

lated to change of station where movement or storage of household goods is involved; and

(6) section 5726(c) of this title, for the expenses of nontemporary storage of household goods and personal effects in connection with assignment at an isolated location.

(b) Expenses specified in subsection (a) of this section, other than those in paragraph (1)(C), may not be allowed in connection with the assignment of a Federal or State or local government employee under this subchapter, unless and until the employee agrees in writing to complete the entire period of his assignment or one year, whichever is shorter, unless separated or reassigned for reasons beyond his control that are acceptable to the Federal agency concerned. If the employee violates the agreement, the money spent by the United States for these expenses is recoverable from the employee as a debt due the United States. The head of the Federal agency concerned may waive in whole or in part a right of recovery under this subsection with respect to a State or local government employee on assignment with the agency.

(c) Appropriations of a Federal agency are available to pay expenses under section 5742 of this title with respect to a Federal or State or local government employee assigned under this subchapter.

(Added Pub. L. 91-648, title IV, § 402(a), Jan. 5, 1971, 84 Stat. 1924; amended Pub. L. 95-454, title VI, § 603(b), (e), Oct. 13, 1978, 92 Stat. 1190, 1191; Pub. L. 104-201, div. A, title XVII, § 1723(a)(1)(A), Sept. 23, 1996, 110 Stat. 2758.)

Editorial Notes

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104-201, § 1723(a)(1)(A)(i), substituted “section 5724a(a)” for “section 5724a(a)(1)”.

Subsec. (a)(4). Pub. L. 104-201, § 1723(a)(1)(A)(ii), substituted “section 5724a(c)” for “section 5724a(a)(3)”.

Subsec. (a)(5). Pub. L. 104-201, § 1723(a)(1)(A)(iii), substituted “section 5724a(g)” for “section 5724a(b)”.

1978—Subsec. (a). Pub. L. 95-454, § 603(b), (e), substituted “a Federal agency” for “an executive agency” in introductory text, substituted “Federal” for “executive” in cl. (1), added cl. (5), and redesignated former cl. (5) as (6).

Subsec. (b). Pub. L. 95-454, § 603(b), substituted “the Federal” for “the executive”.

Subsec. (c). Pub. L. 95-454, § 603(b), substituted “a Federal agency” for “an executive agency”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-201 effective 180 days after Sept. 23, 1996, see section 1725(a) of Pub. L. 104-201, set out as a note under section 5722 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.

EFFECTIVE DATE

Section effective sixty days after Jan. 5, 1971, see section 404 of Pub. L. 91-648, set out as a note under section 3371 of this title.

§ 3376. Regulations

The President may prescribe regulations for the administration of this subchapter.

(Added Pub. L. 91-648, title IV, § 402(a), Jan. 5, 1971, 84 Stat. 1925.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective sixty days after Jan. 5, 1971, see section 404 of Pub. L. 91-648, set out as a note under section 3371 of this title.

Executive Documents

EX. ORD. NO. 11589. DELEGATION OF FUNCTIONS TO OFFICE OF PERSONNEL MANAGEMENT

Ex. Ord. No. 11589, Apr. 1, 1971, 36 F.R. 6343, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. The Office of Personnel Management is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(a) The authority of the President under section 3376 of title 5 of the United States Code [this section] to prescribe regulations for the administration of subchapter VI, “Assignments to and from States,” of chapter 33 of that title [this chapter].

(b) The authority of the President under section 205 (a)(4) of the Federal Civil Defense Act of 1950, as amended ([former] 50 U.S.C. App. 2286(a)(4)), and as affected by Reorganization Plan No. 1 of 1958 (72 Stat. 1799) [set out in the Appendix to this title], relating to the establishment and maintenance of personnel standards on the merit basis.

SEC. 2. To the extent that section 1(b) of this order is inconsistent with the provisions of Executive Order No. 10952 of July 20, 1961, as amended, section 1(b) shall control.

SUBCHAPTER VII—AIR TRAFFIC CONTROLLERS

§ 3381. Training

(a) An air traffic controller with 5 years of service as a controller who is to be removed as a controller because the Secretary has determined—

(1) he is medically disqualified for duties as a controller;

(2) he is unable to maintain technical proficiency as a controller; or

(3) such removal is necessary for the preservation of the physical or mental health of the controller;

is entitled to not more than the full-time equivalent of 2 years of training.

