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[Laws in effect as of January 20, 2004]
[Document not affected by Public Laws enacted between
January 20, 2004 and December 23, 2004]
[CITE: 5USC301]

TITLE 5--GOVERNMENT ORGANIZATION AND EMPLOYEES

PART I--THE AGENCIES GENERALLY

CHAPTER 3--POWERS

Sec. 301. Departmental regulations

The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 379.)

Historical and Revision Notes

| Derivation | U.S. Code | Revised Statutes and Statutes at Large |
|------------|--------------|--|
| | 5 U.S.C. 22. | R.S. Sec. 161. Aug. 12, 1958, Pub. L. 85-619, 72 Stat. 547. |

The words ``Executive department'' are substituted for ``department'' as the definition of ``department'' applicable to this section is coextensive with the definition of ``Executive department'' in section 101. The words ``not inconsistent with law'' are omitted as surplusage as a regulation which is inconsistent with law is invalid.

The words ``or military department'' are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which provided:

``All laws, orders, regulations, and other actions relating to the National Military Establishment, the Departments of the Army, the Navy, or the Air Force, or to any officer or activity of such establishment or such departments, shall, except to the extent inconsistent with the

provisions of this Act, have the same effect as if this Act had not been enacted; but, after the effective date of this Act, any such law, order, regulation, or other action which vested functions in or otherwise related to any officer, department, or establishment, shall be deemed to have vested such function in or relate to the officer, or department, executive or military, succeeding the officer, department, or establishment in which such function was vested. For purposes of this subsection the Department of Defense shall be deemed the department succeeding the National Military Establishment, and the military departments of Army, Navy, and Air Force shall be deemed the departments succeeding the Executive Departments of Army, Navy, and Air Force.''

This section was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, Sec. 201(d), as added Aug. 10, 1949, ch. 412, Sec. 4, 63 Stat. 579 (former 5 U.S.C. 171-1), which provides ``Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense'' is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Minimum Standards for Birth Certificates

Pub. L. 108-458, title VII, Sec. 7211(a)-(d), Dec. 17, 2004, 118 Stat. 3825-3827, provided that:

``(a) Definition.--In this section [enacting this note and repealing provisions set out as a note below], the term `birth certificate' means a certificate of birth--

``(1) for an individual (regardless of where born)--

``(A) who is a citizen or national of the United States at birth; and

``(B) whose birth is registered in the United States; and

``(2) that--

``(A) is issued by a Federal, State, or local government agency or authorized custodian of record and produced from birth records maintained by such agency or custodian of record; or

``(B) is an authenticated copy, issued by a Federal, State, or local government agency or authorized custodian of record, of an original certificate of birth issued by such agency or custodian of record.

``(b) Standards for Acceptance by Federal Agencies.--

``(1) In general.--Beginning 2 years after the promulgation of minimum standards under paragraph (3), no Federal agency may accept a birth certificate for any official purpose unless the certificate conforms to such standards.

``(2) State certification.--

``(A) In general.--Each State shall certify to the Secretary of Health and Human Services that the State is in compliance with the requirements of this section.

``(B) Frequency.--Certifications under subparagraph (A) shall be made at such intervals and in such a manner as the Secretary of Health and Human Services, with the concurrence of the Secretary of Homeland Security and the Commissioner of Social Security, may prescribe by regulation.

``(C) Compliance.--Each State shall ensure that units of local government and other authorized custodians of records in

the State comply with this section.

((D) Audits.--The Secretary of Health and Human Services may conduct periodic audits of each State's compliance with the requirements of this section.

((3) Minimum standards.--Not later than 1 year after the date of enactment of this Act [Dec. 17, 2004], the Secretary of Health and Human Services shall by regulation establish minimum standards for birth certificates for use by Federal agencies for official purposes that--

((A) at a minimum, shall require certification of the birth certificate by the State or local government custodian of record that issued the certificate, and shall require the use of safety paper or an alternative, equally secure medium, the seal of the issuing custodian of record, and other features designed to prevent tampering, counterfeiting, or otherwise duplicating the birth certificate for fraudulent purposes;

((B) shall establish requirements for proof and verification of identity as a condition of issuance of a birth certificate, with additional security measures for the issuance of a birth certificate for a person who is not the applicant;

((C) shall establish standards for the processing of birth certificate applications to prevent fraud;

((D) may not require a single design to which birth certificates issued by all States must conform; and

((E) shall accommodate the differences between the States in the manner and form in which birth records are stored and birth certificates are produced from such records.

((4) Consultation with government agencies.--In promulgating the standards required under paragraph (3), the Secretary of Health and Human Services shall consult with--

((A) the Secretary of Homeland Security;

((B) the Commissioner of Social Security;

((C) State vital statistics offices; and

((D) other appropriate Federal agencies.

((5) Extension of effective date.--The Secretary of Health and Human Services may extend the date specified under paragraph (1) for up to 2 years for birth certificates issued by a State if the Secretary determines that the State made reasonable efforts to comply with the date under paragraph (1) but was unable to do so.

((c) Grants to States.--

((1) Assistance in meeting federal standards.--

((A) In general.--Beginning on the date a final regulation is promulgated under subsection (b)(3), the Secretary of Health and Human Services shall award grants to States to assist them in conforming to the minimum standards for birth certificates set forth in the regulation.

((B) Allocation of grants.--The Secretary shall award grants to States under this paragraph based on the proportion that the estimated average annual number of birth certificates issued by a State applying for a grant bears to the estimated average annual number of birth certificates issued by all States.

((C) Minimum allocation.--Notwithstanding subparagraph (B), each State shall receive not less than 0.5 percent of the grant funds made available under this paragraph.

((2) Assistance in matching birth and death records.--

((A) In general.--The Secretary of Health and Human

Services, in coordination with the Commissioner of Social Security and other appropriate Federal agencies, shall award grants to States, under criteria established by the Secretary, to assist States in--

- ``(i) computerizing their birth and death records;
- ``(ii) developing the capability to match birth and death records within each State and among the States; and
- ``(iii) noting the fact of death on the birth certificates of deceased persons.

``(B) Allocation of grants.--The Secretary shall award grants to qualifying States under this paragraph based on the proportion that the estimated annual average number of birth and death records created by a State applying for a grant bears to the estimated annual average number of birth and death records originated by all States.

``(C) Minimum allocation.--Notwithstanding subparagraph (B), each State shall receive not less than 0.5 percent of the grant funds made available under this paragraph.

``(d) Authorization of Appropriations.--There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this section.''

Improvements in Identification-Related Documents

Pub. L. 104-208, div. C, title VI, Sec. 656, Sept. 30, 1996, 110 Stat. 3009-716, as amended by Pub. L. 106-69, title III, Sec. 355, Oct. 9, 1999, 113 Stat. 1027, which related to standards for acceptance of birth certificates by Federal agencies for any official purpose, required the Secretary of Health and Human Services to make grants to States for assistance in meeting Federal standards and in matching birth and death records and for demonstration projects, and required the Secretary to submit a report to the Congress on ways to reduce the fraudulent obtaining and use of birth certificates, was repealed by Pub. L. 108-458, title VII, Sec. 7211(e), Dec. 17, 2004, 118 Stat. 3827.

Equal Opportunity in Federal Employment

Establishment of equal employment opportunity programs by heads of Executive departments and agencies, see Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319 and Ex. Ord. No. 11478, Aug. 8, 1969, 34 F.R. 12985, set out as notes under section 2000e of Title 42, The Public Health and Welfare.