

**TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES**  
**PART III - EMPLOYEES**  
**Subpart F - Labor-Management and Employee Relations**  
**CHAPTER 73 - SUITABILITY, SECURITY, AND CONDUCT**  
**SUBCHAPTER I - REGULATION OF CONDUCT**

**§ 7301. Presidential regulations**

The President may prescribe regulations for the conduct of employees in the executive branch.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 524.)

**Historical and Revision Notes**

| Derivation                    | U.S. Code | Revised Statutes and Statutes at Large |
|-------------------------------|-----------|--|
| 5 U.S.C. 631 (last 16 words). |           | R.S. § 1753 (last 16 words).           |

The words “employees in the executive branch” are substituted for “persons who may receive appointments in the civil service”.

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

**Short Title of 1993 Amendment**

Pub. L. 103–94, § 1, Oct. 6, 1993, 107 Stat. 1001, provided: “That this Act [enacting sections 5520a and 7321 to 7326 of this title and section 610 of Title 18, Crimes and Criminal Procedure, amending sections 1216, 2302, 3302 and 3303 of this title, sections 602 and 603 of Title 18, section 410 of Title 39, Postal Service, and sections 1973d and 9904 of Title 42, The Public Health and Welfare, omitting former sections 7321 to 7328 of this title, and enacting provisions set out as notes under section 7321 of this title and section 410 of Title 39] may be cited as the ‘Hatch Act Reform Amendments of 1993’.”

**Short Title of 1986 Amendment**

Pub. L. 99–570, title VI, § 6001, Oct. 27, 1986, 100 Stat. 3207–157, provided that: “This title [enacting sections 7361 to 7363 and 7904 of this title, amending sections 290dd–1 and 290ee–1 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under section 7361 of this title and section 801 of Title 21, Food and Drugs] may be cited as the ‘Federal Employee Substance Abuse Education and Treatment Act of 1986’.”

**Emergency Preparedness Functions**

For assignment of certain emergency preparedness functions to the Director of the Office of Personnel Management, see Parts 1, 2, and 22 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of Title 42, The Public Health and Welfare.

**Continuation of Random Drug Testing Program for Certain Department of Defense Employees**

Pub. L. 105–261, div. A, title XI, § 1108, Oct. 17, 1998, 112 Stat. 2142, provided that:

“(a) Continuation of Existing Program.—The Secretary of Defense shall continue to actively carry out the drug testing program, originally required by section 3(a) of Executive Order No. 12564 (51 Fed. Reg. 32889; September 15, 1986) [set out below], involving civilian employees of the Department of Defense who are considered to be employees in sensitive positions. The Secretary shall comply with the drug testing procedures prescribed pursuant to section 4 of the Executive order.

“(b) Testing Upon Reasonable Suspicion of Illegal Drug Use.—The Secretary of Defense shall ensure that the drug testing program referred to in subsection (a) authorizes the testing of a civilian employee of the Department of Defense for illegal drug use when there is a reasonable suspicion that the employee uses illegal drugs.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

“(c) Notification to Applicants.—The Secretary of Defense shall notify persons who apply for employment with the Department of Defense that, as a condition of employment by the Department, the person may be required to submit to drug testing under the drug testing program required by Executive Order No. 12564 (51 Fed. Reg. 32889; September 15, 1986) pursuant to the terms of the Executive order.

“(d) Definitions.—In this section, the terms ‘illegal drugs’ and ‘employee in a sensitive position’ have the meanings given such terms in section 7 of Executive Order No. 12564 (51 Fed. Reg. 32889; September 15, 1986).”

### **Annual Certification of Drug-Free Workplace Plan Administrators**

Pub. L. 106–58, title VI, § 624, Sept. 29, 1999, 113 Stat. 471, provided that: “Notwithstanding any provision of law, the President, or his designee, must certify to Congress, annually, that no person or persons with direct or indirect responsibility for administering the Executive Office of the President’s Drug-Free Workplace Plan are themselves subject to a program of individual random drug testing.”

Similar provisions were contained in the following prior appropriations acts:

Pub. L. 105–277, div. A, § 101(h) [title VI, § 634], Oct. 21, 1998, 112 Stat. 2681–480, 2681–524.

Pub. L. 105–61, title VI, § 621, Oct. 10, 1997, 111 Stat. 1313.

Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 623], Sept. 30, 1996, 110 Stat. 3009–314, 3009–358.

Pub. L. 104–52, title VI, § 624, Nov. 19, 1995, 109 Stat. 502.

Pub. L. 103–329, title VI, § 638, Sept. 30, 1994, 108 Stat. 2432.

### **Designation of Director of the Bureau of the Budget as Member of Federal Labor Relations Council**

Presidential Order of December 8, 1969, provided that:

Pursuant to the provisions of section 4 of Executive Order 11491 [set out as a note under this section], I hereby designate the Director of the Bureau of the Budget [now the Office of Management and Budget] as a member of the Federal Labor Relations Council. This order of designation shall be published in the Federal Register.

Richard Nixon.

### **Display in Federal Buildings of Code of Ethics for Government Service**

Pub. L. 96–303, July 3, 1980, 94 Stat. 855, which provided that each agency, under regulations prescribed by Administrator of General Services Administration, display in appropriate areas of Federal buildings copies of the Code of Ethics for Government Service, authorized publication and distribution of such Code, and set forth text of the Code of Ethics for Government Service, was repealed by Pub. L. 104–179, § 4(a), Aug. 6, 1996, 110 Stat. 1566.

### **Agency Acceptance of Donations for Federal Employees**

Pub. L. 102–368, title XI, § 901, Sept. 23, 1992, 106 Stat. 1156, effective through Sept. 30, 1993, authorized Federal agencies to accept gifts of property, money, or anything else of value from non-Federal sources for extraordinary and unanticipated expenses incurred by agency employees in their personal capacity within areas designated as disaster areas pursuant to President’s declaration of a disaster resulting from Hurricane Andrew, Typhoon Omar, and Hurricane Iniki, directed agencies to establish written procedures to implement this program, and authorized agencies to accept gifts designated for individual employees.

### **Restriction on Availability of Funds To Administer or Implement Drug Testing**

Pub. L. 100–71, title V, § 503, July 11, 1987, 101 Stat. 468, as amended by Pub. L. 102–54, § 13(b)(6), June 13, 1991, 105 Stat. 274, provided:

“(a)(1) Except as provided in subsection (b) or (c), none of the funds appropriated or made available by this Act, or any other Act, with respect to any fiscal year, shall be available to administer or implement any drug testing pursuant to Executive Order Numbered 12564 (dated September 15, 1986) [set out as a note below], or any subsequent order, unless and until—

“(A) the Secretary of Health and Human Services certifies in writing to the Committees on Appropriations of the House of Representatives and the Senate, and other appropriate committees of the Congress, that—

“(i) each agency has developed a plan for achieving a drug-free workplace in accordance with Executive Order Numbered 12564 and applicable provisions of law (including applicable provisions of this section);

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“(ii) the Department of Health and Human Services, in addition to the scientific and technical guidelines dated February 13, 1987, and any subsequent amendments thereto, has, in accordance with paragraph (3), published mandatory guidelines which—

“(I) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out Executive Order Numbered 12564, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

“(II) specify the drugs for which Federal employees may be tested; and

“(III) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out Executive Order Numbered 12564; and

“(iii) all agency drug-testing programs and plans established pursuant to Executive Order Numbered 12564 comply with applicable provisions of law, including applicable provisions of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), title 5 of the United States Code, and the mandatory guidelines under clause (ii);

“(B) the Secretary of Health and Human Services has submitted to the Congress, in writing, a detailed, agency-by-agency analysis relating to—

“(i) the criteria and procedures to be applied in designating employees or positions for drug testing, including the justification for such criteria and procedures;

“(ii) the position titles designated for random drug testing; and

“(iii) the nature, frequency, and type of drug testing proposed to be instituted; and

“(C) the Director of the Office of Management and Budget has submitted in writing to the Committees on Appropriations of the House of Representatives and the Senate a detailed, agency-by-agency analysis (as of the time of certification under subparagraph (A)) of the anticipated annual costs associated with carrying out Executive Order Numbered 12564 and all other requirements under this section during the 5-year period beginning on the date of the enactment of this Act [July 11, 1987].

“(2) Notwithstanding subsection (g), for purposes of this subsection, the term “agency” means—

“(A) the Executive Office of the President;

“(B) an Executive department under section 101 of title 5, United States Code;

“(C) the Environmental Protection Agency;

“(D) the General Services Administration;

“(E) the National Aeronautics and Space Administration;

“(F) the Office of Personnel Management;

“(G) the Small Business Administration;

“(H) the United States Information Agency; and

“(I) the Department of Veterans Affairs;

except that such term does not include the Department of Transportation or any other entity (or component thereof) covered by subsection (b).

“(3) Notwithstanding any provision of chapter 5 of title 5, United States Code, the mandatory guidelines to be published pursuant to subsection (a)(1)(A)(ii) shall be published and made effective exclusively according to the provisions of this paragraph. Notice of the mandatory guidelines proposed by the Secretary of Health and Human Services shall be published in the Federal Register, and interested persons shall be given not less than 60 days to submit written comments on the proposed mandatory guidelines. Following review and consideration of written comments, final mandatory guidelines shall be published in the Federal Register and shall become effective upon publication.

“(b)(1) Nothing in subsection (a) shall limit or otherwise affect the availability of funds for drug testing by—

“(A) the Department of Transportation;

“(B) Department of Energy, for employees specifically involved in the handling of nuclear weapons or nuclear materials;

“(C) any agency with an agency-wide drug-testing program in existence as of September 15, 1986; or

“(D) any component of an agency if such component had a drug-testing program in existence as of September 15, 1986.

