a bill to amend section 118 of the Internal Revenue Code of 1986 to provide for certain exceptions from rules for determining contributions in aid of construction, and for other purposes.

S. 297

At the request of Mr. STEVENS, the name of the Senator from Utah [Mr. BENNETT] was added as a cosponsor of S. 297, a bill to authorize the Air Force Memorial Foundation to establish a memorial in the District of Columbia or its environs.

S. 368

At the request of Mr. BUMPERS, the name of the Senator from Louisiana [Mr. BREAUX] was added as a cosponsor of S. 368, a bill to amend the Internal Revenue Code of 1986 to provide a capital gains tax differential for individual and corporate taxpayers who make high-risk, long-term, growth-oriented venture and seed capital investments in startup and other small enterprises.

36d

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

November 3, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-1609

TO: Legislative Liaison Officer -

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FROM: JAMES J. JUKES (for) JL
Assistant Director for Legislative Reference

OMB CONTACT: Ingrid SCHROEDER (395-3454)
Secretary's line (for simple responses): 395-3454

SUBJECT: OMB Request for Views RE: S 1604, Small Governments Regulatory Improvement and Innovation Act of 1993

DEADLINE: 2PM November 12, 1993

COMMENTS: The Senate Governmental Affairs Committee has scheduled a hearing on S. 1604 for November 18, 1993.

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
Jeff Hill
Peter Weiss
Don Arbuckle
Cookie Walden
Katie McGinty
Howard Paster
Donna Rivelli
Bob Damus
Bill McQuaid
Marcia Hale

The people who suffer are American businesses dependent upon shipping as well as American consumers and workers. Our standard of living is hindered and the volume of trade is reduced.

Last year, the Advisory Commission on Conferences in Ocean Shipping reported numerous examples of the damage this antitrust exemption is causing.

One chemical company decided to build overseas instead of expanding their U.S. operations, in part, because it was unable to negotiate a long-term, confidential contract commitment for ocean transportation.

Fish processors lost market share in Europe because carriers refused to negotiate.

Lumber exporters face competitive disadvantages with Canadians who benefit from deregulated ocean transportation.

Consumers pay more at a department store because of the retailer's inability to obtain contractual commitments assuring flexible service.

The Commission found abuse after abuse, impacting all sectors and regions of our country.

Mr. President, a report prepared for the Department of Agriculture by Dr. Allen Ferguson, entitled "Maritime Policy and Agricultural Interests: Impacts of the Conference System" found that "the 'cartel premium' attributable to conference market power amounts to some 18 percent of the cost of ocean transportation." He found that with a sampling of only six commodities, the elimination of this antitrust exemption would increase revenues of agriculture anywhere from $239 million to $400 million per year.

In fact, Vice President GORE's National Performance Review task force on transportation recommended the elimination of this antitrust exemption for ocean conferences. The task force pointed to the fact that the Justice Department estimates these conferences increase the cost of shipping by at least 10 to 15 percent, while providing U.S. and foreign shippers a backdoor, hidden subsidy of $2 to $3 billion per year.

Mr. President, this practice must come to an end, and I am proud to join Senator METZENBAUM and others in taking this necessary action.•

By Mr. COCHRAN:

S. 1603. A bill to amend chapters 83 and 84 of title 5, United States Code, to extend the civil service retirement provisions of such chapter which are applicable to law enforcement officers; to the Committee on Governmental Affairs.

U.S. FISH AND WILDLIFE SERVICE REFUGE OFFICERS CIVIL SERVICE AMENDMENTS ACT OF 1993

• Mr. COCHRAN. Mr. President, today I am pleased to introduce a bill that will extend to the full-time law enforcement officers of the Refuge Division of the U.S. Fish and Wildlife Service the same retirement provisions that are applicable to other law enforcement officers under the civil service retirement system.

I commend my colleague from Maryland, Senator MIKULSKI, for her introduction earlier this year of similar legislation to extend these civil service retirement benefits for law enforcement officers to INS inspectors, inspectors and canine enforcement officers of the Customs Service, and revenue officers of the Internal Revenue Service.

The bill I am introducing today, will provide the same benefits under the civil service retirement system to the full-time officers who enforce the law in our National Wildlife Refuge System.

I hope Senators will support this legislation.•

By Mr. GLENN (for himself, Mr. LEVIN, Mr. PRYOR, Mr. AKAKA, and Mr. LIEBERMAN):

S. 1604. A bill to provide for greater regulatory flexibility for small governments, lessen compliance burdens on small government, test innovative regulatory methods, and for other purposes; to the Committee on Governmental Affairs.

SMALL GOVERNMENTS REGULATORY IMPROVEMENT AND INNOVATION ACT OF 1993

• Mr. GLENN. Mr. President, I rise today to introduce the Small Governments Regulatory Improvement and Innovation Act of 1993—legislation designed to lessen regulatory compliance and cost burdens on small governments.

As many of my colleagues are aware, Wednesday was National Unfunded Mandates Day, or NUMD for short. State and local officials from all over the United States gathered in Washington to send a message to the Federal Government—Stop burdening us with your responsibilities, your paperwork and administration, and your regulations, unless you give us the help to go with it. In layman's terms, they are saying—"Stop passing the buck, without the bucks."

Estimates by the Congressional Budget Office [CBO] show that the cost to State and local governments of Federal legislative and regulatory mandates rose from $225 million in 1986 to $2.8 billion in 1991. While the CBO data is limited in scope, it clearly shows that cost of Federal mandates has been increasing—this increase occurring during a period when we saw an overall decline in Federal aid to State and local governments. A study by the city of Columbus showed that compliance costs of Federal environmental laws and regulations in nine Ohio metropolitan areas would rise from $183 million in 1992 to $301 million by 1996. This translates into an indirect tax of $225 per household, up from $137 in 1992.

Clearly, Federal regulatory and legislative burdens are increasing on smaller governments at a time when these governments are hard strapped for resources to pay for these mandates. That's why I'm introducing the Small Governments Regulatory Improvement and Innovation Act. The legislation seeks to lessen the burden of Federal regulatory mandates through improvements in the Federal rulemaking process to give greater regulatory flexibility to smaller governments, as well as give greater consideration to the cost impact of Federal regulation.

The legislation accomplishes these objectives through a number of ways. First, consistent with the Clinton administrations Executive orders on regulatory review and intergovernmental relations, the bill establishes a strong role for OMB in reviewing agency rules and regulations that impact small governments. Secondly, agencies must identify their most costly regulations on small governments, and then come up with more flexible, less costly alternatives. In addition, the bill sets up Small Government Coordinators in the major regulatory agencies and establishes an advisory Council on Small Governments to provide advice and analysis to OMB on regulations affecting small governments. And finally, the bill sets up pilot programs to experiment with bold, innovative regulatory approaches.

I would note that coverage of some of the provisions in this bill extend to small business as well. The pilot programs in section 7 of the bill are of particular note to small business as are provisions in section 10 which tighten agency waiver authority of the Regulatory Flexibility Act.

The theme of this bill is flexibility. Laws protecting public safety, human health, and the environment are vital and necessary. However, that doesn't mean we can't use a little more common sense, as well as pay greater attention to cost issues, in promulgating regulations to implement those laws. In many cases, I believe we can fully meet the objectives of our environmental statutes while at the same time reducing their costs and burdens on those directly affected.

The bill encourages innovation and new ways of thinking in the rulemaking process. It is fully consistent with the President's initiatives in the National Performance Review of making the Federal Government more efficient, responsive, and workable.

Mr. President, in closing, I would say that my Committee on Governmental Affairs will be taking a leadership role on this issue of Federal mandates. We will be having a kick-off hearing next Wednesday at 9:30 a.m.

I ask unanimous consent that a copy of the bill be inserted into the RECORD following my statement.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1604

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Governments Regulatory Improvement and Innovation Act of 1993".

SEC. 2. PURPOSES.

The purposes of this Act are to—

(1) better determine the cost and other impacts of regulation on small governments;

(2) encourage the use of more flexible regulatory approaches that lessen compliance burdens on small governments; and

(3) test innovative methods of regulation.

SEC. 3. DEFINITIONS.

For the purposes of this Act—

(1) the term "small government" means a small governmental jurisdiction as defined under section 601(5) of title 5, United States Code;

(2) the term "agency" means any agency as defined under section 551(1) of title 5, United States Code;

(3) the term "Director" means the Director of the Office of Management and Budget;

(4) the term "Council" means the Council on Small Governments established under section 8;

(5) the term "small entity" means a small entity as defined under section 601(6) of title 5, United States Code; and

(6) the term "Administrator" means the Administrator of the Small Business Administration.

SEC. 4. AGENCY RESPONSIBILITIES.

(a) GUIDELINES.—The head of each agency shall, after opportunity for public comment, issue guidelines consistent with section 6(b) of this Act to ensure implementation of chapter 6 of title 5, United States Code, by the agency.

(b) PLANS.—The head of each agency shall develop a plan to inform, educate, and advise small entities on compliance with any rule that has a significant impact on small entities. Such plan shall be published in the Federal Register in the notice of proposed rulemaking and the final rulemaking notice for any such rule, and shall include a listing of—

(1) local and regional workshops for the purpose of providing and receiving information about the impact of the rule;

(2) written guidance and other applicable publications and their availability; and

(3) relevant Federal, State, and local technical assistance programs.

(c) REPORTS.—The head of each agency shall report annually to the Administrator and to the Director on the agency's implementation of this Act and compliance with the provisions of chapter 6 of title 5, United States Code.

SEC. 5. SMALL GOVERNMENT COORDINATORS.

(a) ESTABLISHMENT.—There is established in each agency the position of Small Government Coordinator who shall report directly to the head of the agency. The Small Government Coordinator shall—

(1) communicate the small government perspective on agency rules and policies during the development of such rules and policies;

(2) oversee and report to the agency head on agency efforts to comply with chapter 6 of title 5, United States Code, as such chapter applies to small governmental jurisdictions, including—

(A) participation in the development of agency guidelines for the full implementation of chapter 6 of title 5, United States Code, as such chapter applies to small governmental jurisdictions; and

(B) the development of alternative regulatory proposals that accomplish the stated objectives of applicable statutes and which minimize the impact of regulations on small governments by working with—

(i) agency regulatory policy personnel;

(ii) national organizations representing small governments;

(iii) local elected officials;

(iv) public policy experts;

(v) the Administrator;

(vi) the Director; and

(vii) the Council;

(3) advising the agency head on establishing electronic or other means of information collection to gather data on small governments;

(4) advising the agency head and the Director on the development and implementation of the pilot program established under section 6; and

(5) providing technical assistance to small governments on compliance with agency regulations.

(b) PERSONNEL.—To the greatest extent practicable, the head of each agency shall designate existing personnel to perform the duties described under this section.

(c) WAIVER.—(1) The head of an agency may waive the requirements of this section if such agency head—

(A) in consultation with the Council and in concurrence with the Director, certifies that the agency does not issue a significant number of rules affecting small governments; and

(B) publishes such certification in the Federal Register.

(2) Such waiver shall be reviewed annually and such certification shall be made annually, if appropriate.

SEC. 6. REGULATORY COORDINATION.

(a) OFFICE OF INFORMATION AND REGULATORY AFFAIRS.—The Director shall delegate responsibility for the implementation of all duties of the Director under this Act to the Administrator of the Office of Information and Regulatory Affairs.

(b) GUIDELINES.—The Director, in consultation with the Administrator of Small Business, shall issue guidelines to agencies on the identification of rules having a significant impact on small entities. In issuing the guidelines, the Director shall consider—

(1) the number of small entities that may be impacted by a rule;

(2) the economic cost or benefit to small entities from compliance with a rule;

(3) the effect a rule may have on regional economies; and

(4) the reporting and paperwork requirements imposed on small entities by a rule.

(c) COMPLIANCE.—The Director, to the extent permitted by law and in consultation with the Administrator, shall be responsible for monitoring and coordinating agency compliance with the requirements of this Act.

SEC. 7. REGULATORY FLEXIBILITY PILOT PROGRAM.

(a) ESTABLISHMENT.—The Director, in consultation with agencies and the Council, shall establish pilot programs in at least 2 agencies to test innovative, and more flexible regulatory approaches that—

(1) reduce reporting and compliance burdens on small entities; and

(2) meet overall statutory goals and objectives.

(b) PROGRAM CONTENTS.—The pilot programs shall focus on rules in effect or proposed rules, or a combination thereof, that have a significant impact on small entities, with equal emphasis given to rules that impact small governments, small business, and small organizations.

SEC. 8. THE SMALL GOVERNMENTS ADVISORY COUNCIL.

(a) ESTABLISHMENT.—(1) There is established a Small Governments Advisory Council composed of 9 representatives from small governments appointed by the President, of whom no more than 5 shall be from any one political party.

(2) No later than 6 months after the date of enactment of this Act, the President shall make the original appointments to the Council.

(b) MEMBERSHIP.—No less than 6 members of the Council shall be acting small governmental officials. Members of the Council shall—

(1) have an extensive understanding of and experience with the operations of small governments; and

(2) represent a balance with respect to the regions, the sizes of small governments, and the occupations represented on the Council.

