

§ 7173. Initiation of rulemaking procedures before Commission

(a) Proposal of rules, regulations, and statements of policy of general applicability by Secretary and Commission

The Secretary and the Commission are authorized to propose rules, regulations, and statements of policy of general applicability with respect to any function within the jurisdiction of the Commission under section 7172 of this title.

(b) Consideration and final action on proposals of Secretary

The Commission shall have exclusive jurisdiction with respect to any proposal made under subsection (a), and shall consider and take final action on any proposal made by the Secretary under such subsection in an expeditious manner in accordance with such reasonable time limits as may be set by the Secretary for the completion of action by the Commission on any such proposal.

(c) Utilization of rulemaking procedures for establishment of rates and charges under Federal Power Act and Natural Gas Act

Any function described in section 7172 of this title which relates to the establishment of rates and charges under the Federal Power Act [16 U.S.C. 791a et seq.] or the Natural Gas Act [15 U.S.C. 717 et seq.], may be conducted by rulemaking procedures. Except as provided in subsection (d), the procedures in such a rulemaking proceeding shall assure full consideration of the issues and an opportunity for interested persons to present their views.

(d) Submission of written questions by interested persons

With respect to any rule or regulation promulgated by the Commission to establish rates and charges for the first sale of natural gas by a producer or gatherer to a natural gas pipeline under the Natural Gas Act [15 U.S.C. 717 et seq.], the Commission may afford any interested person a reasonable opportunity to submit written questions with respect to disputed issues of fact to other interested persons participating in the rulemaking proceedings. The Commission may establish a reasonable time for both the submission of questions and responses thereto.

(Pub. L. 95–91, title IV, § 403, Aug. 4, 1977, 91 Stat. 585.)

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (c), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The Natural Gas Act, referred to in subsecs. (c) and (d), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

§ 7174. Referral of other rulemaking proceedings to Commission

(a) Notification of Commission of proposed action; public comment

Except as provided in section 7173 of this title, whenever the Secretary proposes to prescribe

rules, regulations, and statements of policy of general applicability in the exercise of any function which is transferred to the Secretary under section 7151 of this title or section 60501 of title 49, he shall notify the Commission of the proposed action. If the Commission, in its discretion, determines within such period as the Secretary may prescribe, that the proposed action may significantly affect any function within the jurisdiction of the Commission pursuant to section 7172(a)(1) and (c)(1) of this title and section 60502 of title 49, the Secretary shall immediately refer the matter to the Commission, which shall provide an opportunity for public comment.

(b) Recommendations of Commission; publication

Following such opportunity for public comment the Commission, after consultation with the Secretary, shall either—

- (1) concur in adoption of the rule or statement as proposed by the Secretary;
- (2) concur in adoption of the rule or statement only with such changes as it may recommend; or
- (3) recommend that the rule or statement not be adopted.

The Commission shall promptly publish its recommendations, adopted under this subsection, along with an explanation of the reason for its actions and an analysis of the major comments, criticisms, and alternatives offered during the comment period.

(c) Options of Secretary; final agency action

Following publication of the Commission's recommendations the Secretary shall have the option of—

- (1) issuing a final rule or statement in the form initially proposed by the Secretary if the Commission has concurred in such rule pursuant to subsection (b)(1);
- (2) issuing a final rule or statement in amended form so that the rule conforms in all respects with the changes proposed by the Commission if the Commission has concurred in such rule or statement pursuant to subsection (b)(2); or
- (3) ordering that the rule shall not be issued.

The action taken by the Secretary pursuant to this subsection shall constitute a final agency action for purposes of section 704 of title 5.

(Pub. L. 95–91, title IV, § 404, Aug. 4, 1977, 91 Stat. 586.)

CODIFICATION

In subsec. (a), “section 60501 of title 49” substituted for reference to section 306 of this Act, meaning section 306 of Pub. L. 95–91 [42 U.S.C. 7155], and “section 60502 of title 49” substituted for reference to section 402(b), meaning section 402(b) of Pub. L. 95–91 [42 U.S.C. 7172(b)] on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

§ 7175. Right of Secretary to intervene in Commission proceedings

The Secretary may as a matter of right intervene or otherwise participate in any proceeding before the Commission. The Secretary shall comply with rules of procedure of general appli-