

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Chapter XIV

Notice of Opportunity To Submit Comments on Issues Arising Under the Presidential and Executive Accountability Act

AGENCY: Federal Labor Relations Authority

ACTION: Review of regulations, request for comment.

SUMMARY: The Federal Labor Relations Authority (FLRA) is providing an opportunity for all interested persons to comment on issues that have arisen as the agency carries out its responsibilities under the Presidential and Executive Office Accountability Act. The FLRA was directed to issue regulations extending coverage of Chapter 71 of Title 5, United States Code, to the Executive Office of the President no later than October 1, 1998.

DATES: Responses submitted in response to this notice will be considered if received by mail or personal delivery in the Authority's Office of Case Control by 5 p.m. on or before April 17, 1998.

ADDRESSES: Mail or deliver written comments to the Office of Case Control, Federal Labor Relations Authority, 607 14th Street, NW., Room 415, Washington, DC 20424-0001.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Weaver, Director of External

Affairs, at the address listed above or by telephone: (202) 482-6500.

SUPPLEMENTARY INFORMATION:

1. Background

The Presidential and Executive Office Accountability Act (Pub. L. 104-331) (the Act) was enacted on October 26, 1996, extending the coverage of eleven civil rights, labor and employment laws to the Executive Office of the President. The Act applies Chapter 71 of Title 5, the Federal Service Labor-Management Relations Statute (the Statute), to the Executive Office of the President and requires the FLRA to promulgate regulations to implement the Act, no later than October 1, 1998. Pursuant to legislative history urging the FLRA to engage in "extensive rulemaking," the FLRA is requesting comments on the issues raised below.

The Executive Office of the President (EOP) is comprised of thirteen separate offices: the White House Office, the Executive Residence at the White House, the Office of the Vice President, the Official Residence of the Vice President, the Office of Policy Development, the Council of Economic Advisors, the Council on Environmental Quality and Office of Environmental Quality, the National Security Council, the Office of Administration, the Office of Management and Budget, the Office of National Drug Control Policy, the Office of Science and Technology, and the Office of the United States Trade Representative.

According to House Report No. 104-820 (110 Stat. 4375), there are roughly 1,700 employees working in the EOP. Less than one-third of these are Title 3 employees, who traditionally serve at the pleasure of the President. The Title 3 employees work in the White House Office, the Office of the Vice President, the Office of Policy Development, the

Executive Residence, and the Official Residence of the Vice President. The remaining 1,150 employees are covered by Title 5, and are civil service employees serving under the same laws and regulations as other career executive branch employees. The Title 5 employees work in the other eight EOP offices, which were covered by Chapter 71 of Title 5 prior to the enactment of the Act.

2. Requirements Placed on the FLRA

The Act contains a general requirement that the FLRA issue regulations for the EOP that are the same as the substantive regulations promulgated by the FLRA for all other agencies under its jurisdiction. This general requirement applies differently, however, depending on the Act's classification of the EOP offices.

With respect to the first group of five designated offices (the Council on Environmental Quality, the Office of Administration, the Office of Science and Technology Policy, the Office of the U.S. Trade Representative, and the Official Residence of the Vice President), the Act requires that the FLRA's regulations be the same as the substantive regulations that apply to other agencies, except to the extent that the Authority determines for good cause, or to avoid a conflict of interest (COI) or an appearance of a conflict of interest, that a modification is required. For the remaining eight EOP offices, the Act imposes a third requirement: the FLRA must also consider the impact of its regulations on the President's or Vice President's constitutional responsibilities. This compels the FLRA to review its regulations to determine whether there are constitutional issues that require the FLRA to modify its regulations for four of the eight Title 5 offices. See Table 1-1.

TABLE. 1-1

Office [section 401(a)(4)]	Type of employee	Previously covered by chapter 71	FLRA must review COI & constitutional responsibilities [section 431(d)]
White House Office	Title 3	No	Yes.
Office of the Vice President	Title 3	No	Yes.
Office of Policy Development	Title 3	No	Yes.
Executive Residence at the White House	Title 3	No	Yes.
Official Residence of the Vice President	Title 3/Title 10	No	No.
Council of Economic Advisers	Title 5	Yes	Yes.
Council on Environmental Quality	Title 5	Yes	No.

TABLE. 1-1—Continued

Office [section 401(a)(4)]	Type of employee	Previously covered by chapter 71	FLRA must review COI & constitutional responsibilities [section 431(d)]
National Security Council	Title 5	Yes	Yes.
Office of Administration	Title 3/Title 5	Yes (Title 5 employees)	No.
Office of Management and Budget	Title 5	Yes	Yes.
Office of National Drug Control Policy	Title 5	Yes	Yes.
Office of Science and Technology Policy	Title 5	Yes	No.
Office of the US Trade Representative	Title 5	Yes	No.

3. Issues on Which Comments Are Requested

The FLRA is reviewing its current regulations to determine whether any modifications are necessary. As the review process continues, the FLRA is requesting comment on the following issues:

1. Appropriateness of Bargaining Units and Eligibility

Section 7112 of the Statute gives the FLRA the authority to determine the appropriateness of any unit. Section 7112(b) discusses the types of employees who shall not be included in an appropriate unit. Section 431(d)(1)(B) of the Act states that the Authority “shall exclude [employees] from coverage” if there are any conflict of interest or constitutional issues. Given the provision of section 7112, the implementing regulations found at 5 CFR 2421.14, as well as the requirements of section 431(d)(1)(B), are there factors that should be included in the FLRA’s regulations to address the appropriateness of units in the EOP?

2. Remedies

Section 431(a) of the Act prohibits the FLRA from ordering reinstatement as a remedy. Sections 7118(a)(7) and 7105(a)(2)(I) of the Statute describe the remedial powers of the FLRA. Are there remedial powers of the FLRA, in addition to reinstatement, that should be examined in light of the Act’s requirements?

3. Security Issues

The FLRA currently has the ability to investigate, prosecute, and adjudicate cases in which non-public information could be at issue or discussed. In addition to the precautions already taken in those cases, are there additional security concerns that the FLRA should consider in the drafting of its regulations?

4. Conflict of interest/Appearance of Conflict of Interest

Section 431(d)(1)(B)(i) of the Act requires the FLRA to exclude certain

covered employees if the FLRA determines such an exclusion is required due to a conflict of interest or an appearance of a conflict of interest. Do the following examples create a conflict or an appearance of a conflict: (1) the FLRA Chair, General Counsel, and the members of the Federal Service Impasses Panel serve at the pleasure of the President, and therefore, are removable at will; or (2) that the Office of Management and Budget controls the FLRA’s budget and the FLRA does not have so-called “by-pass” authority to allow it to request additional funds from the Congress? Are there other issues that the FLRA should consider in drafting its regulations?

5. Constitutional Issues

Section 431(d)(1)(B)(ii) of the Act requires the FLRA to exclude certain covered employees if the FLRA determines such an exclusion is required due to the President’s or Vice President’s constitutional responsibilities. An initial review by the FLRA of the Constitution and case law outlining the President and Vice President’s constitutional responsibilities did not yield any constitutional issues that would require modification of current FLRA regulations. Are there any constitutional issues that should be considered by the FLRA in drafting the regulations?

6. Political Affiliation

Section 435(g) of the Act states that it: shall not be a violation of any provision of this chapter to consider, or make any employment decision based on, the party affiliation, or political compatibility with the employing office * * *.

Is there anything in the Statute or FLRA’s current regulations that will conflict with section 435(g)?

7. Head of an Agency

Sections 7102(1), 7114(c)(1)—(3), and 7117(c)(3) of the Statute reference actions by the “head of an agency.” For the purposes of the EOP operations,

who should be considered the “head of an agency” for each EOP office?

Solly Thomas,

Executive Director.

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1468

RIN 0578-AA20

Conservation Farm Option

AGENCY: Commodity Credit Corporation, Department of Agriculture.

ACTION: Proposed Rule.

SUMMARY: Section 335 of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) amended the Food Security Act of 1985 (the 1985 Act) to establish the Conservation Farm Option (CFO) Program. The Commodity Credit Corporation (CCC) administers the CFO under the supervision of the Vice President of the CCC who is the Chief of the Natural Resources Conservation Service (NRCS), with concurrence throughout the process by a Executive Vice President of the CCC who is the Administrator of the Farm Service Agency (FSA). The CCC is issuing a proposed rule for the CFO. This proposed rule describes how CCC will implement CFO as authorized by the 1985 Act. The CCC seeks comments from the public which will be used to make revisions, if necessary, that will be issued in a final rule.

DATES: Comments must be received by June 1, 1998.

ADDRESSES: All comments concerning this proposed rule should be addressed to Gary R. Nordstrom, Director, Conservation Operations Division, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013-2890. Attention: CFO. FAX: 202-720-1838. This rule may also be accessed,