

(2), provide written notice of disqualification to his supervisor and counselor upon determining that he will not participate in the matter.

(b) *Disqualification to ensure impartiality.* A DOE employee who is required, in accordance with 5 CFR 2635.502(e), to disqualify himself from participation in a particular matter involving specific parties to which he has been assigned shall, notwithstanding the guidance in 5 CFR 2635.502(e)(1) and (2), provide written notice of disqualification to his supervisor and counselor upon determining that he will not participate in the matter.

(c) *Disqualification from matter effecting prospective employers.* A DOE employee who is required, in accordance with 5 CFR 2635.604(a), to disqualify himself from participation in a particular matter to which he has been assigned shall, notwithstanding the guidance in 5 CFR 2635.604(b) and (c), provide written notice of disqualification to his supervisor and counselor upon determining that he will not participate in the matter.

(d) *Withdrawal of notification.* A DOE employee may withdraw written notice under paragraphs (a), (b), or (c) of this section upon deciding that disqualification from participation in the matter is no longer required. A withdrawal of notification shall be in writing and provided to the employee's supervisor and counselor.

#### **§ 3301.103 Prior approval for outside employment.**

(a) *Prior approval requirement.* Before engaging in any outside employment, whether or not for compensation, an employee, other than a special Government employee, must obtain written approval of his immediate supervisor and the Counselor. Requests for approval shall include the name of the person, group or organization for whom the work is to be performed; the type of work to be performed; and the proposed hours of work and approximate dates of employment.

(b) *Standard for approval.* Approval shall be granted unless there is a determination that the outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(c) *Definition of employment.* For purposes of this section, "employment" means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes but is not limited to personal services as an officer, director, trustee, general partner, agent, attorney, consultant,

contractor, employee, advisor, or teacher. It does not include participating in the activities of a nonprofit, charitable, religious, public service or civic organization, unless such activities involve the provision of professional services or are for compensation.

### **TITLE 10—ENERGY**

#### **Chapter X—Department of Energy (General Provisions)**

2. 10 CFR part 1010 is revised to read as follows:

#### **PART 1010—CONDUCT OF EMPLOYEES**

Sec.

1010.101 General.

1010.102 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

1010.103 Reporting wrongdoing.

1010.104 Cooperation with the Inspector General.

1010.105 Conflict of interest waiver.

Authority: 5 U.S.C. 301, 303; 5 U.S.C. App. (Inspector General Act of 1978); 18 U.S.C. 208; and E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

##### **§ 1010.101 General.**

This part applies to employees of the Department of Energy (DOE), excluding employees of the Federal Energy Regulatory Commission.

##### **§ 1010.102 Cross-reference to employee ethical conduct standards and financial disclosure regulations.**

Employees of DOE are subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the DOE regulation at 5 CFR part 3301 which supplements the executive branch-wide standards, the executive branch-wide financial disclosure regulations at 5 CFR part 2634, and the executive branch-wide employee responsibilities and conduct regulation at 5 CFR part 735.

##### **§ 1010.103 Reporting wrongdoing.**

(a) Employees shall, in fulfilling the obligation of 5 CFR 2635.101(b)(11), report fraud, waste, abuse, and corruption in DOE programs, including on the part of DOE employees, contractors, subcontractors, grantees, or other recipients of DOE financial assistance, to the Office of Inspector General or other appropriate Federal authority.

(b) All alleged violations of the ethical restrictions described in section 1010.102 that are reported in accordance with (a) of this section to an appropriate authority within the

Department shall in turn be referred by that authority to the designated agency ethics official or his delegatee, or the Inspector General.

#### **§ 1010.104 Cooperation with the Inspector General.**

Employees shall respond to questions truthfully under oath when required, whether orally or in writing, and must provide documents and other materials concerning matters of official interest. An employee is not required to respond to such official inquiries if answers or testimony may subject the employee to criminal prosecution.

#### **§ 1010.105 Conflict of interest waiver.**

If a financial interest arises from ownership by an employee, or other person or enterprise referred to in 5 CFR 2635.402(b)(2), of stock in a widely diversified mutual fund or other regulated investment company that in turn owns stock in, or bonds of, another enterprise, that financial interest is exempt from the prohibition of 5 CFR 2635.402(a).

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### **OFFICE OF PERSONNEL MANAGEMENT**

#### **5 CFR Part 734**

RIN 3206-AH33

#### **Political Activities of Federal Employees**

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations regarding the political activity of Federal employees. These regulations will inform Federal employees of the political activities which are permitted and prohibited under the Hatch Act Reform Amendments of 1993. Covered employees also should refer to OPM's interim regulations as part 733, published in the Federal Register in the February 4, 1994 edition, which specifically address political activities connected with local elections in designated communities.

**EFFECTIVE DATE:** August 5, 1996.

**FOR FURTHER INFORMATION CONTACT:** Jo-Ann Chabot at (202) 606-1700.

**SUPPLEMENTARY INFORMATION:** On October 6, 1993, the President signed the Hatch Act Reform Amendments of 1993. The Reform Amendments became

effective on February 3, 1994 and OPM has the authority to issue regulations under the Reform Amendments. On September 23, 1994, OPM issued interim regulations with a request for comments at part 734 concerning the political activities that generally are permitted and prohibited to Federal employees. OPM received comments from nine Federal agencies, two Federal employee labor organizations, and an individual before the comment period closed on November 22, 1994. OPM's observations about the comments follow the numerical order of the regulations starting at subpart A and ending with subpart G.

#### Comment on Supplementary Information Preceding the OPM Interim Regulations

One Federal agency commented that the supplementary information preceding OPM's interim regulations requires clarification of the language which makes it appear that § 734.208 applies exclusively to Federal employees who belong to a Federal employee labor organization. The agency noted that the language of § 734.208 clearly shows that the requirement of belonging to a Federal employee labor organization, or other Federal employee organization, applies only to the fundraising activities described in § 734.208(b)(4). OPM agrees. Every employee who is covered under subparts B and C of part 734 may participate in the activities described in § 734.208 (a) and (b) (1) through (3). The activities described in § 734.208(b)(4) are limited to members of the Federal employee labor organizations and Federal employee organizations that meet the requirements of 5 U.S.C. 7323(a)(2) and 5 CFR 734.103. Sections 734.404(c)-(d) and 734.410 describe permitted and prohibited fundraising activities for employees covered under subpart D.

#### Subpart A—General Provisions

Section 734.101 of the interim regulations provides definitions for certain terms used throughout the regulations. The regulations define "accept" and "receive" as the acts of accepting or receiving something from a person officially on behalf of a candidate, a campaign, a political party, or a partisan political group. One Federal agency and one Federal employee labor organization commented that the language from the supplementary material preceding the interim regulations which noted that "ministerial activities preceding or following the official acceptance and receipt are not covered under the

definitions" should be added to the definitions. OPM agrees that adding such language to the definitions of "accept" and "received" clarifies the definitions and has made the suggested changes.

OPM also received two comments on the definition of "on duty" in § 734.101. A Federal agency commented that the definition should contain language from the supplementary material preceding the interim regulations noting that it is not appropriate to grant excused absence (administrative leave) to participate in political activities. This agency also noted that the definition should note that it is not appropriate to request sick leave in order to participate in political activity. While OPM has the authority to regulate a covered employee's partisan political activity, the granting of excused absence is a matter of agency discretion. However, an agency's decision to grant excused absences for the purposes of engaging in partisan political activities or partisan political management would not be appropriate. Indeed, granting excused absences solely for the purposes of participation in partisan political activities might be a violation of the prohibitions against use of official authority or influence to interfere with or affect the results of an election. In addition, 5 U.S.C. 6307 and OPM's regulations at 5 CFR 630.401 prescribe the conditions under which an employee may use sick leave. It is not appropriate to permit the use of sick leave to participate in partisan political activities. Sick leave should be granted only under the conditions prescribed by 5 U.S.C. 6307 and 5 CFR 630.401.

Citing *Bureau of Alcohol, Tobacco and Firearms v. Federal Labor Relations Authority*, 464 U.S. 89, 105 (1983), a Federal employee labor organization commented that the definition of "on duty" should exclude "official time" given to employees who are labor organizations officials because employees on "official time" are not considered to be in duty status, except for purposes of being paid. Thus, the labor organization noted that, as a matter of statutory construction, official time is simply not time "on duty." The Supreme Court concluded in this decision that Federal employees who negotiate on behalf of a labor organization are not conducting official business on behalf of the Government. However, the Supreme Court reached this conclusion for the limited purpose of determining whether Federal employees who represent their labor unions in collective bargaining with agencies are entitled to reimbursement

from the Government for travel and per diem expenses.

Citing *National Federation of Federal Employees and U.S. Department of Veterans Affairs*, 47 FLRA 1118, 1124, (1993) (*NFFE*) and *American Federation of Government Employees and U.S. Department of Labor*, 39 FLRA 546, 553 (1991), (*AFGE*), the labor organization also noted that the Federal Labor Relations Authority (FLRA) has sanctioned the use of official time for union representatives to lobby Congress concerning working conditions. *NFFE* concerned a collective bargaining proposal to authorize the use of a reasonable amount of time as official time under 5 U.S.C. 7131(d) to lobby members of Congress in support of or opposition to pending or desired legislation which would affect the working conditions of employees represented by the union. The FLRA found that 5 U.S.C. 7102 contemplates that employees will express their views to Congress through their exclusive representative, and specifically grants employees functioning as labor representatives the right to present the views of the labor organization to Congress. It also found that the proposal concerned labor-management relations activities for which official time is authorized under section 7131(d). Although the FLRA concluded that the proposal was negotiable under section 7131(d), the FLRA reached its decision within the context of petitioning Congress regarding nonpartisan issues that generally affect employees' working conditions. It did not determine whether these statutory provisions also provide for official time to participate in partisan political activities on behalf of individuals who are candidates for partisan political office.

*AFGE* concerns an agency denial of an employee's request to use an agency automobile and to use official time for travel to and from a hearing regarding his claim for workers' compensation. The FLRA held that 5 U.S.C. 7131(d) did not preclude the parties in the case from agreeing to provide for official time in circumstances unrelated to labor-management relations activities, provided that granting such official time was consistent with the statute and other applicable laws and regulations. The FLRA cited attendance at hearings before the Equal Employment Opportunity Commission and responding to discovery requests in cases before the Merit Systems Protection Board as examples of circumstances unrelated to labor-management relations activities where use of official time might be authorized. Thus, this decision clearly was made

within the context of prehearing for and appearing at administrative hearings on behalf of employees, and does not address the use of official time to participate actively in partisan political activities.

