

# Proposed Rules

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

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 733

RIN 3206-AF78

### Political Activity: Federal Employees Residing in Designated Localities

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) is proposing changes to rules concerning the political activities of Federal employees who reside in localities designated by OPM. The proposed rule is limited in scope to matters concerning exemptions for employees residing in designated localities and to the political activities that are associated with the local elections for partisan political office in these localities.

**DATES:** Written comments must be received on or before August 25, 1997.

**ADDRESSES:** Send written comments to Lorraine Lewis, General Counsel, Office of Personnel Management, Room 7355, 1900 E Street, NW, Washington, DC 20415.

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

**SUPPLEMENTARY INFORMATION:** On October 6, 1993, President Clinton signed the Hatch Act Reform Amendments of 1993, Public Law 103-94. The Amendments specifically authorize OPM to issue regulations on the political activities of Federal employees regarding matters described in 5 U.S.C. 7325, as amended, concerning Federal employees' participation in local elections of the localities in which they reside.

On February 4, 1994, OPM published an interim regulation on the political activities of Federal employees residing in specified localities designated by OPM. 59 FR 5313. OPM received comments from three individuals; a Federal employee labor organization; six Federal agencies; and two local

governments. In addition, Congress recently enacted an amendment to the Reform Amendments authorizing OPM to permit employees in specified sensitive agencies and positions to participate in the local elections of the designated localities in which they reside. OPM also has determined that the Federally employed residents of Spotsylvania County, Virginia, as well as the Federally employed residents of St. Mary's County, Maryland, qualify for a partial exemption from the prohibitions of 5 U.S.C. 7323(a) (2) and (3). Finally, in connection with its interim regulation, OPM received two comments which suggested that the partial exemption granted by the Civil Service Commission to employees residing in the District of Columbia is invalid. OPM is seeking further comments on this matter.

The OPM interim regulation on the political activities of Federal employees residing in designated localities will remain in effect during this notice and comment period and until the final regulation for part 733 takes effect. The OPM regulation on the political activities of Federal employees appears at 5 CFR part 734 (1996) as modified by the amendments appearing at 61 FR 35088-35102 (July 5, 1996).

### Definitions

Section 733.101 of the proposed regulation defines the terms that apply to part 733. OPM received a comment from one Federal agency concerning the definitions in the interim regulation and suggesting that OPM should define the term *solicit*. OPM agrees with this suggestion in view of the activities that are permitted and prohibited under § 733.103, and proposes to add a definition of *solicit* to § 733.101. OPM also proposes to add the definitions of related terms, such as *accept*, *person*, and *receive*, to § 733.101 for the same reasons, and to add the definition of *subordinate* to § 733.101 in conjunction with provisions concerning uncompensated volunteer services that OPM proposes to add to part 733. OPM notes that the definitions of *accept* and *receive* cover only the acts of accepting or receiving something from a person officially on behalf of a candidate, campaign, a political party or a partisan political group. 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*.

OPM further proposes to add the definitions of *candidate*, *campaign*, *election*, *on duty*, *partisan*, *partisan political group*, *political activity*, *political management*, *political party*, *political purpose*, *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*, and *uniformed service* to § 733.101 because they appear as descriptive terms in part 733. Finally, the existing definition of *political contribution* does not reflect that the Reform Amendments allow Federal employees to solicit, accept, receive, and direct uncompensated volunteer services from certain individuals during the course of a campaign. Therefore, OPM proposes to revise the definition of *political contribution* specifically to exclude such services. The definitions of *employee* and *partisan political office* have not been changed from the definition of these terms in the interim regulation. All of the definitions in § 733.101 of the proposed regulation are identical to the definitions of the same terms appearing in part 734 of this title.

### Exclusion From Coverage

The interim regulation excludes several categories of employees from coverage under part 733. The exclusionary provision in the interim regulation currently applies to employees in the sensitive agencies and positions that are described in 5 U.S.C. 7323(b)(2) and to employees of the Criminal Division of the Department of Justice as specified in 5 U.S.C. 7323(b)(3). Four Federal agencies submitted comments concerning the exclusionary provision in the interim regulation. These agencies stated that employees who reside in designated localities should not be excluded from participation in local partisan elections as independent candidates, or on behalf of independent candidates, because they previously had been permitted to participate in these activities under the more restrictive provisions of the Hatch Act.

On January 6, 1996, Congress amended the Reform Amendments by adding a new provision which

authorizes OPM to permit employees who are described in 5 U.S.C. 7323(b)(2), and who reside in the designated localities, to participate in the local partisan elections of these localities. Section 308 of Pub. L. 104-93, 109 Stat. 961, 966. In view of the amendment to the Reform Amendments and the comments that OPM received on this issue, OPM finds that employees in the agencies and positions specified in 5 U.S.C. 7323(b)(2) who reside in designated localities may be permitted to participate in the local partisan elections of those localities. Therefore, OPM proposes to permit these employees to participate in such local elections as independent candidates and in support of, or opposition to, independent candidates. OPM also proposes to remove these employees from the exclusionary provision which, for purposes of clarity, appears in § 733.102 of the proposed regulation.

