

§ 766. Administrative provisions

(a) Rules, regulations, and procedures; Environmental Protection Agency, notification; quality of environment, publication of comments; emergency preclusion of review by Environmental Protection Agency

The Administrator may promulgate such rules, regulations, and procedures as may be necessary to carry out the functions vested in him: *Provided, That:*

(1) The Administrator shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment. Such comments shall be published together with publication of notice of the proposed action.

(2) The review required by paragraph (1) of this subsection may be waived for a period of fourteen days if there is an emergency situation which, in the judgment of the Administrator, requires making effective the action proposed to be taken at a date earlier than would permit the Administrator of the Environmental Protection Agency the five working days opportunity for prior comment required by paragraph (1). Notice of any such waiver shall be given to the Administrator of the Environmental Protection Agency and filed with the Federal Register with the publication of notice of proposed or final agency action and shall include an explanation of the reasons for such waiver, together with supporting data and a description of the factual situation in such detail as the Administrator determines will apprise such agency and the public of the reasons for such waiver.

The review required by paragraphs (1) and (2) of this subsection may be waived for a period of fourteen days if there is an emergency situation which, in the judgment of the Administrator, requires immediate action.

(b) Adjustments; procedures respecting application and operation; judicial review

Any officer or agency authorized to issue any rule or regulation, or any order having the applicability and effect of a rule as defined in section 551(4) of title 5, pursuant to this chapter shall provide for the making of such adjustments, consistent with the other purposes of this chapter, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens and shall, by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, rescission of, exception to, or exemption from, such rules, regulations, and orders. Such officer or agency shall, within ninety days after August 14, 1976, establish criteria and guidelines by which such special hardship, inequity, or unfair distribution of burdens shall be evaluated. Such officer or agency shall additionally insure that each decision on any application or petition requesting an adjustment shall specify the standards of hardship, inequity, or unfair dis-

tribution of burden by which any disposition was made, and the specific application of such standards to the facts contained in any such application or petition. If any person is aggrieved or adversely affected by a denial of a request for adjustment under the preceding sentences, he may request a review of such denial by the agency and may obtain judicial review in accordance with subsection (c) of this section when such a denial becomes final. The agency shall, by rule, establish appropriate procedures, including a hearing when requested, for review of a denial, and where deemed advisable by the agency, for considering other requests for action under this paragraph, except that no review of a denial under this subparagraph shall be controlled by the same officer denying the adjustment pursuant to this subparagraph.

(c) Judicial review of administrative rulemaking; filing of petition in United States Court of Appeals

Judicial review of administrative rulemaking of general and national applicability done under this chapter, except that done pursuant to the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.],¹ may be obtained only by filing a petition for review in the United States Court of Appeals for the District of Columbia within thirty days from the date of promulgation of any such rule, regulation, or order, and judicial review of administrative rulemaking of general, but less than national, applicability done under this chapter, except that done pursuant to the Emergency Petroleum Allocation Act of 1973,¹ may be obtained only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within thirty days from the date of promulgation of any such rule, regulation, or order, the appropriate circuit being defined as the circuit which contains the area or the greater part of the area within which the rule, regulation, or order is to have effect.

(d) to (k) Repealed or Redesignated. Pub. L. 95-91, title VII, § 709(a)(2)(B), (C), (F), (G), Aug. 4, 1977, 91 Stat. 608

(l) Authority and responsibility of General Counsel

Effective beginning July 1, 1977, amounts authorized to be appropriated under this chapter or any other Act shall not be available for the payment of salaries and other expenses with respect to any office of regional counsel of the Administration unless such office is under the direct supervision and control of the General Counsel of the Administration.

(Pub. L. 93-275, § 7, May 7, 1974, 88 Stat. 100; Pub. L. 94-385, title I, §§ 103-106, Aug. 14, 1976, 90 Stat. 1127-1129; Pub. L. 95-70, § 8, July 21, 1977, 91 Stat. 277; Pub. L. 95-91, title VII, § 709(a)(2), Aug. 4, 1977, 91 Stat. 607.)

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (c), is Pub. L. 93-159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§ 751 et seq.) of this title, was omitted

¹ See References in Text note below.

from the Code pursuant to section 760g of this title, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-91, §709(a)(2)(A), struck out subsec. (a) provisions: for appointment, employment, and compensation of officers and employees; for prescription of their authority and duties; for placement of specified number of positions in GS-16, 17, and 18 and making competitive service provisions inapplicable to a limited number of such positions; and making classification standards and procedures applicable to the authority provided for in this section and for duration of such authority; and redesignated subsec. (c) as (a).