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“(2) The Departments of Transportation and Energy and any agency or component thereof with a drug-testing program in existence as of September 15, 1986—

“(A) shall be brought into full compliance with Executive Order Numbered 12564 [set out as a note below] no later than the end of the 6-month period beginning on the date of the enactment of this Act [July 11, 1987]; and

“(B) shall take such actions as may be necessary to ensure that their respective drug-testing programs or plans are brought into full compliance with the mandatory guidelines published under subsection (a)(1)(A)(ii) no later than 90 days after such mandatory guidelines take effect, except that any judicial challenge that affects such guidelines should not affect drug-testing programs or plans subject to this paragraph.

“(c) In the case of an agency (or component thereof) other than an agency as defined by subsection (a)(2) or an agency (or component thereof) covered by subsection (b), none of the funds appropriated or made available by this Act, or any other Act, with respect to any fiscal year, shall be available to administer or implement any drug testing pursuant to Executive Order Numbered 12564 [set out as a note below], or any subsequent order, unless and until—

“(1) the Secretary of Health and Human Services provides written certification with respect to that agency (or component) in accordance with clauses (i) and (iii) of subsection (a)(1)(A);

“(2) the Secretary of Health and Human Services has submitted a written, detailed analysis with respect to that agency (or component) in accordance with subsection (a)(1)(B); and

“(3) the Director of the Office of Management and Budget has submitted a written, detailed analysis with respect to that agency (or component) in accordance with subsection (a)(1)(C).

“(d) Any Federal employee who is the subject of a drug test under any program or plan shall, upon written request, have access to—

“(1) any records relating to such employee’s drug test; and

“(2) any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings, as referred to in subsection (a)(1)(A)(ii)(III).

“(e) The results of a drug test of a Federal employee may not be disclosed without the prior written consent of such employee, unless the disclosure would be—

“(1) to the employee’s medical review official (as defined in the scientific and technical guidelines referred to in subsection (a)(1)(A)(ii));

“(2) to the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating;

“(3) to any supervisory or management official within the employee’s agency having authority to take the adverse personnel action against such employee; or

“(4) pursuant to the order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

“(f) [Terminated, effective May 15, 2000, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 151 of House Document No. 103–7.]

“(g) For purposes of this section, the terms ‘agency’ and ‘Employee Assistance Program’ each has the meaning given such term under section 7(b) of Executive Order Numbered 12564 [set out as a note below], as in effect on September 15, 1986.”

[For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22, Foreign Relations and Intercourse.]

### **Limitation on Gratuities at Naval Shipbuilding Ceremonies**

Pub. L. 99–145, title XIV, § 1461, Nov. 8, 1985, 99 Stat. 765, provided that:

“(a) General Rule.—A Federal officer, employee, or Member of Congress may not accept, directly or indirectly, any tangible thing of value as a gift or memento in connection with a ceremony to mark the completion of a naval shipbuilding milestone.

“(b) Exclusion.—Subsection (a) does not apply to a gift or memento that has a value of less than \$100.

“(c) Definitions.—For purposes of this section, the terms ‘officer’, ‘employee’, and ‘Member of Congress’ have the meanings given those terms in sections 2104, 2105, and 2106, respectively, of title 5, United States Code.”

## **Executive Order No. 9845**

Ex. Ord. No. 9845, Apr. 28, 1947, 12 F.R. 2799, which permitted Bureau of Reclamation employees to accept appointments as constables or deputy sheriffs under state or territorial laws, was revoked by Ex. Ord. No. 11408, Apr. 25, 1968, 33 F.R. 6459.

## **Ex. Ord. No. 12564. Drug-Free Federal Workplace**

Ex. Ord. No. 12564, Sept. 15, 1986, 51 F.R. 32889, provided:

I, RONALD REAGAN, President of the United States of America, find that:

Drug use is having serious adverse effects upon a significant proportion of the national work force and results in billions of dollars of lost productivity each year;

The Federal government, as an employer, is concerned with the well-being of its employees, the successful accomplishment of agency missions, and the need to maintain employee productivity;

The Federal government, as the largest employer in the Nation, can and should show the way towards achieving drug-free workplaces through a program designed to offer drug users a helping hand and, at the same time, demonstrating to drug users and potential drug users that drugs will not be tolerated in the Federal workplace;

The profits from illegal drugs provide the single greatest source of income for organized crime, fuel violent street crime, and otherwise contribute to the breakdown of our society;

The use of illegal drugs, on or off duty, by Federal employees is inconsistent not only with the law-abiding behavior expected of all citizens, but also with the special trust placed in such employees as servants of the public;

Federal employees who use illegal drugs, on or off duty, tend to be less productive, less reliable, and prone to greater absenteeism than their fellow employees who do not use illegal drugs;

The use of illegal drugs, on or off duty, by Federal employees impairs the efficiency of Federal departments and agencies, undermines public confidence in them, and makes it more difficult for other employees who do not use illegal drugs to perform their jobs effectively. The use of illegal drugs, on or off duty, by Federal employees also can pose a serious health and safety threat to members of the public and to other Federal employees;

The use of illegal drugs, on or off duty, by Federal employees in certain positions evidences less than the complete reliability, stability, and good judgment that is consistent with access to sensitive information and creates the possibility of coercion, influence, and irresponsible action under pressure that may pose a serious risk to national security, the public safety, and the effective enforcement of the law; and

Federal employees who use illegal drugs must themselves be primarily responsible for changing their behavior and, if necessary, begin the process of rehabilitating themselves.

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 3301 (2) of Title 5 of the United States Code, section 7301 of Title 5 of the United States Code, section 290ee-1 of Title 42 of the United States Code, deeming such action in the best interests of national security, public health and safety, law enforcement and the efficiency of the Federal service, and in order to establish standards and procedures to ensure fairness in achieving a drug-free Federal workplace and to protect the privacy of Federal employees, it is hereby ordered as follows:

Section 1. Drug-Free Workplace. (a) Federal employees are required to refrain from the use of illegal drugs.

(b) The use of illegal drugs by Federal employees, whether on duty or off duty, is contrary to the efficiency of the service.

(c) Persons who use illegal drugs are not suitable for Federal employment.

Sec. 2. Agency Responsibilities. (a) The head of each Executive agency shall develop a plan for achieving the objective of a drug-free workplace with due consideration of the rights of the government, the employee, and the general public.

(b) Each agency plan shall include:

(1) A statement of policy setting forth the agency's expectations regarding drug use and the action to be anticipated in response to identified drug use;

(2) Employee Assistance Programs emphasizing high level direction, education, counseling, referral to rehabilitation, and coordination with available community resources;

(3) Supervisory training to assist in identifying and addressing illegal drug use by agency employees;

(4) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues; and

(5) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis in accordance with this Order.

Sec. 3. Drug Testing Programs. (a) The head of each Executive agency shall establish a program to test for the use of illegal drugs by employees in sensitive positions. The extent to which such employees are tested and the criteria for such testing shall be determined by the head of each agency, based upon the nature of the agency's mission and its employees' duties, the efficient use of agency resources, and the danger to the public health and safety or national security that could result from the failure of an employee adequately to discharge his or her position.

(b) The head of each Executive agency shall establish a program for voluntary employee drug testing.

(c) In addition to the testing authorized in subsections (a) and (b) of this section, the head of each Executive agency is authorized to test an employee for illegal drug use under the following circumstances:

(1) When there is a reasonable suspicion that any employee uses illegal drugs;

(2) In an examination authorized by the agency regarding an accident or unsafe practice; or

(3) As part of or as a follow-up to counseling or rehabilitation for illegal drug use through an Employee Assistance Program.

(d) The head of each Executive agency is authorized to test any applicant for illegal drug use.

Sec. 4. Drug Testing Procedures. (a) Sixty days prior to the implementation of a drug testing program pursuant to this Order, agencies shall notify employees that testing for use of illegal drugs is to be conducted and that they may seek counseling and rehabilitation and inform them of the procedures for obtaining such assistance through the agency's Employee Assistance Program. Agency drug testing programs already ongoing are exempted from the 60-day notice requirement. Agencies may take action under section 3(c) of this Order without reference to the 60-day notice period.

(b) Before conducting a drug test, the agency shall inform the employee to be tested of the opportunity to submit medical documentation that may support a legitimate use for a specific drug.

(c) Drug testing programs shall contain procedures for timely submission of requests for retention of records and specimens; procedures for retesting; and procedures, consistent with applicable law, to protect the confidentiality of test results and related medical and rehabilitation records. Procedures for providing urine specimens must allow individual privacy, unless the agency has reason to believe that a particular individual may alter or substitute the specimen to be provided.

(d) The Secretary of Health and Human Services is authorized to promulgate scientific and technical guidelines for drug testing programs, and agencies shall conduct their drug testing programs in accordance with these guidelines once promulgated.

Sec. 5. Personnel Actions. (a) Agencies shall, in addition to any appropriate personnel actions, refer any employee who is found to use illegal drugs to an Employee Assistance Program for assessment, counseling, and referral for treatment or rehabilitation as appropriate.

(b) Agencies shall initiate action to discipline any employee who is found to use illegal drugs, provided that such action is not required for an employee who:

(1) Voluntarily identifies himself as a user of illegal drugs or who volunteers for drug testing pursuant to section 3(b) of this Order, prior to being identified through other means;

(2) Obtains counseling or rehabilitation through an Employee Assistance Program; and

(3) Thereafter refrains from using illegal drugs.

(c) Agencies shall not allow any employee to remain on duty in a sensitive position who is found to use illegal drugs, prior to successful completion of rehabilitation through an Employee Assistance Program. However, as part of a rehabilitation or counseling program, the head of an Executive agency may, in his or her discretion, allow an employee to return to duty in a sensitive position if it is determined that this action would not pose a danger to public health or safety or the national security.

(d) Agencies shall initiate action to remove from the service any employee who is found to use illegal drugs and:

(1) Refuses to obtain counseling or rehabilitation through an Employee Assistance Program; or

(2) Does not thereafter refrain from using illegal drugs.

