

L. 93-400, which was classified to section 418b of former Title 41, Public Contracts, and was repealed and restated as section 1707 of Title 41, Public Contracts, by Pub. L. 111-350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855.

#### AMENDMENTS

1992—Pub. L. 102-558 amended section generally. Prior to amendment, section read as follows: “The functions exercised under this Act shall be excluded from the operation of the Administrative Procedure Act (60 Stat. 237) except as to the requirements of section 3 thereof. Any rule, regulation, or order, or amendment thereto, issued under authority of this Act shall be accompanied by a statement that in the formulation thereof there has been consultation with industry representatives, including trade association representatives, and that consideration has been given to their recommendations, or that special circumstances have rendered such consultation impracticable or contrary to the interest of the national defense, but no such rule, regulation, or order shall be invalid by reason of any subsequent finding by judicial or other authority that such a statement is inaccurate.”

#### EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-558, title I, § 136(b), Oct. 28, 1992, 106 Stat. 4217, provided that: “Section 709 of the Defense Production Act of 1950 (50 U.S.C. App. 2159), as amended by subsection (a) of this section, shall not apply to any regulation issued in proposed or final form on or before the date of enactment of this Act [Oct. 28, 1992].”

#### TERMINATION DATE

Termination of section, see section 2166(a) of this Appendix.

### § 2160. Employment of personnel; appointment policies; nucleus executive reserve; use of confidential information by employees; printing and distribution of reports

(a) Repealed. June 28, 1955, ch. 189, § 12(c)(1), 69 Stat. 180.

(b)(1) The President is further authorized, to the extent he deems it necessary and appropriate in order to carry out the provisions of this Act [sections 2061 to 2170, 2171, and 2172 of this Appendix] and subject to such regulations as he may issue, to employ persons of outstanding experience and ability without compensation;

(2) The President shall be guided in the exercise of the authority provided in this subsection by the following policies:

(i) So far as possible, operations under the Act shall be carried on by full-time, salaried employees of the Government, and appointments under this authority shall be to advisory or consultative positions only.

(ii) Appointments to positions other than advisory or consultative may be made under this authority only when the requirements of the position are such that the incumbent must personally possess outstanding experience and ability not obtainable on a full-time, salaried basis.

(3) Appointees under this subsection shall, when policy matters are involved, be limited to advising appropriate full-time salaried Government officials who are responsible for making policy decisions.

(4) Appointments under this subsection shall be supported by written certification by the head of the employing department or agency—

(i) that the appointment is necessary and appropriate in order to carry out the provisions of the Act [sections 2061 to 2170, 2171, and 2172 of this Appendix];

(ii) that the duties of the position to which the appointment is being made require outstanding experience and ability;

(iii) that the appointee has the outstanding experience and ability required by the position; and

(iv) that the department or agency head has been unable to obtain a person with the qualifications necessary for the position on a full-time, salaried basis.

#### (5) NOTICE AND FINANCIAL DISCLOSURE REQUIREMENTS.—

(A) PUBLIC NOTICE OF APPOINTMENT.—The head of any department or agency who appoints any individual under this subsection shall publish a notice of such appointment in the Federal Register, including the name of the appointee, the employing department or agency, the title of the appointee's position, and the name of the appointee's private employer.

(B) FINANCIAL DISCLOSURE.—Any individual appointed under this subsection who is not required to file a financial disclosure report pursuant to section 101 of the Ethics in Government Act of 1978, shall file a confidential financial disclosure report pursuant to section 107 of that Act with the appointing department or agency.

(6) The Director of the Office of Personnel Management shall carry out a biennial survey of appointments made under this subsection and shall report his or her findings to the President and make such recommendations as he or she may deem proper.

(7) Persons appointed under the authority of this subsection may be allowed reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions for which they were appointed in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5, United States Code.

(c) The President is authorized, to the extent he deems it necessary and appropriate in order to carry out the provisions of this Act [sections 2061 to 2170, 2171, and 2172 of this Appendix] to employ experts and consultants or organizations thereof as authorized by section 55a<sup>1</sup> of title 5 of the United States Code [5 U.S.C. 3109]. Individuals so employed may be compensated at rates not in excess of \$50 per diem and while away from their homes or regular places of business they may be allowed transportation and not to exceed \$15 per diem in lieu of subsistence and other expenses while so employed.

(d) The President may utilize the services of Federal, State, and local agencies and may utilize and establish such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed.

