

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 302
OFFERED BY MR. HICE OF GEORGIA**

Strike sections 1 and 2 and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Creating Schedule F
3 in the Excepted Service Act”.

4 **SEC. 2. SCHEDULE F OF THE EXCEPTED SERVICE.**

5 (a) **IN GENERAL.**—Appointments of individuals to
6 positions of a confidential, policy-determining, policy-mak-
7 ing, or policy-advocating character that are not normally
8 subject to change as a result of a Presidential transition
9 shall be made under schedule F of the excepted service,
10 as established by subsection (b).

11 (b) **REGULATIONS.**—The Director of the Office of
12 Personnel Management shall—

13 (1) amend section 6.2 of title 5, Code of Fed-
14 eral Regulations, to read as follows:

15 “OPM shall list positions that it excepts from the
16 competitive service in Schedules A, B, C, D, E, and F,
17 which schedules shall constitute parts of this rule, as fol-
18 lows:

1 “Schedule A. Positions other than those of a con-
2 fidential or policy-determining character for which it is not
3 practicable to examine shall be listed in Schedule A.

4 “Schedule B. Positions other than those of a con-
5 fidential or policy-determining character for which it is not
6 practicable to hold a competitive examination shall be list-
7 ed in Schedule B. Appointments to these positions shall
8 be subject to such noncompetitive examination as may be
9 prescribed by OPM.

10 “Schedule C. Positions of a confidential or policy-de-
11 termining character normally subject to change as a result
12 of a Presidential transition shall be listed in Schedule C.

13 “Schedule D. Positions other than those of a con-
14 fidential or policy-determining character for which the
15 competitive service requirements make impracticable the
16 adequate recruitment of sufficient numbers of students at-
17 tending qualifying educational institutions or individuals
18 who have recently completed qualifying educational pro-
19 grams. These positions, which are temporarily placed in
20 the excepted service to enable more effective recruitment
21 from all segments of society by using means of recruiting
22 and assessing candidates that diverge from the rules gen-
23 erally applicable to the competitive service, shall be listed
24 in Schedule D.

1 “Schedule E. Position of administrative law judge ap-
2 pointed under 5 U.S.C. 3105. Conditions of good adminis-
3 tration warrant that the position of administrative law
4 judge be placed in the excepted service and that appoint-
5 ment to this position not be subject to the requirements
6 of 5 CFR, part 302, including examination and rating re-
7 quirements, though each agency shall follow the principle
8 of veteran preference as far as administratively feasible.

9 “Schedule F. Positions of a confidential, policy-deter-
10 mining, policy-making, or policy-advocating character not
11 normally subject to change as a result of a Presidential
12 transition shall be listed in Schedule F. In appointing an
13 individual to a position in Schedule F, each agency shall
14 follow the principle of veteran preference as far as admin-
15 istratively feasible”;

16 (2) amend section 6.4 of title 5, Code of Fed-
17 eral Regulations, to read as follows:

18 “Except as required by statute, the Civil Service Rules
19 and Regulations shall not apply to removals from positions
20 listed in Schedules A, C, D, E, or F, or from positions
21 excepted from the competitive service by statute. The Civil
22 Service Rules and Regulations shall apply to removals
23 from positions listed in Schedule B of persons who have
24 competitive status.”;

1 (3) adopt such regulations as the Director de-
2 termines may be necessary to implement this Act,
3 including, as appropriate, amendments to or rescis-
4 sions of regulations that are inconsistent with, or
5 that would impede the implementation of, this Act,
6 giving particular attention to—

7 (A) section 302.101 of title 5, Code of
8 Federal Regulations;

9 (B) subpart D of part 212 of such title;
10 and

11 (C) subparts A and C of part 213 of such
12 title; and

13 (4) provide guidance on conducting a swift, or-
14 derly transition from the existing appointment proc-
15 esses to the schedule F process established by this
16 Act.

17 **SEC. 3. EXECUTIVE AGENCY ACTIONS.**

18 (a) REVIEW.—

19 (1) IN GENERAL.—Each Executive agency head
20 shall conduct, not later than 90 days after the date
21 of enactment of this Act, a preliminary review of the
22 positions in the Executive agency that are covered
23 by subchapter II of chapter 75 of title 5, United
24 States Code, and shall conduct a complete review of
25 the positions in the agency not later than 210 days

1 after the date of enactment of this Act. Thereafter,
2 each agency head shall conduct a review of such po-
3 sitions that are covered by subchapter II of chapter
4 75 of title 5, United States Code, on at least an an-
5 nual basis.

6 (2) PETITIONS.—

7 (A) IN GENERAL.—Following a review
8 under paragraph (1), each agency head shall,
9 for positions not excepted from the competitive
10 service by statute, petition the Director to place
11 in schedule F any such competitive service,
12 schedule A, schedule B, or schedule D positions
13 in the Executive agency that the agency head
14 determines to be of a confidential, policy-deter-
15 mining, policy-making, or policy-advocating
16 character and that are not normally subject to
17 change as a result of a Presidential transition.

