ment, in consultation with Chief[1] Human Capital Officers Council, shall—

(A) submit a report addressing the telework programs of each executive agency to—

(i) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(ii) the Committee on Oversight and Government Reform of the House of Representatives; and

(B) transmit a copy of the report to the Comptroller General and the Office of Management and Budget.

(2) CONTENTS.—Each report submitted under this subsection shall include—

(A) the degree of participation by employees of each executive agency in teleworking during the period covered by the report (and for each executive agency whose head is referred to under section 5312, the degree of participation in each bureau, division, or other major administrative unit of that agency), including—

(i) the total number of employees in the agency;

(ii) the number and percent of employees in the agency who are eligible to telework; and

(iii) the number and percent of eligible employees in the agency who are teleworking—

(I) 3 or more days per pay period;

(II) 1 or 2 days per pay period;

(III) once per month; and

(IV) on an occasional, episodic, or short-term basis;

(B) the method for gathering telework data in each agency;

(C) if the total number of employees teleworking is 10 percent higher or lower than the previous year in any agency, the reasons for the positive or negative variation;

(D) the agency goal for increasing participation to the extent practicable or necessary for the next reporting period, as indicated by the percent of eligible employees teleworking in each frequency category described under subparagraph (A)(iii);

(E) an explanation of whether or not the agency met the goals for the last reporting period and, if not, what actions are being taken to identify and eliminate barriers to maximizing telework opportunities for the next reporting period;

(F) an assessment of the progress each agency has made in meeting agency participation rate goals during the reporting period, and other agency goals relating to telework, such as the impact of telework on—

(i) emergency readiness;

(ii) energy use;

(iii) recruitment and retention;

(iv) performance;

(v) productivity; and

(vi) employee attitudes and opinions regarding telework; and

(G) the best practices in agency telework programs.

(c) COMPTROLLER GENERAL REPORTS.—

(1) REPORT ON GOVERNMENT ACCOUNTABILITY OFFICE TELEWORK PROGRAM.—

(A) IN GENERAL.—Not later than 18 months after the date of enactment of this chapter and on an annual basis thereafter, the Comptroller General shall submit a report addressing the telework program of the Government Accountability Office to—

(i) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(ii) the Committee on Oversight and Government Reform of the House of Representatives.

(B) CONTENTS.—Each report submitted by the Comptroller General shall include the same information as required under subsection (b) applicable to the Government Accountability Office.

(2) REPORT TO CONGRESS ON OFFICE OF PERSONNEL MANAGEMENT REPORT.—Not later than 6 months after the submission of the first report to Congress required under subsection (b), the Comptroller General shall review that report required under subsection (b) and submit a report to Congress on the progress each executive agency has made towards the goals established under section 6504(b)(2).

(d) CHIEF HUMAN CAPITAL OFFICER REPORTS.—

(1) IN GENERAL.—Each year the Chief Human Capital Officer of each executive agency, in consultation with the Telework Managing Officer of that agency, shall submit a report to the Chair and Vice Chair of the Chief Human Capital Officers Council on agency management efforts to promote telework.

(2) REVIEW AND INCLUSION OF RELEVANT INFORMATION.—The Chair and Vice Chair of the Chief Human Capital Officers Council shall—

(A) review the reports submitted under paragraph (1);

(B) include relevant information from the submitted reports in the annual report to Congress required under subsection (b); and

(C) use that relevant information for other purposes related to the strategic management of human capital.

(Added Pub. L. 111–292, §2(a), Dec. 9, 2010, 124 Stat. 3169.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in subsecs. (b)(1) and (c)(1)(A), is the date of enactment of Pub. L. 111–292, which was approved Dec. 9, 2010.

Subpart F—Labor-Management and Employee Relations

CHAPTER 71—LABOR-MANAGEMENT RELATIONS

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7102. Employees' rights.
7103. Definitions; application.

[1] So in original. Probably should be preceded by ''the''.

Sec.
7104. Federal Labor Relations Authority.
7105. Powers and duties of the Authority.
7106. Management rights.

SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

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AMENDMENTS

1978—Pub. L. 95–454, title VII, §§701, 703(a)(2), Oct. 13, 1978, 92 Stat. 1191, 1217, in heading for Subpart F inserted ''Labor-Management and'' before ''Employee'', in heading for chapter 71 substituted ''LABOR-MANAGEMENT RELATIONS'' for ''POLICIES'', in heading for subchapter I substituted ''GENERAL PROVISIONS'' for ''EMPLOYEE ORGANIZATIONS'', in item 7101 substituted ''Findings and purpose'' for ''Right to organize; postal employees'', in item 7102 substituted ''Employees' rights'' for ''Right to petition Congress; employees'', added items 7103 to 7106, and added subchapter II and items 7111 to 7120, subchapter III and items 7121 to 7123, and subchapter IV and items 7131 to 7135. Former subchapter II heading ''ANTIDISCRIMINATION IN EMPLOYMENT'' and items 7151 to 7154, ''Policy'', ''Marital status'', ''Physical handicap'', and ''Other prohibitions'', respectively, were transferred to subchapter I of chapter 72 and renumbered and amended.

SUBCHAPTER I—GENERAL PROVISIONS

§ 7101. Findings and purpose

(a) The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

(Added Pub. L. 95–454, title VII, §701, Oct. 13, 1978, 92 Stat. 1192.)

PRIOR PROVISIONS

A prior section 7101, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 523; Pub. L. 91–375, §6(c)(19), Aug. 12, 1970, 84 Stat. 776, related to right of postal employees to organize, prior to the general amendment of this chapter by Pub. L. 94–454.

EFFECTIVE DATE

Chapter effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SHORT TITLE

This chapter is popularly known as the ''Federal Service Labor-Management Relations Act''.

EMPLOYEE SURVEYS

Pub. L. 108–136, div. A, title XI, §1128, Nov. 24, 2003, 117 Stat. 1641, provided that:

''(a) IN GENERAL.—Each agency shall conduct an annual survey of its employees (including survey questions unique to the agency and questions prescribed under subsection (b)) to assess—

''(1) leadership and management practices that contribute to agency performance; and

''(2) employee satisfaction with—

''(A) leadership policies and practices;

''(B) work environment;

''(C) rewards and recognition for professional accomplishment and personal contributions to achieving organizational mission;

''(D) opportunity for professional development and growth; and

''(E) opportunity to contribute to achieving organizational mission.

''(b) REGULATIONS.—The Office of Personnel Management shall issue regulations prescribing survey questions that should appear on all agency surveys under subsection (a) in order to allow a comparison across agencies.

''(c) AVAILABILITY OF RESULTS.—The results of the agency surveys under subsection (a) shall be made available to the public and posted on the website of the agency involved, unless the head of such agency determines that doing so would jeopardize or negatively impact national security.

''(d) AGENCY DEFINED.—For purposes of this section, the term 'agency' means an Executive agency (as defined by section 105 of title 5, United States Code).''

EXECUTIVE ORDER NO. 10988

Ex. Ord. No. 10988, Jan. 17, 1962, 27 F.R. 551, which related to employee-management cooperation in the Federal service, was revoked by Ex. Ord. No. 11491, Oct. 29, 1969, 34 F.R. 17605, set out below.

EX. ORD. NO. 11491. LABOR-MANAGEMENT RELATIONS IN THE FEDERAL SERVICE

Ex. Ord. No. 11491, Oct. 29, 1969, 34 F.R. 17605, as amended by Ex. Ord. No. 11616, Aug. 26, 1971, 36 F.R. 17319; Ex. Ord. No. 11636, Dec. 17, 1971, 36 F.R. 24901; Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743; Ex. Ord. No. 11901, Jan. 30, 1976, 41 F.R. 4807; Ex. Ord. No. 12027, Dec. 5, 1977, 42 F.R. 61851; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

WHEREAS the public interest requires high standards of employee performance and the continual development and implementation of modern and progressive work practices to facilitate improved employee performance and efficiency; and

WHEREAS the well-being of employees and efficient administration of the Government are benefited by providing employees an opportunity to participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment; and

WHEREAS the participation of employees should be improved through the maintenance of constructive and cooperative relationships between labor organizations and management officials; and

WHEREAS subject to law and the paramount requirements of public service, effective labor-management relations within the Federal service require a clear statement of the respective rights and obligations of labor organizations and agency management:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including sections 3301 and 7301 of title 5 of the United States Code and as President of the United States, I hereby direct that the following policies shall govern officers and agencies of the executive branch of the Government in all dealings with Federal employees and organizations representing such employees.

GENERAL PROVISIONS

SECTION 1. *Policy*. (a) Each employee of the executive branch of the Federal Government has the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right. Except as otherwise expressly provided in this Order, the right to assist a labor organization extends to participation in the management of the organization and acting for the organization in the capacity of an organization representative, including presentation of its views to officials of the executive branch, the Congress, or other appropriate authority. The head of each agency shall take the action required to assure that employees in the agency are apprised of their rights under this section and that no interference, restraint, coercion, or discrimination is practiced within his agency to encourage or discourage membership in a labor organization.

(b) Paragraph (a) of this section does not authorize participation in the management of a labor organization or acting as a representative of such an organization by a supervisor, except as provided in section 24 of this Order, or by an employee when the participation or activity would result in a conflict or apparent conflict of interest or otherwise be incompatible with law or with the official duties of the employee.

SEC. 2. *Definitions*. When used in this Order, the term—

(a) ''Agency'' means an executive department, a Government corporation, and an independent establishment as defined in section 104 of title 5, United States Code, except the General Accounting Office [now Government Accountability Office];

(b) ''Employee'' means an employee of an agency and an employee of a nonappropriated fund instrumentality of the United States but does not include, for the purpose of exclusive recognition or national consultation rights, a supervisor, except as provided in section 24 of this Order;

(c) ''Supervisor'' means an employee having authority, in the interest of an agency, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(d) [Revoked by Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743.]

(e) ''Labor organization'' means a lawful organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with agencies concerning grievances, personnel policies and practices, or other matters affecting the working conditions of their employees; but does not include an organization which—

(1) consists of management officials or supervisors, except as provided in section 24 of this Order;

(2) assists or participates in a strike against the Government of the United States or any agency thereof, or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(3) advocates the overthrow of the constitutional form of government in the United States; or

(4) discriminates with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin;

(f) ''Agency management'' means the agency head and all management officials, supervisors, and other representatives of management having authority to act for the agency on any matters relating to the implementation of the agency labor-management relations program established under this Order;

(g) ''Authority'' means the Federal Labor Relations Authority;

(h) ''Panel'' means the Federal Service Impasses Panel;

(i) ''Assistant Secretary'' means the Assistant Secretary of Labor for Labor Management Relations; and

(j) ''General Counsel'' means the General Counsel of the Authority.

SEC. 3. *Application*. (a) This Order applies to all employees and agencies in the executive branch, except as provided in paragraphs (b), (c) and (d) of this section.

(b) This Order (except section 22) does not apply to—

(1) the Federal Bureau of Investigation;

(2) the Central Intelligence Agency;

(3) any other agency, or office, bureau, or entity within an agency, which has as a primary function intelligence, investigative, or security work, when the head of the agency determines, in his sole judgment, that the Order cannot be applied in a manner consistent with national security requirements and considerations; or

(4) any office, bureau or entity, within an agency which has as a primary function investigation or audit of the conduct or work of officials or employees of the agency for the purpose of ensuring honesty and integrity in the discharge of their official duties, when the head of the agency determines, in his sole judgment, that the Order cannot be applied in a manner consistent with the internal security of the agency.

(5) The Foreign Service of the United States: Department of State, United States Information Agency and Agency for International Development and its successor agency or agencies.

(6) The Tennessee Valley Authority; or

(7) Personnel of the Federal Labor Relations Authority (including the Office of the General Counsel and the Federal Service Impasses Panel).

(c) The head of an agency may, in his sole judgment, suspend any provision of this Order (except section 22) with respect to any agency installation or activity located outside the United States, when he determines that this is necessary in the national interest, subject to the conditions he prescribes.

(d) Employees engaged in administering a labor-management relations law or this Order who are otherwise authorized by this Order to be represented by a labor organization shall not be represented by a labor organi-

zation which also represents other groups of employees under the law or this Order, or which is affiliated directly or indirectly with an organization which represents such a group of employees.

ADMINISTRATION

SEC. 4. *Powers and Duties of the Federal Labor Relations Authority*.

(a) [Revoked].

(b) The Authority shall administer and interpret this Order, decide major policy issues, and prescribe regulations.

(c) The Authority shall, subject to its regulations:

(1) decide questions as to the appropriate unit for the purpose of exclusive recognition and related issues submitted for its considerations;

(2) supervise elections to determine whether a labor organization is the choice of a majority of the employees in an appropriate unit as their exclusive representative, and certify the results;

(3) decide questions as to the eligibility of labor organizations for national consultation rights;

(4) decide unfair labor practice complaints; and

(5) decide questions as to whether a grievance is subject to a negotiated grievance procedure or subject to arbitration under an agreement as provided in Section 13(d) of this Order.

(d) The Authority may consider, subject to its regulations:

(1) appeals on negotiability issues as provided in Section 11(c) of this Order;

(2) exceptions to arbitration awards;

(3) appeals from decisions of the Assistant Secretary of Labor for Labor-Management Relations issued pursuant to Section 6(b) of this Order; and

(4) other matters it deems appropriate to assure the effectuation of the purposes of this Order.

(e) In any matters arising under subsection (c) and (d)(3) of this Section, the Authority may require an agency or a labor organization to cease and desist from violations of this Order and require it to take such affirmative action as the Authority considers appropriate to effectuate the policies of this Order.

(f) In performing the duties imposed on it by this Section, the Authority may request and use the services and assistance of employees of other agencies in accordance with Section 1 of the Act of March 4, 1915 (38 Stat. 1084, as amended; 31 U.S.C. 686) [31 U.S.C. 1535].

SEC. 5. *Powers and Duties of the Federal Service Impasses Panel*. (a) There is hereby established the Federal Service Impasses Panel as a distinct organizational entity within the Authority. The Panel consists of at least three members appointed by the President, one of whom he designates as chairman. The Authority shall provide the services and staff assistance needed by the Panel.

(b) The Panel may consider negotiation impasses as provided in section 17 of this Order and may take any action it considers necessary to settle an impasse.

(c) The Panel shall prescribe regulations needed to administer its function under this Order.

SEC. 6. *Powers and Duties of the Office of the General Counsel and the Assistant Secretary of Labor for Labor-Management Relations*.

(a) The General Counsel is authorized, upon direction by the Authority, to:

(1) investigate complaints of violations of Section 19 of this Order;

(2) make final decisions as to whether to issue unfair labor practice complaints and prosecute such complaints before the Authority;

(3) direct and supervise all employees in the Office of General Counsel, including employees of the General Counsel in the regional office of the Authority;

(4) perform such other duties as the Authority may prescribe; and

(5) prescribe regulations needed to administer his functions under this Order.

(b) The Assistant Secretary shall:

(1) decide alleged violations of the standards of conduct for labor organizations, established in Section 18 of this Order; and

(2) prescribe regulations needed to administer his functions under this Order.

(c) In any matter arising under paragraph (b) of this Section, the Assistant Secretary may require a labor organization to cease and desist from violations of this Order and require it to take such affirmative action as he considers appropriate to effectuate the policies of this Order.

(d) In performing the duties imposed on them by this Section, the General Counsel and the Assistant Secretary may request and use the services and assistance of employees of other agencies in accordance with Section 1 of the Act of March 4, 1915 (38 Stat. 1084, as amended; 31 U.S.C. 686) [31 U.S.C. 1535].

RECOGNITION

SEC. 7. *Recognition in general*. (a) An agency shall accord exclusive recognition or national consultation rights at the request of a labor organization which meets the requirements for the recognition or consultation rights under this Order.

(b) A labor organization seeking recognition shall submit to the agency a roster of its officers and representatives, a copy of its constitution and by-laws, and a statement of its objectives.

(c) When recognition of a labor organization has been accorded, the recognition continues as long as the organization continues to meet the requirements of this Order applicable to that recognition, except that this section does not require an election to determine whether an organization should become, or continue to be recognized as, exclusive representative of the employees in any unit or subdivision thereof within 12 months after a prior valid election with respect to such unit.

(d) Recognition of a labor organization does not—

(1) preclude an employee, regardless of whether he is in a unit of exclusive recognition, from exercising grievance or appellate rights established by law or regulation, or from choosing his own representative in a grievance or appellate action, except when the grievance is covered under a negotiated procedure as provided in section 13;

(2) preclude or restrict consultations and dealings between an agency and a veterans organization with respect to matters of particular interest to employees with veterans preference; or

(3) preclude an agency from consulting or dealing with a religious, social, fraternal, professional or other lawful association, not qualified as a labor organization, with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members. Consultations and dealings under subparagraph (3) of this paragraph shall be so limited that they do not assume the character of formal consultation on matters of general employee-management policy covering employees in that unit or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees.

(e) [Revoked by Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743.]

(f) Informal recognition or formal recognition shall not be accorded.

SEC. 8. [Revoked by Ex. Ord. No. 11616, Aug. 26, 1971, 36 F.R. 17319.]

SEC. 9. *National consultation rights*. (a) An agency shall accord national consultation rights to a labor organization which qualifies under criteria established by the Federal Labor Relations Authority as the representative of a substantial number of employees of the agency. National consultation rights shall not be accorded for any unit where a labor organization already holds exclusive recognition at the national level for that unit. The granting of national consultation rights does not preclude an agency from appropriate dealings at the national level with other organizations on matters affecting their members. An agency shall terminate national consultation rights when the labor organization ceases to qualify under the established criteria.

(b) When a labor organization has been accorded national consultation rights, the agency, through appropriate officials, shall notify representatives of the organization of proposed substantive changes in personnel policies that affect employees it represents and provide an opportunity for the organization to comment on the proposed changes. The labor organization may suggest changes in the agency's personnel policies and have its views carefully considered. It may consult in person at reasonable times, on request, with appropriate officials on personnel policy matters, and at all times present its views thereon in writing. An agency is not required to consult with a labor organization on any matter on which it would not be required to meet and confer if the organization were entitled to exclusive recognition.

(c) Questions as to the eligibility of labor organizations for national consultation rights may be referred to the Authority for decision.

SEC. 10. *Exclusive recognition.* (a) An agency shall accord exclusive recognition to a labor organization when the organization has been selected, in a secret ballot election, by a majority of the employees in an appropriate unit as their representative; provided that this section shall not preclude an agency from according exclusive recognition to a labor organization, without an election, where the appropriate unit is established through the consolidation of existing exclusively recognized units represented by that organization.

(b) A unit may be established on a plant or installation, craft, functional, or other basis which will ensure a clear and identifiable community of interest among the employees concerned and will promote effective dealings and efficiency of agency operations. A unit shall not be established solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be established if it includes—

(1) any management official or supervisor, except as provided in section 24;

(2) an employee engaged in Federal personnel work in other than a purely clerical capacity; or

(3) [Revoked by Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743.]

(4) both professional and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit. Questions as to the appropriate unit and related issues may be referred to the Authority for decision.

(c) [Revoked by Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743.]

(d) All elections shall be conducted under the supervision of the Authority, or persons designated by it, and shall be by secret ballot. Each employee eligible to vote shall be provided the opportunity to choose the labor organization he wishes to represent him, from among those on the ballot, or ''no union'', except as provided in subparagraph (4) of this paragraph. Elections may be held to determine whether—

(1) a labor organization should be recognized as the exclusive representative of employees in a unit;

(2) a labor organization should replace another labor organization as the exclusive representative;

(3) a labor organization should cease to be the exclusive representative; or

(4) a labor organization should be recognized as the exclusive representative of employees in a unit composed of employees in units currently represented by that labor organization or continue to be recognized in the existing separate units.

(e) When a labor organization has been accorded exclusive recognition, it is the exclusive representative of employees in the unit and is entitled to act for and to negotiate agreements covering all employees in the unit. It is responsible for representing the interests of all employees in the unit without discrimination and without regard to labor organization membership. The labor organization shall be given the opportunity to be represented at formal discussions between management and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit.

AGREEMENTS

SEC. 11. *Negotiation of agreements.* (a) An agency and a labor organization that has been accorded exclusive recognition, through appropriate representatives, shall meet at reasonable times and confer in good faith with respect to personnel policies and practices and matters affecting working conditions, so far as may be appropriate under applicable laws and regulations, including policies set forth in the Federal Personnel Manual; published agency policies and regulations for which a compelling need exists under criteria established by the Federal Labor Relations Authority and which are issued at the agency headquarters level or at the level of a primary national subdivision; a national or other controlling agreement at a higher level in the agency; and this order. They may negotiate an agreement, or any question arising thereunder; determine appropriate techniques, consistent with section 17 of this order, to assist in such negotiation; and execute a written agreement or memorandum of understanding.

(b) In prescribing regulations relating to personnel policies and practices and working conditions, an agency shall have due regard for the obligation imposed by paragraph (a) of this section. However, the obligation to meet and confer does not include matters with respect to the mission of an agency; its budget; its organization; the number of employees; and the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty; the technology of performing its work; or its internal security practices. This does not preclude the parties from negotiating agreements providing appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change.

(c) If, in connection with negotiations, an issue develops as to whether a proposal is contrary to law, regulation, controlling agreement, or this order and therefore not negotiable, it shall be resolved as follows:

(1) An issue which involves interpretation of a controlling agreement at a higher agency level is resolved under the procedures of the controlling agreement, or, if none, under agency regulations;

(2) An issue other than as described in subparagraph (1) of this paragraph which arises at a local level may be referred by either party to the head of the agency for determination;

(3) An agency head's determination as to the interpretation of the agency's regulations with respect to a proposal is final;

(4) A labor organization may appeal to the Authority for a decision when—

(i) it disagrees with an agency head's determination that a proposal would violate applicable law, regulation of appropriate authority outside the agency, or this order, or

(ii) it believes that an agency's regulations, as interpreted by the agency head, violate applicable law, regulation of appropriate authority outside the agency, or this order, or are not otherwise applicable to bar negotiations under paragraph (a) of this section.

(d) [Revoked by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055.]

SEC. 12. *Basic provisions of agreements.* Each agreement between an agency and a labor organization is subject to the following requirements—

(a) in the administration of all matters covered by the agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published agency policies and regulations in existence at the time the agreement was approved; and by subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level;

(b) management officials of the agency retain the right, in accordance with applicable laws and regulations—

(1) to direct employees of the agency;
(2) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees;
(3) to relieve employees from duties because of lack of work or for other legitimate reasons;
(4) to maintain the efficiency of the Government operations entrusted to them;
(5) to determine the methods, means, and personnel by which such operations are to be conducted; and
(6) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency; and
(c) nothing in the agreement shall require an employee to become or to remain a member of a labor organization, or to pay money to the organization except pursuant to a voluntary written authorization by a member for the payment of dues through payroll deductions. The requirements of this section shall be expressly stated in the initial or basic agreement and apply to all supplemental, implementing, subsidiary, or informal agreements between the agency and the organization.

SEC. 13. *Grievance and arbitration procedures.* (a) An agreement between an agency and a labor organization shall provide a procedure, applicable only to the unit, for the consideration of grievances. The coverage and scope of the procedure shall be negotiated by the parties to the agreement with the exception that it may not cover matters for which a statutory appeal procedure exists and so long as it does not otherwise conflict with statute or this order. It shall be the exclusive procedure available to the parties and the employees in the unit for resolving grievances which fall within its coverage. However, any employee or group of employees in the unit may present such grievances to the agency and have them adjusted, without the intervention of the exclusive representative, as long as the adjustment is not inconsistent with the terms of the agreement and the exclusive representative has been given opportunity to be present at the adjustment.
(b) A negotiated procedure may provide for arbitration of grievances. Arbitration may be invoked only by the agency or the exclusive representative. Either party may file exceptions to an arbitrator's award with the Authority, under regulations prescribed by the Authority.
(c) [Revoked.]
(d) Questions that cannot be resolved by the parties as to whether or not a grievance is on a matter for which a statutory appeal procedure exists, shall be referred to the Authority for decision. Other questions as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement, or is subject to arbitration under that agreement, may by agreement of the parties be submitted to arbitration or may be referred to the Authority for decision.
(e) [Revoked.]

SEC. 14. [Revoked by Ex. Ord. No. 11616, Aug. 26, 1971, 36 F.R. 17319.]

SEC. 15. *Approval of agreements.* An agreement with a labor organization as the exclusive representative of employees in a unit is subject to the approval of the head of the agency or an official designated by him. An agreement shall be approved within forty-five days from the date of its execution if it conforms to applicable laws, the order, existing published agency policies and regulations (unless the agency has granted an exception to a policy or regulation) and regulations of other appropriate authorities. An agreement which has not been approved or disapproved within forty-five days from the date of its execution shall go into effect without the required approval of the agency head and shall be binding on the parties subject to the provisions of law, the order and the regulations of appropriate authorities outside the agency. A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement, or, if none, under agency regulations.

NEGOTIATION DISPUTES AND IMPASSES

SEC. 16. *Negotiation disputes.* The Federal Mediation and Conciliation Service shall provide services and assistance to Federal agencies and labor organizations in the resolution of negotiation disputes. The Service shall determine under what circumstances and in what manner it shall proffer its services.

SEC. 17. *Negotiation impasses.* When voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or other third-party mediation, fail to resolve a negotiation impasse, either party may request the Federal Service Impasses Panel to consider the matter. The Panel, in its discretion and under the regulations it prescribes, may consider the matter and may recommend procedures to the parties for the resolution of the impasse or may settle the impasse by appropriate action. Arbitration or third-party fact finding with recommendations to assist in the resolution of an impasse may be used by the parties only when authorized or directed by the Panel.

CONDUCT OF LABOR ORGANIZATIONS AND MANAGEMENT

SEC. 18. *Standards of conduct for labor organizations.*
(a) An agency shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in paragraph (b) of this section, an organization is not required to prove that it has the required freedom when it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—
(1) the maintenance of democratic procedures and practices, including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participation in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings;
(2) the exclusion from office in the organization of persons affiliated with Communist or other totalitarian movements and persons identified with corrupt influences;
(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and
(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members.
(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in paragraph (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles when there is reasonable cause to believe that—
(1) the organization has been suspended or expelled from or is subject to other sanction by a parent labor organization or federation of organizations with which it had been affiliated because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by paragraph (a) of this section; or
(2) the organization is in fact subject to influences that would preclude recognition under this Order.
(c) A labor organization which has or seeks recognition as a representative of employees under this Order shall file financial and other reports, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.
(d) The Assistant Secretary shall prescribe the regulations needed to effectuate this section. These regulations shall conform generally to the principles applied

to unions in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary.

SEC. 19. *Unfair labor practices*. (a) Agency management shall not—

(1) interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Order;

(2) encourage or discourage membership in a labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment;

(3) sponsor, control, or otherwise assist a labor organization, except that an agency may furnish customary and routine services and facilities under section 23 of this Order when consistent with the best interests of the agency, its employees, and the organization, and when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status;

(4) discipline or otherwise discriminate against an employee because he has filed a complaint or given testimony under this Order;

(5) refuse to accord appropriate recognition to a labor organization qualified for such recognition; or

(6) refuse to consult, confer, or negotiate with a labor organization as required by this Order.

(b) A labor organization shall not—

(1) interfere with, restrain, or coerce an employee in the exercise of his rights assured by this Order;

(2) attempt to induce agency management to coerce an employee in the exercise of his rights under this Order;

(3) coerce, attempt to coerce, or discipline, fine, or take other economic sanction against a member of the organization as punishment or reprisal for, or for the purpose of hindering or impeding his work performance, his productivity, or the discharge of his duties owed as an officer or employee of the United States;

(4) call or engage in a strike, work stoppage, or slowdown; picket an agency in a labor-management dispute; or condone any such activity by failing to take affirmative action to prevent or stop it;

(5) discriminate against an employee with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin; or

(6) refuse to consult, confer, or negotiate with an agency as required by this Order.

(c) A labor organization which is accorded exclusive recognition shall not deny membership to any employee in the appropriate unit except for failure to meet reasonable occupational standards uniformly required for admission, or for failure to tender initiation fees and dues uniformly required as a condition of acquiring and retaining membership. This paragraph does not preclude a labor organization from enforcing discipline in accordance with procedures under its constitution or by-laws which conform to the requirements of this Order.

(d) Issues which can properly be raised under an appeals procedure may not be raised under this section. Issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under that procedure or the complaint procedure under this section, but not under both procedures. Appeals or grievance decisions shall not be construed as unfair labor practice decisions under this Order nor as precedent for such decisions. All complaints under this section that cannot be resolved by the parties shall be filed with the Authority.

MISCELLANEOUS PROVISIONS

SEC. 20. *Use of official time*. Solicitation of membership or dues, and other internal business of a labor organization, shall be conducted during the non-duty hours of the employees concerned. Employees who represent a recognized labor organization shall not be on official time when negotiating an agreement with agency management, except to the extent that the negotiating parties agree to other arrangements which may provide that the agency will either authorize official time for up to 40 hours or authorize up to one-half the time spent in negotiations during regular working hours, for a reasonable number of employees, which number normally shall not exceed the number of management representatives.

SEC. 21. *Allotment of dues*. (a) When a labor organization holds formal or exclusive recognition, and the agency and the organization agree in writing to this course of action, an agency may deduct the regular and periodic dues of the organization from the pay of members of the organization in the unit of recognition who make a voluntary allotment for that purpose, and shall recover the costs of making the deductions. Such an allotment is subject to the regulations of the Office of Personnel Management, which shall include provision for the employee to revoke his authorization at stated six-month intervals. Such an allotment terminates when—

(1) the dues withholding agreement between the agency and the labor organization is terminated or ceases to be applicable to the employee; or

(2) the employee has been suspended or expelled from the labor organization.

(b) [Revoked by Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743.]

SEC. 22. *Adverse action appeals*. The head of each agency, in accordance with the provisions of this Order and regulations prescribed by the Office of Personnel Management, shall extend to all employees in the competitive civil service rights identical in adverse action cases to those provided preference eligibles under sections 7511–7512 of title 5 of the United States Code. Each employee in the competitive service shall have the right to appeal to the Merit Systems Protection Board from an adverse decision of the administrative officer so acting, such appeal to be processed in an identical manner to that provided for appeals under section 7701 of title 5 of the United States Code. Any recommendation by the Merit Systems Protection Board submitted to the head of an agency on the basis of an appeal by an employee in the competitive service shall be complied with by the head of the agency.

SEC. 23. *Agency implementation*. No later than April 1, 1970, each agency shall issue appropriate policies and regulations consistent with this Order for its implementation. This includes but is not limited to a clear statement of the rights of its employees under this Order; procedures with respect to recognition of labor organizations, determination of appropriate units, consultation and negotiation with labor organizations, approval of agreements, mediation, and impasse resolution; policies with respect to the use of agency facilities by labor organizations; and policies and practices regarding consultation with other organizations and associations and individual employees. Insofar as practicable, agencies shall consult with representatives of labor organizations in the formulation of these policies and regulations.

SEC. 24. *Savings clauses*. (a) This Order does not preclude—

(1) the renewal or continuation of a lawful agreement between an agency and a representative of its employees entered into before the effective date of Executive Order No. 10988 (January 17, 1962); or

(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent the management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the date of this Order.

(b) All grants of informal recognition under Executive Order No. 10988 terminate on July 1, 1970.

(c) All grants of formal recognition under Executive Order No. 10988 terminate under regulations which the Federal Labor Relations Council shall issue before October 1, 1970.

(d) By not later than December 31, 1970, all supervisors shall be excluded from units of formal and exclusive recognition and from coverage by negotiated agreements, except as provided in paragraph (a) of this section.

SEC. 25. *Guidance, training, review and information.* (a) The Office of Personnel Management, in conjunction with the Director of the Office of Management and Budget, shall establish and maintain a program for the policy guidance of agencies on labor-management relations in the Federal service and shall periodically review the implementation of these policies. The Office of Personnel Management shall be responsible for the day-to-day policy guidance under that program. The Office of Personnel Management also shall continuously review the operation of the Federal labor-management relations program to assist in assuring adherence to its provisions and merit system requirements; implement technical advice and information programs for the agencies; assist in the development of programs for training agency personnel and management officials in labor-management relations; and, from time to time, report to the Authority on the state of the program with any recommendations for its improvement.

(b) The Office of Personnel Management shall develop programs for the collection and dissemination of information appropriate to the needs of agencies, organizations and the public.

SEC. 26. *Effective date.* This Order is effective on January 1, 1970, except sections 7(f) and 8 which are effective immediately. Effective January 1, 1970, Executive Order No. 10988 and the President's Memorandum of May 21, 1963, entitled Standards of Conduct for Employee Organizations and Code of Fair Labor Practices, are revoked.

[For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22, Foreign Relations and Intercourse.]

EXECUTIVE ORDER NO. 12871

Ex. Ord. No. 12871, Oct. 1, 1993, 58 F.R. 52201, as amended by Ex. Ord. No. 12983, Dec. 21, 1995, 60 F.R. 66855; Ex. Ord. No. 13156, §1, May 17, 2000, 65 F.R. 31785, which established the National Partnership Council and required the head of certain Government agencies to implement labor-management partnerships to help reform Government, was revoked by Ex. Ord. No. 13203, Feb. 17, 2001, 66 F.R. 11227.

EX. ORD. NO. 13522. CREATING LABOR-MANAGEMENT FORUMS TO IMPROVE DELIVERY OF GOVERNMENT SERVICES

Ex. Ord. No. 13522, Dec. 9, 2009, 74 F.R. 66203, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish a cooperative and productive form of labor-management relations throughout the executive branch, it is hereby ordered as follows:

SECTION 1. *Policy.* Federal employees and their union representatives are an essential source of front-line ideas and information about the realities of delivering Government services to the American people. A nonadversarial forum for managers, employees, and employees' union representatives to discuss Government operations will promote satisfactory labor relations and improve the productivity and effectiveness of the Federal Government. Labor-management forums, as complements to the existing collective bargaining process, will allow managers and employees to collaborate in continuing to deliver the highest quality services to the American people. Management should discuss workplace challenges and problems with labor and endeavor to develop solutions jointly, rather than advise union representatives of predetermined solutions to problems and then engage in bargaining over the impact and implementation of the predetermined solutions.

The purpose of this order is to establish a cooperative and productive form of labor-management relations throughout the executive branch.

SEC. 2. *The National Council on Federal Labor-Management Relations.* There is established the National Council on Federal Labor-Management Relations (Council).

(a) *Membership.* The Council shall be composed of the following members appointed or designated by the President:

(i) the Director of the Office of Personnel Management (OPM) and Deputy Director for Management of the Office of Management and Budget (OMB), who shall serve as Co-Chairs of the Council;

(ii) the Chair of the Federal Labor Relations Authority;

(iii) a Deputy Secretary or other officer with department- or agency-wide authority from each of five executive departments or agencies not otherwise represented on the Council, who shall serve for terms of 2 years;

(iv) the President of the American Federation of Government Employees, AFL-CIO;

(v) the President of the National Federation of Federal Employees;

(vi) the President of the National Treasury Employees Union;

(vii) the President of the International Federation of Professional and Technical Engineers, AFL-CIO;

(viii) the heads of three other labor unions that represent Federal employees and are not otherwise represented on the Council, who shall serve for terms of 2 years;

(ix) the President of the Senior Executives Association; and

(x) the President of the Federal Managers Association.

(b) *Responsibilities and Functions.* The Council shall advise the President on matters involving labor-management relations in the executive branch. Its activities shall include, to the extent permitted by law:

(i) supporting the creation of department- or agency-level labor-management forums and promoting partnership efforts between labor and management in the executive branch;

(ii) developing suggested measurements and metrics for the evaluation of the effectiveness of the Council and department or agency labor-management forums in order to promote consistent, appropriate, and administratively efficient measurement and evaluation processes across departments and agencies;

(iii) collecting and disseminating information about, and providing guidance on, labor-management relations improvement efforts in the executive branch, including results achieved;

(iv) utilizing the expertise of individuals both within and outside the Federal Government to foster successful labor-management relations, including through training of department and agency personnel in methods of dispute resolution and cooperative methods of labor-management relations;

(v) developing recommendations for innovative ways to improve delivery of services and products to the public while cutting costs and advancing employee interests;

(vi) serving as a venue for addressing systemic failures of department- or agency-level forums established pursuant to section 3 of this order; and

(vii) providing recommendations to the President for the implementation of several pilot programs within the executive branch, described in section 4 of this order, for bargaining over subjects set forth in 5 U.S.C. 7106(b)(1).

(c) *Administration.*

(i) The Co-Chairs shall convene and preside at meetings of the Council, determine its agenda, and direct its work.

(ii) The Council shall seek input from nonmember executive departments and agencies, particularly smaller agencies. It also may, from time to time, invite persons from the private and public sectors to submit information. The Council shall also seek input from Federal manager and professional associations, companies, nonprofit organizations, State and local governments, Federal employees, and customers of Federal services, as needed.

(iii) To the extent permitted by law and subject to the availability of appropriations, OPM shall provide

such facilities, support, and administrative services to the Council as the Director of OPM deems appropriate.

(iv) Members of the Council shall serve without compensation for their work on the Council, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701–5707), consistent with the availability of funds.

(v) The heads of executive departments and agencies shall, to the extent permitted by law, provide to the Council such assistance, information, and advice as the Council may require for purposes of carrying out its functions.

(vi) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.), may apply to the Council, any functions of the President under that Act, except that of reporting to the Congress, shall be performed by the Director of OPM in accordance with the guidelines that have been issued by the Administrator of General Services.

(d) *Termination.* The Council shall terminate 2 years after the date of this order unless extended by the President.

SEC. 3. *Implementation of Labor-Management Forums Throughout the Executive Branch.*

(a) The head of each executive department or agency that is subject to the provisions of the Federal Service Labor-Management Relations Act (5 U.S.C. 7101 *et seq.*), or any other authority permitting employees of such department or agency to select an exclusive representative shall, to the extent permitted by law:

(i) establish department- or agency-level labor-management forums by creating labor-management committees or councils at the levels of recognition and other appropriate levels agreed to by labor and management, or adapting existing councils or committees if such groups exist, to help identify problems and propose solutions to better serve the public and agency missions;

(ii) allow employees and their union representatives to have pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. 7106; provide adequate information on such matters expeditiously to union representatives where not prohibited by law; and make a good-faith attempt to resolve issues concerning proposed changes in conditions of employment, including those involving the subjects set forth in 5 U.S.C. 7106(b)(1), through discussions in its labor-management forums; and

(iii) evaluate and document, in consultation with union representatives and consistent with the purposes of this order and any further guidance provided by the Council, changes in employee satisfaction, manager satisfaction, and organizational performance resulting from the labor-management forums.