(c) DUTIES.—The duties of the Small Governments Advisory Council shall be to—

(1) serve as a focal point for the receipt of comments concerning the regulatory policies and activities of agencies that affect small governments;

(2) advise the Small Government Coordinators as to the performance of their duties under section 5;

(3)(A) develop proposals for changes in the regulatory policies and activities of any agency which shall carry out the purposes of this Act; and

(B) communicate such proposals to the Director and appropriate agencies;

(4)(A) monitor the costs and other burdens of Federal regulation on small governments, including the cumulative effect of such regulation; and

(B) make legislative and nonlegislative proposals for eliminating excessive or unnecessary regulatory burdens placed on small governments;

(5) advise the Director on the implementation of section 6 as such section relates to small governments; and

(6) report annually to the Administrator and the Director on the actions of the Council under this Act, including—

(A) a summary of all proposals offered under subsection (c)(3);

(B) a detailed assessment, prepared in consultation with the Small Government Coordinators established under section 5, of the costs and other burdens of government regulation on small governments, including the cumulative effects of such regulation; and

(C) an assessment of the effectiveness of the pilot programs established under section 7.

(d) CHAIRMAN.—The Council shall elect a chairman and meet at the call of the chairman but no less often than every 6 months.

(e) MEETINGS.—The Director shall meet with the Council on a regular basis, but no less often than every 6 months.

(f) FEDERAL ADVISORY COMMITTEE ACT.—The Council shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as necessary to carry out the provisions of this section.

SEC. 9. ASSISTANCE OF GOVERNMENT AGENCIES.

Consistent with applicable law, each department, agency, and instrumentality of the Federal Government shall furnish to the Council such reports and other information as the Council determines necessary to carry out its duties under this Act.

SEC. 10. TECHNICAL AMENDMENTS.

Chapter 6 of title 5, United States Code, is amended—

(1) in section 601(5) by inserting "Indian tribes," after "school districts,";

(2) in section 602(b) by inserting "the Director of the Office of Management and Budget and" after "transmitted to"; and

(3) in section 605(b)—

(A) in the first sentence by striking out "sections 603 and 604 of this title" and inserting in lieu thereof "sections 603(c) and 604 of this title"; and

(B) in the second sentence—

(i) by striking out "or at the time of publication of the final rule"; and

(ii) by inserting "the Director of the Office of Management and Budget and" after "such certification and statement to".●

• Mr. LEVIN. Mr. President, I am pleased to be an original cosponsor of the Small Governments Regulatory Improvement and Innovation Act being introduced today by my colleague, Senator GLENN. I commend him and his staff for their fine work in this important area. This bill is important in obtaining more effective and consistent application of and compliance with the Regulatory Flexibility Act of 1980.

I came to the Senate directly from local government. As a former Detroit City Council president, I am all too familiar with the difficulties local governments face in responding to the demands put on them by Federal agencies. All too often, the Federal programs we create to respond to real problems result in extensive regulations that sometimes bear little relationship to the real world. Frequently, the regulations are blind to the differences between regulated groups and this has been especially true in the case of small governments.

Federal agencies often regulate as if small communities are a small segment of our society even though that could not be further from the truth. Many here in Washington don't realize that over 70 percent of the general purpose governments in the United States have populations of less than 3,000 and half have populations under 1,000. Moreover, only 3 percent of localities in this country have more than 50,000 inhabitants. Consequently, when these small communities are faced with costly regulatory requirements, they don't have a very big tax base upon which to draw.

Small, local governments are frequently comprised of individuals who serve their communities on a volunteer, part-time or low-salary basis. Dedicated community officials oftentimes have very limited access to technical experts, legal counsel, or even computers. Given these real life conditions, Federal agencies need to pay particular attention to the burdens our Federal regulations can place on small communities. This burden can result in exactly what we don't want—non-compliance.

That's in part why we passed the Regulatory Flexibility Act in 1980—to force Federal agencies to take the limitations of small entities like small local governments into account in issuing regulations.

In the fall of 1988, the Governmental Affairs Committee, of which I am a member, held a hearing on the effectiveness of this legislation in easing the regulatory burden on small entities. Unfortunately, we discovered that the act had not been consistently implemented and compliance by many agencies has been woefully inadequate, particularly with regard to small communities.

