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Clean Water Act: A Summary of the Law

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Summary

The principal law governing pollution of the nation's surface waters is the Federal Water Pollution Control Act, or Clean Water Act. Originally enacted in 1948, it was totally revised by amendments in 1972 that gave the act its current shape. The 1972 legislation spelled out ambitious programs for water quality improvement that have since been expanded and are still being implemented by industries and municipalities.

This report presents a summary of the law, describing the essence of the statute without discussing its implementation. Other CRS reports discuss implementation, including CRS Report R40098, *Water Quality Issues in the 111th Congress: Oversight and Implementation*, and numerous products cited in that report.

The Clean Water Act consists of two major parts, one being the provisions which authorize federal financial assistance for municipal sewage treatment plant construction. The other is the regulatory requirements that apply to industrial and municipal dischargers. The act has been termed a technology-forcing statute because of the rigorous demands placed on those who are regulated by it to achieve higher and higher levels of pollution abatement under deadlines specified in the law. Early on, emphasis was on controlling discharges of conventional pollutants (e.g., suspended solids or bacteria that are biodegradable and occur naturally in the aquatic environment), while control of toxic pollutant discharges has been a key focus of water quality programs more recently.

Prior to 1987, programs were primarily directed at point source pollution, wastes discharged from discrete sources such as pipes and outfalls. Amendments in that year authorized measures to address nonpoint source pollution (stormwater runoff from farm lands, forests, construction sites, and urban areas), now estimated to represent more than 50% of the nation's remaining water pollution problems.

Under this act, federal jurisdiction is broad, particularly regarding establishment of national standards or effluent limitations. Certain responsibilities are delegated to the states, and the act embodies a philosophy of federal-state partnership in which the federal government sets the agenda and standards for pollution abatement, while states carry out day-to-day activities of implementation and enforcement.

To achieve its objectives, the act embodies the concept that all discharges into the nation's waters are unlawful, unless specifically authorized by a permit, which is the act's principal enforcement tool. The law has civil, criminal, and administrative enforcement provisions and also permits citizen suit enforcement.

Financial assistance for constructing municipal sewage treatment plants and certain other types of water quality improvements projects is authorized under title VI. It authorizes grants to capitalize State Water Pollution Control Revolving Funds, or loan programs. States contribute matching funds, and under the revolving loan fund concept, monies used for wastewater treatment construction will be repaid to a state, to be available for future construction in other communities.

Contents

Introduction 1
Background 2
Overview 2
Federal and State Responsibilities 4
Titles II and VI—Municipal Wastewater Treatment Construction 4
Permits, Regulations, and Enforcement 5
Selected References 7

Tables

Table 1. Clean Water Act and Major Amendments 1
Table 2. Major U.S. Code Sections of the Clean Water Act 8

Contacts

Author Contact Information 11

Introduction

The principal law governing pollution of the nation's surface waters is the Federal Water Pollution Control Act, or Clean Water Act. Originally enacted in 1948, it was totally revised by amendments in 1972 that gave the act its current shape. The 1972 legislation spelled out ambitious programs for water quality improvement that have since been expanded and are still being implemented by industries, municipalities and others. Congress made fine-tuning amendments in 1977, revised portions of the law in 1981, and enacted further amendments in 1987.

This report presents a summary of the law, describing the essence of the statute. It is excerpted from a larger document, CRS Report RL30798, *Environmental Laws: Summaries of Major Statutes Administered by the EPA*, coordinated by Bonnie C. Gitlin. Many details and secondary provisions are omitted here, and even some major components are only briefly mentioned. Further, this report describes the statute without discussing its implementation. Other CRS products are more current and discuss implementation concerns.[1] **Table 1** shows the original enactment and subsequent major amendments. **Table 2**, at the end of this report, cites the major U.S. Code sections of the codified statute.

Table 1. Clean Water Act and Major Amendments

(codified generally as 33 U.S.C. §§1251-1387)

Year	Act	Public Law
1948	Federal Water Pollution Control Act	P.L. 80-845 (Act of June 30, 1948)
1956	Water Pollution Control Act of 1956	P.L. 84-660 (Act of July 9, 1956)
1961	Federal Water Pollution Control Act Amendments	P.L. 87-88
1965	Water Quality Act of 1965	P.L. 89-234
1966	Clean Water Restoration Act	P.L. 89-753
1970	Water Quality Improvement Act of 1970	P.L. 91-224, Part I
1972	Federal Water Pollution Control Act Amendments	P.L. 92-500
1977	Clean Water Act of 1977	P.L. 95-217
1981	Municipal Wastewater Treatment Construction Grants Amendments	P.L. 97-117
1987	Water Quality Act of 1987	P.L. 100-4

Authorizations for appropriations to support the law generally expired at the end of FY1990 (September 30, 1990). Programs did not lapse, however, and Congress has continued to appropriate funds to carry out the act. Since the 1987 amendments, although Congress has enacted several bills that reauthorize and modify a number of individual provisions in the law, none comprehensively addressed major programs or requirements.

[1] For example, see CRS Report R40098, *Water Quality Issues in the 111th Congress: Oversight and Implementation*, by Claudia Copeland.

Background

The Federal Water Pollution Control Act of 1948 was the first comprehensive statement of federal interest in clean water programs, and it specifically provided state and local governments with technical assistance funds to address water pollution problems, including research. Water pollution was viewed as primarily a state and local problem, hence, there were no federally required goals, objectives, limits, or even guidelines. When it came to enforcement, federal involvement was strictly limited to matters involving interstate waters and only with the consent of the state in which the pollution originated.

During the latter half of the 1950s and well into the 1960s, water pollution control programs were shaped by four laws which amended the 1948 statute. They dealt largely with federal assistance to municipal dischargers and with federal enforcement programs for all dischargers. During this period, the federal role and federal jurisdiction were gradually extended to include navigable intrastate, as well as interstate, waters. Water quality standards became a feature of the law in 1965, requiring states to set standards for interstate waters that would be used to determine actual pollution levels and control requirements. By the late 1960s, there was a widespread perception that existing enforcement procedures were too time-consuming and that the water quality standards approach was flawed because of difficulties in linking a particular discharger to violations of stream quality standards. Additionally, there was mounting frustration over the slow pace of pollution cleanup efforts and a suspicion that control technologies were being developed but not applied to the problems. These perceptions and frustrations, along with increased public interest in environmental protection, set the stage for the 1972 amendments.

The 1972 statute did not continue the basic components of previous laws as much as it set up new ones. It set optimistic and ambitious goals, required all municipal and industrial wastewater to be treated before being discharged into waterways, increased federal assistance for municipal treatment plant construction, strengthened and streamlined enforcement, and expanded the federal role while retaining the responsibility of states for day-to-day implementation of the law.

The 1972 legislation declared as its objective the restoration and maintenance of the chemical, physical, and biological integrity of the nation's waters. Two goals also were established: zero discharge of pollutants by 1985 and, as an interim goal and where possible, water quality that is both "fishable" and "swimmable" by mid-1983. While those dates have passed, the goals remain, and efforts to attain them continue.

Overview

The Clean Water Act (CWA) today consists of two major parts, one being the Title II and Title VI provisions which authorize federal financial assistance for municipal sewage treatment plant construction. The other is the regulatory requirements, found throughout the act, that apply to industrial and municipal dischargers.

The act has been termed a technology-forcing statute because of the rigorous demands placed on those who are regulated by it to achieve higher and higher levels of pollution abatement. Industries were given until July 1, 1977, to install "best practicable control technology" (BPT) to clean up waste discharges. Municipal wastewater treatment plants were required to meet an equivalent goal, termed "secondary treatment," by that date. (Municipalities unable to achieve

secondary treatment by that date were allowed to apply for case-by-case extensions up to July 1, 1988. According to EPA, 86% of all cities met the 1988 deadline; the remainder were put under administrative or court-ordered schedules requiring compliance as soon as possible. However, many cities continue to make investments in building or upgrading facilities needed to achieve secondary treatment, and funding needs remain high; see discussion below.) Cities that discharge wastes into marine waters were eligible for case-by-case waivers of the secondary treatment requirement, where sufficient showing could be made that natural factors provide significant elimination of traditional forms of pollution and that both balanced populations of fish, shellfish, and wildlife and water quality standards would be protected.

The primary focus of BPT was on controlling discharges of conventional pollutants, such as suspended solids, biochemical oxygen demanding materials, fecal coliform and bacteria, and pH. These pollutants are substances which are biodegradable (i.e., bacteria can break them down), occur naturally in the aquatic environment, and deplete the dissolved oxygen concentration in water which is necessary for fish and other aquatic life.

The act mandated greater pollutant cleanup than BPT by no later than March 31, 1989, generally requiring that industry use the "best available technology" (BAT) that is economically achievable. BAT level controls generally focus on toxic substances. Compliance extensions of as long as two years are available for industrial sources utilizing innovative or alternative technology. Failure to meet statutory deadlines could lead to enforcement action.

The act utilizes both water quality standards and technology-based effluent limitations to protect water quality. Technology-based effluent limitations are specific numerical limitations established by EPA and placed on certain pollutants from certain sources. They are applied to industrial and municipal sources through numerical effluent limitations in discharge permits (see discussion of "Permits, Regulations, and Enforcement," below). Water quality standards are standards for the overall quality of water. They consist of the designated beneficial use or uses of a waterbody (recreation, water supply, industrial, or other), plus a numerical or narrative statement identifying maximum concentrations of various pollutants which would not interfere with the designated use. The act requires each state to establish water quality standards for all bodies of water in the state. These standards serve as the backup to federally set technology-based requirements by indicating where additional pollutant controls are needed to achieve the overall goals of the act. In waters where industrial and municipal sources have achieved technology-based effluent limitations, yet water quality standards have not been met, dischargers may be required to meet additional pollution control requirements. For each of these waters, the act requires states to set a total maximum daily load (TMDL) of pollutants at a level that ensures that applicable water quality standards can be attained and maintained. A TMDL is both a planning process for attaining water quality standards and a quantitative assessment of pollution problems, sources, and pollutant reductions needed to restore and protect a river, stream, or lake. Based on state reports, EPA estimates that more than 44,000 U.S. waters are impaired and require preparation of TMDLs.

Control of toxic pollutant discharges has been a key focus of water quality programs. In addition to the BPT and BAT national standards, states are required to implement control strategies for waters expected to remain polluted by toxic chemicals even after industrial dischargers have installed the best available cleanup technologies required under the law. Development of management programs for these post-BAT pollutant problems was a prominent element in the 1987 amendments and is a key continuing aspect of CWA implementation.

Prior to the 1987 amendments, programs in the Clean Water Act were primarily directed at point source pollution, wastes discharged from discrete and identifiable sources, such as pipes and other outfalls. In contrast, except for general planning activities, little attention had been given to nonpoint source pollution (stormwater runoff from agricultural lands, forests, construction sites, and urban areas), despite estimates that it represents more than 50% of the nation's remaining water pollution problems. As it travels across land surface towards rivers and streams, rainfall and snowmelt runoff picks up pollutants, including sediments, toxic materials, and conventional wastes (e.g., nutrients) that can degrade water quality.

The 1987 amendments authorized measures to address such pollution by directing states to develop and implement nonpoint pollution management programs (Section 319 of the act). States were encouraged to pursue groundwater protection activities as part of their overall nonpoint pollution control efforts. Federal financial assistance was authorized to support demonstration projects and actual control activities. These grants may cover up to 60% of program implementation costs.

While the act imposes great technological demands, it also recognizes the need for comprehensive research on water quality problems. This is provided throughout the statute, on topics including pollution in the Great Lakes and Chesapeake Bay, in-place toxic pollutants in harbors and navigable waterways, and water pollution resulting from mine drainage. The act also provides support to train personnel who operate and maintain wastewater treatment facilities.

Federal and State Responsibilities

Under this act, federal jurisdiction is broad, particularly regarding establishment of national standards or effluent limitations. The Environmental Protection Agency (EPA) issues regulations containing the BPT and BAT effluent standards applicable to categories of industrial sources (such as iron and steel manufacturing, organic chemical manufacturing, petroleum refining, and others). Certain responsibilities can be assumed by qualified states, in lieu of EPA, and this act, like other environmental laws, embodies a philosophy of federal-state partnership in which the federal government sets the agenda and standards for pollution abatement, while states carry out day-to-day activities of implementation and enforcement. Responsibilities under the act which may be carried out by qualified states include authority to issue discharge permits to industries and municipalities and to enforce permits. (As of April 2010, 46 states had been authorized to administer this permit program; EPA issues discharge permits in the remaining states—Idaho, Massachusetts, New Hampshire, New Mexico—and the District of Columbia.) In addition, as noted above, states are responsible for establishing water quality standards.