The Federal Service Labor-Management Relations Statute (Labor Statute), at 5 U.S.C. 7101(a)(1)(A) provides that statutory protection of employee rights to organize, bargain collectively, and participate through labor organizations in decisions which affect them safeguard the public interest. It also provides at section 7102 that employees who represent labor organizations are entitled to present labor organization views to Congress in connection with matters regarding conditions of employment. However, none of the provisions in chapter 71 of title 5, United States Code, concern participation in partisan political activities.

The Hatch Act Reform Amendments of 1993, enacted subsequent to the Labor Statute, specifically address participation in partisan political activities and permit Federal employees to participate actively in most of the partisan political activities that previously had been prohibited to these employees under the original Hatch Act. In return for the opportunity for wider political participation, the Reform Amendments specifically prohibit Federal employees from engaging in *any* partisan political activities basically while on duty or on Federal premises.

The intent of Congress in enacting the Reform Amendments, a statute specifically intended to govern the partisan political activities of Federal employees, controls the previously enacted provisions on labor-management, at 5 U.S.C. Chapter 71, which clearly do not permit Federal employees to participate in partisan political activities while they are on duty or on Federal premises, and do not even address participation in partisan political activities. In contrast, the Reform Amendments, at 5 U.S.C. 7324(a), specifically prohibit most Federal employees from such participation and provide for only one exemption from the prohibition. The Reform Amendments, at 5 U.S.C. 7324(b), exempt employees whose official duties and responsibilities continue outside normal duty hours and while away from the normal duty post, and who are (1) paid from an appropriation for the Executive Office of the President, or (2) appointed by the President, by and with the advice and consent of the Senate, to positions that are located within the United States and involve determinations of policy to be

pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws. If Congress had intended to exempt other employees from the prohibition, Congress clearly would have provided for such exemptions in the statute itself.

In addressing the question of whether the Reform Amendments prohibit Federal employees from making voluntary salary allotments to political action committees, an opinion issued by the Office of Legal Counsel at the Department of Justice to the Office of Personnel Management on February 22, 1995, also discussed at length the prohibitions against partisan political participation on duty or on Federal premises, and Congressional intent in enacting it. The opinion stated:

It is evident from the statements of the (Reform Amendments') leading sponsors that Congress intended to create a bright-line rule, with no exceptions: Section 7324(a) prohibits covered employees from engaging in *all* on-duty and on-site political activity. As the principal Senate sponsor of the bill states, on-the-job political activity "would be absolutely and unequivocally prohibited." 139 Cong. Rec. S8605 (daily ed. July 13, 1993) (statement of Senator Glenn). Thus, for example Congress intended to prohibit the wearing of political buttons on duty. Nor can covered employees stuff envelopes with political materials or send out campaign materials while they are on the job or in a federal building—such activities are permitted only off-site and "off the job."

Thus, Congress clearly intended to prohibit partisan political participation on duty, and on Federal premises, and exempted only one category of employees from these prohibitions. Consequently, for the purposes of the Reform Amendments, OPM cannot define "on duty" to exclude "official time," as that term is defined in the Labor Statute.

In this connection, Example 5 in § 734.306 of the interim regulations, which issued September 23, 1994 (59 FR 48756, 48773–48774), provides that employees who are not on duty may engage in political activity in the office of their labor organization even if the space is provided by an agency or instrumentality of the United States Government. In view of the Office of Legal Counsel opinion of February 22, 1995, a subsequent intervening event, OPM found it necessary to revisit its initial review of the statutory scheme established through the Reform Amendments. Based on this further review, OPM has concluded that the Reform Amendments require it to treat the questions of time and space consistently in considering the activities which the Reform Amendments permit

and prohibit. Moreover, it is clear both from OPM's statutory review and the Office of Legal Counsel opinion of February 22, 1995, that Congress intended to create a bright line prohibition against partisan political activities when conducted on duty or on Federal premises, or both.

Consequently, OPM must remove Example 5 from § 734.306 of the interim regulations.

A Federal agency commented that the definition of "political purpose" should include non-partisan political purposes because many political purposes are non-partisan. In the interim regulations, the definition of "political activity" is limited to partisan political activity because OPM has interpreted the Reform Amendments as restricting Federal employees' participation in partisan political activities. The legislative history of the Reform Amendments shows that Congress was well aware that the Hatch Act prohibited active participation in partisan political activities and, in enacting the Reform Amendments, Congress was referring to partisan purposes and activities when referring to a political purpose or political activity. S. Rep. No. 57, 103rd Cong. 1st Sess. 2–6, 13–14, 24–39 (1993); 139 Cong. Rec. S8605–8606 (daily ed. July 13, 1993) (statement of Senator Glenn); *id.* at S8685–8686 (daily ed. July 14, 1993) (statement of Senator Roth); *id.* at S8701–8703 (daily ed. July 14, 1993) (statement of Senator Stevens); *id.* at S8946 (daily ed. July 20, 1993) (statement of Senator Durenberger); *id.* at S8947–8948 (daily ed. July 20, 1993) (statement of Senator Levin). See H.R. Rep. No. 16, 103rd Cong. 1st Sess. 16 (1993) (to accompany H.R. 20). President Clinton's remarks on signing the Reform Amendments, delivered October 6, 1993, the day on which he signed the Reform Amendments, reflect his understanding that the terms "political purpose" and "political activity" refer to partisan political purposes and partisan political activities. He stated:

The Federal Employees Political Activities Act, which I'm about to sign, will permit Federal employees and postal workers on their own time to manage campaigns, raise funds, to hold positions within political parties. Still, there will be some reasonable restrictions. They wouldn't be able to run for partisan political office themselves, for example, and there will be some new responsibilities, which I applaud the Federal employees' unions for embracing and supporting.

While we restore political rights to these millions of citizens, we also hold them to high standards. The Federal workplace, where the business of our Nation is done will

still be strictly off limits to partisan political activity.

Therefore, defining "political purpose" as a partisan political purpose is consistent with other definitions in the regulations, Congressional intent as reflected in the legislative history of the Reform Amendments, and President Clinton's understanding of the term "political activities" as reflected in his remark on signing the Reform Amendments.

Two Federal agencies and one Federal labor union commented that the interim regulations do not provide enough guidance concerning a "room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof." The Federal labor organization noted that the regulations did not specify which areas in a "room or building \* \* \*" encompasses. Another Federal agency noted that the regulations did not address use of areas such as recreational space in leased space or cafeterias, hallways, restrooms and employee lounges. In response to these comments, OPM has added a definition of "room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof."

The definition specifically excludes those rooms in the White House which are part of the Residence area or which are not regularly used solely in the discharge of official duties. This exclusion is based on the January 17, 1979, opinion of the Office of the Legal Counsel of the Department of Justice. The same principles that govern the White House also would apply to the residence of the Vice President which, historically, has been treated like the White House. Therefore, the same analysis and conclusions that apply to the White House also apply to the residence of the Vice President.

The Federal labor organization further commented that political activities in areas defined as "public areas" in the General Services Administration's (GSA's) Federal Property Management Regulations should not be prohibited because GSA's regulations create a protected public forum. OPM sought comment from GSA on the issue of "public areas". GSA noted that "public areas" remain "rooms or buildings" even when in use by the public for cultural, recreational, or educational activities governed by the Cooperative Use Act of 1976, 40 U.S.C. 490(a)(17), as implemented in the Federal Property

Management Regulations at 41 CFR subpart 101-20.4. GSA provided that the Cooperative Use Act and the Reform Amendments should be read together. Accordingly, the definition of "room or building" incorporates the definition of "public area" in 40 U.S.C. 490(a)(17) and 41 CFR 101-20.003.

OPM also sought comments on this issue from the United States Office of Special Counsel (OSC), which noted that the GSA regulations at 41 CFR 101-20.003 define "public areas" as any areas of a building under the control and custody of GSA which ordinarily are open to the public, such as lobbies, meeting rooms, auditoriums, and similar areas not assigned to a lessee or occupant. OSC stated its belief that permitting political activities "in such generally defined areas could lead to confusion and enforcement problems in trying to determine what parts of buildings remain 'off limits' for such activity." It noted further that "allowing political activity in a hallway and courtyard but not a conference room, or in an auditorium but not a cafeteria, could result in confusing and possibly unenforceable interpretations."

Moreover, the Supreme Court noted in *Cornelius v. NAACP Legal Defense and Education Fund, Inc.*, 47 U.S. 788, 802-903 (1985), a designated public forum is created in a Federal office building, or any other government property, only when there is a "clear intent to dedicate the property for assembly, debate and speech." The Cooperative Use Act does not dedicate every public building as a public forum, but only authorizes the GSA Administrator to make certain spaces available "on occasion" and "on such other terms and conditions as the Administrator deems to be in the public interest" if such use "will not disrupt the operation of the building." In *Cornelius*, the Supreme Court held that it will not "infer that the government intended to create a public forum when the nature of the property is inconsistent with expressive activity" and is reluctant to find a "designated public forum," if expressive activity would disrupt the principal function of the property. *Id.* at 803-804. In addition, in *Greer v. Spock*, 424 U.S. 828, 831-836 (1976) the Court held that allowing some speech or expressive activity in a forum does not dedicate the property as a "public forum" for free and uninhibited expressive activity by the public. Accordingly, "public areas" are not "public fora" and employees are prohibited from engaging in partisan political activity in those areas. In view of this, OPM has deleted Example 11 from § 734.306 which provides that a

Federal employee may engage in political activity in the courtyard outside of a Federal building when the employee is not on duty.

One Federal agency commented that the regulations did not specify whether an area leased to contractors such as a cafeteria or fitness facility is a "room or building \* \* \*". Pursuant to the discussion above, we have added an example in § 734.306 providing that employees may not engage in partisan political activity in space leased to contractors in Federal buildings.

Regarding § 734.306 of the interim regulations, a Federal labor organization commented that the regulations imply that the prohibition on political activities in rooms or buildings occupied in the discharge of official duties does not extend to areas not controlled by the Government, such as union offices and the leased offices of candidates. The labor organization suggested modifying Example 5 in § 734.306 to state that political activity is permitted in space, such as meeting rooms or other facilities, temporarily under the control of labor organizations or other non-government entities. In view of the Reform Amendments' prohibition against partisan political participation on Federal property, and the Office of Legal Counsel's interpretation of that prohibition, as described in the discussion relating to the definition of the item "on duty" in § 734.101, OPM must remove this example from § 734.306.

A Federal employee labor organization commented that the definition of "subordinate" in the interim regulations would suggest that it includes more categories of employees than the definitions of the terms "supervisor" and "management official" in 5 U.S.C. 7103(10) and (11). This organization suggested that, rather than defining the term "subordinate," the regulations use the definition of "supervisor" in 5 U.S.C. 7103(10), because the definition of "supervisor" is familiar to many Federal employees. The interim regulations define "subordinate" as "the relationship between two employees when one employee is under the supervisory authority, control or administrative direction of the other employee." OPM believes that the definition of "subordinate" is clear and reflects the intent of Congress to prevent any coercion of subordinate employees by a supervisor or any other employee who may otherwise direct, control or exercise authority over an employee.

Section 734.102 outlines the authority of the Office of Personnel Management, the Office of Special Counsel, and the

Merit Systems Protection Board under the Reform Amendments and the implementing regulations. One Federal employee labor organization commented that this section should cite to the Reform Amendments as the underlying authority. OPM agrees and has added these citations.

One Federal agency and one Federal employee labor organization commented that the regulations do not specify whether the Office of Special Counsel and the Merit Systems Protection Board have exclusive jurisdiction. OPM agrees that the regulations need clarification. Individual agencies do not have authority to investigate suspected political activity violations or to impose administrative remedies. Therefore, OPM is changing the regulations to reflect that the Office of Special Counsel and the Merit Systems Protection Board have exclusive jurisdiction.

Section 734.104 prohibits further restriction on the political activities of covered employees except for employees who are appointed by the President by and with the advice and consent of the Senate, employees who are appointed by the President, non-career Senior Executive Service members, Schedule C employees (appointed pursuant to 5 CFR 213.3301, 213.3302) and any other employees who serve at the pleasure of the President. A Federal agency suggested adding a new subsection to cover United States Trustees appointed under 28 U.S.C. 581. The exceptions in § 734.104 are based upon a September 20, 1994 opinion of the Office of Legal Counsel of the Department of Justice issued to the Office of Personnel Management which provided that an Administration could impose additional restrictions on the specific groups of political appointees outlined in § 734.104. Accordingly, the President or his designee may further restrict the political activities of the specific employees described in § 734.104. However, pursuant to 28 U.S.C. 581, United States Trustees serve at the pleasure of the Attorney General, not the President, and do not fall within the exceptions provided by the Office of legal counsel Opinion. therefore, OPM does not have the authority to add the United States Trustees to the list in § 734.104.

#### Subpart B—Permitted Activities

Section 734.203 of the interim regulations permits employees under subpart B (Permitted Activities) to participate in nonpartisan political activities and describes various nonpartisan activities. A Federal employee labor organization noted that

§ 734.203 fails to reflect that 5 U.S.C. 7211 provides Federal employees with a statutory right to petition Congress. It further commented that this issue is confusing to Federal employees, and suggested adding another example to § 734.203 which illustrates that the Reform Amendments do not prohibit Federal employees from exercising their rights under 5 U.S.C. 7211. OPM agrees with this suggestion, and has added such an example to § 734.203.

Section 734.204 of the interim regulations concerns permitted participation in political organizations. A Federal agency suggested amending this section by adding another paragraph which specifies that an employee may serve as a delegate, alternate, or proxy to a political party convention. OPM agrees with this suggestion and has added such a paragraph to § 734.204.

Example 2 in § 734.204 specifies that an employee may serve as an officer of a partisan or nonpartisan political action committee, as long as the employee does not personally solicit, accept, or receive political contributions. A Federal employee labor organization suggested clarifying the example by stating that ministerial activities which precede or follow the official acceptance and receipt of contributions are not covered under the regulatory definitions of "accept" and "receive." OPM agrees with this suggestion and has amended Example 2 accordingly. Example 2 also describes a political action committee as partisan or nonpartisan. This description does not accord with the definition of political action committee that OPM has added to its political activity regulations at 5 CFR part 734. The definition of this term does not distinguish between partisan and nonpartisan political action committees. Therefore, OPM has further amended Example 2 by removing the descriptive terms "partisan" and "nonpartisan."

Section 734.205 of subpart B (Permitted Activities) describes permissible political activities connected with participation in campaigns for partisan political office. Example 5 in this section specifies that an independent contractor is not covered under subpart B and may display a political button while performing his contractual duties. A Federal employee labor organization submitted several comments concerning the display of political buttons by employees who are covered under subpart B. OPM has discussed those comments in connection with its discussion of § 734.306, *infra*, which prohibits partisan political participation

while on duty, in uniform, in any room or building occupied in the discharge of official duties, or while using a Government-owned or leased vehicle.

Section 734.207 concerns candidacy for public office and permits employees to run as independent candidates in the local partisan elections described in 5 CFR part 733, or as candidates in nonpartisan elections. A Federal agency proposed that OPM add an example to this provision specifying that employees may distribute campaign leaflets, even though the leaflets include information on where to send contributions. The Federal agency further noted that the example also should specify that the employee should refer to another campaign worker any questions concerning further information about contributions. OPM agrees with this suggestion, but has provided in the example that such questions should be referred to another campaign worker who is not a Federal employee. OPM also believes that it would be more appropriate to add the example to § 734.205, which concerns participation in campaigns for partisan political office, rather than to § 734.207.

Section 734.208 describes permissible activities connected with participation in fundraising. Subsection (b)(2) permits employees to accept and receive political contributions in a partisan election described in 5 CFR part 733, which pertains to the political activities of covered employees who reside in certain localities designated by OPM. A Federal agency stated its belief that subsection (b)(2) conflicts with the statutory definition of the term "political contribution" included in section 2(a) of the Reform Amendments and codified at 5 U.S.C. 7322(3), as amended, which does not refer to contributions for "partisan" political purposes. Therefore, the Federal agency suggested deleting subsection (b)(2) from § 734.208 of the OPM regulations.

Section 2(a) of the Reform Amendments, codified at 5 U.S.C. 7325, as amended, authorizes OPM to issue regulations permitting employees, "without regard to the prohibitions in paragraphs (2) and (3) of section 7323(a) (of title 5, United States Code)," to take an active part in certain local elections. Section 7323(a)(2) and (3), respectively, prohibit employees from knowingly soliciting, accepting, or receiving political contributions, and from running "for the nomination or as a candidate for election to a partisan political office." Candidacy for partisan political office occurs within the context of partisan political elections. Accordingly, § 734.208(b)(2) of the OPM regulations does not conflict with the

definition at 5 U.S.C. 7322(3), as amended. Therefore, OPM has not deleted § 734.208(b)(2) from the final version of its regulations.

Section 734.208(b)(4)(ii) of the regulations provides that, under specified limited circumstances, an employee may solicit, accept, or receive political contributions from another employee who is not a subordinate employee. A Federal employers labor organization suggested including in the regulations the definition of the term "supervisor" stated at 5 U.S.C. 7103(10). This suggestion already has been addressed in the discussion of § 734.101 of the Regulations.

Example 5 in § 734.208 prohibits employees from making telephone solicitations for political contributions, even anonymously. A Federal employee labor organization noted that, if a telephone solicitation truly was anonymous, there would be no way of finding the employee who might have made the solicitation. The Federal employee labor organization further noted that a reference to anonymous telephone solicitations might even encourage employees to make such solicitations. Consequently, it suggested that OPM delete the reference to anonymous telephone solicitations in Example 5. OPM believes that this reference makes it clear to Federal employees that, except for solicitations made under the circumstances described in 5 U.S.C. 7323(a)(2), solicitations of political contributions, even anonymous telephone solicitations, are prohibited under the Reform Amendments. Therefore, OPM will retain the reference to anonymous telephone solicitations in Example 5.

Example 11 in § 734.208 provides that a Federal employee may solicit, accept, or receive the uncompensated volunteer services of any individual, except a subordinate employee, to work on behalf of a partisan political candidate or organization. A Federal employee labor organizations suggested deleting the phrase "except a subordinate employee" from Example 11. The labor organization said that the interim regulations clearly specify that a political contribution does not include the uncompensated volunteer services of an individual. Thus, the labor organization did not find any basis for the example prohibiting any employee from soliciting the volunteer services of another employee.

Although it is true that uncompensated volunteer service of an individual is not a political contribution, OPM believes that soliciting such services from subordinate employees is covered under

§ 734.302, which prohibits employees from using their official authority or influence for the purpose of influencing or affecting the results of an election. OPM further believes that removing the reference to subordinate employees in Example 11 would mislead employees into believing that part 734 permits employees to solicit, accept or receive such services from subordinate employees. Therefore, OPM has retained the reference to subordinate employees in Example 11.

The labor organization also said that Example 11 is at odds with Example 4 in § 734.208, which permits employees to sign letters soliciting the contribution of uncompensated services of individuals. It noted that, in a mass mailing, an employee's subordinates might receive these letters. OPM agrees that Example 4 is confusing and requires clarification in this regard. Therefore, it has revised Example 4 to specify that an employee may not knowingly send such a letter to his or her subordinate employees. However, Example 4 also will specify that it is permissible to sign such letters as part of a general mass mailing, as long as the mailing is not specifically targeted to one's subordinate employees.

Another Federal employee labor organization noted that employees who are not members may contribute to the labor organization's political action committee, but Federal employees associated with the labor organization may not accept or receive the contribution. It suggested that § 734.208 might be clarified through an additional example stating that a Federal employee labor organization can receive contributions, independent of their receipt by Federally employed members of the labor organization, and describing procedures for making such contributions. OPM believes that the regulations clearly state that any employee may contribute to the multicandidate political action committee of a Federal labor or Federal employee organization, and that the Federally employed members of such organizations may not accept contributions from Federal employees who are not organization members. Therefore, OPM believes that it is not necessary to add the suggested example to § 734.208.

Finally, the Reform Amendments include an exception to the general prohibition on soliciting, accepting, or receiving political contributions. This exception permits employees to solicit, accept, or receive such contributions from other employees who are not subordinate employees and who are members of the same Federal labor

organization or Federal employee organization for the multicandidate political committees of their organizations. It may not be clear to employees that this exception only extends to the general prohibition against soliciting, receiving, or accepting political contributions. It does not extend to the other prohibitions against engaging in partisan political activities either while on duty, or while on Federal premises, or both. Thus, employees may solicit, accept, and receive political contributions for the multicandidate political committees of their organizations from employees who are not subordinates and who belong to the same Federal labor or employee organization. However, they may not conduct such activities either while they are on duty, or while on Federal premises, or both. Accordingly, OPM has added an example to § 734.208 to clarify this matter. In addition, OPM notes that labor organizations certified by the National Labor Relations Board pursuant to 29 U.S.C. 151 et seq. to represent Postal Service employees are not covered under the definition of "labor organization" in 5 U.S.C. 7103(4) and, therefore, are not Federal labor organizations within the meaning of the Reform Amendments. However, these Postal Service labor organizations clearly qualify as Federal employee organizations for purposes of the Hatch Act Reform Amendments.

#### Subpart C—Prohibited Activities

Section 734.302 prohibits employees from using their official authority or influence in order to interfere with or affect the results of an election. A Federal agency commented that this section does not give adequate guidance and needs to be clarified. The agency noted that if the section intended to prohibit misuses or coercion that it did not clearly do so. OPM agrees that the Reform Amendments intended to prevent employees from misusing their official authority or influence in order to interfere with or affect the result of an election. OPM is revising its regulations to clarify that § 734.302 not only prohibits the misuse of official authority such as the use of an official title, as distinguished from a general form of address such as "The Honorable," while participating in partisan political activities, but also bans coercive actions such as awarding contracts on the basis of contributions to partisan political campaigns or soliciting subordinates for any partisan political purpose. OPM notes in this regard that the merit system principles, at 5 U.S.C. 2301(b)(8), provide that employees should be protected against arbitrary

action, personal favoritism, and coercion for partisan political purposes. Section 2301(b)(8) also provides that employees should be prohibited from using their official authority to interfere with or affect an election or a nomination for election. Moreover, 5 U.S.C. 2302(b)(3) makes it a prohibited personal practice to coerce the political activity of any person (including the providing of any political contribution or service), or to take action against an employee for his or her refusal to participate in these political activities. Thus, soliciting uncompensated volunteer services from a subordinate for a political purpose clearly falls within the prohibition against the use of official authority to interfere with or affect an election.

Accepting or receiving uncompensated volunteer services from a subordinate results in as great a potential for coercion, or the appearance of coercion, as soliciting such services from a subordinate. Although an employee might not directly solicit uncompensated volunteer services from a subordinate, he still could make it clear to the subordinate in more subtle ways that it would be in the subordinate's best interest to provide such services. In view of a superior's authority to promote, discipline, issue awards, or take other personnel actions affecting an employee's career, or to make recommendations regarding such actions to an official above him in the chain of command, and the potential for coercion that exists under such circumstances, accepting and receiving uncompensated volunteer services from subordinates also falls within the prohibition against the use of official authority to interfere with or affect the results of an election. Accordingly, OPM will retain the prohibition against accepting and receiving uncompensated volunteer services from subordinates.

Section 734.303 describes prohibited activities connected with fundraising. Subsection (d) prohibits employees from soliciting, accepting, or receiving uncompensated volunteer services from individuals who are subordinates. A Federal employee labor organization commented that, because the definition of "political contribution" does not include uncompensated volunteer services, employees should not be prohibited from soliciting, accepting, or receiving such services from their subordinates. For the reasons stated in its discussion of § 734.302, *supra*, OPM is retaining these prohibition in its political activity regulation at part 734.

A Federal agency noted that the regulations do not reflect specifically that, as long as an employee is not

coerced, the employee may voluntarily donate uncompensated volunteer services to his supervisor. While OPM's regulations do not specifically prohibit an employee from voluntarily donating uncompensated volunteer services to his supervisor, § 734.303(d) of the regulations does prohibit a supervisor from accepting such services. Therefore, the concern expressed by this agency in its comment has been adequately addressed in the regulation.

This prohibition clearly would not apply to requests for volunteer services made by the President or the Vice-President to the employees specified in 5 U.S.C. 7324(b)(2) whose duties and responsibilities continue outside of normal duty hours and away from the normal duty post, and who are (1) paid from an appropriation for the Executive Office of the President, or (2) appointed by the President, by and with the advice and consent of the Senate, whose positions are located within the United States and who determine policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws. Congress recognized their special status in specifically excluding them from the prohibitions against political participation while on duty, in uniform, on Federal premises, or using a Government vehicle. Moreover, the President and Vice-President of the United States specifically are excluded from the definition of employee in 5 U.S.C. 7322(1) and, therefore, they are not subject to the prohibitions on political activity in Reform Amendments or part 734.

The agency also asked whether a subordinate employee may speak at a political event in place of his superior, a PAS employee, when the PAS employee suddenly learns that she cannot attend the event. The regulations generally permit covered employees to speak at partisan political events, but prohibit an employee who does not qualify for coverage under subpart E of the interim regulations from giving such a speech while on duty.

However, the ultimate answer to such questions depend on the facts and circumstances in each individual case, and also may involve issues related to the standards of ethical conduct for employees of the Executive Branch. Therefore, OPM has determined not to address in its regulatory examples the issues raised in the agency's comments, because such examples might be misleading. Individual detailed guidance on such fact based issues should be sought through an advisory opinion from the United States Office of Special Counsel and, if warranted, from

the designated agency ethics official at the employee's agency.

Example 2 in § 734.303 states that an employee's name may not appear on an invitation to a fundraiser as a sponsor or a point of contact. A Federal employee labor organization commented that this example appeared to be inconsistent with Example 3 in § 734.208 which permits employees' names to appear on such invitations as guest speakers. It also commented that a point of contact on an invitation for a fundraiser would not necessarily be involved with soliciting, accepting or receiving political contributions in an official manner. Thus, it suggested amending Example 2 to provide that an employee's name could appear on an invitation as a point of contact for general information about a fundraiser.

OPM does not believe that these two examples are inconsistent. A person who is identified as a point of contact on a fundraising invitation clearly gives the appearance of being associated with soliciting, accepting, or receiving political contributions. Such is not the case with a person who is only identified on the invitation as a guest speaker. Thus, OPM has decided not to amend Example 2 in § 734.303.

Example 3 in § 734.303 provides that an employee may not ask a subordinate to volunteer on behalf of a partisan political campaign. Section 734.303 describes fundraising activities which are prohibited. A Federal employee labor organization suggested that OPM remove this example because individual uncompensated volunteer services are not political contributions. OPM has addressed the question of requesting subordinate employees to perform uncompensated volunteer services in § 734.302, *supra*.

Section 734.305 prohibits an employee from knowingly soliciting or discouraging the political participation of anyone who has matters pending before the employee's employing office or of anyone who is the subject of investigation or enforcement carried out by the employee's employing office. A Federal agency commented that the regulations should address soliciting or discouraging participation in non-partisan elections. As OPM stated above in response to comments on the definition of "political purpose," the pertinent legislative history and the President's remarks on signing the Reform Amendments show that the Reform Amendments concern participation in partisan political activities. Consequently, the regulations do not address soliciting or discouraging participation in non-partisan political activities.

This same Federal agency further requested that this section address whether an employee may endorse a candidate for an elective office, the duties of which require the incumbent of that office to consistently transact business before the agency. In this instance, it is impossible to provide an example that would accurately answer this agency's inquiry because the answers to such questions depend on the facts and circumstances of each individual case.

This agency also asked whether employees appointed by the President by and with the advice and consent of the Senate (PAS) are prohibited from making political speeches in their personal capacity addressing issues related to agency business. The Reform Amendments and OPM regulations at part 734 generally do not prohibit a PAS from making a political speech in her personal capacity, providing that the President or his designee has not placed further restrictions on her political activities in accordance with § 734.104, and the speech is not made to solicit or discourage the political participation of certain persons described in § 734.305.

Depending on the facts and circumstances associated with the speech, however, such activity also may be governed by provisions other than the Reform Amendments. Because determinations on whether this activity is prohibited ultimately rest on the facts and circumstances of each individual case, employees should consult the Office of Special Counsel and, if warranted, the designated agency ethics official for advice.

Section 734.305 requires that each agency or instrumentality of the United States or District of Columbia Government must determine when matters are pending and ongoing within the employing office of the agency or instrumentality. This same Federal agency also commented that the regulations should provide guidelines for agencies to follow in determining when a matter is pending or ongoing. Since there are great differences among agencies or instrumentalities, OPM disagrees with this comment and believes each agency and instrumentality should make its own determination.

Section 734.306 prohibits employees covered by subparts B and C from participating in partisan political activities while they are on duty, in uniform, in a room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States, using a Government-owned or leased vehicle, or using a privately-owned

vehicle in the discharge of official duties. An individual commented that, if OPM intended through its interim regulations to prohibit employees from wearing partisan political buttons while on duty, OPM should add a provision to subpart C, Prohibited Activities, explicitly stating that employees may not wear partisan political buttons while on duty. Two Federal agencies also suggested OPM might do this by adding an example to § 734.036 specifically stating that employees may not wear partisan political buttons while they are on duty or display partisan political materials at their work stations. OPM agrees with these suggestions and, through another example added to § 734.306, has prohibited employees from wearing partisan political buttons while on duty.

A Federal employee labor organization commented that the interim regulations permit SES members to wear partisan political buttons while they are on duty, but prohibit competitive service employees from wearing partisan political buttons under the same circumstances. The Reform Amendments' prohibition against partisan political participation on duty extends to all covered employees except for the two employee categories described in 5 U.S.C. 7324(b)(2) and covered under subpart E (Special Provisions for Certain Presidential Appointees and Employees Paid from the Appropriation for the Executive Office of the President). All other employees, including SES members, are prohibited from wearing partisan political buttons on duty.

