

5 U.S.C. § 3323 (b)

shall be returned to a position of no lower grade and pay than the position from which the individual was transferred, assigned, or promoted. Nothing in this section prohibits an agency from taking an action against an individual serving a probationary period under subsection (a)(2) of this section for cause unrelated to supervisory or managerial performance.

(c) Subsections (a) and (b) of this section shall not apply with respect to appointments in the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422; Pub. L. 95-454, title III, §303(a), Oct. 13, 1978, 92 Stat. 1146; Pub. L. 100-325, §2(d), May 30, 1988, 102 Stat. 581.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 633(2)4.	Jan. 16, 1883, ch. 27. §2(2)4, 22 Stat. 404.

The authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302. Wording is changed because in practice an appointment is not made after probation. The words "or employment" are omitted as included within "appointment".

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

1988—Subsec. (c). Pub. L. 100-325 inserted reference to Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

1978—Pub. L. 95-454 substituted "probationary period" for "probation; period of" in section catchline, designated existing provisions as subsec. (a), substituted provisions authorizing the President to take necessary action, for provisions authorizing the President to prescribe rules, and added subsecs. (b) and (c).

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.

[§ 3322. Repealed. Pub. L. 95-256, §5(b)(1), Apr. 6, 1978, 92 Stat. 191]

Section, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422, related to temporary appointments after age 70 in the competitive service.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 30, 1978, see section 5(f) of Pub. L. 95-256, set out as an Effective Date of 1978 Amendment note under section 633a of Title 29, Labor.

§ 3323. Automatic separations; reappointment; re-employment of annuitants

(a) An individual who reaches the retirement age prescribed for automatic separation applicable to him may not be continued in the civil service or in the government of the District of Columbia. An individual separated on account of age under a statute or regulation providing for retirement on account of age is not eligible for appointment in the civil service or in the government of the District of Columbia. The President, when in his judgment the public interest

so requires, may except an individual from this subsection by Executive order. This subsection does not apply to an individual named by a statute providing for the continuance of the individual in the civil service or in the government of the District of Columbia.

(b)(1) Notwithstanding other statutes, an annuitant, as defined by section 8331 or 8401, receiving annuity from the Civil Service Retirement and Disability Fund is not barred by reason of his retired status from employment in an appointive position for which the annuitant is qualified. An annuitant so reemployed, other than an annuitant reappointed under paragraph (2) of this subsection, serves at the will of the appointing authority.

(2) Subject to such regulations as the Director of the Office of Personnel Management may prescribe, any annuitant to whom the first sentence of paragraph (1) of this subsection applies and who has served as an administrative law judge pursuant to an appointment under section 3105 of this title may be reappointed an administrative law judge under such section for a specified period or for such period as may be necessary for such administrative law judge to conduct and complete the hearing and disposition of one or more specified cases. The provisions of this title that apply to or with respect to administrative law judges appointed under section 3105 of this title shall apply to or with respect to administrative law judges reappointed under such section pursuant to the first sentence of this paragraph.

(c) Notwithstanding subsection (a) of this section, a member of the Foreign Service retired under section 812 of the Foreign Service Act of 1980 is not barred by reason of his retired status from employment in a position in the civil service for which he is qualified. An annuitant so reemployed serves at the will of the appointing authority.

(d) Notwithstanding subsection (a) of this section, the Chief of Engineers of the Army, under section 569a of title 33, may employ a retired employee whose expert assistance is needed in connection with river and harbor or flood control works. There shall be deducted from the pay of an employee so reemployed an amount equal to the annuity or retired pay allocable to the period of actual employment.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422; Pub. L. 96-465, title II, §2314(a), Oct. 17, 1980, 94 Stat. 2167; Pub. L. 98-224, §2, Mar. 2, 1984, 98 Stat. 47; Pub. L. 102-378, §2(10), Oct. 2, 1992, 106 Stat. 1347.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 715a.	June 30, 1932, ch. 314, §204, 47 Stat. 404.
(b)	5 U.S.C. 2263(a).	July 31, 1956, ch. 804, §401 "Sec. 13(a)", 70 Stat. 757.
(c)	22 U.S.C. 915(c).	Sept. 8, 1960, Pub. L. 86-723, §10(d), 74 Stat. 832.
(d)	33 U.S.C. 544a, 701l.	June 20, 1938, ch. 535, §5, 52 Stat. 805.

In subsection (a), the words "On and after July 1, 1932" are omitted as executed. The words "heretofore or hereafter" are omitted as unnecessary. The words "in the civil service" are substituted for "civilian serv-

ice in any branch or service of the United States Government” and “to any appointive office, position, or employment under the United States” in view of the definition of “civil service” in section 2101.

In subsection (b), the words “receiving annuity from the Civil Service Retirement and Disability Fund” are substituted for “heretofore or hereafter retired under this chapter”. The word “authority” is substituted for “officer” in recognition of the several appointing authorities named in section 2105(a)(1).

In subsection (c), the words “Notwithstanding subsection (a) of this section” are substituted for “Notwithstanding the provisions of sections 62 and 715a of title 5” to reflect the codification of former section 715a in subsection (a) of this section and in view of the repeal of section 62 of title 5 by §402(a)(7) of the Act of Aug. 19, 1964, Pub. L. 88-448, 78 Stat. 492. The words “heretofore or hereafter” and “hereafter” are omitted as unnecessary. The words “in a position in the civil service” are substituted for “in Federal Government service in any appointive position” in view of the definition of “civil service” in section 2101. The word “authority” is substituted for “officer” in recognition of the several appointing authorities named in section 2105(a)(1).

In subsection (d), the words “Notwithstanding subsection (a) of this section” are substituted for “The provisions of section 715a of title 5 shall not be so construed as to prevent” to reflect the codification of former section 715a in subsection (a) of this section, and to conform to the style of this section. The words “under section 569a of title 33” are substituted for “under agreement as authorized by sections 569a, 584a and 607a of title 33” on authority of the provision contained in section 569a of title 33. The word “employee” is coextensive with and substituted for “civilian employee” in view of the definition of “employee” in section 2105. The last sentence is restated for clarity.

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

REFERENCES IN TEXT

Section 812 of the Foreign Service Act of 1980, referred to in subsec. (c), is classified to section 4052 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102-378 substituted “annuitant, as defined by section 8331 or 8401,” for “annuitant as defined by section 8331 of this title”.

1984—Subsec. (b). Pub. L. 98-224 designated existing provisions as par. (1), substituted “the annuitant” for “he” and inserted “, other than an annuitant reappointed under paragraph (2) of this subsection,” and added par. (2).

1980—Subsec. (c). Pub. L. 96-465 substituted “member of the Foreign Service retired under section 812 of the Foreign Service Act of 1980” for “Foreign Service officer retired under section 1001 or 1002 of title 22 or a Foreign Service staff officer or employee retired under section 1063 of title 22”.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

§ 3324. Appointments to positions classified above GS-15

(a) An appointment to a position classified above GS-15 pursuant to section 5108 may be made only on approval of the qualifications of the proposed appointee by the Director of the Office of Personnel Management on the basis of qualification standards developed by the agency involved in accordance with criteria specified in

regulations prescribed by the Director. This section does not apply to a position—

- (1) to which appointment is made by the Chief Judge of the United States Tax Court;
- (2) to which appointment is made by the President;
- (3) to which appointment is made by the Librarian of Congress; or
- (4) the incumbent of which is paid from—

(A) appropriations for the Executive Office of the President under the heading “The White House Office”, “Special Projects”, “Council of Economic Advisers”, or “National Security Council”; or

(B) funds appropriated to the President under the heading “Emergency Fund for the President” by the Treasury, Post Office, and Executive Office Appropriation Act, 1966, or a later statute making appropriations for the same purpose.

(b) The Office may prescribe regulations necessary for the administration of this section.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422; Pub. L. 90-83, §1(10), Sept. 11, 1967, 81 Stat. 197; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-54, §2(a)(17), Aug. 14, 1979, 93 Stat. 382; Pub. L. 101-509, title V, §529 [title I, §101(b)(9)(C)(i), (ii)], Nov. 5, 1990, 104 Stat. 1427, 1441; Pub. L. 102-378, §2(11), Oct. 2, 1992, 106 Stat. 1347; Pub. L. 110-372, §2(c)(2), Oct. 8, 2008, 122 Stat. 4044.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 1105(i).	June 20, 1958, Pub. L. 85-462, §10 “(i)”, 72 Stat. 213. Sept. 13, 1960, Pub. L. 86-768, 74 Stat. 910.

In subsection (a), the words “in GS-16, 17, and 18” are substituted for “in grades 16, 17, and 18 of the General Schedule”.

In subsection (a)(2), the words “by the President” are coextensive with and substituted for “by the President alone or by the President by and with the advice and consent of the Senate”.

In subsection (a)(4)(A), the words “Office of Emergency Planning” are substituted for “Office of Defense Mobilization” on authority of 1958 Reorg. Plan No. 1, §2(a), effective July 1, 1958, 72 Stat. 1799, as amended Aug. 26, 1958, Pub. L. 85-763, 72 Stat. 861, and Sept. 22, 1961, Pub. L. 87-296, 75 Stat. 630. Reference to “President’s Advisory Committee on Government Organization” is omitted since the Committee was abolished by Executive Order No. 10917, February 10, 1961.