(b) During a period of training under this section, a controller shall be—

(1) retained at his last assigned grade and rate of basic pay as a controller;

(2) entitled to each increase in rate of basic pay provided under law; and

(3) excluded from staffing limitations otherwise applicable.

(c) Upon completion of training under this section, a controller may be—

(1) assigned to other duties in the Executive agency in which the controller is employed;

(2) released for transfer to another Executive agency; or

(3) involuntarily separated from the service.

The involuntary separation of a controller under this subsection is not a removal for cause on charges of misconduct, delinquency, or inefficiency for purposes of section 5595 or section 8336 of this title.

(d) The Secretary, without regard to section 3324(a) and (b) of title 31, may pay, or reimburse a controller for, all or part of the necessary expenses of training provided under this section, including expenses authorized to be paid under chapter 41 and subchapter I of chapter 57 of this title, and the costs of other services or facilities directly related to the training of a controller.

(e) Except as provided by subsection (d) of this section, the provisions of chapter 41 of this title, other than sections 4105, 4107(a) and (b),¹ and 4111, shall not apply to training under this section.

(f) The provisions of this section shall not otherwise affect the authority of the Secretary to provide training under chapter 41 of this title or under any other provision of law.

(Added Pub. L. 92-297, §3(a), May 16, 1972, 86 Stat. 142; amended Pub. L. 96-347, §1(b), (c)(1), Sept. 12, 1980, 94 Stat. 1150; Pub. L. 97-258, §3(a)(7), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 103-226, §2(b)(1), Mar. 30, 1994, 108 Stat. 112.)

Editorial Notes

REFERENCES IN TEXT

For definition of Secretary, referred to in subsec. (a), see section 2109 of this title.

Subsecs. (a) and (b) of section 4107 of this title, referred to in subsec. (e), were struck out, and subsecs. (c) and (d) of section 4107 were redesignated (a) and (b), respectively, by Pub. L. 103-226, §2(a)(5)(B), Mar. 30, 1994, 108 Stat. 112. Subsequently, section 4107 was amended generally by Pub. L. 107-296, title XIII, §1331(a), Nov. 25, 2002, 116 Stat. 2298.

AMENDMENTS

1994—Subsec. (e). Pub. L. 103-226 substituted “4105,” for “4105(a),”.

1982—Subsec. (d). Pub. L. 97-258 substituted “section 3324(a) and (b)” for “section 529”.

1980—Subsec. (a). Pub. L. 96-347, §1(b), substituted “Secretary” for “Secretary of Transportation”.

Subsec. (c)(1). Pub. L. 96-347, §1(c)(1), substituted “in the Executive agency in which the controller is employed” for “in the Department of Transportation”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-226, §2(c), Mar. 30, 1994, 108 Stat. 112, provided that: “The amendments made by this section [amending this section and sections 4101, 4103, 4105, 4107, 4108, 4113, and 4118 of this title and repealing sections 4106 and 4114 of this title] shall become effective on the date of enactment of this Act [Mar. 30, 1994].”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96-347, set out as a note under section 2109 of this title.

EFFECTIVE DATE

Pub. L. 92-297, §10, May 16, 1972, 86 Stat. 145, provided that: “This Act [enacting this subchapter and section 2109 of this title, amending sections 3307, 8332, 8334 to 8336, 8339, 8341, 8344 of this title, enacting provisions set

out as notes under this section and section 8335 of this title, and repealing provisions set out as a note under section 3307 of this title] shall become effective at the beginning of the ninetieth day after the date of enactment of this Act [May 16, 1972].”

REPORT TO CONGRESS

Pub. L. 92-297, §9, May 16, 1972, 86 Stat. 145, directed the Secretary of Transportation to report to Congress no later than 5 years after May 16, 1972, concerning his operations under the amendments made by Pub. L. 92-297, including a detailed statement of the effectiveness of Pub. L. 92-297 in meeting the needs of the Air Traffic Controller career program and of the air traffic control system plus recommendations for the management of the program or the system.

§ 3382. Involuntary separation for retirement

An air traffic controller who is eligible for immediate retirement under section 8336 of this title may be separated involuntarily from the service if the Secretary determines that the separation of the controller is necessary in the interest of—

- (1) aviation safety;
- (2) the efficient control of air traffic; or
- (3) the preservation of the physical or mental health of the controller.