One Federal agency asked whether the prohibition on employees wearing political buttons while on duty extends to items worn on duty, or displayed in the work place, relating to candidates in nonpartisan elections or to nonpartisan issues. The interim regulations provide that the prohibition against political participation on duty only extends to partisan political participation. Thus, the prohibition against wearing political buttons on duty or displaying political items in the workplace does not extend to nonpartisan candidates or to nonpartisan issue-oriented campaigns.

A Federal employee labor organization commented that wearing political buttons is an expression of speech guaranteed by the Constitution, as well as an expression of opinion about a political candidate that clearly is permitted under the Hatch Act and should continue to be permitted under the Reform Amendments. Citing *American Federation of Government Employees AFL-CIO v. Pierce*, 586 F. Supp. 1559 (1984), the labor

organization said that the prohibition against wearing political buttons on duty and the illustrative examples are overboard, and do not appear to have a specific purpose such as protecting the efficient performance of official duties or preventing a conflict, or apparent conflict, of interest.

The legislative history of the Reform Amendments shows Congress was aware that, under the then-existing provisions of the Hatch Act, Federal employees were permitted to wear partisan political buttons while on duty. See 139 Cong. Rec. S8604-S8606 (daily ed. July 13, 1993) (statement of Senator Glenn). It also shows that Congress clearly intended to establish a bright-line rule prohibiting all political participation on duty, and that this rule extends to wearing partisan political buttons while on duty. S. Rep. No. 57, 103rd Cong. 1st Sess. 14 (1993), reprinted in 1993 U.S.C.C.A.N. 1082, 1815; 139 Cong. Rec. S8684 (daily ed. July 14, 1993) (statement of Senator Glenn); *id.* at S8765, S8770, S8785-S8786 (daily ed. July 15, 1993) (statement of Senator Glenn); *id.* at S8805, 8808 (daily ed. July 15, 1993) (statements of Senators Boxer and Sarbanes); *id.* at S8929 (daily ed. July 20, 1993) (statement of Senator Glenn). See H.R. Rep. No. 16, 103rd Cong. 1st Sess. 16, 19-20 (1993) (to accompany H.R. 20).

The legislative history of the Reform Amendments further shows that Congress focused on wearing partisan political buttons on duty because this activity could result in subtle and unspoken coercion when done by a supervisor, the appearance of a conflict of interest, and the erroneous identification of the Government as a supporter of particular partisan candidates, parties, or groups. 139 Cong. Rec. S8604-S8605 (daily ed. July 13, 1993) (statement of Senator Glenn); *id.* at S8785 (daily ed. July 15, 1993) (statement of Senator Glenn); *id.* at S8926 (daily ed. July 20, 1993) (statement of Senator Glenn). See H.R. Rep. No. 16, 103rd Cong. 1st Sess. 16, 19-20 (1993) (to accompany H.R. 20). Thus, the regulatory prohibition against employees wearing partisan political buttons while on duty originates with the clear expression of Congressional intent in enacting these Amendments.

*American Federation of Government Employees v. Pierce* concerned a Veterans' Administration regulation prohibiting employees from wearing political buttons while on duty. The United States District Court for the District of Columbia struck down the prohibition as overboard, finding that the prohibition did not protect the

efficient performance of official duties or prevent a conflict or apparent conflict of interest.

Current circumstances differ from the circumstances which resulted in the district court decision. At that time, the Hatch Act prohibited Federal employees from participating actively in any partisan political activities, and Federal employees clearly could not be associated with partisan political candidates, parties, or groups. Now the Reform Amendments permit most Federal employees to participate actively in almost all partisan political activities and to become prominently identified with partisan political candidates, parties, or groups. The expansion of such opportunities for Federal employees to become involved in, and identified with, partisan politics, increases the danger of erroneous perceptions about coercion of Federal employees or individual citizens having business with the Government, identification of the Government with specific partisan candidates or groups, favoritism in administering Government programs, and conflicts of interest. A prohibition narrowly tailored to displays of partisan political buttons, pictures, signs, stickers, or badges on duty or in the workplace clearly promotes the efficient performance of official duties and prevents a conflict or apparent conflict of interest under current circumstances.

In a related matter, an individual, a Federal employee organization, and five Federal agencies commented unfavorably on the requirement to cover bumper stickers on personal vehicles, particularly during occasional use for official travel, such as driving the vehicle to the site of a training course. The labor organization commented that there was no rational basis for requiring employees to cover bumper stickers when they use their personal vehicles as incidental transportation, for example, in lieu of taking a taxi to or from another agency for a meeting. The labor organization stated that the requirement was not realistic and suggested that it should apply only when the private vehicle itself is used in the performance of official duties, such as delivering mail on a rural route or inspecting crops. The agencies and individual commented that the requirement to cover bumper stickers when using a personal vehicle for official business was excessive, unreasonable, unduly burdensome, and virtually unenforceable.

OPM agrees that a requirement to cover bumper stickers in every instance is not practical and would be difficult to enforce where employees use their

private vehicles only occasionally, such as in driving to a meeting or training course. Imposing this requirement within the context of such occasional use of private vehicles would result in inadvertent violations by employees who easily may forget to cover the bumper stickers on their vehicles, and would be very difficult to enforce. Therefore, OPM has amended the examples in § 734.306 to reflect that the requirement to cover bumper stickers on private vehicles only applies when the vehicle is used for official business on a recurrent basis, or clearly is identified as being on official business, and does not apply to the occasional use of such a vehicle for official business. However, within this context, OPM also desires to make it clear to covered employees that they are prohibited from placing partisan political bumper stickers on any Government-owned or leased vehicle.

OPM accordingly has defined the terms "recurrent" and "occasional" in § 734.101. These definitions are based on common usage. The Random House Dictionary of the English Language (Unabridged), 2d Ed., 1987, defines "occasional" as "occurring or appearing at irregular or infrequent intervals; occurring now and then; acting or serving for the occasion or only on particular occasions." Webster's Third New International Dictionary of the English Language (Unabridged), 1966 Ed., defines "occasional" as "occurring or operating on a particular occasion; proceeding from the occasion; met with, appearing, or occurring irregularly and accordingly to no fixed or certain scheme; infrequent."

The Random House Dictionary defines "recurrent" as "occurring or appearing again, esp. repeatedly or periodically." Webster's Dictionary defines "recurrent" as "returning from time to time; appearing or coming periodically; happening again and again." Finally, the Oxford English Dictionary (1933) defines "recurrent" as "occurring or coming again (esp. frequently or periodically); reappearing." The regulatory definitions of "occasional" and "recurrent" incorporate these concepts.

Example 6 of § 734.306 of the interim regulations concerns political activities in a commercial building where Government agencies and instrumentalities lease office space, and where the headquarters of a candidate for partisan political office also are situated. The example provides that an employee of the Government agency or instrumentality may do volunteer work at the candidate's headquarters when the employee is not on duty.

OPM believes that this example is confusing because it suggests that employees may participate in political activities only in the candidate's headquarters, and not elsewhere in the building. Therefore, OPM has revised the example to clarify that, when employees are not on duty, the Reform Amendments do not prohibit them from participating in political activities in the other areas of the building that are not leased by the Government, including public areas that are shared by all of the tenants, such as the main lobby. Although the Reform Amendments would not prohibit employees from political participation in areas that are shared by all of the tenants, OPM notes that political activities in these areas may be restricted by the landlord.

For purposes of contrast and further clarification, OPM has included an additional example specifying that, where a Government agency or instrumentality leases all of the space in a commercial building, employees may not participate in political activity in any area of the building, including the public areas of the leased building.

OPM believes this distinction is in accord with the February 22, 1995 opinion of the Office of Legal Counsel at the Department of Justice to the Office of Personnel Management. That opinion stressed that Congress intended to create a bright-line rule against participating in partisan political activities while on Federal premises. To apply this prohibition to all areas of a commercial building, when the Government has leased only a part of the building, would undermine the bright-line rule described in the Office of Legal Counsel opinion. Accordingly, distinguishing between a commercial building in which the Government has leased part of the space and a commercial building in which the Government has leased all of the space accords with the Congressional intent of establishing a bright-line rule as described in the Office of Legal Counsel opinion.

Example 10 of § 734.306 of the interim regulations provides that Federal employees may participate in partisan political activities while they are sitting in the park on their lunch break, if they are not on duty during their lunch break. A Federal agency suggested that the regulations specify when Federal employees would not be on duty during their lunch breaks, and that individual agencies should determine whether employees are on duty at that time. In general, employees who are covered by title 5, United States Code, are not in a pay status during a bona fide lunch break and, therefore, they are not on duty. However, for the

purposes of these regulations, an employee still is considered to be on duty during his lunch hour when he is representing an agency or instrumentality of the United States in an official capacity during that time.

Example 1 of § 734.307 prohibits the Federally employed spouses of candidates for partisan political office from soliciting, accepting, or receiving contributions of money or personal services. A federal employee labor organization suggested deleting personal services from Example 1 because soliciting volunteer services is not prohibited. Although personal services are different from the uncompensated volunteer services of an individual, it is clear from the comment that use of the term "personal services" in Example 1 is confusing. To clarify the example, OPM has deleted the term "personal services" from Example 1, and substituted the phrase "paid or unpaid services of a business or corporation."

#### Subpart D—Employees in Certain Agencies and Positions

Subpart D of the regulations concerns the political activities of employees in the sensitive agencies and positions that are listed in § 734.401. Through section 501(k) of Pub. L. 103–359 (October 14, 1994), Congress added the Central Imagery Office to the sensitive agencies and positions listed in 5 U.S.C. 7323 (b)(2)(B)(i). Accordingly, OPM has added the Central Imagery Office to the agencies and positions listed in § 734.401(a) of the regulations.

Section 734.402 of subpart D describes permissible expressions of individual opinion for these employees. Subsection (b) of § 734.402 provides that they may display partisan political pictures, signs, stickers, badges, or buttons, as long as these items are displayed off duty and away from Federal premises in accordance with the provisions of § 734.408. Two Federal agencies suggested changing the cross-reference in subsection (b) from §§ 734.408 to 734.406. Section 734.408 generally prohibits active participation in partisan political management and partisan political campaigns. Section 734.406 prohibits political participation while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle. We agree with the suggestions that a cross-reference to § 734.406 would be more appropriate, and have changed § 734.402(b) to reflect this. OPM also has amended Example 5 in § 734.402 to reflect when it is permissible for an employee who is covered under subpart D to wear a partisan political button and, for

purposes of clarification, has added another example providing that an employee may place partisan political signs on his or her private property.