(b) Each head of an executive department or agency in which there exists one or more exclusive representatives shall, in consultation with union representatives, prepare and submit for approval, within 90 days of the date of this order, a written implementation plan to the Council. The plan shall:

(i) describe how the department or agency will conduct a baseline assessment of the current state of labor relations within the department or agency;

(ii) report the extent to which the department or agency has established labor-management forums, as set forth in subsection (a)(i) of this section, or may participate in the pilot projects described in section 4 of this order;

(iii) address how the department or agency will work with the exclusive representatives of its employees through its labor-management forums to develop department-, agency-, or bargaining unit-specific metrics to monitor improvements in areas such as labor-management satisfaction, productivity gains, cost savings, and other areas as identified by the relevant labor-management forum's participants; and

(iv) explain the department's or agency's plan for devoting sufficient resources to the implementation of the plan.

(c) The Council shall review each executive department or agency implementation plan within 30 days of receipt and provide a recommendation to the Co-Chairs as to whether to certify that the plan satisfies all requirements of this order. Plans that are determined by the Co-Chairs to be insufficient will be returned to the department or agency with guidance for improvement and resubmission within 30 days. Each department or agency covered by subsection (b) of this section must have a certified implementation plan in place no later than 150 days after the date of this order, unless the Co-Chairs of the Council authorize an extension of the deadline.

SEC. 4. *Negotiation over Permissive Subjects of Bargaining.*

(a) In order to evaluate the impact of bargaining over permissive subjects, several pilot projects of specified duration shall be established in which some executive departments or agencies elect to bargain over some or all of the subjects set forth in 5 U.S.C. 7106(b)(1) and waive any objection to participating in impasse procedures set forth in 5 U.S.C. 7119 that is based on the subjects being permissive. The Council shall develop recommendations for establishing the pilot projects, including (i) recommendations for evaluating such pilot projects on the basis, among other things, of their impacts on organizational performance, employee satisfaction, and labor relations of the affected departments or agencies; (ii) recommended methods for evaluating the effectiveness of dispute resolution procedures adopted and followed in the course of the pilot projects; and (iii) a recommended timeline for expeditious implementation of the pilot programs.

(b) The Council shall present its recommendations to the President within 150 days after the date of this order.

(c) No later than 18 months after implementation of the pilot projects, the Council shall submit a report to the President evaluating the results of the pilots and recommending appropriate next steps with respect to agency bargaining over the subjects set forth in 5 U.S.C. 7106(b)(1).

SEC. 5. *General Provisions.*

(a) Nothing in this order shall abrogate any collective bargaining agreements in effect on the date of this order.

(b) Nothing in this order shall be construed to limit, preclude, or prohibit any head of an executive department or agency from electing to negotiate over any or all of the subjects set forth in 5 U.S.C. 7106(b)(1) in any negotiation.

(c) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(d) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(e) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EXTENSION OF TERM OF NATIONAL COUNCIL ON FEDERAL LABOR-MANAGEMENT RELATIONS

Term of National Council on Federal Labor-Management Relations extended until Sept. 30, 2013, by Ex. Ord. No. 13591, Nov. 23, 2011, 76 F.R. 74623, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

§ 7102. Employees' rights

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right—

(1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1192.)

PRIOR PROVISIONS

A prior section 7102, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 523, related to right of employees to petition Congress, prior to the general amendment of this chapter by Pub. L. 95–454. See section 7211 of this title.

PARTIAL SUSPENSION OF FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Par. (2) of this section suspended with respect to any matter proposed for bargaining which would substantially impair the implementation by the United States Forces of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nation, see section 1(b) of Ex. Ord. No. 12391, Nov. 4, 1982, 47 F.R. 50457, set out as a note under section 7103 of this title.

§ 7103. Definitions; application

(a) For the purpose of this chapter—

(1) ''person'' means an individual, labor organization, or agency;

(2) ''employee'' means an individual—

(A) employed in an agency; or

(B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;

but does not include—

(i) an alien or noncitizen of the United States who occupies a position outside the United States;

(ii) a member of the uniformed services;

(iii) a supervisor or a management official;

(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the International Communication Agency, the Agency for International Development, the Department of Agriculture, or the Department of Commerce; or

(v) any person who participates in a strike in violation of section 7311 of this title;

(3) ''agency'' means an Executive agency (including a nonappropriated fund instrumentality described in section 2105(c) of this title and the Veterans' Canteen Service, Department of Veterans Affairs), the Library of Congress, the Government Printing Office, and the Smithsonian Institution[1] but does not include—

(A) the Government Accountability Office;

(B) the Federal Bureau of Investigation;

(C) the Central Intelligence Agency;

(D) the National Security Agency;

(E) the Tennessee Valley Authority;

(F) the Federal Labor Relations Authority;

(G) the Federal Service Impasses Panel; or

(H) the United States Secret Service and the United States Secret Service Uniformed Division.

(4) ''labor organization'' means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include—

(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

(C) an organization sponsored by an agency; or

(D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(5) ''dues'' means dues, fees, and assessments;

(6) ''Authority'' means the Federal Labor Relations Authority described in section 7104(a) of this title;

(7) ''Panel'' means the Federal Service Impasses Panel described in section 7119(c) of this title;

(8) ''collective bargaining agreement'' means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

(9) ''grievance'' means any complaint—

(A) by any employee concerning any matter relating to the employment of the employee;

(B) by any labor organization concerning any matter relating to the employment of any employee; or

(C) by any employee, labor organization, or agency concerning—

(i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

(ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;

(10) ''supervisor'' means an individual employed by an agency having authority in the

[1] So in original. Probably should be followed by a comma.

interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term ''supervisor'' includes only those individuals who devote a preponderance of their employment time to exercising such authority;

(11) ''management official'' means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;

(12) ''collective bargaining'' means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession;

(13) ''confidential employee'' means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

(14) ''conditions of employment'' means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—

(A) relating to political activities prohibited under subchapter III of chapter 73 of this title;

(B) relating to the classification of any position; or

(C) to the extent such matters are specifically provided for by Federal statute;

(15) ''professional employee'' means—

(A) an employee engaged in the performance of work—

(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

(ii) requiring the consistent exercise of discretion and judgment in its performance;

(iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

(iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

(B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A)(i) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;

(16) ''exclusive representative'' means any labor organization which—

(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of this title; or

(B) was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit—

(i) on the basis of an election, or

(ii) on any basis other than an election,

and continues to be so recognized in accordance with the provisions of this chapter;

(17) ''firefighter'' means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment; and

(18) ''United States'' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(b)(1) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that—

(A) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

(B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

(2) The President may issue an order suspending any provision of this chapter with respect to any agency, installation, or activity located outside the 50 States and the District of Columbia, if the President determines that the suspension is necessary in the interest of national security.

(Added Pub. L. 95–454, title VII, §701, Oct. 13, 1978, 92 Stat. 1192; amended Pub. L. 96–465, title II, §2314(g), Oct. 17, 1980, 94 Stat. 2168; Pub. L. 102–54, §13(b)(1), June 13, 1991, 105 Stat. 274; Pub. L. 103–359, title V, §501(j), Oct. 14, 1994, 108 Stat. 3430; Pub. L. 104–201, div. A, title XVI, §1634(a), Sept. 23, 1996, 110 Stat. 2752; Pub. L. 105–220, title III, §341(e), Aug. 7, 1998, 112 Stat. 1092; Pub. L. 105–277, div. G, subdiv. A, title XIV, §1422(b)(1), Oct. 21, 1998, 112 Stat. 2681–792; Pub. L. 106–554, §1(a)(4) [div. B, title I, §139], Dec. 21, 2000, 114 Stat. 2763, 2763A–235; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (a)(3)(A). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

2000—Subsec. (a)(3)(H). Pub. L. 106–554 added subpar. (H).

1998—Subsec. (a)(2)(B)(iv). Pub. L. 105–277 substituted ''Agency for International Development'' for ''United States International Development Cooperation Agency''.

Subsec. (a)(3). Pub. L. 105–220, in introductory provisions, struck out ''and'' after ''Library of Congress,'' and inserted ''and the Smithsonian Institution'' after ''Government Printing Office,''.

1996—Subsec. (a)(3)(F) to (H). Pub. L. 104–201 inserted ''or'' at end of subpar. (F), substituted a period for ''; or'' at end of subpar. (G), and struck out subpar. (H) which read as follows: ''the Central Imagery Office;''.

1994—Subsec. (a)(3)(H). Pub. L. 103–359 added subpar. (H).

1991—Subsec. (a)(3). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1980—Subsec. (a)(2)(iv). Pub. L. 96–465 struck out ''the Agency for International Development, or'' after ''Department of State,'' and inserted ''the United States International Development Cooperation Agency, the Department of Agriculture, or the Department of Commerce'' after ''Communication Agency''.

CHANGE OF NAME

International Communication Agency, referred to in subsec. (a)(2)(B)(iv), redesignated United States Information Agency and Director or any other official of International Communication Agency redesignated as Director or other official, as appropriate, of United States Information Agency by section 303 of Pub. L. 97–241, title III, Aug. 24, 1982, 96 Stat. 291, set out as a note under section 1461 of Title 22, Foreign Relations and Intercourse. United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau) abolished and functions transferred to Secretary of State by sections 6531 and 6532 of Title 22.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective Apr. 1, 1999, see section 1401 of Pub. L. 105–277, set out as an Effective Date note under section 6561 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as a note under section 1593 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

EX. ORD. NO. 12171. EXCLUSIONS FROM COVERAGE OF PROGRAM

Ex. Ord. No. 12171, Nov. 19, 1979, 44 F.R. 66565, as amended by Ex. Ord. No. 12338, Jan. 11, 1982, 47 F.R. 1369; Ex. Ord. No. 12410, Mar. 28, 1983, 48 F.R. 13143; Ex. Ord. No. 12559, May 20, 1986, 51 F.R. 18761; Ex. Ord. No. 12632, Mar. 23, 1988, 53 F.R. 9852; Ex. Ord. No. 12666, Jan. 12, 1989, 54 F.R. 1921; Ex. Ord. No. 12671, Mar. 14, 1989, 54 F.R. 11157; Ex. Ord. No. 12681, July 6, 1989, 54 F.R. 28997; Ex. Ord. No. 12693, Sept. 29, 1989, 54 F.R. 40629; Ex. Ord. No. 13039, Mar. 11, 1997, 62 F.R. 12529; Ex. Ord. No. 13252, Jan. 7, 2002, 67 F.R. 1601; Ex. Ord. No. 13381, § 5(b), June 27, 2005, 70 F.R. 37955; Ex. Ord. No. 13467, § 3(d), June 30, 2008, 73 F.R. 38107; Ex. Ord. No. 13480, §§ 2–6, Nov. 26, 2008, 73 F.R. 73991, 73992, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 7103(b) of Title 5 of the United States Code, and in order to exempt certain agencies or subdivisions thereof from coverage of the Federal Labor-Management Relations Program, it is hereby ordered as follows:

1–1. DETERMINATIONS

1–101. The agencies or subdivisions thereof set forth in Section 1–2 of this Order are hereby determined to have as a primary function intelligence, counterintelligence, investigative, or national security work. It is also hereby determined that Chapter 71 of Title 5 of the United States Code cannot be applied to those agencies or subdivisions in a manner consistent with national security requirements and considerations. The agencies or subdivisions thereof set forth in Section 1–2 of this Order are hereby excluded from coverage under Chapter 71 of Title 5 of the United States Code.

1–102. Having determined that it is necessary in the interest of national security, the provisions of Chapter 71 of Title 5 of the United States Code are suspended with respect to any agency, installation, or activity listed in Section 1–3 of this Order. However, such suspension shall be applicable only to that portion of the agency, installation, or activity which is located outside the 50 States and the District of Columbia.

1–2. EXCLUSIONS

1–201. The Information Security Oversight Office, General Services Administration.

1–202. The Federal Research Division, Research Services, the Library of Congress.

1–203. Agencies or subdivisions of the Department of the Treasury:

(a) The Office of Terrorism and Financial Intelligence.

(b) The Financial Crimes Enforcement Network.

(c) Criminal Investigation, Internal Revenue Service.

(d) The Trade Analysis and Enforcement Division, Alcohol and Tobacco Tax and Trade Bureau.

1–204. Agencies or subdivisions of the Department of the Army, Department of Defense:

(a) Office of Assistant Chief of Staff for Intelligence.

(b) U.S. Army Intelligence and Security Command.

(c) U.S. Army Foreign Science and Technology Center.

(d) U.S. Army Intelligence Center and School.

(e) U.S. Army Missile Intelligence Agency.

(f) Foreign Intelligence Office, U.S. Army Missile Research and Development Command.

1–205. Agencies or subdivisions of the Department of the Navy, Department of Defense:

(a) Office of Naval Intelligence.

(b) Naval Intelligence Command Headquarters and Subordinate Commands.

(c) Headquarters, Naval Security Group Command.

(d) Naval Security Group Activities and Detachments.

(e) Fleet Intelligence Center, Europe and Atlantic (FICEURLANT).

(f) Fleet Intelligence Center, Pacific (FICPAC).

(g) Units composed primarily of employees engaged in the operation, repair, and/or maintenance of ''off line'' or ''on line'' cryptographic equipment.

(h) Units composed primarily of employees of naval telecommunications activities in positions which require a cryptographic authorization.

(i) Naval Special Warfare Development Group.

1–206. Agencies or subdivisions of the Department of the Air Force, Department of Defense:

(a) Office of Space Systems, Office of the Secretary of the Air Force.

(b) Office of Special Projects, Office of the Secretary of the Air Force.

(c) Engineering Office, Space and Missile Systems Organization (Air Force Systems Command).

(d) Program Control Office, Space and Missile Systems Organization (Air Force Systems Command).

(e) Detachment 3, Space and Missile Systems Organization (Air Force Systems Command).

(f) Defense Dissemination Systems Program Office, Space and Missile Systems Organization (Air Force Systems Command).

(g) Satellite Data System Program Office, Space and Missile Systems Organization (Air Force Systems Command).

(h) Project Office at El Segundo, California, Office of the Secretary of the Air Force.

(i) Project Office at Patrick Air Force Base, Florida, Office of the Secretary of the Air Force.

(j) Project Office at Fort Myer, Virginia, Office of the Secretary of the Air Force.

(k) Air Force Office of Special Investigations.

(l) U.S. Air Force Security Service.

(m) Foreign Technology Division, Air Force Systems Command, Wright-Patterson Air Force Base.

(n) 1035 Technical Operations Group (Air Force Technical Applications Center), Air Force Systems Command, and subordinate units.

(o) 3480 Technical Training Wing, Air Training Command, Goodfellow Air Force Base, Texas.

(p) Office of the Assistant Chief of Staff, Intelligence.

(q) Air Force Intelligence Service.

1–207. The Defense Intelligence Agency, Department of Defense.

1–208. The Defense Investigative Service, Department of Defense.

1–209. Agencies or subdivisions of the Department of Justice:

a. The Office of Enforcement and the Office of Intelligence, including all domestic field offices and intelligence units, of the Drug Enforcement Administration.

b. The Office of Special Operations, the Threat Analysis Group, the Enforcement Operations Division, the Witness Security Division and the Court Security Division in the Office of the Director and the Enforcement Division in Offices of the United States Marshals in the United States Marshals Service.

(c) United States Attorneys' Offices.

(d) Criminal Division.

(e) INTERPOL—U.S. National Central Bureau.

(f) National Drug Intelligence Center.

(g) National Security Division.

(h) Bureau of Alcohol, Tobacco, Firearms, and Explosives.

1–210. Agencies or subdivisions of the Department of Energy:

(a) The National Nuclear Security Administration.

(b) The Office of Intelligence.

(c) The Office of Counterintelligence.

(d) The Office of Intelligence and Counterintelligence.

(e) The Savannah River Operations Office.

1–211. Offices within the Agency for International Development:

(a) The Immediate Office of the Auditor General.

(b) The Office of Inspections and Investigations.

(c) The Office of Security.

(d) The Office of the Area Auditor General/Washington.

1–212. Agencies or subdivisions under the operational jurisdiction of the Joint Chiefs of Staff (JCS).

(a) Intelligence Division (J–2), Headquarters Atlantic Command (LANTCOM).

(b) Atlantic Command Electronic Intelligence Center.

(c) Intelligence Directorate (J–2), Headquarters U.S. European Command (USEUCOM).

(d) Special Security Office (SSO), Headquarters U.S. European Command (USEUCOM).

(e) European Defense Analysis Center (EUDAC).

(f) Intelligence Directorate (J–2), Headquarters Pacific Command (PACOM).

(g) Intelligence Center Pacific (IPAC).

(h) Intelligence Directorate (J–2), Headquarters U.S. Southern Command (USSOUTHCOM).

(i) Intelligence Directorate (J–2), Headquarters U.S. Readiness Command (USREDCOM)/Joint Deployment Agency.

(j) Deputy Chief of Staff/Intelligence, Headquarters Strategic Air Command (SAC).

(k) 544th Strategic Intelligence Wing, Strategic Air Command (SAC).

(l) Deputy Chief of Staff/Intelligence, Headquarters 15th Air Force, Strategic Air Command (SAC).

(m) Deputy Chief of Staff/Intelligence, Headquarters 8th Air Force, Strategic Air Command (SAC).

(n) Strategic Reconnaissance Center, Headquarters Strategic Air Command (SAC).

(o) 6th Strategic Wing, Strategic Air Command (SAC).

(p) 9th Strategic Reconnaissance Wing, Strategic Air Command (SAC).

(q) 55th Strategic Reconnaissance Wing, Strategic Air Command (SAC).

(r) 306th Strategic Wing, Strategic Air Command (SAC).

(s) 376th Strategic Wing, Strategic Air Command (SAC).

(t) Deputy Chief of Staff/Operations Plans, Headquarters Strategic Air Command (SAC).

(u) The Joint Strategic Target Planning Staff (JSTPS).

(v) The Joint Special Operations Command (JSOC) and all elements under its operational control.

1–213. The following subdivision of the Federal Aviation Administration (FAA), Department of Transportation: National Security Coordination Division, Office of Emergency Operations and Investigations, FAA Office of Security and Hazardous Materials.

1–214. Agencies or subdivisions of the Department of Homeland Security:

(a) Office of the Military Advisor.

(b) The following office within the Management Directorate:

(1) Office of Security.

(c) Office of Operations Coordination.

(d) Office of Counternarcotics Enforcement.

(e) Office of Intelligence and Analysis.

(f) Domestic Nuclear Detection Office.

(g) The following offices and subdivisions within the United States Coast Guard:

(1) Maritime Intelligence Fusion Centers, Atlantic.

(2) Pacific Area Intelligence Division.

(3) Intelligence Coordination Center.

(4) Coast Guard Investigative Service.

(5) Coast Guard Security Center.

(h) The following offices and subdivisions within United States Immigration and Customs Enforcement:

(1) The Office of Investigations.

(2) The Office of International Affairs.

(3) The Office of Intelligence.

(4) The National Incident Response Unit.

(i) The following office within the Transportation Security Administration:

(1) The Office of Law Enforcement/Federal Air Marshal Service.

(j) The following office within United States Customs and Border Protection:

(1) The Office of Intelligence and Operations Coordination.

(k) The following offices and subdivisions within the Federal Emergency Management Agency:

(1) The following offices and subdivisions within the Office of National Continuity Programs:

(A) The Office of the Assistant Administrator.
(B) The Operations Division.
(C) The Continuity of Operations Division.
(D) The Readiness Division.
(E) The Integrated Public Alert and Warning Systems Division.
(2) The following subdivisions within the Disaster Operations Directorate:
(A) The Mobile Emergency Response Support Operations, including Mobile Emergency Response Support Detachments.
(B) The FEMA Operations Center.
(C) The Alternate FEMA Operations Center.
1–215. The Defense Mapping Agency Reston Center, Department of Defense.
1–216. The Federal Investigative Services Division., [sic] Office of Personnel Management.

1–3. UNITS OUTSIDE THE 50 STATES AND THE DISTRICT OF COLUMBIA

1–301. The Drug Enforcement Administration, Department of Justice.

EX. ORD. NO. 12391. PARTIAL SUSPENSION OF FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Ex. Ord. No. 12391, Nov. 4, 1982, 47 F.R. 50457, provided:
By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 7103(b)(2) of Title 5 and Section 301 of Title 3 of the United States Code, and having determined that it is necessary in the interest of national security to suspend certain labor-management relations provisions with respect to overseas activities of the Department of Defense, it is hereby ordered as follows:
SECTION 1. *Suspensions*. With regard to United States citizen employees of the Department of Defense, including the Military Departments, who are employed outside the United States as defined in 5 U.S.C. 7103(a)(18), with the exception of those employed in the Republic of Panama:
(a) The provisions of 5 U.S.C. 7105(a)(2)(D), (E), (G), and (H) and of 5 U.S.C. 7123(b) are suspended with respect to any matter which substantially impairs the implementation by the United States Forces of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nation;
(b) The provisions of 5 U.S.C. 7102(2), 7114(a)(1), 7114(a)(4), 7116(a)(5), and 7117(c) are suspended with respect to any matter proposed for bargaining which would substantially impair the implementation by the United States Forces of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nation;
(c) The provisions of 5 U.S.C. 7116(a)(7) and 7117(b) are suspended with regard to any regulation governing the implementation by the United States Forces of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nations; and
(d) The provisions of 5 U.S.C. 7121(b)(3)(C) are suspended with respect to any grievance involving the implementation by the United States Forces of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nation.
SEC. 2. *Disputes*. Disputes between a labor organization and the United States Forces as to whether a particular matter is covered by one or more of the suspensions set forth in this Order shall be referred to the Secretary of Defense. The decision of the Secretary in such disputes shall be made after consultation with the Secretary of State and shall be final. The Secretary of Defense may delegate this authority, but only to the Deputy Secretary of Defense, an Under Secretary of Defense, or an Assistant Secretary of Defense. The functions assigned to the Secretary of State may not be delegated or assigned to anyone below the rank of an Assistant Secretary of State.

RONALD REAGAN.

EX. ORD. NO. 12632. EXCLUSIONS FROM FEDERAL LABOR-MANAGEMENT RELATIONS PROGRAM

Ex. Ord. No. 12632, Mar. 23, 1988, 53 F.R. 9852, provided:
By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including Section 7103(b) of Title 5 of the United States Code, and in order to exempt certain agencies or subdivisions thereof from coverage of the Federal Labor-Management Relations Program, it is hereby ordered as follows:
SECTION 1. *Determinations*. The agencies or subdivisions thereof set forth in Section 3 of this Order are hereby determined to have as a primary function intelligence, counterintelligence, investigative, or national security work. It is also hereby determined that Chapter 71 of Title 5 of the United States Code cannot be applied to these agencies or subdivisions in a manner consistent with national security requirements and considerations. These agencies or subdivisions thereof are hereby excluded from coverage under Chapter 71 of Title 5 of the United States Code.
SEC. 2. *Relationship to Executive Order No. 12559*. The determinations set forth in Section 1 of this Order are the same determinations that I made at the time of and as a predicate to my issuance on May 20, 1986, of Executive Order No. 12559 [amending Ex. Ord. No. 12171, set out as a note above], which was issued for the same purpose as this Order. On July 10, 1987, Executive Order No. 12559 was held by a United States District Court to be incomplete as a matter of form, and therefore invalid, because it did not expressly set forth these determinations. *AFGE v. Reagan*, Civil No. 86–1587 (D.D.C.). These determinations were not expressly set forth in the text of Executive Order No. 12559 because all that Order did was amend Executive Order No. 12171 [set out as a note above] by adding the agencies or subdivisions referred to in Section 1 of this Order to the list in Executive Order No. 12171 of entities excluded from coverage of the Federal Labor-Management Relations Program, and these determinations were already expressly set forth in the text of Executive Order No. 12171, which remains in effect (as amended). This Order is not intended to reflect any belief that the form of Executive Order No. 12559 was invalid, but is intended solely to accomplish the purpose of that Order.
SEC. 3. *Amendment of Executive Order No. 12171*. Executive Order No. 12171 is amended by deleting Section 1–209 and inserting in its place:
SEC. 1–209. *Agencies or subdivisions of the Department of Justice*. (a) The Office of Enforcement and the Office of Intelligence, including all domestic field offices and intelligence units, of the Drug Enforcement Administration.
(b) The Office of Special Operations, the Threat Analysis Group, the Enforcement Operations Division, the Witness Security Division and the Court Security Division in the Office of the Director and the Enforcement Division in Offices of the United States Marshals in the United States Marshals Service.

RONALD REAGAN.

EX. ORD. NO. 13252. EXCLUSIONS FROM THE FEDERAL LABOR-MANAGEMENT RELATIONS PROGRAM

Ex. Ord. No. 13252, Jan. 7, 2002, 67 F.R. 1601, provided:
By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7103(b)(1) of title 5, United States Code, and in order to exempt certain subdivisions of the Department of Justice from coverage under the Federal Labor-Management Relations Program, it is hereby ordered as follows:
SECTION 1. *Determinations*. The subdivisions of the Department of Justice set forth in section 2 of this order are hereby determined to have as a primary function intelligence, counterintelligence, investigative, or na-

tional security work. It is further determined that chapter 71 of title 5, United States Code, cannot be applied to these subdivisions in a manner consistent with national security requirements and considerations.

SEC. 2. *Amendment of Executive Order 12171.* Executive Order 12171 of November 19, 1979, as amended, [set out above] is further amended by adding to the end of section 1–209 the following new subsections:

''(c) United States Attorneys' Offices.

[''](d) Criminal Division.

[''](e) INTERPOL—U.S. National Central Bureau.

[''](f) National Drug Intelligence Center.

[''](g) Office of Intelligence Policy and Review.''

GEORGE W. BUSH.

§ 7104. Federal Labor Relations Authority

(a) The Federal Labor Relations Authority is composed of three members, not more than 2 of whom may be adherents of the same political party. No member shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.

(b) Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and only for inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as Chairman of the Authority. The Chairman is the chief executive and administrative officer of the Authority.

(c) A member of the Authority shall be appointed for a term of 5 years. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. The term of any member shall not expire before the earlier of—

(1) the date on which the member's successor takes office, or

(2) the last day of the Congress beginning after the date on which the member's term of office would (but for this paragraph) expire.

(d) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.

(e) The Authority shall make an annual report to the President for transmittal to the Congress which shall include information as to the cases it has heard and the decisions it has rendered.

(f)(1) The General Counsel of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed at any time by the President. The General Counsel shall hold no other office or position in the Government of the United States except as provided by law.

(2) The General Counsel may—

(A) investigate alleged unfair labor practices under this chapter,

(B) file and prosecute complaints under this chapter, and

(C) exercise such other powers of the Authority as the Authority may prescribe.

(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices of the Authority.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1196; amended Pub. L. 98–224, § 3, Mar. 2, 1984, 98 Stat. 47.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–224, § 3(a), inserted provision directing that Chairman be chief executive and administrative officer.

Subsec. (c). Pub. L. 98–224, § 3(b), substituted provision that a member of Authority be appointed for a term of 5 years and an individual chosen to fill a vacancy be appointed for unexpired term of member replaced for provision that one original member of Authority be appointed for a term of 1 year, one for a term of 3 years, and Chairman for a term of 5 years, and thereafter each member be appointed for a term of 5 years.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsection (e) of this section relating to transmittal to Congress of an annual report on cases heard and decisions rendered, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 171 of House Document No. 103–7.

DELEGATION OF CERTAIN REPORTING AUTHORITY

Memorandum of President of the United States, Dec. 8, 2004, 69 F.R. 74935, provided:

Memorandum for the Chairman of the Federal Labor Relations Authority

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to the member who has been designated by the President as Chairman the functions conferred upon the President by 5 U.S.C. 7104(e) to provide the specified report to the Congress.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§ 7105. Powers and duties of the Authority

(a)(1) The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

(2) The Authority shall, to the extent provided in this chapter and in accordance with regulations prescribed by the Authority—

(A) determine the appropriateness of units for labor organization representation under section 7112 of this title;

(B) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of section 7111 of this title relating to the according of exclusive recognition to labor organizations;

(C) prescribe criteria and resolve issues relating to the granting of national consultation rights under section 7113 of this title;

(D) prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations under section 7117(b) of this title;

(E) resolves issues relating to the duty to bargain in good faith under section 7117(c) of this title;

(F) prescribe criteria relating to the granting of consultation rights with respect to conditions of employment under section 7117(d) of this title;

(G) conduct hearings and resolve complaints of unfair labor practices under section 7118 of this title;

(H) resolve exceptions to arbitrator's awards under section 7122 of this title; and

(I) take such other actions as are necessary and appropriate to effectively administer the provisions of this chapter.

(b) The Authority shall adopt an official seal which shall be judicially noticed.

(c) The principal office of the Authority shall be in or about the District of Columbia, but the Authority may meet and exercise any or all of its powers at any time or place. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by such agents as it may designate, make any appropriate inquiry necessary to carry out its duties wherever persons subject to this chapter are located. Any member who participates in the inquiry shall not be disqualified from later participating in a decision of the Authority in any case relating to the inquiry.

(d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section 3105 of this title, and other individuals as it may from time to time find necessary for the proper performance of its functions. The Authority may delegate to officers and employees appointed under this subsection authority to perform such duties and make such expenditures as may be necessary.

(e)(1) The Authority may delegate to any regional director its authority under this chapter—

(A) to determine whether a group of employees is an appropriate unit;

(B) to conduct investigations and to provide for hearings;

(C) to determine whether a question of representation exists and to direct an election; and

(D) to supervise or conduct secret ballot elections and certify the results thereof.

(2) The Authority may delegate to any administrative law judge appointed under subsection (d) of this section its authority under section 7118 of this title to determine whether any person has engaged in or is engaging in an unfair labor practice.

(f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of action. The Authority may affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of—

(1) the date of the action; or

(2) the date of the filing of any application under this subsection for review of the action;

the action shall become the action of the Authority at the end of such 60-day period.

(g) In order to carry out its functions under this chapter, the Authority may—

(1) hold hearings;

(2) administer oaths, take the testimony or deposition of any person under oath, and issue subpenas as provided in section 7132 of this title; and

(3) may require an agency or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action it considers appropriate to carry out the policies of this chapter.

(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Authority may appear for the Authority and represent the Authority in any civil action brought in connection with any function carried out by the Authority pursuant to this title or as otherwise authorized by law.

(i) In the exercise of the functions of the Authority under this title, the Authority may request from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or policy directives issued by the Office of Personnel Management in connection with any matter before the Authority.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1196.)

PARTIAL SUSPENSION OF FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Subsec. (a)(2)(D), (E), (G), and (H) of this section suspended with respect to any matter which substantially impairs the implementation by the United States Forces of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nation, see section 1(a) of Ex. Ord. No. 12391, Nov. 4, 1982, 47 F.R. 50457, set out as a note under section 7103 of this title.

§ 7106. Management rights

(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency—

(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

(2) in accordance with applicable laws—

(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

(C) with respect to filling positions, to make selections for appointments from—

(i) among properly ranked and certified candidates for promotion; or

(ii) any other appropriate source; and

(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

(b) Nothing in this section shall preclude any agency and any labor organization from negotiating—

(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

(Added Pub. L. 95–454, title VII, §701, Oct. 13, 1978, 92 Stat. 1198.)

SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

§ 7111. Exclusive recognition of labor organizations

(a) An agency shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in the election.

(b) If a petition is filed with the Authority—

(1) by any person alleging—

(A) in the case of an appropriate unit for which there is no exclusive representative, that 30 percent of the employees in the appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

(B) in the case of an appropriate unit for which there is an exclusive representative, that 30 percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Authority shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. If the Authority finds on the record of the hearing that a question of representation exists, the Authority shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any appropriate unit or in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.

(c) A labor organization which—

(1) has been designated by at least 10 percent of the employees in the unit specified in any petition filed pursuant to subsection (b) of this section;

(2) has submitted a valid copy of a current or recently expired collective bargaining agreement for the unit; or

(3) has submitted other evidence that it is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) of this section and shall be placed on the ballot of any election under such subsection (b) with respect to the petition.

(d) The Authority shall determine who is eligible to vote in any election under this section and shall establish rules governing any such election, which shall include rules allowing employees eligible to vote the opportunity to choose—

(1) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

(2) not to be represented by a labor organization.

In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority of the votes cast in an election shall be certified by the Authority as the exclusive representative.

(e) A labor organization seeking exclusive recognition shall submit to the Authority and the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

(f) Exclusive recognition shall not be accorded to a labor organization—

(1) if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to democratic principles;

(2) in the case of a petition filed pursuant to subsection (b)(1)(A) of this section, if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition;

(3) if there is then in effect a lawful written collective bargaining agreement between the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) covering any employees included in the unit specified in the petition, unless—

(A) the collective bargaining agreement has been in effect for more than 3 years, or

(B) the petition for exclusive recognition is filed not more than 105 days and not less than 60 days before the expiration date of the collective bargaining agreement; or

(4) if the Authority has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition under this section and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative.

(g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority.

(Added Pub. L. 95–454, title VII, §701, Oct. 13, 1978, 92 Stat. 1199.)

§ 7112. Determination of appropriate units for labor organization representation

(a) The Authority shall determine the appropriateness of any unit. The Authority shall de-

termine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this chapter, the appropriate unit should be established on an agency, plant, installation, functional, or other basis and shall determine any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of the agency involved.

(b) A unit shall not be determined to be appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be determined to be appropriate if it includes—

(1) except as provided under section 7135(a)(2) of this title, any management official or supervisor;

(2) a confidential employee;

(3) an employee engaged in personnel work in other than a purely clerical capacity;

(4) an employee engaged in administering the provisions of this chapter;

(5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

(6) any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or

(7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

(c) Any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization—

(1) which represents other individuals to whom such provision applies; or

(2) which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.

(d) Two or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1200; amended Pub. L. 102–378, § 2(54), Oct. 2, 1992, 106 Stat. 1354.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–378 struck out ''(1)'' after subsec. (a) designation.

§ 7113. National consultation rights

(a) If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the Authority, shall be granted national consultation rights by the agency. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

(b)(1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall—

(A) be informed of any substantive change in conditions of employment proposed by the agency, and

(B) be permitted reasonable time to present its views and recommendations regarding the changes.

(2) If any views or recommendations are presented under paragraph (1) of this subsection to an agency by any labor organization—

(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

(c) Nothing in this section shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1201; amended Pub. L. 102–378, § 2(55), Oct. 2, 1992, 106 Stat. 1354.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–378 struck out ''(1)'' after subsec. (a) designation.

§ 7114. Representation rights and duties

(a)(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at—

(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or

(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if—

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

(ii) the employee requests representation.

(3) Each agency shall annually inform its employees of their rights under paragraph (2)(B) of this subsection.

(4) Any agency and any exclusive representative in any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the agency and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 7119 of this title, to assist in any negotiation.

(5) The rights of an exclusive representative under the provisions of this subsection shall not be construed to preclude an employee from—

(A) being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or

(B) exercising grievance or appellate rights established by law, rule, or regulation;

except in the case of grievance or appeal procedures negotiated under this chapter.

(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation—

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data—

(A) which is normally maintained by the agency in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and

(5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

(c)(1) An agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency.

(2) The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).

(3) If the head of the agency does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the agency and the exclusive representative subject to the provisions of this chapter and any other applicable law, rule, or regulation.

(4) A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement or, if none, under regulations prescribed by the agency.

(Added Pub. L. 95–454, title VII, §701, Oct. 13, 1978, 92 Stat. 1202.)

PARTIAL SUSPENSION OF FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Subsec. (a)(1) and (4) of this section suspended with respect to any matter proposed for bargaining which would substantially impair the implementation by the United States Forces of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nation, see section 1(b) of Ex. Ord. No. 12391, Nov. 4, 1982, 47 F.R. 50457, set out as a note under section 7103 of this title.

§ 7115. Allotments to representatives

(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

(b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when—

(1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or

(2) the employee is suspended or expelled from membership in the exclusive representative.

(c)(1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

(2)(A) The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.

(B) Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit.

(Added Pub. L. 95–454, title VII, §701, Oct. 13, 1978, 92 Stat. 1203.)

§ 7116. Unfair labor practices

(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;

(5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(8) to otherwise fail or refuse to comply with any provision of this chapter.

(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;

(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

(4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(5) to refuse to consult or negotiate in good faith with an agency as required by this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

(7)(A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or

(B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

(8) to otherwise fail or refuse to comply with any provision of this chapter.

Nothing in paragraph (7) of this subsection shall result in any informational picketing which does not interfere with an agency's operations being considered as an unfair labor practice.

(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure—

(1) to meet reasonable occupational standards uniformly required for admission, or

(2) to tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 7121(e) and (f) of this title, an employee has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures.

(e) The expression of any personal view, argument, opinion or the making of any statement which—

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election,

(2) corrects the record with respect to any false or misleading statement made by any person, or

(3) informs employees of the Government's policy relating to labor-management relations and representation,

shall not, if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions, (A) constitute an unfair labor practice under any provision of this chapter, or (B) constitute grounds for the setting aside of any election conducted under any provisions of this chapter.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1204.)

PARTIAL SUSPENSION OF FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Subsec. (a)(5) of this section suspended with respect to any matter proposed for bargaining which would substantially impair the implementation by the United States Forces, and subsec. (a)(7) of this section suspended with regard to any regulation governing the implementation by the United States Forces, of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Gov-

ernment of the host nation, see section 1(b), (c) of Ex. Ord. No. 12391, Nov. 4, 1982, 47 F.R. 50457, set out as a note under section 7103 of this title.

§ 7117. Duty to bargain in good faith; compelling need; duty to consult

(a)(1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a Government-wide rule or regulation.

(2) The duty to bargain in good faith shall, to the extent not inconsistent with Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any agency rule or regulation referred to in paragraph (3) of this subsection only if the Authority has determined under subsection (b) of this section that no compelling need (as determined under regulations prescribed by the Authority) exists for the rule or regulation.

(3) Paragraph (2) of the subsection applies to any rule or regulation issued by any agency or issued by any primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit including not less than a majority of the employees in the issuing agency or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.

(b)(1) In any case of collective bargaining in which an exclusive representative alleges that no compelling need exists for any rule or regulation referred to in subsection (a)(3) of this section which is then in effect and which governs any matter at issue in such collective bargaining, the Authority shall determine under paragraph (2) of this subsection, in accordance with regulations prescribed by the Authority, whether such a compelling need exists.

