

pany, 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.

**(d) Time limits**

The Secretary may set reasonable time limits for the Commission to complete action on a proceeding referred to it pursuant to this section.

**(e) Effect on procedural action taken by Secretary prior to issuance of initial remedial order**

Nothing in preceding provisions of this section shall be construed to affect any procedural action taken by the Secretary prior to or incident to initial issuance of a remedial order which is the subject of the hearing provided in preceding provisions of this section, but such procedures shall be reviewable in the hearing.

**(f) Savings provision**

The provisions of preceding provisions of this section shall be applicable only with respect to proceedings initiated by a notice of probable violation issued after October 1, 1977.

**(g) Retroactive application; marketing of petroleum products**

With respect to any person whose sole petroleum industry operation relates to the marketing of petroleum products, the Secretary or any person acting on his behalf may not exercise discretion to maintain a civil action (other than an action for injunctive relief) or issue a remedial

order against such person for any violation of any rule or regulation if—

(1) such civil action or order is based on a retroactive application of such rule or regulation or is based upon a retroactive interpretation of such rule or regulation; and

(2) such person relied in good faith upon rules, regulations, or ruling in effect on the date of the violation interpreting such rules or regulations.

(Pub. L. 95-91, title V, § 503, Aug. 4, 1977, 91 Stat. 590; Pub. L. 95-620, title VIII, § 805, Nov. 9, 1978, 92 Stat. 3348.)

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a), is Pub. L. 93-159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§ 751 et seq.) of Title 15, Commerce and Trade, and was omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

AMENDMENTS

1978—Subsecs. (e), (f). Pub. L. 95-620, § 805(b), inserted “preceding provisions of” before “this section”.

Subsec. (g). Pub. L. 95-620, § 805(a), added subsec. (g).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-620 effective 180 days after Nov. 9, 1978, see section 901 of Pub. L. 95-620, set out as an Effective Date note under section 8301 of this title.

**§ 7194. Requests for adjustments**

(a) The Secretary or any officer designated by him shall provide for the making of such adjustments to any rule, regulation or order described in section 7191(a) of this title issued under the Federal Energy Administration Act [15 U.S.C. 761 et seq.], the Emergency Petroleum Allocation Act of 1973<sup>1</sup> [15 U.S.C. 751 et seq.], the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 791 et seq.], or the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.], consistent with the other purposes of the relevant Act, 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, or rescission<sup>2</sup> of, exception to, or exemption from, such rule, regulation or order. The Secretary or any such officer shall additionally insure that each decision on any application or petition requesting an adjustment shall specify the standards of hardship, inequity, or unfair distribution 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.

(b)(1) If any person is aggrieved or adversely affected by a denial of a request for adjustment under subsection (a) of this section such person may request a review of such denial by the Commission and may obtain judicial review in accordance with this subchapter when such a denial becomes final.

(2) The Commission shall, by rule, establish appropriate procedures, including a hearing

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

<sup>2</sup> So in original. Probably should be “rescision”.

when requested, for review of a denial. Action by the Commission under this section shall be considered final agency action within the meaning of section 704 of title 5 and shall not be subject to further review by the Secretary or any officer or employee of the Department. Litigation involving judicial review of such action shall be the responsibility of the Secretary.

(Pub. L. 95-91, title V, § 504, Aug. 4, 1977, 91 Stat. 590.)

#### REFERENCES IN TEXT

The Federal Energy Administration Act, referred to in subsec. (a), is Pub. L. 93-275, May 7, 1974, 88 Stat. 96, as amended, which is classified generally to chapter 16B (§761 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 761 of Title 15 and Tables.

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a), is Pub. L. 93-159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§751 et seq.) of Title 15, and was omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

The Energy Supply and Environmental Coordination Act of 1974, referred to in subsec. (a), is Pub. L. 93-319, June 22, 1974, 88 Stat. 246, as amended, which is classified principally to chapter 16C (§791 et seq.) of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 791 of Title 15 and Tables.

The Energy Policy and Conservation Act, referred to in subsec. (a), is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, which is classified principally to chapter 77 (§6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

#### § 7195. Report to Congress; contents

Within one year after October 1, 1977, the Secretary shall submit a report to Congress concerning the actions taken to implement section 7191 of this title. The report shall include a discussion of the adequacy of such section from the standpoint of the Department and the public, including a summary of any comments obtained by the Secretary from the public about such section and implementing regulations, and such recommendations as the Secretary deems appropriate concerning the procedures required by such section.

(Pub. L. 95-91, title V, § 505, Aug. 4, 1977, 91 Stat. 591.)

### SUBCHAPTER VI—ADMINISTRATIVE PROVISIONS

#### PART A—CONFLICT OF INTEREST PROVISIONS

#### §§ 7211, 7212. Repealed. Pub. L. 104-106, div. D, title XLIII, § 4304(b)(6), Feb. 10, 1996, 110 Stat. 664

Section 7211, Pub. L. 95-91, title VI, § 601, Aug. 4, 1977, 91 Stat. 591; Pub. L. 103-160, div. C, title XXXI, § 3161(c)(1)(A), (B), Nov. 30, 1993, 107 Stat. 1958, related to definitions of supervisory employees and energy concern.

Section 7212, Pub. L. 95-91, title VI, § 602, Aug. 4, 1977, 91 Stat. 592; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784; Pub. L. 103-160, div. C, title XXXI, § 3161(b), (c)(1)(C), Nov. 30, 1993, 107 Stat. 1958, related to divestiture of energy holdings by supervisory employees.

#### 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.

#### §§ 7213 to 7217. Repealed. Pub. L. 103-160, div. C, title XXXI, § 3161(a), Nov. 30, 1993, 107 Stat. 1957

Section 7213, Pub. L. 95-91, title VI, § 603, Aug. 4, 1977, 91 Stat. 593, related to disclosure of energy assets.

Section 7214, Pub. L. 95-91, title VI, § 604, Aug. 4, 1977, 91 Stat. 594, required, with exceptions for certain information, that supervisory employees of Department file report on prior employment.

Section 7215, Pub. L. 95-91, title VI, § 605, Aug. 4, 1977, 91 Stat. 594, related to postemployment prohibitions and reporting requirements.

Section 7216, Pub. L. 95-91, title VI, § 606, Aug. 4, 1977, 91 Stat. 595, prohibited former supervisory employees from participating in certain Department proceedings.

Section 7217, Pub. L. 95-91, title VI, § 607, Aug. 4, 1977, 91 Stat. 596; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784, related to procedures applicable to reports under former sections 7213, 7214, and 7215 of this title.

#### § 7218. Repealed. Pub. L. 104-106, div. D, title XLIII, § 4304(b)(6), Feb. 10, 1996, 110 Stat. 664

Section, Pub. L. 95-91, title VI, § 603, formerly § 608, Aug. 4, 1977, 91 Stat. 596; renumbered § 603 and amended, Pub. L. 103-160, div. C, title XXXI, § 3161(c)(1)(D), (E), Nov. 30, 1993, 107 Stat. 1958, related to sanctions.

A prior section 603 of Pub. L. 95-91 was classified to section 7213 of this title prior to repeal by Pub. L. 103-160.

#### 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.

### PART B—PERSONNEL PROVISIONS

#### § 7231. Officers and employees

##### (a) Authority of Secretary to appoint and fix compensation

In the performance of his functions the Secretary is authorized to appoint and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out such functions. Except as otherwise provided in this section, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5.

##### (b) Appointment of scientific, engineering, etc., personnel without regard to civil service laws; compensation; termination of authority

(1) Subject to the limitations provided in paragraph (2) and to the extent the Secretary deems such action necessary to the discharge of his functions, he may appoint not more than three hundred eleven of the scientific, engineering, professional, and administrative personnel of the department without regard to the civil service laws, and may fix the compensation of such personnel not in excess of the maximum rate payable for GS-18 of the General Schedule under section 5332 of title 5.

(2) The Secretary's authority under this subsection to appoint an individual to such a posi-