Section 734.404 describes permissible participation in political organizations. Subsection (c) provides that employees may attend political conventions, rallies, fund-raising functions, or other political gatherings. A Federal agency noted that Example 1 appears to contradict, rather than to illustrate, this principle by prohibiting employees from participating in demonstrations or parades while they are attending a convention or rally. The Federal agency suggested that OPM should explain further exactly what activities are permissible, or define what is meant by attending a convention, rally, or other political gathering.

OPM agrees that Example 1 in § 734.404 should be clarified. Although employees may attend the conventions and rallies of political parties or partisan political groups, joining in the parades and demonstrations held at these functions is considered active participation in partisan political activity. Therefore, Example 1 in § 734.404 has been amended to reflect that employees may attend partisan political conventions or partisan political rallies solely as spectators, but they may not participate in demonstrations or parades at these partisan political functions.

Section 734.406 prohibits employees from participating in political activities while they are on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle.

Another Federal agency asked whether § 734.406 prohibits displays in the workplace or while on duty of pictures, signs, badges, or buttons for candidates in non-partisan elections or for ballot issues not specifically identified with a political party. The interim regulations provide that the prohibition against political participation on duty only extends to partisan political participation. Thus, the prohibition against wearing political buttons on duty or displaying political items in the workplace does not extend to displays for candidates in nonpartisan elections or to issues that are not specifically identified with a political party.

The same Federal agency requested clarification on the restriction in § 734.406(a)(4) of participating in political activities while using a privately owned vehicle in the discharge of official duties. The agency noted that, since political participation includes displays of partisan political

bumper stickers, the restriction could be interpreted as barring employees from having such bumper stickers on their private vehicle if the employees use the vehicle for official travel. The agency further noted that enforcement of such a restriction would be impractical. We agree with this assessment, and have added clarifying examples to § 734.406 applying the restriction only to privately owned vehicles that are used for official business on a recurrent basis or clearly are identified as being on official business. The restriction does not apply to the occasional use of such a vehicle for official business. The terms "occasional" and "recurrent" are defined in § 734.101.

In a related matter, an individual and two Federal agencies generally commented in connection with subpart C that, if OPM intended through its interim regulations to prohibit employees from wearing partisan political buttons while on duty, OPM should add a provision explicitly stating that employees may not wear partisan political buttons while on duty. Two Federal agencies suggested OPM might do this by adding an example specifically stating that employees may not wear partisan political buttons while they are on duty or display partisan political materials at their work stations. OPM believes that these suggestions are instructive with regard to subpart D. Therefore, OPM has added to § 734.406 another example which specifies that wearing partisan political buttons while on duty or displaying partisan political items in the workplace is prohibited.

An agency commented that §§ 734.408 and 734.411(a) prohibit the same behavior, are duplicative and potentially confusing, and should be combined. Section 734.408 generally prohibits active participation in political management and campaigns, "except as permitted by this part." Section 734.411(a) prohibits active participation in managing the political campaign of a candidate for partisan political or party office. Section 734.408 covers a broader range of political activities than § 734.411(a), which prohibits active participation in managing the political campaign of a candidate for partisan political office or political party office. Section 734.408 also prohibits activities described in §§ 734.409 and 734.410, as well as in the remaining subsections of § 734.411. Although OPM has not combined §§ 734.408 and 734.411(a), OPM believes that the phrase "except as permitted by this part" in § 734.408 is confusing because employees covered under this section are permitted to

participate only in the political activities described in subpart D. Therefore, OPM revised this phrase to include a reference to "subpart D" rather than to "this part."

Section 734.412(a) of the interim regulations provides that an employee covered under subpart D may not be a candidate for partisan political office except as described in § 734.403 which permits candidacy in *nonpartisan* elections. A Federal agency commented that the exception in § 734.412(a) should be eliminated because it is meaningless and confusing. OPM agrees with this suggestion; a nonpartisan election by definition cannot include any candidates for partisan political office. Therefore, OPM has removed from § 734.412(a) the reference to § 734.403.

#### Subpart E—Special Provisions for Certain Presidential Appointees and Employees Paid From the Appropriation for the Executive Office of the President

A Federal agency suggested that § 734.502(a)(2)(ii) include examples of, or a method for determining whether, an employee who is appointed by the President, by and with the advice and consent of the Senate, "determines policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws." OPM cannot devise a precise procedure that would apply to all positions that might be covered under § 734.502(a)(2)(ii) because each position has its own unique qualifications and duties. In view of this, providing examples of covered positions based on descriptions of their duties and responsibilities would not be of assistance in deciding whether a position meets the criteria in § 734.502(a)(2)(ii). Thus, determinations concerning the coverage of a specific position under § 734.502 must be made on an individual basis by the President or his appropriate designee.

Section 734.502(d) provides that an employee, to whom subpart E of part 734 does not apply and who is not on duty, may participate in political activities in rooms of the White House which are part of the Residence area or which are not regularly used solely in the discharge of official duties. In its discussion of the Residence area of the White House in connection with § 734.101, OPM noted that the same principles that govern the White House also should apply to the residence of the Vice President which, historically, has been treated like the White House. OPM also noted that the same analysis and conclusions that apply to the White

House also apply to the residence of the Vice President. Therefore, OPM is amending § 734.502(d) to include the residence of the Vice President.

One Federal agency commented that all Inspectors General, including those appointed by the heads of designated Federal entities pursuant to the Inspector General Act of 1978, section 8G, should be prohibited from taking an active part in political management or political campaigns. We find no basis for this across-the-board restriction of all such Inspectors General. Section 3(c) of the Inspector General Act, which provides that for the purposes of section 7324 of title 5, United States Code, an Inspector General is not considered to determine policies to be pursued by the United States in the nationwide administration of Federal laws, applies only to an Inspector General who is appointed by the President by and with the advice and consent of the Senate. Section 8G(c) provides that an Inspector General in a designated Federal entity is appointed by the head of the designated Federal entity according to the laws and regulations governing appointments within that specific designated Federal entity. Therefore, the treatment Inspectors General, other than those appointed by the President by and with the advice and consent of the Senate, receive under the regulations depends on their appointment and the entities in which they serve.

#### Use of Official Title, Noncareer Members of the Senior Executive Service, Use of the Phrase "in Concert With" in the Final Regulations, and Political Signs

Two Federal agencies commented that the treatment of the use of official title in connection with political activities was not clear. In response, we have amended § 734.302 to include a prohibition on the use of official title in connection with any partisan political activity. However, a form of address, such as "Honorable" may be used on letters, invitations, or when introducing a covered employee at partisan political functions.

A Federal agency noted that although career Senior Executive Service (SES) employees are specifically mentioned in § 734.401, noncareer SES employees are not mentioned in the regulations. Noncareer SES employees who do not work in the agencies or positions described in § 734.401 are subject to the provisions of subparts B and C of part 734. OPM has added examples about these noncareer SES employees to the provisions in subparts B and C to make it clear that they are subject to the provisions of these subparts. Noncareer

SES employees who work in the agencies or positions described in § 734.401 are subject to the more restrictive provisions of subpart D of part 734. Examples regarding noncareer SES employees also have been added to subpart D. Finally, all career SES employees also are subject to the provisions of subpart D.

A Federal agency noted that the phrases "in concert with" and "in consultation or coordination with" both appear in subpart D, and questioned whether the difference in language signifies any difference in meaning. Although these phrases were intended to express the same concept, the use of the two phrases is a source of confusion. Therefore, OPM has eliminated the phrase "in consultation or coordination with" and exclusively used "in concert with" in the final version of the regulations. OPM relies on the language in *Blaylock v. United States Merit Systems Protection Board*, 851 F.2d 1348 (11th Cir. 1988) and *Biller v. United States Merit Systems Protection Board*, 863 F.2d 1079 (2d Cir. 1988), which refers to political activity done "in concert with" political parties, partisan groups, or candidates for public office in partisan elections. See *Blaylock v. United States Merit Systems Protection Board*, 851 F.2d at 1354; *Biller v. United States Merit Systems Protection Board*, 863 F.2d at 1090–1091.

A Federal agency suggested that an example should be added to the regulations that clearly permits employees to place partisan political signs on their property. OPM has added such an example to § 734.205. In addition, another example in § 734.402 reflects that employees covered under subpart D also may display partisan political signs on their property.

#### Contributions to Political Action Committees Through Voluntary Salary Allotments

The final regulations also contain new provisions which result from the issuance, on February 22, 1995, of an opinion by the Office of Legal Counsel (OLC) at the Department of Justice to the Office of Personnel Management. The OLC opinion addresses the question of whether the Reform Amendments prohibit Federal employees from making voluntary salary allotments to political action committees (PACs). The OLC initially noted that "PACs" are not defined as such under Federal law. OLC noted further that 26 U.S.C. 9002(9) defined the term "political committee" and stated that, for the purposes of its opinion, "PAC" referred only to an organization that came within this

definition. OPM has incorporated into part 734 the definition of "PAC" that OLC used in its opinion. OPM notes that the definition does not make a distinction between partisan and nonpartisan PACs because, according to the OLC opinion, donating to a PAC that meets this definition would be considered political activity within the meaning of the Reform Amendments.

OLC noted in this regard that political activity includes actions sufficient to effect the making of a political contribution, such as taking steps to ensure that part of one's salary is contributed to a political campaign or a PAC. OLC noted that the OPM interim regulations on political activity confirmed its view that contributing to political candidates constitutes political activity within the meaning of the OPM interim regulations because it is directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group. OPM has not revised this definition of political activity.

Moreover, OLC noted that Congress intended that making contributions to PACs would be considered political activity under the terms of the Reform Amendments. It noted that Senator Glenn, the leading Senate sponsor of the Reform Amendments, referred specifically to PAC contributions in describing examples of the political activities that the Reform Amendments would prohibit on duty. See 139 Cong. Rec. S8929 (daily ed. July 20, 1993). In view of this, OPM believes that it is not necessary to further refine the OLC definition of PAC. OPM has added to § 734.101, a definition of the term "political action committee" which tracks the definition of "political committee" in 26 U.S.C. 9002(9).

OLC opined that most Federal employees are not barred from using the salary allotment system to make contributions to PACs. Thus, Federal employees who are subject to subparts B through D of part 734 are not prohibited from making a voluntary allotment to a PAC.