(2) For the purpose of this section, a compelling need shall be determined not to exist for any rule or regulation only if—

(A) the agency, or primary national subdivision, as the case may be, which issued the rule or regulation informs the Authority in writing that a compelling need for the rule or regulation does not exist; or

(B) the Authority determines that a compelling need for a rule or regulation does not exist.

(3) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall be expedited to the extent practicable and shall not include the General Counsel as a party.

(4) The agency, or primary national subdivision, as the case may be, which issued the rule or regulation shall be a necessary party at any hearing under this subsection.

(c)(1) Except in any case to which subsection (b) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

(2) The exclusive representative may, on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by—

(A) filing a petition with the Authority; and

(B) furnishing a copy of the petition to the head of the agency.

(3) On or before the 30th day after the date of the receipt by the head of the agency of the copy of the petition under paragraph (2)(B) of this subsection, the agency shall—

(A) file with the Authority a statement—

(i) withdrawing the allegation; or

(ii) setting forth in full its reasons supporting the allegation; and

(B) furnish a copy of such statement to the exclusive representative.

(4) On or before the 15th day after the date of the receipt by the exclusive representative of a copy of a statement under paragraph (3)(B) of this subsection, the exclusive representative shall file with the Authority its response to the statement.

(5) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall not include the General Counsel as a party.

(6) The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefor at the earliest practicable date.

(d)(1) A labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

(2) A labor organization having consultation rights under paragraph (1) of this subsection shall—

(A) be informed of any substantive change in conditions of employment proposed by the agency, and

(B) shall be permitted reasonable time to present its views and recommendations regarding the changes.

(3) If any views or recommendations are presented under paragraph (2) of this subsection to an agency by any labor organization—

(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1205.)

PARTIAL SUSPENSION OF FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Subsec. (b) of this section suspended with regard to any regulation governing the implementation by the United States Forces, and subsec. (c) of this section suspended with respect to any matter proposed for bargaining which would substantially impair the implementation by the United States Forces, of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nation, see section 1(b), (c) of Ex. Ord. No. 12391, Nov. 4, 1982, 47 F.R. 50457, set out as a note under section 7103 of this title.

§ 7118. Prevention of unfair labor practices

(a)(1) If any agency or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

(2) Any complaint under paragraph (1) of this subsection shall contain a notice—

(A) of the charge;

(B) that a hearing will be held before the Authority (or any member thereof or before an individual employed by the authority and designated for such purpose); and

(C) of the time and place fixed for the hearing.

(3) The labor organization or agency involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

(4)(A) Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

(B) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in subparagraph (A) of this paragraph by reason of—

(i) any failure of the agency or labor organization against which the charge is made to perform a duty owed to the person, or

(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

(5) The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(6) The Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of this title, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Authority, in its discretion, may upon notice receive further evidence or hear argument.

(7) If the Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) determines after any hearing on a complaint under paragraph (5) of this subsection that the preponderance of the evidence received demonstrates that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the agency or labor organization an order—

(A) to cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

(B) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Authority and requiring that the agreement, as amended, be given retroactive effect;

(C) requiring reinstatement of an employee with backpay in accordance with section 5596 of this title; or

(D) including any combination of the actions described in subparagraphs (A) through (C) of this paragraph or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the agency (as provided in section 5596 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(8) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request, in accordance with the provisions of section 7105(i) of this title, from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1207.)

§ 7119. Negotiation impasses; Federal Service Impasses Panel

(a) The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what manner it shall provide services and assistance.

(b) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse—

(1) either party may request the Federal Service Impasses Panel to consider the matter, or

(2) the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse, but only if the procedure is approved by the Panel.

(c)(1) The Federal Service Impasses Panel is an entity within the Authority, the function of which is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives.

(2) The Panel shall be composed of a Chairman and at least six other members, who shall be appointed by the President, solely on the basis of fitness to perform the duties and functions involved, from among individuals who are familiar with Government operations and knowledgeable in labor-management relations.

(3) Of the original members of the Panel, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. Any member of the Panel may be removed by the President.

(4) The Panel may appoint an Executive Director and any other individuals it may from time to time find necessary for the proper performance of its duties. Each member of the Panel who is not an employee (as defined in section 2105 of this title) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay then currently paid under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses as provided under section 5703 of this title.

(5)(A) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either—

(i) recommend to the parties procedures for the resolution of the impasse; or

(ii) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

(B) If the parties do not arrive at a settlement after assistance by the Panel under subparagraph (A) of this paragraph, the Panel may—

(i) hold hearings;

(ii) administer oaths, take the testimony or deposition of any person under oath, and issue subpenas as provided in section 7132 of this title; and

(iii) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless the parties agree otherwise.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1208.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (c)(4), is set out under section 5332 of this title.

§ 7120. Standards of conduct for labor organizations

(a) An agency shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in subsection (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles if there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from, or is subject to other sanction, by a parent labor organization, or federation of organizations with which it had been affili-

ated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a) of this section; or

(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as he considers appropriate to carry out the policies of this section.

(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a supervisor, or a confidential employee, except as specifically provided in this chapter, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

(f) In the case of any labor organization which by omission or commission has willfully and intentionally, with regard to any strike, work stoppage, or slowdown, violated section 7116(b)(7) of this title, the Authority shall, upon an appropriate finding by the Authority of such violation—

(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

(2) take any other appropriate disciplinary action.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1210.)

SUBCHAPTER III—GRIEVANCES, APPEALS, AND REVIEW

AMENDMENTS

1979—Pub. L. 96–54, § 2(a)(42), Aug. 14, 1979, 93 Stat. 383, inserted ‘‘, APPEALS, AND REVIEW’’ after ‘‘GRIEVANCES’’.

§ 7121. Grievance procedures

(a)(1) Except as provided in paragraph (2) of this subsection, any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in subsections (d), (e), and (g) of this section, the procedures shall be the exclusive administrative procedures for resolving grievances which fall within its coverage.

(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

(b)(1) Any negotiated grievance procedure referred to in subsection (a) of this section shall—

(A) be fair and simple,

(B) provide for expeditious processing, and

(C) include procedures that—

(i) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

(ii) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

(iii) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

(2)(A) The provisions of a negotiated grievance procedure providing for binding arbitration in accordance with paragraph (1)(C)(iii) shall, if or to the extent that an alleged prohibited personnel practice is involved, allow the arbitrator to order—

(i) a stay of any personnel action in a manner similar to the manner described in section 1221(c) with respect to the Merit Systems Protection Board; and

(ii) the taking, by an agency, of any disciplinary action identified under section 1215(a)(3) that is otherwise within the authority of such agency to take.

(B) Any employee who is the subject of any disciplinary action ordered under subparagraph (A)(ii) may appeal such action to the same extent and in the same manner as if the agency had taken the disciplinary action absent arbitration.

(c) The preceding subsections of this section shall not apply with respect to any grievance concerning—

(1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);

(2) retirement, life insurance, or health insurance;

(3) a suspension or removal under section 7532 of this title;

(4) any examination, certification, or appointment; or

(5) the classification of any position which does not result in the reduction in grade or pay of an employee.

(d) An aggrieved employee affected by a prohibited personnel practice under section 2302(b)(1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise the matter under either a statutory procedure or

the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to section 7702 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

(e)(1) Matters covered under sections 4303 and 7512 of this title which also fall within the coverage of the negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either under the appellate procedures of section 7701 of this title or under the negotiated grievance procedure, but not both. Similar matters which arise under other personnel systems applicable to employees covered by this chapter may, in the discretion of the aggrieved employee, be raised either under the appellate procedures, if any, applicable to those matters, or under the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

(2) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, an arbitrator shall be governed by section 7701(c)(1) of this title, as applicable.

(f) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, section 7703 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Board. In matters similar to those covered under sections 4303 and 7512 of this title which arise under other personnel systems and which an aggrieved employee has raised under the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures.

(g)(1) This subsection applies with respect to a prohibited personnel practice other than a prohibited personnel practice to which subsection (d) applies.

(2) An aggrieved employee affected by a prohibited personnel practice described in paragraph (1) may elect not more than one of the remedies described in paragraph (3) with respect thereto. For purposes of the preceding sentence, a determination as to whether a particular remedy has been elected shall be made as set forth under paragraph (4).

(3) The remedies described in this paragraph are as follows:

(A) An appeal to the Merit Systems Protection Board under section 7701.

(B) A negotiated grievance procedure under this section.

(C) Procedures for seeking corrective action under subchapters II and III of chapter 12.

(4) For the purpose of this subsection, a person shall be considered to have elected—

(A) the remedy described in paragraph (3)(A) if such person has timely filed a notice of appeal under the applicable appellate procedures;

(B) the remedy described in paragraph (3)(B) if such person has timely filed a grievance in writing, in accordance with the provisions of the parties' negotiated procedure; or

(C) the remedy described in paragraph (3)(C) if such person has sought corrective action from the Office of Special Counsel by making an allegation under section 1214(a)(1).

(h) Settlements and awards under this chapter shall be subject to the limitations in section 5596(b)(4) of this title.

(Added Pub. L. 95–454, title VII, §701, Oct. 13, 1978, 92 Stat. 1211; amended Pub. L. 103–424, §9, Oct. 29, 1994, 108 Stat. 4365; Pub. L. 105–261, div. A, title XI, §1104(b), Oct. 17, 1998, 112 Stat. 2142.)

AMENDMENTS

1998—Subsec. (h). Pub. L. 105–261 added subsec. (h).

1994—Subsec. (a)(1). Pub. L. 103–424, §9(c), substituted ''(d), (e), and (g)'' for ''(d) and (e)'' and inserted ''administrative'' after ''exclusive''.

Subsec. (b). Pub. L. 103–424, §9(a), designated existing provisions as par. (1) and redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and subpars. (A) to (C) of former par. (3) as cls. (i) to (iii) of subpar. (a)(1)(C), respectively, and added par. (2).

Subsec. (g). Pub. L. 103–424, §9(b), added subsec. (g).

PARTIAL SUSPENSION OF FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Subsec. (b)(3)(C) of this section suspended with respect to any grievance involving the implementation by the United States Forces of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nation, see section 1(d) of Ex. Ord. No. 12391, Nov. 4, 1982, 47 F.R. 50457, set out as a note under section 7103 of this title.

§ 7122. Exceptions to arbitral awards

(a) Either party to arbitration under this chapter may file with the Authority an exception to any arbitrator's award pursuant to the arbitration (other than an award relating to a matter described in section 7121(f) of this title). If upon review the Authority finds that the award is deficient—

(1) because it is contrary to any law, rule, or regulation; or

(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the Authority may take such action and make such recommendations concerning the award as

it considers necessary, consistent with applicable laws, rules, or regulations.

(b) If no exception to an arbitrator's award is filed under subsection (a) of this section during the 30-day period beginning on the date the award is served on the party, the award shall be final and binding. An agency shall take the actions required by an arbitrator's final award. The award may include the payment of backpay (as provided in section 5596 of this title).

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1212; amended Pub. L. 98–224, § 4, Mar. 2, 1984, 98 Stat. 48.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–224 amended subsec. (b) generally, substituting ''beginning on the date the award is served on the party'' for ''beginning on the date of such award''.

§ 7123. Judicial review; enforcement

(a) Any person aggrieved by any final order of the Authority other than an order under—

(1) section 7122 of this title (involving an award by an arbitrator), unless the order involves an unfair labor practice under section 7118 of this title, or

(2) section 7112 of this title (involving an appropriate unit determination),

may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority's order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

(b) The Authority may petition any appropriate United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order.

(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority's order unless the court specifically orders the stay. Review of the Authority's order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States district court within any district in which the unfair labor practice in question is alleged to have occurred or in which such person resides or transacts business for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the agency to carry out its essential functions or if the Authority fails to establish probable cause that an unfair labor practice is being committed.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1213.)

PARTIAL SUSPENSION OF FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Subsec. (b) of this section suspended with respect to any matter which substantially impairs the implementation by the United States Forces of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nation, see section 1(a) of Ex. Ord. No. 12391, Nov. 4, 1982, 47 F.R. 50457, set out as a note under section 7103 of this title.

SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

§ 7131. Official time

(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this sub-

section shall not exceed the number of individuals designated as representing the agency for such purposes.

(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a non-duty status.

(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

(d) Except as provided in the preceding subsections of this section—

(1) any employee representing an exclusive representative, or

(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative,

shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

(Added Pub. L. 95–454, title VII, §701, Oct. 13, 1978, 92 Stat. 1214.)

§ 7132. Subpenas

(a) Any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of this title, and any employee of the Authority designated by the Authority may—

(1) issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and

(2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

No subpena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

(b) In the case of contumacy or failure to obey a subpena issued under subsection (a)(1) of this section, the United States district court for the judicial district in which the person to whom the subpena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) Witnesses (whether appearing voluntarily or under subpena) shall be paid the same fee and mileage allowances which are paid subpenaed witnesses in the courts of the United States.

(Added Pub. L. 95–454, title VII, §701, Oct. 13, 1978, 92 Stat. 1214.)

§ 7133. Compilation and publication of data

(a) The Authority shall maintain a file of its proceedings and copies of all available agreements and arbitration decisions, and shall publish the texts of its decisions and the actions taken by the Panel under section 7119 of this title.

(b) All files maintained under subsection (a) of this section shall be open to inspection and reproduction in accordance with the provisions of sections 552 and 552a of this title.

(Added Pub. L. 95–454, title VII, §701, Oct. 13, 1978, 92 Stat. 1215.)

§ 7134. Regulations

The Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Assistant Secretary of Labor for Labor Management Relations, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. Provisions of subchapter II of chapter 5 of this title shall be applicable to the issuance, revision, or repeal of any such rule or regulation.

(Added Pub. L. 95–454, title VII, §701, Oct. 13, 1978, 92 Stat. 1215.)

§ 7135. Continuation of existing laws, recognitions, agreements, and procedures

(a) Nothing contained in this chapter shall preclude—

(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exclusive representative of its employees, which is entered into before the effective date of this chapter; or

(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.

(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this chapter or by regulations or decisions issued pursuant to this chapter.

(Added Pub. L. 95–454, title VII, §701, Oct. 13, 1978, 92 Stat. 1215.)

REFERENCES IN TEXT

For the effective date of this chapter, referred to in text, as 90 days after the date of the enactment of Pub. L. 95–454, which was approved Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Executive Orders 11491, 11616, 11636, and 11838, referred to in subsec. (b), are set out as notes under section 7101 of this title.

Executive Order 11787, referred to in subsec. (b), which was set out as a note under section 7701 of this title, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

[§§ 7151 to 7154. Transferred]

CODIFICATION

Section 7151, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 523, which related to antidiscrimination policy of United States with respect to employment, was renumbered section 7201 of this title by Pub. L. 95–454, title VII, § 703(a)(1), Oct. 13, 1978, 92 Stat. 1216.

Section 7152, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 523; Pub. L. 92–187, § 3, Dec. 15, 1971, 85 Stat. 644, which related to prohibition respecting employment discrimination because of marital status, was renumbered section 7202 of this title by Pub. L. 95–454, title VII, § 703(a)(1), Oct. 13, 1978, 92 Stat. 1216.

Section 7153, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 523, which related to prohibition respecting employment discrimination because of physical handicap, was renumbered section 7203 of this title by Pub. L. 95–454, title VII, 703(a)(1), Oct. 13, 1978, 92 Stat. 1216.

Section 7154, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 523; Pub. L. 90–83, § 1(44), Sept. 11, 1967, 81 Stat. 208; Pub. L. 92–392, § 8, Aug. 19, 1972, 86 Stat. 573, which related to prohibition respecting discrimination because of race, color, creed, sex, or marital status in administration of chapter 51, subchapter III and IV of chapter 53, and sections 305 and 3324 of this title, was renumbered section 7204 of this title by Pub. L. 95–454, title VII, § 703(a)(1), Oct. 13, 1978, 92 Stat. 1216.

CHAPTER 72—ANTIDISCRIMINATION; RIGHT TO PETITION CONGRESS

SUBCHAPTER I—ANTIDISCRIMINATION IN EMPLOYMENT

Sec.
7201. Antidiscrimination policy; minority recruitment program.
7202. Marital status.
7203. Handicapping condition.
7204. Other prohibitions.

SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION CONGRESS

7211. Employees' right to petition Congress

AMENDMENTS

1978—Pub. L. 95–454, title VII, § 703(a)(2), Oct. 13, 1978, 92 Stat. 1217, struck out heading ''SUBCHAPTER II—ANTIDISCRIMINATION IN EMPLOYMENT'' and substituted therefor a chapter heading ''CHAPTER 72—ANTIDISCRIMINATION; RIGHT TO PETITION CONGRESS'' together with the analysis of chapter 72 containing subchapters I, consisting of items 7201 to 7204, and subchapter II, consisting of item 7211.

SUBCHAPTER I—ANTIDISCRIMINATION IN EMPLOYMENT

AMENDMENTS

1979—Pub. L. 96–54, § 2(a)(43), Aug. 14, 1979, 93 Stat. 383, added heading for subchapter I.

§ 7201. Antidiscrimination policy; minority recruitment program

(a) For the purpose of this section—

(1) ''underrepresentation'' means a situation in which the number of members of a minority group designation (determined by the Equal Employment Opportunity Commission in consultation with the Office of Personnel Management, on the basis of the policy set forth in subsection (b) of this section) within a category of civil service employment constitutes a lower percentage of the total number of employees within the employment category than the percentage that the minority constituted within the labor force of the United States, as determined under the most recent decennial or mid-decade census, or current population survey, under title 13, and

(2) ''category of civil service employment'' means—

(A) each grade of the General Schedule described in section 5104 of this title;

(B) each position subject to subchapter IV of chapter 53 of this title;

(C) such occupational, professional, or other groupings (including occupational series) within the categories established under subparagraphs (A) and (B) of this paragraph as the Office determines appropriate.

(b) It is the policy of the United States to insure equal employment opportunities for employees without discrimination because of race, color, religion, sex, or national origin. The President shall use his existing authority to carry out this policy.

(c) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the Office of Personnel Management shall, by regulation, implement a minority recruitment program which shall provide, to the maximum extent practicable—

(1) that each Executive agency conduct a continuing program for the recruitment of members of minorities for positions in the agency to carry out the policy set forth in subsection (b) in a manner designed to eliminate underrepresentation of minorities in the various categories of civil service employment within the Federal service, with special efforts directed at recruiting in minority communities, in educational institutions, and from other sources from which minorities can be recruited; and

(2) that the Office conduct a continuing program of—

(A) assistance to agencies in carrying out programs under paragraph (1) of this subsection, and

(B) evaluation and oversight and such recruitment programs to determine their effectiveness in eliminating such minority underrepresentation.

(d) Not later than 60 days after the date of the enactment of the Civil Service Reform Act of 1978, the Equal Employment Opportunity Commission shall—

(1) establish the guidelines proposed to be used in carrying out the program required under subsection (c) of this section; and

(2) make determinations of underrepresentation which are proposed to be used initially under such program; and

(3) transmit to the Executive agencies involved, to the Office of Personnel Management, and to the Congress the determinations made under paragraph (2) of this subsection.

(e) Not later than January 31 of each year, the Office shall prepare and transmit to each House of the Congress a report on the activities of the Office and of Executive agencies under subsection (c) of this section, including the affirmative action plans submitted under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), the personnel data file maintained by the Office

of Personnel Management, and any other data necessary to evaluate the effectiveness of the program for each category of civil service employment and for each minority group designation, for the preceding fiscal year, together with recommendations for administrative or legislative action the Office considers appropriate.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 523, § 7151; renumbered § 7201 and amended Pub. L. 95–454, title III, § 310, title VII, § 703(a)(1), Oct. 13, 1978, 92 Stat. 1152, 1216.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	42 U.S.C. 2000e(b) (2d proviso).	July 2, 1964, Pub. L. 88–352, § 701(b) (2d proviso), 78 Stat. 254.

The word ''Federal'' is omitted as unnecessary in view of the definition of ''employee'' in section 2105.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

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

AMENDMENTS

1978—Pub. L. 95–454, § 703(a)(1), renumbered section 7151 of this title as this section.

Pub. L. 95–454, § 310(1), substituted ''Antidiscrimination policy; minority recruitment program'' for ''Policy'' in section catchline.

Subsecs. (a) to (e). Pub. L. 95–454, § 310(2)–(4), added subsec. (a), designated existing provisions as subsec. (b), and added subsecs. (c) to (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 310 of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (e) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 187 of House Document No. 103–7.

WORKPLACE POLICIES PROHIBITING DISCRIMINATION AND SEXUAL HARASSMENT

Pub. L. 110–161, div. D, title VII, § 716, Dec. 26, 2007, 121 Stat. 2023, provided that: ''Hereafter, no department, agency, or instrumentality of the United States receiving appropriated funds under this or any other Act shall obligate or expend any such funds, unless such department, agency, or instrumentality has in place, and will continue to administer in good faith, a written policy designed to ensure that all of its workplaces are free from discrimination and sexual harassment and that all of its workplaces are not in violation of title VII of the Civil Rights Act of 1964 (Public Law 88–352, 78 Stat. 241) [42 U.S.C. 2000e et seq.], the Age Discrimination in Employment Act of 1967 (Public Law 90–202, 81 Stat. 602) [29 U.S.C. 621 et seq.], and the Rehabilitation Act of 1973 (Public Law 93–112, 87 Stat. 355) [29 U.S.C. 701 et seq.].''

DISCRIMINATION PROHIBITED IN EMPLOYMENT OF CIVILIAN PERSONNEL AT FACILITIES OPERATED BY THE DEPARTMENT OF DEFENSE IN FOREIGN COUNTRIES

Pub. L. 92–129, title I, § 106, Sept. 28, 1971, 85 Stat. 355, provided that: ''Unless prohibited by treaty, no person shall be discriminated against by the Department of Defense or by any officer or employee thereof, in the employment of civilian personnel at any facility or installation operated by the Department of Defense in any foreign country because such person is a citizen of the United States or is a dependent of a member of the Armed Forces of the United States. As used in this section, the term 'facility or installation operated by the Department of Defense' shall include, but shall not be limited to, any officer's club, non-commissioned officers' club, post exchange, or commissary store.''

§ 7202. Marital status

(a) The President may prescribe rules which shall prohibit, as nearly as conditions of good administration warrant, discrimination because of marital status in an Executive agency or in the competitive service.

(b) Regulations prescribed under any provision of this title, or under any other provision of law, granting benefits to employees, shall provide the same benefits for a married female employee and her spouse and children as are provided for a married male employee and his spouse and children.

(c) Notwithstanding any other provision of law, any provision of law providing a benefit to a male Federal employee or to his spouse or family shall be deemed to provide the same benefit to a female Federal employee or to her spouse or family.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 523, § 7152; Pub. L. 92–187, § 3, Dec. 15, 1971, 85 Stat. 644; renumbered § 7202, Pub. L. 95–454, title VII, § 703(a)(1), Oct. 13, 1978, 92 Stat. 1216.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 633(2)6 (less 1st sentence).	July 26, 1937, ch. 522, 50 Stat. 533.

The authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302. The section is rewritten as a general prohibition instead of specifying each of the personnel actions to which the prohibition applies. The words ''in an Executive agency or in the competitive service'' are added for clarity. The sentence ''All Acts or parts of Acts inconsistent herewith are repealed.'' is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454, renumbered section 7152 of this title as this section.

1971—Pub. L. 92–187 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

§ 7203. Handicapping condition

The President may prescribe rules which shall prohibit, as nearly as conditions of good administration warrant, discrimination because of handicapping condition in an Executive agency or in the competitive service with respect to a position the duties of which, in the opinion of the Office of Personnel Management, can be performed efficiently by an individual with a handicapping condition, except that the employment may not endanger the health or safety of the individual or others.

(Pub. L. 89–544, Sept. 6, 1966, 80 Stat. 523, § 7153; renumbered § 7203 and amended Pub. L. 95–454, title I, § 101(b)(2), title VII, § 703(a)(1), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1118, 1216, 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 633(2)9.	June 10, 1948, ch. 434, 62 Stat. 351.

The authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302. The section is rewritten as a general prohibition instead of specifying the personnel actions included in former section 633(2)9. The words ''in an Executive agency or in the competitive service'' are added for clarity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454, § 703(a)(1), renumbered section 7153 of this title as this section.

Pub. L. 95–454, §§ 101(b)(2), 906(a)(2), substituted ''Handicapping condition'' for ''Physical handicap'' in section catchline, ''handicapping condition'' for ''physical handicap'' wherever appearing in text, and ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by sections 101(b)(2) and 906(a)(2) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

§ 7204. Other prohibitions

[(a) Repealed. Pub. L. 90–83, § 1(44), Sept. 11, 1967, 81 Stat. 208.]

(b) In the administration of chapter 51, subchapters III and IV of chapter 53, and sections 305 and 3324 of this title, discrimination because of race, color, creed, sex, or marital status is prohibited with respect to an individual or a position held by an individual.

(c) The Office of Personnel Management may prescribe regulations necessary for the administration of subsection (b) of this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 523, § 7154; Pub. L. 90–83, § 1(44), Sept. 11, 1967, 81 Stat. 208; Pub. L. 92–392, § 8, Aug. 19, 1972, 86 Stat. 573; renumbered § 7204 and amended Pub. L. 95–454, title VII, § 703(a)(1), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1216, 1224.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 33.	R.S. § 165.
(b)	5 U.S.C. 1074.	Oct. 28, 1949, ch. 782, § 1103, 63 Stat. 972.

In subsection (a), the words ''Executive department'' are substituted for ''department'' as the definition of ''department'' applicable to this section is coextensive with the definition of ''Executive department'' in section 101. The words ''or military department'' are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this subsection, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301. The words ''in the discretion of'' are omitted as unnecessary in view of the permissive grant of authority. The words ''positions in the department'' are substituted for ''any of the clerkships therein authorized by law''. The words ''upon the same requisites and conditions'' are omitted as unnecessary. The words ''legal pay of the position to which appointed'' are substituted for ''same compensations, as are prescribed for men''.

This subsection was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, § 201(d), as added Aug. 10, 1949, ch. 412, § 4, 63 Stat. 579 (former 5 U.S.C. 171–1), which provides ''Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense'' is omitted from this title, but is not repealed.

Subsection (c) is added on authority of former sections 1072 and 1072a, which are codified in section 5115.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section deletes subsection (a) of 5 U.S.C. 7154 to reflect the repeal of the source statute of that subsection by Public Law 89–261, 79 Stat. 987.

AMENDMENTS

1978—Pub. L. 95–454, § 703(a)(1), renumbered section 7154 of this title as this section.

Subsec. (c). Pub. L. 95–454, § 906(a)(2), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

1972—Subsec. (b). Pub. L. 92–392 inserted reference to subchapter IV of chapter 53 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 906(a)(2) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–392 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92–392, set out as an Effective Date note under section 5341 of this title.

SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION CONGRESS

§ 7211. Employees' right to petition Congress

The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

(Added Pub. L. 95–454, title VII, § 703(a)(3), Oct. 13, 1978, 92 Stat. 1217.)

PRIOR PROVISIONS

Provisions of this section were contained in section 7102 of this title prior to the general amendment of chapter 71 of this title by Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1191.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

SUBCHAPTER I—REGULATION OF CONDUCT

Sec.
7301. Presidential regulations.
7302. Post-employment notification.

SUBCHAPTER II—EMPLOYMENT LIMITATIONS

7311. Loyalty and striking.
7312. Employment and clearance; individuals removed for national security.
7313. Riots and civil disorders.

SUBCHAPTER III—POLITICAL ACTIVITIES

7321. Political participation.
7322. Definitions.
7323. Political activity authorized; prohibitions.
7324. Political activities on duty; prohibition.
7325. Political activity permitted; employees residing in certain municipalities.
7326. Penalties.

SUBCHAPTER IV—FOREIGN GIFTS AND DECORATIONS

[7341. Repealed.]
7342. Receipt and disposition of foreign gifts and decorations.

SUBCHAPTER V—MISCONDUCT

7351. Gifts to superiors.
7352. Excessive and habitual use of intoxicants.
7353. Gifts to Federal employees.

SUBCHAPTER VI—DRUG ABUSE, ALCOHOL ABUSE, AND ALCOHOLISM

7361. Drug abuse.
7362. Alcohol abuse and alcoholism.
7363. Reports to Congress.

SUBCHAPTER VII—MANDATORY REMOVAL FROM EMPLOYMENT OF CONVICTED LAW ENFORCEMENT OFFICERS

7371. Mandatory removal from employment of law enforcement officers convicted of felonies.

AMENDMENTS

2003—Pub. L. 108–136, div. A, title XI, §1125(b)(3), Nov. 24, 2003, 117 Stat. 1640, added item 7302.

2000—Pub. L. 106–554, §1(a)(3) [title VI, §639(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–168, added subchapter VII heading and item 7371.

1993—Pub. L. 103–94, §2(b)(2), Oct. 6, 1993, 107 Stat. 1004, amended analysis for subchapter III generally, reenacting subchapter III heading without change, substituting ''participation'' for ''contributions and services'' in item 7321, ''Definitions'' for ''Political use of authority or influence; prohibition'' in item 7322, ''activity authorized; prohibitions'' for ''contributions; prohibition'' in item 7323, ''Political activities on duty; prohibition'' for ''Influencing elections; taking part in political campaigns; prohibitions; exceptions'' in item 7324, ''Political activity permitted; employees residing in certain municipalities'' for ''Penalties'' in item 7325, and ''Penalties'' for ''Nonpartisan political activity permitted'' in item 7326, and striking out item 7327 ''Political activity permitted; employees residing in certain municipalities'' and item 7328 ''General Accounting Office employees''.

1989—Pub. L. 101–194, title III, §303(b), Nov. 30, 1989, 103 Stat. 1747, added item 7353.

1986—Pub. L. 99–570, title VI, §6002(a)(2), Oct. 27, 1986, 100 Stat. 3207–158, added subchapter VI heading and items 7361 to 7363.

1980—Pub. L. 96–191, §8(e)(2), Feb. 15, 1980, 94 Stat. 33, added item 7328.

1968—Pub. L. 90–351, title V, §1001(b), June 19, 1968, 82 Stat. 235, substituted ''EMPLOYMENT LIMITATIONS'' for ''LOYALTY, SECURITY, AND STRIKING'' in subchapter II heading and added item 7313.

1967—Pub. L. 90–83, §1(46), Sept. 11, 1967, 81 Stat. 209, inserted ''GIFTS AND'' before ''DECORATIONS'' in subchapter IV heading, struck out item 7341 ''Receipt and display of foreign decorations'', and added item 7342.

SUBCHAPTER I—REGULATION OF CONDUCT

§ 7301. Presidential regulations

The President may prescribe regulations for the conduct of employees in the executive branch.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 524.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 631 (last 16 words).	R.S. §1753 (last 16 words).

The words ''employees in the executive branch'' are substituted for ''persons who may receive appointments in the civil service''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–94, §1, Oct. 6, 1993, 107 Stat. 1001, provided: ''That this Act [enacting sections 5520a and 7321 to 7326 of this title and section 610 of Title 18, Crimes and Criminal Procedure, amending sections 1216, 2302, 3302 and 3303 of this title, sections 602 and 603 of Title 18, section 410 of Title 39, Postal Service, and sections 1973d and 9904 of Title 42, The Public Health and Welfare, omitting former sections 7321 to 7328 of this title, and enacting provisions set out as notes under section 7321 of this title and section 410 of Title 39] may be cited as the 'Hatch Act Reform Amendments of 1993'.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–570, title VI, §6001, Oct. 27, 1986, 100 Stat. 3207–157, provided that: ''This title [enacting sections 7361 to 7363 and 7904 of this title, amending sections 290dd–1 and 290ee–1 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under section 7361 of this title and section 801 of Title 21, Food and Drugs] may be cited as the 'Federal Employee Substance Abuse Education and Treatment Act of 1986'.''

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Director of the Office of Personnel Management, see Parts 1, 2, and 22 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of Title 42, The Public Health and Welfare.

CONTINUATION OF RANDOM DRUG TESTING PROGRAM FOR CERTAIN DEPARTMENT OF DEFENSE EMPLOYEES

Pub. L. 105–261, div. A, title XI, §1108, Oct. 17, 1998, 112 Stat. 2142, provided that:

''(a) CONTINUATION OF EXISTING PROGRAM.—The Secretary of Defense shall continue to actively carry out the drug testing program, originally required by section 3(a) of Executive Order No. 12564 (51 Fed. Reg. 32889; September 15, 1986) [set out below], involving civilian employees of the Department of Defense who are considered to be employees in sensitive positions. The Secretary shall comply with the drug testing proce-

dures prescribed pursuant to section 4 of the Executive order.

''(b) TESTING UPON REASONABLE SUSPICION OF ILLEGAL DRUG USE.—The Secretary of Defense shall ensure that the drug testing program referred to in subsection (a) authorizes the testing of a civilian employee of the Department of Defense for illegal drug use when there is a reasonable suspicion that the employee uses illegal drugs.

''(c) NOTIFICATION TO APPLICANTS.—The Secretary of Defense shall notify persons who apply for employment with the Department of Defense that, as a condition of employment by the Department, the person may be required to submit to drug testing under the drug testing program required by Executive Order No. 12564 (51 Fed. Reg. 32889; September 15, 1986) pursuant to the terms of the Executive order.

''(d) DEFINITIONS.—In this section, the terms 'illegal drugs' and 'employee in a sensitive position' have the meanings given such terms in section 7 of Executive Order No. 12564 (51 Fed. Reg. 32889; September 15, 1986).''

ANNUAL CERTIFICATION OF DRUG-FREE WORKPLACE PLAN ADMINISTRATORS

Pub. L. 106–58, title VI, § 624, Sept. 29, 1999, 113 Stat. 471, provided that: ''Notwithstanding any provision of law, the President, or his designee, must certify to Congress, annually, that no person or persons with direct or indirect responsibility for administering the Executive Office of the President's Drug-Free Workplace Plan are themselves subject to a program of individual random drug testing.''

Similar provisions were contained in the following prior appropriations acts:

Pub. L. 105–277, div. A, § 101(h) [title VI, § 634], Oct. 21, 1998, 112 Stat. 2681–480, 2681–524.

Pub. L. 105–61, title VI, § 621, Oct. 10, 1997, 111 Stat. 1313.

Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 623], Sept. 30, 1996, 110 Stat. 3009–314, 3009–358.

Pub. L. 104–52, title VI, § 624, Nov. 19, 1995, 109 Stat. 502.

Pub. L. 103–329, title VI, § 638, Sept. 30, 1994, 108 Stat. 2432.

DESIGNATION OF DIRECTOR OF THE BUREAU OF THE BUDGET AS MEMBER OF FEDERAL LABOR RELATIONS COUNCIL

Presidential Order of December 8, 1969, provided that: Pursuant to the provisions of section 4 of Executive Order 11491 [set out as a note under this section], I hereby designate the Director of the Bureau of the Budget [now the Office of Management and Budget] as a member of the Federal Labor Relations Council. This order of designation shall be published in the Federal Register.

RICHARD NIXON.

DISPLAY IN FEDERAL BUILDINGS OF CODE OF ETHICS FOR GOVERNMENT SERVICE

Pub. L. 96–303, July 3, 1980, 94 Stat. 855, which provided that each agency, under regulations prescribed by Administrator of General Services Administration, display in appropriate areas of Federal buildings copies of the Code of Ethics for Government Service, authorized publication and distribution of such Code, and set forth text of the Code of Ethics for Government Service, was repealed by Pub. L. 104–179, § 4(a), Aug. 6, 1996, 110 Stat. 1566.

AGENCY ACCEPTANCE OF DONATIONS FOR FEDERAL EMPLOYEES

Pub. L. 102–368, title XI, § 901, Sept. 23, 1992, 106 Stat. 1156, effective through Sept. 30, 1993, authorized Federal agencies to accept gifts of property, money, or anything else of value from non-Federal sources for extraordinary and unanticipated expenses incurred by agency employees in their personal capacity within areas designated as disaster areas pursuant to President's declaration of a disaster resulting from Hurricane Andrew, Typhoon Omar, and Hurricane Iniki, directed agencies to establish written procedures to implement this program, and authorized agencies to accept gifts designated for individual employees.

RESTRICTION ON AVAILABILITY OF FUNDS TO ADMINISTER OR IMPLEMENT DRUG TESTING

Pub. L. 100–71, title V, § 503, July 11, 1987, 101 Stat. 468, as amended by Pub. L. 102–54, § 13(b)(6), June 13, 1991, 105 Stat. 274, provided:

''(a)(1) Except as provided in subsection (b) or (c), none of the funds appropriated or made available by this Act, or any other Act, with respect to any fiscal year, shall be available to administer or implement any drug testing pursuant to Executive Order Numbered 12564 (dated September 15, 1986) [set out as a note below], or any subsequent order, unless and until—

''(A) the Secretary of Health and Human Services certifies in writing to the Committees on Appropriations of the House of Representatives and the Senate, and other appropriate committees of the Congress, that—

''(i) each agency has developed a plan for achieving a drug-free workplace in accordance with Executive Order Numbered 12564 and applicable provisions of law (including applicable provisions of this section);

''(ii) the Department of Health and Human Services, in addition to the scientific and technical guidelines dated February 13, 1987, and any subsequent amendments thereto, has, in accordance with paragraph (3), published mandatory guidelines which—

''(I) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out Executive Order Numbered 12564, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

''(II) specify the drugs for which Federal employees may be tested; and

''(III) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out Executive Order Numbered 12564; and

''(iii) all agency drug-testing programs and plans established pursuant to Executive Order Numbered 12564 comply with applicable provisions of law, including applicable provisions of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), title 5 of the United States Code, and the mandatory guidelines under clause (ii);

''(B) the Secretary of Health and Human Services has submitted to the Congress, in writing, a detailed, agency-by-agency analysis relating to—

''(i) the criteria and procedures to be applied in designating employees or positions for drug testing, including the justification for such criteria and procedures;

''(ii) the position titles designated for random drug testing; and

''(iii) the nature, frequency, and type of drug testing proposed to be instituted; and

''(C) the Director of the Office of Management and Budget has submitted in writing to the Committees on Appropriations of the House of Representatives and the Senate a detailed, agency-by-agency analysis (as of the time of certification under subparagraph (A)) of the anticipated annual costs associated with carrying out Executive Order Numbered 12564 and all other requirements under this section during the 5-year period beginning on the date of the enactment of this Act [July 11, 1987].

''(2) Notwithstanding subsection (g), for purposes of this subsection, the term ''agency'' means—

''(A) the Executive Office of the President;

''(B) an Executive department under section 101 of title 5, United States Code;

''(C) the Environmental Protection Agency;

''(D) the General Services Administration;

''(E) the National Aeronautics and Space Administration;

''(F) the Office of Personnel Management;

''(G) the Small Business Administration;

''(H) the United States Information Agency; and

''(I) the Department of Veterans Affairs;

except that such term does not include the Department of Transportation or any other entity (or component thereof) covered by subsection (b).

''(3) Notwithstanding any provision of chapter 5 of title 5, United States Code, the mandatory guidelines to be published pursuant to subsection (a)(1)(A)(ii) shall be published and made effective exclusively according to the provisions of this paragraph. Notice of the mandatory guidelines proposed by the Secretary of Health and Human Services shall be published in the Federal Register, and interested persons shall be given not less than 60 days to submit written comments on the proposed mandatory guidelines. Following review and consideration of written comments, final mandatory guidelines shall be published in the Federal Register and shall become effective upon publication.

''(b)(1) Nothing in subsection (a) shall limit or otherwise affect the availability of funds for drug testing by—

''(A) the Department of Transportation;

''(B) Department of Energy, for employees specifically involved in the handling of nuclear weapons or nuclear materials;

''(C) any agency with an agency-wide drug-testing program in existence as of September 15, 1986; or

''(D) any component of an agency if such component had a drug-testing program in existence as of September 15, 1986.

''(2) The Departments of Transportation and Energy and any agency or component thereof with a drug-testing program in existence as of September 15, 1986—

''(A) shall be brought into full compliance with Executive Order Numbered 12564 [set out as a note below] no later than the end of the 6-month period beginning on the date of the enactment of this Act [July 11, 1987]; and

''(B) shall take such actions as may be necessary to ensure that their respective drug-testing programs or plans are brought into full compliance with the mandatory guidelines published under subsection (a)(1)(A)(ii) no later than 90 days after such mandatory guidelines take effect, except that any judicial challenge that affects such guidelines should not affect drug-testing programs or plans subject to this paragraph.

''(c) In the case of an agency (or component thereof) other than an agency as defined by subsection (a)(2) or an agency (or component thereof) covered by subsection (b), none of the funds appropriated or made available by this Act, or any other Act, with respect to any fiscal year, shall be available to administer or implement any drug testing pursuant to Executive Order Numbered 12564 [set out as a note below], or any subsequent order, unless and until—

''(1) the Secretary of Health and Human Services provides written certification with respect to that agency (or component) in accordance with clauses (i) and (iii) of subsection (a)(1)(A);

''(2) the Secretary of Health and Human Services has submitted a written, detailed analysis with respect to that agency (or component) in accordance with subsection (a)(1)(B); and

''(3) the Director of the Office of Management and Budget has submitted a written, detailed analysis with respect to that agency (or component) in accordance with subsection (a)(1)(C).

''(d) Any Federal employee who is the subject of a drug test under any program or plan shall, upon written request, have access to—

''(1) any records relating to such employee's drug test; and

''(2) any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings, as referred to in subsection (a)(1)(A)(ii)(III).

''(e) The results of a drug test of a Federal employee may not be disclosed without the prior written consent of such employee, unless the disclosure would be—

''(1) to the employee's medical review official (as defined in the scientific and technical guidelines referred to in subsection (a)(1)(A)(ii));

''(2) to the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating;

''(3) to any supervisory or management official within the employee's agency having authority to take the adverse personnel action against such employee; or

''(4) pursuant to the order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

''(f) [Terminated, effective May 15, 2000, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 151 of House Document No. 103–7.]

''(g) For purposes of this section, the terms 'agency' and 'Employee Assistance Program' each has the meaning given such term under section 7(b) of Executive Order Numbered 12564 [set out as a note below], as in effect on September 15, 1986.''

[For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22, Foreign Relations and Intercourse.]

LIMITATION ON GRATUITIES AT NAVAL SHIPBUILDING CEREMONIES

Pub. L. 99–145, title XIV, §1461, Nov. 8, 1985, 99 Stat. 765, provided that:

''(a) GENERAL RULE.—A Federal officer, employee, or Member of Congress may not accept, directly or indirectly, any tangible thing of value as a gift or memento in connection with a ceremony to mark the completion of a naval shipbuilding milestone.

''(b) EXCLUSION.—Subsection (a) does not apply to a gift or memento that has a value of less than $100.

''(c) DEFINITIONS.—For purposes of this section, the terms 'officer', 'employee', and 'Member of Congress' have the meanings given those terms in sections 2104, 2105, and 2106, respectively, of title 5, United States Code.''

EXECUTIVE ORDER NO. 9845

Ex. Ord. No. 9845, Apr. 28, 1947, 12 F.R. 2799, which permitted Bureau of Reclamation employees to accept appointments as constables or deputy sheriffs under state or territorial laws, was revoked by Ex. Ord. No. 11408, Apr. 25, 1968, 33 F.R. 6459.

EX. ORD. NO. 12564. DRUG-FREE FEDERAL WORKPLACE

Ex. Ord. No. 12564, Sept. 15, 1986, 51 F.R. 32889, provided:

I, RONALD REAGAN, President of the United States of America, find that:

Drug use is having serious adverse effects upon a significant proportion of the national work force and results in billions of dollars of lost productivity each year;

The Federal government, as an employer, is concerned with the well-being of its employees, the successful accomplishment of agency missions, and the need to maintain employee productivity;

The Federal government, as the largest employer in the Nation, can and should show the way towards

achieving drug-free workplaces through a program designed to offer drug users a helping hand and, at the same time, demonstrating to drug users and potential drug users that drugs will not be tolerated in the Federal workplace;

The profits from illegal drugs provide the single greatest source of income for organized crime, fuel violent street crime, and otherwise contribute to the breakdown of our society;

The use of illegal drugs, on or off duty, by Federal employees is inconsistent not only with the law-abiding behavior expected of all citizens, but also with the special trust placed in such employees as servants of the public;

Federal employees who use illegal drugs, on or off duty, tend to be less productive, less reliable, and prone to greater absenteeism than their fellow employees who do not use illegal drugs;

The use of illegal drugs, on or off duty, by Federal employees impairs the efficiency of Federal departments and agencies, undermines public confidence in them, and makes it more difficult for other employees who do not use illegal drugs to perform their jobs effectively. The use of illegal drugs, on or off duty, by Federal employees also can pose a serious health and safety threat to members of the public and to other Federal employees;

The use of illegal drugs, on or off duty, by Federal employees in certain positions evidences less than the complete reliability, stability, and good judgment that is consistent with access to sensitive information and creates the possibility of coercion, influence, and irresponsible action under pressure that may pose a serious risk to national security, the public safety, and the effective enforcement of the law; and

Federal employees who use illegal drugs must themselves be primarily responsible for changing their behavior and, if necessary, begin the process of rehabilitating themselves.

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 3301(2) of Title 5 of the United States Code, section 7301 of Title 5 of the United States Code, section 290ee–1 of Title 42 of the United States Code, deeming such action in the best interests of national security, public health and safety, law enforcement and the efficiency of the Federal service, and in order to establish standards and procedures to ensure fairness in achieving a drug-free Federal workplace and to protect the privacy of Federal employees, it is hereby ordered as follows:

SECTION 1. *Drug-Free Workplace*. (a) Federal employees are required to refrain from the use of illegal drugs.

(b) The use of illegal drugs by Federal employees, whether on duty or off duty, is contrary to the efficiency of the service.

(c) Persons who use illegal drugs are not suitable for Federal employment.

SEC. 2. *Agency Responsibilities*. (a) The head of each Executive agency shall develop a plan for achieving the objective of a drug-free workplace with due consideration of the rights of the government, the employee, and the general public.

(b) Each agency plan shall include:

(1) A statement of policy setting forth the agency's expectations regarding drug use and the action to be anticipated in response to identified drug use;

(2) Employee Assistance Programs emphasizing high level direction, education, counseling, referral to rehabilitation, and coordination with available community resources;

(3) Supervisory training to assist in identifying and addressing illegal drug use by agency employees;

(4) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues; and

(5) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis in accordance with this Order.

SEC. 3. *Drug Testing Programs*. (a) The head of each Executive agency shall establish a program to test for the use of illegal drugs by employees in sensitive positions. The extent to which such employees are tested and the criteria for such testing shall be determined by the head of each agency, based upon the nature of the agency's mission and its employees' duties, the efficient use of agency resources, and the danger to the public health and safety or national security that could result from the failure of an employee adequately to discharge his or her position.

(b) The head of each Executive agency shall establish a program for voluntary employee drug testing.

(c) In addition to the testing authorized in subsections (a) and (b) of this section, the head of each Executive agency is authorized to test an employee for illegal drug use under the following circumstances:

(1) When there is a reasonable suspicion that any employee uses illegal drugs;

(2) In an examination authorized by the agency regarding an accident or unsafe practice; or

(3) As part of or as a follow-up to counseling or rehabilitation for illegal drug use through an Employee Assistance Program.

(d) The head of each Executive agency is authorized to test any applicant for illegal drug use.

SEC. 4. *Drug Testing Procedures*. (a) Sixty days prior to the implementation of a drug testing program pursuant to this Order, agencies shall notify employees that testing for use of illegal drugs is to be conducted and that they may seek counseling and rehabilitation and inform them of the procedures for obtaining such assistance through the agency's Employee Assistance Program. Agency drug testing programs already ongoing are exempted from the 60-day notice requirement. Agencies may take action under section 3(c) of this Order without reference to the 60-day notice period.

(b) Before conducting a drug test, the agency shall inform the employee to be tested of the opportunity to submit medical documentation that may support a legitimate use for a specific drug.

(c) Drug testing programs shall contain procedures for timely submission of requests for retention of records and specimens; procedures for retesting; and procedures, consistent with applicable law, to protect the confidentiality of test results and related medical and rehabilitation records. Procedures for providing urine specimens must allow individual privacy, unless the agency has reason to believe that a particular individual may alter or substitute the specimen to be provided.

(d) The Secretary of Health and Human Services is authorized to promulgate scientific and technical guidelines for drug testing programs, and agencies shall conduct their drug testing programs in accordance with these guidelines once promulgated.

SEC. 5. *Personnel Actions*. (a) Agencies shall, in addition to any appropriate personnel actions, refer any employee who is found to use illegal drugs to an Employee Assistance Program for assessment, counseling, and referral for treatment or rehabilitation as appropriate.

(b) Agencies shall initiate action to discipline any employee who is found to use illegal drugs, *provided that* such action is not required for an employee who:

(1) Voluntarily identifies himself as a user of illegal drugs or who volunteers for drug testing pursuant to section 3(b) of this Order, prior to being identified through other means;

(2) Obtains counseling or rehabilitation through an Employee Assistance Program; and

(3) Thereafter refrains from using illegal drugs.

(c) Agencies shall not allow any employee to remain on duty in a sensitive position who is found to use illegal drugs, prior to successful completion of rehabilitation through an Employee Assistance Program. However, as part of a rehabilitation or counseling program, the head of an Executive agency may, in his or her discretion, allow an employee to return to duty in a sen-

sitive position if it is determined that this action would not pose a danger to public health or safety or the national security.

(d) Agencies shall initiate action to remove from the service any employee who is found to use illegal drugs and:

(1) Refuses to obtain counseling or rehabilitation through an Employee Assistance Program; or

(2) Does not thereafter refrain from using illegal drugs.

(e) The results of a drug test and information developed by the agency in the course of the drug testing of the employee may be considered in processing any adverse action against the employee or for other administrative purposes. Preliminary test results may not be used in an administrative proceeding unless they are confirmed by a second analysis of the same sample or unless the employee confirms the accuracy of the initial test by admitting the use of illegal drugs.

(f) The determination of an agency that an employee uses illegal drugs can be made on the basis of any appropriate evidence, including direct observation, a criminal conviction, administrative inquiry, or the results of an authorized testing program. Positive drug test results may be rebutted by other evidence that an employee has not used illegal drugs.

(g) Any action to discipline an employee who is using illegal drugs (including removal from the service, if appropriate) shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act [Pub. L. 95–454, see Tables for classification].

(h) Drug testing shall not be conducted pursuant to this Order for the purpose of gathering evidence for use in criminal proceedings. Agencies are not required to report to the Attorney General for investigation or prosecution any information, allegation, or evidence relating to violations of Title 21 of the United States Code received as a result of the operation of drug testing programs established pursuant to this Order.

SEC. 6. *Coordination of Agency Programs.* (a) The Director of the Office of Personnel Management shall:

(1) Issue government-wide guidance to agencies on the implementation of the terms of this Order;

(2) Ensure that appropriate coverage for drug abuse is maintained for employees and their families under the Federal Employees Health Benefits Program;

(3) Develop a model Employee Assistance Program for Federal agencies and assist the agencies in putting programs in place;

(4) In consultation with the Secretary of Health and Human Services, develop and improve training programs for Federal supervisors and managers on illegal drug use; and

(5) In cooperation with the Secretary of Health and Human Services and heads of Executive agencies, mount an intensive drug awareness campaign throughout the Federal work force.

(b) The Attorney General shall render legal advice regarding the implementation of this Order and shall be consulted with regard to all guidelines, regulations, and policies proposed to be adopted pursuant to this Order.

(c) Nothing in this Order shall be deemed to limit the authorities of the Director of Central Intelligence under the National Security Act of 1947, as amended [50 U.S.C. 401 et seq.], or the statutory authorities of the National Security Agency or the Defense Intelligence Agency. Implementation of this Order within the Intelligence Community, as defined in Executive Order No. 12333 [50 U.S.C. 401 note], shall be subject to the approval of the head of the affected agency.

SEC. 7. *Definitions.* (a) This Order applies to all agencies of the Executive Branch.

(b) For purposes of this Order, the term ''agency'' means an Executive agency, as defined in 5 U.S.C. 105; the Uniformed Services, as defined in 5 U.S.C. 2101(3) (but excluding the armed forces as defined by 5 U.S.C. 2101(2)); or any other employing unit or authority of the Federal government, except the United States Postal Service, the Postal Rate Commission, and employing units or authorities in the Judicial and Legislative Branches.

(c) For purposes of this Order, the term ''illegal drugs'' means a controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term ''illegal drugs'' does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(d) For purposes of this Order, the term ''employee in a sensitive position'' refers to:

(1) An employee in a position that an agency head designates Special Sensitive, Critical-Sensitive, or Noncritical-Sensitive under Chapter 731 of the Federal Personnel Manual or an employee in a position that an agency head designates as sensitive in accordance with Executive Order No. 10450, as amended [5 U.S.C. 7311 note];

(2) An employee who has been granted access to classified information or may be granted access to classified information pursuant to a determination of trustworthiness by an agency head under Section 4 of Executive Order No. 12356 [50 U.S.C. 435 note];

(3) Individuals serving under Presidential appointments;

(4) Law enforcement officers as defined in 5 U.S.C. 8331(20); and

(5) Other positions that the agency head determines involve law enforcement, national security, the protection of life and property, public health or safety, or other functions requiring a high degree of trust and confidence.

(e) For purposes of this Order, the term ''employee'' means all persons appointed in the Civil Service as described in 5 U.S.C. 2105 (but excluding persons appointed in the armed services as defined in 5 U.S.C. 2102(2)).

(f) For purposes of this Order, the term ''Employee Assistance Program'' means agency-based counseling programs that offer assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health programs that affect employee job performance. Employee Assistance Programs are responsible for referring drug-using employees for rehabilitation and for monitoring employees' progress while in treatment.

SEC. 8. *Effective Date.* This Order is effective immediately.

RONALD REAGAN.

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.]

EX. ORD. NO. 12674. PRINCIPLES OF ETHICAL CONDUCT FOR GOVERNMENT OFFICERS AND EMPLOYEES

Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended by Ex. Ord. No. 12731, Oct. 17, 1990, 55 F.R. 42547, provided:

By virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish fair and exacting standards of ethical conduct for all executive branch employees, it is hereby ordered as follows:

PART I—PRINCIPLES OF ETHICAL CONDUCT

SECTION 101. *Principles of Ethical Conduct.* To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each Federal employee shall respect and adhere to the fundamental

principles of ethical service as implemented in regulations promulgated under sections 201 and 301 of this order:

(a) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.

(b) Employees shall not hold financial interests that conflict with the conscientious performance of duty.

(c) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(d) An employee shall not, except pursuant to such reasonable exceptions as are provided by regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

(e) Employees shall put forth honest effort in the performance of their duties.

(f) Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Government.

(g) Employees shall not use public office for private gain.

(h) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(i) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(j) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

(k) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(*l*) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those—such as Federal, State, or local taxes—that are imposed by law.

(m) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(n) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this order.

SEC. 102. *Limitations on Outside Earned Income.*

(a) No employee who is appointed by the President to a full-time noncareer position in the executive branch (including full-time noncareer employees in the White House Office, the Office of Policy Development, and the Office of Cabinet Affairs), shall receive any earned income for any outside employment or activity performed during that Presidential appointment.

(b) The prohibition set forth in subsection (a) shall not apply to any full-time noncareer employees employed pursuant to 3 U.S.C. 105 and 3 U.S.C. 107(a) at salaries below the minimum rate of basic pay then paid for GS–9 of the General Schedule. Any outside employment must comply with relevant agency standards of conduct, including any requirements for approval of outside employment.

PART II—OFFICE OF GOVERNMENT ETHICS AUTHORITY

SEC. 201. *The Office of Government Ethics.* The Office of Government Ethics shall be responsible for administering this order by:

(a) Promulgating, in consultation with the Attorney General and the Office of Personnel Management, regulations that establish a single, comprehensive, and clear set of executive-branch standards of conduct that shall be objective, reasonable, and enforceable.

(b) Developing, disseminating, and periodically updating an ethics manual for employees of the executive branch describing the applicable statutes, rules, decisions, and policies.

(c) Promulgating, with the concurrence of the Attorney General, regulations interpreting the provisions of the post-employment statute, section 207 of title 18, United States Code; the general conflict-of-interest statute, section 208 of title 18, United States Code; and the statute prohibiting supplementation of salaries, section 209 of title 18, United States Code.

(d) Promulgating, in consultation with the Attorney General and the Office of Personnel Management, regulations establishing a system of nonpublic (confidential) financial disclosure by executive branch employees to complement the system of public disclosure under the Ethics in Government Act of 1978 [Pub. L. 95–521, see Tables for classification]. Such regulations shall include criteria to guide agencies in determining which employees shall submit these reports.

(e) Ensuring that any implementing regulations issued by agencies under this order are consistent with and promulgated in accordance with this order.

SEC. 202. *Executive Office of the President.* In that the agencies within the Executive Office of the President (EOP) currently exercise functions that are not distinct and separate from each other within the meaning and for the purposes of section 207(e) of title 18, United States Code, those agencies shall be treated as one agency under section 207(c) of title 18, United States Code.

PART III—AGENCY RESPONSIBILITIES

SEC. 301. *Agency Responsibilities.* Each agency head is directed to:

(a) Supplement, as necessary and appropriate, the comprehensive executive branch-wide regulations of the Office of Government Ethics, with regulations of special applicability to the particular functions and activities of that agency. Any supplementary agency regulations shall be prepared as addenda to the branch-wide regulations and promulgated jointly with the Office of Government Ethics, at the agency's expense, for inclusion in Title 5 of the Code of Federal Regulations.

(b) Ensure the review by all employees of this order and regulations promulgated pursuant to the order.

(c) Coordinate with the Office of Government Ethics in developing annual agency ethics training plans. Such training shall include mandatory annual briefings on ethics and standards of conduct for all employees appointed by the President, all employees in the Executive Office of the President, all officials required to file public or nonpublic financial disclosure reports, all employees who are contracting officers and procurement officials, and any other employees designated by the agency head.

(d) Where practicable, consult formally or informally with the Office of Government Ethics prior to granting any exemption under section 208 of title 18, United States Code, and provide the Director of the Office of Government Ethics a copy of any exemption granted.

(e) Ensure that the rank, responsibilities, authority, staffing, and resources of the Designated Agency Ethics Official are sufficient to ensure the effectiveness of the agency ethics program. Support should include the provision of a separate budget line item for ethics activities, where practicable.

PART IV—DELEGATIONS OF AUTHORITY

SEC. 401. *Delegations to Agency Heads.* Except in the case of the head of an agency, the authority of the President under sections 203(d), 205(e), and 208(b) of title 18, United States Code, to grant exemptions or approvals to individuals, is delegated to the head of the agency in which an individual requiring an exemption or approval is employed or to which the individual (or the committee, commission, board, or similar group employing the individual) is attached for purposes of administration.

SEC. 402. *Delegations to the Counsel to the President.*

(a) Except as provided in section 401, the authority of the President under sections 203(d), 205(e), and 208(b) of title 18, United States Code, to grant exemptions or ap-

provals for Presidential appointees to committees, commissions, boards, or similar groups established by the President is delegated to the Counsel to the President.

(b) The authority of the President under sections 203(d), 205(e), and 208(b) of title 18, United States Code, to grant exemptions or approvals for individuals appointed pursuant to 3 U.S.C. 105 and 3 U.S.C. 107(a), is delegated to the Counsel to the President.

SEC. 403. *Delegation Regarding Civil Service*. The Office of Personnel Management and the Office of Government Ethics, as appropriate, are delegated the authority vested in the President by 5 U.S.C. 7301 to establish general regulations for the implementation of this Executive order.

PART V—GENERAL PROVISIONS

SEC. 501. *Revocations*. The following Executive orders are hereby revoked:

(a) Executive Order No. 11222 of May 8, 1965.

(b) Executive Order No. 12565 of September 25, 1986.

SEC. 502. *Savings Provision*.

(a) All actions already taken by the President or by his delegates concerning matters affected by this order and in force when this order is issued, including any regulations issued under Executive Order 11222, Executive Order 12565, or statutory authority, shall, except as they are irreconcilable with the provisions of this order or terminate by operation of law or by Presidential action, remain in effect until properly amended, modified, or revoked pursuant to the authority conferred by this order or any regulations promulgated under this order. Notwithstanding anything in section 102 of this order, employees may carry out preexisting contractual obligations entered into before April 12, 1989.

(b) Financial reports filed in confidence (pursuant to the authority of Executive Order No. 11222, 5 C.F.R. Part 735, and individual agency regulations) shall continue to be held in confidence.

SEC. 503. *Definitions*. For purposes of this order, the term:

(a) ''Contracting officers and procurement officials'' means all such officers and officials as defined in the Office of Federal Procurement Policy Act Amendments of 1988 [see 41 U.S.C. 2101].

(b) ''Employee'' means any officer or employee of an agency, including a special Government employee.

(c) ''Agency'' means any executive agency as defined in 5 U.S.C. 105, including any executive department as defined in 5 U.S.C. 101, Government corporation as defined in 5 U.S.C. 103, or an independent establishment in the executive branch as defined in 5 U.S.C. 104 (other than the General Accounting Office [now Government Accountability Office]), and the United States Postal Service and Postal Rate Commission.

(d) ''Head of an agency'' means, in the case of an agency headed by more than one person, the chair or comparable member of such agency.

(e) ''Special Government employee'' means a special Government employee as defined in 18 U.S.C. 202(a).

SEC. 504. *Judicial Review*. This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

EXECUTIVE ORDER NO. 12820

Ex. Ord. No. 12820, Nov. 5, 1992, 57 F.R. 53429, which facilitated Federal employees' participation in community service activities, was revoked by Ex. Ord. No. 13401, §3(b), Apr. 27, 2006, 71 F.R. 25738.

EXECUTIVE ORDER NO. 12834

Ex. Ord. No. 12834, Jan. 20, 1993, 58 F.R. 5911, which provided for ethics commitments by executive branch appointees, was revoked by Ex. Ord. No. 13184, Dec. 28, 2000, 66 F.R. 697, eff. noon Jan. 20, 2001.

EX. ORD. NO. 13058. PROTECTING FEDERAL EMPLOYEES AND THE PUBLIC FROM EXPOSURE TO TOBACCO SMOKE IN THE FEDERAL WORKPLACE

Ex. Ord. No. 13058, Aug. 9, 1997, 62 F.R. 43451, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America and in order to protect Federal Government employees and members of the public from exposure to tobacco smoke in the Federal workplace, it is hereby ordered as follows:

SECTION 1. *Policy*. It is the policy of the executive branch to establish a smoke-free environment for Federal employees and members of the public visiting or using Federal facilities. The smoking of tobacco products is thus prohibited in all interior space owned, rented, or leased by the executive branch of the Federal Government, and in any outdoor areas under executive branch control in front of air intake ducts.

SEC. 2. *Exceptions*. The general policy established by this order is subject to the following exceptions: (a) The order does not apply in designated smoking areas that are enclosed and exhausted directly to the outside and away from air intake ducts, and are maintained under negative pressure (with respect to surrounding spaces) sufficient to contain tobacco smoke within the designated area. Agency officials shall not require workers to enter such areas during business hours while smoking is ongoing.

(b) The order does not extend to any residential accommodation for persons voluntarily or involuntarily residing, on a temporary or long-term basis, in a building owned, leased, or rented by the Federal Government.

(c) The order does not extend to those portions of federally owned buildings leased, rented, or otherwise provided in their entirety to nonfederal parties.

(d) The order does not extend to places of employment in the private sector or in other nonfederal governmental units that serve as the permanent or intermittent duty station of one or more Federal employees.

(e) The head of any agency may establish limited and narrow exceptions that are necessary to accomplish agency missions. Such exception shall be in writing, approved by the agency head, and to the fullest extent possible provide protection of nonsmokers from exposure to environmental tobacco smoke. Authority to establish such exceptions may not be delegated.

SEC. 3. *Other Locations*. The heads of agencies shall evaluate the need to restrict smoking at doorways and in courtyards under executive branch control in order to protect workers and visitors from environmental tobacco smoke, and may restrict smoking in these areas in light of this evaluation.

SEC. 4. *Smoking Cessation Programs*. The heads of agencies are encouraged to use existing authority to establish programs designed to help employees stop smoking.

SEC. 5. *Responsibility for Implementation*. The heads of agencies are responsible for implementing and ensuring compliance with the provisions of this order. ''Agency'' as used in this order means an Executive agency, as defined in 5 U.S.C. 105, and includes any employing unit or authority of the Federal Government, other than those of the legislative and judicial branches. Independent agencies are encouraged to comply with the provisions of this order.

SEC. 6. *Phase-In of Implementation*. Implementation of the policy set forth in this order shall be achieved no later than 1 year after the date of this order. This 1 year phase-in period is designed to establish a fixed but reasonable time for implementing this policy. Agency heads are directed during this period to inform all employees and visitors to executive branch facilities about the requirements of this order, inform their employees of the health risks of exposure to environmental tobacco smoke, and undertake related activities as necessary.

SEC. 7. *Consistency with Other Laws*. The provisions of this order shall be implemented consistent with appli-

cable law, including the Federal Service Labor-Management Relations Act (5 U.S.C. 7101 *et seq.*) and the National Labor Relations Act (29 U.S.C. 151 *et seq.*)[.] Provisions of existing collective bargaining agreements shall be honored and agencies shall consult with employee labor representatives about the implementation of this order. Nothing herein shall be construed to impair or alter the powers and duties of Federal agencies established under law. Nothing herein shall be construed to replace any agency policy currently in effect, if such policy is legally established, in writing, and consistent with the terms of this order. Agencies shall review their current policy to confirm that agency policy comports with this order, and policy found not in compliance shall be revised to comply with the terms of this order.

SEC. 8. *Cause of Action*. This order does not create any right to administrative or judicial review, or any other right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person or affect in any way the liability of the executive branch under the Federal Tort Claims Act [see Short Title note set out under section 2671 of Title 28, Judiciary and Judicial Procedure].

SEC. 9. *Construction*. Nothing in this order shall limit an agency head from establishing more protective policies on smoking in the Federal workplace for employees and members of the public visiting or using Federal facilities.

WILLIAM J. CLINTON.

EX. ORD. NO. 13401. RESPONSIBILITIES OF FEDERAL DEPARTMENTS AND AGENCIES WITH RESPECT TO VOLUNTEER COMMUNITY SERVICE

Ex. Ord. No. 13401, Apr. 27, 2006, 71 F.R. 25737, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America and in order to help ensure that the Federal Government supports and encourages volunteer community service, it is hereby ordered as follows:

SECTION 1. *Designation of a Liaison for Volunteer Community Service*. (a) The head of each agency shall, within 20 days after the date of this order, designate an officer or employee of such agency compensated at a level at or above the minimum level of pay of a member of the Senior Executive Service to serve under the authority of the head of the agency as the agency liaison for volunteer community service (Liaison).

(b) The Liaison in each agency shall promote and support community service on a voluntary basis among Federal employees, including those approaching retirement; promote the use of skilled volunteers; and facilitate public recognition for volunteer community service.

(c) The head of each agency shall prescribe arrangements within the agency for support and supervision of the Liaison that ensure high priority and substantial visibility for the function of the Liaison within the agency under this order.

(d) Each executive agency shall provide its Liaison with appropriate administrative support and other resources to meet the responsibilities of the Liaison under this order.

SEC. 2. *Goals and Responsibilities of the Liaison*. The Liaison shall foster within the Liaison's agency a culture of taking responsibility, service to others, and good citizenship. Toward that end, the Liaison shall:

(a) identify, catalog, and review all activities of the agency that relate to volunteer community service, including, but not limited to rules, orders, grant programs, external relations, and other policies and practices, and make such recommendations to the head of the agency for adjustments as may be appropriate;

(b) actively work with USA Freedom Corps to promote volunteer community service among agency employees by providing information about community service opportunities;

(c) coordinate within the agency actions to facilitate public recognition for volunteer community service;

(d) promote, expand, and enhance skilled volunteer community service opportunities;

(e) work with the USA Freedom Corps and the Director of the Office of Personnel Management (OPM) to consider any appropriate changes in agency policies or practices that are not currently consistent with OPM guidance;

(f) coordinate the awarding of the President's Volunteer Service Award to recognize outstanding volunteer service by employees within the agency; and

(g) act as a liaison with the USA Freedom Corps.

SEC. 3. *Administrative Provisions*. (a) The USA Freedom Corps shall provide such information with respect to volunteer community service programs and activities and such advice and assistance as may be required by agencies in performing their functions under this order.

(b) Executive Order 12820 of November 5, 1992, is revoked.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) As used in this order:

(i) ''agency'' has the meaning of ''executive agency'' as defined in section 105 of title 5, United States Code; and

(ii) ''USA Freedom Corps'' means the Director of the USA Freedom Corps Office established by section 4 of Executive Order 13254 of January 29, 2002.

SEC. 4. *Reporting Provisions*. (a) Not later than 180 days from the date of this order and annually thereafter, each agency Liaison shall prepare and submit a report to the USA Freedom Corps that includes a description of the agency's activities in performing its functions under this order.

(b) A Liaison's first report under subsection (a) shall include annual performance indicators and measurable objectives for agency action approved by the head of the agency. Each report filed thereafter under subsection (a) shall measure the agency's performance against the indicators and objectives approved by the head of the agency.

SEC. 5. *Judicial Review*. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable by any party at law or in equity against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13488. GRANTING RECIPROCITY ON EXCEPTED SERVICE AND FEDERAL CONTRACTOR EMPLOYEE FITNESS AND REINVESTIGATING INDIVIDUALS IN POSITIONS OF PUBLIC TRUST

Ex. Ord. No. 13488, Jan. 16, 2009, 74 F.R. 4111, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 1104(a)(1), 3301, and 7301 of title 5, United States Code, and in order to simplify and streamline the system of Federal Government personnel investigative and adjudicative processes to make them more efficient and effective, it is hereby ordered as follows:

SECTION 1. *Policy*. (a) When agencies determine the fitness of individuals to perform work as employees in the excepted service or as contractor employees, prior favorable fitness or suitability determinations should be granted reciprocal recognition, to the extent practicable.

(b) It is necessary to reinvestigate individuals in positions of public trust in order to ensure that they remain suitable for continued employment.

SEC. 2. *Definitions*. For the purposes of this order:

(a) ''Agency'' means an executive agency as defined in section 105 of title 5, United States Code, but does not include the Government Accountability Office.

(b) ''Contractor employee'' means an individual who performs work for or on behalf of any agency under a

contract and who, in order to perform the work specified under the contract, will require access to space, information, information technology systems, staff, or other assets of the Federal Government. Such contracts, include, but are not limited to:

(i) personal services contracts;

(ii) contracts between any non-Federal entity and any agency; and

(iii) sub-contracts between any non-Federal entity and another non-Federal entity to perform work related to the primary contract with the agency.

(c) ''Excepted service'' has the meaning provided in section 2103 of title 5, United States Code, but does not include those positions in any element of the intelligence community as defined in the National Security Act of 1947, as amended, to the extent they are not otherwise subject to Office of Personnel Management appointing authorities.

(d) ''Fitness'' is the level of character and conduct determined necessary for an individual to perform work for or on behalf of a Federal agency as an employee in the excepted service (other than a position subject to suitability) or as a contractor employee.

(e) ''Fitness determination'' means a decision by an agency that an individual has or does not have the required level of character and conduct necessary to perform work for or on behalf of a Federal agency as an employee in the excepted service (other than a position subject to suitability) or as a contractor employee. A favorable fitness determination is not a decision to appoint or contract with an individual.

(f) ''Position of Public Trust'' has the meaning provided in 5 *CFR* Part 731.

(g) ''Suitability'' has the meaning and coverage provided in *CFR* Part 731.

SEC. 3. *Agency Authority to Set Fitness Criteria and Determine Equivalency*. The authority to establish criteria for making fitness determinations remains within the discretion of the agency head. Agency heads also have the discretion to determine whether their criteria are equivalent to suitability standards established by the Office of Personnel Management. Agency heads shall take into account Office of Personnel Management guidance when exercising this discretion.

SEC. 4. *Reciprocal Recognition of Fitness and Suitability Determinations*. (a) Except as provided by subsection (b) of this section, agencies making fitness determinations shall grant reciprocal recognition to a prior favorable fitness or suitability determination when:

(i) the gaining agency uses criteria for making fitness determinations equivalent to suitability standards established by the Office of Personnel Management;

(ii) the prior favorable fitness or suitability determination was based on criteria equivalent to suitability standards established by the Office of Personnel Management; and

(iii) the individual has had no break in employment since the favorable determination was made.

(b) Exceptions to Reciprocal Recognition. A gaining agency is not required to grant reciprocal recognition to a prior favorable fitness or suitability determination when:

(i) the new position requires a higher level of investigation than previously conducted for that individual;

(ii) an agency obtains new information that calls into question the individual's fitness based on character or conduct; or

(iii) the individual's investigative record shows conduct that is incompatible with the core duties of the new position.

SEC. 5. *Reinvestigation of Individuals in Positions of Public Trust*. Individuals in positions of public trust shall be subject to reinvestigation under standards (including but not limited to the frequency of such reinvestigation) as determined by the Director of the Office of Personnel Management, to ensure their suitability for continued employment.

SEC. 6. *Responsibilities*. (a) An agency shall report to the Office of Personnel Management the nature and results of the background investigation and fitness determination (or later changes to that determination) made on an individual, to the extent consistent with law.

(b) The Director of the Office of Personnel Management is delegated authority to implement this order, including the authority to issue regulations and guidance governing suitability, or guidance related to fitness, as the Director determines appropriate.

SEC. 7. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order shall not suspend, impede, or otherwise affect Executive Order 10450 of April 27, 1953, as amended, or Executive Order 13467 of June 30, 2008;

(d) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees or agents, or any other person.

SEC. 8. *Effective Date and Applicability*. This order is effective upon issuance and is applicable to individuals newly appointed to excepted service positions or hired as contractor employees beginning 90 days from the effective date of this order.

GEORGE W. BUSH.

EX. ORD. NO. 13490. ETHICS COMMITMENTS BY EXECUTIVE BRANCH PERSONNEL

Ex. Ord. No. 13490, Jan. 21, 2009, 74 F.R. 4673, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. *Ethics Pledge*. Every appointee in every executive agency appointed on or after January 20, 2009, shall sign, and upon signing shall be contractually committed to, the following pledge upon becoming an appointee:

''As a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

''1. *Lobbyist Gift Ban*. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

''2. *Revolving Door Ban—All Appointees Entering Government*. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

''3. *Revolving Door Ban—Lobbyists Entering Government*. If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

(a) participate in any particular matter on which I lobbied within the 2 years before the date of my appointment;

(b) participate in the specific issue area in which that particular matter falls; or

(c) seek or accept employment with any executive agency that I lobbied within the 2 years before the date of my appointment.

''4. *Revolving Door Ban—Appointees Leaving Government*. If, upon my departure from the Government, I am covered by the post-employment restrictions on com-

municating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment.

''5. *Revolving Door Ban—Appointees Leaving Government to Lobby*. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Administration.

''6. *Employment Qualification Commitment*. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

''7. *Assent to Enforcement*. I acknowledge that the Executive Order entitled 'Ethics Commitments by Executive Branch Personnel,' issued by the President on January 21, 2009, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.''

SEC. 2. *Definitions*. As used herein and in the pledge set forth in section 1 of this order:

(a) ''Executive agency'' shall include each ''executive agency'' as defined by section 105 of title 5, United States Code, and shall include the Executive Office of the President; provided, however, that for purposes of this order ''executive agency'' shall include the United States Postal Service and Postal Regulatory Commission, but shall exclude the Government Accountability Office.

(b) ''Appointee'' shall include every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria) in an executive agency. It does not include any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.

(c) ''Gift''

(1) shall have the definition set forth in section 2635.203(b) of title 5, Code of Federal Regulations;

(2) shall include gifts that are solicited or accepted indirectly as defined at section 2635.203(f) of title 5, Code of Federal Regulations; and

(3) shall exclude those items excluded by sections 2635.204(b), (c), (e)(1) & (3) and (j)–(l) of title 5, Code of Federal Regulations.

(d) ''Covered executive branch official'' and ''lobbyist'' shall have the definitions set forth in section 1602 of title 2, United States Code.

(e) ''Registered lobbyist or lobbying organization'' shall mean a lobbyist or an organization filing a registration pursuant to section 1603(a) of title 2, United States Code, and in the case of an organization filing such a registration, ''registered lobbyist'' shall include each of the lobbyists identified therein.

(f) ''Lobby'' and ''lobbied'' shall mean to act or have acted as a registered lobbyist.

(g) ''Particular matter'' shall have the same meaning as set forth in section 207 of title 18, United States Code, and section 2635.402(b)(3) of title 5, Code of Federal Regulations.

(h) ''Particular matter involving specific parties'' shall have the same meaning as set forth in section 2641.201(h) of title 5, Code of Federal Regulations, except that it shall also include any meeting or other communication relating to the performance of one's official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.

(i) ''Former employer'' is any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner, except that ''former employer'' does not include any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, or any United States territory or possession.