Titles II and VI—Municipal Wastewater Treatment Construction

Federal law has authorized grants for planning, design, and construction of municipal sewage treatment facilities since 1956 (Act of July 9, 1956, or P.L. 84-660). Congress greatly expanded this grant program in 1972 in order to assist cities in meeting the act's pollution control requirements. Since that time Congress has authorized $65 billion and appropriated more than $78 billion in CWA funds to aid wastewater treatment plant construction. Grants are allocated among the states according to a complex statutory formula that combines two factors: state

population and an estimate of municipal sewage treatment funding needs derived from a survey conducted periodically by EPA and the states. The most recent estimate, published in 2008, indicated that $202.5 billion more would be required to build and upgrade municipal wastewater treatment plants in the United States and for other types of water quality improvement projects that are eligible for funding under the act, an 8% increase over the previous estimate from four years earlier.

Under the Title II construction grants program established in 1972, federal grants were made for several types of projects (such as secondary or more stringent treatment and associated sewers) based on a priority list established by the states. Grants were generally available for as much as 55% of total project costs. For projects using innovative or alternative technology (such as reuse or recycling of water), as much as 75% federal funding was allowed. Recipients were responsible for non-federal costs but were not required to repay federal grants.

Policymakers have debated the tension between assisting municipal funding needs, which remain large, and the impact of aid programs such as the Clean Water Act's on federal spending and budget deficits. In the 1987 amendments to the act, Congress attempted to deal with that apparent conflict by extending federal aid for wastewater treatment construction through FY1994, yet providing a transition towards full state and local government responsibility for financing after that date. Grants under the previous Title II program were authorized through FY1990. Under Title VI of the act, grants to capitalize State Water Pollution Control Revolving Funds, or loan programs, were authorized beginning in FY1989 to replace the Title II grants. States contribute matching funds, and under the revolving loan fund concept, monies used for wastewater treatment construction will be repaid to a state fund, to be available for future construction in other communities. All states now have functioning loan programs, but the shift from federal grants to loans has been easier for some than others. The new financing requirements have been a problem for cities (especially small towns) that have difficulty repaying project loans. Statutory authorization for grants to capitalize state loan programs expired in 1994; however, Congress has continued to provide annual appropriations. An issue affecting some cities is overflow discharges of inadequately treated wastes from municipal sewers and how cities will pay for costly remediation projects. In 2000, Congress amended the act to authorize a two-year $1.5 billion grant program to help cities reduce these wet weather flows. Authorization for that wet weather grant program expired at the end of FY2003 and has not been renewed.

Permits, Regulations, and Enforcement

To achieve its objectives, the act embodies the concept that all discharges into the nation's waters are unlawful, unless specifically authorized by a permit. Thus, more than 65,000 industrial and municipal dischargers must obtain permits from EPA (or qualified states) under the act's National Pollutant Discharge Elimination System (NPDES) program (authorized in Section 402 of the act). An NPDES permit requires the discharger (source) to attain technology-based effluent limits (BPT or BAT for industry, secondary treatment for municipalities, or more stringent for water quality protection). Permits specify the control technology applicable to each pollutant, the effluent limitations a discharger must meet, and the deadline for compliance. Sources are required to maintain records and to carry out effluent monitoring activities. Permits are issued for no more than five years and must be renewed thereafter to allow continued discharge.

The NPDES permit incorporates numerical effluent limitations issued by EPA. The initial BPT limitations focused on regulating discharges of conventional pollutants, such as bacteria and

oxygen-consuming materials. The more stringent BAT limitations emphasize controlling toxic pollutants—heavy metals, pesticides, and other organic chemicals. In addition to these limitations applicable to categories of industry, EPA has issued water quality criteria for more than 115 pollutants, including 65 named classes or categories of toxic chemicals, or "priority pollutants." These criteria recommend ambient, or overall, concentration levels for the pollutants and provide guidance to states for establishing water quality standards that will achieve the goals of the act.

