

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1010 (4th sentence).	June 11, 1946, ch. 324, §11 (4th sentence), 60 Stat. 244.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission”.

Pub. L. 95-251 substituted references to administrative law judges for references to hearing examiners in section catchline and wherever appearing in text.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 3345. Acting officer

(a) If an officer of an Executive agency (including the Executive Office of the President, and other than the Government Accountability 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.

(Added Pub. L. 105-277, div. C, title I, §151(b), Oct. 21, 1998, 112 Stat. 2681-611; amended Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a)(3)(B), is set out under section 5332 of this title.

PRIOR PROVISIONS

A prior section 3345, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 425; Pub. L. 100-398, §7(a)(1), (2), Aug. 17, 1988, 102 Stat. 988, provided for details to office of head of Executive agency or military department, prior to repeal by Pub. L. 105-277, div. C, title I, §151(b), (d)(1), Oct. 21, 1998, 112 Stat. 2681-611, 2681-616, effective 30 days after Oct. 21, 1998.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” in introductory provisions.

EFFECTIVE DATE

Pub. L. 105-277, div. C, title I, §151(d), Oct. 21, 1998, 112 Stat. 2681-616, provided that:

“(1) EFFECTIVE DATE.—Subject to paragraph (2), this section [enacting this section and sections 3346 to 3349d of this title, repealing former sections 3345 to 3349 of this title, and enacting provisions set out as a note under section 3301 of this title] and the amendments made by this section shall take effect 30 days after the date of enactment of this section [Oct. 21, 1998].

“(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).”

EX. ORD. NO. 13472. EXECUTIVE BRANCH RESPONSIBILITIES WITH RESPECT TO ORDERS OF SUCCESSION

Ex. Ord. No. 13472, Sept. 11, 2008, 73 F.R. 53353, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Policy.* It is the policy of the Federal Government to ensure that each executive branch agency can perform its essential functions and remain an effectively functioning part of the Federal Government under all conditions. Accordingly, each agency shall take all appropriate actions to establish, maintain, and, as necessary, revise an order of succession, or to propose presidential action to establish or revise an order of succession.

SEC. 2. *Definitions.* As used in this order:

(a) “agency” means:

(i) an executive agency as defined in section 105 of title 5, United States Code, other than the Government Accountability Office; and

(ii) the United States Postal Service and the Postal Regulatory Commission; and

(b) “order of succession” means a list of officials by position who shall act as and perform the functions and duties of the office of the head of the agency in the event that the office-holder has died, resigned, or otherwise become unable to perform the functions and duties of the office. “Order of succession” does not include any order, rule, memorandum, or other document delegating or partially delegating the authority of an office.

SEC. 3. *Orders of Succession Requiring Presidential Action.*

(a) Each agency for which presidential action is required to establish an order of succession shall draft a proposed order of succession if no such order exists and, not later than 30 days from the date of this order, send such proposed draft order to the Counsel to the President for review and comment.

(b) Each agency described in subsection 3(a) of this order shall send any proposed updates or revisions to the agency’s order of succession to the Counsel to the President for review and comment.

(c) Upon completion of the requirements set forth by subsections (a) or (b) of this section with respect to a proposed order, the agency shall submit the proposed order to the Office of Management and Budget in accordance with Executive Order 11030, as amended.

SEC. 4. *Orders of Succession Not Requiring Presidential Action.* (a) Each agency for which presidential action is not required to establish an order of succession because of the agency’s existing legal authority shall establish and maintain such order in accordance with applicable law and any applicable guidance issued by the President or the Secretary of Homeland Security, including the laws and guidance regarding continuity plans and programs for the executive branch.

(b) Each agency described in subsection 4(a) of this order shall update and revise its order of succession as necessary. Before implementing any revisions to its order of succession, such agency shall send the proposed revisions to the Counsel to the President for review and comment.

(c) Not later than 30 days from the date of this order, and not later than 7 days from the issuance date of any subsequent final revision to an existing order of succession, each agency described in subsection 4(a) of this order shall provide a copy of its order of succession to the Counsel to the President, the Assistant to the President for Homeland Security and Counterterrorism, and the Director of the Office of Management and Budget.

