

**GUIDANCE ON APPLICATION OF FEDERAL VACANCIES
REFORM ACT OF 1998**

This memorandum provides guidance on the application of the Federal Vacancies Reform Act of 1998 to vacancies in Senate-confirmed offices within the executive branch.

March 22, 1999

MEMORANDUM FOR AGENCY GENERAL COUNSELS

On October 21, 1998, the Federal Vacancies Reform Act of 1998 ("Vacancies Reform Act" or "Act") was signed into law.⁽¹⁾ The Vacancies Reform Act replaces the old Vacancies Act and alters the way in which vacancies in presidentially appointed, Senate-confirmed offices within the executive branch may be filled on a temporary basis. The following Q&As are intended to provide general guidance on the Vacancies Reform Act. If you have questions about this guidance or specific questions about the application of the Act, please contact Jeff Singdahlsen, Attorney-Adviser, at (202) 514-1858.

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Q1. When did the Vacancies Reform Act become effective?

A. The Vacancies Reform Act took effect on November 20, 1998.

Q2. Does the Vacancies Reform Act affect offices that became vacant before November 20, 1998?

A. For offices that became vacant before November 20, 1998, the only provision of the Vacancies Reform Act that applies is the limitation on how long someone may serve in an acting capacity for that office. Further, that time limit is the only part of the Act that applies even if no one is designated to perform the duties of the office on a temporary basis until after November 20, 1998, as long as the office was vacant before that date. (For a more complete discussion of the Vacancies Reform Act's application to offices that became vacant before November 20, 1998, including the calculation of the time limits that apply to acting officers filling those offices, see Memorandum for Agency General Counsels, from Beth Nolan, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Initial Guidance on the Federal Vacancies Reform Act of 1998 (Nov. 13, 1998).

In contrast, the full scope of the Vacancies Reform Act applies to an office that becomes vacant on or after November 20, 1998, including the Act's restrictions on who may serve in an acting capacity and on which duties of the office may be performed by someone other than an acting officer serving in conformity with the Act.

Q3. When does an office become "vacant" for purposes of the Vacancies Reform Act?

A. Under the Vacancies Reform Act, a vacancy arises when a relevant officer "dies, resigns, or is otherwise unable to perform the functions and duties of the office." The full range of what would constitute being "otherwise unable to perform the functions and duties of the office" is unspecified in the Act, except that the Act provides that "the expiration of a term of office is an inability to perform the functions and duties of such office." (5 U.S.C. § 3345(c)(2)) In floor debate, Senators said, by way of example, that an officer would be "otherwise unable to perform the functions and duties of the office" if he or she were fired, imprisoned, or sick. See 144 Cong. Rec. S12,823 (daily ed. Oct. 21, 1998) (statement of Sen. Thompson); id. at S12,824 (statement of Sen. Byrd). The Office of Legal Counsel can assist you with any questions about whether an office is vacant for purposes of the Act.

Q4. Which offices are covered by the Vacancies Reform Act?

A. Generally, the Vacancies Reform Act applies to any office within an Executive agency to which appointment is required to be made by the President, by and with the advice and consent of the Senate (a "PAS position"). The Act, however, excludes from its coverage a few specified offices. The Act also recognizes that a number of PAS positions are covered by other statutes that specifically address how the office is to be filled on a temporary basis. See Questions 6-8 for a discussion of the PAS positions expressly excluded from coverage by the Act and of the statutes that continue to apply to filling certain vacant PAS positions on a temporary basis.

Q5. What is an "Executive agency" within the meaning of the Vacancies Reform Act?

A. In short, "Executive agency" as used in the Vacancies Reform Act includes almost the entire executive branch. Under the Vacancies Reform Act, Executive agency has the same meaning given to that term in 5 U.S.C. § 105 (1994), except that the Act also expressly includes within the definition of Executive agency the Executive Office of the President and expressly excludes from that definition the General Accounting Office. Section 105 of Title 5 defines "Executive agency" to mean "an Executive department, a Government corporation, and an independent establishment." The "Executive departments" are listed in 5 U.S.C. § 101 (1994 & Supp. II 1996); "Government corporation" is defined in 5 U.S.C. § 103 (1994) as "a corporation owned or controlled by the Government of the United States"; and "independent establishment" is defined in 5 U.S.C. § 104 (1994), in relevant part, as "an establishment in the executive branch (other than the United States Postal Service or the Postal Rate Commission) which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment."⁽²⁾

Q6. Are there executive-branch PAS positions that are not covered by the Vacancies Reform Act?

A. Yes, the Vacancies Reform Act expressly excludes certain offices from coverage under the Act. The Act does not apply to any PAS who is (1) a member of a "board, commission,

or similar entity that is composed of multiple members and governs an independent establishment or Government corporation;" (2) a "commissioner of the Federal Energy Regulatory Commission;" (3) a "member of the Surface Transportation Board;" or (4) a judge on "a court constituted under article I of the United States Constitution." (5 U.S.C. § 3349c)

Q7. If a position meets the definition of a covered office under the Vacancies Reform Act, is the Act necessarily the exclusive means of temporarily filling the vacancy?

A. The Vacancies Reform Act was intended in most cases to be the exclusive means for filling a vacant executive-branch PAS position (i.e., having a person designated as the "Acting" officer). The Act also recognizes, however, the continued applicability of certain other mechanisms for filling PAS positions on a temporary basis. In particular, the Act expressly recognizes that a PAS position may be filled temporarily through (a) a recess appointment and (b) a statutory provision that "expressly [i] authorizes the President, a court, or the head of an Executive department, to designate an officer or employee to perform the functions and duties of a specified office temporarily in an acting capacity; or [ii] designates an officer or employee to perform the functions and duties of a specified office temporarily in an acting capacity." (5 U.S.C. § 3347(a)) In addition, § 3349b of the Act provides that the Act does not alter the application of a "statute that authorizes a person to continue to serve in any office - (1) after the expiration of the term for which that person is appointed; and (2) until a successor is appointed or a specified period of time has expired." (5 U.S.C. § 3349b) The Act makes clear, however, that an agency's organic statute does not provide authorization for filling PAS positions on a temporary basis. See Question 9.

Q8. Is there a list of the statutes that continue to authorize the temporary filling of a vacant PAS position?

A. The Report of the Committee on Governmental Affairs, United States Senate, reporting out the Vacancies Reform Act lists forty such statutes. See S. Rep. 105-250, at 16-17. This list is not comprehensive, however, and each Executive agency will need to determine which statutes apply to its PAS positions. OLC can assist you with any questions about the continued applicability of specific statutes.

Q9. May Executive agencies continue to rely on their organic authorities to designate acting officers for positions covered by the Vacancies Reform Act?

A. No. The Vacancies Reform Act provides that "[a]ny statutory provision providing general authority to the head of an Executive agency . . . to delegate duties statutorily vested in that agency head to, or to reassign duties among, officers or employees of such Executive agency, is not" the type of statutory provision that remains a separate, viable authority for filling a vacant PAS positions on a temporary basis. (5 U.S.C. § 3347(b))

Q10. Who may serve in an acting capacity for a vacant executive-branch PAS position under the Vacancies Reform Act?

A. There are generally three categories of people who may serve in an acting capacity for vacant PAS positions under the Vacancies Reform Act: (1) first assistants to the respective vacant offices, (2) PAS officers designated by the President, and (3) certain senior agency

employees designated by the President. (5 U.S.C. § 3345(a))

Q11. Who is the first assistant to the office?

A. The Vacancies Reform Act does not define the term "first assistant." The Committee Report, however, indicates that establishing first assistants by statute or by regulation would be sufficient under the Act. See S. Rep. 105-250, at 12. There is also some support for a broader definition of a first assistant. See 144 Cong. Rec. S11,037 (daily ed. Sept. 28, 1998) (statement of Sen. Lieberman) (identifying first assistant as "a term of art that generally refers to the top deputy" to the position). At a minimum, a designation of a first assistant by statute, or by regulation where no statutory first assistant exists, should be adequate to establish a first assistant for purposes of the Vacancies Reform Act. Others not designated by statute or regulation also may qualify as first assistants under the Act, but there is less explicit support in the legislative history for this proposition.

Q12. How does the first assistant begin to serve as an acting officer for a vacant position?

A. Under the terms of the Vacancies Reform Act, if there is a first assistant to the vacant office, that first assistant begins to serve as the acting officer immediately and automatically upon the occurrence of the vacancy. (5 U.S.C. § 3345(a)(1))

Q13. If someone is designated to be first assistant after the vacancy occurs, does that person still become the acting officer by virtue of being the first assistant?

A. While the Vacancies Reform Act does not expressly address this question, we believe that the better understanding is that you must be the first assistant when the vacancy occurs in order to be the acting officer by virtue of being the first assistant. While someone who is not the acting officer when the vacancy occurs would not qualify to be the acting officer by virtue of being the first assistant, the President may still designate that person to serve as the acting officer if he or she meets the qualifications for serving as an acting officer under a different provision of the Act. See Questions 17-20.*

Q14. Are there limitations on the ability of a first assistant to serve in an acting capacity?

A. In addition to the time limit on the length of service of an acting officer, see Question 23, the Vacancies Reform Act also limits a first assistant's ability to be the nominee for the office and, at the same time, to continue to serve as the acting officer for that office. If the President nominates the first assistant for the vacant office, the first assistant may continue to serve as the acting officer for that position only if (1) the first assistant served as first assistant for at least ninety days (they need not be consecutive days) during the 365-day period that preceded the beginning of the vacancy, or (2) the office of first assistant is itself a PAS position and the Senate approved the appointment of that first assistant to the first assistant's position. (5 U.S.C. § 3345(b))

Q15. Does this limitation on the ability to be both the nominee and the acting officer apply only to first assistants, or does it also apply to persons who qualify to serve as an acting officer under other provisions of the Vacancies Reform Act?

A. The limitation on the ability to be the nominee for the vacant position and to serve as the acting officer applies only to persons who serve as acting officers by virtue of having been the first assistant to the office. If someone is serving in an acting capacity on another basis, i.e., as a PAS or a senior agency employee designated by the President, this particular limitation does not apply. However, because senior agency employees may not be designated by the President unless they have served in the agency for ninety days within the year preceding the vacancy, see Question 20, a similar time limitation in fact applies to anyone who is not already in a PAS position.

Q16. If the first assistant also qualifies to serve in an acting capacity under another provision of the Vacancies Reform Act, does the limitation on the ability to be both the nominee and the acting officer apply?

A. If the first assistant also qualifies to serve in an acting capacity under another category, he or she may be designated under that category. Accordingly, if the first assistant meets the requirements to be an acting officer based on his or her status as a senior agency employee, the first assistant could be nominated for the position and continue to serve in an acting capacity as long as the President made the required designation for that senior agency employee to serve as the acting officer. (As noted above and discussed in more detail in Question 20, the requirements for a senior agency employee to serve as an acting officer include that the employee have served within the agency for at least ninety days in the year preceding the vacancy.)

Q17. How does a PAS officer come to serve as an acting officer for a vacant position?

A. A PAS officer may begin serving as an acting officer for a vacant position only upon direction from the President (and only the President) that that PAS officer is to perform the functions and duties of the vacant office in an acting capacity. (5 U.S.C. § 3345(a)(2))

Q18. Does the Vacancies Reform Act impose any limitations on which PAS officers the President may designate to serve in an acting capacity for a vacant office?

A. The Vacancies Reform Act does not impose any limitations on which PAS officers the President may designate. There are no length of service requirements, and the PAS officer need not be from the same agency as that in which the vacancy arose.

Q19. How does a senior agency employee come to serve as an acting officer for a vacant position?

A. As with PAS officers, certain senior agency employees (see Question 20) may begin to serve as the acting officer for a vacant position upon a directive from the President (and only the President) instructing that senior agency employee to perform the functions and duties of the vacant office in an acting capacity. (5 U.S.C. § 3345(a)(3))

Q20. Does the Vacancies Reform Act impose any limitations on which senior agency employees the President may designate to serve as acting officers?

A. Yes, the Vacancies Reform Act imposes a number of limitations on which senior agency employees the President may designate. First, the senior agency employee must be from the same Executive agency as the one in which the vacancy occurs. (5 U.S.C. § 3345

(a)(3)(A)) Second, the senior agency employee must have served in a position within that Executive agency for not less than ninety days during the 365 days preceding the vacancy. (Id.) Third, the rate of pay for the position in which the senior agency employee served must be at least GS-15, step 1. (5 U.S.C. § 3345(a)(3)(B))

Q21. Are there any other categories of persons qualified to serve in an acting capacity under the Vacancies Reform Act?

A. Yes, with regard to PAS positions that are filled for a term set by statute and are located in an Executive department (a narrower category than Executive agencies - see Question 5), the Vacancies Reform Act also provides for a fourth category of persons who may serve in an acting capacity. For such an office, the President (and only the President) may direct the officer whose term is expiring to continue to serve in that office if that officer is nominated for an additional term to the same office without a break in service. (5 U.S.C. § 3345(c)(1))

Q22. Does the Vacancies Reform Act impose the same time limits on officers who continue to serve once their terms have expired as apply under the Act to the categories of acting officers?

A. No, the Act sets out an additional limitation on how long such an officer may continue to serve. In addition to being subject to the general time limits of the Vacancies Reform Act, the Act also provides that the carry-over officer may no longer continue to serve on a temporary basis once the officer's nomination is either confirmed or rejected by the Senate.

More generally, although the Vacancies Reform Act does not impose such a limitation on other acting officers who are nominated to fill the vacant position in which they are serving in an acting capacity, a similar limitation likely will apply to any such officer as a practical matter. Congress routinely passes an appropriations rider prohibiting the use of appropriated funds to pay someone for filling a position for which that person was nominated if the Senate has voted to reject the nomination. See, e.g., Section 610 of the Treasury and General Government Appropriations Act, 1999, Pub. L. No. 105-277, Div. A, § 101(h), 1998 U.S.C.C.A.N. (112 Stat. 2681- __, 2681- __) 549, 590 (1998).

Q23. Generally, for how long may a vacant office be filled on an acting basis under the Vacancies Reform Act?

A. The Vacancies Reform Act does not provide for a static, set number of days during which an acting officer may serve. Instead, the Vacancies Reform Act's limitation on the length of service involves a series of interrelated provisions tied to the submission of a nomination for the vacant position. These provisions permit an acting officer to serve for a 210-day period prior to the submission of a nomination. Once a nomination is submitted, the acting official may continue to serve until the Senate takes action on the nomination or the nomination is withdrawn. If the first nomination is rejected or returned by the Senate, or withdrawn by the President, a new 210-day period of service begins. Once a second nomination is submitted, an acting officer again may continue to serve as long as the nomination is pending in the Senate. If the second nomination also is rejected, returned, or withdrawn, then a final 210-day period begins to run. The submission of a third nomination does not suspend the running of this final 210-day period; once those 210 days have run, the functions and duties of the vacant office may no longer be performed by an acting officer. (5 U.S.C. § 3346) See questions 25-38 below for a more detailed discussion of how the time

limits are calculated under the Vacancies Reform Act.

Q24. Are there vacancies to which these time limits do not apply?

A. Yes, the time limits of the Vacancies Reform Act do not apply to vacancies caused by sickness. In the case of a PAS who is unable to perform the functions and duties of the office because he or she is sick, the acting officer may continue to serve until the sick PAS officer recovers, at which point the PAS officer again resumes performing the functions and duties of the office. (5 U.S.C. § 3346(a))⁽³⁾

Q25. If the President does not submit a nomination for the vacant position, how long may an acting officer perform the functions and duties of the office?

A. If the President does not submit a nomination, an acting officer may serve in an acting capacity during an initial 210-day period. (5 U.S.C. § 3346(a)(1)) Under various provisions of the Act, the length of this initial period may be adjusted in a number of ways. See Questions 27 and 36-38 discussing possible adjustments to this period.

Q26. From what date do you begin calculating the initial 210-day period?

A. The Vacancies Reform Act clarifies prior law, making it clear that the time limit begins to run on the date the vacancy occurs, rather than on the date the acting officer begins performing the functions and duties of the office. (5 U.S.C. § 3346(a)(1))

Q27. Are there situations in which the time limit will be calculated beginning on a date other than the date the vacancy occurred?

A. Yes, the Vacancies Reform Act provides that "[i]f a vacancy occurs during an adjournment of the Congress sine die, the 210-day [initial limit] shall begin on the date that the Senate first reconvenes." (5 U.S.C. § 3346(c)) So for example, the Congress adjourned sine die on October 21, 1998. See 144 Cong. Rec. H11,704, S12,810, S12,979 (daily ed. Oct. 21, 1998). The Senate did not reconvene until January 6, 1999. As a result, for a vacancy that occurred prior to January 6, 1999, the initial 210-day period during which an acting officer may serve in the absence of a nomination began to run on January 6, 1999, and will continue for a 210-day period ending at the end of the day on August 3, 1999.⁽⁴⁾

The Vacancies Reform Act also includes a special provision that adjusts the beginning dates for vacancies at the start of a new President's first administration to account for the increased difficulty and time required to nominate PAS officers at the beginning of a new administration. See Question 38 for a detailed discussion of that provision.

Q28. How is the time limit affected when the President submits a nomination to fill the vacant office?

A. Once the President submits a nomination to fill the vacant office, an acting officer may continue to serve in an acting capacity while the nomination is pending before the Senate. (5 U.S.C. § 3346(b)) A nomination remains pending before the Senate until the nomination is confirmed, the nomination is withdrawn by the President, or the nomination is rejected or returned by the Senate.

Q29. What is meant by the Senate's "rejection" of the nomination?

A. The Senate "rejects" a nomination only when the full Senate votes on and disapproves a nomination. A determination by a committee that it will not report the nomination out for a vote of the full Senate or a determination of the Senate otherwise not to vote on the nomination does not constitute a rejection of the nomination. See Intrasession Recess Appointments, 13 Op. O.L.C. 271, 274-75 (1989).

Q30. What is meant by the Senate's "return" of the nomination?

A. "Return" takes its meaning from Senate Rule XXXI, which provides in relevant part that "if the Senate shall adjourn or take a recess for more than thirty days, all nominations pending and not finally acted upon at the time of taking such adjournment or recess shall be returned by the Secretary to the President, and shall not again be considered unless they shall again be made to the Senate by the President." Standing Rules of the Senate, <http://www.senate.gov/~rules/srules.htm> see also S. Rep. 105-250, at 15. Nominations left pending at the time of a recess in excess of thirty days and at the end of the first session of a Congress frequently are not returned, but are instead held over pursuant to unanimous consent of the Senate. All nominations left pending at the end of a Congress, however, are returned pursuant to Senate Rule XXXI.

Q31. How is the time limit affected if a nomination is submitted after the 210-day period has expired?

A. The Vacancies Reform Act incorporates a spring-back provision, which permits the acting officer to begin performing the functions and duties of the vacant office again upon the submission of a nomination, even if the 210-day period expired before that nomination was submitted. If the 210-day limitation period expires before the President has submitted a nomination, the restrictions in § 3348 of the Act, which bar anyone from serving in an acting capacity, become operative. (See Questions 39-49 for a discussion of these restrictions.) If thereafter the President submits a nomination, an acting officer is again able to perform the functions and duties of the office as of the date the nomination is submitted. (5 U.S.C. § 3346(a)(2))

Q32. What happens if the first nomination is rejected or returned by the Senate or is withdrawn by the President?

A. If the first nomination is rejected, returned, or withdrawn, a new 210-day period during which an acting official may serve begins to run on the date that the nomination is rejected, returned, or withdrawn. This is a new, full 210 days, and the period is not affected by the length of time an acting official served before the first nomination was submitted or by the length of time the first nomination was pending before the Senate. (5 U.S.C. § 3346(b)(1))

Q33. How is the time limit affected by the submission of a second nomination to fill the vacant position?

A. The effect of the submission of a second nomination is the same as that of the first nomination. Once the President submits a second nomination, an acting officer may continue to serve in an acting capacity while the second nomination is pending before the Senate. Further, the spring-back provision discussed in Question 31 also applies to the

submission of a second nomination. (5 U.S.C. §§ 3346(a)(2), (b)(2))

Q34. What happens if the second nomination is rejected or returned by the Senate or is withdrawn by the President?

A. If the second nomination is rejected, returned, or withdrawn, a new (and final) 210-day period begins to run on the date that that nomination is withdrawn, rejected, or returned. This is again a new, full 210 days, and the period is not affected by the length of time an acting official served before the second nomination was submitted or the length of time the second nomination was pending before the Senate. (5 U.S.C. § 3346(b)(2)(B))

Q35. What effect does the submission of a third nomination have on the time limit?

A. The submission of a third nomination will not suspend or otherwise affect the running of the 210-day limit. The 210-day period that begins upon the rejection, return, or withdrawal of a second nomination is final; once that 210-day period ends, the bar in § 3348 of the Act on serving in an acting capacity takes effect.

Q36. What happens if a 210-day period ends on a date when the Senate is not in session?

A. The Vacancies Reform Act provides for the time period to be extended when the last day of any 210-day period is "a day on which the Senate is not in session." In this circumstance, the last day of the period is deemed to be the second day the Senate is next in session and receiving nominations. (5 U.S.C. § 3348(c))

Q37. Is there any other provision that would activate the spring-back provision while the Senate is recessed or adjourned?

A. The Vacancies Reform Act also includes a provision that would allow the President, in circumstances in which the Senate is recessed or adjourned for more than fifteen days, to provide the Senate with written notice of an intent to nominate and, by providing that notice, to trigger the spring-back provision. (5 U.S.C. § 3349d)

Q38. Does the Vacancies Reform Act include any provision to account for the increased difficulty and time that may be involved in nominating PAS officers at the beginning of a new administration?

A. The Vacancies Reform Act includes a specific provision that adjusts the calculation of time limits to provide extra time for a new administration to submit nominations for PAS positions. Specifically, the Act provides that for any vacancy existing at any point during a sixty-day period beginning on the date the oath of office is taken by a new President (i.e., a President who was not the President immediately before taking the oath of office) the vacancy shall be deemed, for purposes of calculating the time limit, to have arisen either (i) ninety days after the date the oath of office was taken or (ii) ninety days after the date the vacancy occurred, whichever is later. Thus, even if an office became vacant well before the new President takes office, the time limit begins anew, and an extra ninety days is added on to what is deemed to be the first 210-day period. (5 U.S.C. § 3349a)

Q39. What are the effects under the Vacancies Reform Act of the time limit expiring

or there otherwise being no one qualified to serve in an acting capacity?

A. Unless there is a person qualified to serve in an acting capacity under the Vacancies Reform Act, i.e., there is a person who meets the requirements of an acting officer under § 3345, and the time limit for serving has not expired, (i) no one may serve as the "acting officer" and (ii) no one other than the head of the Executive agency may perform any "function or duty" of the vacant office. (5 U.S.C. § 3348(b)) (See Question 43 discussing what is a "function or duty" of the office under this section.)

Q40. If the position of head of the Executive agency is vacant, may the acting head perform a function or duty of a vacant office for which there is no qualified acting officer?

A. A properly serving acting head of an agency may perform a function or duty of a vacant office.

Q41. What is the effect of someone other than a qualified acting officer or the head of the Executive agency performing a function or duty of the office?

A. Under the enforcement provisions set out in § 3348 of the Vacancies Reform Act, an "action" taken in the performance of a "function or duty" of a vacant office to which the Act applies shall have no force or effect unless it was performed either by someone qualified to serve as an acting officer or by the head of the Executive agency. (5 U.S.C. § 3348(d)(1)) Further, the Act expressly provides that an action that has no force or effect under this provision cannot later be ratified. (5 U.S.C. § 3348(d)(2)) While the effect of the enforcement provisions is severe, the breadth of conduct to which the provisions apply is expressly limited by the definition of "function or duty."

Q42. How is an "action" defined under the Vacancies Reform Act?

A. "Action" is defined under the Vacancies Reform Act by reference to the definition of "agency action" in 5 U.S.C. § 551(13) (1994). Agency action is defined in § 551(13) as "includ[ing] the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." (5 U.S.C. § 3348(a)(1))

Q43. How is a "function or duty" of the office defined under the Vacancies Reform Act?

A. For purposes of § 3348, a "function or duty" is defined as any function or duty of the PAS office that is required by statute or regulation to be performed exclusively by the holder of that office. (5 U.S.C. § 3348(a)(2)) See Question 48 discussing the practical scope of the definition of "function or duty."

Q44. May an agency revise its regulations to make what had been an exclusive function or duty under its regulations non-exclusive?

A. Yes, the Vacancies Reform Act anticipates that Executive agencies may revise some of their regulations to eliminate a requirement under the regulation that a function be performed exclusively by the PAS officer. The Act, however, also includes a look-back provision that delays the effectiveness of such a revision for purposes of the Vacancies

Reform Act. Under the definition, a function or duty will be treated as exclusive if, at any time during the 180 days preceding the date on which the vacancy occurred, the regulation provided that the duty or function was to be performed exclusively by the applicable officer. (5 U.S.C. § 3348(a)(2)(B)(ii))

Q45. Does such a look-back provision also apply to the revision of statutes imposing exclusive duties on officers?

A. No, there is no similar look-back provision for statutes. If a statute is amended to eliminate an exclusive performance requirement, either by eliminating a restriction on the ability to delegate the function or by reassigning the function to another officer, that change will eliminate the exclusivity requirement under the Vacancies Reform Act without any delay. Similarly, if a regulation is revised because of a change in the underlying statutory authority, there is no delay imposed by the Act on the elimination of a requirement that the function be performed exclusively by the PAS officer.

Q46. What if Congress imposes an exclusivity requirement on an office after a vacancy arises?

A. Such a statutory imposition of an exclusive function or duty on an office is effective as soon as the new statutory provision itself becomes effective, even if the statute is not enacted until after the vacancy.

Q47. What oversight mechanisms exist to ensure agency compliance with the Act and application of the enforcement provisions?

A. The Act has a number of mechanisms to ensure agency compliance with the law. Executive agencies, of course, are expected to ensure that they are in compliance with the Act. The Act also establishes a reporting procedure under which events that trigger application of the Act and its enforcement provisions are reported to the General Accounting Office ("GAO") and to each House of Congress to assist their oversight of compliance. See Questions 50-53. Congress also expected that private parties would, through litigation challenging agency actions, provide an additional mechanism to ensure compliance. See S. Rep. 105-250, at 19-20 ("The Committee expects that litigants with standing to challenge purported agency actions taken in violation of these provisions will raise noncompliance with this legislation in a judicial proceeding challenging the lawfulness of the agency action.").

Q48. Do the enforcement provisions of the Vacancies Reform Act mean that unless there is a properly serving acting officer nothing the PAS officer did may be performed by anyone other than the head of the Executive agency?

A. No, Congress understood that there would be occasions when the time limits would expire or when there would, for a period, be no one qualified to serve in an acting capacity. Congress also understood that if everything the PAS officer may have done in the performance of his or her duties had to be performed by the head of the Executive agency, the business of the government could be seriously impaired. See S. Rep. 105-250, at 30-31 (Additional Views). As a result, Congress delimited which functions could be performed only by a qualified acting officer or the head of the Executive agency, defining them as only those functions or duties assigned exclusively to the PAS officer by statute or regulation.

Most, and in many cases all, the responsibilities performed by a PAS officer will not be exclusive, and the Act permits non-exclusive responsibilities to be delegated to other appropriate officers and employees in the agency.

Q49. Are there PAS offices that are covered by the Vacancies Reform Act, but to which the enforcement provisions do not apply?

A. Yes, the Vacancies Reform Act sets out a list of offices to which the enforcement provisions of § 3348 do not apply. These offices are: (1) the General Counsel of the National Labor Relations Board, (2) the General Counsel of the Federal Labor Relations Authority, (3) any Inspector General appointed by the President, by and with the advice and consent of the Senate, (4) any Chief Financial Officer appointed by the President, by and with the advice and consent of the Senate, and (5) any office of an Executive agency for which there is a statutory provision that expressly prohibits the head of the Executive agency from performing the functions and duties of the office. (5 U.S.C. § 3348(e))

Q50. What reporting requirements does the Vacancies Reform Act impose on agencies?

A. The Vacancies Reform Act requires the head of each Executive agency to provide notification of (i) a vacancy covered by the Act, (ii) the date on which the vacancy occurred, (iii) the name of any person serving in an acting capacity in connection with such a vacancy, (iv) the date that person began serving in an acting capacity, (v) the name of any person nominated to fill the vacancy, (vi) the date on which the nomination is submitted, and (vii) the date of any rejection, withdrawal, or return of the nomination. (5 U.S.C. § 3349 (a))

Q51. When must the report of each of these occurrences be provided?

A. The report is to be provided "immediately upon the occurrence" of each of these events.

Q52. To whom should the reporting information described above be provided?

A. Each Executive agency is to provide the required information to the Office of Presidential Personnel. The Office of Presidential Personnel, in turn, will provide the information to the Office of Management and Budget, which will be responsible for providing the report to GAO and to each House of Congress.**

Q53. Why is this information being reported to GAO?

A. The information is provided to GAO to permit GAO to supervise compliance with the Act. If GAO determines that an acting officer is serving beyond the time limit allowed under the Vacancies Reform Act, it is to report that determination to relevant congressional committees, the President, and the Office of Personnel Management. (5 U.S.C. § 3349(b))B.

BETH NOLAN
Deputy Assistant Attorney General
Office of Legal Counsel

1. See Pub. L. No. 105-277, Div. C, tit. 1, § 151, 1998 U.S.C.C.A.N. (112 Stat. 2681-__) 701 (to be codified at 5 U.S.C. §§ 3345-49d). For ease of reference, further citation to the Vacancies Reform Act will refer only to the section at which the provision is to be codified.

2. Although the military departments are defined separately in 5 U.S.C. § 102 (1994), the Committee Report indicates that they are nonetheless intended to be covered by the Act. See S. Rep. 105-250, at 12 (1998) ("Because the Department of Defense is a department within the meaning of 5 U.S.C. § 101, the military departments, which are located in the Department of Defense, are also covered by this Act . . .").

3. See Questions 6 and 7, as well, regarding vacancies that are not governed exclusively by the Vacancies Reform Act.

4. If August 3, 1999 is a day on which the Senate is not in session, the period of service may be extended. See Questions 36-37.

* Editor's Note: In 2001, the Office of Legal Counsel reversed its position on this issue and now believes that, on the better view, someone who becomes the first assistant after a vacancy occurs may serve as the acting officer by virtue of being the first assistant.

** Editor's Note: This procedure is subject to change, and has been changed, by the current administration, which has directed the agencies to report directly to GAO and Congress. See Memorandum for the Heads of Federal Executive Departments and Agencies and Units of the Executive Office of the President, from Alberto R. Gonzales, Counsel to the President, *Re: Agency Reporting Requirements Under the Vacancies Reform Act* at 3 (Mar. 21, 2001).

[Back to Original](#)



U.S. General Services Administration

P.L. 105-277

The Federal Vacancies Reform Act of 1998,

SEC. 151. FEDERAL VACANCIES AND APPOINTMENTS.

(a) SHORT TITLE.-This section may be cited as the "Federal Vacancies Reform Act of 1998".

(b) IN GENERAL.-Chapter 33 of title 5, United States Code, is amended by striking sections 3345 through 3349 and inserting the following:

"§3345. Acting officer

"(a) If an officer of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office) whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate, dies, resigns, or is otherwise unable to perform the functions and duties of the office-

"(1) the first assistant to the office of such officer shall perform the functions and duties of the office temporarily in an acting capacity subject to the time limitations of section 3346;

"(2) notwithstanding paragraph (1), the President (and only the President) may direct a person who serves in an office for which appointment is required to be made by the President, by and with the advice and consent of the Senate, to perform the functions and duties of the vacant office temporarily in an acting capacity subject to the time limitations of section 3346; or

"(3) notwithstanding paragraph (1), the President (and only the President) may direct an officer or employee of such Executive agency to perform the functions and duties of the vacant office temporarily in an acting capacity, subject to the time limitations of section 3346, if

"(A) during the 365-day period preceding the date of death, resignation, or beginning of inability to serve of the applicable officer, the officer or employee served in a position in such agency for not less than 90 days; and

"(B) the rate of pay for the position described under subparagraph (A) is equal to or greater than the minimum rate of pay payable for a position at GS-15 of the General Schedule.

"(b)(1) Notwithstanding subsection (a)(1), a person may not serve as an acting officer for an office under this section, if

"(A) during the 365-day period preceding the date of the death, resignation, or

beginning of inability to serve, such person

"(i) did not serve in the position of first assistant to the office of such officer; or

"(ii) served in the position of first assistant to the office of such officer for less than 90 days; and

"(B) the President submits a nomination of such person to the Senate for appointment to such office.

"(2) Paragraph (1) shall not apply to any person if

"(A) such person is serving as the first assistant to the office of an officer described under subsection (a);

"(B) the office of such first assistant is an office for which appointment is required to be made by the President, by and with the advice and consent of the Senate; and

"(C) the Senate has approved the appointment of such person to such office.

"(c)(1) Notwithstanding subsection (a)(1), the President (and only the President) may direct an officer who is nominated by the President for reappointment for an additional term to the same office in an Executive department without a break in service, to continue to serve in that office subject to the time limitations in section 3346, until such time as the Senate has acted to confirm or reject the nomination, notwithstanding adjournment sine die.

"(2) For purposes of this section and sections 3346, 3347, 3348, 3349, 3349a, and 3349d, the expiration of a term of office is an inability to perform the functions and duties of such office.

"§3346. Time limitation

"(a) Except in the case of a vacancy caused by sickness, the person serving as an acting officer as described under section 3345 may serve in the office

"(1) for no longer than 210 days beginning on the date the vacancy occurs; or

"(2) subject to subsection (b), once a first or second nomination for the office is submitted to the Senate, from the date of such nomination for the period that the nomination is pending in the Senate.

"(b) (1) If the first nomination for the office is rejected by the Senate, withdrawn, or returned to the President by the Senate, the person may continue to serve as the acting officer for no more than 210 days after the date of such rejection, withdrawal, or return.

"(2) Notwithstanding paragraph (1), if a second nomination for the office is submitted to the Senate after the rejection, withdrawal, or return of the first nomination, the person serving as the acting officer may continue to serve

"(A) until the second nomination is confirmed; or

"(B) for no more than 210 days after the second nomination is rejected, withdrawn, or returned.

"(c) If a vacancy occurs during an adjournment of the Congress sine die, the 210-day period under subsection (a) shall begin on the date that the Senate first reconvenes.