A separate type of permit is required to dispose of dredged or fill material in the nation's waters, including wetlands. Authorized by Section 404 of the act, this permit program is administered by the U.S. Army Corps of Engineers, subject to and using EPA's environmental guidance. Some types of activities are exempt from permit requirements, including certain farming, ranching, and forestry practices which do not alter the use or character of the land; some construction and maintenance; and activities already regulated by states under other provisions of the act. EPA may delegate certain Section 404 permitting responsibility to qualified states and has done so twice (Michigan and New Jersey). For some time, the act's wetlands permit program has been one of the most controversial parts of the law. Some who wish to develop wetlands maintain that federal regulation intrudes on and impedes private land-use decisions, while environmentalists seek more protection for remaining wetlands and limits on activities that take place in wetlands.

Nonpoint sources of pollution, which EPA and states believe are responsible for the majority of water quality impairments in the nation, are not subject to CWA permits or other regulatory requirements under federal law. They are covered by state programs for the management of runoff, under Section 319 of the act.

Other EPA regulations under the CWA include guidelines on using and disposing of sewage sludge and guidelines for discharging pollutants from land-based sources into the ocean. (A related law, the Ocean Dumping Act, 33 U.S.C. §§1401-45, regulates the intentional disposal of wastes into ocean waters.) EPA also provides guidance on technologies that will achieve BPT, BAT, and other effluent limitations.

The NPDES permit, containing effluent limitations on what may be discharged by a source, is the act's principal enforcement tool. EPA may issue a compliance order or bring a civil suit in U.S. district court against persons who violate the terms of a permit. The penalty for such a violation can be as much as $25,000 per day. Stiffer penalties are authorized for criminal violations of the act—for negligent or knowing violations—of as much as $50,000 per day, three years' imprisonment, or both. A fine of as much as $250,000, 15 years in prison, or both, is authorized for "knowing endangerment"—violations that knowingly place another person in imminent danger of death or serious bodily injury. Finally, EPA is authorized to assess civil penalties administratively for certain well-documented violations of the law. These civil and criminal enforcement provisions are contained in Section 309 of the act. EPA, working with the Army Corps of Engineers, also has responsibility for enforcing against entities who fail to obtain or comply with a Section 404 permit.

While the CWA addresses federal enforcement, the majority of actions taken to enforce the law are undertaken by states, both because states issue the majority of permits to dischargers and because the federal government lacks the resources for day-to-day monitoring and enforcement. Like most other federal environmental laws, CWA enforcement is shared by EPA and states, with states having primary responsibility. However, EPA has oversight of state enforcement and retains the right to bring a direct action where it believes that a state has failed to take timely and

appropriate action or where a state or local agency requests EPA involvement. Finally, the federal government acts to enforce against criminal violations of the federal law.

In addition, individuals may bring a citizen suit in U.S. district court against persons who violate a prescribed effluent standard or limitation. Individuals also may bring citizen suits against the Administrator of EPA or equivalent state official (where program responsibility has been delegated to the state) for failure to carry out a nondiscretionary duty under the act.

Selected References

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Table 2. Major U.S. Code Sections of the Clean Water Act
(codified generally as 33 U.S.C., Chapter 26, Sections 1251-1387)

33 U.S.C.	Section Title	Clean Water Act (as amended)
Subchapter I -	**Research and Related Programs**	
1251	Declaration of goals and policy	Sec. 101
1252	Comprehensive programs for water pollution control	Sec. 102
1253	Interstate cooperation and uniform laws	Sec. 103
1254	Research, investigations, training and information	Sec. 104
1255	Grants for research and development	Sec. 105
1256	Grants for pollution control programs	Sec. 106
1257	Mine water pollution control demonstrations	Sec. 107
1258	Pollution control in the Great Lakes	Sec. 108
1259	Training grants and contracts	Sec. 109
1260	Applications for training grants or contracts; allocations of grants or contracts	Sec. 110
1261	Award of scholarships	Sec. 111
1262	Definitions and authorizations	Sec. 112
1263	Alaska village demonstration project	Sec. 113
1264	Lake Tahoe study	Sec. 114
1265	In-place toxic pollutants	Sec. 115
1266	Hudson River PCB reclamation demonstration project	Sec. 116
1267	Chesapeake Bay	Sec. 117
1268	Great Lakes	Sec. 118
1269	Long Island Sound	Sec. 119
1270	Lake Champlain Basin program	Sec. 120
1273	Lake Pontchartrain Basin	Sec. 121
1274	Wet weather watershed pilot projects	Sec. 122
Subchapter II -	**Grants for Construction of Treatment Works**	
1281	Purpose	Sec. 201
1282	Federal share	Sec. 202
1283	Plans, specifications, estimates, and payments	Sec. 203
1284	Limitations and conditions	Sec. 204
1285	Allotment	Sec. 205
1286	Reimbursement and advanced construction	Sec. 206
1287	Authorization	Sec. 207
1288	Areawide waste treatment management	Sec. 208
1289	Basin planning	Sec. 209