This amendment to the Reform Amendments, however, does not mention the employees of the Criminal Division of the Department of Justice who are described in 5 U.S.C. 7323(b)(3). Moreover, the legislative history of the added provision does not reflect that Congress intended to extend the coverage of the amendment to these employees. Therefore, OPM proposes that employees of the Criminal Division of the Department of Justice will continue to be excluded from coverage under part 733, except for employees in the Criminal Division who are appointed by the President, by and with the advice and consent of the Senate. This tracks the exception described in the Reform Amendments, at 5 U.S.C. 7323(b)(3), for such Presidential appointees in the Criminal Division at the Department of Justice.

#### **Permitted and Prohibited Political Activities—Elections for Local Public Office in Designated Localities**

##### *Candidacy for Local Partisan Political Office*

The interim regulation currently permits employees to run as candidates in elections for local partisan political office in the municipality or subdivision in which they reside, but requires such employees to run as independent candidates. A Federal employee labor organization suggested that employees who reside in designated localities should not be required to run as independent candidates for election to local partisan political offices and should, instead, be able to run for local public office as the candidates of partisan political parties. The labor organization stated its view that, under

5 U.S.C. 7325, employees who reside in designated localities have "the right to run for local partisan political office and to solicit political contributions in support of these campaigns." It further stated that section 7325 specifically provides that such employees may participate actively in local political management and political campaigns "without regard to the prohibitions in paragraphs (2) and (3) of Section 7322(a)," which concern soliciting, accepting and receiving political contributions, and running for election to partisan political office.

The labor organization noted that OPM relied on section 10 of the Reform Amendments (the Sense of the Senate) in requiring employees to run as independent candidates in local elections for partisan political office and in prohibiting employees from soliciting political contributions in these local elections. It noted that section 10 of the Reform Amendments states the Sense of the Senate that Federal employees should not be authorized to solicit political contributions, or to run for the nomination or as a candidate for local partisan political office, except as expressly provided under current law. The labor organization stated that the legislative history of the Reform Amendments demonstrates that section 10 was added to the Reform Amendments to express disagreement with the House version of the Hatch Act reform bill, which would have permitted all Federal employees to run for local partisan political office and to solicit political contributions from the general public. Accordingly, the labor organization stated that section 10 was not intended to restrict the activities of Federal employees in specific communities, but was aimed solely at the rights granted by the House bill to Federal employees in general.

OPM has not adopted this suggestion. The legislative history of the Reform Amendments is at best inconclusive regarding the purpose behind including section 10 in the Reform Amendments. Moreover, the law itself, at 5 U.S.C. 7325, does not give to the Federally employed residents of designated localities the "right" to run for local partisan political office as the candidates of partisan political parties. Section 7325 provides that OPM "may prescribe regulations permitting employees, without regard to the prohibitions in [5 U.S.C. 7327(a)(2) and (3)], to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Office considers it to be in their domestic interest \* \* \*

when the statutory conditions specified in section 7325 are fulfilled.

Independent candidates in local partisan elections clearly are candidates for "partisan political office" within the meaning of the Reform Amendments, which define that term as "any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last (Presidential election)." Thus, under the Reform Amendments, an independent candidate runs for partisan political office when he or she opposes the candidates of political parties. It is clear from the language of the Reform Amendments, particularly the Sense of the Senate (section 10), as well as from the legislative history of the Reform Amendments that, in permitting employees to participate in a much broader range of political activities, Congress was especially concerned about the possibility that Federal employees would become candidates for partisan political office or would solicit other Federal employees as well as the general public for political contributions.

The legislative history of the Reform Amendments shows that Congress was familiar with the Hatch Act provisions on the political activity of Federal employees in designated localities and the OPM regulation interpreting these provisions, and intended to preserve the provisions on candidacy for local partisan political office and soliciting political contributions in enacting the Reform Amendments. S. Rep. No. 103-57, 103d Cong., 1st Sess. 2, 29, 37 (1993); 138 Cong. Rec. S8609 (daily ed. July 13, 1993) (Remarks of Senator Roth); 138 Cong. Rec. S8613 (daily ed. July 13, 1993) (Remarks of Senator Glenn); 138 Cong. Rec. S8765 (daily ed. July 15, 1993) (Remarks of Senator Glenn). In proposing to amend the House bill by removing all of its provisions and adopting the provisions of the Senate bill in toto, and in explaining the provisions of the Senate bill, Representative Clay, the leading advocate of Hatch Act Reform in the House of Representatives, noted that: "The Senate amendment also retains provisions of current law permitting political activity by employees in certain communities pursuant to regulations issued by [OPM]." 138 Cong. Rec. H6817 (daily ed. Sept. 21, 1993). The Hatch Act, like the Reform Amendments, did not specify that employees must run as independent candidates in these elections. However, regulations promulgated under the Hatch Act by the United States Civil Service Commission and later by OPM

required independent candidacies in these local elections. Thus, the legislative history of the Reform Amendments shows that the Senate bill (which became the Reform Amendments) did not change existing provisions requiring Federal employees to run as independent candidates for partisan political office in the local elections of the designated localities. Accordingly, OPM proposes to retain without change the current regulatory provisions that permit employees who reside in designated localities to run for local partisan political office but only as independent candidates.