In subsection (a)(4)(B), the words “Emergency Fund for the President” by the Treasury, Post Office, and Executive Office Appropriation Act, 1966” are substituted for “Emergency Fund for the President, National Defense” by the General Government Matters Appropriation Act, 1959” to reflect the heading and title of the current appropriation Act.

Subsection (b) is added on authority of former sections 1072 and 1072a, which are carried into section 5115.

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

1967 ACT

This section amends 5 U.S.C. 3324(a)(4)(A) to correct typographical errors.

5 CFR 930.201 et seq.

Office of Personnel Management

§ 930.201

§ 930.115 Requests for waiver of requirements.

Agencies may request authority from OPM to waive requirements in this subpart. OPM may grant exceptions or waivers when it finds these waivers or exceptions are in the interest of good administration and meet the objectives of this program.

[50 FR 34669, Aug. 27, 1985, as amended at 66 FR 66712, Dec. 27, 2001]

Subpart B—Administrative Law Judge Program

AUTHORITY: 5 U.S.C. 1104(a), 1302(a), 1305, 3105, 3301, 3304, 3323(b), 3344, 4301(2)(D), 5372, 7521, and E.O. 10577, 3 CFR, 1954-1958 Comp., p. 219.

SOURCE: 72 FR 12954, Mar. 20, 2007, unless otherwise noted.

§ 930.201 Coverage.

(a) This subpart applies to individuals appointed under 5 U.S.C. 3105 for proceedings required to be conducted in accordance with 5 U.S.C. 556 and 557 and to administrative law judge positions.

(b) Administrative law judge positions are in the competitive service. Except as otherwise stated in this subpart, the rules and regulations applicable to positions in the competitive service apply to administrative law judge positions.

(c) The title "administrative law judge" is the official title for an administrative law judge position. Each agency must use only this title for personnel, budget, and fiscal purposes.

(d) The Director of OPM, or designee, shall prescribe the examination methodology in the design of each administrative law judge examination.

(e) OPM does not hire administrative law judges for other agencies but has the authority to:

(1) Recruit and examine applicants for administrative law judge positions, including developing and administering the administrative law judge examinations under 5 U.S.C. 3301, 3304, 1104(a), and 1302, and Executive Order 10577, as amended, except OPM is not required to use the examination scoring process in 5 CFR 337.101(a);

(2) Assure that decisions concerning the appointment, pay, and tenure of administrative law judges in Federal agencies are consistent with applicable laws and regulations;

(3) Establish classification and qualification standards for administrative law judge positions;

(4) Approve noncompetitive personnel actions for administrative law judges, including but not limited to promotions, transfers, reinstatements, restorations, and reassignments;

(5) Approve personnel actions related to pay for administrative law judges under § 930.205(c), (f)(2), (g), and (j);

(6) Approve an intra-agency detail or assignment of an administrative law judge to a non-administrative law judge position that lasts more than 120 days or when an administrative law judge cumulates a total of more than 120 days for more than one detail or assignment within the preceding 12 months;

(7) Arrange the temporary detail (loan) of an administrative law judge from one agency to another under the provisions of the administrative law judge loan program in § 930.208;

(8) Arrange temporary reemployment of retired administrative law judges to meet changing agency workloads under the provisions of the Senior Administrative Law Judge Program in § 930.209;

(9) Maintain and administer the administrative law judge priority referral program under § 930.210(c);

(10) Promulgate regulations for purposes of sections 3105, 3344, 4301(2)(D) and 5372 of title 5, U.S.C.; and

(11) Ensure the independence of the administrative law judge.

(f) An agency employing administrative law judges under 5 U.S.C. 3105 has:

(1) The authority to appoint as many administrative law judges as necessary for proceedings conducted under 5 U.S.C. 556 and 557;

(2) The authority to assign an administrative law judge to cases in rotation so far as is practicable;

(3) The responsibility to ensure the independence of the administrative law judge; and

(4) The responsibility to obtain OPM's approval before taking any of the personnel actions described in

§ 930.202

paragraphs (e)(4) through (8) of this section.

§ 930.202 Definitions.

In this subpart:

Administrative law judge position means a position in which any portion of the duties requires the appointment of an administrative law judge under 5 U.S.C. 3105.

Agency has the same meaning given in 5 U.S.C. 551(1).

Detail means the temporary assignment of an administrative law judge from one administrative law judge position to another administrative law judge position without change in civil service or pay status.