18 (B) PETITION EXPLANATION.—Any peti-
19 tion submitted under subparagraph (A) shall
20 include a written explanation documenting the
21 basis for the agency head's determination that
22 such position should be placed in schedule F.

23 (3) DETERMINATIONS.—

24 (A) IN GENERAL.—Following a review
25 under paragraph (1), each agency head shall,

1 for positions excepted from the competitive
2 service by statute, determine which such posi-
3 tions are of a confidential, policy-determining,
4 policy-making, or policy-advocating character
5 and are not normally subject to change as a re-
6 sult of a Presidential transition.

7 (B) DETERMINATION EFFECT.—A position
8 which the agency head determines under sub-
9 paragraph (A) to be of a confidential, policy-de-
10 termining, policy-making, or policy-advocating
11 character and not normally subject to change as
12 a result of a Presidential transition shall be
13 considered a schedule F position for the pur-
14 poses of Executive agency actions under sub-
15 sections (d) and (f).

16 (C) PUBLICATION.—An agency head shall
17 publish each determination made under sub-
18 paragraph (A) in the Federal Register.

19 (b) APPLICABILITY.—The requirements set forth in
20 subsection (a) shall apply to currently existing positions
21 and newly created positions.

22 (c) ADDITIONAL CONSIDERATION.—When con-
23 ducting the review required by subsection (a), each agency
24 head should give particular consideration to the appro-
25 priateness of either petitioning the Director to place in

1 schedule F or including in the determination published in
2 the Federal Register, as applicable, positions whose duties
3 include any of the following—

4 (1) substantive participation in the advocacy for
5 or development or formulation of policy, especially—

6 (A) substantive participation in the devel-
7 opment or drafting of regulations and guidance;
8 or

9 (B) substantive policy-related work in an
10 Executive agency or Executive agency compo-
11 nent that primarily focuses on policy;

12 (2) the supervision of attorneys;

13 (3) substantial discretion to determine the man-
14 ner in which the Executive agency exercises func-
15 tions committed to the agency by law;

16 (4) viewing, circulating, or otherwise working
17 with proposed regulations, guidance, executive or-
18 ders, or other non-public policy proposals or delib-
19 erations generally covered by deliberative process
20 privilege and either—

21 (A) directly reporting to or regularly work-
22 ing with an individual appointed by either the
23 President or an agency head who is paid at a
24 rate not less than that earned by employees at
25 Grade 13 of the General Schedule; or

1 (B) working in the Executive agency or
2 Executive agency component executive secre-
3 tariat (or equivalent); or

4 (5) conducting, on the Executive agency's be-
5 half, collective bargaining negotiations under chapter
6 71 of title 5, United States Code.

7 (d) PETITION DECISION.—The Director shall
8 promptly determine whether to grant any petition under
9 subsection (a). Not later than December 31 of each year,
10 the Director shall report to the President, through the Di-
11 rector of the Office of Management and Budget and the
12 Assistant to the President for Domestic Policy, concerning
13 the number of petitions granted and denied for that year
14 for each Executive agency.

15 (e) COLLECTIVE BARGAINING EXCLUSIONS.—Each
16 agency head shall, as necessary and appropriate, expedi-
17 tiously petition the Federal Labor Relations Authority to
18 determine whether any schedule F position must be ex-
19 cluded from a collective bargaining unit under section
20 7112(b) of title 5, United States Code, paying particular
21 attention to the question of whether incumbents in such
22 positions are required or authorized to formulate, deter-
23 mine, or influence the policies of the agency.

24 (f) PROHIBITED PERSONNEL PRACTICES.—Agency
25 heads shall establish rules to prohibit the personnel prac-

1 tices prohibited by section 2302(b) of title 5, United
2 States Code, with respect to any employee or applicant
3 for employment in schedule F of the excepted service.

4 **SEC. 4. DEFINITIONS.**

5 In this Act:

6 (1) AGENCY HEAD.—The term “agency head”
7 means the head of an Executive agency.

8 (2) DIRECTOR.—The term “Director” means
9 the Director of the Office of Personnel Management.

10 (3) EXECUTIVE AGENCY.—The term “Executive
11 agency” has the meaning given such term in section
12 105 of title 5, United States Code, but excluding the
13 Government Accountability Office.

14 (4) NORMALLY SUBJECT TO CHANGE AS A RE-
15 SULT OF A PRESIDENTIAL TRANSITION.—The term
16 “normally subject to change as a result of a Presi-
17 dential transition” refers to positions whose occu-
18 pants are, as a matter of practice, expected to resign
19 upon a Presidential transition, including all positions
20 whose appointment requires the assent of the White
21 House Office of Presidential Personnel.

