

1975), (2) outside the scope and purpose or not in compliance with the terms and conditions of the Defense Production Act of 1950, or (3) subsequent to the expiration or repeal of the Defense Production Act of 1950.

“(c) Effective on the date of enactment of this Act [Dec. 16, 1975], the immunity conferred by section 708 or 708A of the Defense Production Act of 1950, as amended by this Act, shall not apply to any action taken or authorized to be taken by or under the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.]”

[Section 708A of the Defense Production Act of 1950, referred to in section 4 of Pub. L. 94-152, set out above, which was classified to section 2158a of the former Appendix to this title, was repealed by Pub. L. 102-99, § 4, Aug. 17, 1991, 105 Stat. 487.]

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 1013 of Title 5, Government Organization and Employees.

Executive Documents

DELEGATION OF FUNCTIONS

Authority of President under subsecs. (c)(1) and (d) of this section with respect to responding to the spread of COVID-19 within the United States delegated to Secretary of Health and Human Services and Secretary of Homeland Security, see section 3 of Ex. Ord. No. 13911, Mar. 27, 2020, 85 F.R. 18404, set out as a note under section 4511 of this title.

Functions conferred upon President under this section necessary to effect changes in composition of, or to take other action respecting voluntary agreements and programs relating to, small business production pools approved prior to July 31, 1953, delegated to Administrator of Small Business Administration by Ex. Ord. No. 10493, Oct. 14, 1953, 18 F.R. 6583, set out as a note under section 640 of Title 15, Commerce and Trade.

Functions of President under this chapter relating to production, conservation, use, control, distribution, and allocation of energy, delegated to Secretary of Energy, see section 4 of Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, set out as a note under section 761 of Title 15.

For delegation of authority of President under subsecs. (c) and (d) of this section, see sections 401 and 402 of Ex. Ord. No. 13603, Mar. 16, 2012, 77 F.R. 16656, set out as a note under section 4553 of this title.

§ 4559. Public participation in rulemaking

(a) Exemption from Administrative Procedure Act

Any regulation issued under this chapter shall not be subject to sections 551 through 559 of title 5.

(b) Opportunity for notice and comment

(1) In general

Except as provided in subsection (c), any regulation issued under this chapter shall be published in the Federal Register and oppor-

tunity for public comment shall be provided for not less than 30 days, consistent with the requirements of section 553(b) of title 5.

(2) Waiver for temporary provisions

The requirements of paragraph (1) may be waived, if—

(A) the officer authorized to issue the regulation finds that urgent and compelling circumstances make compliance with such requirements impracticable;

(B) the regulation is issued on a temporary basis; and

(C) the publication of such temporary regulation is accompanied by the finding made under subparagraph (A) (and a brief statement of the reasons for such finding) and an opportunity for public comment is provided for not less than 30 days before any regulation becomes final.

(3) Consideration of public comments

All comments received during the public comment period specified pursuant to paragraph (1) or (2) shall be considered and the publication of the final regulation shall contain written responses to such comments.

(c) Public comment on procurement regulations

Any procurement policy, regulation, procedure, or form (including any amendment or modification of any such policy, regulation, procedure, or form) issued under this chapter shall be subject to section 1707 of title 41.

(Sept. 8, 1950, ch. 932, title VII, § 709, 64 Stat. 819; Pub. L. 102-558, title I, § 136(a), Oct. 28, 1992, 106 Stat. 4216.)

TERMINATION OF SECTION

For termination of section, see section 4564(a) of this title.

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning act Sept. 8, 1950, ch. 932, 64 Stat. 798, known as the Defense Production Act of 1950, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 4501 of this title and Tables.

CODIFICATION

Section was formerly classified to section 2159 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

In subsec. (c), “section 1707 of title 41” substituted for “section 22 of the Office of Federal Procurement Policy Act” on authority of Pub. L. 111-350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

1992—Pub. L. 102-558 amended section generally. Prior to amendment, section read as follows: “The functions exercised under this chapter shall be excluded from the operation of the Administrative Procedure Act (60 Stat. 237) except as to the requirements of section 3 thereof. Any rule, regulation, or order, or amendment thereto, issued under authority of this chapter shall be accompanied by a statement that in the formulation thereof there has been consultation with industry representatives, including trade association representatives, and that consideration has been given to their rec-

ommendations, or that special circumstances have rendered such consultation impracticable or contrary to the interest of the national defense, but no such rule, regulation, or order shall be invalid by reason of any subsequent finding by judicial or other authority that such a statement is inaccurate.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-558, title I, §136(b), Oct. 28, 1992, 106 Stat. 4217, provided that: “Section 709 of the Defense Production Act of 1950 (50 U.S.C. App. 2159) [now 50 U.S.C. 4559], as amended by subsection (a) of this section, shall not apply to any regulation issued in proposed or final form on or before the date of enactment of this Act [Oct. 28, 1992].”

§ 4560. Employment of personnel; appointment policies; nucleus executive reserve; use of confidential information by employees; printing and distribution of reports

(a) **Repealed. June 28, 1955, ch. 189, § 12(c)(1), 69 Stat. 180**

(b) Presidential appointments

(1) The President is further authorized, to the extent he deems it necessary and appropriate in order to carry out the provisions of this chapter and subject to such regulations as he may issue, to employ persons of outstanding experience and ability without compensation;

(2) The President shall be guided in the exercise of the authority provided in this subsection by the following policies:

(i) So far as possible, operations under this chapter shall be carried on by full-time, salaried employees of the Government, and appointments under this authority shall be to advisory or consultative positions only.

(ii) Appointments to positions other than advisory or consultative may be made under this authority only when the requirements of the position are such that the incumbent must personally possess outstanding experience and ability not obtainable on a full-time, salaried basis.

(3) Appointees under this subsection shall, when policy matters are involved, be limited to advising appropriate full-time salaried Government officials who are responsible for making policy decisions.

(4) Appointments under this subsection shall be supported by written certification by the head of the employing department or agency—

(i) that the appointment is necessary and appropriate in order to carry out the provisions of this chapter;

(ii) that the duties of the position to which the appointment is being made require outstanding experience and ability;

(iii) that the appointee has the outstanding experience and ability required by the position; and

(iv) that the department or agency head has been unable to obtain a person with the qualifications necessary for the position on a full-time, salaried basis.

(5) **NOTICE AND FINANCIAL DISCLOSURE REQUIREMENTS.**—

(A) **PUBLIC NOTICE OF APPOINTMENT.**—The head of any department or agency who ap-

points any individual under this subsection shall publish a notice of such appointment in the Federal Register, including the name of the appointee, the employing department or agency, the title of the appointee's position, and the name of the appointee's private employer.

(B) **FINANCIAL DISCLOSURE.**—Any individual appointed under this subsection who is not required to file a financial disclosure report pursuant to section 13103 of title 5, shall file a confidential financial disclosure report pursuant to section 13109 of title 5 with the appointing department or agency.

(6) The Director of the Office of Personnel Management shall carry out a biennial survey of appointments made under this subsection and shall report his or her findings to the President and make such recommendations as he or she may deem proper.

(7) Persons appointed under the authority of this subsection may be allowed reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions for which they were appointed in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5.

(c) Employment of experts and consultants

The President is authorized, to the extent he deems it necessary and appropriate in order to carry out the provisions of this chapter to employ experts and consultants or organizations thereof, as authorized by section 3109 of title 5. Individuals so employed may be compensated at rates not in excess of \$50 per diem and while away from their homes or regular places of business they may be allowed transportation and not to exceed \$15 per diem in lieu of subsistence and other expenses while so employed.

(d) Utilization of other services

The President may utilize the services of Federal, State, and local agencies and may utilize and establish such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed.

(e) Nucleus executive reserve

The President is further authorized to provide for the establishment and training of a nucleus executive reserve for employment in executive positions in Government during periods of national defense emergency, as determined by the President. Members of this executive reserve who are not full-time Government employees may be allowed transportation and per diem in lieu of subsistence, in accordance with title 5 (with respect to individuals serving without pay, while away from their homes or regular places of business), for the purpose of participating in the executive reserve training program.

(f) Use of confidential information for speculation

Whoever, being an officer or employee of the United States or any department or agency thereof (including any Member of the Senate or House of Representatives), receives, by virtue of his office or employment, confidential informa-