As a result of the problems uncovered at that hearing, Chairman GLENN and I, along with other members of the committee, introduced the Small Governments Regulatory Partnership Act to gain more effective compliance with the Regulatory Flexibility Act. Due to certain concerns raised regarding the structure of that bill, we continued to wrestle with the issue of how to sufficiently strengthen the Regulatory Flexibility Act to ensure compliance and to strengthen the voice of small communities in the regulatory process.

The legislation we are introducing today reflects the continued work that has been done to address this important issue. While the legislation has a specific focus on small governments, it includes provisions to increase compliance for small businesses and other small entities.

The bill requires increased involvement of the Office of Management and Budget's Office of Information and Regulatory Affairs in the development and oversight of agency plans for compliance with the Regulatory Flexibility Act [RFA]. Additionally, the act creates a regulatory pilot program to test new, more flexible regulatory approaches to achieve our regulatory goals. The bill also tightens the certification process which allows agencies to exempt themselves from their responsibilities under the Regulatory Flexibility Act.

With regard to small governments, it requires each agency to designate a small government coordinator, reporting directly to the agency head, who will monitor the agency's adherence to the RFA; make recommendations on less burdensome regulatory approaches; provide compliance assistance; and assist in the development of pilot programs. This position is modeled after the Environmental Protection Agency's Office of Small Community Coordinator, an office which I and other members of the Governmental Affairs Committee have fought to preserve and promote. Moreover, a new advisory council would be established to give small governments and their concerns the high-level presence they currently lack in the Federal regulatory process.

Mr. President, small communities should not feel lost in the wilderness when it comes to gaining information and assistance in complying with Federal regulations. The last thing we want is to frustrate the efforts of those individuals who are trying the best they can to comply with what we ask of them. There is no doubt that regulations are complex—one need only look at the courts to see how difficult it can be to understand just what a regulation requires or means.

I am pleased that the President, in his recent Executive order on regulatory policy, included a specific reference to the concerns of small communities in recognition of their special needs. This legislation will further strengthen agency sensitivity in this area. The sooner we pass this bill, the sooner we will realize our earlier promise to this country's small communities. Once again, I thank my friend from Ohio for his work in this area and I urge my colleagues' support.•

By Mr. SARBANES (for himself, Mr. MITCHELL, Mr. AKAKA, Mr. MOYNIHAN, Mr. DORGAN, Mr. INOUYE, Mr. KENNEDY, Mr. METZENBAUM, Mr. ROCKEFELLER, Mr. LEVIN, Mr. JOHNSTON, Mr. WOFFORD, Ms. MIKULSKI, Mr. ROBB, Mr. PRESSLER, Mr. DURENBERGER, Mr. HATCH, and Mr. STEVENS):

S.J. Res. 150. A joint resolution to designate the week of May 2 through May 8, 1994, as "Public Service Recognition Week"; to the Committee on the Judiciary.

PUBLIC SERVICE RECOGNITION WEEK

Mr. SARBANES. Mr. President, I rise today to introduce a resolution designating the week of May 2–8, 1994, as "Public Service Recognition Week." I have introduced similar resolutions in previous Congresses to honor the public servants who so diligently and faithfully serve our Nation at the State, local, and Federal level.

The 9 million city and county workers, 4 million State employees, and 5 million Federal civilian and military employees who serve the public perform some of our Nation's most critical and important tasks. These are the men and women who defend our Nation and educate our children. They keep our food and drinking water safe and come to our aid should fire, flood, or other disasters strike our homes and communities. They work to find new treatments for cancer and AIDS and to develop new technologies to improve and enhance our lives.

Their collective mission is integral to preserving our health, safety, and standard of living, yet public servants are rarely recognized for their efforts unless there is a disruption in the level of service to which the public is accustomed. Consequently, theirs is a thankless job; and one which they have had to perform under increasingly adverse conditions.

Today, government at every level is bound by severe fiscal constraints. The lingering effects of a slack economy have exacerbated budgetary pressures and forced governments to cut back or eliminate basic services. States and municipalities have been particularly hard-hit and forced to lay off thousands of employees. Those who have not been laid-off are asked to provide the same services with fewer available resources.

I regret some in government have seized upon public employees' vulnerability in these tough economic times and attacked and denigrated them publicly. For more than a decade, public employees, especially at the Federal level, have confronted budget cuts which if not aimed at their very livelihood, targeted their pay or pensions or health benefits. Yet, despite what has been a hostile political and economic climate, public employees continue to

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

31,
January [redacted] 1994

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-1923

TO: Legislative Liaison Officer -

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FROM: RONALD K. PETERSON (for) Ronald K Peterson
Assistant Director for Legislative Reference

OMB CONTACT: Holly FITTER (395-3233)
Secretary's line (for simple responses): 395-6194
Mark KRAMER (395-3445)

SUBJECT: OMB Proposed Testimony RE: HR 3395, Requiring the Preparation of Risk Assessments in connection with Federal Health and Safety or Environmental Regulations

DEADLINE: 1:30 PM [redacted] **January 31, 1994**

COMMENTS: The Committee is considering attaching HR 3395 to HR 3425, the EPA Cabinet Elevation Bill.

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
T. J. Glauthier
K. McGinty
M. Burton
B. Damus
J. Palmieri
T. Thornton
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L. Mori
B. Tuccillo
T. Hunt

FAX 11 pgs

Statement of Sally Katzen
Administrator, Office of Information and Regulatory Affairs
Office of Management and Budget
before the
Committee on Government Operations
Subcommittee on Environment, Energy and Natural Resources
Subcommittee on Legislation and National Security
United States House of Representatives

February 1, 1994

Introduction

Good morning Mr. Chairman and Members of the Subcommittees. I am the Administrator of the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget. OIRA has specified statutory responsibilities and is charged under various Executive Orders with the task of coordinating and reviewing Executive Branch regulatory policy matters.

I appreciate the opportunity to testify on the issue of risk analysis. It is an issue that is very important to the Administration, and to OIRA in particular. I would like to thank you for your interest in this important issue and for your contribution to the ongoing discussion.

The discussion of risk analysis is not new -- policy makers, scientists, economists, and students of public administration have debated various aspects of risk for years. There is a substantial (and growing) body of literature on the subject. Interestingly, over the last year, risk analysis has received increasing attention and visibility. The issue is finally, in a sense, coming into its own. Notwithstanding the attention the subject has received, however, there is still a lack of understanding as to what risk analysis is all about, the role it can or should play in public policy decision-making, and when, how, and by whom it should be used.

At one level, the concept of risk analysis is straightforward and relatively simple. Life is full of risks and those engaged in public policy (elected and appointed officials in both the legislative and executive branches) are often called upon to do something to reduce or minimize the adverse effects of such risks. Risk analysis is a way of organizing what we do about risk. There may be several courses of action to reducing risks; each course of action may present its own risks. And of course there is the risk of doing nothing.

Consider, for example, the concern about injuries resulting from automobile accidents that was in the forefront of public policy several years ago. Risk analysis provides a method of determining the frequency with which such injuries occur and the relative effectiveness of seat belts and/or air bags in reducing the extent of injuries sustained; it also provides a mechanism for determining the risk of unintended consequences of requiring some form of passive restraint (e.g., some may assume that the passive restraints provide the requisite safety factor and so they drive even faster.) Clearly risk analysis does not answer the questions about what regulation(s) should be adopted; that is for the public policy decision makers to do, but it can arrange the information and allow those decision makers to make more informed choices.

The above discussion should also make clear that risk relates to all areas of our lives. Recently, the subject has been discussed in the context of the work done by the Environmental Protection Agency. Yet, risk analysis applies to all agencies with missions to reduce hazards to human health, safety or the environment including the Department of Energy and the Department of Defense, which must clean up contaminated sites; the Food and Drug Administration, charged with managing food safety; the Occupational Safety and Health Administration, the Consumer Product and Safety Administration, the National Highway Traffic and Safety Administration.

Given the importance and the cross-cutting nature of the issue, the Executive Office of the President has sought to provide leadership in this area. I'll be focusing in this testimony on activities in which the White House is specifically involved. There are, however, many important activities at the various agencies. You will be hearing later this morning from Lynn Goldman, the Assistant Administrator at the Environmental Protection Agency and the Director of its Office of Prevention, Pesticides, and Toxic Substances, who will be providing information about some of the fine work EPA is and will be doing in this field.

Background

The Clinton Administration is committed to a sound, effective regulatory policy, and it recognizes the importance of risk analysis in the regulatory decision-making process. The Executive Order on Regulatory Planning and Review (E.O. 12866), signed by the President on September 30, 1993, seeks to establish a regulatory policy that works for the American people, not against them. It sets forth principles and processes to promote a regulatory policy that is not pro-regulation or anti-regulation but smart regulation -- regulation that limits pollution, increases worker safety, discourages unfair business practices, and contributes in many other ways to a safer, healthier, more productive and equitable society without creating undue burden, retarding innovation, reducing productivity, distorting incentives or adversely affecting living standards.

