

## § 788. Use of commercial standards

### (a) General notice of proposed rulemaking

If any proposed rule by the Administrator contains any commercial standards, or specifically authorizes or requires the use of any such standards, then any general notice of the proposed rulemaking shall—

- (1) identify, by name, the organization which promulgated such standards; and
- (2) state whether or not, in the judgment of the Administrator, such organization complied with the requirements of subsection (b) in the promulgation of such standards.

### (b) Promulgation of commercial standards

An organization complies with the requirements of this subsection in promulgating any commercial standards if—

- (1) it gives interested persons adequate notice of the proposed promulgation of the standards and an opportunity to participate in the promulgation process through the presentation of their views in hearings or meetings which are open to the public;
- (2) the membership of the organization at the time of the promulgation of the standards is sufficiently balanced so as to allow for the effective representation of all interested persons;
- (3) before promulgating such standards, it makes available to the public any records of proceedings of the organization, and any documents, letters, memorandums, and materials, relating to such standards; and
- (4) it has procedures allowing interested persons to—

- (A) obtain a reconsideration of any action taken by the organization relating to the promulgation of such standards, and
- (B) obtain a review of the standards (including a review of the basis or adequacy of such standards).

### (c) Consultation with Attorney General and Chairman of Federal Trade Commission; impact of rules on competition

The Administrator shall not incorporate within any rule, nor prescribe any rule specifically authorizing or requiring the use of, any commercial standards unless he has consulted with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of such standards on competition and neither such individual recommends against such incorporation or use.

### (d) Rules relating to Administration procurement activities

The foregoing provisions of this section shall not apply with respect to rules prescribed by the Administrator which relate to the procurement activities of the Administration.

### (e) Participation of Administration employees in organizations relating to promulgation of commercial standards

Not later than 90 days after July 21, 1977, the Administrator shall prescribe, by rule, guidelines or criteria which set forth the extent to which, and the terms and conditions under which, employees of the Administration may

participate in their official capacity in the activities of any organization (which is not a Federal entity) which relate to the promulgation of commercial standards. Such guidelines and criteria may allow for such participation if it is in the public interest and relates to the purposes of this chapter, but in no event may such employees who are participating in their official capacity be allowed under such guidelines or criteria to vote on any matter relating to commercial standards.

### (f) “Commercial standards” defined

As used in this section, the term “commercial standards” means—

- (1) specifications of materials;
- (2) methods of testing;
- (3) criteria for adequate performance or operation;
- (4) model codes;
- (5) classification of components;
- (6) delineation of procedures or definition of terms;
- (7) measurement of quantity or quality for evaluating or referring to materials, products, systems, services, or practices; or
- (8) similar rules, procedures, requirements, or standards;

which are promulgated by any organization which is not a Federal entity. For purposes of the preceding sentence, any revision by any such organization of any such rule, procedure, requirement, or standard shall be considered to be the same as the promulgation of such standard.

(Pub. L. 93-275, §32, as added Pub. L. 95-70, §9, July 21, 1977, 91 Stat. 278.)

#### 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.

### § 789. Repealed. Pub. L. 104-106, div. D, title XLIII, § 4304(b)(2), Feb. 10, 1996, 110 Stat. 664

Section, Pub. L. 93-275, §33, as added Pub. L. 95-70, §10, July 21, 1977, 91 Stat. 279, related to organizational conflicts of interest of persons contracting to perform research, development, or evaluation activities or technical and management support services.

#### EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104-106, set out as an Effective Date of 1996 Amendment note under section 2302 of Title 10, Armed Forces.

#### SUBCHAPTER II—OFFICE OF ENERGY INFORMATION AND ANALYSIS

### § 790. Establishment of Office of Energy Information and Analysis

#### (a) Director; appointment; qualifications

(1) There is established within the Federal Energy Administration an Office of Energy Information and Analysis (hereinafter in this chapter referred to as the “Office”) which shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate.