

**Editorial Notes**

## REFERENCES IN TEXT

Section 7404(b) of this title, referred to in subsec. (a)(1)(B)(i), was amended by Pub. L. 108-445, §3(a)(1), Dec. 3, 2004, 118 Stat. 2636. As so amended, section 7404(b) no longer contains paragraphs. Schedules appear under section 7404(b).

Level II of the Executive Schedule, referred to in subsec. (c)(2), is set out in section 5313 of Title 5, Government Organization and Employees.

Level IV of the Executive Schedule, referred to in subsec. (c)(3), is set out in section 5315 of Title 5, Government Organization and Employees.

## PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4107(g) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

## AMENDMENTS

2022—Subsec. (c)(1). Pub. L. 117-168, §904(a)(1), substituted “50 percent” for “30 percent”.

Subsec. (c)(2). Pub. L. 117-168, §904(a)(2), substituted “level II” for “level IV”.

Subsec. (c)(3). Pub. L. 117-168, §904(a)(3), added par. (3).

2010—Subsec. (c). Pub. L. 111-163 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

“(c)(1) The amount of any increase under subsection (a) in the maximum rate for any grade may not (except in the case of nurse anesthetists, pharmacists, and licensed physical therapists) exceed by two times the amount by which the maximum for such grade (under applicable provisions of law other than this subsection) exceeds the minimum for such grade (under applicable provisions of law other than this subsection), and the maximum rate as so increased may not exceed the rate paid for individuals serving as Assistant Under Secretary for Health.

“(2) Whenever the amount of an increase under subsection (a) results in a rate of basic pay for a position being equal to or greater than the amount that is 94 percent of the maximum amount permitted under paragraph (1), the Secretary shall promptly notify the Committees on Veterans’ Affairs of the Senate and House of Representatives of the increase and the amount thereof.”

2000—Subsec. (c)(1). Pub. L. 106-419 inserted “, pharmacists,” after “anesthetists”.

1992—Subsec. (c). Pub. L. 102-405, §302(c)(1), substituted “Under Secretary for Health” for “Chief Medical Director” in par. (1).

Pub. L. 102-405, §201, designated existing provisions as par. (1), inserted “by two times” after first reference to “exceed”, and added par. (2).

1991—Subsec. (a)(2)(C). Pub. L. 102-83 substituted “902” for “218”.

## Executive Documents

EX. ORD. NO. 12797. REVIEW OF INCREASES IN RATES OF BASIC PAY FOR CERTAIN EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS AND OTHER AGENCIES

Ex. Ord. No. 12797, Apr. 3, 1992, 57 F.R. 11671, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7455(d)(2)-(3) of title 38, United States Code, in order to establish procedures for review of proposed increases in the rates of basic pay of certain employees of the Department of Veterans Affairs and of other agencies, it is hereby ordered as follows:

SECTION 1. The Director of the Office of Personnel Management is designated to exercise the authority vested in the President by section 7455(d)(2)-(3) of title 38, United States Code, to review and approve or dis-

approve the increases in rates of basic pay proposed by the Secretary of Veterans Affairs and to provide the appropriate committees of the Congress with a written statement of the reasons for any such disapproval.

SEC. 2. In exercising this authority, the Director of the Office of Personnel Management shall assure that any increases in basic pay proposed by the Secretary of Veterans Affairs are in the best interest of the Federal Government, do not exceed the amounts authorized by section 7455, and are made only to:

(1) Provide pay in an amount competitive with, but not exceeding, the amount of the same type of pay paid to the same category of health-care personnel at non-Federal health-care facilities in the same labor market;

(2) Achieve adequate staffing at particular facilities; or

(3) Recruit personnel with specialized skills, especially those with skills which are especially difficult or demanding.

SEC. 3. The Secretary of Veterans Affairs shall provide to the Director of the Office of Personnel Management such information as the Director may request in order to carry out the responsibilities delegated by this order.

SEC. 4. The Director of the Office of Personnel Management shall provide the Secretary of Veterans Affairs with a copy of any written statement provided to the appropriate committees of the Congress that sets forth the reasons for disapproval of any proposed increase in rates of basic pay under this order.

SEC. 5. In the case of any other law authorizing another agency to use the authority provided by section 7455 of title 38, United States Code, the Director of the Office of Personnel Management shall exercise the same authority in the same manner as provided for with respect to section 7455 under sections 1 through 4 of this order, and the head of such other agency shall provide information requested by the Director as provided for in section 3 of this order.

SEC. 6. Executive Order No. 12438 of August 23, 1983, is revoked.

SEC. 7. This order shall be effective upon publication in the Federal Register.

GEORGE BUSH.

**§ 7456. Nurses: special rules for weekend duty**

(a) Subject to subsection (b), if the Secretary determines it to be necessary in order to obtain or retain the services of nurses at any Department health-care facility, the Secretary may provide, in the case of nurses appointed under this chapter and employed at such facility, that such nurses who work two regularly scheduled 12-hour tours of duty within the period commencing at midnight Friday and ending at midnight the following Sunday shall be considered for all purposes (except computation of full-time equivalent employees for the purposes of determining compliance with personnel ceilings) to have worked a full 40-hour basic workweek.

(b)(1) Basic and additional pay for a nurse who is considered under subsection (a) to have worked a full 40-hour basic workweek shall be subject to paragraphs (2) and (3).

(2) The hourly rate of basic pay for such a nurse for service performed as part of a regularly scheduled 12-hour tour of duty within the period commencing at midnight Friday and ending at midnight the following Sunday shall be derived by dividing the nurse’s annual rate of basic pay by 1,248.

(3)(A) Such a nurse who performs a period of service in excess of such nurse’s regularly scheduled two 12-hour tours of duty is entitled to overtime pay under section 7453(e) of this title,

or other applicable law, for officially ordered or approved service performed in excess of eight hours on a day other than a Saturday or Sunday, or in excess of 24 hours within the period commencing at midnight Friday and ending at midnight the following Sunday.

(B) Except as provided in subparagraph (C), a nurse to whom this subsection is applicable is not entitled to additional pay under section 7453 of this title, or other applicable law, for any period included in a regularly scheduled 12-hour tour of duty.

(C) If the Secretary determines it to be further necessary in order to obtain or retain the services of nurses at a particular facility, a nurse to whom this paragraph is applicable who performs service in excess of such nurse's regularly scheduled two 12-hour tours of duty may be paid overtime pay under section 7453(e) of this title, or other applicable law, for all or part of the hours of officially ordered or approved service performed by such nurse in excess of 40 hours during an administrative workweek.

(c) The Secretary shall prescribe regulations for the implementation of this section.

(Added Pub. L. 102-40, title IV, § 401(b)(4), May 7, 1991, 105 Stat. 235; amended Pub. L. 111-163, title VI, § 602(b), May 5, 2010, 124 Stat. 1173.)

#### **Editorial Notes**

##### **PRIOR PROVISIONS**

Provisions similar to those in this section were contained in section 4107(h) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

##### **AMENDMENTS**

2010—Subsecs. (c), (d). Pub. L. 111-163 redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: “A nurse described in subsection (b)(1) who is absent on approved sick leave or annual leave during a regularly scheduled 12-hour tour of duty shall be charged for such leave at a rate of five hours of leave for three hours of absence.”

#### **§ 7456A. Nurses: alternate work schedules**

(a) **APPLICABILITY.**—This section applies to registered nurses appointed under this chapter.

(b) **72/80 WORK SCHEDULE.**—(1)(A) Subject to paragraph (2), if the Secretary determines it to be necessary in order to obtain or retain the services of registered nurses at any Department health-care facility, the Secretary may provide, in the case of nurses employed at such facility, that such nurses who work six regularly scheduled 12-hour tours of duty within a 14-day period shall be considered for all purposes to have worked a full 80-hour pay period.

(B) A nurse who works under the authority in subparagraph (A) shall be considered a 0.90 full-time equivalent employee in computing full-time equivalent employees for the purposes of determining compliance with personnel ceilings.

(2)(A) Basic and additional pay for a nurse who is considered under paragraph (1) to have worked a full 80-hour pay period shall be subject to subparagraphs (B) and (C).

(B) The hourly rate of basic pay for a nurse covered by this paragraph for service performed as part of a regularly scheduled 36-hour tour of

duty within the work week shall be derived by dividing the nurse's annual rate of basic pay by 1,872.

(C) The Secretary shall pay overtime pay to a nurse covered by this paragraph who—

(i) performs a period of service in excess of such nurse's regularly scheduled 36-hour tour of duty within an administrative work week;

(ii) for officially ordered or approved service, performs a period of service in excess of 8 hours on a day other than a day on which such nurse's regularly scheduled 12-hour tour of duty falls;

(iii) performs a period of service in excess of 12 hours for any day included in the regularly scheduled 36-hour tour of duty work week; or

(iv) performs a period of service in excess of 40 hours during an administrative work week.

(D) The Secretary may provide a nurse to whom this subsection applies with additional pay under section 7453 of this title for any period included in a regularly scheduled 12-hour tour of duty.

(3) A nurse who works a work schedule described in this subsection who is absent on approved sick leave or annual leave during a scheduled 12-hour tour of duty shall be charged for such leave at a rate of ten hours of leave for every nine hours of absence.

(c) **HOLIDAY PAY.**—A nurse working a work schedule under subsection (b) that includes a holiday designated by law or Executive order shall be eligible for holiday pay under section 7453(d) of this title for any service performed by the nurse on such holiday under such section.

(d) **9-MONTH WORK SCHEDULE FOR CERTAIN NURSES.**—(1) The Secretary may authorize a registered nurse appointed under section 7405 of this title, with the nurse's written consent, to work full time for nine months with 3 months off duty, within a fiscal year, and be paid at 75 percent of the full-time rate for such nurse's grade for each pay period of such fiscal year.

(2) A nurse who works under the authority in paragraph (1) shall be considered a 0.75 full-time equivalent employee in computing full-time equivalent employees for the purposes of determining compliance with personnel ceilings.

(3) Work under this subsection shall be considered part-time service for purposes of computing benefits under chapters 83 and 84 of title 5.

(4) A nurse who works under the authority in paragraph (1) shall be considered a full-time employee for purposes of chapter 89 of title 5.

(e) **NOTIFICATION OF MODIFICATION OF BENEFITS.**—The Secretary shall provide each employee with respect to whom an alternate work schedule under this section may apply written notice of the effect, if any, that the alternate work schedule will have on the employee's health care premium, retirement, life insurance premium, probationary status, or other benefit or condition of employment. The notice shall be provided not later than 14 days before the employee consents to the alternate work schedule.

(f) **REGULATIONS.**—The Secretary shall prescribe regulations to carry out this section.

(Added Pub. L. 108-445, § 4(a)(1), Dec. 3, 2004, 118 Stat. 2643; amended Pub. L. 111-163, title VI, § 602(c), May 5, 2010, 124 Stat. 1173.)