SEC. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) Nothing in this order shall be construed to delegate the President’s authority under the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, to designate individuals to perform the functions and duties of a vacant office temporarily in an acting capacity.

(c) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH.

EXECUTIVE DOCUMENTS

Provisions relating to the exercise of Presidential authorities to designate an order of succession for executive agencies and offices are contained in the following:

COUNCIL ON ENVIRONMENTAL QUALITY

Memorandum of President of the United States, Jan. 13, 2017, 82 F.R. 7627.

Memorandum of President of the United States, Mar. 13, 2015, 80 F.R. 14289, revoked by Memorandum of President of the United States, § 3, Jan. 13, 2017, 82 F.R. 7627.

Memorandum of President of the United States, Sept. 18, 2008, 73 F.R. 54487, revoked by Memorandum of President of the United States, § 3, Mar. 13, 2015, 80 F.R. 14289.

DEPARTMENT OF AGRICULTURE

Ex. Ord. No. 13612, May 21, 2012, 77 F.R. 31153.

Ex. Ord. No. 13542, May 13, 2010, 75 F.R. 27921, revoked by Ex. Ord. No. 13612, § 3, May 21, 2012, 77 F.R. 31154.

Ex. Ord. No. 13241, Dec. 18, 2001, 66 F.R. 66258, as amended by Ex. Ord. No. 13261, § 4(a), Mar. 19, 2002, 67 F.R. 13243; Ex. Ord. No. 13484, §§ 1, 2, Jan. 9, 2009, 74 F.R. 2285, revoked by Ex. Ord. No. 13542, § 3, May 13, 2010, 75 F.R. 27922.

Ex. Ord. No. 11957, Jan. 13, 1977, 42 F.R. 3295, revoked by Ex. Ord. No. 13241, § 4, Dec. 18, 2001, 66 F.R. 66259.

DEPARTMENT OF COMMERCE

Ex. Ord. No. 13613, May 21, 2012, 77 F.R. 31155.

Ex. Ord. No. 13242, Dec. 18, 2001, 66 F.R. 66260, as amended by Ex. Ord. No. 13261, § 4(b), Mar. 19, 2002, 67 F.R. 13243, revoked by Ex. Ord. No. 13613, § 3, May 21, 2012, 77 F.R. 31155.

Ex. Ord. No. 11880, Oct. 2, 1975, 40 F.R. 46089, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617; Ex. Ord. No. 12998, Apr. 5, 1996, 61 F.R. 15873, revoked by Ex. Ord. No. 13242, § 4, Dec. 18, 2001, 66 F.R. 66261.

DEPARTMENT OF DEFENSE

Ex. Ord. No. 13533, Mar. 1, 2010, 75 F.R. 10163.

Ex. Ord. No. 13394, Dec. 22, 2005, 70 F.R. 76665, revoked by Ex. Ord. No. 13533, § 3, Mar. 1, 2010, 75 F.R. 10164.

Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, revoked by Ex. Ord. No. 13394, § 5, Dec. 22, 2005, 70 F.R. 76666.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Ex. Ord. No. 13461, Feb. 15, 2008, 73 F.R. 9437.

Ex. Ord. No. 13250, Dec. 28, 2001, 67 F.R. 1597, as amended by Ex. Ord. No. 13261, § 4(h), Mar. 19, 2002, 67 F.R. 13244, revoked by Ex. Ord. No. 13461, § 4, Feb. 15, 2008, 73 F.R. 9438.

DEPARTMENT OF HOMELAND SECURITY

For order of succession within the Department of Homeland Security, see Ex. Ord. No. 13286, § 88, Feb. 28,

2003, 68 F.R. 10632, as amended, set out as a note under section 111 of Title 6, Domestic Security.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Ex. Ord. No. 13243, Dec. 18, 2001, 66 F.R. 66262, as amended by Ex. Ord. No. 13261, §4(c), Mar. 19, 2002, 67 F.R. 13244.

Ex. Ord. No. 11274, Mar. 30, 1966, 31 F.R. 5243, as amended by Pub. L. 101-509, title V, §529 [title I, §112(c)], Nov. 5, 1990, 104 Stat. 1427, 1454, revoked by Ex. Ord. No. 13243, §4, Dec. 18, 2001, 66 F.R. 66263.

DEPARTMENT OF JUSTICE

Ex. Ord. No. 13787, Mar. 31, 2017, 82 F.R. 16723.

Ex. Ord. No. 13775, Feb. 9, 2017, 82 F.R. 10697, revoked by Ex. Ord. No. 13787, §3, Mar. 31, 2017, 82 F.R. 16723.

Ex. Ord. No. 13762, Jan. 13, 2017, 82 F.R. 7619, revoked by Ex. Ord. No. 13775, §3, Feb. 9, 2017, 82 F.R. 10697.

Ex. Ord. No. 13557, Nov. 4, 2010, 75 F.R. 68679, revoked by Ex. Ord. No. 13762, §3 Jan. 13, 2017, 82 F.R. 7619.

Ex. Ord. No. 13481, Dec. 9, 2008, 73 F.R. 75531, revoked by Ex. Ord. No. 13557, §3, Nov. 4, 2010, 75 F.R. 68679.

Memorandum of President of the United States, Dec. 8, 2006, 71 F.R. 74753, superseded by Ex. Ord. No. 13481, §3, Dec. 9, 2008, 73 F.R. 75531.

DEPARTMENT OF LABOR

Ex. Ord. No. 13755, Dec. 23, 2016, 81 F.R. 96329.

Ex. Ord. No. 13245, Dec. 18, 2001, 66 F.R. 66268, as amended by Ex. Ord. No. 13261, §4(e), Mar. 19, 2002, 67 F.R. 13244, revoked by Ex. Ord. No. 13755, §3, Dec. 23, 2016, 81 F.R. 96329.

Ex. Ord. No. 10513, Jan. 19, 1954, 19 F.R. 369, revoked by Ex. Ord. No. 13245, §4, Dec. 8, 2001, 66 F.R. 66269.

DEPARTMENT OF STATE

Ex. Ord. No. 13251, Dec. 28, 2001, 67 F.R. 1599, as amended by Ex. Ord. No. 13261, §4(i), Mar. 19, 2002, 67 F.R. 13244.

Ex. Ord. No. 12343, Jan. 27, 1982, 47 F.R. 4225, revoked by Ex. Ord. No. 13251, §4, Dec. 28, 2001, 67 F.R. 1599.

DEPARTMENT OF THE AIR FORCE

Ex. Ord. No. 12909, Apr. 22, 1994, 59 F.R. 21909.

DEPARTMENT OF THE ARMY

Ex. Ord. No. 12908, Apr. 22, 1994, 59 F.R. 21907.

DEPARTMENT OF THE INTERIOR

Ex. Ord. No. 13244, Dec. 18, 2001, 66 F.R. 66267, as amended by Ex. Ord. No. 13261, §4(d), Mar. 19, 2002, 67 F.R. 13244.

Ex. Ord. No. 11487, Oct. 6, 1969, 34 F.R. 15593, as amended by Pub. L. 101-509, title V, §529 [title I, §112(c)], Nov. 5, 1990, 104 Stat. 1427, 1454, revoked by Ex. Ord. No. 13244, §4, Dec. 18, 2001, 66 F.R. 66267.

DEPARTMENT OF THE NAVY

Ex. Ord. No. 12879, Nov. 8, 1993, 58 F.R. 59929.

DEPARTMENT OF THE TREASURY

Ex. Ord. No. 13735, Aug. 12, 2016, 81 F.R. 54709.

Ex. Ord. No. 13246, Dec. 18, 2001, 66 F.R. 66270, as amended by Ex. Ord. No. 13261, §4(f), Mar. 19, 2002, 67 F.R. 13244, revoked by Ex. Ord. No. 13735, §4, Aug. 12, 2016, 81 F.R. 54709.

Ex. Ord. No. 11822, Dec. 10, 1974, 39 F.R. 43275, revoked by Ex. Ord. No. 13246, §4, Dec. 18, 2001, 66 F.R. 66270.

DEPARTMENT OF TRANSPORTATION

Ex. Ord. No. 13485, Jan. 9, 2009, 74 F.R. 2287.

DEPARTMENT OF VETERANS AFFAIRS

Ex. Ord. No. 13736, Aug. 12, 2016, 81 F.R. 54711.

Ex. Ord. No. 13247, Dec. 18, 2001, 66 F.R. 66271, as amended by Ex. Ord. No. 13261, §4(g), Mar. 19, 2002, 67 F.R. 13244, revoked by Ex. Ord. No. 13736, §3(a), (b), Aug. 12, 2016, 81 F.R. 54711.

Memorandum of President of the United States, Feb. 12, 2003, 68 F.R. 10141, revoked by Ex. Ord. No. 13736, §3(d), Aug. 12, 2016, 81 F.R. 54711.

ENVIRONMENTAL PROTECTION AGENCY

Ex. Ord. No. 13763, Jan. 13, 2017, 82 F.R. 7621.

Ex. Ord. No. 13737, Aug. 12, 2016, 81 F.R. 54713, revoked by Ex. Ord. No. 13763, §3, Jan. 13, 2017, 82 F.R. 7622.

Ex. Ord. No. 13614, May 21, 2012, 77 F.R. 31157, revoked by Ex. Ord. No. 13737, §3, Aug. 12, 2016, 81 F.R. 54714.

Ex. Ord. No. 13261, Mar. 19, 2002, 67 F.R. 13243, as amended by Ex. Ord. No. 13344, July 7, 2004, 69 F.R. 41747, revoked by Ex. Ord. No. 13614, §3, May 21, 2012, 77 F.R. 31157, amended by Ex. Ord. No. 13736, §3(b), Aug. 12, 2016, 81 F.R. 54711.

FEDERAL BUREAU OF INVESTIGATION

Memorandum of President of the United States, Feb. 9, 2007, 72 F.R. 7343.

FEDERAL EMERGENCY MANAGEMENT AGENCY

Memorandum of President of the United States, Nov. 26, 2002, 67 F.R. 79513, terminated upon the transfer of the authorities, functions, personnel, and assets of the Federal Emergency Management Agency to the Department of Homeland Security.

FEDERAL MEDIATION AND CONCILIATION SERVICE

Memorandum of President of the United States, Jan. 13, 2017, 82 F.R. 7629.

Memorandum of President of the United States, Dec. 23, 2016, 81 F.R. 96333.

Memorandum of President of the United States, Oct. 17, 2014, 79 F.R. 63803.

GENERAL SERVICES ADMINISTRATION

Memorandum of President of the United States, Sept. 20, 2013, 78 F.R. 59161.

MILLENNIUM CHALLENGE CORPORATION

Memorandum of President of the United States, May 21, 2012, 77 F.R. 31161.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Memorandum of President of the United States, Jan. 16, 2009, 74 F.R. 4099.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Memorandum of President of the United States, Dec. 23, 2016, 81 F.R. 96331.

Memorandum of President of the United States, May 21, 2012, 77 F.R. 31163, revoked by Memorandum of President of the United States, §3, Dec. 23, 2016, 81 F.R. 96331.

NATIONAL ENDOWMENT FOR THE ARTS

Memorandum of President of the United States, Dec. 23, 2016, 81 F.R. 96335.

NATIONAL ENDOWMENT FOR THE HUMANITIES

Memorandum of President of the United States, Aug. 12, 2016, 81 F.R. 54717.

OFFICE OF MANAGEMENT AND BUDGET

Ex. Ord. No. 13615, May 21, 2012, 77 F.R. 31159.

Ex. Ord. No. 13370, Jan. 13, 2005, 70 F.R. 3137, revoked by Ex. Ord. No. 13615, §3, May 21, 2012, 77 F.R. 31159.