(j) ''Former client'' is any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service provided was limited to a speech or similar appearance. It does not include clients of the appointee's former employer to whom the appointee did not personally provide services.

(k) ''Directly and substantially related to my former employer or former clients'' shall mean matters in which the appointee's former employer or a former client is a party or represents a party.

(l) ''Participate'' means to participate personally and substantially.

(m) ''Post-employment restrictions'' shall include the provisions and exceptions in section 207(c) of title 18, United States Code, and the implementing regulations.

(n) ''Government official'' means any employee of the executive branch.

(o) ''Administration'' means all terms of office of the incumbent President serving at the time of the appointment of an appointee covered by this order.

(p) ''Pledge'' means the ethics pledge set forth in section 1 of this order.

(q) All references to provisions of law and regulations shall refer to such provisions as in effect on January 20, 2009.

SEC. 3. *Waiver*. (a) The Director of the Office of Management and Budget, or his or her designee, in consultation with the Counsel to the President or his or her designee, may grant to any current or former appointee a written waiver of any restrictions contained in the pledge signed by such appointee if, and to the extent that, the Director of the Office of Management and Budget, or his or her designee, certifies in writing (i) that the literal application of the restriction is inconsistent with the purposes of the restriction, or (ii) that it is in the public interest to grant the waiver. A waiver shall take effect when the certification is signed by the Director of the Office of Management and Budget or his or her designee.

(b) The public interest shall include, but not be limited to, exigent circumstances relating to national security or to the economy. *De minimis* contact with an executive agency shall be cause for a waiver of the restrictions contained in paragraph 3 of the pledge.

SEC. 4. *Administration*. (a) The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish such rules or procedures (conforming as nearly as practicable to the agency's general ethics rules and procedures, including those relating to designated agency ethics officers) as are necessary or appropriate to ensure that every appointee in the agency signs the pledge upon assuming the appointed office or otherwise becoming an appointee; to ensure that compliance with paragraph 3 of the pledge is addressed in a written ethics agreement with each appointee to whom it applies, which agreement shall also be approved by the Counsel to the President or his or her designee prior to the appointee commencing work; to ensure that spousal employment issues and other conflicts not expressly addressed by the pledge are addressed in ethics agreements with appointees or, where no such agreements are required, through ethics counseling; and generally to ensure compliance with this order within the agency.

(b) With respect to the Executive Office of the President, the duties set forth in section 4(a) shall be the responsibility of the Counsel to the President or his or her designee.

(c) The Director of the Office of Government Ethics shall:

(1) ensure that the pledge and a copy of this order are made available for use by agencies in fulfilling their duties under section 4(a) above;

(2) in consultation with the Attorney General or the Counsel to the President or their designees, when appropriate, assist designated agency ethics officers in providing advice to current or former appointees regarding the application of the pledge; and

(3) in consultation with the Attorney General and the Counsel to the President or their designees, adopt such rules or procedures as are necessary or appropriate:

(i) to carry out the foregoing responsibilities;

(ii) to apply the lobbyist gift ban set forth in paragraph 1 of the pledge to all executive branch employees;

(iii) to authorize limited exceptions to the lobbyist gift ban for circumstances that do not implicate the purposes of the ban;

(iv) to make clear that no person shall have violated the lobbyist gift ban if the person properly disposes of a gift as provided by section 2635.205 of title 5, Code of Federal Regulations;

(v) to ensure that existing rules and procedures for Government employees engaged in negotiations for future employment with private businesses that are affected by their official actions do not affect the integrity of the Government's programs and operations;

(vi) to ensure, in consultation with the Director of the Office of Personnel Management, that the requirement set forth in paragraph 6 of the pledge is honored by every employee of the executive branch;

(4) in consultation with the Director of the Office of Management and Budget, report to the President on whether full compliance is being achieved with existing laws and regulations governing executive branch procurement lobbying disclosure and on steps the executive branch can take to expand to the fullest extent practicable disclosure of such executive branch procurement lobbying and of lobbying for presidential pardons, and to include in the report both immediate action the executive branch can take and, if necessary, recommendations for legislation; and

(5) provide an annual public report on the administration of the pledge and this order.

(d) The Director of the Office of Government Ethics shall, in consultation with the Attorney General, the Counsel to the President, and the Director of the Office of Personnel Management, or their designees, report to the President on steps the executive branch can take to expand to the fullest extent practicable the revolving door ban set forth in paragraph 5 of the pledge to all executive branch employees who are involved in the procurement process such that they may not for 2 years after leaving Government service lobby any Government official regarding a Government contract that was under their official responsibility in the last 2 years of their Government service; and to include in the report both immediate action the executive branch can take and, if necessary, recommendations for legislation.

(e) All pledges signed by appointees, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder.

SEC. 5. *Enforcement.* (a) The contractual, fiduciary, and ethical commitments in the pledge provided for herein are solely enforceable by the United States pursuant to this section by any legally available means, including debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive, or monetary relief.

(b) Any former appointee who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge may be barred from lobbying any officer or employee of that agency for up to 5 years in addition to the time period covered by the pledge. The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish procedures to implement this subsection, which procedures shall include (but not be limited to) providing for factfinding and investigation of possible violations of this order and for referrals to the Attorney General for his or her consideration pursuant to subsection (c).

(c) The Attorney General or his or her designee is authorized:

(1) upon receiving information regarding the possible breach of any commitment in a signed pledge, to request any appropriate Federal investigative authority to conduct such investigations as may be appropriate; and

(2) upon determining that there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue, if not enjoined, to commence a civil action against the former employee in any United States District Court with jurisdiction to consider the matter.

(d) In any such civil action, the Attorney General or his or her designee is authorized to request any and all relief authorized by law, including but not limited to:

(1) such temporary restraining orders and preliminary and permanent injunctions as may be appropriate to restrain future, recurring, or continuing conduct by the former employee in breach of the commitments in the pledge he or she signed; and

(2) establishment of a constructive trust for the benefit of the United States, requiring an accounting and payment to the United States Treasury of all money and other things of value received by, or payable to, the former employee arising out of any breach or attempted breach of the pledge signed by the former employee.

SEC. 6. *General Provisions.* (a) No prior Executive Orders are repealed by this order. To the extent that this order is inconsistent with any provision of any prior Executive Order, this order shall control.

(b) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

(c) Nothing in this order shall be construed to impair or otherwise affect:

(1) authority granted by law to a department, agency, or the head thereof; or

(2) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(d) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(e) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(f) The definitions set forth in this order are solely applicable to the terms of this order, and are not otherwise intended to impair or affect existing law.

BARACK OBAMA.

DELEGATION OF CERTAIN FUNCTIONS AND AUTHORITIES RELATING TO WORKPLACE ACCOMMODATIONS FOR NURSING MOTHERS

Memorandum of President of the United States, Dec. 20, 2010, 75 F.R. 80673, provided:

Memorandum for the Director of the Office of Personnel Management

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions and authority conferred upon the President by section 7301 of title 5, United States Code, with respect to providing appropriate workplace accommodations for executive branch civilian employees who are nursing mothers.

You are authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 7302. Post-employment notification

(a) Not later than the effective date of the amendments made by section 1106 of the National Defense Authorization Act for Fiscal Year 2004,[1] or 180 days after the date of the enactment of that Act, whichever is later, the Office of Personnel Management shall, in consultation with the Attorney General and the Office of Government Ethics, promulgate regulations requiring that each Executive branch agency notify any employee of that agency who is subject to the provisions of section 207(c)(1) of title 18, as a result of the amendment to section 207(c)(2)(A)(ii) of that title by that Act.

(b) The regulations shall require that notice be given before, or as part of, the action that affects the employee's coverage under section 207(c)(1) of title 18, by virtue of the provisions of section 207(c)(2)(A)(ii) of that title, and again when employment or service in the covered position is terminated.

(Added Pub. L. 108–136, div. A, title XI, §1125(b)(2), Nov. 24, 2003, 117 Stat. 1639.)

REFERENCES IN TEXT

The effective date of the amendments made by section 1106 of the National Defense Authorization Act for Fiscal Year 2004, referred to in subsec. (a), probably means the effective date of the amendments made by section 1125 of the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108–136, which enacted this section. Pub. L. 108–136 does not contain a section 1106, and the provisions appearing in section 1106 of H.R. 1588, the National Defense Authorization Act for Fiscal Year 2004, as passed by the House of Representatives on May 22, 2003, were contained in section 1125 of Pub. L. 108–136. For effective date of amendments made by section 1125 of Pub. L. 108–136, see section 1125(c) of Pub. L. 108–136, set out as an Effective Date of 2003 Amendment note under section 5304 of this title.

The date of the enactment of that Act, referred to in subsec. (a), is the date of enactment of the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108–136, which was approved Nov. 24, 2003.

EFFECTIVE DATE

Section effective on first day of first pay period beginning on or after Jan. 1, 2004, see section 1125(c)(1) of Pub. L. 108–136, set out as an Effective Date of 2003 Amendment note under section 5304 of this title.

SUBCHAPTER II—EMPLOYMENT LIMITATIONS

AMENDMENTS

1968—Pub. L. 90–351, title V, §1001(c), June 19, 1968, 82 Stat. 235, substituted ''EMPLOYMENT LIMITATIONS'' for ''LOYALTY, SECURITY, AND STRIKING'' in subchapter heading.

§ 7311. Loyalty and striking

An individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he—

(1) advocates the overthrow of our constitutional form of government;

(2) is a member of an organization that he knows advocates the overthrow of our constitutional form of government;

(3) participates in a strike, or asserts the right to strike, against the Government of the United States or the government of the District of Columbia; or

(4) is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that he knows asserts the right to strike against the Government of the United States or the government of the District of Columbia.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 524.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 118p.	Aug. 9, 1955, ch. 690, §1, 69 Stat. 624.
.....	[Uncodified].	June 29, 1956, ch. 479, §3, (as applicable to the Act of Aug. 9, 1955, ch. 690, §1, 69 Stat. 624), 70 Stat. 453.

The word ''position'' is coextensive with and is substituted for ''office or employment''.

In paragraphs (1) and (2), the words ''in the United States'' in former section 118p(1), (2) are omitted as unnecessary in view of the reference to ''our constitutional form of government''.

In paragraphs (3) and (4), the reference to the ''government of the District of Columbia'' is added on authority of the Act of June 29, 1956, in order to make these paragraphs meaningful with respect to individuals employed by the government of the District of Columbia. The words ''From and after July 1, 1956'', appearing in the Act of June 29, 1956, are omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

EX. ORD. NO. 10450. SECURITY REQUIREMENTS FOR GOVERNMENT EMPLOYEES

Ex. Ord. No. 10450, Apr. 27, 1953, 18 F.R. 2489, as amended by Ex. Ord. No. 10491, Oct. 15, 1953, 18 F.R. 6583; Ex. Ord. No. 10531, May 27, 1954, 19 F.R. 3069; Ex. Ord. No. 10548, Aug. 3, 1954, 19 F.R. 4871; Ex. Ord. No. 10550, Aug. 6, 1954, 19 F.R. 4981; Ex. Ord. No. 11605, July 2, 1971, 36 F.R. 12831; Ex. Ord. No. 11785, June 4, 1974, 39 F.R. 20053; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

WHEREAS the interests of the national security require that all persons privileged to be employed in the departments and agencies of the Government shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States; and

WHEREAS the American tradition that all persons should receive fair, impartial, and equitable treatment at the hands of the Government requires that all persons seeking the privilege of employment or privileged to be employed in the departments and agencies of the Government be adjudged by mutually consistent and no less than minimum standards and procedures among the departments and agencies governing the employment and retention in employment of persons in the Federal service:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including section 1753 of the Revised Statutes of the United States (5 U.S.C. 631) [sections 3301 and 7301 of this title]; the Civil Service Act of 1883 (22 Stat. 403; 5 U.S.C. 632, et seq.) [section 1101 et seq. of this title]; section 9A of the act of August 2, 1939, 53 Stat. 1148 (5 U.S.C. 118j) [sections 3333 and 7311 of this title]; and the act of August 26, 1950, 64 Stat. 476 (5 U.S.C. 22–1, et seq.) [section 7501 et seq. of this title], and as President of the United States, and deeming such action necessary in the best interests of the national security it is hereby ordered as follows:

[1] See References in Text note below.

SECTION 1. In addition to the departments and agencies specified in the said act of August 26, 1950, and Executive Order No. 10237 of April 26, 1951 the provisions of that act shall apply to all other departments and agencies of the Government.

SEC. 2. The head of each department and agency of the Government shall be responsible for establishing and maintaining within his department or agency an effective program to insure that the employment and retention in employment of any civilian officer or employee within the department or agency is clearly consistent with the interests of the national security.

SEC. 3. (a) The appointment of each civilian officer or employee in any department or agency of the Government shall be made subject to investigation. The scope of the investigation shall be determined in the first instance according to the degree of adverse effect the occupant of the position sought to be filled could bring about, by virtue of the nature of the position, on the national security, but in no event shall the investigation include less than a national agency check (including a check of the fingerprint files of the Federal Bureau of Investigation), and written inquiries to appropriate local law enforcement agencies, former employers and supervisors, references, and schools attended by the person under investigation: Provided, that upon request of the head of the department or agency concerned, the Office of Personnel Management may, in its discretion, authorize such less investigation as may meet the requirements of the national security with respect to per-diem, intermittent, temporary, or seasonal employees, or aliens employed outside the United States. Should there develop at any stage of investigation information indicating that the employment of any such person may not be clearly consistent with the interests of the national security, there shall be conducted with respect to such person a full field investigation, or such less investigation as shall be sufficient to enable the head of the department or agency concerned to determine whether retention of such person is clearly consistent with the interests of the national security.

(b) The head of any department or agency shall designate, or cause to be designated, any position within his department or agency the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security as a sensitive position. Any position so designated shall be filled or occupied only by a person with respect to whom a full field investigation has been conducted: Provided, that a person occupying a sensitive position at the time it is designated as such may continue to occupy such position pending the completion of a full field investigation, subject to the other provisions of this order: And provided further, that in case of emergency a sensitive position may be filled for a limited period by a person with respect to whom a full field pre-appointment investigation has not been completed if the head of the department or agency concerned finds that such action is necessary in the national interest, which finding shall be made a part of the records of such department or agency.

SEC. 4. The head of each department and agency shall review, or cause to be reviewed, the cases of all civilian officers and employees with respect to whom there has been conducted a full field investigation under Executive Order No. 9835 of March 21, 1947, and, after such further investigation as may be appropriate, shall re-adjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, such of those cases as have not been adjudicated under a security standard commensurate with that established under this order.

SEC. 5. Whenever there is developed or received by any department or agency information indicating that the retention in employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, such information shall be forwarded to the head of the employing department or agency or his representative, who, after such investigation as may be appropriate, shall review, or cause to be reviewed, and, where necessary, re-adjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, the case of such officer or employee.

SEC. 6. Should there develop at any stage of investigation information indicating that the employment of any officer or employees of the Government may not be clearly consistent with the interests of the national security, the head of the department or agency concerned or his representative shall immediately suspend the employment of the person involved if he deems such suspension necessary in the interests of the national security and, following such investigation and review as he deems necessary the head of the department or agency concerned shall terminate the employment of such suspended officer in the interests of the national security, or employee whenever he shall determine such termination necessary or advisable in accordance with the said act of August 26, 1950.

SEC. 7. Any person whose employment is suspended or terminated under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950, or pursuant to the said Executive Order No. 9835 or any other security or loyalty program relating to officers or employees of the Government, shall not be reinstated or restored to duty or reemployed in the same department or agency and shall not be reemployed in any other department or agency, unless the head of the department or agency concerned finds that such reinstatement, restoration, or reemployment is clearly consistent with the interests of the national security, which finding shall be made a part of the records of such department or agency: Provided, that no person whose employment has been terminated under such authority thereafter may be employed by any other department or agency except after a determination by the Office of Personnel Management that such person is eligible for such employment.

SEC. 8. (a) The investigations conducted pursuant to this order shall be designed to develop information as to whether the employment or retention in employment in the Federal service of the person being investigated is clearly consistent with the interests of the national security. Such information shall relate, but shall not be limited, to the following:

(1) Depending on the relation of the Government employment to the national security:

(i) Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy.

(ii) Any deliberate misrepresentations, falsifications or omissions of material facts.

(iii) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction or sexual perversion.

(iv) Any illness, including any mental condition, of a nature which in the opinion of competent medical authority may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case.

(v) Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security.

(2) Commission of any act of sabotage, espionage, treason, or sedition, or attempts thereat or preparation therefor, or conspiring with, or aiding or abetting another to commit or attempt to commit any act of sabotage, espionage, treason, or sedition.

(3) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with any espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the government of the United States or the alteration of the form of government of the United States by unconstitutional means.

(4) Advocacy of use of force or violence to overthrow the government of the United States, or of the alteration of the form of government of the United States by unconstitutional means.

(5) Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means.

(6) Intentional unauthorized disclosure to any person of security information, or of other information disclosure of which is prohibited by law, or willful violation or disregard of security regulations.

(7) Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

(8) Refusal by the individual, upon the ground of constitutional privilege against self-incrimination, to testify before a congressional committee regarding charges of his alleged disloyalty or other misconduct.

(b) The investigation of persons entering or employed in the competitive service shall primarily be the responsibility of the Office of Personnel Management, except in cases in which the head of a department or agency assumes that responsibility pursuant to law or by agreement with the Office. The Office shall furnish a full investigative report to the department or agency concerned.

(c) The investigation of persons (including consultants, however employed), entering employment of, or employed by, the Government other than in the competitive service shall primarily be the responsibility of the employing department or agency. Departments and agencies without investigative facilities may use the investigative facilities of the Office of Personnel Management, and other departments and agencies may use such facilities under agreement with the Office.

(d) There shall be referred promptly to the Federal Bureau of Investigation all investigations being conducted by any other agencies which develop information indicating that an individual may have been subjected to coercion, influence, or pressure to act contrary to the interests of the national security, or information relating to any of the matters described in subdivisions (2) through (8) of subsection (a) of this section. In cases so referred to it, the Federal Bureau of Investigation shall make a full field investigation.

SEC. 9. (a) There shall be established and maintained in the Office of Personnel Management a security-investigations index covering all persons as to whom security investigations have been conducted by any department or agency of the Government under this order. The central index established and maintained by the Office under Executive Order No. 9835 of March 21, 1947, shall be made a part of the security-investigations index. The security-investigations index shall contain the name of each person investigated, adequate identifying information concerning each such person, and a reference to each department and agency which has conducted an investigation concerning the person involved or has suspended or terminated the employment of such person under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950.

(b) The heads of all departments and agencies shall furnish promptly to the Office of Personnel Management information appropriate for the establishment and maintenance of the security-investigations index.

(c) The reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in section 7 of this order shall remain the property of the investigative agencies conducting the investigations, but may, subject to considerations of the national security, be retained by the department or agency concerned. Such reports and other investigative material and information shall be maintained in confidence, and no access shall be given thereto except with the consent of the investigative agency concerned, to other departments and agencies conducting security programs under the authority granted by or in accordance with the said act of August 26, 1950, as may be required for the efficient conduct of Government business.

SEC. 10. Nothing in this order shall be construed as eliminating or modifying in any way the requirement for any investigation or any determination as to security which may be required by law.

SEC. 11. On and after the effective date of this order the Loyalty Review Board established by Executive Order No. 9835 of March 21, 1947, shall not accept agency findings for review, upon appeal or otherwise. Appeals pending before the Loyalty Review Board on such date shall be heard to final determination in accordance with the provisions of the said Executive Order No. 9835, as amended. Agency determinations favorable to the officer or employee concerned pending before the Loyalty Review Board on such date shall be acted upon by such Board, and whenever the Board is not in agreement with such favorable determination the case shall be remanded to the department or agency concerned for determination in accordance with the standards and procedures established pursuant to this order. Cases pending before the regional loyalty boards of the Office of Personnel Management on which hearings have not been initiated on such date shall be referred to the department or agency concerned. Cases being heard by regional loyalty boards on such date shall be heard to conclusion, and the determination of the board shall be forwarded to the head of the department or agency concerned: Provided, that if no specific department or agency is involved, the case shall be dismissed without prejudice to the applicant. Investigations pending in the Federal Bureau of Investigation or the Office of Personnel Management on such date shall be completed, and the reports thereon shall be made to the appropriate department or agency.

SEC. 12. Executive Order No. 9835 of March 21, 1947, as amended, is hereby revoked.

SEC. 13. The Attorney General is requested to render to the heads of departments and agencies such advice as may be requisite to enable them to establish and maintain an appropriate employee-security program.

SEC. 14. (a) The Office of Personnel Management, with the continuing advice and collaboration of representatives of such departments and agencies as the National Security Council may designate, shall make a continuing study of the manner in which this order is being implemented by the departments and agencies of the Government for the purpose of determining:

(1) Deficiencies in the department and agency security programs established under this order which are inconsistent with the interests of or directly or indirectly weaken, the national security.

(2) Tendencies in such programs to deny to individual employees fair, impartial and equitable treatment at the hands of the Government, or rights under the Constitution and laws of the United States or this order.

Information affecting any department or agency developed or received during the course of such continuing study shall be furnished immediately to the head of the department or agency concerned. The Office of Personnel Management shall report to the National Security Council, at least semiannually, on the results of such study, shall recommend means to correct any such deficiencies or tendencies, and shall inform the National Security Council immediately of any deficiency which is deemed to be of major importance.

(b) All departments and agencies of the Government are directed to cooperate with the Office of Personnel Management to facilitate the accomplishment of the responsibilities assigned to it by subsection (a) of this section.

(c) To assist the Office of Personnel Management in discharging its responsibilities under this order, the

head of each department and agency shall, as soon as possible and in no event later than ninety days after receipt of the final investigative report on a civilian officer or employee subject to a full field investigation under the provisions of this order, advise the Office as to the action taken with respect to such officer or employee. The information furnished by the heads of departments and agencies pursuant to this section shall be included in the reports which the Office of Personnel Management is required to submit to the National Security Council in accordance with subsection (a) of this section. Such reports shall set forth any deficiencies on the part of the heads of departments and agencies in taking timely action under this order, and shall mention specifically any instances of noncompliance with this subsection.

SEC. 15. This order shall become effective thirty days after the date hereof.

EXECUTIVE ORDER NO. 11605

Ex. Ord. No. 11605. July 2, 1971, 36 F.R. 12831, which amended Ex. Ord. No. 10450, Apr. 27, 1953, 18 F.R. 2489, which related to security requirements for government employees, was revoked by Ex. Ord. No. 11785, June 4, 1974, 39 F.R. 20053, set out below.

EX. ORD. NO. 11785. SECURITY REQUIREMENTS FOR GOVERNMENTAL EMPLOYEES

Ex. Ord. No. 11785, June 4, 1974, 39 F.R. 20053, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States, including 5 U.S.C. 1101 *et seq.*, 3301, 3571, 7301, 7313, 7501(c), 7512, 7532, and 7533; and as President of the United States, and finding such action necessary in the best interests of national security, it is hereby ordered as follows:

SECTION 1. Section 12 of Executive Order No. 10450 of April 27, 1953, as amended [set out as a note under this section], is revised to read in its entirety as follows:

''SEC. 12. Executive Order No. 9835 of March 21, 1947, as amended, is hereby revoked.''

SEC. 2. Neither the Attorney General, nor the Subversive Activities Control Board, nor any other agency shall designate organizations pursuant to section 12 of Executive Order No. 10450, as amended, nor circulate nor publish a list of organizations previously so designated. The list of organizations previously designated is hereby abolished and shall not be used for any purpose.

SEC. 3. Subparagraph (5) of paragraph (a) of section 8 of Executive Order No. 10450, as amended, is revised to read as follows:

''Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means.''

SEC. 4. Executive Order No. 11605 of July 2, 1971, is revoked.

RICHARD NIXON.

§ 7312. Employment and clearance; individuals removed for national security

Removal under section 7532 of this title does not affect the right of an individual so removed to seek or accept employment in an agency of the United States other than the agency from which removed. However, the appointment of an individual so removed may be made only after the head of the agency concerned has consulted with the Office of Personnel Management. The Office, on written request of the head of the agency or the individual so removed, may determine whether the individual is eligible for employment in an agency other than the agency from which removed.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 524; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 22–1 (4th and 5th provisos).	Aug. 26, 1950, ch. 803, § 1 (4th and 5th provisos), 64 Stat. 477.

The words ''Removal under section 7532 of this title'' and ''so removed'' are coextensive with and substituted for ''termination of employment herein provided'' and ''whose employment has been terminated under the provisions of said sections'', respectively.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

§ 7313. Riots and civil disorders

(a) An individual convicted by any Federal, State, or local court of competent jurisdiction of—

(1) inciting a riot or civil disorder;

(2) organizing, promoting, encouraging, or participating in a riot or civil disorder;

(3) aiding or abetting any person in committing any offense specified in clause (1) or (2); or

(4) any offense determined by the head of the employing agency to have been committed in furtherance of, or while participating in, a riot or civil disorder;

shall, if the offense for which he is convicted is a felony, be ineligible to accept or hold any position in the Government of the United States or in the government of the District of Columbia for the five years immediately following the date upon which his conviction becomes final. Any such individual holding a position in the Government of the United States or the government of the District of Columbia on the date his conviction becomes final shall be removed from such position.

(b) For the purposes of this section, ''felony'' means any offense for which imprisonment is authorized for a term exceeding one year.

(Added Pub. L. 90–351, title V, § 1001(a), June 19, 1968, 82 Stat. 235.)

EFFECTIVE DATE

Section 1002 of Pub. L. 90–351 provided that: ''The provisions of section 1001(a) of this title [enacting this section] shall apply only with respect to acts referred to in section 7313(a)(1)–(4) of title 5, United States Code, as added by section 1001 of this title, which are committed after the date of enactment of this title [June 19, 1968].''

RECEIPT OF BENEFITS UNDER LAWS PROVIDING RELIEF FOR DISASTER VICTIMS

Section 1106(e) of Pub. L. 90–448, title XI, Aug. 1, 1968, 82 Stat. 567, provided that: ''No person who has been convicted of committing a felony during and in connection with a riot or civil disorder shall be permitted, for a period of one year after the date of his conviction, to receive any benefit under any law of the United States providing relief for disaster victims.''

SUBCHAPTER III—POLITICAL ACTIVITIES

AMENDMENTS

1993—Pub. L. 103–94, § 2(a), Oct. 6, 1993, 107 Stat. 1001, reenacted subchapter heading without change.

§ 7321. Political participation

It is the policy of the Congress that employees should be encouraged to exercise fully, freely, and without fear of penalty or reprisal, and to the extent not expressly prohibited by law, their right to participate or to refrain from participating in the political processes of the Nation.

(Added Pub. L. 103–94, § 2(a), Oct. 6, 1993, 107 Stat. 1001.)

PRIOR PROVISIONS

A prior section 7321, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 525, related to political contributions and services of employees in Executive agencies or competitive service, prior to the general revision of this subchapter by Pub. L. 103–94.

EFFECTIVE DATE; SAVINGS PROVISION

Section 12 of Pub. L. 103–94 provided that:

''(a) The amendments made by this Act [enacting sections 5520a and 7321 to 7326 of this title and section 610 of Title 18, Crimes and Criminal Procedure, amending sections 1216, 2302, 3302 and 3303 of this title, sections 602 and 603 of Title 18, section 410 of Title 39, Postal Service, and sections 1973d and 9904 of Title 42, The Public Health and Welfare, and omitting former sections 7321 to 7328 of this title] shall take effect 120 days after the date of the enactment of this Act [Oct. 6, 1993], except that the authority to prescribe regulations granted under section 7325 of title 5, United States Code (as added by section 2 of this Act), shall take effect on the date of the enactment of this Act.

''(b) Any repeal or amendment made by this Act of any provision of law shall not release or extinguish any penalty, forfeiture, or liability incurred under that provision, and that provision shall be treated as remaining in force for the purpose of sustaining any proper proceeding or action for the enforcement of that penalty, forfeiture, or liability.

''(c) No provision of this Act shall affect any proceedings with respect to which the charges were filed on or before the effective date of the amendments made by this Act. Orders shall be issued in such proceedings and appeals shall be taken therefrom as if this Act had not been enacted.''

DELEGATION OF AUTHORITY

Memorandum of President of the United States, Oct. 27, 1994, 59 F.R. 54515, provided:

Memorandum for the Secretary of Defense

Pursuant to authority vested in me as the Chief Executive Officer of the United States, and consistent with the provisions of the Hatch Act Reform Amendment regulations, 5 CFR 734.104, and section 301 of title 3, United States Code, I delegate to you the authority to limit the political activities of political appointees of the Department of Defense, including Presidential appointees, Presidential appointees with Senate confirmation, noncareer SES appointees, and Schedule C appointees.

You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

Memorandum of President of the United States, Oct. 24, 1994, 59 F.R. 54121, provided:

Memorandum for the Secretary of State

Pursuant to authority vested in me as the Chief Executive Officer of the United States, and consistent with the provisions of the Hatch Act Reform Amendment regulations, 5 CFR 734.104, and section 301 of title 3, United States Code, I delegate to you the authority to limit the political activities of political appointees of the Department of State, including Presidential appointees, Presidential appointees with Senate confirmation, noncareer SES appointees, and Schedule C appointees.

You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

Memorandum of President of the United States, Sept. 30, 1994, 59 F.R. 50809, provided:

Memorandum for the Attorney General

Pursuant to authority vested in me as the Chief Executive Officer of the United States, and consistent with the provisions of the Hatch Act Reform Amendment regulations, 5 CFR 734.104, and section 301 of title 3, United States Code, I delegate to you the authority to limit the political activities of political appointees of the Department of Justice, including Presidential appointees, Presidential appointees with Senate confirmation, noncareer SES appointees, and Schedule C appointees.

You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 7322. Definitions

For the purpose of this subchapter—

(1) ''employee'' means any individual, other than the President and the Vice President, employed or holding office in—

(A) an Executive agency other than the Government Accountability Office;

(B) a position within the competitive service which is not in an Executive agency; or

(C) the government of the District of Columbia, other than the Mayor or a member of the City Council or the Recorder of Deeds;

but does not include a member of the uniformed services;

(2) ''partisan political office'' means any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but shall exclude any office or position within a political party or affiliated organization; and

(3) ''political contribution''—

(A) means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose;

(B) includes any contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose;

(C) includes any payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and

(D) includes the provision of personal services for any political purpose.

(Added Pub. L. 103–94, §2(a), Oct. 6, 1993, 107 Stat. 1001; amended Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

PRIOR PROVISIONS

A prior section 7322, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 525, prohibited employees in Executive agencies or competitive service from using official authority or influence to coerce political actions of persons or bodies, prior to the general revision of this subchapter by Pub. L. 103–94.

AMENDMENTS

2004—Par. (1)(A). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

§ 7323. Political activity authorized; prohibitions

(a) Subject to the provisions of subsection (b), an employee may take an active part in political management or in political campaigns, except an employee may not—

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election;

(2) knowingly solicit, accept, or receive a political contribution from any person, unless such person is—

(A) a member of the same Federal labor organization as defined under section 7103(4) of this title or a Federal employee organization which as of the date of enactment of the Hatch Act Reform Amendments of 1993 had a multicandidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4)));

(B) not a subordinate employee; and

(C) the solicitation is for a contribution to the multicandidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4))) of such Federal labor organization as defined under section 7103(4) of this title or a Federal employee organization which as of the date of the enactment of the Hatch Act Reform Amendments of 1993 had a multicandidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4))); or

(3) run for the nomination or as a candidate for election to a partisan political office; or

(4) knowingly solicit or discourage the participation in any political activity of any person who—

(A) has an application for any compensation, grant, contract, ruling, license, permit, or certificate pending before the employing office of such employee; or

(B) is the subject of or a participant in an ongoing audit, investigation, or enforcement action being carried out by the employing office of such employee.

(b)(1) An employee of the Federal Election Commission (except one appointed by the President, by and with the advice and consent of the Senate), may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a political contribution.

(2)(A) No employee described under subparagraph (B) (except one appointed by the President, by and with the advice and consent of the Senate), may take an active part in political management or political campaigns.

(B) The provisions of subparagraph (A) shall apply to—

(i) an employee of—

(I) the Federal Election Commission or the Election Assistance Commission;

(II) the Federal Bureau of Investigation;

(III) the Secret Service;

(IV) the Central Intelligence Agency;

(V) the National Security Council;

(VI) the National Security Agency;

(VII) the Defense Intelligence Agency;

(VIII) the Merit Systems Protection Board;

(IX) the Office of Special Counsel;

(X) the Office of Criminal Investigation of the Internal Revenue Service;

(XI) the Office of Investigative Programs of the United States Customs Service;

(XII) the Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms;

(XIII) the National Geospatial-Intelligence Agency; or

(XIV) the Office of the Director of National Intelligence; or

(ii) a person employed in a position described under section 3132(a)(4), 5372, 5372a, or 5372b of title 5, United States Code.

(3) No employee of the Criminal Division or National Security Division of the Department of Justice (except one appointed by the President, by and with the advice and consent of the Senate), may take an active part in political management or political campaigns.

(4) For purposes of this subsection, the term ''active part in political management or in a political campaign'' means those acts of political management or political campaigning which were prohibited for employees of the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

(c) An employee retains the right to vote as he chooses and to express his opinion on political subjects and candidates.

(Added Pub. L. 103–94, §2(a), Oct. 6, 1993, 107 Stat. 1002; amended Pub. L. 103–359, title V, §501(k), Oct. 14, 1994, 108 Stat. 3430; Pub. L. 104–201, div. A, title XI, §1122(a)(1), Sept. 23, 1996, 110 Stat. 2687; Pub. L. 106–554, §1(a)(3) [title VI, §645(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–170; Pub. L. 107–252, title VIII, §811(a), Oct. 29, 2002, 116 Stat. 1727; Pub. L. 108–458, title I, §1079(a), Dec. 17, 2004, 118 Stat. 3695; Pub. L. 109–177, title V, §506(b)(2), Mar. 9, 2006, 120 Stat. 249; Pub. L. 110–417, [div. A], title IX, §931(a)(1), Oct. 14, 2008, 122 Stat. 4575.)

REFERENCES IN TEXT

The date of enactment of the Hatch Act Reform Amendments of 1993, referred to in subsec. (a)(2)(A), (C), is the date of enactment of Pub. L. 103–94, which was approved Oct. 6, 1993.

PRIOR PROVISIONS

A prior section 7323, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 525, prohibited employee in Executive agency from requesting, receiving from, or giving to, an employee, a Member of Congress, or an officer of a uniformed service, a thing of value for political purposes and provided for removal from service of employee for violation, prior to the general revision of this subchapter by Pub. L. 103–94.

AMENDMENTS

2008—Subsec. (b)(2)(B)(i)(XIII). Pub. L. 110–417 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

2006—Subsec. (b)(3). Pub. L. 109–177 inserted ''or National Security Division'' after ''Criminal Division''.

2004—Subsec. (b)(2)(B)(i)(XIV). Pub. L. 108–458 added subcl. (XIV).

2002—Subsec. (b)(2)(B)(i)(I). Pub. L. 107–252 inserted ''or the Election Assistance Commission'' after ''Commission''.

2000—Subsec. (b)(2)(B)(ii). Pub. L. 106–554 substituted ''5372a, or 5372b'' for ''or 5372a''.

1996—Subsec. (b)(2)(B)(i)(XIII). Pub. L. 104–201 substituted ''National Imagery and Mapping Agency'' for ''Central Imagery Office''.

1994—Subsec. (b)(2)(B)(i)(XIII). Pub. L. 103–359 added subcl. (XIII).

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of Title 50, War and National Defense.

Amendment by Pub. L. 108–458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out as an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of Title 50, War and National Defense.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–252 effective upon appointment of all members of the Election Assistance Commission under section 15323 of Title 42, The Public Health and Welfare, see section 15534(a) of Title 42.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of Title 10, Armed Forces.

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms, including the related functions of the Secretary of the Treasury, to the Department of Justice, see section 531(c) of Title 6, Domestic Security and section 599A(c)(1) of Title 28, Judiciary and Judicial Procedure.

§ 7324. Political activities on duty; prohibition

(a) An employee may not engage in political activity—

(1) while the employee is on duty;

(2) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof;

(3) while wearing a uniform or official insignia identifying the office or position of the employee; or

(4) using any vehicle owned or leased by the Government of the United States or any agency or instrumentality thereof.

(b)(1) An employee described in paragraph (2) of this subsection may engage in political activity otherwise prohibited by subsection (a) if the costs associated with that political activity are not paid for by money derived from the Treasury of the United States.

(2) Paragraph (1) applies to an employee—

(A) the duties and responsibilities of whose position continue outside normal duty hours and while away from the normal duty post; and

(B) who is—

(i) an employee paid from an appropriation for the Executive Office of the President; or

(ii) an employee appointed by the President, by and with the advice and consent of the Senate, whose position is located within the United States, who determines policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws.

(Added Pub. L. 103–94, § 2(a), Oct. 6, 1993, 107 Stat. 1003.)

PRIOR PROVISIONS

A prior section 7324, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 525; Pub. L. 93–268, § 4(a), Apr. 17, 1974, 88 Stat. 87, prohibited Executive agency employees and employees of the District of Columbia from influencing elections or taking part in political campaigns, prior to the general revision of this subchapter by Pub. L. 103–94.

§ 7325. Political activity permitted; employees residing in certain municipalities

The Office of Personnel Management may prescribe regulations permitting employees, without regard to the prohibitions in paragraphs (2) and (3) of section 7323(a) and paragraph (2) of section 7323(b) of this title, to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Office considers it to be in their domestic interest, when—

(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which the majority of voters are employed by the Government of the United States; and

(2) the Office determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees and individuals to permit that political participation.

(Added Pub. L. 103–94, §2(a), Oct. 6, 1993, 107 Stat. 1004; amended Pub. L. 104–93, title III, §308, Jan. 6, 1996, 109 Stat. 966.)

PRIOR PROVISIONS

A prior section 7325, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 526; Pub. L. 96–54, §2(a)(44), Aug. 14, 1979, 93 Stat. 384, related to penalties, prior to the general revision of this subchapter by Pub. L. 103–94.

AMENDMENTS

1996—Pub. L. 104–93 inserted ''and paragraph (2) of section 7323(b)'' after ''section 7323(a)''.

§ 7326. Penalties

An employee or individual who violates section 7323 or 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit System Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board.

(Added Pub. L. 103–94, §2(a), Oct. 6, 1993, 107 Stat. 1004.)