(e) The results of a drug test and information developed by the agency in the course of the drug testing of the employee may be considered in processing any adverse action against the employee or for other administrative purposes. Preliminary test results may not be used in an administrative proceeding unless they are confirmed by a second analysis of the same sample or unless the employee confirms the accuracy of the initial test by admitting the use of illegal drugs.

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(f) The determination of an agency that an employee uses illegal drugs can be made on the basis of any appropriate evidence, including direct observation, a criminal conviction, administrative inquiry, or the results of an authorized testing program. Positive drug test results may be rebutted by other evidence that an employee has not used illegal drugs.

(g) Any action to discipline an employee who is using illegal drugs (including removal from the service, if appropriate) shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act [Pub. L. 95-454, see Tables for classification].

(h) Drug testing shall not be conducted pursuant to this Order for the purpose of gathering evidence for use in criminal proceedings. Agencies are not required to report to the Attorney General for investigation or prosecution any information, allegation, or evidence relating to violations of Title 21 of the United States Code received as a result of the operation of drug testing programs established pursuant to this Order.

Sec. 6. Coordination of Agency Programs. (a) The Director of the Office of Personnel Management shall:

- (1) Issue government-wide guidance to agencies on the implementation of the terms of this Order;
- (2) Ensure that appropriate coverage for drug abuse is maintained for employees and their families under the Federal Employees Health Benefits Program;
- (3) Develop a model Employee Assistance Program for Federal agencies and assist the agencies in putting programs in place;
- (4) In consultation with the Secretary of Health and Human Services, develop and improve training programs for Federal supervisors and managers on illegal drug use; and
- (5) In cooperation with the Secretary of Health and Human Services and heads of Executive agencies, mount an intensive drug awareness campaign throughout the Federal work force.

(b) The Attorney General shall render legal advice regarding the implementation of this Order and shall be consulted with regard to all guidelines, regulations, and policies proposed to be adopted pursuant to this Order.

(c) Nothing in this Order shall be deemed to limit the authorities of the Director of Central Intelligence under the National Security Act of 1947, as amended [50 U.S.C. 401 et seq.], or the statutory authorities of the National Security Agency or the Defense Intelligence Agency. Implementation of this Order within the Intelligence Community, as defined in Executive Order No. 12333 [50 U.S.C. 401 note ], shall be subject to the approval of the head of the affected agency.

Sec. 7. Definitions. (a) This Order applies to all agencies of the Executive Branch.

(b) For purposes of this Order, the term “agency” means an Executive agency, as defined in 5 U.S.C. 105; the Uniformed Services, as defined in 5 U.S.C. 2101 (3) (but excluding the armed forces as defined by 5 U.S.C. 2101 (2)); or any other employing unit or authority of the Federal government, except the United States Postal Service, the Postal Rate Commission, and employing units or authorities in the Judicial and Legislative Branches.

(c) For purposes of this Order, the term “illegal drugs” means a controlled substance included in Schedule I or II, as defined by section 802 (6) of Title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term “illegal drugs” does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(d) For purposes of this Order, the term “employee in a sensitive position” refers to:

- (1) An employee in a position that an agency head designates Special Sensitive, Critical-Sensitive, or Noncritical-Sensitive under Chapter 731 of the Federal Personnel Manual or an employee in a position that an agency head designates as sensitive in accordance with Executive Order No. 10450, as amended [5 U.S.C. 7311 note ];
- (2) An employee who has been granted access to classified information or may be granted access to classified information pursuant to a determination of trustworthiness by an agency head under Section 4 of Executive Order No. 12356 [50 U.S.C. 435 note ];
- (3) Individuals serving under Presidential appointments;
- (4) Law enforcement officers as defined in 5 U.S.C. 8331 (20); and
- (5) Other positions that the agency head determines involve law enforcement, national security, the protection of life and property, public health or safety, or other functions requiring a high degree of trust and confidence.

(e) For purposes of this Order, the term “employee” means all persons appointed in the Civil Service as described in 5 U.S.C. 2105 (but excluding persons appointed in the armed services as defined in 5 U.S.C. 2102 (2)).

(f) For purposes of this Order, the term “Employee Assistance Program” means agency-based counseling programs that offer assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol,

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and mental health programs that affect employee job performance. Employee Assistance Programs are responsible for referring drug-using employees for rehabilitation and for monitoring employees' progress while in treatment.

Sec. 8. Effective Date. This Order is effective immediately.

Ronald Reagan.

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.]

## **Ex. Ord. No. 12674. Principles of Ethical Conduct for Government Officers and Employees**

Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended by Ex. Ord. No. 12731, Oct. 17, 1990, 55 F.R. 42547, provided:

By virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish fair and exacting standards of ethical conduct for all executive branch employees, it is hereby ordered as follows:

### **Part I—Principles of Ethical Conduct**

Section 101. Principles of Ethical Conduct. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each Federal employee shall respect and adhere to the fundamental principles of ethical service as implemented in regulations promulgated under sections 201 and 301 of this order:

- (a) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.
- (b) Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- (c) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
- (d) An employee shall not, except pursuant to such reasonable exceptions as are provided by regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
- (e) Employees shall put forth honest effort in the performance of their duties.
- (f) Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Government.
- (g) Employees shall not use public office for private gain.
- (h) Employees shall act impartially and not give preferential treatment to any private organization or individual.
- (i) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
- (j) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
- (k) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
- (l) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those—such as Federal, State, or local taxes—that are imposed by law.
- (m) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
- (n) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this order.

Sec. 102. Limitations on Outside Earned Income.

(a) No employee who is appointed by the President to a full-time noncareer position in the executive branch (including full-time noncareer employees in the White House Office, the Office of Policy Development, and the Office of Cabinet Affairs), shall receive any earned income for any outside employment or activity performed during that Presidential appointment.

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(b) The prohibition set forth in subsection (a) shall not apply to any full-time noncareer employees employed pursuant to 3 U.S.C. 105 and 3 U.S.C. 107(a) at salaries below the minimum rate of basic pay then paid for GS-9 of the General Schedule. Any outside employment must comply with relevant agency standards of conduct, including any requirements for approval of outside employment.

## **Part II—Office of Government Ethics Authority**

Sec. 201. The Office of Government Ethics. The Office of Government Ethics shall be responsible for administering this order by:

(a) Promulgating, in consultation with the Attorney General and the Office of Personnel Management, regulations that establish a single, comprehensive, and clear set of executive-branch standards of conduct that shall be objective, reasonable, and enforceable.

(b) Developing, disseminating, and periodically updating an ethics manual for employees of the executive branch describing the applicable statutes, rules, decisions, and policies.

(c) Promulgating, with the concurrence of the Attorney General, regulations interpreting the provisions of the post-employment statute, section 207 of title 18, United States Code; the general conflict-of-interest statute, section 208 of title 18, United States Code; and the statute prohibiting supplementation of salaries, section 209 of title 18, United States Code.

(d) Promulgating, in consultation with the Attorney General and the Office of Personnel Management, regulations establishing a system of nonpublic (confidential) financial disclosure by executive branch employees to complement the system of public disclosure under the Ethics in Government Act of 1978 [Pub. L. 95-521, see Tables for classification]. Such regulations shall include criteria to guide agencies in determining which employees shall submit these reports.

(e) Ensuring that any implementing regulations issued by agencies under this order are consistent with and promulgated in accordance with this order.

Sec. 202. Executive Office of the President. In that the agencies within the Executive Office of the President (EOP) currently exercise functions that are not distinct and separate from each other within the meaning and for the purposes of section 207 (e) of title 18, United States Code, those agencies shall be treated as one agency under section 207 (c) of title 18, United States Code.

## **Part III—Agency Responsibilities**

Sec. 301. Agency Responsibilities. Each agency head is directed to:

(a) Supplement, as necessary and appropriate, the comprehensive executive branch-wide regulations of the Office of Government Ethics, with regulations of special applicability to the particular functions and activities of that agency. Any supplementary agency regulations shall be prepared as addenda to the branch-wide regulations and promulgated jointly with the Office of Government Ethics, at the agency's expense, for inclusion in Title 5 of the Code of Federal Regulations.

(b) Ensure the review by all employees of this order and regulations promulgated pursuant to the order.

(c) Coordinate with the Office of Government Ethics in developing annual agency ethics training plans. Such training shall include mandatory annual briefings on ethics and standards of conduct for all employees appointed by the President, all employees in the Executive Office of the President, all officials required to file public or nonpublic financial disclosure reports, all employees who are contracting officers and procurement officials, and any other employees designated by the agency head.

(d) Where practicable, consult formally or informally with the Office of Government Ethics prior to granting any exemption under section 208 of title 18, United States Code, and provide the Director of the Office of Government Ethics a copy of any exemption granted.

(e) Ensure that the rank, responsibilities, authority, staffing, and resources of the Designated Agency Ethics Official are sufficient to ensure the effectiveness of the agency ethics program. Support should include the provision of a separate budget line item for ethics activities, where practicable.

## **Part IV—Delegations of Authority**

Sec. 401. Delegations to Agency Heads. Except in the case of the head of an agency, the authority of the President under sections 203 (d), 205 (e), and 208 (b) of title 18, United States Code, to grant exemptions or approvals to individuals, is delegated to the head of the agency in which an individual requiring an exemption or approval is employed or to which the individual (or the committee, commission, board, or similar group employing the individual) is attached for purposes of administration.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscp.html>).

Sec. 402. Delegations to the Counsel to the President.

(a) Except as provided in section 401, the authority of the President under sections 203 (d), 205 (e), and 208 (b) of title 18, United States Code, to grant exemptions or approvals for Presidential appointees to committees, commissions, boards, or similar groups established by the President is delegated to the Counsel to the President.

(b) The authority of the President under sections 203 (d), 205 (e), and 208 (b) of title 18, United States Code, to grant exemptions or approvals for individuals appointed pursuant to 3 U.S.C. 105 and 3 U.S.C. 107(a), is delegated to the Counsel to the President.

Sec. 403. Delegation Regarding Civil Service. The Office of Personnel Management and the Office of Government Ethics, as appropriate, are delegated the authority vested in the President by 5 U.S.C. 7301 to establish general regulations for the implementation of this Executive order.

## Part V—General Provisions

Sec. 501. Revocations. The following Executive orders are hereby revoked:

(a) Executive Order No. 11222 of May 8, 1965.

(b) Executive Order No. 12565 of September 25, 1986.

Sec. 502. Savings Provision.

(a) All actions already taken by the President or by his delegates concerning matters affected by this order and in force when this order is issued, including any regulations issued under Executive Order 11222, Executive Order 12565, or statutory authority, shall, except as they are irreconcilable with the provisions of this order or terminate by operation of law or by Presidential action, remain in effect until properly amended, modified, or revoked pursuant to the authority conferred by this order or any regulations promulgated under this order. Notwithstanding anything in section 102 of this order, employees may carry out preexisting contractual obligations entered into before April 12, 1989.

(b) Financial reports filed in confidence (pursuant to the authority of Executive Order No. 11222, 5 C.F.R. Part 735, and individual agency regulations) shall continue to be held in confidence.

Sec. 503. Definitions. For purposes of this order, the term:

(a) “Contracting officers and procurement officials” means all such officers and officials as defined in the Office of Federal Procurement Policy Act Amendments of 1988 [see 41 U.S.C. 423].

(b) “Employee” means any officer or employee of an agency, including a special Government employee.

(c) “Agency” means any executive agency as defined in 5 U.S.C. 105, including any executive department as defined in 5 U.S.C. 101, Government corporation as defined in 5 U.S.C. 103, or an independent establishment in the executive branch as defined in 5 U.S.C. 104 (other than the General Accounting Office [now Government Accountability Office]), and the United States Postal Service and Postal Rate Commission.

(d) “Head of an agency” means, in the case of an agency headed by more than one person, the chair or comparable member of such agency.

(e) “Special Government employee” means a special Government employee as defined in 18 U.S.C. 202 (a).

Sec. 504. Judicial Review. This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

### Executive Order No. 12820

Ex. Ord. No. 12820, Nov. 5, 1992, 57 F.R. 53429, which facilitated Federal employees’ participation in community service activities, was revoked by Ex. Ord. No. 13401, § 3(b), Apr. 27, 2006, 71 F.R. 25738.

### Executive Order No. 12834

Ex. Ord. No. 12834, Jan. 20, 1993, 58 F.R. 5911, which provided for ethics commitments by executive branch appointees, was revoked by Ex. Ord. No. 13184, Dec. 28, 2000, 66 F.R. 697, eff. noon Jan. 20, 2001.

### Ex. Ord. No. 13058. Protecting Federal Employees and the Public From Exposure to Tobacco Smoke in the Federal Workplace

Ex. Ord. No. 13058, Aug. 9, 1997, 62 F.R. 43451, provided:

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

By the authority vested in me as President by the Constitution and the laws of the United States of America and in order to protect Federal Government employees and members of the public from exposure to tobacco smoke in the Federal workplace, it is hereby ordered as follows:

Section 1. Policy. It is the policy of the executive branch to establish a smoke-free environment for Federal employees and members of the public visiting or using Federal facilities. The smoking of tobacco products is thus prohibited in all interior space owned, rented, or leased by the executive branch of the Federal Government, and in any outdoor areas under executive branch control in front of air intake ducts.

Sec. 2. Exceptions. The general policy established by this order is subject to the following exceptions: (a) The order does not apply in designated smoking areas that are enclosed and exhausted directly to the outside and away from air intake ducts, and are maintained under negative pressure (with respect to surrounding spaces) sufficient to contain tobacco smoke within the designated area. Agency officials shall not require workers to enter such areas during business hours while smoking is ongoing.

(b) The order does not extend to any residential accommodation for persons voluntarily or involuntarily residing, on a temporary or long-term basis, in a building owned, leased, or rented by the Federal Government.

(c) The order does not extend to those portions of federally owned buildings leased, rented, or otherwise provided in their entirety to nonfederal parties.

(d) The order does not extend to places of employment in the private sector or in other nonfederal governmental units that serve as the permanent or intermittent duty station of one or more Federal employees.

(e) The head of any agency may establish limited and narrow exceptions that are necessary to accomplish agency missions. Such exception shall be in writing, approved by the agency head, and to the fullest extent possible provide protection of nonsmokers from exposure to environmental tobacco smoke. Authority to establish such exceptions may not be delegated.

Sec. 3. Other Locations. The heads of agencies shall evaluate the need to restrict smoking at doorways and in courtyards under executive branch control in order to protect workers and visitors from environmental tobacco smoke, and may restrict smoking in these areas in light of this evaluation.

Sec. 4. Smoking Cessation Programs. The heads of agencies are encouraged to use existing authority to establish programs designed to help employees stop smoking.

Sec. 5. Responsibility for Implementation. The heads of agencies are responsible for implementing and ensuring compliance with the provisions of this order. "Agency" as used in this order means an Executive agency, as defined in 5 U.S.C. 105, and includes any employing unit or authority of the Federal Government, other than those of the legislative and judicial branches. Independent agencies are encouraged to comply with the provisions of this order.