" §3347 Exclusivity

"(a) Sections 3345 and 3346 are the exclusive means for temporarily authorizing an acting official to perform the functions and duties of any office of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office,) for which appointment is required to be made by the President, by and with the advice and consent of the Senate, unless

"(1) a statutory provision expressly

"(A) authorizes the President, a court, or the head of an Executive department to designate an officer or employee to perform the functions and duties of a specified office temporarily in an acting capacity; or

"(B) designates an officer or employee to perform the functions and duties of a specified office temporarily in an acting capacity; or "(2) the President makes an appointment to fill a vacancy in such office during the recess of the Senate pursuant to clause 3 of section 2 of article II of the United States Constitution.

"(b) Any statutory provision providing general authority to the head of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office) to delegate duties statutorily vested in that agency head to, or to reassign duties among, officers or employees of such Executive agency, is not a statutory provision to which subsection (a)(2) applies.

"§3348. Vacant office

"(a) In this section-

"(1) the term 'action' includes any agency action as defined under section 551(13); and

"(2) the term 'function or duty' means any function or duty of the applicable office that

"(A) (i) is established by statute; and

"(ii) is required by statute to be performed by the applicable officer (and only that officer); or

"(B)(i)(I) is established by regulation; and

"(II) is required by such regulation to be performed by the applicable officer (and only that officer); or

"(ii) includes a function or duty to which clause (i) (I) and (II) applies, and the applicable regulation is in effect at any time during the 180-day period preceding the date on which the vacancy occurs.

"(b) Unless an officer or employee is performing the functions and duties in accordance with sections 3345, 3346, and 3347, if an officer of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office) whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate, dies, resigns, or is otherwise unable to perform the functions and duties of the Office-

"(1) the, office shall remain vacant; and

"(2) in the case of an office other than the office of the head of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office), only the head of such Executive agency may perform any function or duty of such office.

"(c) If the last day of any 210-day period under section 3346 is a day on which the Senate is not in session, the second day the Senate is next in session and receiving nominations shall be deemed to be the last day of such period.

"(d) (1) An action taken by any person who is not acting under section 3345, 3346, or 3347, or as provided by subsection (b), in the performance of any function or duty of a vacant office to which this section and sections 3346, 3347, 3349, 3349a, 3349b, and 3349c apply shall have no force or effect.

"(2) An action that has no force or effect under paragraph (1) may not be ratified.

"(e) This section shall not apply to-

"(1) the General Counsel of the National Labor Relations Board;

"(2) the General Counsel of the Federal Labor Relations Authority;

"(3) any Inspector General appointed by the President, by and with the advice and consent of the Senate;

"(4) any Chief Financial Officer appointed by the President, by and with the advice and consent of the Senate; or

"(5) an office of an Executive agency (including the Executive Office of the President, and other than the General Accounting office) if a statutory provision expressly prohibits the head of the Executive agency from performing the functions and duties of such office.

"§3349. Reporting of vacancies

"(a) The head of each Executive agency (including the Executive Office of the President, and other than the General Accounting office) shall submit to the Comptroller General of the United States and to each House of Congress

"(1) notification of a vacancy in an office to which this section and sections 3345, 3346, 3347, 3348, 3349a, 3349b, 3349c, and 3349d apply and the date such vacancy occurred immediately upon the occurrence of the vacancy;

"(2) the name of any person serving in an acting capacity and the date such service began immediately upon the designation,

"(3) the name of any person nominated to the Senate to fill the vacancy and the date such nomination is submitted immediately upon the submission of the nomination; and

"(4)" the date of a rejection, withdrawal, or return of any nomination immediately upon such rejection, withdrawal, or return.

"(b) If the Comptroller General of the United States makes a determination that an officer is serving longer than the 210-day period including the applicable exceptions to such period under section 3346 or section 3349a, the Comptroller General shall report such determination immediately to—

"(1) the Committee on Governmental Affairs of the Senate;

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

"(3) the Committees on Appropriations of the Senate and House of Representatives;

"(4) the appropriate committees of jurisdiction of the Senate and House of Representatives;

"(5) the President; and

"(6) the Office of Personnel Management.

"§3349a. Presidential inaugural transitions

"(a) In this section, the term 'transitional inauguration day' means the date on which any person swears or affirms the oath of office as President, if such person is not the President on the date preceding the date of swearing or affirming such oath of office.

"(b) With respect to any vacancy that exists during the 60-day period beginning on a transitional inauguration day, the 210-day period under section 3346 or 3348 shall be deemed to begin on the later of the date occurring—

"(1) 90 days after such transitional inauguration day; or

"(2) 90 days after the date on which the vacancy occurs.

"§3349b. Holdover provisions

"Sections 3345 through 3349a shall not be construed to affect any statute that authorizes a

person to continue to serve in any office

"(1) after the expiration of the term for which such person is appointed; and

"(2) until a successor is appointed or a specified period of time has expired.

"§3349c. Exclusion of certain officers

"Sections 3345 through 3349b shall not apply to-

"(1) any member who is appointed by the President, by and with the advice and consent of the Senate to any board, commission, or similar entity that

"(A) is composed of multiple members; and

"(B) governs an independent establishment or Government corporation;

"(2) any commissioner of the Federal Energy Regulatory Commission;

"(3) any member of the Surface Transportation Board; or

"(4) any judge appointed by the President, by and with the advice and consent of the Senate, to a court constituted under article I of the United States Constitution.

"§3349d. Notification of intent to nominate during certain recesses or adjournments

"(a) The submission to the Senate, during a recess or adjournment of the Senate in excess of 15 days, of a written notification by the President of the President's intention to submit a nomination after the recess or adjournment shall be considered a nomination for purposes of sections 3345 through 3349c if such notification contains the name of the proposed nominee and the office for which the person is nominated.

"(b) If the President does not submit a nomination of the person named under subsection (a) within 2 days after the end of such recess or adjournment, effective after such second day the notification considered a nomination under subsection (a) shall be treated as a withdrawn nomination for purposes of sections 3345 through 3349c.

(c) TECHNICAL AND CONFORMING AMENDMENT

(1) TABLE OF SECTIONS.-The table of sections for chapter 33 of title 5, United States Code, is amended by striking the matter relating to subchapter III and inserting the following:

"SUBCHAPTER III-DETAILS, VACANCIES, AND APPOINTMENTS

"3341. Details; within Executive or military departments.

"[3342. Repealed.]

"3343. Details; to international organization.

"3344. Details; administrative law judges.

"3345. Acting officer.

"3346. Time limitation.

"3347. Exclusivity."3348. Vacant office.

"3349. Reporting of vacancies.

"3349a. Presidential inaugural transitions.

"3349b. Holdover provisions relating to certain independent establishments.

"3349c. Exclusion of certain officers.

"3349d. Notification of intent to nominate during certain recesses or adjournments.

(2) SUBCHAPTER HEADING.-The subchapter heading for subchapter III of chapter 33 of title 5, United States Code, is amended to read as follows:

"SUBCHAPTER III-DETAILS, VACANCIES, AND APPOINTMENTS".

(d) EFFECTIVE DATE AND APPLICATION

(1) EFFECTIVE DATE.-Subject to paragraph (2), this section and the amendments made by this section shall take effect 30 days after the date of enactment of this section.

(2) APPLICATION.

(A) IN GENERAL.-This section shall apply to any office that becomes vacant after the effective date of this section.

(B) IMMEDIATE APPLICATION OF TIME LIMITATION. -Notwithstanding subparagraph (A), for any office vacant on the effective date of this section, the time limitations under section 3346 of title 5, United States Code (as amended by this section) shall apply to such office. Such time limitations shall apply as though such office first became vacant on the effective date of this section.

(C) CERTAIN NOMINATIONS.-If the President submits to the Senate the nomination of any person after the effective date of this section for an office for which such person had been nominated before such date, the next nomination of such person after such date shall be considered a first nomination of such person to that office for purposes of sections 3345 through 3349 and section 3349d of title 5, United States Code (as amended by this section).

[The Vacancies Reform Act of 1998 \[PDF \] \[Word \]](#)

Sec. 215

DOE Organization Act

C

Effective: October 17, 2006

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 84. Department of Energy (Refs & Annos)
Subchapter II. Establishment of Department
→ § 7144b. Office of Counterintelligence

§ 1014 of Publ. 108-458,
amended § 106 of the National
Security Act of 1947 -- bottom
line is that Director of National
Intelligence must concur on
appointment of Director of office
of Counterintelligence
Intelligence

(a) Establishment

There is within the Department an Office of Counterintelligence.

(b) Director

(1) The head of the Office shall be the Director of the Office of Counterintelligence, who shall be an employee in the Senior Executive Service, the Senior Intelligence Service, the Senior National Intelligence Service, or any other Service that the Secretary, in coordination with the Director of National Intelligence, considers appropriate. The Director of the Office shall report directly to the Secretary.

(2) The Secretary shall select the Director of the Office from among individuals who have substantial expertise in matters relating to counterintelligence.

(3) The Director of the Federal Bureau of Investigation may detail, on a reimbursable basis, any employee of the Bureau to the Department for service as Director of the Office. The service of an employee of the Bureau as Director of the Office shall not result in any loss of status, right, or privilege by the employee within the Bureau.

(c) Duties

(1) The Director of the Office shall be responsible for establishing policy for counterintelligence programs and activities at Department facilities in order to reduce the threat of disclosure or loss of classified and other sensitive information at such facilities.

(2) The Director of the Office shall be responsible for establishing policy for the personnel assurance programs of the Department.

(3) The Director shall inform the Secretary, the Director of Central Intelligence, and the Director of the Federal Bureau of Investigation on a regular basis, and upon specific request by any such official, regarding the status and effectiveness of the counterintelligence programs and activities at Department facilities.

(d) Annual reports

(1) Not later than March 1 each year, the Director of the Office shall submit a report on the status and effectiveness of the counterintelligence programs and activities at each Department facility during the preceding year. Each such report shall be submitted to the following:

(A) The Secretary.

(B) The Director of Central Intelligence.

(C) The Director of the Federal Bureau of Investigation.

(D) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(E) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

(2) Each such report shall include for the year covered by the report the following:

(A) A description of the status and effectiveness of the counterintelligence programs and activities at Department facilities.

(B) A description of any violation of law or other requirement relating to intelligence, counterintelligence, or security at such facilities, including--

(i) the number of violations that were investigated; and

(ii) the number of violations that remain unresolved.

(C) A description of the number of foreign visitors to Department facilities, including the locations of the visits of such visitors.

(D) The adequacy of the Department's procedures and policies for protecting national security information, making such recommendations to Congress as may be appropriate.

(E) A determination of whether each Department of Energy national laboratory is in full compliance with all departmental security requirements and, in the case of any such laboratory that is not, what measures are being taken to bring that laboratory into compliance.

(3) Not less than 30 days before the date that the report required by paragraph (1) is submitted, the director of each Department of Energy national laboratory shall certify in writing to the Director of the Office whether that laboratory is in full compliance with all departmental security requirements and, if not, what measures are being taken to bring that laboratory into compliance and a schedule for implementing those measures.

(4) Each report under this subsection as submitted to the committees referred to in subparagraphs (D) and (E) of paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

CREDIT(S)

(Pub.L. 95-91, Title II, § 215, as added Pub.L. 106-65, Div. C, Title XXXII, § 3204(a), Oct. 5, 1999, 113 Stat. 955, and amended Pub.L. 109-364, Div. C, Title XXXI, § 3117(f), Oct. 17, 2006, 120 Stat. 2508.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1999 Acts. House Conference Report No. 106-301 and Statement by President, see 1999 U.S. Code Cong. and Adm. News, p. 94.

2006 Acts. House Conference Report No. 109-702, see 2006 U.S. Code Cong. and Adm. News, p. 1298.

Statement by President, see 2006 U.S. Code Cong. and Adm. News, p. S59.