OLC opined in addition that 5 U.S.C. 7324(a)(1)(4) prohibits Federal employees from taking steps sufficient to effect the making of a PAC contribution while they are on duty or in a Federal building. Thus, employees who are subject to subparts B through D of part 734 are prohibited from filling out direct-deposit forms for salary allotments to PACs while they are on duty or in a Federal building, and from personally delivering such forms to payroll employees who would process or administer these allotments. OPM has amended §§ 734.208, 734.306, 734.404,

and 734.406 of its regulations to reflect the conclusions stated on the OLC opinion. OPM also has added to § 734.101, a definition of the term "political action committee" which tracks the definition of "political committee" in 26 U.S.C. 9002(9).

OLC also opined that Federal employees who are identified in 5 U.S.C. 7324(b)(2) may not use the salary allotment system to contribute money to PACs. Section 7324(b)(2) applies to employees whose duties and responsibilities "continue outside normal duty hours and while away from the normal duty post" and who are either employees (1) "paid from an appropriation for the Executive Office of the President" or (2) "appointed by the President, by and with the advice and consent of the Senate, whose position(s) are located within the United States in relations with foreign powers or in the nationwide administration of Federal laws." Such employees are covered under subpart E of OPM's regulations. OLC opined that in the use of the salary allotment system, the costs associated with the transfer of contributions to PACs would be borne by the Federal Government, and 5 U.S.C. 7324(b)(1) of the Reform Amendments prohibits these employees from engaging in political activity using "money derived from the Treasury of the United States." OPM has added to subpart E a new provision that reflects this prohibition.

Finally, the OLC opinion stressed that 5 U.S.C. 5525, the statutory provision governing allotment and assignment of pay, as well as the OPM allotment regulations at 5 CFR 550.311(b), provide that individual agency heads have the discretion to determine whether eligible employees of the agency may use the allotment system for particular purposes, such as making contributions to PACs.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 734

Political activities (Government employees).

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, the Office of Personnel Management interim rule adding 5 CFR part 734, published at 59 FR 48765 on September 23, 1994, is adopted as a final rule with the following changes:

## **PART 734—POLITICAL ACTIVITIES OF FEDERAL EMPLOYEES**

1. The authority citation for part 734 continues to read as follows:

Authority: 5 U.S.C. 1103, 1104, 7325; Reorganization Plan No. 2 of 1978, 92 Stat. 3783, 3 CFR 1978 Comp. p. 323; and E.O. 12107, 3 CFR 1978 Comp. p. 264.

2. In § 734.101 the definitions of *accept*, and *receive*, are revised, and the definitions of *occasional*, *political action committee*, *recurrent*, and *room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency thereof* are added in alphabetical order, to read as follows:

### **§ 734.101 Definitions.**

\* \* \* \* \*

*Accept* means to come into possession of something from a person officially on behalf of a candidate, a campaign, a political party, or a partisan political group, but does not include ministerial activities which precede or follow this official act.

\* \* \* \* \*

*Occasional* means occurring infrequently, at irregular intervals, and according to no fixed or certain scheme; acting or serving for the occasion or only on particular occasions.

\* \* \* \* \*

*Political Action Committee* means any committee, association, or organization (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the nomination or election of one or more individuals to Federal, State, or local elective public office.

\* \* \* \* \*

*Receive* means to come into possession of something from a person officially on behalf of a candidate, a campaign, a political party, or a partisan political group, but does not include ministerial activities which precede or follow this official act.

*Recurrent* means occurring frequently, or periodically on a regular basis.

*Room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or*

any agency thereof includes, but is not limited to:

(1) Any Federally owned space (including, but not limited to, "public buildings" as defined in 40 U.S.C. 612(1)) or Federally leased space in which Federal employees perform official duties on a regular basis;

(2) Public areas as defined in 40 U.S.C. 490(a)(17) and 41 CFR 101-20.003 of buildings under the custody and control of the General Services Administration.

(3) A room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency thereof does not include rooms in the White House, or in the residence of the Vice President, which are part of the Residence area or which are not regularly used solely in the discharge of official duties.

3. In § 734.102 paragraphs (a) introductory text and (b) are revised to read as follows:

**§ 734.102 Jurisdiction.**

(a) The United States Office of Special Counsel has exclusive authority to investigate allegations of political activity prohibited by the Hatch Act Reform Amendments of 1993, as implemented by 5 CFR part 734, prosecute alleged violations before the United States Merit Systems Protection Board, and render advisory opinions concerning the applicability of 5 CFR part 734 to the political activity of Federal employees and employees of the District of Columbia government. (5 U.S.C. 1212 and 1216. Advice concerning the Hatch Act Reform Amendments may be requested from the Office of Special Counsel:

\* \* \* \* \*

(b) The Merit Systems Protection Board has exclusive authority to determine whether a violation of the Hatch Act Reform Amendments of 1993, as implemented by 5 CFR part 734, has occurred and to impose a minimum penalty of suspension for 30 days and a maximum penalty of removal for violation of the political activity restrictions regulated by this part. (5 U.S.C. 1204 and 7326).

\* \* \* \* \*

4. In § 734.203, Example 2 is added to read as follows:

**§ 734.203 Participation in nonpartisan activities.**

\* \* \* \* \*

*Example 2:* An employee, individually or collectively with other employees, may petition or provide information to Congress as provided in 5 U.S.C. 7211.

5. In § 734.204, paragraph (f) is added, and Example 2 is revised, to read as follows:

**§ 734.204 Participation in political organizations.**

\* \* \* \* \*

(f) Serve as a delegate, alternate, or proxy to a political party convention.

\* \* \* \* \*

*Example 2:* A noncareer member of the Senior Executive Service, or other employee covered under this subpart, may serve as a vice-president of a political action committee, as long as the duties of the office do not involve personal solicitation, acceptance, or receipt of political contributions. Ministerial activities which precede or follow the official acceptance and receipt, such as handling, disbursing, or accounting for contributions are not covered under the definitions of *accept* and *receive* in § 734.101. Sections 734.208 and 734.303 describe in detail permitted and prohibited activities which are related to fundraising.

\* \* \* \* \*

6. In § 734.205, Examples 8 and 9 are added to read as follows:

**§ 734.205 Participation in political campaigns.**

\* \* \* \* \*

*Example 8:* While not on duty, a Federal employee may distribute campaign leaflets by hand to homes or parked cars even though the leaflet may contain information concerning where to send contributions among other factual material about a partisan political candidate. However, should a member of the public stop the employee and request further information about contributions, the employee should refer that request to another campaign worker who is not a Federal employee.

*Example 9:* An employee may place in his or her front yard a sign or banner supporting a partisan political candidate.

7. § 734.208, paragraphs (c) and (d) are added, Examples 12 and 13 are added, and Example 4 is revised, to read as follows:

**§ 734.208 Participation in fundraising.**

\* \* \* \* \*

(c) Subject to the provisions of § 734.306, an employee may make a financial contribution to a political action committee through a voluntary allotment made under § 550.311(b) of this chapter, if the head of the employee's agency permits agency employees to make such allotments to political action committees.

(d) An employee who is covered under this subpart and is a payroll official in an agency where employees are permitted to make allotments to political action committees may process the completed direct deposit forms for voluntary allotments which have been

made to such committees under section 550.311(b) of this title.

\* \* \* \* \*

*Example 4:* When an employee of the Department of Transportation is not on duty, he or she may engage in activities which do not require personal solicitations of contributions, such as organizing mail or phone solicitations for political contributions. Activities such as stuffing envelopes with requests for political contributions also are permitted. However, he or she may not sign the solicitation letter unless the solicitation is for the contribution of uncompensated volunteer services of individuals who are not subordinate employees. An employee may not knowingly send to his or her subordinate employees a letter soliciting the contribution of their uncompensated services. However, he or she may sign a letter that solicits contributions of uncompensated volunteer services as part of a general mass mailing that might reach a subordinate employee, as long as the mass mailing is not specifically targeted to his or her subordinate employees.

\* \* \* \* \*

*Example 12:* An employee who desires to make a financial contribution to a political action committee through a voluntary allotment personally may obtain blank direct deposit forms from his or her payroll office. However, he or she may not complete the form while he or she is on duty, on Federal property, or in a Federally owned or leased vehicle. Moreover, he or she may not personally deliver his or her completed form, or the completed form of another employee, to the payroll office. However, the employee may mail his or her direct deposit form to his or her agency payroll office.

*Example 13:* Employees who are permitted to solicit, accept, or receive political contributions under the circumstances described in § 734.208(b)(4) may not solicit, accept, or receive such contributions either while they are on duty, or while they are on Federal premises, or both.

8. Section 734.302 is revised to read as follows:

**§ 734.302 Use of official authority; prohibition.**

(a) An employee may not use his or her official authority or influence for the purpose of interfering with or affecting the result of an election.

(b) Activities prohibited by paragraph (a) of this section include, but are not limited to:

(1) Using his or her official title while participating in political activity;

(2) Using his or her authority to coerce any person to participate in political activity; and

(3) Soliciting, accepting, or receiving uncompensated individual volunteer services from a subordinate for any political purpose.

*Example 1:* An employee who signs a letter seeking uncompensated volunteer services from individuals may not identify himself or

herself by using his or her official title. However, the employee may use a general form of address, such as "The Honorable."

*Example 2:* A noncareer member of the Senior Executive Service, or another employee covered by this subpart, may not ask his or her subordinate employees to provide uncompensated individual volunteer services for a political party, partisan political group, or candidate for partisan political office. Moreover, he or she may not accept or receive such services from a subordinate employee who offers to donate them.

*Example 3:* An employee may not require any person to contribute to a partisan political campaign in order to win a Federal contract:

9. In § 734.306, Example 3 through 13 are revised and 14 through 19 are added to read as follows:

**734.306 Participation in political activities while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle.**

\* \* \* \* \*

*Example 3:* An employee who uses his or her privately owned vehicle on a recurrent basis for official business may place a partisan political bumper sticker on the vehicle, as long as he or she covers the bumper sticker while the vehicle is being used for official duties.

*Example 4:* An employee who uses his or her privately owned vehicle on official business, must cover any partisan political bumper sticker while the vehicle is being used for official duties, if the vehicle is clearly identified as being on official business.

