(c) The board of review shall review evidence supporting and inconsistent with the determination of the Secretary and, within a period of 30 days after being convened, shall issue its findings and furnish copies thereof to the Secretary and the controller. The board may approve or rescind the determination of the Secretary. A decision by the board under this subsection is final. The Secretary shall take such action as may be necessary to carry out the decision of the board.

(d) Except as provided under section 3382 of this title, the review procedure of this section is in addition to any other review or appeal procedures provided under any other provision of law, but is the sole and exclusive administrative remedy available to a controller within the Executive agency in which such controller is employed.

(Added Pub. L. 92–297, § 3(a), May 16, 1972, 86 Stat. 143; amended Pub. L. 95–454, title IX, § 906(a)(6), Oct. 13, 1978, 92 Stat. 1225; Pub. L. 96–347, § 1(b), (c)(2), (3), Sept. 12, 1980, 94 Stat. 1150.)

REFERENCES IN TEXT

For definition of Secretary, referred to in text, see section 2109 of this title.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–347, § 1(b), substituted ''Secretary under'' for ''Secretary of Transportation under''.

Subsec. (b)(2). Pub. L. 96–347, § 1(c)(2), substituted ''the Executive agency in which the controller is employed'' for ''the Department of Transportation''.

Subsec. (d). Pub. L. 96–347, § 1(c)(3), substituted ''within the Executive agency in which such controller is employed'' for ''within the Department of Transportation''.

1978—Subsec. (b)(3). Pub. L. 95–454 substituted ''Merit Systems Protection Board'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96–347, set out as a note under section 2109 of this title.

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.

EFFECTIVE DATE

Section effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92–297, set out as a note under section 3381 of this title.

§ 3384. Regulations

The Secretary is authorized to issue regulations to carry out the provisions of this subchapter.

(Added Pub. L. 92–297, § 3(a), May 16, 1972, 86 Stat. 143; amended Pub. L. 96–347, § 1(b), Sept. 12, 1980, 94 Stat. 1150.)

REFERENCES IN TEXT

For definition of Secretary, referred to in text, see section 2109 of this title.

AMENDMENTS

1980—Pub. L. 96–347 substituted ''Secretary'' for ''Secretary of Transportation''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96–347, set out as a note under section 2109 of this title.

EFFECTIVE DATE

Section effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92–297, set out as a note under section 3381 of this title.

§ 3385. Effect on other authority

This subchapter shall not limit the authority of the Secretary to reassign temporarily an air traffic controller to other duties with or without notice, in the interest of the safe or efficient separation and control of air traffic or the physical or mental health of a controller; or to reassign permanently or separate a controller under any other provision of law.

(Added Pub. L. 92–297, § 3(a), May 16, 1972, 86 Stat. 143; amended Pub. L. 96–347, § 1(b), Sept. 12, 1980, 94 Stat. 1150.)

REFERENCES IN TEXT

For definition of Secretary, referred to in text, see section 2109 of this title.

AMENDMENTS

1980—Pub. L. 96–347 substituted ''Secretary'' for ''Secretary of Transportation''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96–347, set out as a note under section 2109 of this title.

EFFECTIVE DATE

Section effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92–297, set out as a note under section 3381 of this title.

SUBCHAPTER VIII—APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

PRIOR PROVISIONS

A prior subchapter VIII, added Pub. L. 95–437, § 3(a), Oct. 10, 1978, 92 Stat. 1056, which related to part-time career employment opportunities, was redesignated as chapter 34 of this title by Pub. L. 95–454, title IX, § 906(c)(1)(A), Oct. 13, 1978, 92 Stat. 1226.

§ 3391. Definitions

For the purpose of this subchapter, ''agency'', ''Senior Executive Service position'', ''senior executive'', ''career appointee'', ''limited term appointee'', ''limited emergency appointee'', ''noncareer appointee'', and ''general position'' have the meanings set forth in section 3132(a) of this title.

(Added Pub. L. 95–454, title IV, § 403(a), Oct. 13, 1978, 92 Stat. 1161.)

PRIOR PROVISIONS

A prior section 3391, added Pub. L. 95–437, § 3(a), Oct. 10, 1978, 92 Stat. 1056, which related to definitions for part-time career employment opportunities, was renumbered as section 3401 of this title by Pub. L. 95–454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

EFFECTIVE DATE

Subchapter effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401

through 412 of Pub. L. 95–454, see section 415(a)(1), (b) of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

§ 3392. General appointment provisions

(a) Qualification standards shall be established by the head of each agency for each Senior Executive Service position in the agency—

(1) in accordance with requirements established by the Office of Personnel Management, with respect to standards for career reserved positions, and

(2) after consultation with the Office, with respect to standards for general positions.

(b) Not more than 30 percent of the Senior Executive Service positions authorized under section 3133 of this title may at any time be filled by individuals who did not have 5 years of current continuous service in the civil service immediately preceding their initial appointment to the Senior Executive Service, unless the President certifies to the Congress that the limitation would hinder the efficiency of the Government. In applying the preceding sentence, any break in service of 3 days or less shall be disregarded.

(c)(1) If a career appointee is appointed by the President, by and with the advice and consent of the Senate, to a civilian position in the executive branch which is not in the Senior Executive Service, and the rate of basic pay payable for which is equal to or greater than the rate payable for level V of the Executive Schedule, the career appointee may elect (at such time and in such manner as the Office may prescribe) to continue to have the provisions of this title relating to basic pay, performance awards, awarding of ranks, severance pay, leave, and retirement apply as if the career appointee remained in the Senior Executive Service position from which he was appointed. Such provisions shall apply in lieu of the provisions which would otherwise apply—

(A) to the extent provided under regulations prescribed by the Office, and

(B) so long as the appointee continues to serve under such Presidential appointment.

(2) An election under paragraph (1) may also be made by any career appointee who is appointed to a civilian position in the executive branch—

(A) which is not in the Senior Executive Service; and

(B) which is covered by the Executive Schedule, or the rate of basic pay for which is fixed by statute at a rate equal to 1 of the levels of the Executive Schedule.

An election under this paragraph shall remain effective so long as the appointee continues to serve in the same position.

(d) Appointment or removal of a person to or from any Senior Executive Service position in an independent regulatory commission shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President.

(Added Pub. L. 95–454, title IV, § 403(a), Oct. 13, 1978, 92 Stat. 1161; amended Pub. L. 101–335, § 7(a), July 17, 1990, 104 Stat. 325.)

REFERENCES IN TEXT

The Executive Schedule, referred to in subsec. (c), is set out as section 5311 et seq. of this title.

PRIOR PROVISIONS

A prior section 3392, added Pub. L. 95–437, § 3(a), Oct. 10, 1978, 92 Stat. 1056, which related to the establishment of part-time career employment programs, was renumbered as section 3402 of this title by Pub. L. 95–454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–335 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 7(b)(1) of Pub. L. 101–335 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [July 17, 1990].''

ELECTION BY PERSONS PREVIOUSLY APPOINTED; RETROACTIVE PERFORMANCE AWARDS

Section 7(b)(2), (3) of Pub. L. 101–335, as amended by Pub. L. 102–378, § 7(a), Oct. 2, 1992, 106 Stat. 1359, provided that:

''(2) ELECTION BY PERSONS PREVIOUSLY APPOINTED.—The Office of Personnel Management shall prescribe regulations (including procedures and deadlines) under which an election under section 3392(c)(2) of title 5, United States Code (as amended by this section) may be made by any individual who—

''(A) on the date of enactment of this Act [July 17, 1990], is serving in a civilian position in the executive branch which—

''(i) is not in the Senior Executive Service; and

''(ii) satisfies section 3392(c)(2)(B) of such title 5 (as so amended);

''(B) was appointed to that position on or after November 1, 1986, and has served continuously in such position since then;

''(C) was a career appointee (within the meaning of section 3132(a)(4) of such title 5) immediately before having been so appointed; and

''(D) was not, based on such individual's appointment to the position described in subparagraph (A), eligible to make an election under section 3392(c) of such title 5 (as then in effect).

An election under this paragraph shall be effective as of the date of appointment to the position described in subparagraph (A).

''(3) RETROACTIVE PERFORMANCE AWARDS.—If an individual elects under paragraph (2) to continue to be subject to performance awards, the head of the agency in which such individual is serving shall determine whether to grant retroactive performance awards for any fiscal years prior to fiscal year 1991 to such individual, and the amount of any such awards, without regard to the provisions of subsection (b) of section 5383 of title 5, United States Code, and subsections (b) and (c) of section 5384 of such title. Before granting an award, the head of the agency shall make a written determination that the individual's performance during the fiscal year for which the award is given was at least fully successful, and shall consider the recommendation of the agency's performance review board with respect to the award. No such award for performance during any fiscal year may be less than 5 percent nor more than 15 percent of the individual's rate of basic pay as of the end of such fiscal year.''

[Pub. L. 102–378, § 7(b), Oct. 2, 1992, 106 Stat. 1359, provided that: ''The amendment made by subsection (a) [enacting section 7(b)(3) of Pub. L. 101–335, set out above] shall be effective as if enacted as a part of section 7 of the Thrift Savings Plan Technical Amendments Act of 1990 [Pub. L. 101–335].''']