#### *Soliciting Political Contributions*

The interim regulation prohibits Federal employees from soliciting political contributions in connection with local elections for partisan political office. The same Federal employee labor organization also noted that employees in designated localities should be permitted to engage in this activity because they were permitted to do so prior to the Reform Amendments. Citing *In the Matter of Andrew J. Panholzer*, 3 P.A.R. 88, 91 (1971), a Federal agency noted the legal precedent under the Hatch Act that Federal employees residing in partially exempted localities were free to participate in campaign activities on behalf of independent candidates, including soliciting political contributions from non-government employees.

In *Panholzer*, the Civil Service Commission held that employees residing in a designated locality could participate actively in political campaigns on behalf of independent candidates for local public office but could not solicit political contributions from other Federal employees. Because employees in designated localities previously were permitted to solicit political contributions in local elections on behalf of independent candidates for partisan political office, OPM proposes to revise the interim regulation to permit such solicitation as, or on behalf of, independent candidates. Federal employees would, however, be prohibited from knowingly soliciting political contributions from other Federal employees. OPM notes that, notwithstanding this prohibition, employees who are not employed in the sensitive agencies and positions described in the Reform Amendments at 5 U.S.C. 7323(b)(2)(B) and OPM's regulation at section 733.105(a), and who are members of a Federal labor or Federal employee organization as defined in 5 CFR 734.101, still may solicit political contributions in accordance with the conditions

specified for such solicitation in the Reform Amendments at 5 U.S.C. 7323(a)(2) and OPM's regulation at 5 CFR 734.208(b).

#### **Other Political Activities**

The interim regulation currently permits employees residing in designated localities to accept and receive political contributions on behalf of candidates for local partisan political office who represent political parties. Except for employees in the agencies and positions described in § 733.105(a), employees covered by Part 733 still would be permitted to accept and receive political contributions on behalf of such candidates for local office. OPM also proposes to add provisions about soliciting, accepting, and receiving uncompensated volunteer services to part 733 because such services play such an important part in election campaigns for local partisan political office.

#### *Employees Who Reside in Designated Localities and Are Not Employed in the Agencies and Positions Described in § 733.105(a)*

Sections 733.103 and 733.104 describe the political activities that are permitted to employees who reside in the designated localities and who are not employed in the agencies and positions described in § 733.105(a). Employees covered by §§ 733.103 and 733.104 would be permitted to run for election to partisan political office in local elections, but only as independent candidates. They would be permitted to solicit political contributions but only as, or on behalf of, independent candidates for election to local partisan political office. These employees, however, would be prohibited from knowingly soliciting political contributions from other Federal employees, except as permitted under 5 U.S.C. 7323(a)(2) (A)–(C).

Employees subject to §§ 733.103 and 733.104 would be permitted to accept or receive political contributions as, or on behalf of, independent candidates, as well as on behalf of candidates for local partisan political office who represent a political party. Although employees would be permitted to accept or receive political contributions from other Federal employees, they would be prohibited from accepting or receiving such contributions from a subordinate employee. Employees would be permitted to solicit, accept, or receive uncompensated volunteer services as, or on behalf of independent candidates, as well as on behalf of candidates for local partisan political office who represent a political party. Although employees

would be permitted to solicit, accept, or receive uncompensated volunteer services from other Federal employees, they would be prohibited from soliciting, accepting, or receiving such services from a subordinate employee. Finally, employees would be prohibited from political participation while they are on duty, on Federal premises, in uniform, or while using a Government-owned or leased vehicle.

#### *Employees Who Reside in Designated Localities and Are Employed in the Agencies and Positions Described in § 733.105(a)*

Sections 733.105 and 733.106 describe the political activities that are permitted to employees who reside in the designated localities and who are employed in the agencies and positions described in § 733.105(a). Employees who are covered by §§ 733.105 and 733.106 would be permitted to run for election to partisan political office in local elections but only as independent candidates. These employees would be permitted to solicit political contributions but only as, or on behalf of, independent candidates for election to local partisan political office. However, they would be prohibited from knowingly soliciting political contributions from other Federal employees.

Employees covered under §§ 733.105 and 733.106 would be permitted to accept or receive political contributions only as, or on behalf of, independent candidates. They would be prohibited from accepting or receiving such contributions on behalf of a candidate for local partisan political office who represents a political party. Although employees would be permitted to accept or receive political contributions from other Federal employees, they would be prohibited from accepting or receiving such contributions from a subordinate employee. They also would be prohibited from political participation while they are on duty, on Federal premises, in uniform, or while using a Government-owned or leased vehicle.

