

The members of the Council shall be eligible for reappointment.

(b) Functions

The Council shall advise, consult with, and make recommendations to, the Administrator on matters relating to activities, functions, and policies of the Agency under this subchapter.

(c) Compensation and allowances; travel expenses

Members of the Council appointed under this section shall, while attending meetings or conferences of the Council or otherwise engaged in business of the Council, receive compensation and allowances at a rate to be fixed by the Administrator, but not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Council. While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b)¹ of title 5.

(d) Advisory committee termination provision inapplicable

Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council.

(July 1, 1944, ch. 373, title XIV, §1446, as added Pub. L. 93-523, §2(a), Dec. 16, 1974, 88 Stat. 1688; amended Pub. L. 104-182, title I, §127, Aug. 6, 1996, 110 Stat. 1659.)

REFERENCES IN TEXT

Section 5703 of title 5, referred to in subsec. (c), was amended generally by Pub. L. 94-22, §4, May 19, 1975, 89 Stat. 85, and, as so amended, does not contain a subsec. (b).

Section 14(a) of the Federal Advisory Committee Act, referred to in subsec. (d), is section 14(a) of Pub. L. 92-463, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-182 inserted “, of which two such members shall be associated with small, rural public water systems” before period at end of second sentence.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93-641, §6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

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

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

§ 300j-6. Federal agencies

(a) In general

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government—

(1) owning or operating any facility in a wellhead protection area;

(2) engaged in any activity at such facility resulting, or which may result, in the contamination of water supplies in any such area;

(3) owning or operating any public water system; or

(4) engaged in any activity resulting, or which may result in, underground injection which endangers drinking water (within the meaning of section 300h(d)(2) of this title),

shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting the protection of such wellhead areas, respecting such public water systems, and respecting any underground injection in the same manner and to the same extent as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, 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 regulatory program respecting the protection of wellhead areas or public water systems or respecting any underground injection. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court¹ with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local law concerning the protection of wellhead areas or public water systems or concerning underground injection with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, em-

¹ See References in Text note below.

¹ So in original. Probably should not be capitalized.

ployee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State requirement adopted pursuant to this subchapter, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of 1 year, but additional exemptions may be granted for periods not to exceed 1 year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) Administrative penalty orders

(1) In general

If the Administrator finds that a Federal agency has violated an applicable requirement under this subchapter, the Administrator may issue a penalty order assessing a penalty against the Federal agency.

(2) Penalties

The Administrator may, after notice to the agency, assess a civil penalty against the agency in an amount not to exceed \$25,000 per day per violation.

(3) Procedure

Before an administrative penalty order issued under this subsection becomes final, the Administrator shall provide the agency an opportunity to confer with the Administrator and shall provide the agency notice and an opportunity for a hearing on the record in accordance with chapters 5 and 7 of title 5.

(4) Public review

(A) In general

Any interested person may obtain review of an administrative penalty order issued under this subsection. The review may be obtained in the United States District Court for the District of Columbia or in the United States District Court for the district in which the violation is alleged to have occurred by the filing of a complaint with the court within the 30-day period beginning on the date the penalty order becomes final. The person filing the complaint shall simultaneously send a copy of the complaint by certified mail to the Administrator and the Attorney General.

(B) Record

The Administrator shall promptly file in the court a certified copy of the record on which the order was issued.

(C) Standard of review

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 of the penalty by the Administrator constitutes an abuse of discretion.

(D) Prohibition on additional penalties

The court may not impose an additional civil penalty for a violation that is subject to the order unless the court finds that the assessment constitutes an abuse of discretion by the Administrator.

(e) Limitation on State use of funds collected from Federal Government

Unless a State law in effect on August 6, 1996, or a State constitution requires the funds to be used in a different manner, all funds collected by a State from the Federal Government from penalties and fines imposed for violation of any substantive or procedural requirement referred to in subsection (a) of this section shall be used by the State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.

(d) Indian rights and sovereignty as unaffected; "Federal agency" defined

(1) Nothing in the Safe Drinking Water Amendments of 1977 shall be construed to alter or affect the status of American Indian lands or water rights nor to waive any sovereignty over Indian lands guaranteed by treaty or statute.

(2) For the purposes of this chapter, the term "Federal agency" shall not be construed to refer to or include any American Indian tribe, nor to the Secretary of the Interior in his capacity as trustee of Indian lands.

(e) Washington Aqueduct

The Secretary of the Army shall not pass the cost of any penalty assessed under this subchapter on to any customer, user, or other purchaser of drinking water from the Washington Aqueduct system, including finished water from the Dalecarlia or McMillan treatment plant.

(July 1, 1944, ch. 373, title XIV, §1447, as added Pub. L. 93-523, §2(a), Dec. 16, 1974, 88 Stat. 1688; amended Pub. L. 95-190, §8(a), (d), Nov. 16, 1977, 91 Stat. 1396, 1397; Pub. L. 104-182, title I, §129(a), (c), Aug. 6, 1996, 110 Stat. 1660, 1662.)