*Example 5:* A noncareer member of the Senior Executive Service, or any other employee covered by this subpart, who uses his or her privately owned vehicle only on an occasional basis to drive to another Federal agency for a meeting, or to take a training course, is not required to cover a partisan political bumper sticker on his or her vehicle.

*Example 6:* An employee may not place a partisan political bumper sticker on any Government owned or Government leased vehicle.

*Example 7:* An employee may place a bumper sticker on his or her privately owned vehicle and park his or her vehicle in a parking lot of an agency or instrumentality of the United States Government or in a non-Federal facility for which the employee receives a subsidy from his or her employing agency or instrumentality.

*Example 8:* When an agency or instrumentality of the United States Government leases offices in a commercial building and that building includes the headquarters of a candidate for partisan political office, an employee of that agency or instrumentality may do volunteer work, when he or she is not on duty, at the candidate's headquarters and in other areas of the building that have not been leased by the Government.

*Example 9:* A Government agency or instrumentality leases all of the space in a

commercial building; employees may not participate in political activity in the public areas of the leased building.

*Example 10:* An employee of the National Aeronautics and Space Administration (NASA) may not engage in political activities while wearing a NASA flight patch, NASA twenty-year pin or anything with an official NASA insignia.

*Example 11:* If a political event begins while an employee is on duty and continues into the time when he or she is not on duty, the employee must wait until he or she is not on duty to attend the event. Alternatively, an employee may request annual leave to attend the political event when it begins.

*Example 12:* Officials of labor organizations who have been given official time to perform representational duties are on duty.

*Example 13:* An employee may stuff envelopes for a mailing on behalf of a candidate for partisan political office while the employee is sitting in the park during his or her lunch period if he or she is not considered to be on duty during his or her lunch period.

*Example 14:* An employee who works at home may engage in political activities at home when he or she is not in a pay status or representing the Government in an official capacity.

*Example 15:* An employee who is appointed by the President by and with the advice and consent of the Senate (PAS) may attend a political event with a non-PAS employee whose official duties do not require accompanying the PAS as long as the non-PAS employee is not on duty.

*Example 16:* A noncareer member of the Senior Executive Service, or any other employee covered by this subpart, may not wear partisan political buttons or display partisan political pictures, signs, stickers, or badges while he or she is on duty or at his or her place of work.

*Example 17:* An employee may not engage in political activity in the cafeteria of a Federal building, even if the cafeteria is in space leased by a contractor.

*Example 18:* An employee who contributes financially to a political action committee through a voluntary allotment made under § 550.311(b) of this title may not complete the direct deposit forms while he or she is on duty, in a "room or building" defined in § 734.101 or in a Federally owned or leased vehicle.

*Example 19:* An employee who contributes financially to a political action committee through a voluntary allotment may not personally deliver his or her completed direct deposit form, or the completed direct deposit form of another employee, to the payroll employees who would process or administer such forms. However, the employee may mail his or her direct deposit form to his or her agency payroll office.

10. In § 734.307, Example 1 is revised to read as follows:

**§ 734.307 Campaigning for a spouse or family member.**

\* \* \* \* \*

*Example 1:* An employee who is married to a candidate for partisan political office

may attend a fundraiser for his or her spouse, stand in the receiving line, sit at the head table, and urge others to vote for his or her spouse. However, the employee may not personally solicit, accept, or receive contributions of money or the paid or unpaid services of a business or corporation, or sell or collect money for tickets to the fundraiser.

\* \* \* \* \*

11. In § 734.401, paragraphs (a)(14) through (a)(16) are revised and paragraph (a)(17) is added to read as follows:

**§ 734.401 Coverage.**

(a) \* \* \*

(14) The Central Imagery Office;

(15) Career Senior Executive Service positions described in 5 U.S.C. 3132(a)(4);

(16) Administrative Law Judge positions described in 5 U.S.C. 5372;

(17) Contract Appeals Board Member positions described in 5 U.S.C. 5372a.

\* \* \* \* \*

12. In § 734.402, paragraph (b) is revised, Examples 4 and 5 are redesignated as Examples 5 and 6 respectively, newly redesignated Examples 5 and 6 are revised, and Example 4 is added, to read as follows:

**§ 734.402 Expression of an employee's individual opinion.**

\* \* \* \* \*

(b) Display a political picture, sign, sticker, badge, or button, as long as these items are displayed in accordance with the provisions of § 734.406;

\* \* \* \* \*

*Example 4:* An employee may place in his or her yard a sign supporting a candidate for partisan political office.

*Example 5:* An employee may stand outside of a political party convention with a homemade sign which states his or her individual opinion that one of the candidates for nomination is the best qualified candidate.

*Example 6:* An employee, including a career SES employee, may wear a button with a partisan political theme when the employee is not on duty or at his or her place of work.

13. Section 734.404 is revised to read as follows:

**§ 734.404 Participation in political organizations.**

(a) Each employee covered under this subpart retains the right to:

(1) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;

(2) Be a member of a political party or other partisan political group and participate in its activities to the extent consistent with other Federal law;

(3) Attend a political convention, rally, fund-raising function, or other political gathering; and

(4) Make a financial contribution to a political party, partisan political group, or to the campaign committee of a candidate for partisan political office.

(b) Subject to the provisions in § 734.406, an employee covered under this subpart may make a financial contribution to a political action committee through a voluntary allotment made under § 550.311(b) of this chapter if the head of the employee's agency permits agency employees to make such allotments to political action committees.

(c) An employee who is covered under this subpart and is a payroll official in an agency where employees are permitted to make allotments to political action committees may process the completed direct deposit forms for voluntary allotments which have been made to such committees under § 550.311(b) of this chapter.

*Example 1:* An employee, or a noncareer SES employee who is subject to subpart D of part 734, may attend a political convention or rally solely as a spectator. However, the employee and noncareer SES employee may not participate in demonstrations or parades which are sponsored by a political party, a partisan political group, or an individual who is running for nomination to be a candidate for partisan political office.

*Example 2:* An employee may attend a political party's annual barbecue, but he or she may not organize, distribute invitations to, or sell tickets to the barbecue.

*Example 3:* An employee who desires to contribute to a political action committee through an allotment personally may obtain blank direct deposit forms from his or her payroll office. The employee may not complete the direct deposit form while he or she is on duty, on Federal property, or in a Federally owned or leased vehicle. The employee also may not personally deliver his or her completed direct deposit form, or the completed direct deposit form of another employee, to his or her payroll office. However, the employee may mail the completed form to his or her agency payroll office.

14. In § 734.406, Examples 1 through 8 are added to read as follows:

**§ 734.406 Participation in political activities while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle; prohibition.**

\* \* \* \* \*

*Example 1:* An employee who uses his or her privately owned vehicle on a recurrent basis for official business may place a bumper sticker on the vehicle, as long as he or she covers the bumper sticker while the vehicle is being used for official duties.

*Example 2:* An employee who uses his or her privately owned vehicle on official business, must cover any partisan political bumper sticker while the vehicle is being used for official duties, if the vehicle is

clearly identified as being on official business.

*Example 3:* An employee or career SES employee who uses his or her privately owned vehicle only on an occasional basis to drive to another Federal agency for a meeting, or to take a training course, if not required to cover a partisan political bumper sticker on his or her vehicle.

*Example 4:* An employee may not place a partisan political bumper sticker on any Government owned or Government leased vehicle.

*Example 5:* An employee may place a bumper sticker on his or her privately owned vehicle and park the vehicle in a parking lot of an agency or instrumentality of the United States Government or in a non-Federal facility for which the employee receives a subsidy from his or her employing agency or instrumentality.

*Example 6:* An employee, or noncareer SES employee who is subject to subpart D of this part 734, may not wear partisan political buttons or display partisan political pictures, signs, stickers, or badges while he or she is on duty or at his or her place of work.

*Example 7:* An employee who contributes financially to a political action committee through a voluntary allotment made under § 550.311(b) of this title may not complete the direct deposit forms while he or she is on duty, in a "room or building" defined in § 734.101, or in a Federally owned or leased vehicle.

*Example 8:* An employee who contributes financially to a political action committee may not personally deliver his or her completed direct deposit form, or the completed direct deposit form of another employee, to the payroll employees who would process or administer such forms. However, the employee may mail his or her direct deposit form to his or her agency payroll office.

15. Section 734.408 is revised to read as follows:

**§ 734.408 Participation in political management and political campaigning; prohibitions.**

An employee covered under this subpart may not take an active part in political management or in a political campaign, except as permitted by subpart D of this part.

16. In § 734.412, paragraphs (a), (b), and (c) are revised to read as follows:

**§ 734.412 Participation in elections; prohibitions.**

(a) Be a candidate for partisan political office;

(b) Act as recorder, watcher, challenger, or similar officer at polling places in concert with a political party, partisan political group, or a candidate for partisan political office;

(c) Drive voters to polling places in concert with a political party, partisan political group, or a candidate for partisan political office;

17. In § 734.502 paragraph (d) is revised to read as follows:

**§ 734.502 Participation in political activity while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle.**

\* \* \* \* \*

(d) An employee, to whom subpart E of this part does not apply, who is not on duty may participate in political activities in rooms of the White House or the Residence of the Vice President which are part of the Residence area or which are not regularly used solely in the discharge of official duties.

\* \* \* \* \*

18. Section 734.504 is added to read as follows:

\* \* \* \* \*

**§ 734.504 Contributions to political action committees through voluntary payroll allotments prohibited.**

An employee described in § 734.502(a) may not financially contribute to a political action committee through a voluntary allotment made under § 550.311(b) of this title.

[FR Doc. 96-17006 Filed 7-3-96; 8:45 am]

BILLING CODE 6325-01-M

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Part 301**

[Docket No. 96-016-7]

**Karnal Bunt; Compensation**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the regulations to provide compensation for certain growers and handlers, owners of grain storage facilities, and flour millers in order to mitigate losses and expenses incurred because of Karnal bunt. The payment of compensation is necessary in order to reduce the economic impact of the Karnal bunt quarantine on affected wheat growers and other individuals, and to help obtain cooperation from affected individuals in Karnal bunt eradication efforts.

**DATES:** Interim rule effective June 27, 1996. Consideration will be given only to comments received on or before September 3, 1996.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 96-016-7, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road