PRIOR PROVISIONS

A prior section 7326, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 526, authorized nonpartisan political activities, prior to the general revision of this subchapter by Pub. L. 103–94.

A prior section 7327, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 526; Pub. L. 96–54, §2(a)(14), (15), Aug. 14, 1979, 93 Stat. 382; Pub. L. 97–468, title VI, §615(b)(1)(E), Jan. 14, 1983, 96 Stat. 2578, related to permitted political activity in certain municipalities where employees reside, prior to the general revision of this subchapter by Pub. L. 103–94.

A prior section 7328, added Pub. L. 96–191, §8(e)(1), Feb. 15, 1980, 94 Stat. 33, exempted employees of the General Accounting Office from provisions of this subchapter, prior to the general revision of this subchapter by Pub. L. 103–94.

SUBCHAPTER IV—FOREIGN GIFTS AND DECORATIONS

AMENDMENTS

1967—Pub. L. 90–83, §1(45)(A), Sept. 11, 1967, 81 Stat. 208, substituted ''FOREIGN GIFTS AND DECORATIONS'' for ''FOREIGN DECORATIONS'' in subchapter heading.

[§ 7341. Repealed. Pub. L. 90–83, § 1(45)(B), Sept. 11, 1967, 81 Stat. 208]

Section, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 526, related to receipt and display of foreign decorations. See section 7342 of this title.

§ 7342. Receipt and disposition of foreign gifts and decorations

(a) For the purpose of this section—

(1) ''employee'' means—

(A) an employee as defined by section 2105 of this title and an officer or employee of the United States Postal Service or of the Postal Regulatory Commission;

(B) an expert or consultant who is under contract under section 3109 of this title with the United States or any agency, department, or establishment thereof, including, in the case of an organization performing services under such section, any individual involved in the performance of such services;

(C) an individual employed by, or occupying an office or position in, the government of a territory or possession of the United States or the government of the District of Columbia;

(D) a member of a uniformed service;

(E) the President and the Vice President;

(F) a Member of Congress as defined by section 2106 of this title (except the Vice President) and any Delegate to the Congress; and

(G) the spouse of an individual described in subparagraphs (A) through (F) (unless such individual and his or her spouse are separated) or a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986) of such an individual, other than a spouse or dependent who is an employee under subparagraphs (A) through (F);

(2) ''foreign government'' means—

(A) any unit of foreign governmental authority, including any foreign national, State, local, and municipal government;

(B) any international or multinational organization whose membership is composed of any unit of foreign government described in subparagraph (A); and

(C) any agent or representative of any such unit or such organization, while acting as such;

(3) ''gift'' means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government;

(4) ''decoration'' means an order, device, medal, badge, insignia, emblem, or award tendered by, or received from, a foreign government;

(5) ''minimal value'' means a retail value in the United States at the time of acceptance of $100 or less, except that—

(A) on January 1, 1981, and at 3 year intervals thereafter, ''minimal value'' shall be redefined in regulations prescribed by the Administrator of General Services, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period; and

(B) regulations of an employing agency may define ''minimal value'' for its employees to be less than the value established under this paragraph; and

(6) ''employing agency'' means—

(A) the Committee on Standards of Official Conduct of the House of Representatives, for Members and employees of the House of Representatives, except that those responsibilities specified in subsections (c)(2)(A), (e)(1), and (g)(2)(B) shall be carried out by the Clerk of the House;

(B) the Select Committee on Ethics of the Senate, for Senators and employees of the Senate, except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in subsections (c)(2), (d), and (g)(2)(B) shall be carried out by the Secretary of the Senate;

(C) the Administrative Office of the United States Courts, for judges and judicial branch employees; and

(D) the department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees.

(b) An employee may not—

(1) request or otherwise encourage the tender of a gift or decoration; or

(2) accept a gift or decoration, other than in accordance with the provisions of subsections (c) and (d).

(c)(1) The Congress consents to—

(A) the accepting and retaining by an employee of a gift of minimal value tendered and received as a souvenir or mark of courtesy; and

(B) the accepting by an employee of a gift of more than minimal value when such gift is in the nature of an educational scholarship or medical treatment or when it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, except that—

(i) a tangible gift of more than minimal value is deemed to have been accepted on behalf of the United States and, upon acceptance, shall become the property of the United States; and

(ii) an employee may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if such acceptance is appropriate, consistent with the interests of the United States, and permitted by the employing agency and any regulations which may be prescribed by the employing agency.

(2) Within 60 days after accepting a tangible gift of more than minimal value (other than a gift described in paragraph (1)(B)(ii)), an employee shall—

(A) deposit the gift for disposal with his or her employing agency; or

(B) subject to the approval of the employing agency, deposit the gift with that agency for official use.

Within 30 days after terminating the official use of a gift under subparagraph (B), the employing agency shall forward the gift to the Administrator of General Services in accordance with subsection (e)(1) or provide for its disposal in accordance with subsection (e)(2).

(3) When an employee deposits a gift of more than minimal value for disposal or for official use pursuant to paragraph (2), or within 30 days after accepting travel or travel expenses as provided in paragraph (1)(B)(ii) unless such travel or travel expenses are accepted in accordance with specific instructions of his or her employing agency, the employee shall file a statement with his or her employing agency or its delegate containing the information prescribed in subsection (f) for that gift.

(d) The Congress consents to the accepting, retaining, and wearing by an employee of a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the employing agency of such employee. Without this approval, the decoration is deemed to have been accepted on behalf of the United States, shall become the property of the United States, and shall be deposited by the employee, within sixty days of acceptance, with the employing agency for official use, for forwarding to the Administrator of General Services for disposal in accordance with subsection (e)(1), or for disposal in accordance with subsection (e)(2).

(e)(1) Except as provided in paragraph (2), gifts and decorations that have been deposited with an employing agency for disposal shall be (A) returned to the donor, or (B) forwarded to the Administrator of General Services for transfer, donation, or other disposal in accordance with the provisions of subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41. However, no gift or decoration that has been deposited for disposal may be sold without the approval of the Secretary of State, upon a determination that the sale will not adversely affect the foreign relations of the United States. Gifts and decorations may be sold by negotiated sale.

(2) Gifts and decorations received by a Senator or an employee of the Senate that are deposited with the Secretary of the Senate for disposal, or are deposited for an official use which has terminated, shall be disposed of by the Commission on Arts and Antiquities of the United States Senate. Any such gift or decoration may be returned by the Commission to the donor or may be transferred or donated by the Commission, subject to such terms and conditions as it may prescribe, (A) to an agency or instrumentality of (i) the United States, (ii) a State, territory, or possession of the United States, or a political subdivision of the foregoing, or (iii) the District of Columbia, or (B) to an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code. Any such gift or decoration not disposed of as provided in the preceding sentence shall be forwarded to the Administrator of General Services for disposal in accordance with paragraph (1). If the Administrator does not dispose of such gift or decoration within one year, he shall, at the request of the Commission, return it to the Commission and the Commission may dispose of such gift or decoration in such manner as it considers proper, except that such gift or decoration may be sold only with the approval of the Secretary of State upon a determination that the sale will not adversely affect the foreign relations of the United States.

(f)(1) Not later than January 31 of each year, each employing agency or its delegate shall compile a listing of all statements filed during the preceding year by the employees of that agency pursuant to subsection (c)(3) and shall transmit such listing to the Secretary of State who shall publish a comprehensive listing of all such statements in the Federal Register.

(2) Such listings shall include for each tangible gift reported—

(A) the name and position of the employee;

(B) a brief description of the gift and the circumstances justifying acceptance;

(C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift;

(D) the date of acceptance of the gift;

(E) the estimated value in the United States of the gift at the time of acceptance; and

(F) disposition or current location of the gift.

(3) Such listings shall include for each gift of travel or travel expenses—

(A) the name and position of the employee;

(B) a brief description of the gift and the circumstances justifying acceptance; and

(C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift.

(4)(A) In transmitting such listings for an element of the intelligence community, the head of such element may delete the information described in subparagraph (A) or (C) of paragraph (2) or in subparagraph (A) or (C) of paragraph (3) if the head of such element certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources or methods.

(B) Any information not provided to the Secretary of State pursuant to the authority in subparagraph (A) shall be transmitted to the Director of National Intelligence who shall keep a record of such information.

(C) In this paragraph, the term ''intelligence community'' has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(g)(1) Each employing agency shall prescribe such regulations as may be necessary to carry out the purpose of this section. For all employing agencies in the executive branch, such regulations shall be prescribed pursuant to guidance provided by the Secretary of State. These regulations shall be implemented by each employing agency for its employees.

(2) Each employing agency shall—

(A) report to the Attorney General cases in which there is reason to believe that an employee has violated this section;

(B) establish a procedure for obtaining an appraisal, when necessary, of the value of gifts; and

(C) take any other actions necessary to carry out the purpose of this section.

(h) The Attorney General may bring a civil action in any district court of the United States against any employee who knowingly solicits or accepts a gift from a foreign government not consented to by this section or who fails to deposit or report such gift as required by this section. The court in which such action is brought may assess a penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus $5,000.

(i) The President shall direct all Chiefs of a United States Diplomatic Mission to inform their host governments that it is a general policy of the United States Government to prohibit United States Government employees from receiving gifts or decorations of more than minimal value.

(j) Nothing in this section shall be construed to derogate any regulation prescribed by any employing agency which provides for more stringent limitations on the receipt of gifts and decorations by its employees.

(k) The provisions of this section do not apply to grants and other forms of assistance to which section 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies.

(Added Pub. L. 90–83, §1(45)(C), Sept. 11, 1967, 81 Stat. 208; amended Pub. L. 95–105, title V, §515(a)(1), Aug. 17, 1977, 91 Stat. 862; Pub. L. 95–426, title VII, §712(a)–(c), Oct. 7, 1978, 92 Stat. 994; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 107–217, §3(a)(1), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 108–458, title I, §1079(b), Dec. 17, 2004, 118 Stat. 3696; Pub. L. 109–435, title VI, §604(b), Dec. 20, 2006, 120 Stat. 3241; Pub. L. 111–259, title III, §361, Oct. 7, 2010, 124 Stat. 2701; Pub. L. 111–350, §5(a)(10), Jan. 4, 2011, 124 Stat. 3841.)

HISTORICAL AND REVISION NOTES

Section of title 5	*Source (U.S.Code)*	*Source (Statutes at Large)*
7342(a)	22:2621.	Oct. 15, 1966, Pub. L. 89–673, §2, 80 Stat. 952.
7342(b)	22:2622.	Oct. 15, 1966, Pub. L. 89–673, §3, 80 Stat. 952.
7342(c)	22:2623.	Oct. 15, 1966, Pub. L. 89–673, §4, 80 Stat. 952.
7342(d)	22:2624.	Oct. 15, 1966, Pub. L. 89–673, §5, 80 Stat. 952.
7342(e)	22:2626.	Oct. 15, 1966, Pub. L. 89–673, §7, 80 Stat. 952.

The definitions of ''employee'' and ''uniformed services'' in 5 U.S.C. 2105 and 2101 are broad enough to cover the persons included in 22 U.S.C. 2621(1) with the exception of (1) individuals employed by, or occupying an office or position in, the government of a territory or possession of the United States or of the District of Columbia, (2) the President, and (3) Members of Congress, who, accordingly, are covered in paragraphs (B), (D), and (E). As the Canal Zone Government is an independent agency of the United States, see section 31 of title 2, Canal Zone Code, an employee thereof is an ''employee'' as defined in 5 U.S.C. 2105.

In subsection (b), the words ''An employee may not'' are substituted for ''No person shall'' to conform to the definition applicable and style of title 5, United States Code.

In subsection (c), the words ''under regulations prescribed under this section'' are substituted for ''in accordance with the rules and regulations issued pursuant to this Act''.

In subsection (e), the words ''The President may prescribe regulations to carry out the purpose of this section'' are substituted for ''Rules and regulations to carry out the purposes of this Act may be prescribed by or under the authority of the President''. Under 3 U.S.C. 301, the President may delegate the authority vested in him by this subsection.

REFERENCES IN TEXT

Section 152 of the Internal Revenue Code of 1986, referred to in subsec. (a)(1)(G), is classified to section 152 of Title 26, Internal Revenue Code.

Section 501 of the Internal Revenue Code of 1986, referred to in subsec. (e)(2), is classified to section 501 of Title 26, Internal Revenue Code.

Section 108A of the Mutual Educational and Cultural Exchange Act of 1961, referred to in subsec. (k), is classified to section 2458a of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2011—Subsec. (e)(1). Pub. L. 111–350 substituted ''division C (except sections 3302, 3501(b), 3509, 3906, 4710, and

4711) of subtitle I of title 41'' for ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)''.

2010—Subsec. (f)(4). Pub. L. 111–259 amended par. (4) generally. Prior to amendment, par. (4) read as follows:

''(A) In transmitting such listings for the Central Intelligence Agency, the Director of the Central Intelligence Agency may delete the information described in subparagraphs (A) and (C) of paragraphs (2) and (3) if the Director certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources.

''(B) In transmitting such listings for the Office of the Director of National Intelligence, the Director of National Intelligence may delete the information described in subparagraphs (A) and (C) of paragraphs (2) and (3) if the Director certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources.''

2006—Subsec. (a)(1)(A). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

2004—Subsec. (f)(4). Pub. L. 108–458 designated existing provisions as subpar. (A), substituted ''the Director of the Central Intelligence Agency'' for ''the Director of Central Intelligence'', and added subpar. (B).

2002—Subsec. (e)(1). Pub. L. 107–217 substituted ''provisions of subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' for ''provisions of the Federal Property and Administrative Services Act of 1949''.

1986—Subsecs. (a)(1)(G), (e)(2). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1978—Subsec. (a)(6)(A). Pub. L. 95–426, §712(a)(1), substituted ''(e)(1)'' for ''(e)''.

Subsec. (a)(6)(B). Pub. L. 95–426, §712(a)(2), inserted '', except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in subsection (c)(2), (d), and (g)(2)(B) shall be carried out by the Secretary of the Senate''.

Subsec. (c)(2). Pub. L. 95–426, §712(b)(1), substituted ''subsection (e)(1) or provide for its disposal in accordance with subsection (e)(2)'' for ''subsection (e)''.

Subsec. (d). Pub. L. 95–426, §712(b)(2), substituted ''official use, for forwarding'', for ''official use, or forwarding'', and ''subsection (e)(1), or for disposal in accordance with subsection (e)(2)'' for ''subsection (e)''.

Subsec. (e). Pub. L. 95–426, §712(c), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), gifts'' for ''Gifts'', ''(A)'' and ''(B)'' for ''(1)'' and ''(2)'', respectively, and added par. (2).

1977—Subsec. (a). Pub. L. 95–105 in par. (1) inserted provisions expanding definition of ''employee'' to include an officer or employee of the United States Postal Service or Postal Rate Commission, certain experts and consultants, the Vice President, and any Delegate to Congress, in par. (2) incorporated existing provisions into subpars. (A) and (C) and added subpar. (B), in par. (3) substituted reference to tangible or intangible present for reference to present, in par. (4) inserted reference to award, and added pars. (5) and (6).

Subsec. (b). Pub. L. 95–105 designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 95–105 incorporated existing provisions of pars. (1) and (2) into par. (1), inserted provisions giving congressional consent to acceptance of a gift in the nature of an educational scholarship, medical treatment, or travel or travel expenses, and added pars. (2) and (3).

Subsec. (d). Pub. L. 95–105 struck out provisions requiring the Secretary of State to concur with the approval of the employing agency and substituted provisions requiring the employee to deposit property within 60 days of acceptance with the employing agency for official use or forwarding to the Administrator of General Services for disposal for provisions requiring the employee to deposit the decoration for use and disposal as the property of the United States under regulations prescribed under this section.

Subsec. (e). Pub. L. 95–105 substituted provisions relating to the disposal of decorations for provisions authorizing the President to prescribe regulations to carry out the purposes of this section.

Subsecs. (f) to (k). Pub. L. 95–105 added subsecs. (f) to (k).

CHANGE OF NAME

Committee on Standards of Official Conduct of House of Representatives changed to Committee on Ethics of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of Title 50, War and National Defense.

Amendment by Pub. L. 108–458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out as an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 515(a)(2) of Pub. L. 95–105 provided that: ''The amendment made by paragraph (1) of this subsection [amending this section] shall take effect on January 1, 1978.''

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

LEASING OF SPACE AND FACILITIES FOR STORING AND SAFEGUARDING PROPERTY

Section 712(d) of Pub. L. 95–426 provided that: ''In the event that the space and facilities available to the Secretary of the Senate for carrying out his responsibilities in storing and safeguarding property in his custody under section 7342 of title 5, United States Code, are insufficient for such purpose, he may, with the approval of the Committee on Rules and Administration of the Senate, lease such space and facilities as may be necessary for such purpose. Rental payments under any such lease and expenses incurred in connection therewith shall be paid from the contingent fund of the Senate upon vouchers approved by the Secretary of the Senate.''

WEARING OF CERTAIN DECORATIONS

Section 33A of act Aug. 10, 1956, ch. 1041, as added by Pub. L. 85–861, Sept. 2, 1958, §33(e), 72 Stat. 1567, provided: ''A member or former member of an armed force of the United States holding any office of profit or trust under the United States may wear any decoration, order, medal, or emblem accepted (1) under the Act of July 20, 1942, chapter 508 (56 Stat. 662), or (2) before August 1, 1947, from the government of a cobelligerent or neutral nation or an American Republic.''

EXECUTIVE ORDER NO. 11320

Ex. Ord. No. 11320, Dec. 12, 1966, 31 F.R. 15789, which delegated to the Secretary of State the authority of the President under 22 U.S.C. 2626 to prescribe rules and regulations to carry out the Foreign Gifts and Decorations Act of 1966, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

EX ORD. NO. 11446. ACCEPTANCE OF SERVICE MEDALS AND RIBBONS FROM MULTILATERAL ORGANIZATIONS OTHER THAN UNITED NATIONS

Ex. Ord. No. 11446, Jan. 16, 1969, 34 F.R. 803, as amended by Ex. Ord. No. 13286, § 62, Feb. 28, 2003, 68 F.R. 10629, provided:

By virtue of the authority vested in me as President of the United States and as Commander in Chief of the Armed Forces of the United States, I hereby authorize the Secretary of Defense, with respect to members of the Army, Navy, Air Force, and Marine Corps, and the Secretary of Homeland Security, with respect to members of the Coast Guard when it is not operating as a service in the Navy, to prescribe regulations for the acceptance of medals and ribbons which are offered by multilateral organizations, other than the United Nations, to members of the Armed Forces of the United States in recognition of service conducted under the auspices of those organizations. A determination that service for a multilateral organization in a particular geographical area or for a particular purpose constitutes a justifiable basis for authorizing acceptance of the medal or ribbon offered to eligible members of the Armed Forces of the United States shall be made with the concurrence of the Secretary of State.

SUBCHAPTER V—MISCONDUCT

§ 7351. Gifts to superiors

(a) An employee may not—

(1) solicit a contribution from another employee for a gift to an official superior;

(2) make a donation as a gift or give a gift to an official superior; or

(3) accept a gift from an employee receiving less pay than himself.

(b) An employee who violates this section shall be subject to appropriate disciplinary action by the employing agency or entity.

(c) Each supervising ethics office (as defined in section 7353(d)(1)) is authorized to issue regulations implementing this section, including regulations exempting voluntary gifts or contributions that are given or received for special occasions such as marriage or retirement or under other circumstances in which gifts are traditionally given or exchanged.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 527; Pub. L. 101–194, title III, § 301, Nov. 30, 1989, 103 Stat. 1745; Pub. L. 101–280, § 4(a), May 4, 1990, 104 Stat. 157.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 113.	R.S. § 1784.

The application of the section is confined to employees, since the President and Members of Congress, though officers, could not have been intended to be ''summarily discharged'', and members of uniformed services are not covered by this statute. In the last sentence, the word ''removed'' is substituted for ''summarily discharged'' because of the provisions of the Lloyd-LaFollette Act, 37 Stat. 555, as amended, and the Veterans' Preference Act of 1944, 58 Stat. 387, as amended, which are carried into this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1990—Subsec. (a)(2). Pub. L. 101–280, § 4(a)(1), inserted ''or give a gift'' after ''donation as a gift''.

Subsec. (c). Pub. L. 101–280, § 4(a)(2), substituted ''Each supervising ethics office (as defined in section 7353(d)(1))'' for ''The Office of Government Ethics'' and ''circumstances in which gifts are traditionally given or exchanged'' for ''similar circumstances''.

1989—Pub. L. 101–194 designated existing provisions as subsec. (a), struck out ''An employee who violates this section shall be removed from the service.'' at end, and added subsecs. (b) and (c).

INAPPLICABILITY TO TRANSFERS OF UNUSED ACCRUED ANNUAL LEAVE BY FEDERAL EMPLOYEES; EXCEPTION

Pub. L. 100–284, Apr. 7, 1988, 102 Stat. 81, provided: ''That, except as the Office of Personnel Management may by regulation prescribe, nothing in section 7351 of title 5, United States Code, shall apply with respect to a solicitation, donation, or acceptance of leave under any program under which, during the fiscal year ending on September 30, 1988, unused accrued annual leave of officers or employees of the Federal Government may be transferred for use by other officers or employees who need such leave due to a personal emergency.''

§ 7352. Excessive and habitual use of intoxicants

An individual who habitually uses intoxicating beverages to excess may not be employed in the competitive service.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 527.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 640.	Jan. 16, 1883, ch. 27, § 8, 22 Stat. 406.

The word ''employed'' is substituted for ''appointed to, or retained in'' because it includes both.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 7353. Gifts to Federal employees

(a) Except as permitted by subsection (b), no Member of Congress or officer or employee of the executive, legislative, or judicial branch shall solicit or accept anything of value from a person—

(1) seeking official action from, doing business with, or (in the case of executive branch officers and employees) conducting activities regulated by, the individual's employing entity; or

(2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.

(b)(1) Each supervising ethics office is authorized to issue rules or regulations implementing the provisions of this section and providing for such reasonable exceptions as may be appropriate.

(2)(A) Subject to subparagraph (B), a Member, officer, or employee may accept a gift pursuant to rules or regulations established by such individual's supervising ethics office pursuant to paragraph (1).

(B) No gift may be accepted pursuant to subparagraph (A) in return for being influenced in the performance of any official act.

(3) Nothing in this section precludes a Member, officer, or employee from accepting gifts on behalf of the United States Government or any of its agencies in accordance with statutory authority.

(4) Nothing in this section precludes an employee of a private sector organization, while as-

signed to an agency under chapter 37, from continuing to receive pay and benefits from such organization in accordance with such chapter.

(c) A Member of Congress or an officer or employee who violates this section shall be subject to appropriate disciplinary and other remedial action in accordance with any applicable laws, Executive orders, and rules or regulations.

(d) For purposes of this section—

(1) the term ''supervising ethics office'' means—

(A) the Committee on Standards of Official Conduct of the House of Representatives or the House of Representatives as a whole, for Members, officers, and employees of the House of Representatives;

(B) the Select Committee on Ethics of the Senate, or the Senate as a whole, for Senators, officers, and employees of the Senate;

(C) the Judicial Conference of the United States for judges and judicial branch officers and employees;

(D) the Office of Government Ethics for all executive branch officers and employees; and

(E) in the case of legislative branch officers and employees other than those specified in subparagraphs (A) and (B), the committee referred to in either such subparagraph to which reports filed by such officers and employees under title I of the Ethics in Government Act of 1978 are transmitted under such title, except that the authority of this section may be delegated by such committee with respect to such officers and employees; and

(2) the term ''officer or employee'' means an individual holding an appointive or elective position in the executive, legislative, or judicial branch of Government, other than a Member of Congress.

(Added Pub. L. 101–194, title III, § 303(a), Nov. 30, 1989, 103 Stat. 1746; amended Pub. L. 101–280, § 4(d), May 4, 1990, 104 Stat. 158; Pub. L. 107–347, title II, § 209(g)(1)(C), Dec. 17, 2002, 116 Stat. 2932.)

REFERENCES IN TEXT

The Ethics in Government Act of 1978, referred to in subsec. (d)(1)(E), is Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824, as amended. Title I of the Act, which was classified principally to chapter 18 (§ 701 et seq.) of Title 2, The Congress, was amended generally by Pub. L. 101–194, title II, § 202, Nov. 30, 1989, 103 Stat. 1724, and as so amended, is set out in the Appendix to this title. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95–521 in the Appendix to this title and Tables.

AMENDMENTS

2002—Subsec. (b)(4). Pub. L. 107–347 added par. (4).

1990—Subsec. (a). Pub. L. 101–280, § 4(d)(1)(A), substituted ''branch'' for ''branches'' in introductory provisions.

Subsec. (a)(1). Pub. L. 101–280, § 4(d)(1)(B), substituted ''by, the'' for ''by the'' and ''entity'' for ''agency''.

Subsec. (c). Pub. L. 101–280, § 4(d)(2), substituted ''A Member of Congress or an officer or employee'' for ''An employee''.

Subsec. (d)(1)(B). Pub. L. 101–280, § 4(d)(3)(A)(i), substituted ''officers,'' for ''officers''.

Subsec. (d)(1)(E). Pub. L. 101–280, § 4(d)(3)(A)(ii), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''the ethics committee with which the officer or employee is required to file financial disclosure forms, for all legislative branch officers and employees other than those specified in subparagraphs (A) and (B), except that such authority may be delegated; and''.

Subsec. (d)(2). Pub. L. 101–280, § 4(d)(3)(B), substituted ''Government,'' for ''Government''.

CHANGE OF NAME

Committee on Standards of Official Conduct of House of Representatives changed to Committee on Ethics of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–347 effective 120 days after Dec. 17, 2002, see section 402(a) of Pub. L. 107–347, set out as an Effective Date note under section 3601 of Title 44, Public Printing and Documents.

LIMITATION ON ACCEPTANCE OF HONORARY CLUB MEMBERSHIPS

Pub. L. 110–402, § 2, Oct. 13, 2008, 122 Stat. 4255, provided that:

''(a) DEFINITIONS.—In this section:

''(1) GIFT.—The term 'gift' has the meaning given under section 109(5) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

''(2) JUDICIAL OFFICER.—The term 'judicial officer' has the meaning given under section 109(10) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

''(b) PROHIBITION ON ACCEPTANCE OF HONORARY CLUB MEMBERSHIPS.—A judicial officer may not accept a gift of an honorary club membership with a value of more than $50 in any calendar year.''

SUBCHAPTER VI—DRUG ABUSE, ALCOHOL ABUSE, AND ALCOHOLISM

§ 7361. Drug abuse

(a) The Office of Personnel Management shall be responsible for developing, in cooperation with the President, with the Secretary of Health and Human Services (acting through the National Institute on Drug Abuse), and with other agencies, and in accordance with applicable provisions of this subchapter, appropriate prevention, treatment, and rehabilitation programs and services for drug abuse among employees. Such agencies are encouraged to extend, to the extent feasible, such programs and services to the families of employees and to employees who have family members who are drug abusers. Such programs and services shall make optimal use of existing governmental facilities, services, and skills.

(b) Section 527[1] of the Public Health Service Act (42 U.S.C. 290ee–3), relating to confidentiality of records, and any regulations prescribed thereunder, shall apply with respect to records maintained for the purpose of carrying out this section.

(c) Each agency shall, with respect to any programs or services provided by such agency, submit such written reports as the Office may require in connection with any report required under section 7363 of this title.

(d) For the purpose of this section, the term ''agency'' means an Executive agency.

(Added Pub. L. 99–570, title VI, § 6002(a)(1), Oct. 27, 1986, 100 Stat. 3207–157.)

REFERENCES IN TEXT

Section 527 of the Public Health Service Act, referred to in subsec. (b) and formerly classified to section

[1] See References in Text note below.

290ee–3 of Title 42, The Public Health and Welfare, was renumbered section 548 of that Act by Pub. L. 100–77, title VI, §611(2), July 22, 1987, 101 Stat. 516 and then omitted in the general revision of Part D of Subchapter III–A of Chapter 6A of Title 42 by Pub. L. 102–321, title I, §131, July 10, 1992, 106 Stat. 366. Provisions relating to the confidentiality of patient records are now classified to section 290dd–2 of Title 42.

EDUCATIONAL PROGRAM FOR FEDERAL EMPLOYEES RELATING TO DRUG AND ALCOHOL ABUSE

Section 6003 of Pub. L. 99–570 provided that:

''(a) ESTABLISHMENT.—The Director of the Office of Personnel Management shall, in consultation with the Secretary of Health and Human Services, establish a Government-wide education program, using seminars and such other methods as the Director considers appropriate, to carry out the purposes prescribed in subsection (b).

''(b) PURPOSES.—The program established under this section shall be designed to provide information to Federal Government employees with respect to—

''(1) the short-term and long-term health hazards associated with alcohol abuse and drug abuse;

''(2) the symptoms of alcohol abuse and drug abuse;

''(3) the availability of any prevention, treatment, or rehabilitation programs or services relating to alcohol abuse or drug abuse, whether provided by the Federal Government or otherwise;

''(4) confidentiality protections afforded in connection with any prevention, treatment, or rehabilitation programs or services;

''(5) any penalties provided under law or regulation, and any administrative action (permissive or mandatory), relating to the use of alcohol or drugs by a Federal Government employee or the failure to seek or receive appropriate treatment or rehabilitation services; and

''(6) any other matter which the Director considers appropriate.''

§ 7362. Alcohol abuse and alcoholism

(a) The Office of Personnel Management shall be responsible for developing, in cooperation with the Secretary of Health and Human Services and with other agencies, and in accordance with applicable provisions of this subpart, appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse and alcoholism among employees. Such agencies are encouraged to extend, to the extent feasible, such programs and services to the families of alcoholic employees and to employees who have family members who are alcoholics. Such programs and services shall make optimal use of existing governmental facilities, services, and skills.

(b) Section 523[1] of the Public Health Service Act (42 U.S.C. 290dd–3), relating to confidentiality of records, and any regulations prescribed thereunder, shall apply with respect to records maintained for the purpose of carrying out this section.

(c) Each agency shall, with respect to any programs or services provided by such agency, submit such written reports as the Office may require in connection with any report required under section 7363 of this title.

(d) For the purpose of this section, the term ''agency'' means an Executive agency.

(Added Pub. L. 99–570, title VI, §6002(a)(1), Oct. 27, 1986, 100 Stat. 3207–157.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 523 of the Public Health Service Act, referred to in subsec. (b) and formerly classified to section 290dd–3 of Title 42, The Public Health and Welfare, was renumbered section 544 of that Act by Pub. L. 100–77, title VI, §611(2), July 22, 1987, 101 Stat. 516 and then omitted in the general revision of Part D of Subchapter III–A of Chapter 6A of Title 42 by Pub. L. 102–321, title I, §131, July 10, 1992, 106 Stat. 366. Provisions relating to the confidentiality of patient records are now classified to section 290dd–2 of Title 42.

§ 7363. Reports to Congress

(a) The Office of Personnel Management shall, within 6 months after the date of the enactment of the Federal Employee Substance Abuse Education and Treatment Act of 1986 and annually thereafter, submit to each House of Congress a report containing the matters described in subsection (b).

(b) Each report under this section shall include—

(1) a description of any programs or services provided under section 7361 or 7362 of this title, including the costs associated with each such program or service and the source and adequacy of any funding[1] such program or service;

(2) a description of the levels of participation in each program and service provided under section 7361 or 7362 of this title, and the effectiveness of such programs and services;

(3) a description of the training and qualifications required of the personnel providing any program or service under section 7361 or 7362 of this title;

(4) a description of the training given to supervisory personnel in connection with recognizing the symptoms of drug or alcohol abuse and the procedures (including those relating to confidentiality) under which individuals are referred for treatment, rehabilitation, or other assistance;

(5) any recommendations for legislation considered appropriate by the Office and any proposed administrative actions; and

(6) information describing any other related activities under section 7904 of this title, and any other matter which the Office considers appropriate.

(Added Pub. L. 99–570, title VI, §6002(a)(1), Oct. 27, 1986, 100 Stat. 3207–158.)

REFERENCES IN TEXT

The date of the enactment of the Federal Employee Substance Abuse Education and Treatment Act of 1986, referred to in subsec. (a), is the date of enactment of title VI of Pub. L. 99–570 which was approved Oct. 27, 1986.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 187 of House Document No. 103–7.

[1] So in original. Probably should be followed by ''of''.

SUBCHAPTER VII—MANDATORY REMOVAL FROM EMPLOYMENT OF CONVICTED LAW ENFORCEMENT OFFICERS

§ 7371. Mandatory removal from employment of law enforcement officers convicted of felonies

(a) In this section, the term—

(1) ''conviction notice date'' means the date on which an agency that employs a law enforcement officer has notice that the officer has been convicted of a felony that is entered by a Federal or State court, regardless of whether that conviction is appealed or is subject to appeal; and

(2) ''law enforcement officer'' has the meaning given that term under section 8331(20) or 8401(17).

(b) Any law enforcement officer who is convicted of a felony shall be removed from employment as a law enforcement officer on the last day of the first applicable pay period following the conviction notice date.

(c)(1) This section does not prohibit the removal of an individual from employment as a law enforcement officer before a conviction notice date if the removal is properly effected other than under this section.

(2) This section does not prohibit the employment of any individual in any position other than that of a law enforcement officer.

(d) If the conviction is overturned on appeal, the removal shall be set aside retroactively to the date on which the removal occurred, with back pay under section 5596 for the period during which the removal was in effect, unless the removal was properly effected other than under this section.

(e)(1) If removal is required under this section, the agency shall deliver written notice to the employee as soon as practicable, and not later than 5 calendar days after the conviction notice date. The notice shall include a description of the specific reasons for the removal, the date of removal, and the procedures made applicable under paragraph (2).

(2) The procedures under section 7513(b)(2), (3), and (4), (c), (d), and (e) shall apply to any removal under this section. The employee may use the procedures to contest or appeal a removal, but only with respect to whether—

(A) the employee is a law enforcement officer;

(B) the employee was convicted of a felony; or

(C) the conviction was overturned on appeal.

(3) A removal required under this section shall occur on the date specified in subsection (b) regardless of whether the notice required under paragraph (1) of this subsection and the procedures made applicable under paragraph (2) of this subsection have been provided or completed by that date.

(Added Pub. L. 106–554, § 1(a)(3) [title VI, § 639(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–168.)

EFFECTIVE DATE

Pub. L. 106–554, § 1(a)(3) [title VI, § 639(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–168, provided that: ''The amendments made by this section [enacting this subchapter] shall take effect 30 days after the date of enactment of this Act [Dec. 21, 2000] and shall apply to any conviction of a felony entered by a Federal or State court on or after that date.''

CHAPTER 75—ADVERSE ACTIONS

SUBCHAPTER I—SUSPENSION OF[1] 14 DAYS OR LESS

Sec.
7501. Definitions.
7502. Actions covered.
7503. Cause and procedure.
7504. Regulations.

SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

7511. Definitions; application.
7512. Actions covered.
7513. Cause and procedure.
7514. Regulations.

SUBCHAPTER III—ADMINISTRATIVE LAW JUDGES

7521. Actions against administrative law judges.

SUBCHAPTER IV—NATIONAL SECURITY

7531. Definitions.
7532. Suspension and removal.
7533. Effect on other statutes.

SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

7541. Definitions.
7542. Actions covered.
7543. Cause and procedure.

AMENDMENTS

1978—Pub. L. 95–454, title II, § 204(b), title IV, § 411(1), Oct. 13, 1978, 92 Stat. 1137, 1173, substituted ''SUSPENSION OF 14 DAYS OR LESS'' for ''COMPETITIVE SERVICE'' in subchapter I heading, substituted ''Definitions'' for ''Cause; procedure; exception'' in item 7501, added items 7502 to 7504, substituted ''REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS'' for ''PREFERENCE ELIGIBLES'' in subchapter II heading, inserted ''; application'' in item 7511, substituted ''Actions covered'' for ''Cause; procedure; exception'' in item 7512, added items 7513 and 7514, substituted ''ADMINISTRATIVE LAW JUDGES'' for ''HEARING EXAMINERS'' in subchapter III heading, substituted ''Actions against administrative law judges'' for ''Removal'' in item 7521, and added subchapter V heading and items 7541 to 7543.

SUBCHAPTER I—SUSPENSION FOR 14 DAYS OR LESS

AMENDMENTS

1978—Pub. L. 95–454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1134, substituted ''SUSPENSION FOR 14 DAYS OR LESS'' for ''COMPETITIVE SERVICE'' in subchapter heading.

§ 7501. Definitions

For the purpose of this subchapter—

(1) ''employee'' means an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; and

(2) ''suspension'' means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

[1] So in original. Does not conform to subchapter heading.

(Added Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1134.)

PRIOR PROVISIONS

A prior section 7501, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 527, related to removal or suspension without pay of an individual in the competitive service and procedures applicable to such removal or suspension, prior to repeal by Pub. L. 95–454, §204(a).

EFFECTIVE DATE

Subchapter effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–376, §1, Aug. 17, 1990, 104 Stat. 461, provided that: ''This Act [amending sections 4303, 7511, and 7701 of this title and enacting provisions set out as notes under section 4303 of this title] may be cited as the 'Civil Service Due Process Amendments'.''

§ 7502. Actions covered

This subchapter applies to a suspension for 14 days or less, but does not apply to a suspension under section 7521 or 7532 of this title or any action initiated under section 1215 of this title.

(Added Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1135; amended Pub. L. 101–12, §9(a)(2), Apr. 10, 1989, 103 Stat. 35.)

AMENDMENTS

1989—Pub. L. 101–12 substituted ''1215'' for ''1206''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

§ 7503. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an employee may be suspended for 14 days or less for such cause as will promote the efficiency of the service (including discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances within any one-year period or any other pattern of discourteous conduct).

(b) An employee against whom a suspension for 14 days or less is proposed is entitled to—

(1) an advance written notice stating the specific reasons for the proposed action;

(2) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and the specific reasons therefor at the earliest practicable date.

(c) Copies of the notice of proposed action, the answer of the employee if written, a summary thereof if made orally, the notice of decision and reasons therefor, and any order effecting[1] the suspension, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.

(Added Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1135.)

[1] So in original. Probably should be ''affecting''.

§ 7504. Regulations

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

(Added Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1135.)

SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

AMENDMENTS

1978—Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1135, substituted ''REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS'' for ''PREFERENCE ELIGIBLES'' in subchapter heading.