(e) The President is further authorized to provide for the establishment and training of a nu-

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

cleus executive reserve for employment in executive positions in Government during periods of national defense emergency, as determined by the President. Members of this executive reserve who are not full-time Government employees may be allowed transportation and per diem in lieu of subsistence, in accordance with title 5 of the United States Code (with respect to individuals serving without pay, while away from their homes or regular places of business), for the purpose of participating in the executive reserve training program.

(f) Whoever, being an officer or employee of the United States or any department or agency thereof (including any Member of the Senate or House of Representatives), receives, by virtue of his office or employment, confidential information, and (1) uses such information in speculating directly or indirectly on any commodity exchange, or (2) discloses such information for the purpose of aiding any other person so to speculate, shall be fined not more than \$10,000 or imprisoned not more than one year, or both. As used in this section, the term “speculate” shall not include a legitimate hedging transaction, or a purchase or sale which is accompanied by actual delivery of the commodity.

(g) The President, when he deems such action necessary, may make provision for the printing and distribution of reports, in such number and in such manner as he deems appropriate, concerning the actions taken to carry out the objectives of this Act [sections 2061 to 2170, 2171, and 2172 of this Appendix].

(Sept. 8, 1950, ch. 932, title VII, § 710, 64 Stat. 819; July 31, 1951, ch. 275, title I, § 109(f), 65 Stat. 139; June 28, 1955, ch. 189, § 12(c)(1), 69 Stat. 180; Aug. 9, 1955, ch. 655, §§ 7, 8, 69 Stat. 582, 583; Pub. L. 94-152, § 5, Dec. 16, 1975, 89 Stat. 820; Pub. L. 102-558, title I, § 143, Oct. 28, 1992, 106 Stat. 4217; Pub. L. 111-67, § 10, Sept. 30, 2009, 123 Stat. 2019.)

#### REFERENCES IN TEXT

Sections 101 and 107 of the Ethics in Governments Act of 1978, referred to in subsec. (b)(5)(B), are sections 101 and 107 of Pub. L. 95-521, which are set out in the Appendix to Title 5, Government Organization and Employees.

Section 55a of title 5, referred to in subsec. (c), which was based on section 15 of act Aug. 2, 1946, ch. 744, 60 Stat. 810, was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof as section 3109 of Title 5.

#### AMENDMENTS

2009—Subsec. (b)(2)(iii). Pub. L. 111-67, § 10(1)(A), struck out cl. (iii), which read as follows: “In the appointment of personnel and in assignment of their duties, the head of the department or agency involved shall take steps to avoid, to as great an extent as possible, any conflict between the governmental duties and the private interests of such personnel.”

Subsec. (b)(4), (5). Pub. L. 111-67, § 10(1)(B), (C), redesignated pars. (5) and (6) as (4) and (5), respectively, and struck out former par. (4), which exempted persons employed under subsec. (b) from certain provisions restricting activities of and payments to retired military officers and public officials, with specific exceptions.

Subsec. (b)(6). Pub. L. 111-67, § 10(1)(D), substituted “The Director of the Office of Personnel Management shall carry out a biennial survey of” for “At least once every three months the Director of the Office of Personnel Management shall survey”.

Pub. L. 111-67, § 10(1)(C), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (b)(7), (8). Pub. L. 111-67, § 10(1)(C), redesignated par. (8) as (7). Former par. (7) redesignated (6).

Subsec. (c). Pub. L. 111-67, § 10(2), struck out at end “The President is authorized to provide by regulation for the exemption of such persons from the operation of sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code and section 190 of the Revised Statutes (5 U.S.C. 99).”

Subsec. (d). Pub. L. 111-67, § 10(3), substituted “needed.” for “needed; and he is authorized to provide by regulation for the exemption of persons whose services are utilized under this subsection from the operation of sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code and section 190 of the Revised Statutes (5 U.S.C. 99).”

Subsec. (e). Pub. L. 111-67, § 10(4), substituted “national defense emergency, as determined by the President” for “emergency” and struck out at end “The President is authorized to provide by regulation for the exemption of such persons who are not full-time Government employees from the operation of sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code and section 190 of the Revised Statutes (5 U.S.C. 99).”

1992—Subsec. (b)(6). Pub. L. 102-558, § 143(a), amended par. (6) generally. Prior to amendment, par. (6) read as follows: “The heads of the departments or agencies making appointments under this subsection shall file with the Division of the Federal Register for publication in the Federal Register a statement including the name of the appointee, the employing department or agency, the title of his position, and the name of his private employer, and the appointee shall file with such Division for publication in the Federal Register a statement listing the names of any corporations of which he is an officer or director or within sixty days preceding his appointment has been an officer or director, or in which he owns, or within sixty days preceding his appointment has owned, any stocks, bonds, or other financial interests, and the names of any partnerships in which he is, or was within sixty days preceding his appointment, a partner, and the names of any other businesses in which he owns, or within such sixty-day period has owned, any similar interest. At the end of each succeeding six-month period, the appointee shall file with such Division for publication in the Federal Register a statement showing any changes in such interests during such period.”

Subsec. (b)(7). Pub. L. 102-558, § 143(b)(1), substituted “Director of the Office of Personnel Management” for “Chairman of the United States Civil Service Commission” and “his or her findings” for “his findings”, struck out “and the Joint Committee on Defense Production” after “to the President”, and substituted “he or she may” for “he may”.

Subsec. (b)(8). Pub. L. 102-558, § 143(b)(2), substituted “reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions for which they were appointed in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5, United States Code” for “transportation and not to exceed \$15 per diem in lieu of subsistence while away from their homes or regular places of business pursuant to such appointment”.

1975—Subsec. (e). Pub. L. 94-152 substituted provisions authorizing per diem in lieu of subsistence in accordance with provisions of title 5 of the United States Code with respect to individuals serving without pay while away from their homes or regular places of business, for provisions authorizing \$15 per diem in lieu of subsistence.

1955—Subsec. (a). Act June 28, 1955, repealed subsec. (a) which authorized President to place positions and employ persons temporarily in grades 16, 17, and 18 of the General Schedule established by Classification Act of 1949.

Subsec. (b). Act Aug. 9, 1955, § 7, imposed additional restrictions on employment of persons without compensation by establishing guides to be used by Presi-

dent, requiring written certification, publication of statements, and a survey of appointments.

Subsecs. (e) to (g). Act Aug. 9, 1955, §8, added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

1951—Subsec. (f). Act July 31, 1951, added subsec. (f).

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 2062 of this Appendix.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-152 effective at close of Nov. 30, 1975, see section 9 of Pub. L. 94-152, as amended, set out as a note under section 2158 of this Appendix.

#### EFFECTIVE DATE OF 1955 AMENDMENTS

Amendment by act Aug. 9, 1955, effective as of close of July 31, 1955, see section 11 of act Aug. 9, 1955, set out as a note under section 2062 of this Appendix.

Amendment by act June 28, 1955, effective June 28, 1955, see section 13(b) of act June 28, 1955.

#### TERMINATION DATE

Termination of section, see section 2166(a) of this Appendix.

#### DELEGATION OF FUNCTIONS

Functions of President under act Sept. 8, 1950 [section 2061 et seq. of this Appendix], relating to production, conservation, use, control, distribution, and allocation of energy, delegated to Secretary of Energy, see section 4 of Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, set out under section 761 of Title 15, Commerce and Trade.

For delegation of authority of President under subsecs. (b), (c), and (e) of this section, see sections 501(b) and 502 of Ex. Ord. No. 13603, Mar. 16, 2012, 77 F.R. 16656, set out as a note under section 2153 of this Appendix.

#### ANNUAL SUBMISSION OF REPORT

Pub. L. 89-348, §2(11), Nov. 8, 1965, 79 Stat. 1313, which modified former subsec. (b)(7) (now (b)(6)) of this section to require annual instead of quarterly submission of the report to the Congress, was rendered obsolete by the amendment by section 10(1)(D) of Pub. L. 111-67. See 2009 Amendment note above.

#### EXECUTIVE ORDER NO. 10182

Ex. Ord. No. 10182, Nov. 21, 1950, 15 F.R. 8013, as amended by Ex. Ord. No. 10205, Jan. 16, 1951, 16 F.R. 419, which provided for appointments and exemptions, was revoked by Ex. Ord. No. 10647, Nov. 28, 1955, 20 F.R. 8769, formerly set out below.

#### EXECUTIVE ORDER NO. 10647

Ex. Ord. No. 10647, Nov. 28, 1955, 20 F.R. 8769, as amended by Ex. Ord. No. 11355, May 26, 1967, 32 F.R. 7803; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, which delegated authority to make appointments, was revoked by section 904(a)(4) of Ex. Ord. No. 12919, June 3, 1994, 59 F.R. 29533, set out as a note under section 2153 of this Appendix.

