

DEPARTMENT OF ENERGY STANDARDIZATION ACT OF 1997

MARCH 11, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce,  
submitted the following

REPORT

[To accompany H.R. 649]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 649) to amend sections of the Department of Energy Organization Act that are obsolete or inconsistent with other statutes and to repeal a related section of the Federal Energy Administration Act of 1974, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of this legislation is to conform public participation procedures of the Department of Energy to the standards required

of other Federal agencies. Since the original passage of the Department of Energy Organization Act and the Federal Energy Administration Act of 1974, the evolution of the Department's missions, the evolution of administrative case law, and the enactment of other government-wide statutes have rendered certain public participation provisions either obsolete, duplicative, or inconsistent with government-wide statutes governing rulemaking and advisory committee management.

#### BACKGROUND AND NEED FOR LEGISLATION

The Administrative Procedure Act (APA), P.L. 89-554, and the Federal Advisory Committee Act (FACA), P.L. 92-463, generally determine the parameters of public involvement in the Federal government's rulemaking and advisory committee processes. The general public is provided notice of proposed rulemakings, a period of time to comment on the proposed rules, and the opportunity for the agency to consider these comments prior to the issuance of a final rule. The public is also afforded the opportunity for involvement, either through actual participation or through attendance at meetings, in the various advisory committees which make recommendations to Federal agencies. This public involvement is a critical aspect of the Federal rulemaking process, providing a strong stream of public input into Federal decision making.

The Department of Energy Organization Act (DOE Act), P.L. 95-91, and the Federal Energy Administration Act of 1974 (FEAA), P.L. 93-275, include provisions which, through the passage of time since their original enactment, have become inconsistent with the APA and FACA. When originally passed, the DOE Act and FEAA included language which incorporated a higher standard of public involvement than was then provided by the APA and FACA. Since that time, however, a succession of court cases has interpreted the requirements of the APA and FACA to be much more stringent than their original application. As a result, the APA and FACA, as interpreted by courts and administrative law judges, require a fairly high standard of public involvement. The requirements of the DOE Act and FEAA have, in effect, been overtaken by developments surrounding the APA and FACA.

This situation has led to a duplication of effort within the Department of Energy (DOE) to comply with the differing standards within these various statutes. In order to rectify this situation, H.R. 649 would eliminate those provisions of the DOE Act and FEAA which conflict with or overlap the requirements of the APA and FACA. With these changes, DOE's rulemaking process and administration of advisory committees would be consistent with that of other Federal agencies.

#### HEARINGS

The Subcommittee on Energy and Power held a hearing on H.R. 649 on February 26, 1997. The Subcommittee received testimony from Mr. Eric Fygi, Deputy General Counsel of the Department of Energy, who testified in support of the legislation.

## COMMITTEE CONSIDERATION

On February 26, 1997, the Subcommittee on Energy and Power met in open markup session and approved H.R. 649 for Full Committee consideration, without amendment, by a voice vote. On March 5, 1997, the Committee on Commerce met in open markup session and ordered H.R. 649 reported to the House, without amendment, by a voice vote.

## ROLLCALL VOTES

Clause 2(1)(2)(B) of rule XI of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. There were no recorded votes taken in connection with ordering H.R. 649 reported. A motion by Mr. Bliley to order H.R. 649 reported to the House, without amendment, was agreed to by a voice vote, a quorum being present.

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

## COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee finds that H.R. 649, the Department of Energy Standardization Act of 1997, would result in no new or increased budget authority or tax expenditures or revenues.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
*Washington, D.C., March 6, 1997.*

Hon. TOM BLILEY,  
*Chairman, Committee on Commerce,  
 House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 649, the Department of Energy Standardization Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathleen Gramp.

Sincerely,

JAMES L. BLUM  
 (For June E. O'Neill, Director.)

Enclosure.

*H.R. 649—Department of Energy Standardization Act of 1997*

This bill would change the statutory guidelines for various administrative activities at the Department of Energy (DOE). Assuming that appropriations are adjusted to be consistent with the bill, CBO estimates that enacting H.R. 649 would result in discretionary savings of about \$500,000 a year. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 649 contains no intergovernmental or private-sector mandates and would not impose any costs on state, local, or tribal governments.

H.R. 649 would eliminate certain statutory requirements applicable to DOE's procurement actions and advisory committees. DOE currently must comply with two sets of standards: those that apply government-wide and some that apply only to the department. For example, before DOE procurement rules can be finalized, the department has to issue a proposed rule and provide for public notice and comment. In contrast, other agencies are authorized to issue procurement rules without going through that process. Likewise, all meetings of DOE's advisory committees must be open to the public unless they involve documented national security issues or research and development. Based on information provided by DOE, CBO estimates that repealing these agency-specific requirements would reduce the workload associated with procurement actions, saving the department about \$500,000 a year beginning in fiscal year 1998. CBO estimates that other provisions of the bill would have no significant budgetary impact.