33 U.S.C.	Section Title	Clean Water Act (as amended)
1290	Annual survey	Sec. 210
1291	Sewage collection systems	Sec. 211
1292	Definitions	Sec. 212
1293	Loan guarantees for construction of treatment works	Sec. 213
1294	Public information on water recycling, reuse	Sec. 214
1295	Requirements for American materials	Sec. 215
1296	Determination of priority	Sec. 216
1297	Cost-effectiveness guidelines	Sec. 217
1298	Cost effectiveness	Sec. 218
1299	State certification of projects	Sec. 219
1300	Pilot program for alternative water source projects	Sec. 220
1301	Sewer overflow control grants	Sec. 221
Subchapter III -	**Standards and Enforcement**	
1311	Effluent Limitations	Sec. 301
1312	Water quality related effluent limitations	Sec. 302
1313	Water quality standards and implementation plans	Sec. 303
1314	Information and guidelines	Sec. 304
1315	Water quality inventory	Sec. 305
1316	National standards of performance	Sec. 306
1317	Toxic and pretreatment effluent standards	Sec. 307
1318	Inspections, monitoring, and entry	Sec. 308
1319	Federal enforcement	Sec. 309
1320	International pollution abatement	Sec. 310
1321	Oil and hazardous substance liability	Sec. 311
1322	Marine sanitation devices	Sec. 312
1323	Federal facilities pollution control	Sec. 313
1324	Clean lakes	Sec. 314
1325	National study commission	Sec. 315
1326	Thermal discharges	Sec. 316
1327	Financing study	Sec. 317
1328	Aquaculture	Sec. 318
1329	Nonpoint source management programs	Sec. 319
1330	National estuary program	Sec. 320

33 U.S.C.	Section Title	Clean Water Act (as amended)
Subchapter IV -	**Permits and Licenses**	
1341	Certification	Sec. 401
1342	National pollutant discharge elimination system	Sec. 402
1343	Ocean discharge criteria	Sec. 403
1344	Permits for dredged or fill material	Sec. 404
1345	Disposal of sewage sludge	Sec. 405
1346	Coastal recreation water quality monitoring and notification	Sec. 406
Subchapter V -	**General Provisions**	
1361	Administration	Sec. 501
1362	General definitions	Sec. 502
1363	Water pollution control advisory board	Sec. 503
1364	Emergency powers	Sec. 504
1365	Citizen suits	Sec. 505
1366	Appearance	Sec. 506
1367	Employee protection	Sec. 507
1368	Federal procurement	Sec. 508
1369	Administrative procedure and judicial review	Sec. 509
1370	State authority	Sec. 510
1371	Other affected authority	Sec. 511
1372	Separability	Sec. 512
1372	Labor standards	Sec. 513
1373	Public health agency coordination	Sec. 514
1374	Effluent standards and water quality information advisory committee	Sec. 515
1375	Reports to Congress	Sec. 516
1376	General authorization	Sec. 517
1377	Indian tribes	Sec. 518
1251 note	Short title	Sec. 519
Subchapter VI -	**State Water Pollution Control Revolving Funds**	
1381	Grants to states for establishment of revolving funds	Sec. 601
1382	Capitalization grant agreements	Sec. 602
1383	Water pollution control revolving loan funds	Sec. 603
1384	Allotment of funds	Sec. 604
1385	Corrective action	Sec. 605

33 U.S.C.	Section Title	Clean Water Act (as amended)
1386	Audits, reports, and fiscal controls; intended use plan	Sec. 606
1387	Authorization of appropriations	Sec. 607

Note: This table shows only the major code sections. For more detail and to determine when a section was added, the reader should consult the official printed version of the U.S. Code.

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