

cability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with rules of procedure of general applicability governing the conduct thereof. The intervention or participation of the Secretary in any proceeding or activity shall not affect the obligation of the Commission to assure procedure fairness to all participants.

(Pub. L. 95-91, title IV, § 405, Aug. 4, 1977, 91 Stat. 586.)

#### § 7176. Reorganization

For the purposes of chapter 9 of title 5 the Commission shall be deemed to be an independent regulatory agency.

(Pub. L. 95-91, title IV, § 406, Aug. 4, 1977, 91 Stat. 586.)

#### § 7177. Access to information

(a) The Secretary, each officer of the Department, and each Federal agency shall provide to the Commission, upon request, such existing information in the possession of the Department or other Federal agency as the Commission determines is necessary to carry out its responsibilities under this chapter.

(b) The Secretary, in formulating the information to be requested in the reports or investigations under section 825c and section 825j of title 16 and section 717i and section 717j of title 15 shall include in such reports and investigations such specific information as requested by the Federal Energy Regulatory Commission and copies of all reports, information, results of investigations and data under said sections shall be furnished by the Secretary to the Federal Energy Regulatory Commission.

(Pub. L. 95-91, title IV, § 407, Aug. 4, 1977, 91 Stat. 587.)

#### REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

#### § 7178. Federal Energy Regulatory Commission fees and annual charges

##### (a) In general

(1) Except as provided in paragraph (2) and beginning in fiscal year 1987 and in each fiscal year thereafter, the Federal Energy Regulatory Commission shall, using the provisions of this section and authority provided by other laws, assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year.

(2) The provisions of this section shall not affect the authority, requirements, exceptions, or limitations in sections 803(e) and 823a(e) of title 16.

##### (b) Basis for assessments

The fees or annual charges assessed shall be computed on the basis of methods that the Com-

mission determines, by rule, to be fair and equitable.

##### (c) Estimates

The Commission may assess fees and charges under this section by making estimates based on data available to the Commission at the time of assessment.

##### (d) Time of payment

The Commission shall provide that the fees and charges assessed under this section shall be paid by the end of the fiscal year for which they were assessed.

##### (e) Adjustments

The Commission shall, after the completion of a fiscal year, make such adjustments in the assessments for such fiscal year as may be necessary to eliminate any overrecovery or underrecovery of its total costs, and any overcharging or undercharging of any person.

##### (f) Use of funds

All moneys received under this section shall be credited to the general fund of the Treasury.

##### (g) Waiver

The Commission may waive all or part of any fee or annual charge assessed under this section for good cause shown.

(Pub. L. 99-509, title III, § 3401, Oct. 21, 1986, 100 Stat. 1890.)

#### CODIFICATION

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1986, and not as part of the Department of Energy Organization Act which comprises this chapter.

#### SUBCHAPTER V—ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

#### § 7191. Procedures for issuance of rules, regulations, or orders

##### (a) Applicability of subchapter II of chapter 5 of title 5

(1) Subject to the other requirements of this subchapter, the provisions of subchapter II of chapter 5 of title 5 shall apply in accordance with its terms to any rule or regulation, or any order having the applicability and effect of a rule (as defined in section 551(4) of title 5), issued pursuant to authority vested by law in, or transferred or delegated to, the Secretary, or required by this chapter or any other Act to be carried out by any other officer, employee, or component of the Department, other than the Commission, including any such rule, regulation, or order of a State, or local government agency or officer thereof, issued pursuant to authority delegated by the Secretary in accordance with this subchapter. If any provision of any Act, the functions of which are transferred, vested, or delegated pursuant to this chapter, provides administrative procedure requirements in addition to the requirements provided in this subchapter, such additional requirements shall also apply to actions under that provision.

(2) Notwithstanding paragraph (1), this subchapter shall apply to the Commission to the same extent this subchapter applies to the Sec-

retary in the exercise of any of the Commission's functions under section 7172(c)(1) of this title or which the Secretary has assigned under section 7172(e) of this title.

**(b) Substantial issue of fact or law or likelihood of substantial impact on Nation's economy, etc.; oral presentation**

(1) If the Secretary determines, on his own initiative or in response to any showing made pursuant to paragraph (2) (with respect to a proposed rule, regulation, or order described in subsection (a)) that no substantial issue of fact or law exists and that such rule, regulation, or order is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, such proposed rule, regulation, or order may be promulgated in accordance with section 553 of title 5. If the Secretary determines that a substantial issue of fact or law exists or that such rule, regulation, or order is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be provided.

(2) Any person, who would be adversely affected by the implementation of any proposed rule, regulation, or order who desires an opportunity for oral presentation of views, data, and arguments, may submit material supporting the existence of such substantial issues or such impact.

(3) A transcript shall be kept of any oral presentation with respect to a rule, regulation, or order described in subsection (a).

**(c) Waiver of requirements**

The requirements of subsection (b) of this section may be waived where strict compliance is found by the Secretary to be likely to cause serious harm or injury to the public health, safety, or welfare, and such finding is set out in detail in such rule, regulation, or order. In the event the requirements of this section are waived, the requirements shall be satisfied within a reasonable period of time subsequent to the promulgation of such rule, regulation, or order.

**(d) Effects confined to single unit of local government, geographic area within State, or State; hearing or oral presentation**

(1) With respect to any rule, regulation, or order described in subsection (a), the effects of which, except for indirect effects of an inconsequential nature, are confined to—

- (A) a single unit of local government or the residents thereof;
- (B) a single geographic area within a State or the residents thereof; or
- (C) a single State or the residents thereof;

the Secretary shall, in any case where appropriate, afford an opportunity for a hearing or the oral presentation of views, and provide procedures for the holding of such hearing or oral presentation within the boundaries of the unit of local government, geographic area, or State described in paragraphs (A) through (C) of this paragraph as the case may be.

(2) For the purposes of this subsection—

- (A) the term "unit of local government" means a county, municipality, town, town-

ship, village, or other unit of general government below the State level; and

(B) the term "geographic area within a State" means a special purpose district or other region recognized for governmental purposes within such State which is not a unit of local government.

(3) Nothing in this subsection shall be construed as requiring a hearing or an oral presentation of views where none is required by this section or other provision of law.

**(e) Prescription of procedures for State and local government agencies**

Where authorized by any law vested, transferred, or delegated pursuant to this chapter, the Secretary may, by rule, prescribe procedures for State or local government agencies authorized by the Secretary to carry out such functions as may be permitted under applicable law. Such procedures shall apply to such agencies in lieu of this section, and shall require that prior to taking any action, such agencies shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views (including oral presentation of views where practicable) within a reasonable time before taking the action.

(Pub. L. 95-91, title V, §501, Aug. 4, 1977, 91 Stat. 587; Pub. L. 105-28, §2(a), July 18, 1997, 111 Stat. 245.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (e), was in the original "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

AMENDMENTS

1997—Subsec. (b). Pub. L. 105-28, §2(a)(1), (2), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows:

"(1) In addition to the requirements of subsection (a) of this section, notice of any proposed rule, regulation, or order described in subsection (a) of this section shall be given by publication of such proposed rule, regulation, or order in the Federal Register. Such publication shall be accompanied by a statement of the research, analysis, and other available information in support of, the need for, and the probable effect of, any such proposed rule, regulation, or order. Other effective means of publicity shall be utilized as may be reasonably calculated to notify concerned or affected persons of the nature and probable effect of any such proposed rule, regulation, or order. In each case, a minimum of thirty days following such publication shall be provided for an opportunity to comment prior to promulgation of any such rule, regulation, or order.

"(2) Public notice of all rules, regulations, or orders described in subsection (a) of this section which are promulgated by officers of a State or local government agency pursuant to a delegation under this chapter shall be provided by publication of such proposed rules, regulations, or orders in at least two newspapers of statewide circulation. If such publication is not practicable, notice of any such rule, regulation, or order shall be given by such other means as the officer promulgating such rule, regulation, or order determines will reasonably assure wide public notice.

