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109TH CONGRESS
2D SESSION

H. R. 5450

AN ACT

To provide for the National Oceanic and Atmospheric Administration, 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 ''National Oceanic and Atmospheric Administration Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) The term ''Administration'' means the National Oceanic and Atmospheric Administration.

(2) The term ''Administrator'' means the Administrator of the National Oceanic and Atmospheric Administration.

(3) The term ''Secretary'' means the Secretary of Commerce.

SEC. 3. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.

(a) IN GENERAL.—There shall be in the Department of Commerce an agency known as the National Oceanic and Atmospheric Administration.

(b) MISSION.—The mission of the Administration is to understand the systems of the Earth's oceans and atmosphere and predict changes in the Earth's oceans and atmosphere and the effects of such changes on the land environment, to conserve and manage coastal, ocean, and Great Lakes ecosystems to meet national economic, social, and environmental needs, and to educate the public about these topics.

(c) FUNCTIONS.—The functions of the Administration shall include—

(1) collecting, through observation and other means, communicating, analyzing, processing, and disseminating comprehensive scientific data and information about weather and climate, solar and geophysical events on the Sun and in the space environment, and about the coasts, oceans, Great Lakes, upper reaches of estuaries, and hydrologic systems;

(2) operating and maintaining a system for the storage, retrieval, and dissemination of data relating to weather and climate, solar and geophysical events on the Sun and in the space environment, and about the coasts, oceans, Great Lakes, upper reaches of estuaries, and hydrologic systems;

(3) using observational data and technologies developed by other Federal agencies to improve the Administration's operations;

(4) conducting and supporting basic and applied research, development, and technology transfer as may be necessary to carry out the mission described in subsection (b);

(5) issuing weather, water, climate, space weather, tsunami, and other forecasts and warnings related to Earth's oceans and atmosphere;

(6) coordinating efforts of Federal agencies with respect to meteorological services;

(7) understanding the science of Earth's climate and related systems, and undertaking research and development to enhance society's ability to plan for and respond to climate variability and change;

(8) protecting, restoring, and managing the use of, the coasts, oceans, and Great Lakes through ecosystem-based research, development, demonstration, and management;

(9) administering public outreach and education programs and services to increase scientific and environmental literacy about weather and climate, solar and geophysical events on the Sun and in the space environment, and the coasts, oceans, Great Lakes, upper reaches of estuaries, and hydrologic systems;

(10) providing, as appropriate and in cooperation with the Secretary of State, representation at all international meetings and conferences relating to the mission of the Administration, including meteorological, climate, and Earth and ocean observing issues;

(11) any other function assigned to the Administration by law; and

(12) such other functions as are necessary to accomplish the mission described in subsection (b).

SEC. 4. ADMINISTRATION LEADERSHIP.

(a) ADMINISTRATOR.—

(1) IN GENERAL.—There shall be, as the Administrator of the Administration, an Under Secretary of Commerce for Oceans and Atmosphere. The Administrator shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall be paid at the rate of basic pay for level III of the Executive Schedule.

(2) FUNCTIONS.—The Administrator shall be responsible for—

(A) general management;

(B) policy development and guidance;

(C) budget formulation, guidance, and execution;

(D) serving as the Department of Commerce official for all ocean and atmosphere issues with other elements of the Department of Commerce and with other Federal agencies, State, tribal, and local governments, and the public; and

(E) such other duties with respect to the Administration as the Secretary may prescribe.

(3) DELEGATION OF AUTHORITY.—The Administrator may, except as otherwise prohibited by law—

(A) delegate any functions, powers, or duties of the Administrator to such officers and employees of the Administration as the Administrator may designate; and

(B) authorize such successive redelegations of such functions, powers, or duties within the Administration as the Administrator considers necessary or appropriate.

(4) AUTHORITIES.—

(A) IN GENERAL.—As may be necessary or proper to carry out the Administration's functions under this Act or as otherwise provided by law, the Administrator may—

(i) promulgate rules and regulations;

(ii) enter into and perform contracts, leases, grants, and cooperative agreements with Federal agencies, State and local governments, Indian tribes, international organizations, foreign governments, educational institutions, nonprofit organizations, and commercial organizations;

(iii) use, with their consent, and with or without reimbursement, the services, equipment, personnel, and facilities of other departments, agencies, and instrumentalities of the Federal Government; and

(iv) conduct education and outreach in direct support of the mission described in section 3(b).

