

SUBCHAPTER IV—FEDERAL ENERGY  
REGULATORY COMMISSION

**§ 7171. Appointment and administration**

**(a) Federal Energy Regulatory Commission; establishment**

There is established within the Department an independent regulatory commission to be known as the Federal Energy Regulatory Commission.

**(b) Composition; term of office; conflict of interest; expiration of terms**

(1) The Commission shall be composed of five members appointed by the President, by and with the advice and consent of the Senate. One of the members shall be designated by the President as Chairman. Members shall hold office for a term of 5 years and may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. Not more than three members of the Commission shall be members of the same political party. Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of his term until his successor is appointed and has been confirmed and taken the oath of Office, except that such Commissioner shall not serve beyond the end of the session of the Congress in which such term expires. Members of the Commission shall not engage in any other business, vocation, or employment while serving on the Commission.

(2) Notwithstanding the third sentence of paragraph (1), the terms of members first taking office after April 11, 1990, shall expire as follows:

(A) In the case of members appointed to succeed members whose terms expire in 1991, one such member's term shall expire on June 30, 1994, and one such member's term shall expire on June 30, 1995, as designated by the President at the time of appointment.

(B) In the case of members appointed to succeed members whose terms expire in 1992, one such member's term shall expire on June 30, 1996, and one such member's term shall expire on June 30, 1997, as designated by the President at the time of appointment.

(C) In the case of the member appointed to succeed the member whose term expires in 1993, such member's term shall expire on June 30, 1998.

**(c) Duties and responsibilities of Chairman**

The Chairman shall be responsible on behalf of the Commission for the executive and administrative operation of the Commission, including functions of the Commission with respect to (1) the appointment and employment of hearing examiners in accordance with the provisions of title 5, (2) the selection, appointment, and fixing of the compensation of such personnel as he deems necessary, including an executive director, (3) the supervision of personnel employed by or assigned to the Commission, except that each member of the Commission may select and supervise personnel for his personal staff, (4) the distribution of business among personnel and among administrative units of the Commission,

and (5) the procurement of services of experts and consultants in accordance with section 3109 of title 5. The Secretary shall provide to the Commission such support and facilities as the Commission determines it needs to carry out its functions.

**(d) Supervision and direction of members, employees, or other personnel of Commission**

In the performance of their functions, the members, employees, or other personnel of the Commission shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department.

**(e) Designation of Acting Chairman; quorum; seal**

The Chairman of the Commission may designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all sessions of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have one vote. Actions of the Commission shall be determined by a majority vote of the members present. The Commission shall have an official seal which shall be judicially noticed.

**(f) Rules**

The Commission is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions. Until changed by the Commission, any procedural and administrative rules applicable to particular functions over which the Commission has jurisdiction shall continue in effect with respect to such particular functions.

**(g) Powers of Commission**

In carrying out any of its functions, the Commission shall have the powers authorized by the law under which such function is exercised to hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate. The Commission may, by one or more of its members or by such agents as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions, except that nothing in this subsection shall be deemed to supersede the provisions of section 556 of title 5 relating to hearing examiners.

**(h) Principal office of Commission**

The principal office of the Commission shall be in or near the District of Columbia, where its general sessions shall be held, but the Commission may sit anywhere in the United States.

**(i) Commission deemed agency; attorney for Commission**

For the purpose of section 552b of title 5, the Commission shall be deemed to be an agency. Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Chairman of the Commission may appear for, and represent the Commission in, any civil action brought in con-

nection with any function carried out by the Commission pursuant to this chapter or as otherwise authorized by law.

**(j) Annual authorization and appropriation request**

In each annual authorization and appropriation request under this chapter, the Secretary shall identify the portion thereof intended for the support of the Commission and include a statement by the Commission (1) showing the amount requested by the Commission in its budgetary presentation to the Secretary and the Office of Management and Budget and (2) an assessment of the budgetary needs of the Commission. Whenever the Commission submits to the Secretary, the President, or the Office of Management and Budget, any legislative recommendation or testimony, or comments on legislation, prepared for submission to Congress, the Commission shall concurrently transmit a copy thereof to the appropriate committees of Congress.

**(k) Addressing insufficient compensation of employees and other personnel of the Commission**

**(1) In general**

Notwithstanding any other provision of law, if the Chairman of the Commission publicly certifies that compensation for a category of employees or other personnel of the Commission is insufficient to retain or attract employees and other personnel to allow the Commission to carry out the functions of the Commission in a timely, efficient, and effective manner, the Chairman may fix the compensation for the category of employees or other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, or any other civil service law.

**(2) Certification requirements**

A certification issued under paragraph (1) shall—

(A) apply with respect to a category of employees or other personnel responsible for conducting work of a scientific, technological, engineering, or mathematical nature;

(B) specify a maximum amount of reasonable compensation for the category of employees or other personnel;

(C) be valid for a 5-year period beginning on the date on which the certification is issued;

(D) be no broader than necessary to achieve the objective of retaining or attracting employees and other personnel to allow the Commission to carry out the functions of the Commission in a timely, efficient, and effective manner; and

(E) include an explanation for why the other approaches available to the Chairman for retaining and attracting employees and other personnel are inadequate.

**(3) Renewal**

**(A) In general**

Not later than 90 days before the date of expiration of a certification issued under paragraph (1), the Chairman shall determine

whether the certification should be renewed for a subsequent 5-year period.

**(B) Requirement**

If the Chairman determines that a certification should be renewed under subparagraph (A), the Chairman may renew the certification, subject to the certification requirements under paragraph (2) that were applicable to the initial certification.

**(4) New hires**

**(A) In general**

An employee or other personnel that is a member of a category of employees or other personnel that would have been covered by a certification issued under paragraph (1), but was hired during a period in which the certification has expired and has not been renewed under paragraph (3) shall not be eligible for compensation at the level that would have applied to the employee or other personnel if the certification had been in effect on the date on which the employee or other personnel was hired.

**(B) Compensation of new hires on renewal**

On renewal of a certification under paragraph (3), the Chairman may fix the compensation of the employees or other personnel described in subparagraph (A) at the level established for the category of employees or other personnel in the certification.

**(5) Retention of level of fixed compensation**

A category of employees or other personnel, the compensation of which was fixed by the Chairman in accordance with paragraph (1), may, at the discretion of the Chairman, have the level of fixed compensation for the category of employees or other personnel retained, regardless of whether a certification described under that paragraph is in effect with respect to the compensation of the category of employees or other personnel.

**(6) Consultation required**

The Chairman shall consult with the Director of the Office of Personnel Management in implementing this subsection, including in the determination of the amount of compensation with respect to each category of employees or other personnel.

**(7) Experts and consultants**

**(A) In general**

Subject to subparagraph (B), the Chairman may—

(i) obtain the services of experts and consultants in accordance with section 3109 of title 5;

(ii) compensate those experts and consultants for each day (including travel time) at rates not in excess of the rate of pay for level IV of the Executive Schedule under section 5315 of that title; and

(iii) pay to the experts and consultants serving away from the homes or regular places of business of the experts and consultants travel expenses and per diem in lieu of subsistence at rates authorized by sections 5702 and 5703 of that title for per-

sons in Government service employed intermittently.

### (B) Limitations

The Chairman shall—

(i) to the maximum extent practicable, limit the use of experts and consultants pursuant to subparagraph (A); and

(ii) ensure that the employment contract of each expert and consultant employed pursuant to subparagraph (A) is subject to renewal not less frequently than annually.

(Pub. L. 95-91, title IV, §401, Aug. 4, 1977, 91 Stat. 582; Pub. L. 101-271, §2(a), (b), Apr. 11, 1990, 104 Stat. 135; Pub. L. 116-260, div. Z, title XI, §11004(a), Dec. 27, 2020, 134 Stat. 2612.)

### Editorial Notes

#### REFERENCES IN TEXT

This chapter, referred to in subsecs. (i) and (j), 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.

#### AMENDMENTS

2020—Subsec. (k). Pub. L. 116-260 added subsec. (k).

1990—Subsec. (b). Pub. L. 101-271 designated existing provisions as par. (1), substituted “5 years” for “four years”, struck out after third sentence “The terms of the members first taking office shall expire (as designated by the President at the time of appointment), two at the end of two years, two at the end of three years, and one at the end of four years.”, substituted “A Commissioner may continue to serve after the expiration of his term until his successor is appointed and has been confirmed and taken the oath of Office, except that such Commissioner shall not serve beyond the end of the session of the Congress in which such term expires.” for “A Commissioner may continue to serve after the expiration of his term until his successor has taken office, except that he may not so continue to serve for more than one year after the date on which his term would otherwise expire under this subsection.”, and added par. (2).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-260, div. Z, title XI, §11004(c), Dec. 27, 2020, 134 Stat. 2614, provided that: “The amendment made by subsection (a) [amending this section] shall apply beginning on the date that is 30 days after the date of enactment of this Act [Dec. 27, 2020].”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-271, §2(c), Apr. 11, 1990, 104 Stat. 136, provided that: “The amendments made by this section [amending this section] apply only to persons appointed or reappointed as members of the Federal Energy Regulatory Commission after the date of enactment of this Act [Apr. 11, 1990].”

#### REPORTS

Pub. L. 116-260, div. Z, title XI, §11004(b), Dec. 27, 2020, 134 Stat. 2614, provided that:

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Dec. 27, 2020], and every 2 years thereafter for 10 years, the Chairman of the Federal Energy Regulatory Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report on informa-

tion relating to hiring, vacancies, and compensation at the Federal Energy Regulatory Commission.