Employees covered by §§ 733.105 and 733.106 would be permitted to solicit, accept, or receive uncompensated volunteer services only as, or on behalf of, independent candidates. They would be prohibited from soliciting, accepting, or receiving uncompensated volunteer services on behalf of a candidate for local partisan political office who represents a political party. Although employees would be permitted to solicit, accept, or receive uncompensated volunteer services from other Federal employees, they would be prohibited from soliciting, accepting, or

receiving such services from a subordinate employee.

Finally, employees who are subject to §§ 733.105 and 733.106 would be permitted to participate actively in other activities associated with elections for local partisan political office, such as stuffing envelopes, making telephone calls, driving voters to the polls, directing a group of uncompensated volunteers, or managing the campaign of an independent candidate for local partisan political office. However, their participation in such activities would be limited to participation as, or on behalf of, independent candidates for local partisan political office. Employees would be prohibited from such participation on behalf of a candidate for local partisan political office who represents a political party.

### Designated Localities

Section 7323(a) (2) and (3) of title 5, United States Code, prohibits Federal employees from becoming candidates for partisan political office and from soliciting, accepting, or receiving political contributions. However, 5 U.S.C. 7325 authorizes OPM to prescribe regulations permitting Federal employees in certain communities to participate in local partisan elections, without regard to the prohibitions stated in 5 U.S.C. 7323(a) (2) and (3), if the requirements stated in section 7325 are fulfilled. The first requirement is that the community or political subdivision must be located in Maryland or Virginia and in the immediate vicinity of the District of Columbia. Alternatively, the majority of the community's registered voters must be employed by the United States Government. The second requirement is that OPM must determine that it is in the domestic interest of the employees to permit that political participation because of special or unusual circumstances existing in the municipality or political subdivision.

Section 733.105 of the proposed regulation reflects these statutory requirements. Under part 733, the exemption from the prohibitions stated in 5 U.S.C. 7323(a) (2) and (3) would be a partial exemption because employees would be required to run as independent candidates for local partisan political office, and they would be permitted to participate in other political activities connected with elections for local public office as specified in part 733. Section 733.105 also includes a list of designated localities whose residents have been granted a partial exemption by OPM.

Three Federal agencies, two local governments, and one individual submitted comments concerning the

regulatory list of designated localities in the interim regulation for part 733. In addition, two individuals requested that OPM grant a partial exemption to the Federally employed residents of Spotsylvania County, Virginia, and one individual requested that OPM grant a partial exemption to the Federally employed residents of St. Mary's County, Maryland.

#### *Spotsylvania County, Virginia and St. Mary's County, Maryland*

OPM proposes to grant to the Federal employees residing in Spotsylvania County, Virginia, and in St. Mary's County, Maryland, a partial exemption from the political activity restrictions in 5 U.S.C. 7323(a) (2) and (3), and to add Spotsylvania County and St. Mary's County to OPM's regulatory list of designated localities in 5 CFR 733.104. OPM has determined that Spotsylvania County and St. Mary's County, respectively, meet the criteria described in 5 U.S.C. 7325 and 5 CFR 733.104 for a partial exemption to issue.

In response to separate applications from a Federal employee and a retired Federal employee who reside in Spotsylvania County, Virginia, as well as an application from a Federal employee who resides in St. Mary's County, Maryland, OPM proposes to designate those counties as localities in which Federal employees may run as independent candidates for local partisan political office and may participate in other political activities in connection with elections for local public office as specified in Part 733. However, an employee's candidacy for, and service in, a local partisan political office must not result in the neglect of, or interference with, the employee's performance of the duties of his or her Federal position or create a conflict or apparent conflict of interest.

This proposal reflects OPM's determination that special or unusual circumstances exist so that it is in the domestic interest of Federal employees residing in Spotsylvania County, Virginia, to participate in these political activities. OPM's determination is based upon documentary material provided by the applicants as well as interviews of both applicants and the County Administrator. Principal factors in OPM's determination include the proximity of Spotsylvania County to the District of Columbia; the statistically significant proportion of county residents who are Federal employees; the rapid growth of the county within the past few years; and significant public issues associated with this rapid growth. A public notice regarding this proposal to include Spotsylvania

County in the OPM list of designated localities also will be published in a local newspaper serving that county.

This proposal also reflects OPM's further determination that special or unusual circumstances exist so that it is in the domestic interest of Federal employees residing in St. Mary's County, Maryland, to participate in these political activities. OPM's determination is based upon documentary material provided by the applicant as well as interviews of the applicant and the President of the Board of County Commissioners. Principal factors in OPM's determination include the proximity of St. Mary's County to the District of Columbia; the rapidly increasing population of the county; significant public issues associated with the increase in population; the impending transfer of naval functions to naval facilities in that county and associated increases in Federal employees residing in the county; and the statistically significant proportion of county residents who are Federal employees. A public notice regarding this proposal to include St. Mary's County in the OPM list of designated localities also will be published in a local newspaper serving that county.

If this proposal is adopted as a final rule, OPM will add Spotsylvania County to the list of designated Virginia municipalities and political subdivisions, and will add St. Mary's County to the list of designated Maryland municipalities and political subdivisions, in which Federal Government employees may run as independent candidates for local partisan political office and may solicit, accept, or receive political contributions as, or on behalf of, independent candidates in connection with local elections. The addition of Spotsylvania County will be listed among the designated Virginia municipalities and political subdivisions after Prince William County and before Stafford County. The addition of St. Mary's County to the designated Maryland municipalities and political subdivisions will be listed after Somerset and before Takoma Park.

#### *The District of Columbia*

The District of Columbia currently is included in the OPM regulatory list of designated localities. The District of Columbia was added to this list on July 5, 1977, by the United States Civil Service Commission. In separate comments, two Federal agencies questioned whether the District of Columbia should continue to be listed as a partially exempt municipality in view of the unpublished memorandum

opinion of the United States District Court for the District of Columbia in *Ward Three Democratic Committee versus United States*, No. 78-853 (D.D.C. Aug. 29, 1980). OPM recognizes that, when the statutory exemption requirements were enacted in 1940, Congress did not foresee a need for an exemption for the District of Columbia because the District held no local elections at the time and was, instead, governed by three Commissioners appointed by the President of the United States.

One commentator provided a history of the district court decision, noting that, on May 30, 1974, the Civil Service Commission added the District of Columbia to the list of exempted localities at 5 CFR 733.124, retroactively effective May 16, 1974. 39 FR 18761 (1974). In *Joseph versus United States Civil Service Commission*, 554 F. 2d 1140 (1977), the United States Court of Appeals for the District of Columbia declared the exemption for the District of Columbia invalid because it was not published after a notice and comment period, as required by the Administrative Procedure Act. The appeals court held that, under the Hatch Act, the District of Columbia could not qualify under the first alternative for an exemption to issue. *Id.* at 1154-1155. The appeals court stated in this regard that:

Although there can be no dispute that it is "in the immediate vicinity of the District of Columbia," it is equally certain that it is not in the states of Maryland or Virginia. The legislative history of this first alternative clearly indicates that it was proposed to restrict the Civil Service Commission's exemption authority to areas adjacent to the District. (Citation omitted.) Admittedly the failure to include areas within the District may well have been due to the fact that there were no elective positions within the District government in 1940 when the Commission was given its exemption authority. (Footnote omitted.) The literal language of the first alternative in subsection 7327(b)(1), however, clearly does not include the District, and although a court should interpret the meaning of statutory language in light of the intent of its drafters, we cannot rewrite the statute to compensate for unforeseen circumstances.

*Id.* The appeals court also stated that, if the Civil Service Commission republished the exemption, it should furnish statistical evidence that a majority of District of Columbia voters were employed by the United States Government or the District of Columbia Government. *Id.* at 1152-1157. In order to comply with the decision in *Joseph*, the Civil Service Commission subsequently proposed to add the District of Columbia to the list of

exempted localities on May 6, 1977, 42 FR 23160 (1977), and the District was then added to the list of exempted localities, effective July 5, 1977. 42 FR 34308.

In a second suit challenging the validity of section 733.124, the appeals court remanded the case to the district court to gather statistical evidence to determine whether the majority of registered voters in the District of Columbia were employed by the United States or the District of Columbia governments. *Ward Three Democratic Committee versus United States*, 609 F. 2d 10 (D.C. Cir. 1979). On remand, the district court found that, based upon the statistical evidence submitted by the parties, less than 50 percent of registered voters in the District of Columbia were employed by the United States Government or the District of Columbia Government. Thus, the district court held that § 733.124(b), the regulation which provided for partial exemptions at that time, was "not applicable to the District of Columbia and shall not be applied thereto." *Ward Three Democratic Committee versus United States*, No. 78-853 (D.D.C. Aug. 29, 1980). OPM notes that this judicial decision was based upon requirements stated in the Hatch Act for an exemption to issue, but the same requirements also appear in the Reform Amendments. OPM is requesting further comments from the public, in particular from the Federal, Postal Service, and District of Columbia government employees who are registered voters in the District of Columbia. In the interim, OPM will also pursue a legislative solution to put the District of Columbia on the same footing as the surrounding Virginia and Maryland localities.

#### Other Designated Localities

The interim regulation includes "Martin's Additions 1, 2, 3, and 4 to Chevy Chase" in its list of designated Maryland municipalities and subdivisions. OPM proposes to remove "Martin's Additions 1, 2, 3, and 4 to Chevy Chase" from, and add "Village of Martin's Additions" to, the list of designated localities appearing in § 733.104 of the proposed regulation. OPM based this action on a comment received from a former local official of Martin's Additions, who advises that "Martin's Additions 1, 2, 3, and 4 to Chevy Chase" became an incorporated municipality in 1985. He also advises that the name of the subdivision was changed officially to the "Village of Martin's Additions" on its incorporation.

The interim regulation also includes "Chevy Chase, sections 1 and 2", in its

list of designated localities. OPM has removed "Chevy Chase, sections 1 and 2," from the list of designated localities in § 733.104 of the proposed regulation and has added the "Town of Chevy Chase Village" to that list. OPM has taken this action on the basis of a comment received from an official of the Town of Chevy Chase Village, who advised that sections 1 and 2 of Chevy Chase are included within the Town of Chevy Chase Village.