(B) EXCEPTION.—The authorities conferred on the Administrator by this paragraph do not include the authority to contract for services that are an inherently governmental function as defined in section 5 of the Federal Activities Inventory Reform Act of 1998 (31 U.S.C. 501 note).

(b) ASSISTANT SECRETARY FOR OCEANS AND ATMOSPHERE.—

(1) IN GENERAL.—There shall be, as Deputy Administrator of the Administration, an Assistant Secretary of Commerce for Oceans and Atmosphere. The Assistant Secretary shall be appointed by the President, by and with the advice and consent of the Senate. The Assistant Secretary shall be the Administrator's first assistant for purposes of subchapter

III of chapter 33 of title 5, United States Code. The Assistant Secretary shall be paid at the rate of basic pay for level IV of the Executive Schedule.

(2) FUNCTIONS.—The Assistant Secretary shall perform such functions and exercise such powers as the Administrator may prescribe and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(c) DEPUTY UNDER SECRETARY FOR OCEANS AND ATMOSPHERE.—

(1) IN GENERAL.—There shall, be as the Chief Operating Officer of the Administration, a Deputy Under Secretary of Commerce for Oceans and Atmosphere. The Deputy Under Secretary shall be appointed by the Secretary. The position of Deputy Under Secretary shall be a Senior Executive Service position authorized under section 3133 of title 5, United States Code.

(2) FUNCTIONS.—The Deputy Under Secretary—

(A) shall ensure the timely and effective implementation of Administration policies and objectives;

(B) shall be responsible for all aspects of the Administration's operations and management, including budget, financial operations, information services, facilities, human resources, procurements, and associated services;

(C) in the absence or disability of the Assistant Secretary, or in the event of a vacancy in such position, shall act in that position; and

(D) shall perform such other duties as the Administrator shall prescribe.

(d) DEPUTY ASSISTANT SECRETARY FOR SCIENCE AND EDUCATION.—

(1) IN GENERAL.—There shall be in the Administration a Deputy Assistant Secretary for Science and Education who shall coordinate and oversee the science and education activities of the Administration and their application to Administration decisions and operations. The Deputy Assistant Secretary for Science and Education shall be appointed by the Secretary. The position of Deputy Assistant Secretary for Science and Education shall be a Senior Executive Service career reserved position as defined in section 3132(a)(8) of title 5, United States Code.

(2) FUNCTIONS.—The Deputy Assistant Secretary for Science and Education shall—

(A) coordinate research and development activities across the Administration;

(B) review the Administration's annual budget to ensure that funding for research and development is adequate, properly focused, and carried out by the appropriate entities across the Administration;

(C) advise the Administrator on how research results can be applied to operational use;

(D) advise the Administrator regarding science issues and their relationship to Administration policies, procedures, and decisions;

(E) participate in developing the Administration's strategic plans and policies and review the science and education aspects of those plans and policies;

(F) serve as liaison to the nongovernmental science community;

(G) develop and oversee guidelines for peer review of research sponsored or conducted by the Administration;

(H) oversee implementation of the strategic plan for research and development required under section 9(b);

(I) oversee management of laboratories in the Administration;

(J) oversee the research and education programs of the Administration; and

(K) perform such other duties as the Administrator shall prescribe.

(3) QUALIFICATIONS.—An individual appointed under paragraph (1) shall be a person who has an outstanding science and education background, including research accomplishments, scientific reputation, and public policy experience.

(4) CONSULTATION.—Before appointing an individual under paragraph (1), the Secretary shall consult with the National Academy of Sciences, the Science Advisory Board of the Administration, and other appropriate scientific organizations.

(e) DEPUTY ASSISTANT SECRETARIES.—There may be in the Administration no more than two additional Deputy Assistant Secretaries whose duties may be designated by the Administrator. The Deputy Assistant Secretaries shall be appointed by the Secretary. The positions of Deputy Assistant Secretaries shall be Senior Executive

Service positions authorized under section 3133 of title 5, United States Code.

(f) GENERAL COUNSEL.—

(1) IN GENERAL.—There shall be in the Administration a General Counsel. The General Counsel shall be appointed by the Secretary. The General Counsel shall be paid at the rate of basic pay for level V of the Executive Schedule.

(2) FUNCTIONS.—The General Counsel—

(A) shall serve as the chief legal officer of the Administration for all legal matters that arise in connection with the conduct of the functions of the Administration; and

(B) shall perform such other functions and exercise such powers as the Administrator may prescribe.

(g) CONTINUATION OF SERVICE.—Any individual serving on the effective date of this Act in a position provided for in this Act may continue to serve in that position until a successor is appointed under this Act. Nothing in this Act shall be construed to require the appointment of a successor under this Act sooner than would have been required under law as in effect before the effective date of this Act.

SEC. 5. NATIONAL WEATHER SERVICE.

(a) IN GENERAL.—The Secretary shall maintain within the Administration the National Weather Service.

(b) MISSION.—The mission of the National Weather Service is to provide weather, water, climate, tsunami, and space weather forecasts and warnings for the United States, its territories, adjacent waters, and ocean areas for the protection of life and property and the enhancement of the national economy. In carrying out the mission of the National Weather Service, the Administrator shall ensure that the National Weather Service—

(1) provides timely and accurate weather, water, climate, tsunami, and space weather forecasts; and

(2) provides timely and accurate warnings of natural hazards related to weather, water, climate, and tsunamis, and of space weather hazards.

(c) FUNCTIONS.—The functions of the National Weather Service shall include—

(1) maintaining a network of local weather forecast offices;

(2) maintaining a network of observation systems to collect weather and climate data;

(3) operating national centers to deliver guidance, forecasts, warnings, and analysis about weath-

er, water, climate, tsunami, and space weather phenomena for the Administration and the public;

(4) providing information to Federal agencies and other organizations responsible for emergency preparedness and response as required by law;

(5) conducting and supporting applied research to facilitate the rapid incorporation of weather and climate science advances into operational tools; and

(6) other functions to serve the mission of the National Weather Service described in subsection (b).

SEC. 6. OPERATIONS AND SERVICES.

(a) IN GENERAL.—The Secretary shall maintain within the Administration programs to support efforts, on a continuing basis, to collect data and provide information and products regarding satellites, observations, and coastal, ocean and Great Lakes information.

(b) FUNCTIONS.—To accomplish the mission described in section 3(b), and in addition to the functions described in section 3(c), the operations and service aspects of the Administration shall include—

(1) acquiring, managing, and operating coastal, ocean, and Great Lakes observing systems;

(2) contributing to the operation of a global Earth-observing system;

(3) integrating Administration remote sensing and in situ assets that provide critical data needed to support the mission of the Administration, and providing that data to decisionmakers and the public;

(4) developing, acquiring, and managing operational environmental satellite programs and associated ground control and data acquisition and delivery facilities to support the mission of the Administration;

(5) managing and distributing atmospheric, geophysical, and marine data and data products for the Administration through national environmental data centers;

(6) providing for long-term stewardship of environmental data, products, and information via data processing, storage, reanalysis, reprocessing, and archive facilities;

(7) issuing licenses for private remote sensing space systems under the Land Remote Sensing Policy Act of 1992;

(8) administering a national water level observation network, which shall include monitoring of the Great Lakes;

(9) providing charts and other information for safe navigation of the oceans and inland waters, as provided by law;

(10) maintaining a fleet of ships and aircraft to support the mission of the Administration; and

(11) such other operations and services functions to serve the mission of the Administration as the Administrator may prescribe.

SEC. 7. RESEARCH AND EDUCATION.

(a) IN GENERAL.—The Secretary shall maintain within the Administration programs to conduct and support research and education and the development of technologies relating to weather, climate, and the coasts, oceans, and Great Lakes.

(b) FUNCTIONS.—To accomplish the mission described in section 3(b), and in addition to the functions described in section 3(c), the research and education aspects of the Administration shall include—

(1) conducting and supporting research and development to improve the Administration's capabilities to collect, through observation and otherwise, communicate, analyze, process, and disseminate comprehensive scientific data and information about weather, climate, and the coasts, oceans, and Great Lakes;

(2) improving ecological prediction and management capabilities through ecosystem-based research and development;

(3) contributing information on the Earth's climate and related systems, obtained through research and observation, that addresses questions confronting policymakers, resources managers, and other users;

(4) reducing uncertainty in projections of how the Earth's climate and related systems may change in the future;

(5) fostering the public's ability to understand and integrate scientific information into considerations of national environmental issues through education and public outreach activities;

(6) administering the National Sea Grant College Program Act;

(7) conducting and supporting research and development of technology for exploration of the oceans;

(8) maintaining a system of laboratories to perform the functions described in this subsection;

(9) supporting extramural peer-reviewed competitive grant programs to assist the Administration

in performing the functions described in this subsection; and

(10) such other research, development, education, and outreach functions to serve the mission of the Administration as the Administrator may prescribe.

SEC. 8. SCIENCE ADVISORY BOARD.

(a) IN GENERAL.—There shall be within the Administration a Science Advisory Board, which shall provide such scientific advice as may be requested by the Administrator, the Committee on Commerce, Science, and Transportation of the Senate, or the Committee on Science or on Resources of the House of Representatives.

(b) PURPOSE.—The purpose of the Science Advisory Board is to advise the Administrator and Congress on long-range and short-range strategies for research, education, and the application of science to resource management and environmental assessment and prediction.

(c) MEMBERS.—

(1) IN GENERAL.—The Science Advisory Board shall be composed of at least 15 members appointed by the Administrator. Each member of the Board shall be qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board under this section.

(2) TERMS OF SERVICE.—Members shall be appointed for 3-year terms, renewable once, and shall serve at the discretion of the Administrator. An individual serving a term as a member of the Science Advisory Board on the date of enactment of this Act may complete that term, and may be reappointed once for another term of 3 years unless the term being served on such date of enactment is the second term served by that individual. Vacancy appointments shall be for the remainder of the unexpired term of the vacancy, and an individual so appointed may subsequently be appointed for 2 full 3-year terms if the remainder of the unexpired term is less than one year.

(3) CHAIRPERSON.—The Administrator shall designate a chairperson from among the members of the Board.

(4) APPOINTMENT.—Members of the Science Advisory Board shall be appointed as special Government employees, within the meaning given such term in section 202(a) of title 18, United States Code.

(d) ADMINISTRATIVE PROVISIONS.—

(1) REPORTING.—The Science Advisory Board shall report to the Administrator and the appropriate requesting party.

(2) ADMINISTRATIVE SUPPORT.—The Administrator shall provide administrative support to the Science Advisory Board.

(3) MEETINGS.—The Science Advisory Board shall meet at least twice each year, and at other times at the call of the Administrator or the Chairperson.

(4) COMPENSATION AND EXPENSES.—A member of the Science Advisory Board shall not be compensated for service on such board, but may be allowed travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

(5) SUBCOMMITTEES.—The Science Advisory Board may establish such subcommittees of its members as may be necessary. The Science Advisory Board may establish task forces and working groups consisting of Board members and outside experts as may be necessary.

(e) EXPIRATION.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Science Advisory Board.

SEC. 9. REPORTS.

(a) REPORT ON DATA MANAGEMENT, ARCHIVAL, AND DISTRIBUTION.—

(1) CONTENTS.—Not later than 1 year after the date of enactment of this Act, and once every 5 years thereafter, the Administrator shall do the following:

(A) Enter into an arrangement with the National Academy of Sciences to review the environmental data and information systems of the Administration and to provide recommendations to address any inadequacies identified by the review. The review shall assess the adequacy of the environmental data and information systems of the Administration to—

(i) provide adequate capacity to manage, archive and disseminate environmental information collected and processed, or expected to be collected and processed, by the Administration, including data gathered by other agencies that is processed or stored by the Administration;

(ii) establish, develop, and maintain information bases, including necessary management systems, which will provide

for consistent, efficient, and compatible transfer and use of data;

(iii) develop effective interfaces among the environmental data and information systems of the Administration and other appropriate departments and agencies;

(iv) develop and use nationally accepted formats and standards for data collected by various national and international sources;

(v) integrate and interpret data from different sources to produce information that can be used by decisionmakers in developing policies that effectively respond to national and global environmental concerns; and

(vi) reanalyze and reprocess the archived data as better science is developed to integrate diverse data sources.

(B) Develop a strategic plan, with respect to the environmental data and information systems of the Administration, to—

(i) respond to each of the recommendations in the review conducted under subparagraph (A);

(ii) set forth modernization and improvement objectives for an integrated national environmental data access and archive system for the 10-year period beginning with the year in which the plan is transmitted, including facility requirements and critical new technology components that would be necessary to meet the objectives set forth;

(iii) propose specific Administration programs and activities for implementing the plan;

(iv) identify the data and information management, reanalysis, reprocessing, archival, and distribution responsibilities of the Administration with respect to other Federal departments and agencies and international organizations; and

(v) provide an implementation schedule and estimate funding levels necessary to achieve modernization and improvement objectives.

(2) TRANSMITTAL TO CONGRESS.—Not later than 18 months after the date of enactment of this Act, the Administrator shall transmit to the Com-

mittee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives the initial review and strategic plan developed under paragraph (1). Subsequent reviews and strategic plans developed under paragraph (1) shall also be transmitted to those committees upon completion.

(b) STRATEGIC PLAN FOR RESEARCH AND DEVELOPMENT.—

(1) CONTENTS.—Not later than 1 year after the date of enactment of this Act, and once every 5 years thereafter, the Administrator shall develop a strategic plan for research and development at the Administration. The plan shall include—

(A) an assessment of the science and technology needs of the Administration based on the Administration's operational requirements and on input provided by external stakeholders at the national, regional, State, and local levels; and

(B) a strategic plan that assigns specific programs within the administration the responsibility to meet each need identified under subparagraph (A) and that describes the extent to

which each need identified in subparagraph (A) will be addressed through—

(i) intramural research;

(ii) extramural, peer-reviewed, competitive grant programs; and

(iii) work done in cooperation with other Federal agencies.

(2) NATIONAL ACADEMY OF SCIENCES REVIEW.—The Administrator shall enter into an arrangement with the National Academy of Sciences for a review of the plan developed under paragraph (1).

(3) TRANSMITTAL TO CONGRESS.—Not later than 18 months after the date of enactment of this Act, the Administrator shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives the initial strategic plan developed under paragraph (1) and the review prepared pursuant to paragraph (2). Subsequent strategic plans developed under paragraph (1) shall also be transmitted to those committees upon completion.

SEC. 10. PUBLIC-PRIVATE PARTNERSHIPS.

Not less than once every 5 years, the Secretary shall develop and submit to Congress a policy that defines proc-

esses for making decisions about the roles of the Administration, the private sector, and the academic community in providing environmental information, products, technologies, and services. The first such submission shall be completed not less than 3 years after the date of enactment of this Act. At least 90 days before each submission of the policy to Congress, the Secretary shall publish the policy in the Federal Register for a public comment period of not less than 60 days. Nothing in this section shall be construed to require changes in the policy in effect on the date of enactment of this Act.

SEC. 11. EFFECT OF REORGANIZATION PLAN.

Reorganization Plan No. 4 of 1970 shall have no further force and effect.

SEC. 12. SAVINGS PROVISION.

All rules and regulations, determinations, standards, contracts, including collective bargaining agreements, certifications, authorizations, appointments, delegations, results and findings of investigations, and other actions duly issued, made, or taken by or pursuant to or under the authority of any statute or executive order which resulted in the assignment of functions or activities to the Secretary, the Department of Commerce, the Under Secretary of Commerce for Oceans and Atmosphere, the Administrator, or any other officer of the Administration, that is

in effect immediately before the date of enactment of this Act, shall continue in full force and effect after the effective date of this Act until modified or rescinded. All suits, appeals, judgments, and proceedings pending on such effective date relating to responsibilities or functions transferred pursuant to this Act shall continue without regard to such transfers, except for the transfer of responsibilities or functions. Any reference in law to a responsibility, function, or office transferred pursuant to this Act shall be deemed to refer to the responsibility, function, or office as so transferred. Nothing in this Act shall be construed to limit the ability of an Administration employee to discuss scientific research performed by that employee. Nothing in this Act shall be construed to alter the responsibilities or authorities of any other Federal agency. Nothing in this Act shall be construed to authorize or prohibit the transfer of any program, function, or project from other Federal agencies to the Administration. Nothing in this Act shall be construed to expand, modify, or supersede the authority that the Administration has immediately before the date of enactment of this Act, nor to provide the Administration with any new regulatory authority. Nothing in this Act shall be construed to grant the Administrator any authority to construct, alter, repair, or acquire by any means a public building, as defined at section 3301 of title

40, United States Code, or to grant any authority to lease general purpose office or storage space in any building; and nothing in this Act shall be construed to diminish any authority the Administrator has immediately before the date of enactment of this Act to construct, alter, repair, or acquire by any means a public building, as defined at section 3301 of title 40, United States Code, or to diminish any authority the Administrator has immediately before the date of enactment of this Act to lease general purpose office or storage space in any building (regardless of whether those authorities are derived from laws, executive orders, rules, regulations, or delegations of authority from the Secretary of Commerce).

SEC. 13. REORGANIZATION PLAN.

(a) SCHEDULE.—(1) Not later than 18 months after the date of enactment of this Act, the Administrator shall develop a reorganization plan for the Administration in accordance with this section and shall publish the plan in the Federal Register. The Federal Register notice shall solicit comments for a period of 60 days.

(2) Not later than 90 days after the expiration date of the comment period described in paragraph (1), the Administrator shall transmit to Congress a revised version of the plan that takes into account the comments received. The Administrator shall also publish the revised plan in

the Federal Register. The Administrator shall transmit and publish, along with the plan, an explanation of how the Administrator dealt with each issue raised by the comments received.

(3) The Administrator shall implement the plan 60 days after the plan has been transmitted to the Congress.

(b) CONTENT.—The plan, to the greatest extent practicable, shall—

(1) consistent with section 5 and the other provisions of this Act, maximize the efficiency with which the Administration carries out the functions of—

(A) operations and services;

(B) research and education; and

(C) resource management;

(2) improve the sharing of research and other information that is of use across programmatic themes; and

(3) eliminate duplication of effort or overlapping efforts among offices.

(c) CONSULTATION.—In developing the plan, the Administrator shall consult with interested parties, including the States, academia, industry, conservation organizations, and Administration employees.

SEC. 14. FACILITY EVALUATION PROCESS.

(a) PUBLIC NOTIFICATION AND ASSESSMENT PROCESS.—

(1) IN GENERAL.—The Administrator shall not close, consolidate, relocate, subdivide, or establish a facility of the Administration, unless and until the Administrator has followed the procedures required by this section.

(2) REVIEW PROCESS.—The Administrator shall not close, consolidate, relocate, subdivide, or establish a facility of the Administration with an annual operating budget of $5,000,000 or greater, or a National Weather Service field office, unless and until—

(A) the Administrator has published in the Federal Register the proposed action and a description of the offices, personnel, and activities of the Administration that would be affected by the proposed change, and has provided for a minimum of 60 days for public comment;

(B) if the proposed change involves a science facility of the Administration, the Science Advisory Board has reviewed the proposed change and provided to the Administrator written findings regarding the proposed change;

(C) if the proposed change involves a National Weather Service field office, the Administrator has prepared a report including—

(i) a description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(ii) a detailed comparison of the services provided within the service area and the services to be provided after the proposed change;

(iii) a description of any recent or expected modernization of National Weather Service operations which will enhance services in the service area;

(iv) an identification of any area within any State which would not receive coverage (at an elevation of 10,000 feet) due to the proposed change; and

(v) evidence, based on operational demonstration of National Weather Service operations, which was considered in reaching the conclusion that no degradation in service will result from the proposed change;

(D) the Administrator has prepared an analysis of the anticipated costs and savings associated with the proposed facility change, including both costs and savings in the first fiscal year following the change, and changes in operations and maintenance costs and savings over a ten-year period; and

(E) the Administrator has prepared an analysis of the effects of the facility change on operations and research of the Administration, and the potential impacts on cooperative institutes, other external Administration partnerships, partnerships with other Federal agencies, and any State and local partnerships.

(3) NOTICE TO CONGRESS.—(A) The Administrator shall provide to Congress, at least 90 days before any closure, consolidation, relocation, subdivision, or establishment of a facility of the Administration with an annual budget of $5,000,000 or greater, or any National Weather Service field office, a summary of the public comments received pursuant to paragraph (2)(A), any written findings prepared under paragraph (2)(B), any report prepared under paragraph (2)(C), and the analyses prepared under paragraph (2)(D) and (E).

(B) The Administrator shall provide to Congress, at least 90 days before any closure, consolidation, relocation, subdivision, or establishment of a facility of the Administration not described in subparagraph (A), written notification of the planned closure, consolidation, relocation, subdivision, or establishment.

(b) WEATHER SERVICE MODERNIZATION.—Nothing in this Act shall be construed to alter the Weather Service Modernization Act (15 U.S.C. 313 note).

(c) DEFINITION.—For purposes of this section—

(1) the term ''facility'' means a laboratory, operations office, administrative service center, or other establishment of the Administration; and

(2) the term ''field office'' has the same meaning given that term in section 702 of the Weather Service Modernization Act.

SEC. 15. BUDGET REPROGRAMMING.

Whenever the Administrator transmits a budget reprogramming request to the Appropriations Committees of the House of Representatives and the Senate, the Administrator shall simultaneously submit a copy of the request to the Committee on Science and the Committee on Resources of the House of Representatives and the Com-

mittee on Commerce, Science, and Transportation of the Senate.

SEC. 16. BASELINES AND COST CONTROLS.

(a) CONDITIONS FOR DEVELOPMENT.—

(1) IN GENERAL.—The Administration shall not enter into a contract for the development of a major program unless the Administrator determines that—

(A) the technical, cost, and schedule risks of the program are clearly identified and the program has developed a plan to manage those risks;

(B) the technologies required for the program have been demonstrated in a relevant laboratory or test environment; and

(C) the program complies with all relevant policies, regulations, and directives of the Administration.

(2) REPORT.—The Administrator shall transmit a report describing the basis for the determination required under paragraph (1) to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate at least 30 days before entering

1 into a contract for development under a major pro-
2 gram.
3 (3) NONDELEGATION.—The Administrator may
4 not delegate the determination requirement under
5 this subsection, except in cases in which the Admin-
6 istrator has a conflict of interest.
7 (b) MAJOR PROGRAM ANNUAL REPORTS.—
8 (1) REQUIREMENT.—Annually, at the same
9 time as the President's annual budget submission to
10 the Congress, the Administrator shall transmit to
11 the Committee on Science of the House of Rep-
12 resentatives and the Committee on Commerce,
13 Science, and Transportation of the Senate a report
14 that includes the information required by this sec-
15 tion for each major program for which the Adminis-
16 tration proposes to expend funds in the subsequent
17 fiscal year. Reports under this paragraph shall be
18 known as Major Program Annual Reports.
19 (2) BASELINE REPORT.—The first Major Pro-
20 gram Annual Report for each major program shall
21 include a Baseline Report that shall, at a minimum,
22 include—
23 (A) the purposes of the program and key
24 technical characteristics necessary to fulfill
25 those purposes;

(B) an estimate of the life-cycle cost for the program, with a detailed breakout of the development cost, program reserves, and an estimate of the annual costs until development is completed;

(C) the schedule for development, including key program milestones;

(D) the plan for mitigating technical, cost, and schedule risks identified in accordance with subsection (a)(1)(A); and

(E) the name of the person responsible for making notifications under subsection (c), who shall be an individual whose primary responsibility is overseeing the program.

(3) INFORMATION UPDATES.—For major programs for which a Baseline Report has been submitted, each subsequent Major Program Annual Report shall describe any changes to the information that had been provided in the Baseline Report, and the reasons for those changes.

(c) NOTIFICATION.—

(1) REQUIREMENT.—The individual identified under subsection (b)(2)(E) shall immediately notify the Administrator any time that individual has rea-

sonable cause to believe that, for the major program for which he or she is responsible—

(A) the development cost of the program is likely to exceed the estimate provided in the Baseline Report of the program by 15 percent or more; or

(B) a milestone of the program is likely to be delayed by 6 months or more from the date provided for it in the Baseline Report of the program.

(2) REASONS.—Not later than 30 days after the notification required under paragraph (1), the individual identified under subsection (b)(2)(E) shall transmit to the Administrator a written notification explaining the reasons for the change in the cost or milestone of the program for which notification was provided under paragraph (1).

(3) NOTIFICATION OF CONGRESS.—Not later than 15 days after the Administrator receives a written notification under paragraph (2), the Administrator shall transmit the notification to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(d) FIFTEEN PERCENT THRESHOLD.—Not later than 30 days after receiving a written notification under subsection (c)(2), the Administrator shall determine whether the development cost of the program is likely to exceed the estimate provided in the Baseline Report of the program by 15 percent or more, or whether a milestone is likely to be delayed by 6 months or more. If the determination is affirmative, the Administrator shall—

(1) transmit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, not later than 15 days after making the determination, a report that includes—

(A) a description of the increase in cost or delay in schedule and a detailed explanation for the increase or delay;

(B) a description of actions taken or proposed to be taken in response to the cost increase or delay; and

(C) a description of any impacts the cost increase or schedule delay, or the actions described under subparagraph (B), will have on any other program within the Administration; and

(2) if the Administrator intends to continue with the program, promptly initiate an analysis of the program, which shall include, at a minimum—

(A) the projected cost and schedule for completing the program if current requirements of the program are not modified;

(B) the projected cost and the schedule for completing the program after instituting the actions described under paragraph (1)(B); and

(C) a description of, and the projected cost and schedule for, a broad range of alternatives to the program.

The Administration shall complete an analysis initiated under paragraph (2) not later than 6 months after the Administrator makes a determination under this subsection. The Administrator shall transmit the analysis to the Committee on Science of the House of Representatives and Committee on Commerce, Science, and Transportation of the Senate not later than 30 days after its completion.

(e) THIRTY PERCENT THRESHOLD.—If the Administrator determines under subsection (d) that the development cost of a program will exceed the estimate provided in the Baseline Report of the program by more than 30 percent, then, beginning 18 months after the date the Ad-

ministrator transmits a report under subsection (d)(1), the Administrator shall not expend any additional funds on the program, other than termination costs, unless the Congress has subsequently authorized continuation of the program by law. An appropriation for the specific program enacted subsequent to a report being transmitted shall be considered an authorization for purposes of this subsection. If the program is continued, the Administrator shall submit a new Baseline Report for the program no later than 90 days after the date of enactment of the Act under which Congress has authorized continuation of the program.

(f) DEFINITIONS.—For the purposes of this section—

(1) the term ''development'' means the phase of a program following the formulation phase and beginning with the approval to proceed to implementation.

(2) the term ''development cost'' means the total of all costs, including construction of facilities and civil servant costs, from the period beginning with the approval to proceed to implementation through the achievement of operational readiness, without regard to funding source or management control, for the life of the program;

(3) the term ''life-cycle cost'' means the total of the direct, indirect, recurring, and nonrecurring costs, including the construction of facilities and civil servant costs, and other related expenses incurred or estimated to be incurred in the design, development, verification, production, operation, maintenance, support, and retirement of a program over its planned lifespan, without regard to funding source or management control; and

(4) the term ''major program'' means an activity approved to proceed to implementation that has an estimated life-cycle cost of more than $250,000,000.

SEC. 17. LIMITATIONS ON OFF-SHORE PERFORMANCE OF CONTRACTS FOR THE PROCUREMENT OF GOODS AND SERVICES.

(a) CONVERSIONS TO CONTRACTOR PERFORMANCE OF ADMINISTRATION ACTIVITIES.—Except as provided in subsection (c), an activity or function of the Administration that is converted to contractor performance under Office of Management and Budget Circular A-76 may not be performed by the contractor or any subcontractor at a location outside the United States.

(b) CONTRACTS FOR THE PROCUREMENT OF SERVICES.—(1) Except as provided in subsection (c), a contract

for the procurement of goods or services that is entered into by the Administrator may not be performed outside the United States unless it is to meet a requirement of the Administration for goods or services specifically at a location outside the United States.

(2) The President may waive the prohibition in paragraph (1) in the case of any contract for which the President determines in writing that it is necessary in the national security interests of the United States for goods or services under the contract to be performed outside the United States.

(3) The Administrator may waive the prohibition in paragraph (1) in the case of any contract for which the Administrator determines in writing that essential goods or services under the contract are only available from a source outside the United States.

(c) EXCEPTION.—Subsections (a) and (b)(1) shall not apply to the extent that the activity or function under the contract was previously performed by Federal Government employees outside the United States.

(d) CONSISTENCY WITH INTERNATIONAL AGREEMENTS.—The provisions of this section shall not apply to the extent that they are inconsistent with obligations of the United States under international agreements.

SEC. 18. RECORDKEEPING AND REPORTING REQUIREMENT.

The Administrator shall transmit to Congress, not later than 120 days after the end of each fiscal year beginning with the first fiscal year after the date of enactment of this Act, a report on the contracts and subcontracts performed overseas and the amount of purchases directly or indirectly by the Administration from foreign entities in that fiscal year. The report shall separately indicate—

(1) the contracts and subcontracts and their dollar values for which the Administrator determines that essential goods or services under the contract are available only from a source outside the United States; and

(2) the items and their dollar values for which the Buy American Act was waived pursuant to obligations of the United States under international agreements.

Passed the House of Representatives September 20, 2006.

Attest:

Clerk.

109th CONGRESS
2d Session

H. R. 5450

AN ACT

To provide for the National Oceanic and Atmospheric Administration, and for other purposes.