

other facilities for their employees directly or by providing funds to the States or local communities for this purpose.

Copies of the report shall be provided to the Secretary of Energy and the Secretary shall, subject to the provisions of section 796(d) of title 15, provide the report to the Secretary of Agriculture, the Governor, and the appropriate county or local officials and make it available for public review.

**(g) Administration**

The Secretary of Agriculture shall carry out his responsibilities under this section through the Farmers Home Administration and such other agencies within the Department of Agriculture as he may determine appropriate.

**(h) Appropriations authorization**

(1)<sup>2</sup> There is hereby authorized to be appropriated to the Secretary of Energy for purposes of this section, \$60,000,000 for fiscal year 1979 and \$120,000,000 for fiscal year 1980. The Secretary of Energy and the Secretary of Agriculture shall enter into an agreement for the allocation of funds appropriated pursuant to this section for carrying out their respective responsibilities under this section, including the amounts for personnel and administrative costs, and upon such agreement, the Secretary of Energy shall transfer to the Secretary of Agriculture amounts determined under that agreement.

**(i) Protection from certain hazardous actions**

Federal agencies having responsibilities concerning the health and safety of any person working in any coal, uranium, metal, or non-metallic mine regulated by any Federal agency shall interpret and utilize their authorities fully and promptly, including the promulgation of standards and regulations, to protect existing and future housing, property, persons, and public facilities located adjacent to or near active and abandoned coal, uranium, metal, and non-metallic mines from actions occurring at such activities that pose a hazard to such property or persons.

**(j) Reorganization**

The authority of the Secretary of Agriculture and the authority of the Secretary of Energy under this section may not be transferred to any other Secretary or to any other Federal agency under chapter 9 of title 5 or under any other provision of law, other than under specific provisions of a law enacted after November 9, 1978. The preceding provisions of this subsection shall not preclude either Secretary from delegating any such authority to any officer, employee, or entity within such Secretary's department.

(Pub. L. 95-620, title VI, §601, Nov. 9, 1978, 92 Stat. 3323.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a)(1), is the effective date of Pub. L. 95-620. See section 901 of Pub. L. 95-620, set out as an Effective Date note under section 8301 of this title.

Section 1609 of title 16, referred to in subsec. (c)(6)(B), was in the original "section 10 of the Forest and Range-

land Renewable Resources Planning Act of 1974". Such section 10 is classified to section 1608 of title 16 but has been editorially translated as section 1609 of title 16 as the probable intent of Congress in that the properties defined as being in the National Forest System appear in section 1609.

**§ 8401a. "Local government" defined**

For the purposes of section 8401 of this title, the term "local government" shall include—

(1) any county, parish, city, town, township, village or other general purpose political subdivision of a State with the power to levy taxes and expend Federal, State, and local funds and exercise governmental powers; and

(2) which (in whole or in part) is located in, or has authority over the energy impacted area: *Provided further*, That such term shall include a public or private nonprofit corporation, or a school, water, sewer, highway, or other public special purpose district, authority, or body, with the concurrence of the Governor: *Provided further*, That such term shall be applicable to all applications for assistance received since the effective date of section 8401 of this title.

(Pub. L. 96-514, title II, §201, Dec. 12, 1980, 94 Stat. 2975.)

REFERENCES IN TEXT

For effective date of section 8401 of this title, referred to in par. (2), see section 901 of Pub. L. 95-620, set out as an Effective Date note under section 8301 of this title.

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1981, and not as part of the Powerplant and Industrial Fuel Use Act of 1978 which comprises this chapter.

**§ 8402. Loans to assist powerplant acquisitions of air pollution control equipment**

**(a) Authority to make loans**

The Secretary may, in accordance with the provisions of this section and such rules and regulations as he shall prescribe, make a loan (and may make a commitment to loan) to any person who owns or operates any existing electric powerplant converting to coal or other alternate fuel as its primary energy source after the effective date of this chapter for the purpose of financing the purchase and installation of one or more certified air pollution control devices for such electric powerplant.

**(b) Limitations and conditions**

A loan made under this section shall—

(1) not exceed two-thirds of the cost of purchasing and installing the certified air pollution control devices;

(2) have a maturity date not extending beyond 10 years after the date such loan is made;

(3) bear interest at a rate not less than (A) a rate determined by the Secretary of the Treasury, taking into consideration the average market yield of outstanding Treasury obligations of comparable maturity, plus (B) 1 percent;

(4) be made on the condition of payment to the Secretary of a loan fee in an amount equal

<sup>2</sup>So in original. No par. (2) has been enacted.

to (A) such insurance fee as the Secretary determines is necessary to avoid a Federal revenue loss under this section, plus (B) 1 percent of the loan amount; and

(5) be made only if the Secretary finds that—

(A) the financial assistance applied for is not otherwise available from other Federal agencies;

(B) the applicant is unable to obtain sufficient funds on reasonable terms and conditions from any other source;

(C) there is continued reasonable assurance of full repayment of the principal, interest, and fees; and

(D) competition among private entities for the provision of air pollution control devices for electric powerplants using coal as their primary energy source to be assisted under this section will be in no way limited or precluded.

**(c) Allocation and priorities**

In making loans or commitments to loan pursuant to this section, the Secretary shall—

(1) allocate a minimum of 25 percent of available financial assistance to existing small municipal and rural powerplants; and

(2) give priority consideration to requests for financial assistance by existing electric powerplants subject to any prohibition under subchapter III of this chapter (or under section 792 of title 15).

**(d) Definitions**

For purposes of this section—

(1) The term “certified pollution control device” means a new identifiable device which—

(A) is used, in connection with a powerplant, to abate or control atmospheric pollution by removing, altering, disposing, storing, or preventing the emission of pollutants;

(B) the appropriate State air pollution control agency has certified to the Administrator of the Environmental Protection Agency that such device is needed to meet, and is in conformity with, State requirements for abatement or control of atmospheric pollution or contamination;

(C) the Administrator of the Environmental Protection Agency has certified to the Secretary as not duplicating or displacing existing air pollution control devices with a remaining useful economic life in excess of 2 years and as otherwise being in furtherance of the requirements and purposes of the Clean Air Act [42 U.S.C. 7401 et seq.];

(D) does not constitute or include a building, or a structural component of a building, other than a building used exclusively for the purposes set forth in subparagraph (A); and

(E) the construction of which began after the effective date of this chapter.

(2) The term “small municipal or rural cooperative electric powerplant” means an electric generating unit, which—

(A) by design is not capable of consuming fuel at a fuel heat input rate in excess of a rate determined appropriate by the Secretary by rule; and

(B) is owned or operated by a municipality or a rural electric cooperative.

**(e) Records**

(1) The Secretary shall require all persons receiving financial assistance under this section to keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance was given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the later of—

(A) the expiration of 3 years after completion of the project or undertaking referred to in subsection (a) of this section, or

(B) full repayment of interest and principal on a loan made under this section, occurs,

have access for the purposes of audit, evaluation, examination to any books, documents, papers, and records of such receipts which in the opinion of the Secretary or the Comptroller General may be related or pertinent to such loan.

**(f) Default**

(1) If there is a default in any payment by the obligor of interest or principal due under a loan entered into by the Secretary under this section and such default has continued for 90 days, the Secretary has the right to demand payment of such unpaid amount, unless the Secretary finds that such default has been remedied, or a satisfactory plan to remedy such default by the obligor has been accepted by the Secretary.

(2) In demanding payment of unpaid interest or principal by the obligor, the Secretary has all rights specified in the loan-related agreements with respect to any security which he held with respect to the loan, including the authority to complete, maintain, operate, lease, sell, or otherwise dispose of any property acquired pursuant to such loan or related agreements.

(3) If there is a default under any loan, the Secretary shall notify the Attorney General who shall take such action against the obligor or other parties liable thereunder as is, in his discretion, necessary to protect the interests of the United States. The holder of such loan shall make available to the United States all records and evidence necessary to prosecute any such suit.

**(g) Deposit of receipts**

Amounts received by the Secretary as principal, interest, fees, proceeds from security acquired following default, or other amounts received by the Secretary in connection with loans made under this section shall be paid into the Treasury of the United States as miscellaneous receipts.

**(h) Authorization of appropriation**

There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to carry out the purposes of this sec-

tion, but not to exceed \$400,000,000 for fiscal year 1979 and \$400,000,000 for fiscal year 1980. Authority granted to the Secretary under subsection (a) of this section may be exercised only to the extent as may be provided in advance in appropriation Acts.

(Pub. L. 95-620, title VI, § 602, Nov. 9, 1978, 92 Stat. 3327.)

#### REFERENCES IN TEXT

The effective date of this chapter, referred to in subsecs. (a) and (d)(1)(E), is the effective date of Pub. L. 95-620. See section 901 of Pub. L. 95-620, set out as an Effective Date note under section 8301 of this title.

The Clean Air Act, referred to in subsec. (d)(1)(C), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

### SUBCHAPTER VII—ADMINISTRATION AND ENFORCEMENT

#### PART A—PROCEDURES

### § 8411. Administrative procedures

#### (a) General rulemaking

Except to the extent otherwise provided in this section or other provisions of this chapter, rules prescribed under this chapter shall be made in accordance with the procedures set forth in section 553 of title 5.

#### (b) Notices of rules and orders imposing prohibitions

Before the Secretary prescribes any rule or issues any order imposing a prohibition under this chapter, he shall publish such proposed rule or order in the Federal Register, together with a statement of the reasons for such rule or order and, in the case of a rule, a detailed statement of any special circumstances or characteristics required to be taken into account in prescribing such rule. A copy shall be transmitted to the person who operates any such powerplant required to be specifically identified in such rule or order.

#### (c) Petitions for exemptions

(1) Any petition for an exemption from any prohibition under this chapter shall be filed at such time and shall be in such form as the Secretary shall by rule prescribe. The Secretary, upon receipt of such petition, shall publish a notice thereof in the Federal Register together with a statement of the reasons set forth in such a petition for requesting such exemption, and provide a period of public comment of at least 45 days for written comments thereon. Rules required under this paragraph shall be prescribed not later than 120 days after November 9, 1978.

(2) The Secretary, upon receipt of such petition, shall notify the appropriate State agencies having primary authority to permit or regulate the construction or operation of the electric powerplant which is the subject of such petition, and, to the maximum extent practicable, consult with such agencies.

(3) The Secretary, within 6 months after the period for public comment and hearing applicable to any petition for an exemption, shall issue

a final order granting or denying the petition for such exemption, except that the Secretary may extend such period to a specified date if he publishes notice thereof in the Federal Register and includes with such notice a statement of the reasons for such extension.

#### (d) Public comment on prohibitions and exemptions

(1) In the case of any proposed rule or order by the Secretary imposing a prohibition or any petition for any order granting an exemption under this chapter, any interested person shall be afforded an opportunity to present oral data, views, and arguments at a public hearing. At such hearing any interested person shall have an opportunity to question—

(A) other interested persons who make oral presentations,

(B) employees and contractors of the United States who have made written or oral presentations or who have participated in the development of the proposed rule or order or in the consideration of such petition, and

(C) experts and consultants who have provided information to any person who makes an oral presentation and which is contained in or referred to in such presentation,

with respect to disputed issues of material fact, except that the Secretary may restrict questioning if he determines that such questioning is duplicative or is not likely to result in a timely and effective resolution of such issues. Any oral or documentary evidence may be received, but the Secretary as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.

(2) A rule or order subject to this section may not be issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence.

#### (e) Transcript

A transcript shall be kept of any public hearing made in accordance with this section.

#### (f) Environmental Protection Agency comment

A copy of any proposed rule or order to be prescribed or issued by the Secretary which imposes a prohibition under this chapter (other than under section 8374 of this title), or a petition for an exemption (or permit) under this chapter (other than under section 8374 of this title), shall be transmitted by the Secretary to the Administrator of the Environmental Protection Agency and the Secretary shall request such agency to comment thereon within the period provided to the public unless a longer period is provided under the Clean Air Act [42 U.S.C. 7401 et seq.]. In any such case, the Administrator of the Environmental Protection Agency shall be afforded the same opportunity to comment and question as is provided other interested persons under subsection (d) of this section.

#### (g) Repealed. Pub. L. 100-42, § 1(c)(16)(E), May 21, 1987, 101 Stat. 313

#### (h) Coordination with other provisions of law

(1) Except as provided in sections 8412(c)(4), 8433(d)(5), and 8434 of this title, title V of the De-