The interim regulation further includes the "Town of Fairfax" in its list of designated Virginia municipalities and subdivisions. OPM has removed the "Town of Fairfax" from the list of designated localities in § 733.104 of the proposed regulation and has added the "City of Fairfax" to that list. OPM has taken this action on the basis of information received from the Office of the City Attorney for the City of Fairfax regarding a Transition Order issued on June 30, 1961, *In the Matter of the Town of Fairfax, Virginia, Applying to Become a City of The Second Class*, Circuit Court of the County of Fairfax, Law No. 10031, and amendment of the Town Charter by the Virginia General Assembly, Acts of Assembly 1962, Ch. 468.

In connection with the regulatory list of designated localities, an individual commented generally that some localities on the list may no longer fulfill the statutory requirements for designation as an exempt locality and should therefore be removed from the list. Except in the possible case of the District of Columbia, OPM does not have any evidence to suggest that these localities may no longer qualify for a partial exemption.

#### 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 this regulation will not have a significant economic impact on a substantial number of small entities because the changes will affect only employees of the Federal Government.

#### List of Subjects in 5 CFR Part 733

Political activities (Government employees).

Office of Personnel Management.

**James B. King,**  
Director.

Accordingly, the Office of Personnel Management proposes to revise 5 CFR part 733 as follows:

# **PART 733—POLITICAL ACTIVITY— FEDERAL EMPLOYEES RESIDING IN DESIGNATED LOCALITIES**

Sec.

733.101 Definitions.

733.102 Exclusion of employees in the Criminal Division of the United States Department of Justice.

733.103 Permitted political activities—employees who reside in designated localities.

733.104 Prohibited political activities—employees who reside in designated localities.

733.105 Permitted political activities—employees who reside in designated localities and are employed in certain agencies and positions.

733.106 Prohibited political activities—employees who reside in designated localities and are employed in certain agencies and positions.

733.107 Designated localities.

**Authority:** 5 U.S.C. 7325; sec. 8 of Pub. L. 104–93, 109 Stat. 961, 966 (Jan. 6, 1996).

## **§ 733.101 Definitions.**

In this part:

*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.

*Candidate* means an individual who seeks nomination or election to any elective office whether or not the person is elected. An individual is deemed to be a candidate if the individual has received political contributions or made expenditures or has consented to another person receiving contributions or making expenditures with a view to bringing about the individual's nomination or election.

*Campaign* means all acts done by a candidate and his or her adherents to obtain a majority or plurality of the votes to be cast toward a nomination or in an election.

*Election* includes a primary, special, runoff, or general election.

*Employee* means:

Any individual (other than the President, the Vice President, or a member of the uniformed services) employed or holding office in—

(1) An Executive agency other than the General Accounting Office;

(2) A position within the competitive service which is not in an Executive agency;

(3) The government of the District of Columbia, other than the Mayor or a member of the City Council or the Recorder of Deeds; or

(4) The United States Postal Service or the Postal Rate Commission.

*On Duty* means the time period when an employee is:

(1) In a pay status other than paid leave, compensatory time off, credit hours, time off as an incentive award, or excused or authorized absence (including leave without pay); or

(2) Representing any agency or instrumentality of the United States Government or any agency or instrumentality of the District of Columbia Government in an official capacity.

*Partisan* when used as an adjective means related to a political party.

*Partisan political group* means any committee, club, or other organization which is affiliated with a political party or candidate for public office in a partisan election, or organized for a partisan purpose, or which engages in partisan political activity.

*Partisan political office* means any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but does not include any office or position within a political party or affiliated organization.

*Person* means an individual; a State, local, or foreign government; or a corporation and the subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity.

*Political activity* means an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.

*Political contribution* means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose.

(1) A political contribution includes:

(i) Any contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose;

(ii) Any payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and

(iii) The provision of personal services, paid or unpaid, for any political purpose.

(2) A political contribution does not include the value of services provided without compensation by any

individual who volunteers on behalf of any candidate, campaign, political party, or partisan political group.

*Political management* means the direction or supervision of a partisan political group or campaign for partisan political office.

*Political party* means a national political party, a State political party, or an affiliated organization.

*Political purpose* means an objective of promoting or opposing a political party, candidate for partisan political office, or partisan political group.

*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.

*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.

*Solicit* means to request expressly of another person that he or she contribute something to a candidate, a campaign, a political party, or partisan political group.

*Subordinate* refers to the relationship between two employees when one employee is under the supervisory authority, control or administrative direction of the other employee.

*Uniformed services* means uniformed services as defined in 5 U.S.C. 2101(3).

## **§ 733.102 Exclusion of employees in the Criminal Division of the United States Department of Justice.**

Employees in the Criminal Division in the Department of Justice (except employees appointed by the President, by and with the advice and consent of the Senate) specifically are excluded

from coverage under the provisions of this part.

**§ 733.103 Permitted political activities—employees who reside in designated localities.**

(a) This section does not apply to employees in the agencies and positions described in § 733.105(a).