Removal means discharge of an administrative law judge from the position of an administrative law judge or involuntary reassignment, demotion, or promotion to a position other than that of an administrative law judge.

Senior administrative law judge means a retired administrative law judge who is reemployed under a temporary appointment under 5 U.S.C. 3323(b)(2) and § 930.209 of this chapter.

Superior qualifications means an appointment made at a rate above the minimum rate based on such qualifications as experience practicing law before the hiring agency; experience practicing before another forum in a field of law relevant to the hiring agency; or an outstanding reputation among others in a field of law relevant to the hiring agency.

§ 930.203 Cost of competitive examination.

Each agency employing administrative law judges must reimburse OPM for the cost of developing and administering the administrative law judge examination. Each agency is charged a pro rata share of the examination cost, based on the actual number of administrative law judges the agency employs. OPM computes the cost of the examination program on an annual basis and notifies the employing agencies of their respective shares after the calculations are made.

5 CFR Ch. I (1-1-09 Edition)

§ 930.204 Appointments and conditions of employment.

(a) *Appointment.* An agency may appoint an individual to an administrative law judge position only with prior approval of OPM, except when it makes its selection from the list of eligibles provided by OPM. An administrative law judge receives a career appointment and is exempt from the probationary period requirements under part 315 of this chapter. An administrative law judge appointment is subject to investigation, and an administrative law judge is subject to the suitability requirements in part 731 of this chapter.

(b) *Licensure.* (1) At the time of application and any new appointment and while serving as an administrative law judge, the individual must possess a professional license to practice law and be authorized to practice law under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution. Judicial status is acceptable in lieu of "active" status in States that prohibit sitting judges from maintaining "active" status to practice law. Being in "good standing" is also acceptable in lieu of "active" status in States where the licensing authority considers "good standing" as having a current license to practice law.

(2) The requirements contained in paragraph (b)(1) are suspended until further notice with respect to incumbents serving as administrative law judges.

(c) *Appointment of incumbents of newly classified administrative law judge positions.* An agency may give an incumbent employee an administrative law judge career appointment if that employee is serving in the position when it is classified as an administrative law judge position on the basis of legislation, Executive order, or a decision of a court and if:

(1) The employee has competitive status or is serving in an excepted position under a permanent appointment;

(2) The employee is serving in an administrative law judge position on the day the legislation, Executive order, or decision of the court on which the classification of the position is based becomes effective;

(3) OPM receives a recommendation for the employee's appointment from the agency concerned; and

(4) OPM determines the employee meets the qualification requirements and has passed the current examination for an administrative law judge position.

(d) *Appointment of an employee from a non-administrative law judge position.* Except as provided in paragraphs (a) and (c) of this section, an agency may not appoint an employee who is serving in a position other than an administrative law judge position to an administrative law judge position.

(e) *Promotion.* (1) Except as otherwise stated in this paragraph, 5 CFR part 335 applies in the promotion of administrative law judges.

(2) To reclassify an administrative law judge position at a higher level, the agency must submit a request to OPM. When OPM approves the higher level classification, OPM will direct the promotion of the administrative law judge occupying the position prior to the reclassification.

(f) *Reassignment.* Prior to OPM's approval, the agency must provide a bona fide management reason for the reassignment.

(g) *Reinstatement.* An agency may reinstate a former administrative law judge who served under 5 U.S.C. 3105, passed an OPM administrative law judge competitive examination, and meets the professional license requirement in paragraph (b) of this section.

(h) *Transfer.* An agency may not transfer an individual from one administrative law judge position to another administrative law judge position within 1 year after the individual's last appointment, unless the gaining and losing agencies agree to the transfer.

(i) *Conformity.* Actions under this section must be consistent with § 930.201(f).

[72 FR 12954, Mar. 20, 2007, as amended at 73 FR 41235, July 18, 2008]

§ 930.205 Administrative law judge pay system.

(a) OPM assigns each administrative law judge position to one of the three levels of basic pay, AL-3, AL-2 or AL-1 of the administrative law judge pay system established under 5 U.S.C. 5372

in accordance with this section. Pay level AL-3 has six rates of basic pay, A, B, C, D, E, and F.

(1) The rate of basic pay for AL-3, rate A, may not be less than 65 percent of the rate of basic pay for level IV of the Executive Schedule. The rate of basic pay for AL-1 may not exceed the rate for level IV of the Executive Schedule.

(2) The President determines the appropriate adjustment for each level in the administrative law judge pay system, subject to paragraph (a)(1) of this section. Such adjustments take effect on the 1st day of the first pay period beginning on or after the first day of the month in which adjustments in the General Schedule rates of basic pay under 5 U.S.C. 5303 take effect.

(3) An agency must use the following procedures to convert an administrative law judge's annual rate of basic pay to an hourly, daily, weekly, or bi-weekly rate:

(i) To derive an hourly rate, divide the annual rate of pay by 2,087 and round to the nearest cent, counting one-half cent and over as the next higher cent.

(ii) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required by the administrative law judge's basic daily tour of duty.

(iii) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, respectively.

(b) Pay level AL-3 is the basic pay level for administrative law judge positions filled through a competitive examination.

(c) Subject to OPM approval, agencies may establish administrative law judge positions in pay levels AL-2 and AL-1. Administrative law judge positions are placed at these levels when they involve significant administrative and managerial responsibilities.

(d) Administrative law judges must serve at least 1 year in each AL pay level, or in an equivalent or higher level in positions in the Federal service, before advancing to the next higher level and may advance only one level at a time.

(e) Except as provided in paragraph (f) of this section, upon appointment to an administrative law judge position

§ 930.206

and placement in level AL-3, an administrative law judge is paid at the minimum rate A of AL-3. He or she is automatically advanced successively to rates B, C, and D of that level upon completion of 52 weeks of service in the next lower rate, and to rates E and F of that level upon completion of 104 weeks of service in the next lower rate. Time in a non-pay status is generally creditable service when computing the 52- or 104-week period as long as it does not exceed 2 weeks per year for each 52 weeks of service. However, absence due to ununiformed service or compensable injury is fully creditable upon reemployment as provided in part 353 of this chapter.

(f) Upon appointment to a position at AL-3, an administrative law judge may be paid at the minimum rate A, unless the administrative law judge is eligible for the higher rate B, C, D, E, or F because of prior service or superior qualifications, as provided in paragraphs (f)(1) and (f)(2) of this section.

(1) An agency may offer an administrative law judge applicant with prior Federal service a higher than minimum rate up to the lowest rate of basic pay that equals or exceeds the applicant's highest previous Federal rate of basic pay, not to exceed the maximum rate F.

(2) With prior OPM approval, an agency may pay the rate of pay that is next above the applicant's existing pay or earnings up to the maximum rate F. The agency may offer a higher than minimum rate to:

(i) An administrative law judge applicant with superior qualifications (as defined in § 930.202) who is within reach for appointment from an administrative law judge certificate of eligibles; or

(ii) A former administrative law judge with superior qualifications who is eligible for reinstatement.

(g) With prior OPM approval, an agency, on a one-time basis, may advance an administrative law judge in an AL-3 position with added administrative and managerial duties and responsibilities one rate above the administrative law judge's current AL-3 pay rate, up to the maximum rate F.

(h) Upon appointment to an administrative law judge position placed at

5 CFR Ch. I (1-1-09 Edition)

AL-2 or AL-1, an administrative law judge is paid at the established rate for the level.

(i) An employing agency may reduce the level or rate of basic pay of an administrative law judge under § 930.211.

(j) With prior OPM approval, an employing agency may reduce the level of basic pay of an administrative law judge if the administrative law judge submits to the employing agency a written request for a voluntary reduction due to personal reasons.

§ 930.206 Performance rating and awards.

(a) An agency may not rate the job performance of an administrative law judge.

(b) An agency may not grant any monetary or honorary award or incentive under 5 U.S.C. 4502, 4503, or 4504, or under any other authority, to an administrative law judge.

§ 930.207 Details and assignments to other duties within the same agency.

(a) An agency may detail an administrative law judge from one administrative law judge position to another administrative law judge position within the same agency in accordance with 5 U.S.C. 3341.

(b) An agency may not detail an employee who is not an administrative law judge to an administrative law judge position.

(c) An agency may assign an administrative law judge to perform non-administrative law judge duties only when:

(1) The other duties are consistent with administrative law judge duties and responsibilities;

(2) The assignment is to last no longer than 120 days; and

(3) The administrative law judge has not had a total of more than 120 days of such assignments or details within the preceding 12 months.

(d) OPM may authorize a waiver of paragraphs (c)(2) and (c)(3) of this section if an agency shows that it is in the public interest to do so. In determining whether a waiver is justified, OPM may consider, but is not restricted to considering, such factors as unusual case

load or special expertise of the detailee.

§ 930.208 Administrative Law Judge Loan Program—detail to other agencies.

(a) In accordance with 5 U.S.C. 3344, OPM administers an Administrative Law Judge Loan Program that coordinates the loan/detail of an administrative law judge from one agency to another. An agency may request from OPM the services of an administrative law judge if the agency is occasionally or temporarily insufficiently staffed with administrative law judges, or an agency may loan the services of its administrative law judges to other agencies if there is insufficient work to fully occupy the administrative law judges' work schedule.

(b) An agency's request to OPM for the services of an administrative law judge must:

- (1) Identify and briefly describe the nature of the case(s) to be heard;
- (2) Specify the legal authority for which the use of an administrative law judge is required; and
- (3) Demonstrate, as appropriate, that the agency has no administrative law judge available to hear the case(s).

(c) The services of an administrative law judge under this program are made from the starting date of the detail until the end of the current fiscal year, but may be extended into the next fiscal year with OPM's approval. Decisions for an extension are made by OPM on a case-by-case basis.

(d) The agency requesting the services of an administrative law judge under this program is responsible for reimbursing the agency that employs the administrative law judge for the cost of the service.

§ 930.209 Senior Administrative Law Judge Program.

(a) OPM administers a Senior Administrative Law Judge Program in accordance with 5 U.S.C. 3323(b)(2). The Senior Administrative Law Judge Program is subject to the requirements and limitations in this section.

(b) A senior administrative law judge must meet the:

- (1) Annuitant requirements under 5 U.S.C. 3323;

(2) Professional license requirement in § 930.204(b); and

(3) Investigations and suitability requirements in part 731 of this chapter.

(c) Under the Senior Administrative Law Judge Program, OPM authorizes agencies that have temporary, irregular workload requirements for conducting proceedings in accordance with 5 U.S.C. 556 and 557 to temporarily reemploy administrative law judge annuitants. If OPM is unable to identify an administrative law judge under § 930.208 who meets the agency's qualification requirements, OPM will approve the agency's request.

(d) An agency wishing to temporarily reemploy an administrative law judge must submit a written request to OPM. The request must:

- (1) Identify the statutory authority under which the administrative law judge is expected to conduct proceedings;
- (2) Demonstrate the agency's temporary or irregular workload requirements for conducting proceedings;
- (3) Specify the tour of duty, location, period of time, or particular case(s) for the requested reemployment; and
- (4) Describe any special qualifications the retired administrative law judge possesses that are required of the position, such as experience in a particular field, agency, or substantive area of law.

(e) OPM establishes the terms of the appointment for a senior administrative law judge. The senior administrative law judge may be reemployed either for a specified period not to exceed 1 year or for such time as may be necessary for the senior administrative law judge to conduct and complete the hearing and issue decisions for one or more specified cases. Upon agency request, OPM may reduce or extend such period of reemployment, as necessary, to coincide with changing staffing requirements.

(f) A senior administrative law judge serves subject to the same limitations as any other administrative law judge employed under this subpart and 5 U.S.C. 3105.

(g) A senior administrative law judge is paid the rate of basic pay for the pay level at which the position has been classified. If the position is classified

§ 930.210

at pay level AL-3, the senior administrative law judge is paid the lowest rate of basic pay in AL-3 that equals or exceeds the highest previous rate of basic pay attained by the individual as an administrative law judge immediately before retirement, up to the maximum rate F.

§ 930.210 Reduction in force.

(a) *Retention preference regulations.* Except as modified by this section, the reduction in force regulations in part 351 of this chapter apply to administrative law judges.

(b) *Determination of retention standing.* In determining retention standing in a reduction in force, each agency lists its administrative law judges by group and subgroup according to tenure of employment, veterans' preference, and service date as outlined in part 351 of this chapter. Because administrative law judges are not given performance ratings (see § 930.206), the provisions in part 351 of this chapter referring to the effect of performance ratings on retention standing are not applicable to administrative law judges.

(c) *Placement assistance.* (1) An administrative law judge who is reached in an agency's reduction in force and receives a notification of separation is eligible for placement assistance under the agency's reemployment priority list established and maintained in accordance with subpart B of part 330 of this chapter.

(2) An administrative law judge who is reached by an agency in a reduction in force and who is notified of being separated, furloughed for more than 30 days, or demoted, is entitled to have his or her name placed on OPM's administrative law judge priority referral list for the level in which last served and for all lower levels.

(i) To have his or her name placed on the OPM priority referral list, a displaced administrative law judge must provide OPM with a request for priority referral placement, a resume or equivalent, a list of acceptable geographical locations, and a copy of the reduction in force notice at any time after the receipt of the specific reduction in force notice, but not later than 90 days after the date of separation,

5 CFR Ch. I (1-1-09 Edition)

furlough for more than 30 days, or demotion.

(ii) Eligibility on the OPM priority referral list expires 2 years after the effective date of the reduction in force action.

(iii) Referral and selection of administrative law judges are made without regard to selective certification or special qualification procedures.

(iv) Termination of eligibility on the OPM priority referral list takes place when an administrative law judge submits a written request to terminate eligibility, accepts a permanent full-time administrative law judge position, or declines one full-time employment offer as an administrative law judge at or above the level held when reached for reduction in force at geographic locations indicated as acceptable under paragraph (c)(2)(i) of this section.

(3) When there is no administrative law judge available on the agency's reemployment priority list, an agency may fill a vacant administrative law judge position only from OPM's priority referral list, unless the agency obtains prior approval from OPM to fill the vacant position through competitive examining, promotion, transfer, reassignment, or reinstatement procedures. OPM will grant such approvals only under extraordinary circumstances. The agency must demonstrate that the potential administrative law judge candidate possesses experience and qualifications superior to any available displaced administrative law judge on OPM's priority referral list.

§ 930.211 Actions against administrative law judges.

(a) *Procedures.* An agency may remove, suspend, reduce in level, reduce in pay, or furlough for 30 days or less an administrative law judge only for good cause established and determined by the Merit Systems Protection Board on the record and after opportunity for a hearing before the Board as prescribed in 5 U.S.C. 7521 and 5 CFR part 1201. Procedures for adverse actions by agencies under part 752 of this chapter do not apply to actions against administrative law judges.

(b) *Status during removal proceedings.* In exceptional cases when there are circumstances in which the retention of an administrative law judge in his or her position, pending adjudication of the existence of good cause for his or her removal, is detrimental to the interests of the Federal Government, the agency may:

(1) Assign the administrative law judge to duties consistent with his or her normal duties in which these circumstances would not exist;

(2) Place the administrative law judge on leave with his or her consent;

(3) Carry the administrative law judge on annual leave, sick leave, leave without pay, or absence without leave, as appropriate, if he or she is voluntarily absent for reasons not originating with the agency; or

(4) If the alternatives in paragraphs (b)(1) through (b)(3) of this section are not available, the agency may consider placing the administrative law judge in a paid non-duty or administrative leave status.

(c) *Exceptions from procedures.* The procedures in paragraphs (a) and (b) of this section do not apply:

(1) In making dismissals or taking other actions under 5 CFR part 731;

(2) In making dismissals or other actions made by agencies in the interest of national security under 5 U.S.C. 7532;

(3) To reduction in force actions taken by agencies under 5 U.S.C. 3502; or

(4) In any action initiated by the Office of Special Counsel under 5 U.S.C. 1215.

Subpart C—Information Security Responsibilities for Employees who Manage or Use Federal Information Systems

AUTHORITY: 5 U.S.C. 4118; Pub. L. 107-347, 116 Stat. 2899.

SOURCE: 69 FR 32836, June 14, 2004, unless otherwise noted.

§ 930.301 Information systems security awareness training program.

Each Executive Agency must develop a plan for Federal information systems security awareness and training and

(a) Identify employees with significant information security responsibilities and provide role-specific training in accordance with National Institute of Standards and Technology (NIST) standards and guidance available on the NIST Web site, <http://csrc.nist.gov/publications/nistpubs/>, as follows:

(1) All users of Federal information systems must be exposed to security awareness materials at least annually. Users of Federal information systems include employees, contractors, students, guest researchers, visitors, and others who may need access to Federal information systems and applications.

(2) Executives must receive training in information security basics and policy level training in security planning and management.

(3) Program and functional managers must receive training in information security basics; management and implementation level training in security planning and system/application security management; and management and implementation level training in system/application life cycle management, risk management, and contingency planning.

(4) Chief Information Officers (CIOs), IT security program managers, auditors, and other security-oriented personnel (e.g., system and network administrators, and system/application security officers) must receive training in information security basics and broad training in security planning, system and application security management, system/application life cycle management, risk management, and contingency planning.

(5) IT function management and operations personnel must receive training in information security basics; management and implementation level training in security planning and system/application security management; and management and implementation level training in system/application life cycle management, risk management, and contingency planning.

(b) Provide the Federal information systems security awareness material/exposure outlined in NIST guidance on IT security awareness and training to all new employees before allowing them access to the systems.

Executive Order 9397

**EXECUTIVE ORDER 9397
NUMBERING SYSTEM FOR FEDERAL ACCOUNTS
RELATING TO INDIVIDUAL PERSONS**

WHEREAS certain Federal agencies from time to time require in the administration of their activities a system of numerical identification of accounts of individual persons; and

WHEREAS some seventy million persons have heretofore been assigned account numbers pursuant to the Social Security Act; and

WHEREAS a large percentage of Federal employees have already been assigned account numbers pursuant to the Social Security Act; and

WHEREAS it is desirable in the interest of economy and orderly administration that the Federal Government move towards the use of a single, unduplicated numerical identification system of accounts and avoid the unnecessary establishment of additional systems:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

1. Hereafter any Federal department, establishment, or agency shall, whenever the head thereof finds it advisable to establish a new system of permanent account numbers pertaining to individual persons, utilize exclusively the Social Security Act account numbers assigned pursuant to Title 26, section 402.502 of the 1940 Supplement to the Code of Federal Regulations* and pursuant to paragraph 2 of this order.

2. The Social Security Board shall provide for the assignment of an account number to each person who is required by any Federal agency to have such a number but who has not previously been assigned such number by the Board. The Board may accomplish this purpose by (a) assigning such numbers to individual persons, (b) assigning blocks of numbers to Federal agencies for reassignment to individual persons, or (c) making such other arrangements for the assignment of numbers as it may deem appropriate.

3. The Social Security Board shall furnish, upon request of any Federal agency utilizing the numerical identification system of accounts provided for in this order, the account number pertaining to any person with whom such agency has an account or the name and other identifying data pertaining to any account number of any such person.

4. The Social Security Board and each Federal agency shall maintain the confidential character of information relating to individual persons obtained pursuant to the provisions of this order.

5. There shall be transferred to the Social Security Board, from time to time, such amounts as the Director of the Bureau of the Budget shall determine to be required for reimbursement by any Federal agency for the services rendered by the Board pursuant to the provisions of this order.

6. This order shall be published in the FEDERAL REGISTER.

FRANKLIN D ROOSEVELT
THE WHITE HOUSE,
November 22, 1943.

*26 CFR, Cum. Supp., 402.502.

End.

EO 13478

Title 3—The President

(a) The term “United States national” has the same meaning as “national of the United States” in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)), but also includes any entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches).

(b) The term “foreign national” means any person other than a United States national.

(c) The term “person” means any individual or entity, including both natural and juridical persons.

(d) The term “entity” means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

Sec. 3. 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 departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH

The White House,
October 31, 2008.

Executive Order 13478 of November 18, 2008

Amendments To Executive Order 9397 Relating To Federal Agency Use of Social Security Numbers

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

Section 1. Policy. It is the policy of the United States that Federal agencies should conduct agency activities that involve personal identifiers in a manner consistent with protection of such identifiers against unlawful use.

Sec. 2. Amendments to Executive Order 9397. Executive Order 9397 of November 22, 1943, is amended:

(a) in paragraph 1 by:

(i) striking “shall” and inserting in lieu thereof “may”;

(ii) striking “exclusively”;

(iii) striking “Title 26, section 402.502” and inserting in lieu thereof “title 20, section 422.103”; and

(iv) striking “the 1940 Supplement to”;

(b) by striking “Bureau of the Budget” in paragraph 5 and inserting in lieu thereof “Office of Management and Budget”;

(c) by renumbering paragraph 6 as paragraph 8;

(d) by inserting immediately following paragraph 5 the following new paragraphs:

“6. This order shall be implemented in accordance with applicable law and subject to the availability of appropriations.

“7. 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 departments, agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.”; and

(e) by striking “Board” each place it appears and inserting in lieu thereof in each such place “Administration”.

Sec. 3. 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 departments, agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH

The White House,
November 18, 2008.

Executive Order 13479 of November 18, 2008

Transformation of the National Air Transportation System

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 United States to establish and maintain a national air transportation system that meets the present and future civil aviation, homeland security, economic, environmental protection, and national defense needs of the United States, including through effective implementation of the Next Generation Air Transportation System (NextGen).

Sec. 2. Definitions. As used in this order the term “Next Generation Air Transportation System” means the system to which section 709 of the Vision 100—Century of Aviation Reauthorization Act (Public Law 108–176) (Act) refers.

Sec. 3. Functions of the Secretary of Transportation. Consistent with sections 709 and 710 of the Act and the policy set forth in section 1 of this order, the Secretary of Transportation shall:

(a) take such action within the authority of the Secretary, and recommend as appropriate to the President such action as is within the authority of the President, to implement the policy set forth in section 1 of this order and in particular to implement the NextGen in a safe, secure, timely, environmentally sound, efficient, and effective manner;

(b) convene quarterly, unless the Secretary determines that meeting less often is consistent with effective implementation of the policy set forth in section 1 of this order, the Senior Policy Committee established pursuant to section 710 of the Act (Committee);

(c) not later than 60 days after the date of this order, establish within the Department of Transportation a support staff (Staff), including employees from departments and agencies assigned pursuant to subsection 4(e) of this order, to support, as directed by the Secretary, the Secretary and the Committee in the performance of their duties relating to the policy set forth in section 1 of this order; and