The CBO staff contact for this estimate is Kathleen Gramp. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

SECTION 1

Section 1 of the bill provides the short title, the Department of Energy Standardization Act of 1997.

SECTION 2

Section 2 of the bill consists of two subsections. The first subsection strikes redundant and conflicting sections of the Department of Energy Organization Act related to the promulgation of Department of Energy regulations. After enactment of this subsection, DOE rulemaking with respect to public property, contracts, loans, and grants will be conducted under the same legislative authorities as such rulemaking is conducted generally, i.e., under the Office of Federal Procurement Policy Act (41 U.S.C. 418b). Requirements for other proposed and final DOE rules will be governed by the applicable provisions of the Administrative Procedure Act (5 U.S.C. 553(c) and (d)).

The second subsection strikes redundant and conflicting sections of the Department of Energy Organization Act and the Federal Energy Administration Act of 1974 relating to advisory committee management. After enactment of this subsection, DOE advisory committees will be governed completely by the Federal Advisory Committee Act (5 U.S.C. Appendix).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

DEPARTMENT OF ENERGY ORGANIZATION ACT

\* \* \* \* \*

TITLE V—ADMINISTRATIVE PROCEDURES AND JUDICIAL  
REVIEW

## PROCEDURES

SEC. 501. (a) \* \* \*

[(b)(1) In addition to the requirements of subsection (a) of this section, notice of any proposed rule, regulation, or order described in subsection (a) 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) which are promulgated by officers of a State or local government agency pursuant to a delegation under this Act 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 title, the exception from the requirements of section 553 of title 5, United States Code, provided by subsection (a)(2) of such section with respect to public property, loans, grants, or contracts shall not be available.]

[(c)] (b)(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, United States Code. 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).

[(d) 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 re-

sponding to the major comments, criticisms, and alternatives offered during the comment period.】

【(e)】 (c) The requirements of 【subsections (b), (c), and (d)】 *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.

【(f)】 (d)(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, township, 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 purpose within such State 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.

【(g)】 (e) Where authorized by any law vested, transferred, or delegated pursuant to this Act, 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.

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## TITLE VI—ADMINISTRATIVE PROVISIONS

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### PART B—PERSONNEL PROVISIONS

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## ADVISORY COMMITTEES

SEC. 624. [(a)] The Secretary is authorized to establish in accordance with the Federal Advisory Committee Act such advisory committees as he may deem appropriate to assist in the performance of his functions. Members of such advisory committees, other than full-time employees of the Federal Government, while attending meetings of such committees or while otherwise serving at the request of the Secretary while serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government serving without pay.

[(b)] Section 17 of the Federal Energy Administration Act of 1974 shall be applicable to advisory committees chartered by the Secretary, or transferred to the Secretary or the Department under this Act, except that where an advisory committee advises the Secretary on matters pertaining to research and development, the Secretary may determine that such meeting shall be closed because it involves research and development matters and comes within the exemption of section 552b(c)(4) of title 5, United States Code.]

\* \* \* \* \*

**SECTION 17 OF THE FEDERAL ENERGY  
ADMINISTRATION ACT OF 1974**

[ADVISORY COMMITTEES

[SEC. 17. (a) Whenever the Administrator shall establish or utilize any board, task force, commission, committee, or similar group, not composed entirely of full-time Government employees, to advise with respect to, or to formulate or carry out, any agreement or plan of action affecting any industry or segment thereof, the Administrator shall endeavor to insure that each such group is reasonably representative of the various points of view and functions of the industry and users affected, including those of residential, commercial, and industrial consumers, and shall include, where appropriate, representation from both State and local governments, and from representatives of State regulatory utility commissions, selected after consultation with the respective national associations.

[(b)] Each meeting of such board, task force, commission, committee, or similar group, shall be open to the public, and interested persons shall be permitted to attend, appear before, and file statements with, such group, except that the Administrator may determine that such meeting shall be closed in the interest of national security. Such determination shall be in writing, shall contain a detailed explanation of reasons in justification of the determination, and shall be made available to the public.

[(c)] All records, reports, transcripts, memoranda, and other documents, which were prepared for or by such group, shall be available for public inspection and copying at a single location in the offices of the Administration.

[(d)] Advisory committees established or utilized pursuant to this Act shall be governed in full by the provisions of the Federal Advi-

sory Committee Act (Public Law 92-463, 86 Stat. 770), except as inconsistent with this section.】

