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.

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

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

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

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

(1) amend section 6.2 of title 5, Code of Federal Regulations, to read as follows:

“OPM shall list positions that it excepts from the competitive service in Schedules A, B, C, D, E, and F, which schedules shall constitute parts of this rule, as follows:
“Schedule A. Positions other than those of a confidential or policy-determining character for which it is not practicable to examine shall be listed in Schedule A.

“Schedule B. Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination shall be listed in Schedule B. Appointments to these positions shall be subject to such noncompetitive examination as may be prescribed by OPM.

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

“Schedule D. Positions other than those of a confidential or policy-determining character for which the competitive service requirements make impracticable the adequate recruitment of sufficient numbers of students attending qualifying educational institutions or individuals who have recently completed qualifying educational programs. These positions, which are temporarily placed in the excepted service to enable more effective recruitment from all segments of society by using means of recruiting and assessing candidates that diverge from the rules generally applicable to the competitive service, shall be listed in Schedule D.
“Schedule E. Position of administrative law judge appointed under 5 U.S.C. 3105. Conditions of good administration warrant that the position of administrative law judge be placed in the excepted service and that appointment to this position not be subject to the requirements of 5 CFR, part 302, including examination and rating requirements, though each agency shall follow the principle of veteran preference as far as administratively feasible.

“Schedule F. Positions of a confidential, policy-determining, policy-making, or policy-advocating character not normally subject to change as a result of a Presidential transition shall be listed in Schedule F. In appointing an individual to a position in Schedule F, each agency shall follow the principle of veteran preference as far as administratively feasible”;

(2) amend section 6.4 of title 5, Code of Federal Regulations, to read as follows:

“Except as required by statute, the Civil Service Rules and Regulations shall not apply to removals from positions listed in Schedules A, C, D, E, or F, or from positions excepted from the competitive service by statute. The Civil Service Rules and Regulations shall apply to removals from positions listed in Schedule B of persons who have competitive status.”;
(3) adopt such regulations as the Director determines may be necessary to implement this Act, including, as appropriate, amendments to or rescissions of regulations that are inconsistent with, or that would impede the implementation of, this Act, giving particular attention to—

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

(B) subpart D of part 212 of such title;

and

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

(4) provide guidance on conducting a swift, orderly transition from the existing appointment processes to the schedule F process established by this Act.

SEC. 3. EXECUTIVE AGENCY ACTIONS.

(a) Review.—

(1) IN GENERAL.—Each Executive agency head shall conduct, not later than 90 days after the date of enactment of this Act, a preliminary review of the positions in the Executive agency that are covered by subchapter II of chapter 75 of title 5, United States Code, and shall conduct a complete review of the positions in the agency not later than 210 days
after the date of enactment of this Act. Thereafter, each agency head shall conduct a review of such positions that are covered by subchapter II of chapter 75 of title 5, United States Code, on at least an annual basis.

(2) Petitions.—

(A) In general.—Following a review under paragraph (1), each agency head shall, for positions not excepted from the competitive service by statute, petition the Director to place in schedule F any such competitive service, schedule A, schedule B, or schedule D positions in the Executive agency that the agency head determines to be of a confidential, policy-determining, policy-making, or policy-advocating character and that are not normally subject to change as a result of a Presidential transition.

(B) Petition explanation.—Any petition submitted under subparagraph (A) shall include a written explanation documenting the basis for the agency head’s determination that such position should be placed in schedule F.

(3) Determinations.—

(A) In general.—Following a review under paragraph (1), each agency head shall,
for positions excepted from the competitive
service by statute, determine which such posi-
tions are of a confidential, policy-determining,
policy-making, or policy-advocating character
and are not normally subject to change as a re-
result of a Presidential transition.

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

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

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

(c) ADDITIONAL CONSIDERATION.—When con-
ducting the review required by subsection (a), each agency
head should give particular consideration to the appro-
priateness of either petitioning the Director to place in
schedule F or including in the determination published in the Federal Register, as applicable, positions whose duties include any of the following—

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

(A) substantive participation in the development or drafting of regulations and guidance; or

(B) substantive policy-related work in an Executive agency or Executive agency component that primarily focuses on policy;

(2) the supervision of attorneys;

(3) substantial discretion to determine the manner in which the Executive agency exercises functions committed to the agency by law;

(4) viewing, circulating, or otherwise working with proposed regulations, guidance, executive orders, or other non-public policy proposals or deliberations generally covered by deliberative process privilege and either—

(A) directly reporting to or regularly working with an individual appointed by either the President or an agency head who is paid at a rate not less than that earned by employees at Grade 13 of the General Schedule; or
(B) working in the Executive agency or Executive agency component executive secretariat (or equivalent); or

(5) conducting, on the Executive agency’s behalf, collective bargaining negotiations under chapter 71 of title 5, United States Code.

(d) Petition Decision.—The Director shall promptly determine whether to grant any petition under subsection (a). Not later than December 31 of each year, the Director shall report to the President, through the Director of the Office of Management and Budget and the Assistant to the President for Domestic Policy, concerning the number of petitions granted and denied for that year for each Executive agency.

(e) Collective Bargaining Exclusions.—Each agency head shall, as necessary and appropriate, expeditiously petition the Federal Labor Relations Authority to determine whether any schedule F position must be excluded from a collective bargaining unit under section 7112(b) of title 5, United States Code, paying particular attention to the question of whether incumbents in such positions are required or authorized to formulate, determine, or influence the policies of the agency.

(f) Prohibited Personnel Practices.—Agency heads shall establish rules to prohibit the personnel prac-
tives prohibited by section 2302(b) of title 5, United States Code, with respect to any employee or applicant for employment in schedule F of the excepted service.

SEC. 4. DEFINITIONS.

In this Act:

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

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

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

(4) NORMALLY SUBJECT TO CHANGE AS A RESULT OF A PRESIDENTIAL TRANSITION.—The term “normally subject to change as a result of a Presidential transition” refers to positions whose occupants are, as a matter of practice, expected to resign upon a Presidential transition, including all positions whose appointment requires the assent of the White House Office of Presidential Personnel.