"(3) For the purposes of this subchapter, the exception from the requirements of section 553 of title 5 pro-

vided by subsection (a)(2) of such section with respect to public property, loans, grants, or contracts shall not be available.”

Subsec. (c). Pub. L. 105-28, §2(a)(2), (3), redesignated subsec. (e) as (c) and substituted “subsection (b)” for “subsections (b), (c), and (d)”. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 105-28, §2(a)(1), (2), redesignated subsec. (f) as (d) and struck out former subsec. (d) which read as follows: “Following the notice and comment period, including any oral presentation required by this subsection, the Secretary may promulgate a rule if the rule is accompanied by an explanation responding to the major comments, criticisms, and alternatives offered during the comment period.”

Subsecs. (e) to (g). Pub. L. 105-28, §2(a)(2), redesignated subsecs. (e) to (g) as (c) to (e), respectively.

#### § 7192. Judicial review

##### (a) Agency action

Judicial review of agency action taken under any law the functions of which are vested by law in, or transferred or delegated to the Secretary, the Commission or any officer, employee, or component of the Department shall, notwithstanding such vesting, transfer, or delegation, be made in the manner specified in or for such law.

##### (b) Review by district court of United States; removal

Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising exclusively under this chapter, or under rules, regulations, or orders issued exclusively thereunder, other than any actions taken to implement or enforce any rule, regulation, or order by any officer of a State or local government agency under this chapter, except that nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on the unconstitutionality of this chapter or the validity of action taken by any agency under this chapter). If in any such proceeding an issue by way of defense is raised based on the unconstitutionality of this chapter or the validity of agency action under this chapter, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28. Cases or controversies arising under any rule, regulation, or order of any officer of a State or local government agency may be heard in either (A) any appropriate State court, or (B) without regard to the amount in controversy, the district courts of the United States.

##### (c) Litigation supervision by Attorney General

Subject to the provisions of section 7171(i) of this title and notwithstanding any other law, the litigation of the Department shall be subject to the supervision of the Attorney General pursuant to chapter 31 of title 28. The Attorney General may authorize any attorney of the Department to conduct any civil litigation of the Department in any Federal court except the Supreme Court.

(Pub. L. 95-91, title V, §502, Aug. 4, 1977, 91 Stat. 589.)

#### REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

#### § 7193. Remedial orders

##### (a) Violations of rules, regulations, or orders promulgated pursuant to Emergency Petroleum Allocation Act of 1973

If upon investigation the Secretary or his authorized representative believes that a person has violated any regulation, rule, or order described in section 7191(a) of this title promulgated pursuant to the Emergency Petroleum Allocation Act of 1973<sup>1</sup> [15 U.S.C. 751 et seq.], he may issue a remedial order to the person. Each remedial order shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of such rule, regulation, or order alleged to have been violated. For purposes of this section “person” includes any individual, association, company, corporation, partnership, or other entity however organized.

##### (b) Notice of intent to contest; final order not subject to review

If within thirty days after the receipt of the remedial order issued by the Secretary, the person fails to notify the Secretary that he intends to contest the remedial order, the remedial order shall become effective and shall be deemed a final order of the Secretary and not subject to review by any court or agency.

##### (c) Notice of contestation to Commission; stay; hearing; cross examination; final order; enforcement and review

If within thirty days after the receipt of the remedial order issued by the Secretary, the person notifies the Secretary that he intends to contest a remedial order issued under subsection (a) of this section, the Secretary shall immediately advise the Commission of such notification. Upon such notice, the Commission shall stay the effect of the remedial order, unless the Commission finds the public interest requires immediate compliance with such remedial order. The Commission shall, upon request, afford an opportunity for a hearing, including, at a minimum, the submission of briefs, oral or documentary evidence, and oral arguments. To the extent that the Commission in its discretion determines that such is required for a full and true disclosure of the facts, the Commission shall afford the right of cross examination. The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary’s remedial order, or directing other appropriate relief, and such order shall, for the purpose of judicial review, constitute a final agency action, except that enforcement and other judicial review of such action shall be the responsibility of the Secretary.

<sup>1</sup> See References in Text note below.