In the section on regulatory principles, the Executive Order begins by requiring agencies to identify the problem that they intend to address as well as assess the significance of that problem (Section 1(b)(1)). Of particular relevance here, the Order states that Federal agencies are to consider "how the action [they propose] will reduce risks to public health, safety, or the environment, as well as how the magnitude of the risk addressed by the action relates to other risks within the jurisdiction of the agency." (Section 1(b)(4)) The Order also emphasizes the importance of good data: "each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation." (Section 1(b)(7))

In the section on planning, the Order states that "in setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risk posed by various substances or activities within its jurisdiction." (Section 4(c)(1)(d)) Simply stated, risk analysis is one tool in the regulatory tool kit. It is a mechanism to incorporate science into regulatory decisions and a means for organizing scientific and technical information in such a way that it can be considered along side other important concerns including economic and social consideration.

Given the convergence of science and regulatory policy, Dr. John H. Gibbons, Assistant to the President for Science and Technology and the Director of the Office of Science and Technology Policy (OSTP), and I convened representatives of the White House policy offices and the regulatory agencies that regulate risk to discuss this issue. The purpose of the meetings was to begin to build consensus for a comprehensive and consistent approach to risk across agencies that address environmental, health and safety issues; our goal was to obtain agreement on the importance of developing consistent methodologies, where appropriate, and preventing gaps and/or duplication of efforts across agencies.

Our initiative was well received, and after several meetings we developed a basic framework, a preliminary structure of principles of risk analysis. Our approach can be divided into four areas:

<u>Risk Assessment.</u> The first step in risk analysis is to assemble the relevant data. Risk assessment is the term used for the process of describing or characterizing the nature and magnitude of the risk. It includes for example, a measure (whether it be a point or a range) both of the toxicity of the substance and the anticipated exposures.

Risk assessment is not an exact or perfect science. It is riddled with questions and uncertainties; indeed, scientists have made careers of examining the nuances of characterizing risks. In many areas, science does not have all of the answers; there are and will inevitably be -- no matter how much we learn -- gaps in scientific knowledge. It is essential therefore that when judgements and inferences are made to bridge these gaps, as they necessarily will be, they should be made explicit and risk managers must be informed about the existence (and magnitude) of the uncertainties that exist.

It is also important to separate the inferences grounded in the natural sciences, as well as the economic, technical, behavioral sciences, from policy judgements (see risk management below). The former (the set of facts and inferences grounded in the sciences) should pass muster under peer review by those in the same discipline who should have an opportunity to ensure that the underlying work was competently done and that any assumptions made were reasonable.

Risk management. Risk management is the process of weighing risk estimates with or against other factors, such as equity, quality of life, individual preferences, cost-effectiveness and the distribution of costs and benefits that are key elements of public policy decisions. In other words, risk management is the process by which risk assessment data is augmented by analyses of other benefits (both direct and indirect, both quantifiable and non-quantifiable) associated with the selection or implementation of a risk management strategy, together with analyses of the costs (both direct and indirect, both quantifiable and non-quantifiable) associated with each strategy. These are the decisions that should be made by the elected and appointed officials charged with the responsibility (and accountable to the public for) public policy.

To facilitate sound decisions, it is essential that those in public policy charged with risk management keep open the lines of communication with risk assessors to assure that risk assessments anticipate and address the widest range of risk-related issues that will be relevant to the risk management decision. It is also essential for the risk managers to keep open the lines of communication with the public so that their perceptions can be incorporated in the decision making process.

Risk communication. The exchange of information about risks, and perceptions about risks, between the policy makers and the public is known as risk communication. In describing the risk, it is important to explain the basis for significant assumptions, data, models, and inferences used or relied upon; and to describe the extent and magnitude of significant uncertainties associated with the assessment or decision. Not only should risks be communicated accurately and objectively, but they should be communicated in a way that can be readily understood by the public in the context of other familiar risks.

The importance of communicating risks to the public is underscored by some studies that demonstrate little if any correlation between public perception and scientific judgements about the magnitudes of risks for a number of activities. Some have suggested that this is a function of media attention on certain risks which are more easily understood (and hence covered by the mass media) to the detriment of coverage of potentially more harmful but more complicated risks.

Others suggest that the apparent divergence between expert and public perceptions may not necessarily be a function of the public's not being well informed, but rather that the public's ranking of risks reflects the incorporation of other values. For example, while it is widely accepted (and well publicized) that driving an automobile is more dangerous than flying the same distance, many people choose to drive instead of fly because of an acute fear of air travel. Another explanation for the discrepancy may be the distinction between voluntary and involuntary risks. It may be that the public will react more adversely to the involuntary risk of living next to a nuclear power plant (which has a relatively small health risk) than to the voluntary risk of smoking several packs of cigarettes a day (which is a well-documented high health risk).

<u>The setting of priorities.</u> Risk analysis provides an important for the setting of priorities. It helps us allocate limited resources so they will have maximal impact, in other words, so we can achieve the "biggest bang for the buck"

When it is not feasible to rank various risks with precision, the relevant decision-makers should attempt to group them in broad categories such as high, moderate, and low.

As with risk management decisions, the setting of priorities should take into account the views of internal agency experts and a broad range of individuals in state and local governments, industry, academia and non-governmental organizations as well as the public at large. Where possible, the relevant decision-makers should attempt to reflect consensus views in the setting of priorities and should attempt to coordinate risk reduction efforts wherever feasible.

Major Administration Objectives

Our intention is to continue the dialogue we began with the agencies and ultimately to produce a series of guidance memoranda beginning with a general statement of our basic approach to more specific, technical issues of implementation. Like peeling layers of an onion, we intend to approach this issue step by step; we envision an evolving process, rather than a one-shot attempt to provide the Administration's definitive statement. We chose this course not only because of the number and complexity of issues with respect to risk analysis, but also because we perceive a need to develop a broad-based consensus, not only within the Executive Branch, but with those on Capitol Hill, State and local governments, business groups, and public interest and non-governmental groups that are all affected and that all can contribute to the process. Furthermore, we recognize that risk analysis is an evolving process and we must retain sufficient flexibility to incorporate advances in thinking about the subject.

As we continue our work, our efforts will be focused on two particular activities on risk that are centered in the White House and that will be proceeding in parallel. First, the President recently signed Executive Order 12881 establishing the National Science and Technology Council (NSTC). Currently, OSTP is organizing an NSTC Subcommittee on Risk Assessment to evaluate the risk assessment aspects of risk analysis. This Subcommittee will examine the purely scientific issues associated with the evaluation of risk, including issues pertaining to cancer, noncancer, and ecological risk assessment methodologies in general. The subcommittee will include all Federal agencies that regulate health, safety and environmental risks.

Second, under E.O. 12866, the Administrator of OIRA chairs a Regulatory Working Group (RWG) consisting of representatives of the major regulatory agencies, the White House policy offices and the Office of the Vice President. The Order charges the RWG with exploring the methods, efficacy and utility of comparative risk assessment. At the most recent meeting, we established a committee on risk assessment (co-chaired by OSTP and EPA). One of the projects the committee will undertake is the compilation of statutes that in some way require regulation of risks. As you know, the manner in which statutes deal with risks vary widely -- some tolerate no risk, while others speak of "reasonable" or "not unreasonable" risk or "safe" or "significant" risk; some statutes preclude consideration of costs in risk management, while others speak of "affordability" or "feasibility" or "cost effectiveness". The statutory approach to risk is not coordinated, coherent and systematic. We will look for ways to work with the Congress to bring greater consistency to the process. The committee will also explore comparing risks across agencies. We recognize that differences in data available, depth of knowledge, and methods used to estimate risks contribute to the difficulty in comparative risk analysis. However, while comparative risk analysis may be rough and inexact, the committee is charged with whether exploring whether such an undertaking would be useful.

In addition to these two parallel tracks, the Administration, through the Office of Science and Technology Policy, is also in discussions with various non-governmental organizations to participate in, be aware of, and promote risk-related projects. For example, we are working with Resources for the Future on issues related to managing risk and setting priorities. We hope to initiate a policy dialogue on risk analysis, a broad-based discussion on how risk is evaluated and used in making regulatory decisions. We recently participated in the Interbranch Forum on Risk at the Brookings Institution, a discussion of risk policy among the executive, legislative and judicial branches of government. And we are having discussions with the National Research Council about a potential study on the scientific aspects of risk based priority setting.

Conclusion

[Risk analysis, because of its usefulness in setting priorities and broad applicability across agencies that regulate risks to health, safety and the environment, is an undeniably important issue in regulatory decision-making. The Administration is committed to continuing its work in this area.][moving aggressively but deliberatively; doing the consultations necessary to establish broad-based consensus and a level of comfort that our guidance is not only sound but implementable.]