Amendments

2006 Amendments. Subsec. (b)(1). Pub.L. 109-364, § 3117(f), in the first sentence, struck out “, which shall be a position in the Senior Executive Service” and inserted “, who shall be an employee in the Senior Executive Service, the Senior Intelligence Service, the Senior National Intelligence Service, or any other Service that the Secretary, in coordination with the Director of National Intelligence, considers appropriate”.

Effective and Applicability Provisions

1999 Acts. Enactment by Pub.L. 106-65, effective October 5, 1999, see section 3299(b)(1) of Pub.L. 106-65, set out as a note under section 2401 of Title 50.

Transfer of Functions; Sunset

Pub.L. 109-364, Div. C, Title XXXI, § 3117(a), Oct. 17, 2006, 120 Stat. 2507, provided that:

“(1) **In general.**--The functions, personnel, funds, assets, and other resources of the Office of Defense Nuclear Counterintelligence of the National Nuclear Security Administration are transferred to the Secretary of Energy, to be administered (except to any extent otherwise directed by the Secretary) by the Director of the Office of Counterintelligence of the Department of Energy.

“(2) **Sunset.**--Effective September 30, 2010--

“(A) the functions, personnel, funds, assets, and other resources transferred by paragraph (1) are transferred to the Administrator for Nuclear Security;

“(B) [Omitted; Repealed 50 U.S.C.A. § 2410(c).];

“(C) [Omitted; Amended 50 U.S.C.A. § 2423.].”

LIBRARY REFERENCES

American Digest System

United States 29, 35, 40, 41.
Key Number System Topic No. 393.

42 U.S.C.A. § 7144b, 42 USCA § 7144b

Current through P.L. 110-243 (excluding P.L. 110-234) approved 6-3-08

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Sec. 216

C

Effective: October 17, 2006

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
 Chapter 84. Department of Energy (Refs & Annos)
 Subchapter II. Establishment of Department
 → § 7144c. Office of Intelligence

(a) Establishment

There is within the Department an Office of Intelligence.

(b) Director

(1) The head of the Office shall be the Director of the Office of Intelligence, who shall be an employee in the Senior Executive Service, the Senior Intelligence Service, the Senior National Intelligence Service, or any other Service that the Secretary, in coordination with the Director of National Intelligence, considers appropriate. The Director of the Office shall report directly to the Secretary.

(2) The Secretary shall select the Director of the Office from among individuals who have substantial expertise in matters relating to foreign intelligence.

(c) Duties

Subject to the authority, direction, and control of the Secretary, the Director of the Office shall perform such duties and exercise such powers as the Secretary may prescribe.

CREDIT(S)

(Pub.L. 95-91, Title II, § 216, as added Pub.L. 106-65, Div. C, Title XXXII, § 3204(a), Oct. 5, 1999, 113 Stat. 956, and amended Pub.L. 109-364, Div. C, Title XXXI, § 3117(f), Oct. 17, 2006, 120 Stat. 2508.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1999 Acts. House Conference Report No. 106-301 and Statement by President, see 1999 U.S. Code Cong. and Adm. News, p. 94.

2006 Acts. House Conference Report No. 109-702, see 2006 U.S. Code Cong. and Adm. News, p. 1298.

Statement by President, see 2006 U.S. Code Cong. and Adm. News, p. S59.

Amendments

2006 Amendments. Subsec. (b)(1). Pub.L. 109-364, § 3117(f), in the first sentence, struck out "which shall be a position in the Senior Executive Service" and inserted "who shall be an employee in the Senior Executive Service,

the Senior Intelligence Service, the Senior National Intelligence Service, or any other Service that the Secretary, in coordination with the Director of National Intelligence, considers appropriate”.

Effective and Applicability Provisions

1999 Acts. Enactment by Pub.L. 106-65, effective October 5, 1999, see section 3299(b)(1) of Pub.L. 106-65, set out as a note under section 2401 of Title 50.

LIBRARY REFERENCES

American Digest System

United States 29, 35, 41.
Key Number System Topic No. 393.

42 U.S.C.A. § 7144c, 42 USCA § 7144c

Current through P.L. 110-243 (excluding P.L. 110-234) approved 6-3-08

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END OF DOCUMENT

EPACT 2005, P.L. 109-58

TITLE V—INDIAN ENERGY

SEC. 501. SHORT TITLE.

This title may be cited as the "Indian Tribal Energy Development and Self-Determination Act of 2005".

SEC. 502. OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS.

(a) IN GENERAL.--Title II of the Department of Energy Organization Act (42 U.S.C. 7131 et seq.) is amended by adding at the end the following:

"OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS

<< 42 USCA § 7144e >>

"SEC. 217. (a) ESTABLISHMENT.--There is established within the Department an Office of Indian Energy Policy and Programs (referred to in this section as the 'Office'). The Office shall be headed by a Director, who shall be appointed by the Secretary and compensated at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(b) DUTIES OF DIRECTOR.--The Director, in accordance with Federal policies promoting Indian self-determination and the purposes of this Act, shall provide, direct, foster, coordinate, and implement energy planning, education, management, conservation, and delivery programs of the Department that--

"(1) promote Indian tribal energy development, efficiency, and use;

"(2) reduce or stabilize energy costs;

"(3) enhance and strengthen Indian tribal energy and economic infrastructure relating to natural resource development and electrification; and

"(4) bring electrical power and service to Indian land and the homes of tribal members located on Indian lands or acquired, constructed, or improved (in whole or in part) with Federal funds."

(b) CONFORMING AMENDMENTS.--

(1) The table of contents of the Department of Energy Organization Act (42 U.S.C. prec. 7101) is amended--

***764**

(A) in the item relating to section 209, by striking "Section" and inserting "Sec."; and
(B) by striking the items relating to sections 213 through 216 and inserting the following:

"Sec. 213. Establishment of policy for National Nuclear Security Administration.

"Sec. 214. Establishment of security, counterintelligence, and intelligence policies.

"Sec. 215. Office of Counterintelligence.

"Sec. 216. Office of Intelligence.

"Sec. 217. Office of Indian Energy Policy and Programs."

<< 5 USCA § 5315 >>

(2) Section 5315 of title 5, United States Code, is amended by inserting after the item related to the Inspector General, Department of Energy the following new item:

"Director, Office of Indian Energy Policy and Programs, Department of Energy."

C

Effective: August 18, 1998

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
 [Ⓜ] Chapter 84. Department of Energy (Refs & Annos)
 [Ⓜ] Subchapter III. Transfers of Functions
 → **§ 7152. Transfers from Department of the Interior**

(a) Functions relating to electric power

(1) There are transferred to, and vested in, the Secretary all functions of the Secretary of the Interior under section 825s of Title 16, and all other functions of the Secretary of the Interior, and officers and components of the Department of the Interior, with respect to--

(A) the Southeastern Power Administration;

(B) the Southwestern Power Administration;

(C) the Bonneville Power Administration including but not limited to the authority contained in the Bonneville Project Act of 1937 [16 U.S.C.A. § 832 et seq.] and the Federal Columbia River Transmission System Act [16 U.S.C.A. § 838 et seq.];

(D) the power marketing functions of the Bureau of Reclamation, including the construction, operation, and maintenance of transmission lines and attendant facilities; and

(E) the transmission and disposition of the electric power and energy generated at Falcon Dam and Amistad Dam, international storage reservoir projects on the Rio Grande, pursuant to the Act of June 18, 1954, as amended by the Act of December 23, 1963.

(2) The Southeastern Power Administration, the Southwestern Power Administration, and the Bonneville Power Administration, [FNI] shall be preserved as separate and distinct organizational entities within the Department. Each such entity shall be headed by an Administrator appointed by the Secretary. The functions transferred to the Secretary in paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) shall be exercised by the Secretary, acting by and through such Administrators. Each such Administrator shall maintain his principal office at a place located in the region served by his respective Federal power marketing entity.

(3) The functions transferred in paragraphs (1)(E) and (1)(F) of this subsection shall be exercised by the Secretary, acting by and through a separate and distinct Administration within the Department which shall be headed by an Administrator appointed by the Secretary. The Administrator shall establish and shall maintain such regional offices as necessary to facilitate the performance of such functions. Neither the transfer of functions effected by paragraph (1)(E) of this subsection nor any changes in cost allocation or project evaluation standards shall be deemed to authorize the reallocation of joint costs of multipurpose facilities theretofore allocated unless and to the extent that such change is hereafter approved by Congress.

(b), (c) Repealed. Pub.L. 97-100, Title II, § 201, Dec. 23, 1981, 95 Stat. 1407

(d) Functions of Bureau of Mines

There are transferred to, and vested in, the Secretary those functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department under the Act of May 15, 1910, and other authorities, exercised by the Bureau of Mines, but limited to--

- (1) fuel supply and demand analysis and data gathering;
- (2) research and development relating to increased efficiency of production technology of solid fuel minerals, other than research relating to mine health and safety and research relating to the environmental and leasing consequences of solid fuel mining (which shall remain in the Department of the Interior); and
- (3) coal preparation and analysis.

CREDIT(S)

(Pub.L. 95-91, Title III, § 302, Aug. 4, 1977, 91 Stat. 578; Pub.L. 97-100, Title I, § 201, Dec. 23, 1981, 95 Stat. 1407; Pub.L. 104-58, Title I, § 104(h), Nov. 28, 1995, 109 Stat. 560.)

[FN1]So in original. Comma probably should not appear.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1977 Acts. Senate Report No. 95-164 and House Conference Report No. 95-539, see 1977 U.S. Code Cong. and Adm. News, p. 854.

1995 Acts. Senate Report No. 104-78 and House Conference Report No. 104-312, see 1995 U.S. Code Cong. and Adm. News, p. 494.

References in Text

The Bonneville Project Act of 1937, referred to in subsec. (a)(1)(C), is Act Aug. 20, 1937, c. 720, 50 Stat. 731, as amended, which is classified generally to chapter 12B (section 832 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 832 of Title 16 and Tables.

The Federal Columbia River Transmission System Act, referred to in subsec. (a)(1)(C), is Pub.L. 93-454, Oct. 18, 1974, 88 Stat. 1376, as amended, which is classified generally to chapter 12G (section 838 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 838 of Title 16 and Tables.

Act of June 18, 1954, as amended by the Act of December 23, 1963, referred to in subsec. (a)(1)(E), is Act June 18, 1954, c. 310, 68 Stat. 255, which was not classified to the Code.

Paragraphs (1)(E) and (1)(F) of this subsection, referred to in subsec. (a)(3), were redesignated as pars. (1)(D) and (1)(E) of this subsection, respectively, by Pub.L. 104-58, Title I, § 104(h)(1)(B), Nov. 28, 1995, 109 Stat. 560.

The Act of May 15, 1910, referred to in subsec. (d), probably means Act May 16, 1910, c. 240, 36 Stat. 369, which is classified to sections 1, 3, and 5 to 7 of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Tables.

United States ⇄ 41.
Key Number System Topic Nos. 149E, 393.

Corpus Juris Secundum
C.J.S. United States § 54.

Encyclopedias
27A Am. Jur. 2d Energy and Power Sources § 14.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 7275. Definitions

As used in sections 7275 to 7276c of this title:

(1) The term "Administrator" means the Administrator of the Western Area Power Administration.

(2) The term "integrated resource planning" means a planning process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to its electric customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; and shall treat demand and supply resources on a consistent and integrated basis.

(3) The term "least cost option" means an option for providing reliable electric services to electric customers which will, to the extent practicable, minimize life-cycle system costs, including adverse environmental effects, of providing such service. To the extent practicable, energy efficiency and renewable resources may be given priority in any least-cost option.

(4) The term "long-term firm power service contract" means any contract for the sale by Western Area Power Administration of firm capacity, with or without energy, which is to be delivered over a period of more than one year.

(5) The terms "customer" or "customers" means any entity or entities purchasing firm capacity with or without energy, from the Western Area Power Administration under a long-term firm power service contract. Such terms include parent-type entities and their distribution or user members.

Westlaw

50 U.S.C.A. § 2622

Page 1

Effective: November 24, 2003

United States Code Annotated Currentness

Title 50. War and National Defense (Refs & Annos)

Chapter 42. Atomic Energy Defense Provisions

Subchapter IV. Environmental Restoration and Waste Management Matters

Part D. Hanford Reservation, Washington

→ § 2622. Hanford waste tank cleanup program reforms

(a) Establishment of **Office of River Protection**

The Secretary of Energy shall establish an office at the Hanford Reservation, Richland, Washington, to be known as the **“Office of River Protection”** (in this section referred to as the “Office”).

(b) Management and responsibilities of Office

(1) The Office shall be headed by a senior official of the Department of Energy, who shall report to the Assistant Secretary of Energy for Environmental Management.

(2) The head of the Office shall be responsible for managing, consistent with the policy direction established by the Department, all aspects of the River Protection Project, Richland, Washington.

(3)(A) The Assistant Secretary of Energy for Environmental Management shall delegate in writing responsibility for the management of the River Protection Project, Richland, Washington, to the head of the Office.

(B) Such delegation shall include, at a minimum, authorities for contracting, financial management, safety, and general program management that are equivalent to the authorities of managers of other operations offices of the Department of Energy.

(C) The head of the Office shall, to the maximum extent possible, coordinate all activities of the Office with the manager of the Richland Operations Office of the Department of Energy.

(c) Department responsibilities

The Secretary shall provide the head of the Office with the resources and personnel necessary to carry out the responsibilities specified in subsection (b)(2) of this section.

(d) Report

The Assistant Secretary of Energy for Environmental Management shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, not later than November 29, 2000, a copy of the delegation of authority required by subsection (b)(3) of this section.

(e) Report

Not later than 2 years after the commencement of operations of the Office, the Secretary shall submit to the

committees referred to in subsection (d) of this section a report describing--

- (1) any progress in or resulting from the utilization of the Tank Waste Remediation System; and
- (2) any improvements in the management structure of the Department at Hanford with respect to the Tank Waste Remediation System as a result of the Office.

(f) Termination

(1) The Office shall terminate on the later to occur of the following dates:

(A) September 30, 2010.

(B) The date on which the Assistant Secretary of Energy for Environmental Management determines, in consultation with the head of the Office, that continuation of the Office is no longer necessary to carry out the responsibilities of the Department of Energy under the Tri-Party Agreement.

(2) The Assistant Secretary shall notify, in writing, the committees referred to in subsection (d) of this section of a determination under paragraph (1).

(3) In this subsection, the term "Tri-Party Agreement" means the Hanford Federal Facility Agreement and Consent Order entered into among the Department of Energy, the Environmental Protection Agency, and the State of Washington Department of Ecology.

CREDIT(S)

(Pub.L. 107-314, Div. D, Title XLIV, § 4442, as added and amended Pub.L. 108-136, Div. C, Title XXXI, § 3141(g)(17), Nov. 24, 2003, 117 Stat. 1767.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

2003 Acts. House Conference Report No. 108-354 and Statement by President, see 2003 U.S. Code Cong. and Adm. News, p. 1407.

Codifications

Section, originally enacted by Pub.L. 105-261, Div. C, Title XXXI, § 3139, Oct. 17, 1998, 112 Stat. 2250; Pub.L. 106-398, § 1 [Div. C, Title XXXI, § 3141], Oct. 30, 2000, 114 Stat. 1654, 1654A-463; Pub.L. 107-107, Div. C, Title XXXI, § 3135, Dec. 28, 2001, 115 Stat. 1368, which was not classified to the Code, was renumbered § 4442 of Title XLIV of Pub.L. 107-314, classified as this section and amended by Pub.L. 108-136, Div. C, Title XXXI, § 3141(g)(17), Nov. 24, 2003, 117 Stat. 1767.

Amendments

2003 Amendments. Subsec. (d). Pub.L. 108-136, § 3141(g)(17)(D), struck out "30 days after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001," and inserted "November 29, 2000,".

2001 Amendments. Subsec. (f). Pub.L. 107-107, § 3135, rewrote subsec. (f), which formerly read:

“(f) Termination

“(1) The Office shall terminate 5 years after the commencement of operations under this section unless the Secretary determines that termination on that date would disrupt effective management of the Hanford Tank Farm operations.

“(2) The Secretary shall notify, in writing, the committees referred to in subsection (d) of a determination under paragraph (1).”

2000 Amendments. Subsec. (b)(2). Pub.L. 106-398, § 1[Div. C, Title XXXI, § 3141(b)(1)], struck out “managing all aspects of the Tank Waste Remediation System (also referred to as the Hanford Tank Farm operations), including those portions under privatization contracts, of the Department of Energy at Hanford.” and inserted “managing, consistent with the policy direction established by the Department, all aspects of the River Protection Project, Richland, Washington.”

Subsec. (b)(3). Pub.L. 106-398, 1[Div. C, Title XXXI, § 3141(b)(2)], added par. (3).

Subsec. (c). Pub.L. 106-398, 1[Div. C, Title XXXI, § 3141(c)(1)], struck out “manager of the Office” and inserted “head of the Office”.

Pub.L. 106-398, § 1[Div. C, Title XXXI, § 3141(c)(2)], struck out “to manage the tank waste privatization program at Hanford in an efficient and streamlined manner.” and inserted “to carry out the responsibilities specified in subsection (b)(2) of this section.”

Subsec. (d). Pub.L. 106-398, § 1[Div. C, Title XXXI, § 3141(d)], rewrote subsec. (d), which formerly read: “**(d) Integrated management plan.**--Not later than 90 days after October 30, 2000, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committees on Commerce and on National Security of the House of Representatives an integrated management plan for all aspects of the Hanford Tank Farm operations, including the roles, responsibilities, and reporting relationships of the Office.”

50 U.S.C.A. § 2622, 50 USCA § 2622

Current through P.L. 110-180 (excluding P.L. 110-161 and 110-172) approved 1-8-08

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50 USC 2404

SEC. 3214. DEPUTY ADMINISTRATOR FOR DEFENSE PROGRAMS.⁴

- (a) IN GENERAL.—There is in the Administration a Deputy Administrator for Defense Programs, who is appointed by the President, by and with the advice and consent of the Senate.
- (b) DUTIES.—Subject to the authority, direction, and control of the Administrator, the Deputy Administrator for Defense Programs shall perform such duties and exercise such powers as the Administrator may prescribe, including the following:
- (1) Maintaining and enhancing the safety, reliability, and performance of the United States nuclear weapons stockpile, including the ability to design, produce, and test, in order to meet national security requirements.
 - (2) Directing, managing, and overseeing the nuclear weapons production facilities and the national security laboratories.
 - (3) Directing, managing, and overseeing assets to respond to incidents involving nuclear weapons and materials.

50 USC 2405

SEC. 3215. DEPUTY ADMINISTRATOR FOR DEFENSE NUCLEAR NONPROLIFERATION.

- (a) IN GENERAL.—There is in the Administration a Deputy Administrator for Defense Nuclear Nonproliferation, who is appointed by the President, by and with the advice and consent of the Senate.
- (b) DUTIES.—Subject to the authority, direction, and control of the Administrator, the Deputy Administrator for Defense Nuclear Nonproliferation shall perform such duties and exercise such powers as the Administrator may prescribe, including the following:
- (1) Preventing the spread of materials, technology, and expertise relating to weapons of mass destruction.
 - (2) Detecting the proliferation of weapons of mass destruction worldwide.
 - (3) Eliminating inventories of surplus fissile materials usable for nuclear weapons.
 - (4) Providing for international nuclear safety.

50 USC 2406

SEC. 3216. DEPUTY ADMINISTRATOR FOR NAVAL REACTORS.

- (a) IN GENERAL.—
- (1) There is in the Administration a Deputy Administrator for Naval Reactors. The director of the Naval Nuclear Propulsion Program provided for under the Naval Nuclear Propulsion

⁴ **Amendments** – 2001 – Subsec. (c). Pub. L. 107-107 struck out heading and text of subsec. (c). Text read as follows: "The head of each national security laboratory and nuclear weapons production facility shall, consistent with applicable contractual obligations, report to the Deputy Administrator for Defense Programs."

Executive Order shall serve as the Deputy Administrator for Naval Reactors.

(2) Within the Department of Energy, the Deputy Administrator shall report to the Secretary of Energy through the Administrator and shall have direct access to the Secretary and other senior officials in the Department.

(b) DUTIES.—The Deputy Administrator shall be assigned the responsibilities, authorities, and accountability for all functions of the Office of Naval Reactors under the Naval Nuclear Propulsion Executive Order.

(c) EFFECT ON EXECUTIVE ORDER.—Except as otherwise specified in this section and notwithstanding any other provision of this title, the provisions of the Naval Nuclear Propulsion Executive Order remain in full force and effect until changed by law.

(d) NAVAL NUCLEAR PROPULSION EXECUTIVE ORDER.—As used in this section, the Naval Nuclear Propulsion Executive Order is Executive Order No. 12344, dated February 1, 1982 (42 U.S.C. 7158 note) (as in force pursuant to section 1634 of the Department of Defense Authorization Act, 1985 (Public Law 98-525; 42 U.S.C. 7158 note)).

50 USC 2407

SEC. 3217. GENERAL COUNSEL.

There is a General Counsel of the Administration. The General Counsel is the chief legal officer of the Administration.

50 USC 2408

SEC. 3218. STAFF OF ADMINISTRATION.⁵

(a) IN GENERAL.—The Administrator shall maintain within the Administration sufficient staff to assist the Administrator in carrying out the duties and responsibilities of the Administrator.

(b) RESPONSIBILITIES.—The staff of the Administration shall perform, in accordance with applicable law, such of the functions of the Administrator as the Administrator shall prescribe. The Administrator shall assign to the staff responsibility for the following functions:

- (1) Personnel.
- (2) Legislative affairs.
- (3) Public affairs.
- (4) Liaison with the Department of Energy's Office of Intelligence and Counterintelligence.
- (5) Liaison with other elements of the Department of Energy and with other Federal agencies, State, tribal, and local governments, and the public.

⁵ Amendments – 2006 – Subsec. (b). Pub. L. 109-364, div. C, title XXXI, Sec. 3117(e), added par. (4), and redesignated former par. (4) as (5).

General/Flag Officer Position History

History

The Principal Assistant Deputy Administrator for Military Application (PADAMA) position was created by Section 25 of the Atomic Energy Act of 1954, as amended, 42 USC 2035. Section 25 created a Division of Military Application and provided that the Division be under the direction of an Assistant General Manager for Military Application. Section 25 states the Assistant General Manager for Military Application... "shall be appointed by the Commission and shall be an active commissioned officer of the Armed Services serving in general or flag officer rank or grade, as appropriate." (42 USC 2035(a)).

Section 104, Energy Reorganization Act of 1974, Public Law 93-438, 42 USC 5814, abolished the Atomic Energy Commission and repealed Sections 21 and 22 of the Atomic Energy Act of 1954, as amended (42 USC 2031 and 2032). It also transferred the Division of Military Application, established by Section 25 of the Atomic Energy Act, and transferred all functions and personnel to the Energy Research and Development Administration (ERDA).