Sec. 6. Phase-In of Implementation. Implementation of the policy set forth in this order shall be achieved no later than 1 year after the date of this order. This 1 year phase-in period is designed to establish a fixed but reasonable time for implementing this policy. Agency heads are directed during this period to inform all employees and visitors to executive branch facilities about the requirements of this order, inform their employees of the health risks of exposure to environmental tobacco smoke, and undertake related activities as necessary.

Sec. 7. Consistency with Other Laws. The provisions of this order shall be implemented consistent with applicable law, including the Federal Service Labor-Management Relations Act (5 U.S.C. 7101 et seq.) and the National Labor Relations Act (29 U.S.C. 151 et seq.). Provisions of existing collective bargaining agreements shall be honored and agencies shall consult with employee labor representatives about the implementation of this order. Nothing herein shall be construed to impair or alter the powers and duties of Federal agencies established under law. Nothing herein shall be construed to replace any agency policy currently in effect, if such policy is legally established, in writing, and consistent with the terms of this order. Agencies shall review their current policy to confirm that agency policy comports with this order, and policy found not in compliance shall be revised to comply with the terms of this order.

Sec. 8. Cause of Action. This order does not create any right to administrative or judicial review, or any other right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person or affect in any way the liability of the executive branch under the Federal Tort Claims Act [see Short Title note set out under section 2671 of Title 28, Judiciary and Judicial Procedure].

Sec. 9. Construction. Nothing in this order shall limit an agency head from establishing more protective policies on smoking in the Federal workplace for employees and members of the public visiting or using Federal facilities.

William J. Clinton.

### **Ex. Ord. No. 13401. Responsibilities of Federal Departments and Agencies With Respect to Volunteer Community Service**

Ex. Ord. No. 13401, Apr. 27, 2006, 71 F.R. 25737, provided:

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

By the authority vested in me as President by the Constitution and the laws of the United States of America and in order to help ensure that the Federal Government supports and encourages volunteer community service, it is hereby ordered as follows:

Section 1. Designation of a Liaison for Volunteer Community Service. (a) The head of each agency shall, within 20 days after the date of this order, designate an officer or employee of such agency compensated at a level at or above the minimum level of pay of a member of the Senior Executive Service to serve under the authority of the head of the agency as the agency liaison for volunteer community service (Liaison).

(b) The Liaison in each agency shall promote and support community service on a voluntary basis among Federal employees, including those approaching retirement; promote the use of skilled volunteers; and facilitate public recognition for volunteer community service.

(c) The head of each agency shall prescribe arrangements within the agency for support and supervision of the Liaison that ensure high priority and substantial visibility for the function of the Liaison within the agency under this order.

(d) Each executive agency shall provide its Liaison with appropriate administrative support and other resources to meet the responsibilities of the Liaison under this order.

Sec. 2. Goals and Responsibilities of the Liaison. The Liaison shall foster within the Liaison's agency a culture of taking responsibility, service to others, and good citizenship. Toward that end, the Liaison shall:

(a) identify, catalog, and review all activities of the agency that relate to volunteer community service, including, but not limited to rules, orders, grant programs, external relations, and other policies and practices, and make such recommendations to the head of the agency for adjustments as may be appropriate;

(b) actively work with USA Freedom Corps to promote volunteer community service among agency employees by providing information about community service opportunities;

(c) coordinate within the agency actions to facilitate public recognition for volunteer community service;

(d) promote, expand, and enhance skilled volunteer community service opportunities;

(e) work with the USA Freedom Corps and the Director of the Office of Personnel Management (OPM) to consider any appropriate changes in agency policies or practices that are not currently consistent with OPM guidance;

(f) coordinate the awarding of the President's Volunteer Service Award to recognize outstanding volunteer service by employees within the agency; and

(g) act as a liaison with the USA Freedom Corps.

Sec. 3. Administrative Provisions. (a) The USA Freedom Corps shall provide such information with respect to volunteer community service programs and activities and such advice and assistance as may be required by agencies in performing their functions under this order.

(b) Executive Order 12820 of November 5, 1992, is revoked.

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

(d) As used in this order:

(i) "agency" has the meaning of "executive agency" as defined in section 105 of title 5, United States Code; and

(ii) "USA Freedom Corps" means the Director of the USA Freedom Corps Office established by section 4 of Executive Order 13254 of January 29, 2002.

Sec. 4. Reporting Provisions. (a) Not later than 180 days from the date of this order and annually thereafter, each agency Liaison shall prepare and submit a report to the USA Freedom Corps that includes a description of the agency's activities in performing its functions under this order.

(b) A Liaison's first report under subsection (a) shall include annual performance indicators and measurable objectives for agency action approved by the head of the agency. Each report filed thereafter under subsection (a) shall measure the agency's performance against the indicators and objectives approved by the head of the agency.

Sec. 5. Judicial Review. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable by any party at law or in equity against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

George W. Bush.