

(c)(1)(B) of this section and who is serving under an excepted appointment in a position which is not designated a career reserved position in the Senior Executive Service, but is—

“(1) a position in Schedule C of subpart C of part 213 of title 5, Code of Federal Regulations;

“(2) a position filled by noncareer executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations; or

“(3) a position in the Executive Schedule under subchapter II of chapter 53 of title 5, United States Code [section 5311 et seq. of this title], other than a career Executive Schedule position;

shall be appointed as a noncareer appointee to a Senior Executive Service position.

“(f) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section, who is serving in a position described in paragraph (1), (2), or (3) of subsection (e) of this section, and whose position is designated as a career reserved position under subsection (b) of this section shall be appointed as a noncareer appointee to an appropriate general position in the Senior Executive Service or shall be separated.

“(g) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section, who is serving in a position described in paragraph (1), (2), or (3) of subsection (e) of this section, and whose position is designated as a Senior Executive Service position and who has reinstatement eligibility to a position in the competitive service, may, on request to the Office, be appointed as a career appointee to a Senior Executive Service position. The name of, and basis for reinstatement eligibility for, each employee appointed as a career appointee under this subsection shall be published in the Federal Register.

“(h) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and who is serving under a limited executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations, shall—

“(1) be appointed as a limited term appointee to a Senior Executive Service position if the position then held by such employee will terminate within 3 years of the date of such appointment;

“(2) be appointed as a noncareer appointee to a Senior Executive Service position if the position then held by such employee is designated as a general position; or

“(3) be appointed as a noncareer appointee to a general position if the position then held by such employee is designated as a career reserved position.

“(i) The rate of basic pay for any employee appointed to a Senior Executive Service position under this section shall be greater than or equal to the rate of basic pay payable for the position held by such employee at the time of such appointment.

“(j) Any employee who is aggrieved by any action by any agency under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of title 5, United States Code (as added by this title). An agency shall take any corrective action which the Board orders in its decision on an appeal under this subsection.

“(k) The Office shall prescribe regulations to carry out the purpose of this section.”

Section 415(a)(2) of Pub. L. 95-454 provided that section 413 is effective Oct. 13, 1978.

### § 3134. Limitations on noncareer and limited appointments

(a) During each calendar year, each agency shall—

(1) examine its needs for employment of noncareer appointees for the fiscal year beginning in the following year; and

(2) submit to the Office of Personnel Management, in accordance with regulations pre-

scribed by the Office, a written request for authority to employ a specific number of noncareer appointees for such fiscal year.

(b) The number of noncareer appointees in each agency shall be determined annually by the Office on the basis of demonstrated need of the agency. The total number of noncareer appointees in all agencies may not exceed 10 percent of the total number of Senior Executive Service positions in all agencies.

(c) Subject to the 10 percent limitation of subsection (b) of this section, the Office may adjust the number of noncareer positions authorized for any agency under subsection (b) of this section if emergency needs arise that were not anticipated when the original authorizations were made.

(d) The number of Senior Executive Service positions in any agency which are filled by noncareer appointees may not at any time exceed the greater of—

(1) 25 percent of the total number of Senior Executive Service positions in the agency; or

(2) the number of positions in the agency which were filled on the date of the enactment of the Civil Service Reform Act of 1978 by—

(A) noncareer executive assignments under subpart F of part 305 of title 5, Code of Federal Regulations, as in effect on such date, or

(B) appointments to level IV or V of the Executive Schedule which were not required on such date to be made by and with the advice and consent of the Senate.

This subsection shall not apply in the case of any agency having fewer than 4 Senior Executive Service positions.

(e) The total number of limited emergency appointees and limited term appointees in all agencies may not exceed 5 percent of the total number of Senior Executive Service positions in all agencies.

(Added Pub. L. 95-454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1159.)

#### REFERENCES IN TEXT

The date of enactment of the Civil Service Reform Act of 1978, referred to in subsec. (d)(2), is the date of enactment of Pub. L. 95-454, which was approved Oct. 13, 1978.

Level IV or V of the Executive Schedule, referred to in subsec. (d)(2)(B), are set out in sections 5315 and 5316 of this title.

### [§ 3135. Repealed. Pub. L. 104-66, title II, § 2181(a)(1), Dec. 21, 1995, 109 Stat. 732]

Section, added Pub. L. 95-454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1159; amended Pub. L. 98-168, title III, § 301(b), Nov. 29, 1983, 97 Stat. 1112; Pub. L. 98-615, title III, § 306(a), Nov. 8, 1984, 98 Stat. 3219, directed Office of Personnel Management to submit reports to Congress relating to Senior Executive Service.

### § 3136. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

(Added Pub. L. 95-454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1160.)