Section 309, Department of Energy Organization Act, Public Law 95-91, 42 USC 7158, provided that the Division of Military Application, established by section 25 of the Atomic Energy Act, would transfer to the newly created Department of Energy under the Assistant Secretary. The Assistant Secretary would be responsible for... "[n]ational security functions, including those transferred from [ERDA] which relate to management and implementation of the nuclear weapons program and other national security functions involving nuclear weapons research and development."

In 1999, the National Nuclear Security Administration (NNSA) was created and the NNSA Act, Public Law 106-65, transferred all Defense Programs functions and personnel to the NNSA. The position was transferred to the NNSA as part of Defense Programs and given its current title consistent with the organizational structure of the NNSA. The PADAMA currently works for the Deputy Administrator for Defense Programs (DADP) within the NNSA.

Pub L 110-69

SEC. 5012. ADVANCED RESEARCH PROJECTS AGENCY--ENERGY.

(a) Definitions- In this section:

- (1) ARPA-E- The term 'ARPA-E' means the Advanced Research Projects Agency--Energy established by subsection (b).
- (2) DIRECTOR- The term 'Director' means the Director of ARPA-E appointed under subsection (d).
- (3) FUND- The term 'Fund' means the Energy Transformation Acceleration Fund established under subsection (m)(1).

(b) Establishment- There is established the Advanced Research Projects Agency--Energy within the Department to overcome the long-term and high-risk technological barriers in the development of energy technologies.

(c) Goals-

- (1) IN GENERAL- The goals of ARPA-E shall be—
 - (A) to enhance the economic and energy security of the United States through the development of energy technologies that result in—
 - (i) reductions of imports of energy from foreign sources;
 - (ii) reductions of energy-related emissions, including greenhouse gases; and
 - (iii) improvement in the energy efficiency of all economic sectors; and
 - (B) to ensure that the United States maintains a technological lead in developing and deploying advanced energy technologies.
- (2) MEANS- ARPA-E shall achieve the goals established under paragraph (1) through energy technology projects by—
 - (A) identifying and promoting revolutionary advances in fundamental sciences;
 - (B) translating scientific discoveries and cutting-edge inventions into technological innovations; and
 - (C) accelerating transformational technological advances in areas that industry by itself is not likely to undertake because of technical and financial uncertainty.

(d) Director-

- (1) APPOINTMENT- There shall be in the Department of Energy a Director of ARPA-E, who shall be appointed by the President, by and with the advice and consent of the Senate.
- (2) QUALIFICATIONS- The Director shall be an individual who, by reason of professional background and experience, is especially qualified to advise the Secretary on, and manage research programs addressing, matters pertaining to long-term and high-risk technological barriers to the development of energy technologies.
- (3) RELATIONSHIP TO SECRETARY- The Director shall report to the Secretary.
- (4) RELATIONSHIP TO OTHER PROGRAMS- No other programs within the Department shall report to the Director.

(e) Responsibilities- The responsibilities of the Director shall include--

- (1) approving all new programs within ARPA-E;
- (2) developing funding criteria and assessing the success of programs through the establishment of technical milestones;
- (3) administering the Fund through awards to institutions of higher education, companies, research foundations, trade and industry research collaborations, or consortia of such entities, which may include federally-funded research and development centers, to achieve the goals described in subsection (c) through targeted acceleration of—
 - (A) novel early-stage energy research with possible technology applications;
 - (B) development of techniques, processes, and technologies, and related testing and evaluation;
 - (C) research and development of manufacturing processes for novel energy technologies; and
 - (D) coordination with nongovernmental entities for demonstration of technologies and research applications to facilitate technology transfer; and
- (4) terminating programs carried out under this section that are not achieving the goals of the programs.

(f) Personnel-

(1) PROGRAM MANAGERS-

(A) IN GENERAL- The Director shall designate employees to serve as program managers for each of the programs established pursuant to the responsibilities established for ARPA-E under subsection (e).

(B) RESPONSIBILITIES- A program manager of a program shall be responsible for—

(i) establishing research and development goals for the program, including through the convening of workshops and conferring with outside experts, and publicizing the goals of the program to the public and private sectors;

(ii) soliciting applications for specific areas of particular promise, especially areas that the private sector or the Federal Government are not likely to undertake alone;

(iii) building research collaborations for carrying out the program;

(iv) selecting on the basis of merit, with advice under subsection (j) as appropriate, each of the projects to be supported under the program after considering—

(I) the novelty and scientific and technical merit of the proposed projects;

(II) the demonstrated capabilities of the applicants to successfully carry out the proposed project;

(III) the consideration by the applicant of future commercial applications of the project, including the feasibility of partnering with 1 or more commercial entities; and

(IV) such other criteria as are established by the Director;

(v) monitoring the progress of projects supported under the program; and

(vi) recommending program restructure or termination of research partnerships or whole projects.

(C) TERM- The term of a program manager shall be 3 years and may be renewed.

(2) HIRING AND MANAGEMENT-

(A) IN GENERAL- The Director shall have the authority to--

(i) make appointments of scientific, engineering, and professional personnel without regard to the civil service laws; and

(ii) fix the compensation of such personnel at a rate to be determined by the Director.

(B) NUMBER- The Director shall appoint not less than 70, and not more than 120, personnel under this section.

(C) PRIVATE RECRUITING FIRMS- The Secretary, or the Director serving as an agent of the Secretary, may contract with private recruiting firms for the hiring of qualified technical staff to carry out this section.

(D) ADDITIONAL STAFF- The Director may use all authorities in existence on the date of enactment of this Act that are provided to the Secretary to hire administrative, financial, and clerical staff as necessary to carry out this section.

(g) Reports and Roadmaps-

(1) ANNUAL REPORT- As part of the annual budget request submitted for each fiscal year, the Director shall provide to the relevant authorizing and appropriations committees of Congress a report describing projects supported by ARPA-E during the previous fiscal year.

(2) STRATEGIC VISION ROADMAP- Not later than October 1, 2008, and October 1, 2011, the Director shall provide to the relevant authorizing and appropriations committees of Congress a roadmap describing the strategic vision that ARPA-E will use to guide the choices of ARPA-E for future technology investments over the following 3 fiscal years.

(h) Coordination and Nonduplication-

(1) IN GENERAL- To the maximum extent practicable, the Director shall ensure that the activities of ARPA-E are coordinated with, and do not duplicate the efforts of, programs and laboratories within the Department and other relevant research agencies.

(2) TECHNOLOGY TRANSFER COORDINATOR- To the extent appropriate, the Director may coordinate technology transfer efforts with the Technology Transfer Coordinator appointed under section 1001 of the Energy Policy Act of 2005 (42 U.S.C. 16391).

(i) Federal Demonstration of Technologies- The Secretary shall make information available to purchasing and procurement programs of Federal agencies regarding the potential to demonstrate technologies resulting from activities funded through ARPA-E.

(j) Advice-

- (1) **ADVISORY COMMITTEES-** The Director may seek advice on any aspect of ARPA-E from--
 - (A) an existing Department of Energy advisory committee; and
 - (B) a new advisory committee organized to support the programs of ARPA-E and to provide advice and assistance on--
 - (i) specific program tasks; or
 - (ii) overall direction of ARPA-E.
- 2) **ADDITIONAL SOURCES OF ADVICE-** In carrying out this section, the Director may seek advice and review from--
 - (A) the President's Committee of Advisors on Science and Technology; and
 - (B) any professional or scientific organization with expertise in specific processes or technologies under development by ARPA-E.

(k) ARPA-E Evaluation-

- (1) **IN GENERAL-** After ARPA-E has been in operation for 4 years, the Secretary shall offer to enter into a contract with the National Academy of Sciences under which the National Academy shall conduct an evaluation of how well ARPA-E is achieving the goals and mission of ARPA-E.
- (2) **INCLUSIONS-** The evaluation shall include--
 - (A) the recommendation of the National Academy of Sciences on whether ARPA-E should be continued or terminated; and
 - (B) a description of lessons learned from operation of ARPA-E.
- (3) **AVAILABILITY-** On completion of the evaluation, the evaluation shall be made available to Congress and the public.

(l) Existing Authorities- The authorities granted by this section are--

- (1) in addition to existing authorities granted to the Secretary; and
- (2) are not intended to supersede or modify any existing authorities.

(m) Funding-

- (1) **FUND-** There is established in the Treasury of the United States a fund, to be known as the 'Energy Transformation Acceleration Fund', which shall be administered by the Director for the purposes of carrying out this section.
- (2) **AUTHORIZATION OF APPROPRIATIONS-** Subject to paragraphs (4) and (5), there are authorized to be appropriated to the Director for deposit in the Fund, without fiscal year limitation--
 - (A) \$300,000,000 for fiscal year 2008; and
 - (B) such sums as are necessary for each of fiscal years 2009 and 2010.
- (3) **SEPARATE BUDGET AND APPROPRIATION-**
 - (A) **BUDGET REQUEST-** The budget request for ARPA-E shall be separate from the rest of the budget of the Department.
 - (B) **APPROPRIATIONS-** Appropriations to the Fund shall be separate and distinct from the rest of the budget for the Department.
- (4) **LIMITATION-** No amounts may be appropriated for ARPA-E for fiscal year 2008 unless the amount appropriated for the activities of the Office of Science of the Department for fiscal year 2008 exceeds the amount appropriated for the Office for fiscal year 2007, as adjusted for inflation in accordance with the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor.
- (5) **ALLOCATION-** Of the amounts appropriated for a fiscal year under paragraph (2)--
 - (A) not more than 50 percent of the amount shall be used to carry out subsection (e)(3)(D);
 - (B) at least 2.5 percent of the amount shall be used for technology transfer and outreach activities; and
 - (C) no funds may be used for construction of new buildings or facilities during the 5-year period beginning on the date of enactment of this Act.

February 10, 1996
NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1996

SEC. 5125. AGENCY CHIEF INFORMATION OFFICER.

<< 44 USCA § 3506 >>

- (a) DESIGNATION OF CHIEF INFORMATION OFFICERS.--Section 3506 of title 44, United States Code, is amended--
- (1) in subsection (a)--
 - (A) in paragraph (2)(A), by striking out "senior official" and inserting in lieu thereof "Chief Information Officer";
 - (B) in paragraph (2)(B)--
 - (i) by striking out "senior officials" in the first sentence and inserting in lieu thereof "Chief Information Officers";
 - (ii) by striking out "official" in the second sentence and inserting in lieu thereof "Chief Information Officer"; and
 - (iii) by striking out "officials" in the second sentence and inserting in lieu thereof "Chief Information Officers"; and
 - (C) in paragraphs (3) and (4), by striking out "senior official" each place it appears and inserting in lieu thereof "Chief Information Officer"; and
 - (2) in subsection (c)(1), by striking out "official" in the matter preceding subparagraph (A) and inserting in lieu thereof "Chief Information Officer".

<< 40 USCA § 1425 >>

- (b) GENERAL RESPONSIBILITIES.--The Chief Information Officer of an executive agency shall be responsible for--
- (1) providing advice and other assistance to the head of the executive agency and other senior management personnel of the executive agency to ensure that information technology is acquired and information resources are managed for the executive agency in a manner that implements the policies and procedures of this division, consistent with chapter 35 of title 44, United States Code, and the priorities established by the head of the executive agency;
 - (2) developing, maintaining, and facilitating the implementation of a sound and integrated information technology architecture for the executive agency; and
 - (3) promoting the effective and efficient design and operation of all major information resources management processes for the executive agency, including improvements to work processes of the executive agency.
- (c) DUTIES AND QUALIFICATIONS.--The Chief Information Officer of an agency that is listed in section 901(b) of title 31, United States Code, shall--
- (1) have information resources management duties as that official's primary duty;
 - (2) monitor the performance of information technology programs of the agency, evaluate the performance of those programs on the basis of the applicable performance measurements, and advise the head of the agency regarding whether to continue, modify, or terminate a program or project; and
 - (3) annually, as part of the strategic planning and performance evaluation process required (subject to section 1117 of title 31, United States Code) under section 306 of title 5, United States Code, and sections 1105(a)(29), 1115, 1116, 1117, and 9703 of title 31, United States Code--
 - (A) assess the requirements established for agency personnel regarding knowledge and skill in information resources management and the adequacy of such requirements for facilitating the achievement of the performance goals established for information resources management;
 - (B) assess the extent to which the positions and personnel at the executive level of the agency and the positions and personnel at management level of the agency below the executive level

meet those requirements;

(C) in order to rectify any deficiency in meeting those requirements, develop strategies and specific plans for hiring, training, and professional development; and

(D) report to the head of the agency on the progress made in improving information resources management capability.