Chapter 75 of this title does not apply to a determination or action under this section. Separation under this section shall not become final, without the consent of the controller, until the last day of the second month following the day the controller receives a notification of the determination by the Secretary under this section, or, if a review is requested under section 3383 of this title, the last day of the month in which a final decision is issued by a board of review under section 3383(c) of this title, whichever is later. A controller who is to be separated under this section is entitled to training under section 3381 of this title. Separation of such a controller who elects to receive training under section 3381 shall not become final until the last day of the month following the completion of his training.

(Added Pub. L. 92-297, §3(a), May 16, 1972, 86 Stat. 142; amended Pub. L. 96-347, §1(b), Sept. 12, 1980, 94 Stat. 1150.)

Editorial Notes

REFERENCES IN TEXT

For definition of Secretary, referred to in text, see section 2109 of this title.

AMENDMENTS

1980—Pub. L. 96-347 in provisions preceding par. (1) substituted “Secretary determines” for “Secretary of Transportation determines”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96-347, set out as a note under section 2109 of this title.

EFFECTIVE DATE

Section effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92-297, set out as a note under section 3381 of this title.

§ 3383. Determinations; review procedures

(a) An air traffic controller subject to a determination by the Secretary under section 3381(a)

¹ See References in Text note below.

or section 3382 of this title, shall be furnished a written notice of the determination and the reasons therefor, and a notification that the controller has 15 days after the receipt of the notification within which to file a written request for reconsideration of the determination. Unless the controller files such a request within the 15 days, or unless the determination is rescinded by the Secretary within the 15 days, the determination shall be final.

(b) If the Secretary does not rescind his determination within 15 days after his receipt of the written request filed by the controller under subsection (a) of this section, the Secretary shall immediately convene a board of review, consisting of—

- (1) a person designated by the controller;
- (2) a representative of the Executive agency in which the controller is employed designated by the Secretary; and
- (3) a representative of the Merit Systems Protection Board, designated by the Chairman, who shall serve as chairman of the board of review.

(c) The board of review shall review evidence supporting and inconsistent with the determination of the Secretary and, within a period of 30 days after being convened, shall issue its findings and furnish copies thereof to the Secretary and the controller. The board may approve or rescind the determination of the Secretary. A decision by the board under this subsection is final. The Secretary shall take such action as may be necessary to carry out the decision of the board.

(d) Except as provided under section 3382 of this title, the review procedure of this section is in addition to any other review or appeal procedures provided under any other provision of law, but is the sole and exclusive administrative remedy available to a controller within the Executive agency in which such controller is employed.

(Added Pub. L. 92-297, §3(a), May 16, 1972, 86 Stat. 143; amended Pub. L. 95-454, title IX, §906(a)(6), Oct. 13, 1978, 92 Stat. 1225; Pub. L. 96-347, §1(b), (c)(2), (3), Sept. 12, 1980, 94 Stat. 1150.)

Editorial Notes

REFERENCES IN TEXT

For definition of Secretary, referred to in text, see section 2109 of this title.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-347, §1(b), substituted “Secretary under” for “Secretary of Transportation under”.

Subsec. (b)(2). Pub. L. 96-347, §1(c)(2), substituted “the Executive agency in which the controller is employed” for “the Department of Transportation”.

Subsec. (d). Pub. L. 96-347, §1(c)(3), substituted “within the Executive agency in which such controller is employed” for “within the Department of Transportation”.

1978—Subsec. (b)(3). Pub. L. 95-454 substituted “Merit Systems Protection Board” for “Civil Service Commission”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96-347, set out as a note under section 2109 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.

EFFECTIVE DATE

Section effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92-297, set out as a note under section 3381 of this title.

§ 3384. Regulations

The Secretary is authorized to issue regulations to carry out the provisions of this subchapter.

(Added Pub. L. 92-297, §3(a), May 16, 1972, 86 Stat. 143; amended Pub. L. 96-347, §1(b), Sept. 12, 1980, 94 Stat. 1150.)

Editorial Notes

REFERENCES IN TEXT

For definition of Secretary, referred to in text, see section 2109 of this title.

AMENDMENTS

1980—Pub. L. 96-347 substituted “Secretary” for “Secretary of Transportation”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96-347, set out as a note under section 2109 of this title.

EFFECTIVE DATE

Section effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92-297, set out as a note under section 3381 of this title.