Subsec. (b). Pub. L. 95-91, §709(a)(2)(A), (C)–(E), struck out subsec. (b) provisions respecting employment and compensation of experts and consultants, redesignated subsec. (i)(1)(D) as (b), and substituted therein “any rule or regulation, or any order having the applicability and effect of a rule as defined in section 551(4) of title 5 pursuant to this chapter” for “the rules, regulations, or orders described in paragraph (A)” and “subsection (c) of this section” for “paragraph (2) of this subsection”.

Subsec. (c). Pub. L. 95-91, §709(a)(2)(F), redesignated subsec. (i)(2)(A) as (c). Former subsec. (c) redesignated (a).

Subsecs. (d) to (h). Pub. L. 95-91, §709(a)(2)(B), struck out subsecs. (d) to (h) relating to: interagency cooperation and reimbursement; seal and judicial notice; acceptance of gifts; contract authority; and performance of other necessary activities.

Subsec. (i)(1)(A) to (C). Pub. L. 95-91, §709(a)(2)(C), struck out subpar. (A) to (C) provisions relating to: application of subch. II of ch. 5 of title 5 to rules, regulations, or orders issued under this chapter; publication of notice of proposed rules, regulations, or orders in the Federal Register and opportunity for comment and waiver of the requirements when warranted by considerations of public health, safety, or welfare; and opportunity for oral presentation of views, data, and arguments where rules, regulations, or orders are likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses.

Subsec. (i)(1)(D). Pub. L. 95-91, §709(a)(2)(C), redesignated subpar. (D) as subsec. (b).

Subsec. (i)(E), (F). Pub. L. 95-91, §709(a)(2)(C), struck out provisions of subpars. (E) and (F) providing for public availability of internal rules and guidelines of the agency forming a basis for rules, regulations, or orders and agency opinions respecting determinations of requests for exception or exemption from rules or orders; and procedures for holding hearings or oral presentation of views with respect to rules or regulations the effects of which are confined to a single unit of local government or the residents thereof, a single geographic area within a State or the residents thereof, or a single State or the residents thereof.

Subsec. (i)(2)(A). Pub. L. 95-91, §709(a)(2)(F), redesignated subpar. (A) as subsec. (c).

Subsec. (i)(2)(B), (3). Pub. L. 95-91, §709(a)(2)(F), (G), struck out par. (2)(B) provisions relating to jurisdiction of federal district courts, power of courts of competent jurisdiction to consider defenses, removal of cases raising constitutional defenses, and concurrent jurisdiction of cases or controversies arising under rules, regulations, or orders of State or local government agencies; and par. (3) provisions relating to procedures for State or local government agencies.

Subsecs. (j), (k). Pub. L. 95-91, §709(a)(2)(G), struck out subsecs. (j) and (k) relating to information for independent regulatory agencies and limitation on enforcement authority of the Administrator.

Subsec. (l). Pub. L. 95-70 added subsec. (l).

1976—Subsec. (c). Pub. L. 94-385, §103, struck out provisions relating to review of rules, regulations and procedures by the Cost of Living Council and redistributed remaining provisions as pars. (1) and (2).

Subsec. (i)(1)(D). Pub. L. 94-385, §104, inserted provisions which require any officer or agency authorized to issue rules, regulations or orders to establish criteria and guidelines for evaluation of special hardship situations, to include in every decision the standards applied in the disposition of such situations, and requiring the hearing upon request of the aggrieved party to be heard by an officer other than the one denying the adjustment.

Subsec. (i)(1)(F). Pub. L. 94-385, §105, added subpar. (F).

Subsec. (k). Pub. L. 94-385, §106, added subsec. (k).

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§ 767. Transitional and savings provisions

(a) Continuance of effective status

All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, by any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this chapter, and

(2) which are in effect at the time this chapter takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Administrator, other authorized officials, a court of competent jurisdiction, or by operation of law.

(b) Pending proceedings; orders, appeals, payments

This chapter shall not affect any proceeding pending, at the time this chapter takes effect, before any department or agency (or component thereof) regarding functions which are transferred by this chapter; but such proceedings, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals (except as provided in section 766(i)(2) of this title) shall be taken therefrom, and payments shall be made pursuant to such orders, as if this chapter had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions, and to the same extent, that such proceeding could have been discontinued if this chapter had not been enacted.

(c) Commencement of suits before effective date

Except as provided in subsection (e) of this section—

(1) the provisions of this chapter shall not affect suits commenced prior to the date this chapter takes effect, and

(2) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the