

may obtain judicial review in accordance with this subchapter when such a denial becomes final.

(2) The Commission shall, by rule, establish appropriate procedures, including a hearing when requested, for review of a denial. Action by the Commission under this section shall be considered final agency action within the meaning of section 704 of title 5 and shall not be subject to further review by the Secretary or any officer or employee of the Department. Litigation involving judicial review of such action shall be the responsibility of the Secretary.

(Pub. L. 95-91, title V, § 504, Aug. 4, 1977, 91 Stat. 590.)

REFERENCES IN TEXT

The Federal Energy Administration Act, referred to in subsec. (a), is Pub. L. 93-275, May 7, 1974, 88 Stat. 96, as amended, which is classified generally to chapter 16B (§ 761 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 761 of Title 15 and Tables.

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a), is Pub. L. 93-159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§ 751 et seq.) of Title 15, and was omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

The Energy Supply and Environmental Coordination Act of 1974, referred to in subsec. (a), is Pub. L. 93-319, June 22, 1974, 88 Stat. 246, as amended, which is classified principally to chapter 16C (§ 791 et seq.) of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 791 of Title 15 and Tables.

The Energy Policy and Conservation Act, referred to in subsec. (a), is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, which is classified principally to chapter 77 (§ 6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

§ 7195. Report to Congress; contents

Within one year after October 1, 1977, the Secretary shall submit a report to Congress concerning the actions taken to implement section 7191 of this title. The report shall include a discussion of the adequacy of such section from the standpoint of the Department and the public, including a summary of any comments obtained by the Secretary from the public about such section and implementing regulations, and such recommendations as the Secretary deems appropriate concerning the procedures required by such section.

(Pub. L. 95-91, title V, § 505, Aug. 4, 1977, 91 Stat. 591.)

SUBCHAPTER VI—ADMINISTRATIVE PROVISIONS

PART A—CONFLICT OF INTEREST PROVISIONS

§§ 7211, 7212. Repealed. Pub. L. 104-106, div. D, title XLIII, § 4304(b)(6), Feb. 10, 1996, 110 Stat. 664

Section 7211, Pub. L. 95-91, title VI, § 601, Aug. 4, 1977, 91 Stat. 591; Pub. L. 103-160, div. C, title XXXI, § 3161(c)(1)(A), (B), Nov. 30, 1993, 107 Stat. 1958, related to definitions of supervisory employees and energy concern.

Section 7212, Pub. L. 95-91, title VI, § 602, Aug. 4, 1977, 91 Stat. 592; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784; Pub. L. 103-160, div. C, title XXXI, § 3161(b), (c)(1)(C), Nov. 30, 1993, 107 Stat. 1958, related to divestiture of energy holdings by supervisory employees.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104-106, set out as an Effective Date of 1996 Amendment note under section 2302 of Title 10, Armed Forces.

§§ 7213 to 7217. Repealed. Pub. L. 103-160, div. C, title XXXI, § 3161(a), Nov. 30, 1993, 107 Stat. 1957

Section 7213, Pub. L. 95-91, title VI, § 603, Aug. 4, 1977, 91 Stat. 593, related to disclosure of energy assets.

Section 7214, Pub. L. 95-91, title VI, § 604, Aug. 4, 1977, 91 Stat. 594, required, with exceptions for certain information, that supervisory employees of Department file report on prior employment.

Section 7215, Pub. L. 95-91, title VI, § 605, Aug. 4, 1977, 91 Stat. 594, related to postemployment prohibitions and reporting requirements.

Section 7216, Pub. L. 95-91, title VI, § 606, Aug. 4, 1977, 91 Stat. 595, prohibited former supervisory employees from participating in certain Department proceedings.

Section 7217, Pub. L. 95-91, title VI, § 607, Aug. 4, 1977, 91 Stat. 596; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784, related to procedures applicable to reports under former sections 7213, 7214, and 7215 of this title.

§ 7218. Repealed. Pub. L. 104-106, div. D, title XLIII, § 4304(b)(6), Feb. 10, 1996, 110 Stat. 664

Section, Pub. L. 95-91, title VI, § 603, formerly § 608, Aug. 4, 1977, 91 Stat. 596; renumbered § 603 and amended, Pub. L. 103-160, div. C, title XXXI, § 3161(c)(1)(D), (E), Nov. 30, 1993, 107 Stat. 1958, related to sanctions.

A prior section 603 of Pub. L. 95-91 was classified to section 7213 of this title prior to repeal by Pub. L. 103-160.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104-106, set out as an Effective Date of 1996 Amendment note under section 2302 of Title 10, Armed Forces.

PART B—PERSONNEL PROVISIONS

§ 7231. Officers and employees

(a) Authority of Secretary to appoint and fix compensation

In the performance of his functions the Secretary is authorized to appoint and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out such functions. Except as otherwise provided in this section, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5.

(b) Appointment of scientific, engineering, etc., personnel without regard to civil service laws; compensation; termination of authority

(1) Subject to the limitations provided in paragraph (2) and to the extent the Secretary deems such action necessary to the discharge of his functions, he may appoint not more than three hundred eleven of the scientific, engineering, professional, and administrative personnel of

the department without regard to the civil service laws, and may fix the compensation of such personnel not in excess of the maximum rate payable for GS-18 of the General Schedule under section 5332 of title 5.

(2) The Secretary's authority under this subsection to appoint an individual to such a position without regard to the civil service laws shall cease—

(A) when a person appointed, within four years after October 1, 1977, to fill such position under paragraph (1) leaves such position, or

(B) on the day which is four years after such date,

whichever is later.

(c) Placement of GS-16, GS-17, and GS-18 positions without regard to section 3324 of title 5; termination of authority

(1) Subject to the provisions of chapter 51 of title 5 but notwithstanding the last two sentences of section 5108(a)¹ of such title, the Secretary may place at GS-16, GS-17, and GS-18, not to exceed one hundred seventy-eight positions of the positions subject to the limitation of the first sentence of section 5108(a)¹ of such title.

(2) Appointments under this subsection may be made without regard to the provisions of sections 3324 of title 5, relating to the approval by the Director of the Office of Personnel Management of appointments under GS-16, GS-17, and GS-18 if the individual placed in such position is an individual who is transferred in connection with a transfer of functions under this chapter and who, immediately before October 1, 1977, held a position and duties comparable to those of such position.

(3) The Secretary's authority under this subsection with respect to any position shall cease when the person first appointed to fill such position leaves such position.

(d) Appointment of additional scientific, engineering, etc., personnel without regard to civil service laws; compensation

In addition to the number of positions which may be placed at GS-16, GS-17, and GS-18 under section 5108 of title 5, under existing law, or under this chapter, and to the extent the Secretary deems such action necessary to the discharge of his functions, he may appoint not more than two hundred of the scientific, engineering, professional, and administrative personnel without regard to the civil service laws and may fix the compensation of such personnel not in excess of the maximum rate payable for GS-18 of the General Schedule under section 5332 of title 5.

(e) Determination of maximum aggregate number of positions

For the purposes of determining the maximum aggregate number of positions which may be placed at GS-16, GS-17, or GS-18 under section 5108(a) of title 5, 63 percent of the positions established under subsections (b) and (c) shall be deemed GS-16 positions, 25 percent of such positions shall be deemed GS-17 positions, and 12 percent of such positions shall be deemed GS-18.

¹ See References in Text note below.

(f) Intelligence and intelligence-related positions exempt from competitive service

All positions in the Department which the Secretary determines are devoted to intelligence and intelligence-related activities of the United States Government are excepted from the competitive service, and the individuals who occupy such positions as of August 14, 1991, shall, while employed in such positions, be exempt from the competitive service.

(Pub. L. 95-91, title VI, § 621, Aug. 4, 1977, 91 Stat. 596; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784; Pub. L. 102-88, title IV, § 403, Aug. 14, 1991, 105 Stat. 434.)

REFERENCES IN TEXT

Section 5108(a) of title 5, referred to in subsec. (c)(1), was amended generally by Pub. L. 101-509, title V, § 529 [title I, § 102(b)(2)], Nov. 5, 1990, 104 Stat. 1427, 1443, and, as so amended, contains only one sentence.

This chapter, referred to in subsections (c)(2) and (d), was in the original "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

CODIFICATION

August 14, 1991, referred to in subsec. (f), was in the original "the date of enactment of this Act", which was translated as meaning the date of enactment of Pub. L. 102-88, which enacted subsec. (f) of this section, to reflect the probable intent of Congress.

AMENDMENTS

1991—Subsec. (f). Pub. L. 102-88 added subsec. (f).

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" substituted for "Civil Service Commission" in subsec. (c)(2), pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

APPOINTMENTS OF EXCEPTIONALLY WELL QUALIFIED INDIVIDUALS TO SCIENTIFIC, ENGINEERING, OR OTHER CRITICAL TECHNICAL POSITIONS

Pub. L. 113-76, div. D, title III, § 313, Jan. 17, 2014, 128 Stat. 176, provided that:

"(a) IN GENERAL.—Subject to subsections (b) through (d), the Secretary may appoint, without regard to the provisions of chapter 33 of title 5, United States Code, governing appointments in the competitive service, exceptionally well qualified individuals to scientific, engineering, or other critical technical positions.

"(b) LIMITATIONS.—

"(1) NUMBER OF POSITIONS.—The number of critical positions authorized by subsection (a) may not exceed 120 at any one time in the Department.