§ 7511. Definitions; application

(a) For the purpose of this subchapter—

(1) ''employee'' means—

(A) an individual in the competitive service—

(i) who is not serving a probationary or trial period under an initial appointment; or

(ii) who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less;

(B) a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions—

(i) in an Executive agency; or

(ii) in the United States Postal Service or Postal Regulatory Commission; and

(C) an individual in the excepted service (other than a preference eligible)—

(i) who is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service; or

(ii) who has completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less;

(2) ''suspension'' has the same meaning as set forth in section 7501(2) of this title;

(3) ''grade'' means a level of classification under a position classification system;

(4) ''pay'' means the rate of basic pay fixed by law or administrative action for the position held by an employee; and

(5) ''furlough'' means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

(b) This subchapter does not apply to an employee—

(1) whose appointment is made by and with the advice and consent of the Senate;

(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by—

(A) the President for a position that the President has excepted from the competitive service;

(B) the Office of Personnel Management for a position that the Office has excepted from the competitive service; or

(C) the President or the head of an agency for a position excepted from the competitive service by statute;

(3) whose appointment is made by the President;

(4) who is receiving an annuity from the Civil Service Retirement and Disability Fund, or the Foreign Service Retirement and Disability Fund, based on the service of such employee;

(5) who is described in section 8337(h)(1), relating to technicians in the National Guard;

(6) who is a member of the Foreign Service, as described in section 103 of the Foreign Service Act of 1980;

(7) whose position is within the Central Intelligence Agency or the Government Accountability Office;

(8) whose position is within the United States Postal Service, the Postal Regulatory Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, an intelligence component of the Department of Defense (as defined in section 1614 of title 10), or an intelligence activity of a military department covered under subchapter I of chapter 83 of title 10, unless subsection (a)(1)(B) of this section or section 1005(a) of title 39 is the basis for this subchapter's applicability;

(9) who is described in section 5102(c)(11) of this title; or

(10) who holds a position within the Veterans Health Administration which has been excluded from the competitive service by or under a provision of title 38, unless such employee was appointed to such position under section 7401(3) of such title.

(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office which is not otherwise covered by this subchapter.

(Added Pub. L. 95–454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1135; amended Pub. L. 101–376, § 2(a), Aug. 17, 1990, 104 Stat. 461; Pub. L. 102–378, § 6(a), Oct. 2, 1992, 106 Stat. 1358; Pub. L. 103–359, title V, § 501(*l*), Oct. 14, 1994, 108 Stat. 3430; Pub. L. 104–201, div. A, title XVI, § 1634(b), Sept. 23, 1996, 110 Stat. 2752; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109–435, title VI, § 604(b), (f), Dec. 20, 2006, 120 Stat. 3241, 3242.)

REFERENCES IN TEXT

Section 103 of the Foreign Service Act of 1980, referred to in subsec. (b)(6), is classified to section 3903 of Title 22, Foreign Relations and Intercourse.

PRIOR PROVISIONS

A prior section 7511, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 528; Pub. L. 94–183, § 2(30), Dec. 31, 1975, 89 Stat. 1058, defined ''preference eligible employee'' and ''adverse action'' for purposes of this subchapter, prior to repeal by Pub. L. 95–454, § 204(a).

AMENDMENTS

2006—Subsec. (a)(1)(B)(ii). Pub. L. 109–435, § 604(b), substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

Subsec. (b)(8). Pub. L. 109–435, § 604(f), substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

2004—Subsec. (b)(7). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1996—Subsec. (b)(8). Pub. L. 104–201 substituted ''an intelligence component of the Department of Defense (as defined in section 1614 of title 10), or an intelligence activity of a military department covered under subchapter I of chapter 83 of title 10'' for ''the National Security Agency, the Defense Intelligence Agency, the Central Imagery Office, or an intelligence activity of a military department covered under section 1590 of title 10''.

1994—Subsec. (b)(8). Pub. L. 103–359 inserted ''the Central Imagery Office,'' after ''Defense Intelligence Agency,''.

1992—Subsec. (b)(7). Pub. L. 102–378, § 6(a)(1), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''whose position is with the Central Intelligence Agency, the General Accounting Office, or the Veterans Health Services and Research Administration;''.

Subsec. (b)(10). Pub. L. 102–378, § 6(a)(2)–(4), added par. (10).

1990—Pub. L. 101–376 amended section generally. Prior to amendment, section read as follows:

''(a) For the purpose of this subchapter—

''(1) 'employee' means—

''(A) an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less; and

''(B) a preference eligible in an Executive agency in the excepted service, and a preference eligible in the United States Postal Service or the Postal Rate Commission, who has completed 1 year of current continuous service in the same or similar positions;

''(2) 'suspension' has the meaning as set forth in section 7501(2) of this title;

''(3) 'grade' means a level of classification under a position classification system;

''(4) 'pay' means the rate of basic pay fixed by law or administrative action for the position held by an employee; and

''(5) 'furlough' means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

''(b) This subchapter does not apply to an employee—

''(1) whose appointment is made by and with the advice and consent of the Senate;

''(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by—

''(A) the Office of Personnel Management for a position that it has excepted from the competitive service; or

''(B) the President or the head of an agency for a position which is excepted from the competitive service by statute.

''(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as a note under section 1593 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 6(b) of Pub. L. 102–378 provided that:

''(1) The amendments made by subsection (a) [amending this section] shall apply with respect to any personnel action taking effect on or after the date of enactment of this Act [Oct. 2, 1992].

''(2) In the case of an employee or former employee of the Veterans Health Administration (or predecessor agency in name)—

''(A) against whom an adverse personnel action was taken before the date of enactment of this Act,

''(B) who, as a result of the enactment of the Civil Service Due Process Amendments (5 U.S.C. 7501 note) [Pub. L. 101–376], became ineligible to appeal such action to the Merit Systems Protection Board,

''(C) as to whom that appeal right is restored as a result of the enactment of subsection (a), or would have been restored but for the passage of time, and

''(D) who is not precluded, by section 7121(e)(1) of title 5, United States Code, from appealing to the Merit Systems Protection Board,

the deadline for bringing an appeal under section 7513(d) or section 4303(e) of such title with respect to such action shall be the latter of—

''(i) the 60th day after the date of enactment of this Act; or

''(ii) the deadline which would otherwise apply if this paragraph had not been enacted.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–376 applicable with respect to any personnel action taking effect on or after Aug. 17, 1990, see section 2(c) of Pub. L. 101–376, set out as a note under section 4303 of this title.

EFFECTIVE DATE

Subchapter effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 7512. Actions covered

This subchapter applies to—

(1) a removal;

(2) a suspension for more than 14 days;

(3) a reduction in grade;

(4) a reduction in pay; and

(5) a furlough of 30 days or less;

but does not apply to—

(A) a suspension or removal under section 7532 of this title,

(B) a reduction-in-force action under section 3502 of this title,

(C) the reduction in grade of a supervisor or manager who has not completed the probationary period under section 3321(a)(2) of this title if such reduction is to the grade held immediately before becoming such a supervisor or manager,

(D) a reduction in grade or removal under section 4303 of this title, or

(E) an action initiated under section 1215 or 7521 of this title.

(Added Pub. L. 95–454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1136; amended Pub. L. 101–12, § 9(a)(2), Apr. 10, 1989, 103 Stat. 35.)

PRIOR PROVISIONS

A prior section 7512, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 528, related to adverse action against a preference eligible employee and procedures applicable to such adverse action, prior to repeal by Pub. L. 95–454, § 204(a).

AMENDMENTS

1989—Par. (E). Pub. L. 101–12 substituted ''1215'' for ''1206''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

§ 7513. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

(b) An employee against whom an action is proposed is entitled to—

(1) at least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;

(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and the specific reasons therefor at the earliest practicable date.

(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(e) Copies of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Board upon its request and to the employee affected upon the employee's request.

(Added Pub. L. 95–454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1136.)

§ 7514. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter, except as it concerns any matter with respect to which the Merit Systems Protection Board may prescribe regulations.

(Added Pub. L. 95–454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1137.)

SUBCHAPTER III—ADMINISTRATIVE LAW JUDGES

AMENDMENTS

1978—Pub. L. 95–454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1137, substituted ''ADMINISTRATIVE LAW JUDGES'' for ''HEARING EXAMINERS'' in subchapter heading.

§ 7521. Actions against administrative law judges

(a) An action may be taken against an administrative law judge appointed under section 3105 of this title by the agency in which the administrative law judge is employed only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board.

(b) The actions covered by this section are—

(1) a removal;
(2) a suspension;
(3) a reduction in grade;
(4) a reduction in pay; and
(5) a furlough of 30 days or less;

but do not include—

(A) a suspension or removal under section 7532 of this title;

(B) a reduction-in-force action under section 3502 of this title; or

(C) any action initiated under section 1215 of this title.

(Added Pub. L. 95–454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1137; amended Pub. L. 101–12, § 9(a)(2), Apr. 10, 1989, 103 Stat. 35.)

PRIOR PROVISIONS

A prior section 7521, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 528; Pub. L. 95–251, § 2(a)(1), Mar. 27, 1978, 92 Stat. 183, related to removal of an administrative law judge appointed under section 3105 of this title, prior to repeal by Pub. L. 95–454, § 204(a).

AMENDMENTS

1989—Subsec. (b)(C). Pub. L. 101–12 substituted ''1215'' for ''1206''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SUBCHAPTER IV—NATIONAL SECURITY

§ 7531. Definitions

For the purpose of this subchapter, ''agency'' means—

(1) the Department of State;
(2) the Department of Commerce;
(3) the Department of Justice;
(4) the Department of Defense;
(5) a military department;
(6) the Coast Guard;
(7) the Atomic Energy Commission;
(8) the National Aeronautics and Space Administration; and
(9) such other agency of the Government of the United States as the President designates in the best interests of national security.

The President shall report any designation to the Committees on the Armed Services of the Congress.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 528.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 22–3.	Aug. 26, 1950, ch. 823, § 3, 64 Stat. 477.

Paragraphs (1)–(8) are supplied on authority of former section 22–1, which is carried in part into section 7532. The references to ''the Foreign Service of the United States'' and ''several field services'' are omitted as unnecessary since they are within the agencies concerned. The words ''military departments'' are substituted for the enumeration of the military departments in view of the definition of ''military department'' in section 102.

The reference to the National Security Resources Board is omitted as the Board was abolished by 1953 Reorg. Plan No. 3, § 6, eff. June 12, 1953, 67 Stat. 636.

Paragraph (9) is restated to conform to the style of this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ABOLITION OF ATOMIC ENERGY COMMISSION

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

PANAMA CANAL AND PANAMA RAILROAD COMPANY

Ex. Ord. No. 10237, Apr. 27, 1951, 16 F.R. 3627, made the provisions of former sections 22–1 and 22–3 of this title [see Disposition Table preceding section 101 of this title] applicable to the Panama Canal Government and to the Panama Canal Company.

DESIGNATION OF NATIONAL SECURITY AGENCY, DEFENSE INTELLIGENCE AGENCY, AND DEFENSE MAPPING AGENCY AS ''AGENCIES''

Memorandum of the President of the United States, May 23, 1988, 53 F.R. 26023, provided:

Memorandum for the Secretary of Defense

I have reviewed the personnel security requirements of the National Security Agency, the Defense Intelligence Agency, and the Defense Mapping Agency and the termination provisions of 5 U.S.C. Section 7532. I have determined that these Agencies are sensitive agencies and that it is in the best interests of national security that they be designated ''agencies'' within the meaning of that section.

Therefore, pursuant to the authority set forth in 5 U.S.C. Section 7531(9), I hereby designate the National Security Agency, the Defense Intelligence Agency, and the Defense Mapping Agency as ''agencies'' within the meaning of 5 U.S.C. Section 7532.

You are hereby authorized and directed to report these designations to the Committees on Armed Services of the Congress and to publish this memorandum in the Federal Register.

RONALD REAGAN.

§ 7532. Suspension and removal

(a) Notwithstanding other statutes, the head of an agency may suspend without pay an employee of his agency when he considers that action necessary in the interests of national security. To the extent that the head of the agency determines that the interests of national security permit, the suspended employee shall be notified of the reasons for the suspension. Within 30 days after the notification, the suspended employee is entitled to submit to the official designated by the head of the agency statements or affidavits to show why he should be restored to duty.

(b) Subject to subsection (c) of this section, the head of an agency may remove an employee

suspended under subsection (a) of this section when, after such investigation and review as he considers necessary, he determines that removal is necessary or advisable in the interests of national security. The determination of the head of the agency is final.

(c) An employee suspended under subsection (a) of this section who—

(1) has a permanent or indefinite appointment;

(2) has completed his probationary or trial period; and

(3) is a citizen of the United States;

is entitled, after suspension and before removal, to—

(A) a written statement of the charges against him within 30 days after suspension, which may be amended within 30 days thereafter and which shall be stated as specifically as security considerations permit;

(B) an opportunity within 30 days thereafter, plus an additional 30 days if the charges are amended, to answer the charges and submit affidavits;

(C) a hearing, at the request of the employee, by an agency authority duly constituted for this purpose;

(D) a review of his case by the head of the agency or his designee, before a decision adverse to the employee is made final; and

(E) a written statement of the decision of the head of the agency.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 529.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 22–1 (less 3d–5th provisos).	Aug. 26, 1950, ch. 803, §1 (less 3d–5th provisos), 64 Stat. 476. July 29, 1958, Pub. L. 85–568, §301(c), 72 Stat. 432.

The application of this section is covered by the definition in section 7531.

In subsection (a), the words ''Notwithstanding the provisions of section 652 of this title'' are omitted but are carried into section 7501(c). The words ''in his absolute discretion'' are omitted as unnecessary in view of the permissive grant of authority. The word ''reinstated'' is omitted as it is commonly used in other statutes to denote action different from that referred to here.

In subsections (b) and (c), the words ''remove'' and ''removal'' are coextensive with and substituted for ''terminate the employment'', ''termination'', and ''employment is terminated'', as appropriate.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 7533. Effect on other statutes

This subchapter does not impair the powers vested in the Atomic Energy Commission by chapter 23 of title 42, or the requirement in section 2201(d) of title 42 that adequate provision be made for administrative review of a determination to dismiss an employee of the Atomic Energy Commission.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 529.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 22–2.	Aug. 26, 1950, ch. 803, §2, 64 Stat. 477.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

§ 7541. Definitions

For the purpose of this subchapter—

(1) ''employee'' means a career appointee in the Senior Executive Service who—

(A) has completed the probationary period prescribed under section 3393(d) of this title; or

(B) was covered by the provisions of subchapter II of this chapter immediately before appointment to the Senior Executive Service; and

(2) ''suspension'' has the meaning set forth in section 7501(2) of this title.

(Added Pub. L. 95–454, title IV, §411(2), Oct. 13, 1978, 92 Stat. 1174.)

EFFECTIVE DATE

Subchapter effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as a note under section 3131 of this title.

§ 7542. Actions covered

This subchapter applies to a removal from the civil service or suspension for more than 14 days, but does not apply to an action initiated under section 1215 of this title, to a suspension or removal under section 7532 of this title, or to a removal under section 3592 or 3595 of this title.

(Added Pub. L. 95–454, title IV, §411(2), Oct. 13, 1978, 92 Stat. 1174; amended Pub. L. 97–35, title XVII, §1704(d)(1), Aug. 13, 1981, 95 Stat. 758; Pub. L. 101–12, §9(a)(2), Apr. 10, 1989, 103 Stat. 35.)

AMENDMENTS

1989—Pub. L. 101–12 substituted ''1215'' for ''1206''.

1981—Pub. L. 97–35 inserted reference to section 3595 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective June 1, 1981, with certain exceptions and conditions, see section 1704(e) of Pub. L. 97–35, set out as an Effective Date note under section 3595 of this title.

§ 7543. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take

an action covered by this subchapter against an employee only for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

(b) An employee against whom an action covered by this subchapter is proposed is entitled to—

(1) at least 30 days' advance written notice, unless there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed, stating specific reasons for the proposed action;

(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and specific reasons therefor at the earliest practicable date.

(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(e) Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.

(Added Pub. L. 95–454, title IV, § 411(2), Oct. 13, 1978, 92 Stat. 1174; amended Pub. L. 97–35, title XVII, § 1704(d)(2), Aug. 13, 1981, 95 Stat. 758; Pub. L. 98–615, title III, § 304(c), Nov. 8, 1984, 98 Stat. 3219.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–615 inserted reference to failure to accept a directed reassignment or to accompany a position in a transfer of function.

1981—Subsec. (a). Pub. L. 97–35 substituted ''misconduct, neglect of duty, or malfeasance'' for ''such cause as will promote the efficiency of the service''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective Nov. 8, 1984, see section 307 of Pub. L. 98–615, set out as a note under section 3393 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective June 1, 1981, with certain exceptions and conditions, see section 1704(e) of Pub. L. 97–35, set out as an Effective Date note under section 3595 of this title.

CHAPTER 77—APPEALS

Sec.
7701. Appellate procedures.
7702. Actions involving discrimination.
7703. Judicial review of decisions of the Merit Systems Protection Board.

AMENDMENTS

1978—Pub. L. 95–454, title II, § 205, Oct. 13, 1978, 92 Stat. 1138, substituted ''Appellate procedures'' for ''Appeals of preference eligibles'' in item 7701, and added items 7702 and 7703.

§ 7701. Appellate procedures

(a) An employee, or applicant for employment, may submit an appeal to the Merit Systems Protection Board from any action which is appealable to the Board under any law, rule, or regulation. An appellant shall have the right—

(1) to a hearing for which a transcript will be kept; and

(2) to be represented by an attorney or other representative.

Appeals shall be processed in accordance with regulations prescribed by the Board.

(b)(1) The Board may hear any case appealed to it or may refer the case to an administrative law judge appointed under section 3105 of this title or other employee of the Board designated by the Board to hear such cases, except that in any case involving a removal from the service, the case shall be heard by the Board, an employee experienced in hearing appeals, or an administrative law judge. The Board, administrative law judge, or other employee (as the case may be) shall make a decision after receipt of the written representations of the parties to the appeal and after opportunity for a hearing under subsection (a)(1) of this section. A copy of the decision shall be furnished to each party to the appeal and to the Office of Personnel Management.

(2)(A) If an employee or applicant for employment is the prevailing party in an appeal under this subsection, the employee or applicant shall be granted the relief provided in the decision effective upon the making of the decision, and remaining in effect pending the outcome of any petition for review under subsection (e), unless—

(i) the deciding official determines that the granting of such relief is not appropriate; or

(ii)(I) the relief granted in the decision provides that such employee or applicant shall return or be present at the place of employment during the period pending the outcome of any petition for review under subsection (e); and

(II) the employing agency, subject to the provisions of subparagraph (B), determines that the return or presence of such employee or applicant is unduly disruptive to the work environment.

(B) If an agency makes a determination under subparagraph (A)(ii)(II) that prevents the return or presence of an employee at the place of employment, such employee shall receive pay, compensation, and all other benefits as terms and conditions of employment during the period pending the outcome of any petition for review under subsection (e).

(C) Nothing in the provisions of this paragraph may be construed to require any award of back pay or attorney fees be paid before the decision is final.

(3) With respect to an appeal from an adverse action covered by subchapter V of chapter 75, authority to mitigate the personnel action involved shall be available, subject to the same

standards as would apply in an appeal involving an action covered by subchapter II of chapter 75 with respect to which mitigation authority under this section exists.

(c)(1) Subject to paragraph (2) of this subsection, the decision of the agency shall be sustained under subsection (b) only if the agency's decision—

(A) in the case of an action based on unacceptable performance described in section 4303, is supported by substantial evidence; or

(B) in any other case, is supported by a preponderance of the evidence.

(2) Notwithstanding paragraph (1), the agency's decision may not be sustained under subsection (b) of this section if the employee or applicant for employment—

(A) shows harmful error in the application of the agency's procedures in arriving at such decision;

(B) shows that the decision was based on any prohibited personnel practice described in section 2302(b) of this title; or

(C) shows that the decision was not in accordance with law.

(d)(1) In any case in which—

(A) the interpretation or application of any civil service law, rule, or regulation, under the jurisdiction of the Office of Personnel Management is at issue in any proceeding under this section; and

(B) the Director of the Office of Personnel Management is of the opinion that an erroneous decision would have a substantial impact on any civil service law, rule, or regulation under the jurisdiction of the Office;

the Director may as a matter of right intervene or otherwise participate in that proceeding before the Board. If the Director exercises his right to participate in a proceeding before the Board, he shall do so as early in the proceeding as practicable. Nothing in this title shall be construed to permit the Office to interfere with the independent decisionmaking of the Merit Systems Protection Board.

(2) The Board shall promptly notify the Director whenever the interpretation of any civil service law, rule, or regulation under the jurisdiction of the Office is at issue in any proceeding under this section.

(e)(1) Except as provided in section 7702 of this title, any decision under subsection (b) of this section shall be final unless—

(A) a party to the appeal or the Director petitions the Board for review within 30 days after the receipt of the decision; or

(B) the Board reopens and reconsiders a case on its own motion.

The Board, for good cause shown, may extend the 30-day period referred to in subparagraph (A) of this paragraph. One member of the Board may grant a petition or otherwise direct that a decision be reviewed by the full Board. The preceding sentence shall not apply if, by law, a decision of an administrative law judge is required to be acted upon by the Board.

(2) The Director may petition the Board for a review under paragraph (1) of this subsection only if the Director is of the opinion that the decision is erroneous and will have a substantial impact on any civil service law, rule, or regulation under the jurisdiction of the Office.

(f) The Board, or an administrative law judge or other employee of the Board designated to hear a case, may—

(1) consolidate appeals filed by two or more appellants, or

(2) join two or more appeals filed by the same appellant and hear and decide them concurrently,

if the deciding official or officials hearing the cases are of the opinion that the action could result in the appeals' being processed more expeditiously and would not adversely affect any party.

(g)(1) Except as provided in paragraph (2) of this subsection, the Board, or an administrative law judge or other employee of the Board designated to hear a case, may require payment by the agency involved of reasonable attorney fees incurred by an employee or applicant for employment if the employee or applicant is the prevailing party and the Board, administrative law judge, or other employee (as the case may be) determines that payment by the agency is warranted in the interest of justice, including any case in which a prohibited personnel practice was engaged in by the agency or any case in which the agency's action was clearly without merit.

(2) If an employee or applicant for employment is the prevailing party and the decision is based on a finding of discrimination prohibited under section 2302(b)(1) of this title, the payment of attorney fees shall be in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

(h) The Board may, by regulation, provide for one or more alternative methods for settling matters subject to the appellate jurisdiction of the Board which shall be applicable at the election of an applicant for employment or of an employee who is not in a unit for which a labor organization is accorded exclusive recognition, and shall be in lieu of other procedures provided for under this section. A decision under such a method shall be final, unless the Board reopens and reconsiders a case at the request of the Office of Personnel Management under subsection (e) of this section.

(i)(1) Upon the submission of any appeal to the Board under this section, the Board, through reference to such categories of cases, or other means, as it determines appropriate, shall establish and announce publicly the date by which it intends to complete action on the matter. Such date shall assure expeditious consideration of the appeal, consistent with the interests of fairness and other priorities of the Board. If the Board fails to complete action on the appeal by the announced date, and the expected delay will exceed 30 days, the Board shall publicly announce the new date by which it intends to complete action on the appeal.

(2) Not later than March 1 of each year, the Board shall submit to the Congress a report describing the number of appeals submitted to it during the preceding fiscal year, the number of appeals on which it completed action during

that year, and the number of instances during that year in which it failed to conclude a proceeding by the date originally announced, together with an explanation of the reasons therefor.

(3) The Board shall by rule indicate any other category of significant Board action which the Board determines should be subject to the provisions of this subsection.

(4) It shall be the duty of the Board, an administrative law judge, or employee designated by the Board to hear any proceeding under this section to expedite to the extent practicable that proceeding.

(j) In determining the appealability under this section of any case involving a removal from the service (other than the removal of a reemployed annuitant), neither an individual's status under any retirement system established by or under Federal statute nor any election made by such individual under any such system may be taken into account.

(k) The Board may prescribe regulations to carry out the purpose of this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 530; Pub. L. 95–454, title II, § 205, Oct. 13, 1978, 92 Stat. 1138; Pub. L. 96–54, § 2(a)(45), Aug. 14, 1979, 93 Stat. 384; Pub. L. 99–386, title II, § 208, Aug. 22, 1986, 100 Stat. 824; Pub. L. 101–12, § 6, Apr. 10, 1989, 103 Stat. 33; Pub. L. 101–194, title V, § 506(b)(6), Nov. 30, 1989, 103 Stat. 1758; Pub. L. 101–280, § 6(d)(2), May 4, 1990, 104 Stat. 160; Pub. L. 101–376, § 3, Aug. 17, 1990, 104 Stat. 462; Pub. L. 102–175, § 5, Dec. 2, 1991, 105 Stat. 1223; Pub. L. 102–378, § 2(56), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 107–296, title XIII, § 1321(a)(3), Nov. 25, 2002, 116 Stat. 2297.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 863 (less 1st 168 words, and less 2d proviso).	June 27, 1944, ch. 287, § 14 (less 1st 168 words, and less 2d proviso), 58 Stat. 390. Aug. 4, 1947, ch. 447, 61 Stat. 723.
.....	5 U.S.C. 868 (proviso).	June 22, 1948, ch. 604, 62 Stat. 575.

The application of the section is established by the words ''A preference eligible employee as defined by section 7511 of this title''. Specific mention of the actions appealable are covered by the reference to ''an adverse decision under section 7512 of this title''. The words ''administrative authority'' are substituted for ''administrative officer'' to avoid conflict with the definitions of ''employee'' and ''officer'' in chapter 21 of this title and to include an individual who is employed by the government of the District of Columbia or who is a member of a uniformed service as such an individual could have been an ''administrative officer'' under former section 863. The words ''the date of'' in the phrase ''after the date of receipt of notice'' are omitted as unnecessary. The words ''reasonable rules and'' in the phrase ''reasonable rules and regulations'' are omitted as unnecessary. The word ''proper'' in the phrase ''proper administrative officer'' is omitted as unnecessary. The word ''designated'' in the phrase ''designated representative'' is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title outlined in preface to the report.

AMENDMENTS

2002—Subsec. (c)(1)(A). Pub. L. 107–296, which directed the amendment of subpar. (A) by striking ''or removal from the Senior Executive Service for failure to be recertified under section 3393a'', was executed by striking out ''or a removal from the Senior Executive Service for failure to be recertified under section 3393a'' after ''section 4303'' to reflect the probable intent of Congress.

1992—Subsec. (c)(1)(A). Pub. L. 102–378 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''in the case of an action based on unacceptable performance described in section 4303 or a removal from the Senior Executive Service for failure to be recertified under section 3393a of this title, is supported by substantial evidence, or''.

1991—Subsec. (b)(3). Pub. L. 102–175 added par. (3).

1990—Subsec. (c)(1)(A). Pub. L. 101–280 amended Pub. L. 101–194, see 1989 Amendment note below.

Subsecs. (j), (k). Pub. L. 101–376 added subsec. (j) and redesignated former subsec. (j) as (k).

1989—Subsec. (b). Pub. L. 101–12 designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(1)(A). Pub. L. 101–194, as amended by Pub. L. 101–280, which directed the substitution of ''or a removal from the Senior Executive Service for failure to be recertified under section 3393a of'' for ''of'', was executed by making the substitution for the second reference to ''of'' as the probable intent of Congress.

1986—Subsec. (i)(2). Pub. L. 99–386 substituted ''fiscal'' for ''calendar''.

1979—Subsec. (e)(1). Pub. L. 96–54, § 2(a)(45)(A), substituted ''administrative'' for ''administration''.

Subsec. (g)(1). Pub. L. 96–54, § 2(a)(45)(B), substituted ''(as the case may be)'' for '', as the case may be,''.

Subsec. (h). Pub. L. 96–54, § 2(a)(45)(C), substituted ''subsection (e)'' for ''subsection (d)''.

1978—Pub. L. 95–454 substituted ''Appellate procedures'' for ''Appeals of preference eligibles'' in section catchline, and in text substituted provisions relating to procedures applicable with respect to the Merit Systems Protection Board for an employee or applicant for employment, for provisions relating to appeals of preference eligible employees.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–376 effective Aug. 17, 1990, and applicable with respect to any appeal or other proceeding brought on or after such date, see section 4 of Pub. L. 101–376, set out as a note under section 4303 of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by Pub. L. 101–194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101–194, set out as a note under section 3151 of this title.

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–54 effective July 12, 1979, see section 2(b) of Pub. L. 96–54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SAVINGS PROVISION

For effect of Pub. L. 101–12 on orders, rules, and regulations issued before effective date of Pub. L. 101–12, administrative proceedings pending at time provisions of Pub. L. 101–12 take effect, and suits and other proceed-

ings as in effect immediately before effective date of Pub. L. 101–12, see section 7 of Pub. L. 101–12, set out as a note under section 1201 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (i)(2) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 177 of House Document No. 103–7.

EXECUTIVE ORDER NO. 11787

Ex. Ord. No. 11787, June 11, 1974, 39 F.R. 20675; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, which provided that the appeals system established by the Merit Systems Protection Board is the sole system of appeal for an employee covered by that appeal system, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

§ 7702. Actions involving discrimination

(a)(1) Notwithstanding any other provision of law, and except as provided in paragraph (2) of this subsection, in the case of any employee or applicant for employment who—

(A) has been affected by an action which the employee or applicant may appeal to the Merit Systems Protection Board, and

(B) alleges that a basis for the action was discrimination prohibited by—

(i) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16),

(ii) section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)),

(iii) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791),

(iv) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), or

(v) any rule, regulation, or policy directive prescribed under any provision of law described in clauses (i) through (iv) of this subparagraph,

the Board shall, within 120 days of the filing of the appeal, decide both the issue of discrimination and the appealable action in accordance with the Board's appellate procedures under section 7701 of this title and this section.

(2) In any matter before an agency which involves—

(A) any action described in paragraph (1)(A) of this subsection; and

(B) any issue of discrimination prohibited under any provision of law described in paragraph (1)(B) of this subsection;

the agency shall resolve such matter within 120 days. The decision of the agency in any such matter shall be a judicially reviewable action unless the employee appeals the matter to the Board under paragraph (1) of this subsection.

(3) Any decision of the Board under paragraph (1) of this subsection shall be a judicially reviewable action as of—

(A) the date of issuance of the decision if the employee or applicant does not file a petition with the Equal Employment Opportunity Commission under subsection (b)(1) of this section, or

(B) the date the Commission determines not to consider the decision under subsection (b)(2) of this section.

(b)(1) An employee or applicant may, within 30 days after notice of the decision of the Board under subsection (a)(1) of this section, petition the Commission to consider the decision.

(2) The Commission shall, within 30 days after the date of the petition, determine whether to consider the decision. A determination of the Commission not to consider the decision may not be used as evidence with respect to any issue of discrimination in any judicial proceeding concerning that issue.

(3) If the Commission makes a determination to consider the decision, the Commission shall, within 60 days after the date of the determination, consider the entire record of the proceedings of the Board and, on the basis of the evidentiary record before the Board, as supplemented under paragraph (4) of this subsection, either—

(A) concur in the decision of the Board; or

(B) issue in writing another decision which differs from the decision of the Board to the extent that the Commission finds that, as a matter of law—

(i) the decision of the Board constitutes an incorrect interpretation of any provision of any law, rule, regulation, or policy directive referred to in subsection (a)(1)(B) of this section, or

(ii) the decision involving such provision is not supported by the evidence in the record as a whole.

(4) In considering any decision of the Board under this subsection, the Commission may refer the case to the Board, or provide on its own, for the taking (within such period as permits the Commission to make a decision within the 60-day period prescribed under this subsection) of additional evidence to the extent it considers necessary to supplement the record.

(5)(A) If the Commission concurs pursuant to paragraph (3)(A) of this subsection in the decision of the Board, the decision of the Board shall be a judicially reviewable action.

(B) If the Commission issues any decision under paragraph (3)(B) of this subsection, the Commission shall immediately refer the matter to the Board.

(c) Within 30 days after receipt by the Board of the decision of the Commission under subsection (b)(5)(B) of this section, the Board shall consider the decision and—

(1) concur and adopt in whole the decision of the Commission; or

(2) to the extent that the Board finds that, as a matter of law, (A) the Commission decision constitutes an incorrect interpretation of any provision of any civil service law, rule, regulation or policy directive, or (B) the Commission decision involving such provision is not supported by the evidence in the record as a whole—

(i) reaffirm the initial decision of the Board; or

(ii) reaffirm the initial decision of the Board with such revisions as it determines appropriate.

If the Board takes the action provided under paragraph (1), the decision of the Board shall be a judicially reviewable action.

(d)(1) If the Board takes any action under subsection (c)(2) of this section, the matter shall be

immediately certified to a special panel described in paragraph (6) of this subsection. Upon certification, the Board shall, within 5 days (excluding Saturdays, Sundays, and holidays), transmit to the special panel the administrative record in the proceeding, including—

(A) the factual record compiled under this section,

(B) the decisions issued by the Board and the Commission under this section, and

(C) any transcript of oral arguments made, or legal briefs filed, before the Board or the Commission.

(2)(A) The special panel shall, within 45 days after a matter has been certified to it, review the administrative record transmitted to it and, on the basis of the record, decide the issues in dispute and issue a final decision which shall be a judicially reviewable action.

(B) The special panel shall give due deference to the respective expertise of the Board and Commission in making its decision.

(3) The special panel shall refer its decision under paragraph (2) of this subsection to the Board and the Board shall order any agency to take any action appropriate to carry out the decision.

(4) The special panel shall permit the employee or applicant who brought the complaint and the employing agency to appear before the panel to present oral arguments and to present written arguments with respect to the matter.

(5) Upon application by the employee or applicant, the Commission may issue such interim relief as it determines appropriate to mitigate any exceptional hardship the employee or applicant might otherwise incur as a result of the certification of any matter under this subsection, except that the Commission may not stay, or order any agency to review on an interim basis, the action referred to in subsection (a)(1) of this section.

(6)(A) Each time the Board takes any action under subsection (c)(2) of this section, a special panel shall be convened which shall consist of—

(i) an individual appointed by the President, by and with the advice and consent of the Senate, to serve for a term of 6 years as chairman of the special panel each time it is convened;

(ii) one member of the Board designated by the Chairman of the Board each time a panel is convened; and

(iii) one member of the Commission designated by the Chairman of the Commission each time a panel is convened.

The chairman of the special panel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

(B) The chairman is entitled to pay at a rate equal to the maximum annual rate of basic pay payable under the General Schedule for each day he is engaged in the performance of official business on the work of the special panel.

(C) The Board and the Commission shall provide such administrative assistance to the special panel as may be necessary and, to the extent practicable, shall equally divide the costs of providing the administrative assistance.

(e)(1) Notwithstanding any other provision of law, if at any time after—

(A) the 120th day following the filing of any matter described in subsection (a)(2) of this section with an agency, there is no judicially reviewable action under this section or an appeal under paragraph (2) of this subsection;

(B) the 120th day following the filing of an appeal with the Board under subsection (a)(1) of this section, there is no judicially reviewable action (unless such action is not as the result of the filing of a petition by the employee under subsection (b)(1) of this section); or

(C) the 180th day following the filing of a petition with the Equal Employment Opportunity Commission under subsection (b)(1) of this section, there is no final agency action under subsection (b), (c), or (d) of this section;

an employee shall be entitled to file a civil action to the same extent and in the same manner as provided in section 717(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16(c)), section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)), or section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)).

(2) If, at any time after the 120th day following the filing of any matter described in subsection (a)(2) of this section with an agency, there is no judicially reviewable action, the employee may appeal the matter to the Board under subsection (a)(1) of this section.

(3) Nothing in this section shall be construed to affect the right to trial de novo under any provision of law described in subsection (a)(1) of this section after a judicially reviewable action, including the decision of an agency under subsection (a)(2) of this section.

(f) In any case in which an employee is required to file any action, appeal, or petition under this section and the employee timely files the action, appeal, or petition with an agency other than the agency with which the action, appeal, or petition is to be filed, the employee shall be treated as having timely filed the action, appeal, or petition as of the date it is filed with the proper agency.

(Added Pub. L. 95–454, title II, § 205, Oct. 13, 1978, 92 Stat. 1140; amended Pub. L. 96–54, § 2(a)(46), Aug. 14, 1979, 93 Stat. 384.)

AMENDMENTS

1979—Subsec. (a)(1)(A). Pub. L. 96–54, § 2(a)(46)(A), substituted ''affected'' for ''effected''.

Subsec. (a)(1)(B)(i). Pub. L. 96–54, § 2(a)(46)(B), substituted ''2000e–16'' for ''2000e–16c''.

Subsec. (e)(1). Pub. L. 96–54, § 2(a)(46)(C), (D), substituted ''of this section'' for ''of this title'' in subpar. (C), and ''216(b)'' for ''216(d)'' in provision following subpar. (C).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–54 effective July 12, 1979, see section 2(b) of Pub. L. 96–54, set out as a note under section 305 of this title.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 7703. Judicial review of decisions of the Merit Systems Protection Board

(a)(1) Any employee or applicant for employment adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board may obtain judicial review of the order or decision.

(2) The Board shall be named respondent in any proceeding brought pursuant to this subsection, unless the employee or applicant for employment seeks review of a final order or decision on the merits on the underlying personnel action or on a request for attorney fees, in which case the agency responsible for taking the personnel action shall be the respondent.

(b)(1) Except as provided in paragraph (2) of this subsection, a petition to review a final order or final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit. Notwithstanding any other provision of law, any petition for review must be filed within 60 days after the date the petitioner received notice of the final order or decision of the Board.

(2) Cases of discrimination subject to the provisions of section 7702 of this title shall be filed under section 717(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16(c)), section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)), and section 16(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216(b)), as applicable. Notwithstanding any other provision of law, any such case filed under any such section must be filed within 30 days after the date the individual filing the case received notice of the judicially reviewable action under such section 7702.

(c) In any case filed in the United States Court of Appeals for the Federal Circuit, the court shall review the record and hold unlawful and set aside any agency action, findings, or conclusions found to be—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(2) obtained without procedures required by law, rule, or regulation having been followed; or

(3) unsupported by substantial evidence;

except that in the case of discrimination brought under any section referred to in subsection (b)(2) of this section, the employee or applicant shall have the right to have the facts subject to trial de novo by the reviewing court.

(d) The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing, within 60 days after the date the Director received notice of the final order or decision of the Board, a petition for judicial review in the United States Court of Appeals for the Federal Circuit if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.

(Added Pub. L. 95–454, title II, § 205, Oct. 13, 1978, 92 Stat. 1143; amended Pub. L. 97–164, title I, § 144, Apr. 2, 1982, 96 Stat. 45; Pub. L. 101–12, § 10, Apr. 10, 1989, 103 Stat. 35; Pub. L. 105–311, § 10(a), Oct. 30, 1998, 112 Stat. 2954.)