REFERENCES IN TEXT

The Safe Drinking Water Amendments of 1977, referred to in subsec. (d)(1), is Pub. L. 95-190, Nov. 16, 1977, 91 Stat. 1393. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 201 of this title and Tables.

AMENDMENTS

1996—Subsecs. (a) to (d). Pub. L. 104-182, §129(a), added subsecs. (a) to (c), redesignated former subsec. (c) as (d), and struck out former subsecs. (a) and (b) which related to compliance by Federal agencies with Federal, State, and local requirements respecting provision of safe drinking water and respecting underground injection programs, liability for civil penalties, and waiver of compliance requirements when necessary in interest of national security.

Subsec. (e). Pub. L. 104-182, §129(c), added subsec. (e). 1977—Subsec. (a). Pub. L. 95-190, §8(a), substituted provisions relating to compliance by Federal agencies having jurisdiction over federally owned or maintained public water systems, or engaged in underground injection activities with Federal, State, and local requirements, etc., for provisions relating to compliance by Federal agencies having jurisdiction over federally owned or maintained public water systems with national primary drinking water regulations.

Subsec. (c). Pub. L. 95-190, §8(d), added subsec. (c).

§ 300j-7. Judicial review

(a) Courts of appeals; petition for review: actions respecting regulations; filing period; grounds arising after expiration of filing period; exclusiveness of remedy

A petition for review of—

(1) actions pertaining to the establishment of national primary drinking water regulations (including maximum contaminant level goals) may be filed only in the United States Court of Appeals for the District of Columbia circuit; and

(2) any other final action of the Administrator under this chapter may be filed in the circuit in which the petitioner resides or transacts business which is directly affected by the action.

Any such petition shall be filed within the 45-day period beginning on the date of the promulgation of the regulation or any other final Agency action with respect to which review is sought or on the date of the determination with respect to which review is sought, and may be filed after the expiration of such 45-day period if the petition is based solely on grounds arising after the expiration of such period. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement. In any petition concerning the assessment of a civil penalty pursuant to section 300g-3(g)(3)(B) of this title, the petitioner shall simultaneously send a copy of the complaint by certified mail to the Administrator and the Attorney General. The court shall set aside and remand the penalty order if the court finds that there is not substantial evidence in the record to support the finding of a violation or that the assessment of the penalty by the Administrator constitutes an abuse of discretion.

(b) District courts; petition for review: actions respecting variances or exemptions; filing period; grounds arising after expiration of filing period; exclusiveness of remedy

The United States district courts shall have jurisdiction of actions brought to review (1) the granting of, or the refusing to grant, a variance or exemption under section 300g-4 or 300g-5 of this title or (2) the requirements of any schedule prescribed for a variance or exemption under such section or the failure to prescribe such a schedule. Such an action may only be brought upon a petition for review filed with the court within the 45-day period beginning on the date the action sought to be reviewed is taken or, in the case of a petition to review the refusal to

grant a variance or exemption or the failure to prescribe a schedule, within the 45-day period beginning on the date action is required to be taken on the variance, exemption, or schedule, as the case may be. A petition for such review may be filed after the expiration of such period if the petition is based solely on grounds arising after the expiration of such period. Action with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement.

(c) Judicial order for additional evidence before Administrator; modified or new findings; recommendation for modification or setting aside of original determination

In any judicial proceeding in which review is sought of a determination under this subchapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such term and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(July 1, 1944, ch. 373, title XIV, §1448, as added Pub. L. 93-523, §2(a), Dec. 16, 1974, 88 Stat. 1689; amended Pub. L. 99-339, title III, §303, June 19, 1986, 100 Stat. 667; Pub. L. 104-182, title I, §113(c), Aug. 6, 1996, 110 Stat. 1636.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-182, §113(c)(2), (3), in concluding provisions, substituted “or any other final Agency action” for “or issuance of the order” and inserted at end “In any petition concerning the assessment of a civil penalty pursuant to section 300g-3(g)(3)(B) of this title, the petitioner shall simultaneously send a copy of the complaint by certified mail to the Administrator and the Attorney General. The court shall set aside and remand the penalty order if the court finds that there is not substantial evidence in the record to support the finding of a violation or that the assessment of the penalty by the Administrator constitutes an abuse of discretion.”

Subsec. (a)(2). Pub. L. 104-182, §113(c)(1), substituted “any other final action” for “any other action”.

1986—Subsec. (a)(1). Pub. L. 99-339, §303(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “action of the Administrator in promulgating any national primary drinking water regulation under section 300g-1 of this title, any regulation under section 300g-2(b)(1) of this title, any regulation under section 300g-3(c) of this title, any regulation for State underground injection control programs under section 300h of this title, or any general regulation for the administration of this subchapter may be filed only in the United States Court of Appeals for the District of Columbia Circuit; and”.

Subsec. (a)(2). Pub. L. 99-339, §303(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: