

Department of the Interior Departmental Manual

Effective Date: 11/4/70

Series: Legislation

Part 463: Legislative Provisions

Chapter 1: Direction and Control of Litigation

Originating Office: Office of the Solicitor

463 DM 1

1.1 **Policy.** With respect to legislative provisions on the direction and control of litigation before the courts on behalf of the Government, the Bureau of the Budget, now the Office of Management and Budget has established guidelines. These guidelines are contained in Circular No. A-99 dated June 30, 1970, which is set forth below:

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Direction and control of litigation

1 Purpose. This Circular establishes guidelines for legislative provisions covering the direction and control of litigation before the courts on behalf of departments and agencies. Departments and agencies are requested to incorporate such provisions in draft bills which they propose and to recommend them in their reports to the Congress on pending legislation.

2. Guidelines. Legislative provisions on litigation, which departments and agencies incorporate in draft bills or recommend in proposed reports on pending legislation, should place litigating authority in the Attorney General, to be exercised as he deems appropriate. The following illustrate desirable litigation provisions:

- a. AA civil action authorized to be brought under this Act shall be referred to the Attorney General for appropriate action.
- b. In case of refusal to obey a subpoena issued to any person, the Secretary may request the Attorney General to invoke the aid of a court of the United States to secure compliance.
- c. Whenever the Secretary finds a violation has occurred, he may (issue an order, assess a penalty, etc.). Upon failure of the offending party to (comply with the order, pay the penalty, etc.) the Secretary may request the Attorney General to commence action in a court of the United States for such relief as may be appropriate.

Since the need for such legislative provisions arises in a variety of situations, standard language, such as that set forth above, may not fit all cases. Accordingly, as necessary, departments and agencies should consult informally with the Department of Justice

through the Office of the Deputy Attorney General.

Finally, departments and agencies should oppose legislative provisions in pending legislation which infringe on the Attorney General's litigative responsibilities or discretion. Examples of such infringements include provisions which would (a) authorize other departments or agencies to litigate; (b) require, rather than authorize, the Attorney General to act; (c) require, rather than authorize, the Attorney General to use attorneys from or appointed by a particular department or agency; and (d) designate the United States attorneys, rather than the Attorney General, as the official authorized to litigate.

11/4/70 #1235

New