(b) Employees who reside in a municipality or political subdivision designated by OPM under § 733.107 may:

(1) Run as independent candidates for election to partisan political office in elections for local office in the municipality or political subdivision;

(2) Solicit, accept, or receive a political contribution as, or on behalf of, an independent candidate for partisan political office in elections for local office in the municipality or political subdivision;

(3) Accept or receive a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party;

(4) Solicit, accept, or receive uncompensated volunteer services as an independent candidate, or on behalf of an independent candidate, for local partisan public office, in connection with the local elections of the municipality or subdivision; and

(5) Solicit, accept, or receive uncompensated volunteer services on behalf of an individual who is a candidate for local partisan political office and who represents a political party.

**§ 733.104 Prohibited political activities—employees who reside in designated localities.**

(a) This section does not apply to employees in the agencies and positions described in § 733.105(a).

(b) Employees who reside in a municipality or political subdivision designated by OPM under § 733.107 may not:

(1) Run as the representative of a political party for local partisan political office;

(2) Solicit a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party;

(3) Knowingly solicit a political contribution from any Federal employee, except as permitted under 5 U.S.C. 7323(a)(2) (A)–(C).

(4) Accept or receive a political contribution from a subordinate; or

(5) Solicit, accept, or receive uncompensated volunteer services from a subordinate for any political purpose.

(c) An employee covered under this section may not participate in political activities:

(1) While he or she is on duty;

(2) While he or she is wearing a uniform, badge, or insignia that identifies the employing agency or instrumentality or the position of the employee;

(3) While he or she is in any 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; or

(4) While using a Government-owned or leased vehicle or while using a privately owned vehicle in the discharge of official duties.

(d) An employee described in 5 U.S.C. 7324(b)(2) may participate in political activity otherwise prohibited by § 733.104(c) if the costs associated with that political activity are not paid for by money derived from the Treasury of the United States.

(e) Candidacy for, and service in, a partisan political office shall not result in neglect of, or interference with, the performance of the duties of the employee or create a conflict, or apparent conflict, of interest.

**§ 733.105 Permitted political activities—employees who reside in designated localities and are employed in certain agencies and positions.**

(a) This section applies to employees who reside in designated localities and are employed in the following agencies or positions:

- (1) Federal Election Commission;
- (2) Federal Bureau of Investigation;
- (3) Secret Service;
- (4) Central Intelligence Agency;
- (5) National Security Council;
- (6) National Security Agency;
- (7) Defense Intelligence Agency;
- (8) Merit Systems Protection Board;
- (9) United States Office of Special Counsel;

(10) Office of Criminal Investigation of the Internal Revenue Service;

(11) Office of Investigative Programs of the United States Customs Service;

(12) Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms;

(13) Central Imagery Office;

(14) Career appointees in the Senior Executive Service;

(15) Administrative Law Judges; and

(16) Contract appeals board members described in 5 U.S.C. 5372a.

(b) Employees who are covered under this section and who reside in a municipality or political subdivision designated by OPM under § 733.107 may:

(1) Run as independent candidates for election to partisan political office in elections for local office in the municipality or political subdivision;

(2) Solicit, accept, or receive a political contribution as, or on behalf of, an independent candidate for partisan political office in elections for local office in the municipality or political subdivision;

(3) Solicit, accept, or receive uncompensated volunteer services as, or on behalf of, an independent candidate for partisan political office in elections for local office in the municipality or subdivision; and

(4) Take an active part in other political activities associated with elections for local partisan political office and in managing the campaigns of candidates for election to local partisan political office in the municipality or political subdivision, but only as an independent candidate or on behalf of, or in opposition to, an independent candidate.

**§ 733.106 Prohibited political activities—employees who reside in designated localities and are employed in certain agencies and positions.**

(a) Employees who are employed in the agencies and positions described in § 733.105(a), and who reside in a municipality or political subdivision designated by OPM under § 733.107, may not:

(1) Run as the representative of a political party for local partisan political office;

(2) Solicit, accept, or receive a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party;

(3) Knowingly solicit a political contribution from any Federal employee;

(4) Accept or receive a political contribution from a subordinate;

(5) Solicit, accept, or receive uncompensated volunteer services on behalf of an individual who is a candidate for local partisan political office and who represents a political party;

(6) Solicit, accept, or receive uncompensated volunteer services from a subordinate for any political purpose; or

(7) Take an active part in other political activities associated with elections for local partisan political office, when such participation occurs on behalf of a political party, partisan political group, or a candidate for local partisan political office who represents a political party.



(b) An employee covered under this section may not participate in political activities:

- (1) While he or she is on duty;
- (2) While he or she is wearing a uniform, badge, or insignia that identifies the employing agency or instrumentality or the position of the employee;
- (3) While he or she is in any 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; or
- (4) While using a Government-owned or leased vehicle or while using a privately owned vehicle in the discharge of official duties.

(c) An employee described in 5 U.S.C. 7324(b)(2) may participate in political activity otherwise prohibited by § 733.104(b) if the costs associated with that political activity are not paid for by money derived from the Treasury of the United States.