SUBCHAPTER III—THE FEDERAL BUREAU OF INVESTIGATION AND DRUG ENFORCEMENT ADMINISTRATION SENIOR EXECUTIVE SERVICE

**§ 3151. The Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service**

(a) The Attorney General may by regulation establish a personnel system for senior personnel within the Federal Bureau of Investigation and the Drug Enforcement Administration to be known as the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service (hereinafter in this subchapter referred to as the “FBI-DEA Senior Executive Service”). The regulations establishing the FBI-DEA Senior Executive Service shall—

(1) meet the requirements set forth in section 3131 for the Senior Executive Service;

(2) provide that positions in the FBI-DEA Senior Executive Service meet requirements that are consistent with the provisions of section 3132(a)(2);

(3) provide rates of pay for the FBI-DEA Senior Executive Service that are not in excess of the maximum rate or less than the minimum rate of basic pay established for the Senior Executive Service under section 5382 and that are adjusted at the same time and to the same extent as rates of basic pay for the Senior Executive Service are adjusted;

(4) provide a performance appraisal system for the FBI-DEA Senior Executive Service that conforms to the provisions of subchapter II of chapter 43;

(5) provide for—

(A) removal consistent with section 3592;

(B) reduction-in-force procedures consistent with section 3595(a), together with measures to ensure that a member of the FBI-DEA Senior Executive Service may not be removed due to a reduction in force unless reasonable efforts to place such member in another such position are first taken;

(C) procedures in accordance with which any furlough affecting the FBI-DEA Senior Executive Service shall be carried out;

(D) removal or suspension consistent with subsections (a), (b), and (c) of section 7543 (except that any hearing or appeal to which a member of the FBI-DEA Senior Executive Service is entitled shall be held or decided pursuant to procedures established by regulations of the Attorney General); and

(E) recertification consistent with section 3393a;<sup>1</sup>

(6) permit the payment of performance awards to members of the FBI-DEA Senior Executive Service consistent with the provisions applicable to performance awards under section 5384; and

(7) provide that members of the FBI-DEA Senior Executive Service may be granted sabbatical leaves consistent with the provisions of section 3396(c).

(b) Except as provided in subsection (a), the Attorney General may—

(1) make applicable to the FBI-DEA Senior Executive Service any of the provisions of this title applicable to applicants for or members of the Senior Executive Service; and

(2) appoint, promote, and assign individuals to positions established within the FBI-DEA Senior Executive Service without regard to the provisions of this title governing appointments and other personnel actions in the competitive service.

(c) The President, based on the recommendations of the Attorney General, may award ranks to members of the FBI-DEA Senior Executive Service in a manner consistent with the provisions of section 4507.

(d) Notwithstanding any other provision of this section, the Attorney General may detail or assign any member of the FBI-DEA Senior Executive Service to serve in a position outside the Federal Bureau of Investigation or the Drug Enforcement Administration (as the case may be) in which the member's expertise and experience may be of benefit to the Federal Bureau of Investigation or the Drug Enforcement Administration (as the case may be) or another Government agency. Any such member shall not by reason of such detail or assignment lose any entitlement or status associated with membership in the FBI-DEA Senior Executive Service.

(e) The Attorney General shall each year submit to Congress, at the time the budget is submitted by the President to the Congress for the next fiscal year, a report on the FBI-DEA Senior Executive Service. The report shall include, in the aggregate and by agency—

(1) the number of FBI-DEA Senior Executive Service positions established as of the end of the preceding fiscal year;

(2) the number of individuals being paid at each rate of basic pay for the FBI-DEA Senior Executive Service as of the end of the preceding fiscal year;

(3) the number, distribution, and amount of awards paid to members of the FBI-DEA Senior Executive Service during the preceding fiscal year; and

(4) the number of individuals removed from the FBI-DEA Senior Executive Service during the preceding fiscal year—

(A) for less than fully successful performance;

(B) due to a reduction in force; or

(C) for any other reason.

(Added Pub. L. 100-325, §1(a), May 30, 1988, 102 Stat. 579; amended Pub. L. 101-194, title V, §506(b)(1), Nov. 30, 1989, 103 Stat. 1758; Pub. L. 109-108, title I, §111, Nov. 22, 2005, 119 Stat. 2305.)

REFERENCES IN TEXT

Section 3393a, referred to in subsec. (a)(5)(E), was repealed by Pub. L. 107-296, title XIII, §1321(a)(1)(B), Nov. 25, 2002, 116 Stat. 2296.

Provisions of this title governing appointments and other personnel actions in the competitive service, referred to in subsec. (b)(2), are classified generally to section 3301 et seq. of this title.

AMENDMENTS

2005—Subsec. (b). Pub. L. 109-108 struck out par. (1) designation before “Except as provided”, redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and struck out former par. (2) which read as follows:

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