§ 3385. Effect on other authority

This subchapter shall not limit the authority of the Secretary to reassign temporarily an air traffic controller to other duties with or without notice, in the interest of the safe or efficient separation and control of air traffic or the physical or mental health of a controller; or to reassign permanently or separate a controller under any other provision of law.

(Added Pub. L. 92-297, §3(a), May 16, 1972, 86 Stat. 143; amended Pub. L. 96-347, §1(b), Sept. 12, 1980, 94 Stat. 1150.)

Editorial Notes

REFERENCES IN TEXT

For definition of Secretary, referred to in text, see section 2109 of this title.

AMENDMENTS

1980—Pub. L. 96-347 substituted “Secretary” for “Secretary of Transportation”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96-347, set out as a note under section 2109 of this title.

EFFECTIVE DATE

Section effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92-297, set out as a note under section 3381 of this title.

SUBCHAPTER VIII—APPOINTMENT, RE-ASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

Editorial Notes

PRIOR PROVISIONS

A prior subchapter VIII, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1056, which related to part-time career employment opportunities, was redesignated as chapter 34 of this title by Pub. L. 95-454, title IX, §906(c)(1)(A), Oct. 13, 1978, 92 Stat. 1226.

§ 3391. Definitions

For the purpose of this subchapter, “agency”, “Senior Executive Service position”, “senior executive”, “career appointee”, “limited term appointee”, “limited emergency appointee”, “non-career appointee”, and “general position” have the meanings set forth in section 3132(a) of this title.

(Added Pub. L. 95-454, title IV, §403(a), Oct. 13, 1978, 92 Stat. 1161.)

Editorial Notes

PRIOR PROVISIONS

A prior section 3391, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1056, which related to definitions for part-time career employment opportunities, was renumbered as section 3401 of this title by Pub. L. 95-454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section 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(a)(1), (b) of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

§ 3392. General appointment provisions

(a) Qualification standards shall be established by the head of each agency for each Senior Executive Service position in the agency—

(1) in accordance with requirements established by the Office of Personnel Management, with respect to standards for career reserved positions, and

(2) after consultation with the Office, with respect to standards for general positions.

(b) Not more than 30 percent of the Senior Executive Service positions authorized under section 3133 of this title may at any time be filled by individuals who did not have 5 years of current continuous service in the civil service immediately preceding their initial appointment to the Senior Executive Service, unless the President certifies to the Congress that the limitation would hinder the efficiency of the Government. In applying the preceding sentence, any break in service of 3 days or less shall be disregarded.

(c)(1) If a career appointee is appointed by the President, by and with the advice and consent of

the Senate, to a civilian position in the executive branch which is not in the Senior Executive Service, and the rate of basic pay payable for which is equal to or greater than the rate payable for level V of the Executive Schedule, the career appointee may elect (at such time and in such manner as the Office may prescribe) to continue to have the provisions of this title relating to basic pay, performance awards, awarding of ranks, severance pay, leave, and retirement apply as if the career appointee remained in the Senior Executive Service position from which he was appointed. Such provisions shall apply in lieu of the provisions which would otherwise apply—

(A) to the extent provided under regulations prescribed by the Office, and

(B) so long as the appointee continues to serve under such Presidential appointment.

(2) An election under paragraph (1) may also be made by any career appointee who is appointed to a civilian position in the executive branch—

(A) which is not in the Senior Executive Service; and

(B) which is covered by the Executive Schedule, or the rate of basic pay for which is fixed by statute at a rate equal to 1 of the levels of the Executive Schedule.

An election under this paragraph shall remain effective so long as the appointee continues to serve in the same position.

(d) Appointment or removal of a person to or from any Senior Executive Service position in an independent regulatory commission shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President.

(Added Pub. L. 95-454, title IV, §403(a), Oct. 13, 1978, 92 Stat. 1161; amended Pub. L. 101-335, §7(a), July 17, 1990, 104 Stat. 325.)

Editorial Notes

REFERENCES IN TEXT

The Executive Schedule, referred to in subsec. (c), is set out as section 5311 et seq. of this title.

PRIOR PROVISIONS

A prior section 3392, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1056, which related to the establishment of part-time career employment programs, was renumbered as section 3402 of this title by Pub. L. 95-454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101-335 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-335, §7(b)(1), July 17, 1990, 104 Stat. 325, provided that: “The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [July 17, 1990].”

EFFECTIVE DATE

Section effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through