OFFICE OF PERSONNEL MANAGEMENT

Memorandum of President of the United States, Aug. 12, 2016, 81 F.R. 54715.

Memorandum of President of the United States, May 21, 2012, 77 F.R. 31165, revoked by Memorandum of President of the United States, §3, Aug. 12, 2016, 81 F.R. 54715.

Memorandum of President of the United States, May 5, 2005, 70 F.R. 28773, superseded by Memorandum of

President of the United States, May 21, 2012, 77 F.R. 31165.

Memorandum of President of the United States, Mar. 11, 2003, 68 F.R. 12281, superseded by Memorandum of President of the United States, May 5, 2005, 70 F.R. 28773.

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Memorandum of President of the United States, Jan. 13, 2017, 82 F.R. 7625.

Memorandum of President of the United States, Aug. 5, 2009, 74 F.R. 39871, revoked by Memorandum of President of the United States, §3, Jan. 13, 2017, 82 F.R. 7625.

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Memorandum of President of the United States, Sept. 20, 2013, 78 F.R. 59159.

Memorandum of President of the United States, Mar. 8, 2011, 76 F.R. 13499, revoked by Memorandum of President of the United States, §4, Sept. 20, 2013, 78 F.R. 59159.

Memorandum of President of the United States, Oct. 3, 2008, 73 F.R. 58869, revoked by Memorandum of President of the United States, §5, Mar. 8, 2011, 76 F.R. 13499.

Memorandum of President of the United States, Dec. 20, 2005, 70 F.R. 76375, superseded by Memorandum of President of the United States, §4, Oct. 3, 2008, 73 F.R. 58869.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Memorandum of President of the United States, Feb. 20, 2007, 72 F.R. 8085.

OVERSEAS PRIVATE INVESTMENT CORPORATION

Memorandum of President of the United States, June 6, 2011, 76 F.R. 33613.

Memorandum of President of the United States, Jan. 16, 2009, 74 F.R. 4101, revoked by Memorandum of President of the United States, §3, June 6, 2011, 76 F.R. 33613.

PENSION BENEFIT GUARANTY CORPORATION

Memorandum of President of the United States, Feb. 1, 2013, 78 F.R. 8953.

Memorandum of President of the United States, Dec. 9, 2008, 73 F.R. 75533, superseded by Memorandum of President of the United States, §3, Feb. 1, 2013, 78 F.R. 8953.

SOCIAL SECURITY ADMINISTRATION

Memorandum of President of the United States, Dec. 23, 2016, 81 F.R. 96337.

Memorandum of President of the United States, Oct. 17, 2014, 79 F.R. 63805, revoked by Memorandum of President of the United States, §3, Dec. 23, 2016, 81 F.R. 96337.

Memorandum of President of the United States, Oct. 17, 2008, 73 F.R. 62845, revoked by Memorandum of President of the United States, §3, Oct. 17, 2014, 79 F.R. 63805.

Memorandum of President of the United States, Apr. 17, 2006, 71 F.R. 20333, superseded by Memorandum of President of the United States, §3, Oct. 17, 2008, 73 F.R. 62845.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

Memorandum of President of the United States, Dec. 9, 2008, 73 F.R. 75535.

UNITED STATES SECTION, INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

Memorandum of President of the United States, Aug. 31, 2009, 74 F.R. 45533.

§ 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.

(Added Pub. L. 105-277, div. C, title I, §151(b), Oct. 21, 1998, 112 Stat. 2681-612.)

PRIOR PROVISIONS

A prior section 3346, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426, provided for details to subordinate offices, prior to repeal by Pub. L. 105-277, div. C, title I, §151(b), (d)(1), Oct. 21, 1998, 112 Stat. 2681-611, 2681-616, effective 30 days after Oct. 21, 1998. See section 3345 of this title.

EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1998, and applicable to any office that becomes vacant after such effective date, with certain exceptions, see section 151(d) of Pub. L. 105-277, set out as a note under section 3345 of this title.

§ 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 Government Accountability 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.