(d) INFORMATION TECHNOLOGY ARCHITECTURE DEFINED.--In this section, the term "information technology architecture", with respect to an executive agency, means an integrated framework for evolving or maintaining existing information technology and acquiring new information technology to achieve the agency's strategic goals and information resources management goals.

<< 5 USCA § 5315 >>

<< 40 USCA § 1425 >>

(e) EXECUTIVE LEVEL IV.--Section 5315 of title 5, United States Code, is amended by adding at the end the following:

"Chief Information Officer, Department of Agriculture.

"Chief Information Officer, Department of Commerce.

"Chief Information Officer, Department of Defense (unless the official designated as the Chief Information Officer of the Department of Defense is an official listed under section 5312, 5313, or 5314 of this title).

"Chief Information Officer, Department of Education.

"Chief Information Officer, Department of Energy.

"Chief Information Officer, Department of Health and Human Services.

"Chief Information Officer, Department of Housing and Urban Development.

"Chief Information Officer, Department of Interior.

"Chief Information Officer, Department of Justice.

"Chief Information Officer, Department of Labor.

"Chief Information Officer, Department of State.

"Chief Information Officer, Department of Transportation.

"Chief Information Officer, Department of Treasury.

"Chief Information Officer, Department of Veterans Affairs.

"Chief Information Officer, Environmental Protection Agency.

"Chief Information Officer, National Aeronautics and Space Administration.

"Chief Information Officer, Agency for International Development.

"Chief Information Officer, Federal Emergency Management Agency.

"Chief Information Officer, General Services Administration.

"Chief Information Officer, National Science Foundation.

"Chief Information Officer, Nuclear Regulatory Agency.

"Chief Information Officer, Office of Personnel Management.

"Chief Information Officer, Small Business Administration."

<< 40 USCA § 1426 >>

SEC. 5126. ACCOUNTABILITY.

The head of each executive agency, in consultation with the Chief Information Officer and the Chief Financial Officer of that executive agency (or, in the case of an executive agency without a Chief Financial Officer, any comparable official), shall establish policies and procedures that--

(1) ensure that the accounting, financial, and asset management systems and other information systems of the executive agency are designed, developed, maintained, and used effectively to provide financial or program performance data for financial statements of the executive agency;

(2) ensure that financial and related program performance data are provided on a reliable, consistent, and timely basis to executive agency financial management systems; and

(3) ensure that financial statements support--

- (A) assessments and revisions of mission-related processes and administrative processes of the executive agency; and
- (B) performance measurement of the performance in the case of investments made by the agency in information systems.

<< 40 USCA § 1427 >>

SEC. 5127. SIGNIFICANT DEVIATIONS.

The head of an executive agency shall identify in the strategic information resources management plan required under section 3506(b)(2) of title 44, United States Code, any major information technology acquisition program, or any phase or increment of such a program, that has significantly deviated from the cost, performance, or schedule goals established for the program.

Westlaw

41 U.S.C.A. § 414

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Effective: November 24, 2003

United States Code Annotated Currentness

Title 41. Public Contracts

↳ Chapter 7. Office of Federal Procurement Policy (Refs & Annos)

→ § 414. Chief acquisition officers and senior procurement executives

(a) Establishment of agency chief acquisition officers

(1) The head of each executive agency described in section 901(b)(1) (other than the Department of Defense) or section 901(b)(2)(C) of Title 31, with a Chief Financial Officer appointed or designated under section 901(a) of Title 31 shall appoint or designate a non-career employee as Chief Acquisition Officer for the agency, who shall--

(A) have acquisition management as that official's primary duty; and

(B) advise and assist the head of the executive agency and other agency officials to ensure that the mission of the executive agency is achieved through the management of the agency's acquisition activities.

(b) Authority and functions of agency chief acquisition officers

The functions of each Chief Acquisition Officer shall include--

(1) monitoring the performance of acquisition activities and acquisition programs of the executive agency, evaluating the performance of those programs on the basis of applicable performance measurements, and advising the head of the executive agency regarding the appropriate business strategy to achieve the mission of the executive agency;

(2) increasing the use of full and open competition in the acquisition of property and services by the executive agency by establishing policies, procedures, and practices that ensure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Government's requirements (including performance and delivery schedules) at the lowest cost or best value considering the nature of the property or service procured;

(3) increasing appropriate use of performance-based contracting and performance specifications;

(4) making acquisition decisions consistent with all applicable laws and establishing clear lines of authority, accountability, and responsibility for acquisition decisionmaking within the executive agency;

(5) managing the direction of acquisition policy for the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency;

(6) developing and maintaining an acquisition career management program in the executive agency to ensure that there is an adequate professional workforce; and

(7) as part of the strategic planning and performance evaluation process required under section 306 of Title 5, and sections 1105(a)(28), 1115, 1116, and 9703 of Title 31--

(A) assessing the requirements established for agency personnel regarding knowledge and skill in acquisition resources management and the adequacy of such requirements for facilitating the achievement of the performance goals established for acquisition management;

(B) in order to rectify any deficiency in meeting such requirements, developing strategies and specific plans for hiring, training, and professional development; and

(C) reporting to the head of the executive agency on the progress made in improving acquisition management capability.

(c) Senior procurement executive

(1) The head of each executive agency shall designate a senior procurement executive who shall be responsible for management direction of the procurement system of the executive agency, including implementation of the unique procurement policies, regulations, and standards of the executive agency.

(2) In the case of an executive agency for which a chief acquisition officer has been appointed or designated under subsection (a) of this section, the head of such executive agency shall either

(A) designate the Chief Acquisition Officer as the senior procurement executive for the executive agency; or

(B) ensure that the senior procurement executive designated for the executive agency under paragraph (1) reports directly to the Chief Acquisition Officer without intervening authority.

CREDIT(S)

(Pub.L. 93-400, § 16, as added Pub.L. 98-191, § 7, Dec. 1, 1983, 97 Stat. 1330, and amended Pub.L. 98-369, Div. B, Title VII, § 2732(b)(2), July 18, 1984, 98 Stat. 1199; Pub.L. 108-136, Div. A, Title XIV, § 1421(a)(1), Nov. 24, 2003, 117 Stat. 1666.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1983 Acts. Section 7 also amends the OFPP Act by adding a section 16 on Executive Agency Responsibilities. This section incorporates management directives prescribed by Executive order 12352, which require the head of each executive agency to (1) increase the use of effective competition, (2) establish clear lines of authority, accountability and responsibility for procurement decisionmaking, (3) designate a procurement executive who will be responsible for managing the agency's procurement system, and (4) develop and maintain a procurement career management program. In addition, agencies are required to participate, to the extent practicable, in inter-agency groups established by the Administrator. Senate Report No. 98-214.

1984 Acts. House Report No. 98-432(Part II), Senate Report Nos. 98-50 and 98-297, and House Conference Report No. 98-861, see 1984 U.S. Code Cong. and Adm. News, p. 697.

2003 Acts. House Conference Report No. 108-354 and Statement by President, see 2003 U.S. Code Cong. and

"(f) Extension of Policies.--

"(1) In general.-- The Secretary shall extend through August 31, 2003, and may extend through December 31, 2003, the termination date of any insurance policy that the Department of Transportation issued to an air carrier under subsection (a) and that is in effect on the date of enactment of this subsection on no less favorable terms to the air carrier than existed on June 19, 2002; except that the Secretary shall amend the insurance policy, subject to such terms and conditions as the Secretary may prescribe, to add coverage for losses or injuries to aircraft hulls, passengers, and crew at the limits carried by air carriers for such losses and injuries as of such date of enactment and at an additional premium comparable to the premium charged for third-party casualty coverage under such policy.

"(2) Special rules.-- Notwithstanding paragraph (1)--

"(A) in no event shall the total premium paid by the air carrier for the policy, as amended, be more than twice **[**2287]** the premium that the air carrier was paying to the Department of Transportation for its third party policy as of June 19, 2002; and

"(B) the coverage in such policy shall begin with the first dollar of any covered loss that is incurred."

[*1203] Sec. 1203. <49 USC 44306> CORRECTION OF REFERENCE.

Effective November 19, 2001, section 147 of the Aviation and Transportation Security Act (Public Law 107-71) is amended by striking "(b)" and inserting "(c)".

[*1204] Sec. 1204. REPORT.

Not later than 90 days after the date of enactment of this Act, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that--

(A) evaluates the availability and cost of commercial war risk insurance for air carriers and other aviation entities for passengers and third parties;

(B) analyzes the economic effect upon air carriers and other aviation entities of available commercial war risk insurance; and

(C) describes the manner in which the Department could provide an alternative means of providing aviation war risk reinsurance covering passengers, crew, and third parties through use of a risk-retention group or by other means.

TITLE XIII--FEDERAL WORKFORCE IMPROVEMENT

Subtitle A--Chief Human Capital Officers

[*1301] Sec. 1301. <5 USC 101 note> SHORT TITLE.

This title may be cited as the "Chief Human Capital Officers Act of 2002".

[*1302] Sec. 1302. AGENCY CHIEF HUMAN CAPITAL OFFICERS.

(a) In General.--Part II of title 5, United States Code, is amended by inserting after chapter 13 the following:

CHAPTER 14--AGENCY CHIEF HUMAN CAPITAL OFFICERS

"Sec.

"1401. Establishment of agency Chief Human Capital Officers.

"1402. Authority and functions of agency Chief Human Capital Officers.

"Sec. 1401. Establishment of agency Chief Human Capital Officers

"The head of each agency referred to under paragraphs (1) and (2) of section 901(b) of title 31 shall appoint or designate a Chief Human Capital Officer, who shall--

"(1) advise and assist the head of the agency and other agency officials in carrying out the agency's responsibilities **【**2288】** for selecting, developing, training, and managing a high-quality, productive workforce in accordance with merit system principles;

"(2) implement the rules and regulations of the President and the Office of Personnel Management and the laws governing the civil service within the agency; and

"(3) carry out such functions as the primary duty of the Chief Human Capital Officer.

"Sec. 1402. Authority and functions of agency Chief Human Capital Officers

"(a) The functions of each Chief Human Capital Officer shall include--

"(1) setting the workforce development strategy of the agency;

"(2) assessing workforce characteristics and future needs based on the agency's mission and strategic plan;

"(3) aligning the agency's human resources policies and programs with organization mission, strategic goals, and performance outcomes;

"(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

"(5) identifying best practices and benchmarking studies, and

"(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth.

"(b) In addition to the authority otherwise provided by this section, each agency Chief Human Capital Officer--

"(1) shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material that--

"(A) are the property of the agency or are available to the agency; and

"(B) relate to programs and operations with respect to which that agency Chief Human Capital Officer has responsibilities under this chapter; and

"(2) may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this chapter from any Federal, State, or local governmental entity."

(b) Technical and Conforming Amendment.--The table of chapters for chapters for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 13 the