(d) Candidacy for, and service in, a partisan political office shall not result in neglect of, or interference with, the performance of the duties of the employee or create a conflict, or apparent conflict, of interest.

#### § 733.107 Designated localities.

(a) OPM may designate a municipality or political subdivision in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or a municipality in which the majority of voters are employed by the Government of the United States, when OPM determines that, because of special or unusual circumstances, it is in the domestic interest of employees to participate in local elections.

(b) Information as to the documentation required to support a request for designation is furnished by the General Counsel of OPM on request.

(c) The following municipalities and political subdivisions have been designated, effective on the day specified:

#### In Maryland

Annapolis (May 16, 1941).  
Anne Arundel County (March 14, 1973).  
Berwyn Heights (June 15, 1944).  
Bethesda (Feb. 17, 1943).  
Bladensburg (April 20, 1942).  
Bowie (April 11, 1952).  
Brentwood (Sept. 26, 1940).  
Calvert County (June 18, 1992).  
Capitol Heights (Nov. 12, 1940).  
Cheverly (Dec. 18, 1940).  
Chevy Chase, section 3 (Oct. 8, 1940).  
Chevy Chase, section 4 (Oct. 2, 1940).  
Chevy Chase View (Feb. 26, 1941).  
Chevy Chase Village, Town of (March 4, 1941).  
College Park (June 13, 1945).

Cottage City (Jan. 15, 1941).  
District Heights (Nov. 2, 1940).  
Edmonston (Oct. 24, 1940).  
Fairmont Heights (Oct. 24, 1940).  
Forest Heights (April 22, 1949).  
Frederick County (May 31, 1991).  
Garrett Park (Oct. 2, 1940).  
Glenarden (May 21, 1941).  
Glen Echo (Oct. 22, 1940).  
Greenbelt (Oct. 4, 1940).  
Howard County (April 25, 1974).  
Hyattsville (Sept. 20, 1940).  
Kensington (Nov. 8, 1940).  
Landover Hills (May 5, 1945).  
Martin's Additions, Village of (Feb. 13, 1941).  
Montgomery County (April 30, 1964).  
Morningside (May 19, 1949).  
Mount Rainier (Nov. 22, 1940).  
New Carrollton (July 7, 1981).  
North Beach (Sept. 20, 1940).  
North Brentwood (May 6, 1941).  
North Chevy Chase (July 22, 1942).  
Northwest Park (Feb. 17, 1943).  
Prince Georges County (June 19, 1962).  
Riverdale (Sept. 26, 1940).  
Rockville (April 15, 1948).  
Seat Pleasant (Aug. 31, 1942).  
Somerset (Nov. 22, 1940).  
St. Mary's County (date to be determined at a later date).  
Takoma Park (Oct. 22, 1940).  
University Park (Jan. 18, 1941).  
Washington Grove (April 5, 1941).

#### In Virginia

Alexandria (April 15, 1941).  
Arlington County (Sept. 9, 1940).  
Clifton (July 14, 1941).  
Fairfax, City of (Feb. 9, 1954).  
Fairfax County (Nov. 10, 1949).  
Falls Church (June 6, 1941).  
Herndon (April 7, 1945).  
Loudoun County (Oct. 1, 1971).  
Manassas (Jan. 8, 1980).  
Manassas Park (March 4, 1980).  
Portsmouth (Feb. 27, 1958).  
Prince William County (Feb. 14, 1967).  
Spotsylvania County (date to be determined at a later date).  
Stafford County (Nov. 2, 1979).  
Vienna (March 18, 1946).

#### Other Municipalities

Anchorage, Alaska (Dec. 29, 1947).  
Benicia, Calif. (Feb. 20, 1948).  
Bremerton, Wash. (Feb. 27, 1946).  
Centerville, Ga. (Sept. 16, 1971).  
Crane, Ind. (Aug. 3, 1967).  
District of Columbia (July 5, 1977).  
Elmer City, Wash. (Oct. 28, 1947).  
Huachuca City, Ariz. (April 9, 1959).  
New Johnsonville, Tenn. (April 26, 1956).  
Norris, Tenn. (May 6, 1959).  
Port Orchard, Wash. (Feb. 27, 1946).  
Sierra Vista, Ariz. (Oct. 5, 1955).  
Warner Robins, Ga. (March 19, 1948).

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 96-NM-220-AD]

RIN 2120-AA64

#### Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes. This proposal would require a one-time inspection of the hydraulic tubes and electrical harness wires of the wing rear access door for chafing, leakage, or wear damage; repair of any discrepancy found; and modification of the wing rear access door. This proposal is prompted by reports of interference between the wing rear access door and the hydraulic tubes and electrical harnesses, and chafing damage to the hydraulic tubes. The actions specified by the proposed AD are intended to prevent such interference or chafing damage, which could lead to failure of the number 2 hydraulic system or loss of certain electrical and landing systems, and resultant reduced controllability of the airplane.

**DATES:** Comments must be received by August 4, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-220-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S-581.88, Linköping, Sweden.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ruth Harder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1721; fax (425) 227-1149.