“(2) INCLUSIONS.—Each report under paragraph (1) shall include—

“(A) an analysis of any trends with respect to hiring, vacancies, and compensation at the Federal Energy Regulatory Commission; and

“(B) a description of the efforts to retain and attract employees or other personnel responsible for conducting work of a scientific, technological, engineering, or mathematical nature at the Federal Energy Regulatory Commission.”

#### RENEWABLE ENERGY AND ENERGY CONSERVATION INCENTIVES

Pub. L. 101-549, title VIII, §808, Nov. 15, 1990, 104 Stat. 2690, provided that:

“(a) DEFINITION.—For purposes of this section, ‘renewable energy’ means energy from photovoltaic, solar thermal, wind, geothermal, and biomass energy production technologies.

“(b) RATE INCENTIVES STUDY.—Within 18 months after enactment [Nov. 15, 1990], the Federal Energy Regulatory Commission, in consultation with the Environmental Protection Agency, shall complete a study which calculates the net environmental benefits of renewable energy, compared to nonrenewable energy, and assigns numerical values to them. The study shall include, but not be limited to, environmental impacts on air, water, land use, water use, human health, and waste disposal.

“(c) MODEL REGULATIONS.—In conjunction with the study in subsection (b), the Commission shall propose one or more models for incorporating the net environmental benefits into the regulatory treatment of renewable energy in order to provide economic compensation for those benefits.

“(d) REPORT.—The Commission shall transmit the study and the model regulations to Congress, along with any recommendations on the best ways to reward renewable energy technologies for their environmental benefits, in a report no later than 24 months after enactment [Nov. 15, 1990].”

#### RETENTION AND USE OF REVENUES FROM LICENSING FEES, INSPECTION SERVICES, AND OTHER SERVICES AND COLLECTIONS; REDUCTION TO ACHIEVE FINAL FISCAL YEAR APPROPRIATION

Pub. L. 99-500, §101(e) [title III], Oct. 18, 1986, 100 Stat. 1783-194, 1783-208, and Pub. L. 99-591, §101(e) [title III], Oct. 30, 1986, 100 Stat. 3341-194, 3341-208, provided in part: “That hereafter and notwithstanding any other provision of law revenues from licensing fees, inspection services, and other services and collections, estimated at \$78,754,000 in fiscal year 1987, may be retained and used for necessary expenses in this account [Federal Energy Regulatory Commission, Salaries and Expenses], and may remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced as revenues are received during fiscal year 1987, so as to result in a final fiscal year 1987 appropriation estimated at not more than \$20,325,000.”

Similar provisions were contained in the following appropriation acts:

Pub. L. 116-260, div. D, title III, Dec. 27, 2020, 134 Stat. 1372.

Pub. L. 116-94, div. C, title III, Dec. 20, 2019, 133 Stat. 2678.

Pub. L. 115-244, div. A, title III, Sept. 21, 2018, 132 Stat. 2915.

Pub. L. 115-141, div. D, title III, Mar. 23, 2018, 132 Stat. 527.

Pub. L. 115-31, div. D, title III, May 5, 2017, 131 Stat. 319.

Pub. L. 114-113, div. D, title III, Dec. 18, 2015, 129 Stat. 2415.

Pub. L. 113-235, div. D, title III, Dec. 16, 2014, 128 Stat. 2322.

Pub. L. 113-76, div. D, title III, Jan. 17, 2014, 128 Stat. 172.

Pub. L. 112-74, div. B, title III, Dec. 23, 2011, 125 Stat. 875.  
 Pub. L. 111-85, title III, Oct. 28, 2009, 123 Stat. 2871.  
 Pub. L. 111-8, div. C, title III, Mar. 11, 2009, 123 Stat. 625.  
 Pub. L. 110-161, div. C, title III, Dec. 26, 2007, 121 Stat. 1966.  
 Pub. L. 109-103, title III, Nov. 19, 2005, 119 Stat. 2277.  
 Pub. L. 108-447, div. C, title III, Dec. 8, 2004, 118 Stat. 2957.  
 Pub. L. 108-137, title III, Dec. 1, 2003, 117 Stat. 1859.  
 Pub. L. 108-7, div. D, title III, Feb. 20, 2003, 117 Stat. 153.  
 Pub. L. 107-66, title III, Nov. 12, 2001, 115 Stat. 508.  
 Pub. L. 106-377, §1(a)(2) [title III], Oct. 27, 2000, 114 Stat. 1441, 1441A-78.  
 Pub. L. 106-60, title III, Sept. 29, 1999, 113 Stat. 494.  
 Pub. L. 105-245, title III, Oct. 7, 1998, 112 Stat. 1851.  
 Pub. L. 105-62, title III, Oct. 13, 1997, 111 Stat. 1334.  
 Pub. L. 104-206, title III, Sept. 30, 1996, 110 Stat. 2998.  
 Pub. L. 104-46, title III, Nov. 13, 1995, 109 Stat. 416.  
 Pub. L. 103-316, title III, Aug. 26, 1994, 108 Stat. 1719.  
 Pub. L. 103-126, title III, Oct. 28, 1993, 107 Stat. 1330.  
 Pub. L. 102-377, title III, Oct. 2, 1992, 106 Stat. 1338.  
 Pub. L. 102-104, title III, Aug. 17, 1991, 105 Stat. 531.  
 Pub. L. 101-514, title III, Nov. 5, 1990, 104 Stat. 2093.  
 Pub. L. 101-101, title III, Sept. 29, 1989, 103 Stat. 661.  
 Pub. L. 100-371, title III, July 19, 1988, 102 Stat. 870.  
 Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-124.

### § 7172. Jurisdiction of Commission

#### (a) Transfer of functions from Federal Power Commission

(1) There are transferred to, and vested in, the Commission the following functions of the Federal Power Commission or of any member of the Commission or any officer or component of the Commission:

(A) the investigation, issuance, transfer, renewal, revocation, and enforcement of licenses and permits for the construction, operation, and maintenance of dams, water conduits, reservoirs, powerhouses, transmission lines, or other works for the development and improvement of navigation and for the development and utilization of power across, along, from, or in navigable waters under part I of the Federal Power Act [16 U.S.C. 791a et seq.];

(B) the establishment, review, and enforcement of rates and charges for the transmission or sale of electric energy, including determinations on construction work in progress, under part II of the Federal Power Act [16 U.S.C. 824 et seq.], and the interconnection, under section 202(b), of such Act [16 U.S.C. 824a(b)], of facilities for the generation, transmission, and sale of electric energy (other than emergency interconnection);

(C) the establishment, review, and enforcement of rates and charges for the transportation and sale of natural gas by a producer or gatherer or by a natural gas pipeline or natural gas company under sections 1, 4, 5, and 6 of the Natural Gas Act [15 U.S.C. 717, 717c to 717e];

(D) the issuance of a certificate of public convenience and necessity, including abandonment of facilities or services, and the establishment of physical connections under section 7 of the Natural Gas Act [15 U.S.C. 717f];

(E) the establishment, review, and enforcement of curtailments, other than the establishment and review of priorities for such cur-

tailments, under the Natural Gas Act [15 U.S.C. 717 et seq.]; and

(F) the regulation of mergers and securities acquisition under the Federal Power Act [16 U.S.C. 791a et seq.] and Natural Gas Act [15 U.S.C. 717 et seq.].

(2) The Commission may exercise any power under the following sections to the extent the Commission determines such power to be necessary to the exercise of any function within the jurisdiction of the Commission:

(A) sections 4, 301, 302, 306 through 309, and 312 through 316 of the Federal Power Act [16 U.S.C. 797, 825, 825a, 825e to 825h, 825k to 825o]; and

(B) sections 8, 9, 13 through 17, 20, and 21 of the Natural Gas Act [15 U.S.C. 717g, 717h, 717i to 717p, 717s, 717t].

#### (b) Repealed. Pub. L. 103-272, § 7(b), July 5, 1994, 108 Stat. 1379

#### (c) Consideration of proposals made by Secretary to amend regulations issued under section 753 of title 15; exception

(1) Pursuant to the procedures specified in section 7174 of this title and except as provided in paragraph (2), the Commission shall have jurisdiction to consider any proposal by the Secretary to amend the regulation required to be issued under section 753(a)<sup>1</sup> of title 15 which is required by section 757 or 760a<sup>1</sup> of title 15 to be transmitted by the President to, and reviewed by, each House of Congress, under section 6421 of this title.

(2) In the event that the President determines that an emergency situation of overriding national importance exists and requires the expeditious promulgation of a rule described in paragraph (1), the President may direct the Secretary to assume sole jurisdiction over the promulgation of such rule, and such rule shall be transmitted by the President to, and reviewed by, each House of Congress under section 757 or 760a<sup>1</sup> of title 15, and section 6421 of this title.

#### (d) Matters involving agency determinations to be made on record after agency hearing

The Commission shall have jurisdiction to hear and determine any other matter arising under any other function of the Secretary—

(1) involving any agency determination required by law to be made on the record after an opportunity for an agency hearing; or

(2) involving any other agency determination which the Secretary determines shall be made on the record after an opportunity for an agency hearing,

except that nothing in this subsection shall require that functions under sections 6213 and 6214<sup>1</sup> of this title shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

#### (e) Matters assigned by Secretary after public notice and matters referred under section 7174 of this title

In addition to the other provisions of this section, the Commission shall have jurisdiction

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