### § 2161. Authorization of appropriations; availability of funds

There are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes of this Act [sections 2061 to 2170, 2171, and 2172 of this Appendix] by the President and such agencies as he may designate or create. Funds made available pursuant to this paragraph for the purposes of this Act may be allocated or transferred for any of the purposes of

this Act, with the approval of the Office of Management and Budget, to any agency designated to assist in carrying out this Act. Funds so allocated or transferred shall remain available for such period as may be specified in the Acts making such funds available.

(Sept. 8, 1950, ch. 932, title VII, §711, 64 Stat. 820; Pub. L. 93-426, §3, Sept. 30, 1974, 88 Stat. 1167; Pub. L. 96-294, title I, §105(a), June 30, 1980, 94 Stat. 632; Pub. L. 98-265, §5, Apr. 17, 1984, 98 Stat. 151; Pub. L. 99-441, §3, Oct. 3, 1986, 100 Stat. 1117; Pub. L. 101-137, §9(b), Nov. 3, 1989, 103 Stat. 826; Pub. L. 102-99, §3, Aug. 17, 1991, 105 Stat. 487; Pub. L. 102-558, title I, §§144, 152, 161, Oct. 28, 1992, 106 Stat. 4218, 4219; Pub. L. 104-64, §3, Dec. 18, 1995, 109 Stat. 689; Pub. L. 105-261, div. A, title X, §1072(b), Oct. 17, 1998, 112 Stat. 2137; Pub. L. 106-65, div. A, title X, §1063(b), Oct. 5, 1999, 113 Stat. 769; Pub. L. 106-363, §2, Oct. 27, 2000, 114 Stat. 1407; Pub. L. 107-47, §3, Oct. 5, 2001, 115 Stat. 260; Pub. L. 108-195, §2(b), Dec. 19, 2003, 117 Stat. 2892; Pub. L. 110-367, §3, Oct. 8, 2008, 122 Stat. 4026; Pub. L. 111-67, §2(b), Sept. 30, 2009, 123 Stat. 2007.)

#### AMENDMENTS

2009—Pub. L. 111-67 struck out subsec. (a) designation and heading at beginning of section, substituted “There” for “Except as provided in subsection (b), there” and “by” for “(including sections 302 and 303, but excluding sections 305 and 306) by”, and struck out subsec. (b). Text of subsec. (b) read as follows: “There are authorized to be appropriated for each of fiscal years 1996 through 2009, such sums as may be necessary to carry out title III.”

2008—Subsec. (b). Pub. L. 110-367 substituted “2009” for “2008”.

2003—Subsec. (b). Pub. L. 108-195 substituted “2008” for “2003”.

2001—Subsec. (b). Pub. L. 107-47 substituted “2003” for “2001”.

2000—Subsec. (b). Pub. L. 106-363 substituted “2001” for “2000”.

1999—Subsec. (b). Pub. L. 106-65 substituted “fiscal years 1996 through 2000” for “the fiscal years 1996, 1997, 1998, and 1999”.

1998—Subsec. (b). Pub. L. 105-261 substituted “1998, and 1999” for “and 1998”.

1995—Subsec. (a). Pub. L. 104-64, §3(1), struck out paragraph designation “(1)” and former par. (1) heading “In general” and in text substituted “Except as provided in subsection (b),” for “Except as provided in subsection (c),”.

Subsecs. (b) to (d). Pub. L. 104-64, §3(2), added subsec. (b) and struck out former subsec. (b) which authorized appropriations to carry out provisions of section 2095(k)(2) of this Appendix, former subsec. (c) which authorized appropriations for fiscal year 1991 to carry out provisions of sections 2091 to 2093 of this Appendix, and former subsec. (d) which authorized appropriations for fiscal years 1993, 1994, and 1995 to carry out sections 2091 to 2099a of this Appendix.

1992—Subsec. (a). Pub. L. 102-558, §152(2)(A), inserted heading.

Subsec. (a)(1). Pub. L. 102-558, §152(2)(A), (B), inserted par. heading, substituted “Except as provided in subsection (c),” for “Except as provided in paragraph (2) and paragraph (4)”, and struck out “and for payment of interest under subsection (b) of this section” after “sections 302 and 303”.

Pub. L. 102-558, §144, substituted “Office of Management and Budget” for “Bureau of the Budget”.

Subsec. (a)(2). Pub. L. 102-558, §152(2)(C), struck out par. (2) which read as follows:

“(A) There are hereby authorized to be appropriated without fiscal year limitation not to exceed