

§ 2159. Public participation in rulemaking**(a) Exemption from Administrative Procedure Act**

Any regulation issued under this Act [sections 2061 to 2170, 2171, and 2172 of this Appendix] shall not be subject to sections 551 through 559 of title 5, United States Code.

(b) Opportunity for notice and comment**(1) In general**

Except as provided in subsection (c), any regulation issued under this Act [sections 2061 to 2170, 2171, and 2172 of this Appendix] shall be published in the Federal Register and opportunity for public comment shall be provided for not less than 30 days, consistent with the requirements of section 553(b) of title 5, United States Code.

(2) Waiver for temporary provisions

The requirements of paragraph (1) may be waived, if—

(A) the officer authorized to issue the regulation finds that urgent and compelling circumstances make compliance with such requirements impracticable;

(B) the regulation is issued on a temporary basis; and

(C) the publication of such temporary regulation is accompanied by the finding made under subparagraph (A) (and a brief statement of the reasons for such finding) and an opportunity for public comment is provided for not less than 30 days before any regulation becomes final.

(3) Consideration of public comments

All comments received during the public comment period specified pursuant to paragraph (1) or (2) shall be considered and the publication of the final regulation shall contain written responses to such comments.

(c) Public comment on procurement regulations

Any procurement policy, regulation, procedure, or form (including any amendment or modification of any such policy, regulation, procedure, or form) issued under this Act [sections 2061 to 2170, 2171, and 2172 of this Appendix] shall be subject to section 22 of the Office of Federal Procurement Policy Act [now 41 U.S.C. 1707].

(Sept. 8, 1950, ch. 932, title VII, § 709, 64 Stat. 819; Pub. L. 102-558, title I, § 136(a), Oct. 28, 1992, 106 Stat. 4216.)

REFERENCES IN TEXT

The Administrative Procedure Act, referred to in subsec. (a), was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof principally in subchapter II (§ 551 et seq.) of chapter 5, and chapter 7 (§ 701 et seq.), of Title 5, Government Organization and Employees.

Section 22 of the Office of Federal Procurement Policy Act, referred to in subsec. (c), was section 22 of Pub. L. 93-400, which was classified to section 418b of former Title 41, Public Contracts, and was repealed and restated as section 1707 of Title 41, Public Contracts, by Pub. L. 111-350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855.

AMENDMENTS

1992—Pub. L. 102-558 amended section generally. Prior to amendment, section read as follows: “The functions

exercised under this Act shall be excluded from the operation of the Administrative Procedure Act (60 Stat. 237) except as to the requirements of section 3 thereof. Any rule, regulation, or order, or amendment thereto, issued under authority of this Act shall be accompanied by a statement that in the formulation thereof there has been consultation with industry representatives, including trade association representatives, and that consideration has been given to their recommendations, or that special circumstances have rendered such consultation impracticable or contrary to the interest of the national defense, but no such rule, regulation, or order shall be invalid by reason of any subsequent finding by judicial or other authority that such a statement is inaccurate.”

EFFECTIVE DATE OF 1992 AMENDMENT

Section 136(b) of Pub. L. 102-558 provided that: “Section 709 of the Defense Production Act of 1950 (50 U.S.C. App. 2159), as amended by subsection (a) of this section, shall not apply to any regulation issued in proposed or final form on or before the date of enactment of this Act [Oct. 28, 1992].”

TERMINATION DATE

Termination of section, see section 2166(a) of this Appendix.

§ 2160. Employment of personnel; appointment policies; nucleus executive reserve; use of confidential information by employees; printing and distribution of reports

(a) Repealed. June 28, 1955, ch. 189, § 12(c)(1), 69 Stat. 180.

(b)(1) The President is further authorized, to the extent he deems it necessary and appropriate in order to carry out the provisions of this Act [sections 2061 to 2170, 2171, and 2172 of this Appendix] and subject to such regulations as he may issue, to employ persons of outstanding experience and ability without compensation;

(2) The President shall be guided in the exercise of the authority provided in this subsection by the following policies:

(i) So far as possible, operations under the Act shall be carried on by full-time, salaried employees of the Government, and appointments under this authority shall be to advisory or consultative positions only.

(ii) Appointments to positions other than advisory or consultative may be made under this authority only when the requirements of the position are such that the incumbent must personally possess outstanding experience and ability not obtainable on a full-time, salaried basis.

(3) Appointees under this subsection shall, when policy matters are involved, be limited to advising appropriate full-time salaried Government officials who are responsible for making policy decisions.

(4) Appointments under this subsection shall be supported by written certification by the head of the employing department or agency—

(i) that the appointment is necessary and appropriate in order to carry out the provisions of the Act [sections 2061 to 2170, 2171, and 2172 of this Appendix];

(ii) that the duties of the position to which the appointment is being made require outstanding experience and ability;

(iii) that the appointee has the outstanding experience and ability required by the position; and