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–311, § 10(a)(1), substituted ''within 60 days'' for ''within 30 days''.

Subsec. (d). Pub. L. 105–311, § 10(a)(2), in first sentence, inserted '', within 60 days after the date the Director received notice of the final order or decision of the Board,'' after ''filing''.

1989—Subsec. (a)(2). Pub. L. 101–12 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Board shall be the named respondent in any proceeding brought pursuant to this subsection, unless the employee or applicant for employment seeks review of a final order or decision issued by the Board under section 7701. In review of a final order or decision issued under section 7701, the agency responsible for taking the action appealed to the Board shall be the named respondent.''

1982—Subsec. (b)(1). Pub. L. 97–164, § 144(1), substituted ''United States Court of Appeals for the Federal Circuit'' for ''Court of Claims or a United States court of appeals as provided in chapters 91 and 158, respectively, of title 28''.

Subsec. (c). Pub. L. 97–164, § 144(2), substituted ''Court of Appeals for the Federal Circuit'' for ''Court of Claims or a United States court of appeals''.

Subsec. (d). Pub. L. 97–164, § 144(3), substituted ''United States Court of Appeals for the Federal Circuit'' for ''United States Court of Appeals for the District of Columbia''.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–311, § 10(b), Oct. 30, 1998, 112 Stat. 2954, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [Oct. 30, 1998], and apply to any suit, action, or other administrative or judicial proceeding pending on such date or commenced on or after such date.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SAVINGS PROVISION

For effect of Pub. L. 101–12 on orders, rules, and regulations issued before effective date of Pub. L. 101–12, administrative proceedings pending at time provisions of Pub. L. 101–12 take effect, and suits and other proceedings as in effect immediately before effective date of Pub. L. 101–12, see section 7 of Pub. L. 101–12 set out as a note under section 1201 of this title.

CHAPTER 79—SERVICES TO EMPLOYEES

Sec.
7901. Health service programs.
7902. Safety programs.
7903. Protective clothing and equipment.
7904. Employee assistance programs relating to drug abuse and alcohol abuse.
7905. Programs to encourage commuting by means other than single-occupancy motor vehicles.
7906. Services of post-combat case coordinators.

AMENDMENTS

2011—Pub. L. 112–81, div. A, title XI, §1106(b), Dec. 31, 2011, 125 Stat. 1614, added item 7906.

1993—Pub. L. 103–172, §2(b), Dec. 2, 1993, 107 Stat. 1996, added item 7905.

1986—Pub. L. 99–570, title VI, §6004(b), Oct. 27, 1986, 100 Stat. 3207–159, added item 7904.

STATE OR LOCAL GOVERNMENT PROGRAMS ENCOURAGING EMPLOYEE USE OF PUBLIC TRANSPORTATION; FEDERAL AGENCY PARTICIPATION

Pub. L. 102–241, §44, Dec. 19, 1991, 105 Stat. 2226, provided that: ''The Department of Transportation may include military personnel of the Coast Guard in any program in which the Department participates under section 629 of the Treasury, Postal Service and General Government Appropriations Act, 1991, Public Law 101–509 [set out below], notwithstanding section 629(c)(2) of that Act.''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

Pub. L. 101–509, title VI, §629, Nov. 5, 1990, 104 Stat. 1478, authorized Federal agencies and employees to participate in State or local government programs encouraging employees to use public transportation, directed General Accounting Office, not later than June 30, 1993, to conduct a study and submit a report on the implementation of such programs, and provided that this section was repealed effective Dec. 31, 1993.

§ 7901. Health service programs

(a) The head of each agency of the Government of the United States may establish, within the limits of appropriations available, a health service program to promote and maintain the physical and mental fitness of employees under his jurisdiction.

(b) A health service program may be established by contract or otherwise, but only—

(1) after consultation with the Secretary of Health, Education, and Welfare and consideration of its recommendations; and

(2) in localities where there are a sufficient number of employees to warrant providing the service.

(c) A health service program is limited to—

(1) treatment of on-the-job illness and dental conditions requiring emergency attention;

(2) preemployment and other examinations;

(3) referral of employees to private physicians and dentists; and

(4) preventive programs relating to health.

(d) The Secretary of Health, Education, and Welfare, on request, shall review a health service program conducted under this section and shall submit comment and recommendations to the head of the agency concerned.

(e) When this section authorizes the use of the professional services of physicians, that authorization includes the use of the professional services of surgeons and osteopathic practitioners within the scope of their practice as defined by State law.

(f) The health programs conducted by the Tennessee Valley Authority are not affected by this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 530; Pub. L. 90–83, §1(47), Sept. 11, 1967, 81 Stat. 209; Pub. L. 104–201, div. C, title XXXV, §3548(a)(9), Sept. 23, 1996, 110 Stat. 2869.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 150.	Aug. 8, 1946, ch. 865, 60 Stat. 903. Sept. 23, 1950, ch. 1010, §8, 64 Stat. 986.

In subsection (a), the words ''agency of the Government of the United States'' are coextensive with and substituted for ''departments and agencies including Government-owned and controlled corporations'' to avoid confusion with the definitions in sections 101–105.

In subsection (d) the word ''appropriate'' in the phrase ''appropriate comment and recommendations'' is omitted as unnecessary. The words ''to the head of the agency concerned'' are added for clarity.

In subsection (e), the substance of the definition of ''physician'' in former section 790 is substituted for the reference to that section.

In subsection (f)(2) and (3), the words ''Canal Zone Government'' and ''Panama Canal Company'' are substituted for ''Panama Canal'' and ''Panama Railroad'', respectively, on the authority of the Act of Sept. 26, 1950, ch. 1049, §2(a), 64 Stat. 1038.

The last proviso of the first sentence of the Act of Aug. 8, 1946, is omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section amends 5 U.S.C. 7901 to reflect 1966 Reorganization Plan No. 3, effective June 25, 1966, 80 Stat. 1610, section 1 of which transferred all functions of the Public Health Service to the Secretary of Health, Education, and Welfare.

AMENDMENTS

1996—Subsec. (f). Pub. L. 104–201 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''The health programs conducted by the following agencies are not affected by this section—

''(1) the Tennessee Valley Authority;

''(2) the Canal Zone Government; and

''(3) the Panama Canal Company.''

CHANGE OF NAME

Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 3508 of Title 20, Education.

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–172, §1(a), Dec. 2, 1993, 107 Stat. 1995, provided that: ''This Act [enacting section 7905 of this title and provisions set out as notes under section 7905 of

this title] may be cited as the 'Federal Employees Clean Air Incentives Act'.''

DEMONSTRATION PROJECT: HEALTH PROTECTION; HEALTH PROMOTION; DISEASE PREVENTION; AND SECONDARY PREVENTION

Pub. L. 99–251, title I, §110, Feb. 27, 1986, 100 Stat. 17, directed Director of Office of Personnel Management to conduct a demonstration project to determine most effective method of furnishing health protection, health promotion, disease prevention, and secondary prevention services to Federal Government employees, with Director to report to Congress no later than 60 days after termination of project on Feb. 27, 1988.

§ 7902. Safety programs

(a) For the purpose of this section—

(1) ''employee'' means an employee as defined by section 8101 of this title; and

(2) ''agency'' means an agency in any branch of the Government of the United States (not including the United States Postal Service), including an instrumentality wholly owned by the United States, and the government of the District of Columbia.

(b) The Secretary of Labor shall carry out a safety program under section 941(b)(1) of title 33 covering the employment of each employee of an agency.

(c) The President may—

(1) establish by Executive order a safety council composed of representatives of the agencies and of labor organizations representing employees to serve as an advisory body to the Secretary in furtherance of the safety program carried out by the Secretary under subsection (b) of this section; and

(2) undertake such other measures as he considers proper to prevent injuries and accidents to employees of the agencies.

(d) The head of each agency shall develop and support organized safety promotion to reduce accidents and injuries among employees of his agency, encourage safe practices, and eliminate work hazards and health risks.

(e) Each agency shall—

(1) keep a record of injuries and accidents to its employees whether or not they result in loss of time or in the payment or furnishing of benefits; and

(2) make such statistical or other reports on such forms as the Secretary may prescribe by regulation.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 530; Pub. L. 91–596, §19(c), Dec. 29, 1970, 84 Stat. 1610; Pub. L. 105–241, §2(b)(2), Sept. 28, 1998, 112 Stat. 1572.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 784 (less (a)).	Sept. 16, 1916, ch. 458, §33 (less (a)); added Dec. 22, 1944, ch. 664, 58 Stat. 887. Oct. 14, 1949, ch. 691, §209, 63 Stat. 865.

Subsection (a) is added on authority of former sections 790(b) and 794 (1st sentence), which are carried into section 8101.

The words ''Secretary of Labor'' and ''Secretary'' are substituted for ''Administrator'' on authority of section 1 of 1950 Reorg. Plan No. 19, eff. May 24, 1950, 64 Stat. 1271.

Subsection (b) is restated for clarity. The words ''under section 941(b)(1) of title 33'' are substituted for ''The provisions of section 941 of title 33 shall, insofar as not inapplicable, apply'' on authority of section 941(g)(2) of title 33. The reference to ''a safety program'' is based in part on the words ''in furtherance of the safety program carried out by the Secretary pursuant to this section'' in former section 784(c).

In subsection (d), the word ''foster'' is omitted as included in ''develop and support''. The words ''and reduce compensable injuries'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105–241 inserted ''(not including the United States Postal Service)'' after ''Government of the United States''.

1970—Subsec. (c)(1). Pub. L. 91–596 included representatives of labor organizations representing employees.

EXECUTIVE ORDER NO. 10990

Ex. Ord. No. 10990, Feb. 5, 1962, 27 F.R. 1065, which provided for the establishment of a Federal Safety Council, was superseded by Ex. Ord. No. 11612, July 26, 1971, 36 F.R. 13891, formerly set out below.

EXECUTIVE ORDER NO. 11612

Ex. Ord. No. 11612, July 26, 1971, 36 F.R. 13891, which related to occupational safety and health programs for federal employees, was superseded by Ex. Ord. 11807, Sept. 28, 1974, 39 F.R. 35559, formerly set out below.

EXECUTIVE ORDER NO. 11807

Ex. Ord. No. 11807, Sept. 28, 1974, 39 F.R. 35559, which related to occupational safety and health programs for federal employees and continued the Federal Advisory Council on Occupational Safety and Health, was revoked by Ex. Ord. No. 12196, Feb. 26, 1980, 45 F.R. 12769, set out below.

EX. ORD. NO. 12196. OCCUPATIONAL SAFETY AND HEALTH PROGRAMS FOR FEDERAL EMPLOYEES

Ex. Ord. No. 12196, Feb. 26, 1980, 45 F.R. 12769, as amended by Ex. Ord. No. 12223, June 30, 1980, 45 F.R. 45235; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 7902(c) of Title 5 of the United States Code and in accord with Section 19 of the Occupational Safety and Health Act of 1970, as amended (29 U.S.C 668), it is ordered:

1–1. SCOPE OF THIS ORDER

1–101. This order applies to all agencies of the Executive Branch except military personnel and uniquely military equipment, systems, and operations.

1–102. For the purposes of this order, the term ''agency'' means an Executive department, as defined in 5 U.S.C. 101, or any employing unit or authority of the Federal government, other than those of the judicial and legislative branches. Since section 19 [29 U.S.C. 668] of the Occupational Safety and Health Act (''the Act'') [29 U.S.C. 651 et seq.] covers all Federal employees, however, the Secretary of Labor (''the Secretary'') shall cooperate and consult with the heads of agencies in the legislative and judicial branches of the government to help them adopt safety and health programs.

1–2. HEADS OF AGENCIES

1–201. The head of each agency shall:

(a) Furnish to employees places and conditions of employment that are free from recognized hazards that

are causing or are likely to cause death or serious physical harm.

(b) Operate an occupational safety and health program in accordance with the requirements of this order and basic program elements promulgated by the Secretary.

(c) Designate an agency official with sufficient authority to represent the interest and support of the agency head to be responsible for the management and administration of the agency occupational safety and health program.

(d) Comply with all standards issued under section 6 of the Act [29 U.S.C. 655], except where the Secretary approves compliance with alternative standards. When an agency head determines it necessary to apply a different standard, that agency head shall, after consultation with appropriate occupational safety and health committees where established, notify the Secretary and provide justification that equivalent or greater protection will be assured by the alternate standard.

(e) Assure prompt abatement of unsafe or unhealthy working conditions. Whenever an agency cannot promptly abate such conditions, it shall develop an abatement plan setting forth a timetable for abatement and a summary of interim steps to protect employees. Employees exposed to the conditions shall be informed of the provisions of the plan. When a hazard cannot be abated without assistance of the General Services Administration or other Federal lessor agency, an agency shall act with the lessor agency to secure abatement.

(f) Establish procedures to assure that no employee is subject to restraint, interference, coercion, discrimination or reprisal for filing a report of an unsafe or unhealthy working condition, or other participation in agency occupational safety and health program activities.

(g) Assure that periodic inspections of all agency workplaces are performed by personnel with equipment and competence to recognize hazards.

(h) Assure response to employee reports of hazardous conditions and require inspections within twenty-four hours for imminent dangers, three working days for potential serious conditions, and twenty working days for other conditions. Assure the right to anonymity of those making the reports.

(i) Assure that employee representatives accompany inspections of agency workplaces.

(j) Operate an occupational safety and health management information system, which shall include the maintenance of such records as the Secretary may require.

(k) Provide safety and health training for supervisory employees, employees responsible for conducting occupational safety and health inspections, all members of occupational safety and health committees where established, and other employees.

(*l*) Submit to the Secretary an annual report on the agency occupational safety and health program that includes information the Secretary prescribes.

1–3. Occupational Safety and Health Committees

1–301. Agency heads may establish occupational safety and health committees. If committees are established, they shall be established at both the national level and, for agencies with field or regional offices, other appropriate levels. The committees shall be composed of representatives of management and an equal number of nonmanagement employees or their representatives. Where there are exclusive bargaining representatives for employees at the national or other level in an agency, such representatives shall select the appropriate nonmanagement members of the committee.

1–302. The committees shall, except where prohibited by law,

(a) Have access to agency information relevant to their duties, including information on the nature and hazardousness of substances in agency workplaces.

(b) Monitor performance, including agency inspections, of the agency safety and health programs at the level they are established.

(c) Consult and advise the agency on the operation of the program.

1–303. A Committee may request the Secretary of Labor to conduct an evaluation or inspection pursuant to this order if half of a Committee is not substantially satisfied with an agency's response to a report of hazardous working conditions.

1–4. Department of Labor

1–401. The Secretary of Labor shall:

(a) Provide leadership and guidance to the heads of agencies to assist them with their occupational safety and health responsibilities.

(b) Maintain liaison with the Office of Management and Budget in matters relating to this order and coordinate the activities of the Department with those of other agencies that have responsibilities or functions related to Federal employee safety and health, including the Office of Personnel Management, the Department of Health and Human Services, and the General Services Administration.

(c) Issue, subject to the approval of the Director of the Office of Management and Budget, and in consultation with the Federal Advisory Council on Occupational Safety and Health, a set of basic program elements. The program elements shall help agency heads establish occupational safety and health committees and operate effective occupational safety and health programs, and shall provide flexibility to each agency head to implement a program consistent with its mission, size and organization. Upon request of an agency head, and after consultation with the Federal Advisory Council on Occupational Safety and Health, the Secretary may approve alternate program elements.

(d) Prescribe recordkeeping and reporting requirements.

(e) Assist agencies by providing training materials, and by conducting training programs upon request and with reimbursement.

(f) Facilitate the exchange of ideas and information throughout the government about occupational safety and health.

(g) Provide technical services to agencies upon request, where the Secretary deems necessary, and with reimbursement. These services may include studies of accidents, causes of injury and illness, identification of unsafe and unhealthful working conditions, and means to abate hazards.

(h) Evaluate the occupational safety and health programs of agencies and promptly submit reports to the agency heads. The evaluations shall be conducted through such scheduled headquarters or field reviews, studies or inspections as the Secretary deems necessary, at least annually for the larger or more hazardous agencies or operations, and as the Secretary deems appropriate for the smaller or less hazardous agencies.

(i) Conduct unannounced inspections of agency workplaces when the Secretary determines necessary if an agency does not have occupational safety and health committees; or in response to reports of unsafe or unhealthful working conditions, upon request of occupational safety and health committees under Section 1–3; or, in the case of a report of an imminent danger, when such a committee has not responded to an employee who has alleged to it that the agency has not adequately responded to a report as required in 1–201(h). When the Secretary or his designee performs an inspection and discovers unsafe or unhealthy conditions, a violation of any provisions of this order, or any safety or health standards adopted by an agency pursuant to this order, or any program element approved by the Secretary, he shall promptly issue a report to the head of the agency and to the appropriate occupational safety and health committee, if any. The report shall describe the nature of the findings and may make recommendations for correcting the violation.

(j) Submit to the President each year a summary report of the status of the occupational safety and health of Federal employees, and, together with agency responses, evaluations of individual agency progress and

problems in correcting unsafe and unhealthful working conditions, and recommendations for improving their performance.

(k) Submit to the President unresolved disagreements between the Secretary and agency heads, with recommendations.

(l) Enter into agreements or other arrangements as necessary or appropriate with the National Institute for Occupational Safety and Health and delegate to it the inspection and investigation authority provided under this section.

1–5. THE FEDERAL ADVISORY COUNCIL ON OCCUPATIONAL SAFETY AND HEALTH

1–501. The Federal Advisory Council on Occupational Safety and Health, established pursuant to Executive Order No. 11612, is continued. It shall advise the Secretary in carrying out responsibilities under this order. The Council shall consist of sixteen members appointed by the Secretary, of whom eight shall be representatives of Federal agencies and eight shall be representatives of labor organizations representing Federal employees. The members shall serve three-year terms with the terms of five or six members expiring each year, provided this Council is renewed every two years in accordance with the Federal Advisory Committee Act [5 U.S.C. App.]. The members currently serving on the Council shall be deemed to be its initial members under this order and their terms shall expire in accordance with the terms of their appointment.

1–502. The Secretary, or a designee, shall serve as the Chairman of the Council, and shall prescribe rules for the conduct of its business.

1–503. The Secretary shall make available necessary office space and furnish the Council necessary equipment, supplies, and staff services, and shall perform such functions with respect to the Council as may be required by the Federal Advisory Committee Act, as amended (5 U.S.C. App.).

1–6. GENERAL SERVICES ADMINISTRATION

1–601. Within six months of the effective date of this order the Secretary of Labor and the Administrator of the General Services Administration shall initiate a study of conflicts that may exist in their standards and other requirements affecting Federal employee safety and health, and shall establish a procedure for resolving conflicting standards for space leased by the General Services Administration.

1–602. In order to assist the agencies in carrying out their duties under Section 19 of the Act [29 U.S.C. 668] and this order the Administrator shall:

(a) Upon request, require personnel of the General Services Administration to accompany the Secretary or an agency head on any inspection or investigation conducted pursuant to this order of a facility subject to the authority of the General Services Administration.

(b) Assure prompt attention to reports from agencies of unsafe or unhealthy conditions of facilities subject to the authority of the General Services Administration; where abatement cannot be promptly effected, submit to the agency head a timetable for action to correct the conditions; and give priority in the allocation of resources available to the Administrator for prompt abatement of the conditions.

(c) Procure and provide safe supplies, devices, and equipment, and establish and maintain a product safety program for those supplies, devices, equipment and services furnished to agencies, including the issuance of Material Safety Data Sheets when hazardous substances are furnished them.

1–7. GENERAL PROVISIONS

1–701. Employees shall be authorized official time to participate in the activities provided for by this order.

1–702. Nothing in this order shall be construed to impair or alter the powers and duties of the Secretary or heads of other Federal agencies pursuant to Section 19 of the Occupational Safety and Health Act of 1970 [29 U.S.C. 668]. Chapter 71 of Title 5 of the United States Code, Sections 7901, 7902, and 7903 of Title 5 of the United States Code, nor shall it be construed to alter any other provisions of law or Executive Order providing for collective bargaining agreements and related procedures, or affect the responsibilities of the Director of Central Intelligence to protect intelligence sources and methods ([former] 50 U.S.C. 403(d)(3)).

1–703. Executive Order No. 11807 of September 28, 1974, is revoked.

1–704. This order is effective October 1, 1980.

EXECUTIVE ORDER NO. 12566

Ex. Ord. No. 12566, Sept. 26, 1986, 51 F.R. 34575, which related to safety belt use by Federal employees, was revoked by Ex. Ord. No. 13043, §6, Apr. 16, 1997, 62 F.R. 19218, set out as a note under section 402 of Title 23, Highways.

EXTENSION OF TERM OF FEDERAL ADVISORY COUNCIL ON OCCUPATIONAL SAFETY AND HEALTH

Term of the Federal Advisory Council on Occupational Safety and Health extended until Dec. 31, 1978, by Ex. Ord. No. 11948, Dec. 20, 1976, 41 F.R. 55705, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Dec. 31, 1980, by Ex. Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Dec. 31, 1982, by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 1984, by Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 1985, by Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 1987, by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 1989, by Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 1991, by Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 1993, by Ex. Ord. No. 12774, Sept. 27, 1991, 56 F.R. 49835, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 1995, by Ex. Ord. No. 12869, Sept. 30, 1993, 58 F.R. 51751, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 1997, by Ex. Ord. No. 12974, Sept. 29, 1995, 60 F.R. 51875, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 1999, by Ex. Ord. No. 13062, §1(b), Sept. 29, 1997, 62 F.R. 51755,

formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 2001, by Ex. Ord. No. 13138, Sept. 30, 1999, 64 F.R. 53879, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 2003, by Ex. Ord. No. 13225, Sept. 28, 2001, 66 F.R. 50291, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 2005, by Ex. Ord. No. 13316, Sept. 17, 2003, 68 F.R. 55255, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 2007, by Ex. Ord. No. 13385, Sept. 29, 2005, 70 F.R. 57989, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 2009, by Ex. Ord. No. 13446, Sept. 28, 2007, 72 F.R. 56175, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 2011, by Ex. Ord. No. 13511, Sept. 29, 2009, 74 F.R. 50909, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 2013, by Ex. Ord. No. 13585, Sept. 30, 2011, 76 F.R. 62281, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

THE PRESIDENTIAL POWER INITIATIVE: PROTECTING OUR WORKERS AND ENSURING REEMPLOYMENT

Memorandum of President of the United States, July 19, 2010, 75 F.R. 43029, provided:

Memorandum for the Heads of Executive Departments and Agencies

Each year Federal civilian employees are injured or fall ill on the job in significant numbers. Although the Federal Government has made progress in reducing workplace injuries and illnesses in recent years, its workers (excluding those employed by the U.S. Postal Service) still filed more than 79,000 new claims and received over $1.6 billion in workers' compensation payments in fiscal year 2009. Many of these work-related injuries and illnesses are preventable, and executive departments and agencies can and should do even more to improve workplace safety and health, reduce the financial burden of injury on taxpayers, and relieve unnecessary suffering by workers and their families.

Therefore, I am establishing a 4-year Protecting Our Workers and Ensuring Reemployment (POWER) Initiative, covering fiscal years 2011 through 2014. The POWER Initiative will extend prior workplace safety and health efforts of the Federal Government by setting more aggressive performance targets, encouraging the collection and analysis of data on the causes and consequences of frequent or severe injury and illness, and prioritizing safety and health management programs that have proven effective in the past.

Under the POWER Initiative, each executive department and agency will be expected to improve its performance in seven areas:

(i) reducing total injury and illness case rates;

(ii) reducing lost time injury and illness case rates;

(iii) analyzing lost time injury and illness data;

(iv) increasing the timely filing of workers' compensation claims;

(v) increasing the timely filing of wage-loss claims;

(vi) reducing lost production day rates; and

(vii) speeding employees' return to work in cases of serious injury or illness.

Executive departments and agencies (except the U.S. Postal Service) shall coordinate with the Department of Labor's Occupational Safety and Health Administration and Office of Workers' Compensation Programs to establish performance targets in each category. The Secretary of Labor shall lead the POWER Initiative by measuring both Government-wide and agency-level performance and reporting to me annually.

Each executive department and agency shall bear its own costs for participating in the POWER Initiative, and nothing in this memorandum shall be construed to impair or otherwise affect the authority granted by law to an executive department or agency, or the head thereof.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Secretary of Labor is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 7903. Protective clothing and equipment

Appropriations available for the procurement of supplies and material or equipment are available for the purchase and maintenance of special clothing and equipment for the protection of personnel in the performance of their assigned tasks. For the purpose of this section, ''appropriations'' includes funds made available by statute under section 9104 of title 31.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 531; Pub. L. 97–258, § 3(a)(16), Sept. 13, 1982, 96 Stat. 1063.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 118g.	Aug. 2, 1946, ch. 744, § 13, 60 Stat. 809.

The definition of the word ''appropriations'' is added on authority of section 18 of the Act of Aug. 2, 1946, ch. 744, 60 Stat. 811.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1982—Pub. L. 97–258 substituted ''section 9104'' for ''section 849''.

§ 7904. Employee assistance programs relating to drug abuse and alcohol abuse

(a) The head of each Executive agency shall, in a manner consistent with guidelines prescribed under subsection (b) of this section and applicable provisions of law, establish appropriate prevention, treatment, and rehabilitation programs and services for drug abuse and alcohol abuse for employees in or under such agency.

(b) The Office of Personnel Management shall, after such consultations as the Office considers appropriate, prescribe guidelines for programs and services under this section.

(c) The Secretary of Health and Human Services, on request of the head of an Executive agency, shall review any program or service provided under this section and shall submit comments and recommendations to the head of the agency concerned.

(Added Pub. L. 99–570, title VI, § 6004(a), Oct. 27, 1986, 100 Stat. 3207–159.)

§ 7905. Programs to encourage commuting by means other than single-occupancy motor vehicles

(a) For the purpose of this section—

(1) the term ''employee'' means an employee as defined by section 2105, a member of a uniformed service, and a student who provides voluntary services under section 3111;

(2) the term ''agency'' means—

(A) an Executive agency;

(B) an entity of the legislative branch; and

(C) the judicial branch;

(3) the term ''entity of the legislative branch'' means the House of Representatives, the Senate, the Office of the Architect of the Capitol (including the Botanic Garden), the Capitol Police, the Congressional Budget Office, the Copyright Royalty Tribunal, the Government Printing Office, the Library of Congress, and the Office of Technology Assessment; and

(4) the term ''transit pass'' means a transit pass as defined by section 132(f)(5) of the Internal Revenue Code of 1986.

(b)(1) The head of each agency may establish a program to encourage employees of such agency to use means other than single-occupancy motor vehicles to commute to or from work.

(2) A program established under this section may involve such options as—

(A) transit passes (including cash reimbursements therefor, but only if a voucher or similar item which may be exchanged only for a transit pass is not readily available for direct distribution by the agency);

(B) furnishing space, facilities, or services to bicyclists; and

(C) any non-monetary incentive which the agency head may otherwise offer under any other provision of law or other authority.

(c) The functions of an agency head under this section shall—

(1) with respect to the judicial branch, be carried out by the Director of the Administrative Office of the United States Courts;

(2) with respect to the House of Representatives, be carried out by the Committee on House Administration of the House of Representatives; and

(3) with respect to the Senate, be carried out by the Committee on Rules and Administration of the Senate.

(d) The President shall designate 1 or more agencies which shall—

(1) prescribe guidelines for programs under this section;

(2) on request, furnish information or technical advice on the design or operation of any program under this section; and

(3) submit to the President and the Congress, before January 1, 1995, and at least every 2 years thereafter, a written report on the operation of this section, including, with respect to the period covered by the report—

(A) the number of agencies offering programs under this section;

(B) a brief description of each of the various programs;

(C) the extent of employee participation in, and the costs to the Government associated with, each of the various programs;

(D) an assessment of any environmental or other benefits realized as a result of programs established under this section; and

(E) any other matter which may be appropriate.

(Added Pub. L. 103–172, §2(a), Dec. 2, 1993, 107 Stat. 1995; amended Pub. L. 107–296, title XIII, §1314(a), Nov. 25, 2002, 116 Stat. 2296.)

REFERENCES IN TEXT

Section 132(f)(5) of the Internal Revenue Code of 1986, referred to in subsec. (a)(4), is classified to section 132(f)(5) of Title 26, Internal Revenue Code.

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–296 substituted '', a member of a uniformed service, and a student who provides voluntary services under section 3111'' for ''and a member of a uniformed service''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE

Section 3 of Pub. L. 103–172 provided that: ''This Act [enacting this section and provisions set out as notes under this section and section 7901 of this title] and the amendments made by this Act shall take effect on January 1, 1994.''

TRANSIT SUBSIDY FOR DEPARTMENT OF LABOR EMPLOYEES OF NATIONAL CAPITAL REGION

Pub. L. 111–8, div. F, title I, §104, Mar. 11, 2009, 123 Stat. 761, provided that: ''After September 30, 2008, the Secretary of Labor shall issue a monthly transit subsidy of not less than the full amount (of not less than $115) that each of its employees of the National Capital Region is eligible to receive.''

Pub. L. 110–161, div. G, title I, §104, Dec. 26, 2007, 121 Stat. 2167, provided that: ''After September 30, 2007, the Secretary of Labor shall issue a monthly transit subsidy of not less than the full amount (of not less than $110) that each of its employees of the National Capital Region is eligible to receive.''

TRANSIT PASS TRANSPORTATION FRINGE BENEFITS

Pub. L. 109–59, title III, §3049(a), Aug. 10, 2005, 119 Stat. 1711, as amended by Pub. L. 109–435, title VI, §604(f), Dec. 20, 2006, 120 Stat. 3242, provided that:

''(1) IN GENERAL.—Effective as of the first day of the next fiscal year beginning after the date of the enactment of this Act [Aug. 10, 2005], each covered agency shall implement a program under which all qualified Federal employees serving in or under such agency shall be offered transit pass transportation fringe benefits, as described in paragraph (2).

''(2) BENEFITS DESCRIBED.—The benefits described in this paragraph are the transit pass transportation fringe benefits which, under section 2 of Executive Order No. 13150 [set out below], are required to be offered by Federal agencies in the National Capital Region on the date of the enactment of this Act.

''(3) DEFINITIONS.—In this subsection—

''(A) the term 'covered agency' means any agency, to the extent of its facilities in the National Capital Region;

''(B) the term 'agency' means any agency (as defined by 7905(a)(2) of title 5, United States Code), the Postal Regulatory Commission, and the Smithsonian Institution;

''(C) the term 'National Capital Region' includes the District of Columbia and every county or other geographic area covered by section 2 of Executive Order No. 13150;

''(D) the term 'Executive Order No. 13150' refers to Executive Order No. 13150 (5 U.S.C. 7905 note);

''(E) the term 'Federal agency' is used in the same way as under section 2 of Executive Order No. 13150; and

''(F) any determination as to whether or not one is a 'qualified Federal employee' shall be made applying the same criteria as would apply under section 2 of Executive Order No. 13150.

''(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be considered to require that a covered agency—

''(A) terminate any program or benefits in existence on the date of the enactment of this Act, or postpone any plans to implement (before the effective date referred to in paragraph (1)) any program or benefits permitted or required under any other provision of law; or

''(B) discontinue (on or after the effective date referred to in paragraph (1)) any program or benefits referred to in subparagraph (A), so long as such program or benefits satisfy the requirements of paragraphs (1) through (3).''

TRANSPORTATION SUBSIDY FOR EMPLOYEES OF THE SENATE

Pub. L. 107–68, title I, §112, Nov. 12, 2001, 115 Stat. 569, authorized an employing office of an employee of the Senate to provide a monthly transportation subsidy to such employee up to the maximum monthly amount authorized under section 132(f)(2)(A) of Title 26, Internal Revenue Code.

TRANSIT SUBSIDIES; APPROPRIATIONS

Pub. L. 105–277, div. A, §101(f) [title II, §210], Oct. 21, 1998, 112 Stat. 2681–337, 2681–359, provided that: ''Funds appropriated in this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts, for the National Institutes of Health may be used to provide transit subsidies in amounts consistent with the transportation subsidy programs authorized under section 629 of Public Law 101–509 [see note preceding section 7901 of this title] to non-FTE bearing positions including trainees, visiting fellows and volunteers.''

Similar provisions were contained in the following prior appropriations act:

Pub. L. 105–78, title II, §210, Nov. 13, 1997, 111 Stat. 1489.

PURPOSE OF PUB. L. 103–172

Section 1(b) of Pub. L. 103–172 provided that: ''The purpose of this Act [enacting this section and provisions set out as notes under this section and section 7901 of this title] is to improve air quality and to reduce traffic congestion by providing for the establishment of programs to encourage Federal employees to commute by means other than single-occupancy motor vehicles.''

EX. ORD. NO. 13150. FEDERAL WORKFORCE TRANSPORTATION

Ex. Ord. No. 13150, Apr. 21, 2000, 65 F.R. 24613, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Transportation Equity Act for the 21st Century (Public Law 105–178) [see Tables for classification], section 1911 of the Energy Policy Act of 1992 (Public Law 102–486) [amending section 132 of Title 26, Internal Revenue Code], section 531(a)(1) of the Deficit Reduction Act of 1984 (26 U.S.C. 132), and the Federal Employees Clean Air Incentives Act (Public Law 103–172) [enacting this section and provisions set out as notes above], and in order to reduce Federal employees' contribution to traffic congestion and air pollution and to expand their commuting alternatives, it is hereby ordered as follows:

SECTION 1. *Mass Transportation and Vanpool Transportation Fringe Benefit Program.* (a) By no later than October 1, 2000, Federal agencies shall implement a transportation fringe benefit program that offers qualified Federal employees the option to exclude from taxable wages and compensation, consistent with section 132 of title 26, United States Code, employee commuting costs incurred through the use of mass transportation and vanpools, not to exceed the maximum level allowed by law (26 U.S.C. 132 (f)(2)). These agency programs shall comply with the requirements of Internal Revenue Service regulations for qualified transportation fringe benefits under section 1.132–9 of title 26, Code of Federal Regulations, and other guidance.

(b) Federal agencies are encouraged to use any nonmonetary incentive that the agencies may otherwise offer under any other provision of law or other authority to encourage mass transportation and vanpool use, as provided for in section 7905(b)(2)(C) of title 5, United States Code.

SEC. 2. *Federal Agencies in the National Capital Region.* Federal agencies in the National Capital Region shall implement a ''transit pass'' transportation fringe benefit program for their qualified Federal employees by no later than October 1, 2000. Under this program, agencies shall provide their qualified Federal employees, in addition to current compensation, transit passes as defined in section 132(f)(5) of title 26, United States Code, in amounts approximately equal to employee commuting costs, not to exceed the maximum level allowed by law (26 U.S.C. 132(f)(2)). The National Capital Region is defined as the District of Columbia; Montgomery, Prince George's, and Frederick Counties in Maryland; Arlington, Fairfax, Loudon, and Prince William Counties in Virginia; and all cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of said counties.

SEC. 3. *Nationwide Pilot Program.* The Department of Transportation, the Environmental Protection Agency, and the Department of Energy shall implement a ''transit pass'' transportation fringe benefit program, as described in section 2 of this order, for all of their qualified Federal employees as a 3 year pilot program by no later than October 1, 2000. Before determining whether the program should be extended to other Federal employees nationwide, it shall be analyzed by an entity determined by the agencies identified in section 4 of this order to ascertain, among other things, if it is effective in reducing single occupancy vehicle travel and local area traffic congestion.

SEC. 4. *Guidance.* Federal agencies shall develop plans to implement this order in consultation with the Department of the Treasury, the Department of Transportation, the Environmental Protection Agency, the Office of Personnel Management, the General Services Administration, and the Office of Management and Budget. Federal agencies that currently have more generous programs or benefits in place may continue to offer those programs or benefits. Agencies shall absorb the costs of implementing this order within the sums received pursuant to the President's FY 2001 budget request to the Congress.

SEC. 5. *Judicial Review.* This order is not intended to and does not create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON.

§ 7906. Services of post-combat case coordinators

(a) DEFINITIONS.—For purposes of this section—

(1) the terms ''employee'', ''agency'',[1] ''injury'', ''war-risk hazard'', and ''hostile force or individual'' have the meanings given those terms in section 8101; and

(2) the term ''qualified employee'' means an employee as described in subsection (b).

[1] So in original. The definition of ''agency'' does not appear in section 8101 of this title.

(b) REQUIREMENT.—The head of each agency shall, in a manner consistent with the guidelines prescribed under subsection (c), provide for the assignment of a post-combat case coordinator in the case of any employee of such agency who suffers an injury or disability incurred, or an illness contracted, while in the performance of such employee's duties, as a result of a war-risk hazard or during or as a result of capture, detention, or other restraint by a hostile force or individual.

(c) GUIDELINES.—The Office of Personnel Management shall, after such consultation as the Office considers appropriate, prescribe guidelines for the operation of this section. Under the guidelines, the responsibilities of a post-combat case coordinator shall include—

(1) acting as the main point of contact for qualified employees seeking administrative guidance or assistance relating to benefits under chapter 81 or 89;

(2) assisting qualified employees in the collection of documentation or other supporting evidence for the expeditious processing of claims under chapter 81 or 89;

(3) assisting qualified employees in connection with the receipt of prescribed medical care and the coordination of benefits under chapter 81 or 89;

(4) resolving problems relating to the receipt of benefits under chapter 81 or 89; and

(5) ensuring that qualified employees are properly screened and receive appropriate treatment—

(A) for post-traumatic stress disorder or other similar disorder stemming from combat trauma; or

(B) for suicidal or homicidal thoughts or behaviors.

(d) DURATION.—The services of a post-combat case coordinator shall remain available to a qualified employee until—

(1) such employee accepts or declines a reasonable offer of employment in a position in the employee's agency for which the employee is qualified, which is not lower than 2 grades (or pay levels) below the employee's grade (or pay level) before the occurrence or onset of the injury, disability, or illness (as referred to in subsection (a)), and which is within the employee's commuting area; or

(2) such employee gives written notice, in such manner as the employing agency prescribes, that those services are no longer desired or necessary.

(Added Pub. L. 112–81, div. A, title XI, §1106(a), Dec. 31, 2011, 125 Stat. 1613.)

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AMENDMENTS

2008—Pub. L. 110–181, div. A, title XI, §1105(b), Jan. 28, 2008, 122 Stat. 349, added item 8102a.

[1] So in original. Does not conform to section catchline.