“(2) TERM.—The term of an appointment under subsection (a) may not exceed 4 years.

“(3) PRIOR EMPLOYMENT.—An individual appointed under subsection (a) shall not have been a Department employee during the 2-year period ending on the date of appointment.

“(4) PAY.—

“(A) IN GENERAL.—The Secretary shall have the authority to fix the basic pay of an individual appointed under subsection (a) at a rate to be determined by the Secretary up to level I of the Executive Schedule [5 U.S.C. 5312] without regard to the civil service laws.

“(B) TOTAL ANNUAL COMPENSATION.—The total annual compensation for any individual appointed under subsection (a) may not exceed the highest total annual compensation payable at the rate determined under section 104 of title 3, United States Code.

“(5) ADVERSE ACTIONS.—An individual appointed under subsection (a) may not be considered to be an employee for purposes of subchapter II of chapter 75 of title 5, United States Code.

“(c) REQUIREMENTS.—

“(1) IN GENERAL.—The Secretary shall ensure that—

“(A) the exercise of the authority granted under subsection (a) is consistent with the merit principles of section 2301 of title 5, United States Code; and

“(B) the Department notifies diverse professional associations and institutions of higher education, including those serving the interests of women and racial or ethnic minorities that are underrepresented in scientific, engineering, and mathematical fields, of position openings as appropriate.

“(2) REPORT.—Not later than 2 years after the date of enactment of this Act [Jan. 17, 2014], the Secretary and the Director of the Office of Personnel Management shall submit to Congress a report on the use of the authority provided under this section that includes, at a minimum, a description or analysis of—

“(A) the ability to attract exceptionally well qualified scientists, engineers, and technical personnel;

“(B) the amount of total compensation paid each employee hired under the authority each calendar year; and

“(C) whether additional safeguards or measures are necessary to carry out the authority and, if so, what action, if any, has been taken to implement the safeguards or measures.

“(d) TERMINATION OF EFFECTIVENESS.—The authority provided by this section terminates effective on the date that is 4 years after the date of enactment of this Act.”

AUTHORITY FOR APPOINTMENT OF CERTAIN SCIENTIFIC, ENGINEERING, AND TECHNICAL PERSONNEL

Pub. L. 103-337, div. C, title XXXI, §3161, Oct. 5, 1994, 108 Stat. 3095, as amended by Pub. L. 105-85, div. C, title XXXI, §3139, Nov. 18, 1997, 111 Stat. 2040; Pub. L. 105-261, div. C, title XXXI, §§3152, 3155, Oct. 17, 1998, 112 Stat. 2253, 2257; Pub. L. 106-398, §1 [div. C, title XXXI, §3191], Oct. 30, 2000, 114 Stat. 1654, 1654A-480; Pub. L. 107-314, div. C, title XXXI, §3174, Dec. 2, 2002, 116 Stat. 2745, which was formerly set out as a note under this section, was renumbered section 4601 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(i)(2), Nov. 24, 2003, 117 Stat. 1776, and is classified to section 2701 of Title 50, War and National Defense.

§ 7232. Senior positions

In addition to those positions created by subchapter II of this chapter, there shall be within the Department fourteen additional officers in positions authorized by section 5316 of title 5 who shall be appointed by the Secretary and

who shall perform such functions as the Secretary shall prescribe from time to time.

(Pub. L. 95-91, title VI, §622, Aug. 4, 1977, 91 Stat. 597.)

§ 7233. Experts and consultants

The Secretary may obtain services as authorized by section 3109 of title 5, at rates not to exceed the daily rate prescribed for grade GS-18 of the General Schedule under section 5332 of title 5 for persons in Government service employed intermittently.

(Pub. L. 95-91, title VI, §623, Aug. 4, 1977, 91 Stat. 598.)

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 7234. Advisory committees

The Secretary is authorized to establish in accordance with the Federal Advisory Committee Act such advisory committees as he may deem appropriate to assist in the performance of his functions. Members of such advisory committees, other than full-time employees of the Federal Government, while attending meetings of such committees or while otherwise serving at the request of the Secretary while serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for individuals in the Government serving without pay.

(Pub. L. 95-91, title VI, §624, Aug. 4, 1977, 91 Stat. 598; Pub. L. 105-28, §2(b)(1), July 18, 1997, 111 Stat. 245.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in text, is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1997—Pub. L. 105-28 struck out subsec. (a) designation and struck out subsec. (b) which read as follows: “Section 776 of title 15 shall be applicable to advisory committees chartered by the Secretary, or transferred to the Secretary or the Department under this chapter, except that where an advisory committee advises the Secretary on matters pertaining to research and development, the Secretary may determine that such meeting shall be closed because it involves research and development matters and comes within the exemption of section 552b(c)(4) of title 5.”

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration