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is practicable under local conditions. Such differential shall be treated as part of the basic compensation for the position to the extent it is so treated in the Federal Wage System.

**§ 251.72 Physical hardship or hazard differentials for non-manual positions.**

The head of each agency, in coordination with the heads of other agencies, may authorize payment of differentials for positions, other than positions subject to § 251.71 of this chapter, to compensate for irregular or intermittent duty involving unusual physical hardship or hazard. Differential prescribed under this section shall generally conform to regulations published in 5 CFR Part 550.

**§ 251.73 Premium pay.**

(a) Premium pay for Manual-type positions shall be established in accordance with the provisions of 5 U.S.C. 5544 and Supplement 532-1 of the Federal Personnel Manual; *Provided, However,* That any rule concerning premium pay established prior to the effective date of these regulations may be continued for the type of position to which the rule applied before the said effective date.

(b) Premium pay and compensatory time for positions, other than positions subject to paragraph (a) of this section, shall be established in accordance with the provisions of Subchapter V of Chapter 55 of Title 5, United States Code; *Provided, however,* That any rule concerning premium pay or compensatory time established prior to the effective date of these regulations may be continued for the type of position to which the rule applied before the said effective date.

**PART 253—REGULATIONS OF THE SECRETARY OF THE ARMY (PANAMA CANAL EMPLOYMENT SYSTEM)—EMPLOYMENT POLICY**

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### PANAMA CANAL EMPLOYMENT SYSTEM

## Subpart A—General Provisions

### § 253.1 Purpose.

The regulations in this part are prescribed for the purpose of establishing the Panama Canal Employment System governing employment in the Panama Canal Commission and any other Executive Agency, or the Smithsonian Institution, electing to participate in the system.

### § 253.2 Definitions.

As used in this part:

(a) *Administrator* is the Administrator of the Panama Canal Commission.

(b) *Agency* means: (1) The Panama Canal Commission, and (2) an executive agency or the Smithsonian Institution, to the extent of any election in effect under section 1212(b)(2) of the Panama Canal Act; except that in paragraph (r)

of this section *agency* shall mean an Executive agency, as that term is defined in 5 U.S.C. 105.

(c) *Competitive service* has the meaning given that term in 5 U.S.C. 2102.

(d) *Employee* means an individual serving in a position.

(e) The *Panama Canal Act* means the Panama Canal Act of 1979 (Pub. L. 96-70, 93 Stat. 463).

(f) The *Panama Canal Treaty* means the Panama Canal Treaty between the United States of America and the Republic of Panama, signed September 7, 1977, and related agreements.

(g) *Position* means a civilian position in an agency, if a substantial portion of the duties and responsibilities of the position are performed in the Republic of Panama. In the case of the Commission, *position* means a civilian position in the Commission.

(h) *Subchapter II* means Subchapter II of Chapter 2 of Title I of the Panama Canal Act.

(i) *PAPB* means the Panama Area Personnel Board.

(j) *CEO* means the Central Examining Office.

(k) *Competitive status* has the meaning ascribed to that term in 5 CFR 1.3(c).

(l) *Continental United States* means the forty-eight contiguous states of the United States of America and the District of Columbia.

(m) *Federal Wage System* means the system for fixing and adjusting the rates of pay for prevailing rate employees of the U.S. Government that was established by Pub. L. 92-392 and as set forth in FPM Supplement 532-1 and related issuances.

(n) *Isthmus* means all territory of the Republic of Panama.

(o) *Merit Status* means basic eligibility to be noncompetitively selected to fill a vacant position under the Panama Canal Employment System.

(p) *OPM* means the Office of Personnel Management.

(q) *Veteran* means a person entitled to preference as a *preference eligible* as defined by 5 U.S.C. 2108(3).

(r) *Department* means a department, agency or independent establishment in the executive branch of the Government of the United States (including a corporation wholly owned or controlled

by the United States) which conducted operations in the Canal Zone.

**§ 253.3 Establishment of Panama Canal Employment System; scope and requirements.**

(a) There is hereby established a Panama Canal Employment System. The employment system is a system of:

(1) Selection for appointment, re-appointment, reinstatement, reemployment and retention with respect to positions, employees, and individuals under consideration for appointment; and

(2) Regulations concerning other matters related to employment in an agency, as prescribed in this chapter.

(b) The Panama Canal Employment System shall:

(1) Be based on the consideration of the merit of each employee or candidate for employment and the qualifications and fitness of the employee or candidate to hold the position concerned;

(2) Be subject to the provisions of the Panama Canal Treaty of 1977 and related agreements and any other applicable provision of law;

(3) Apply uniformly within and among all agencies, positions, employees and individuals concerned;

(4) Conform, to the extent practicable and consistent with the provisions of law, to the policies, principles, and standards applicable to the competitive service;

(5) In the case of employees who are citizens of the United States, provide for the appropriate interchange of those employees between positions under this system and positions in the competitive service; and

(6) In the case of non-Panamanian employees hired on or after October 1, 1979, include a policy for their periodic rotation in accordance with the Panama Canal Treaty or the Agreement in Implementation of Article IV thereof.

(c) The Panama Canal Commission and, to the extent of any election pursuant to law and paragraph (d) of this section, any other agency shall conduct their employment practices in accordance with this system and the regulations in this part and in part 251 of this chapter.

(d) The head of any Executive Agency and the Smithsonian Institution may elect to have the Panama Canal Employment System made applicable in whole or in part to personnel of that agency in the Republic of Panama.

(e) Provisions for interchange between this system and the competitive service which involve movement from this system to the competitive service shall be subject to the concurrence of the Office of Personnel Management.

**§ 253.4 Coverage and exclusions.**

(a) *Applicability.* Except as otherwise provided by an agency head in adopting this employment system for application to an agency, the regulations in this part apply to all applicants for employment and employees, irrespective of citizenship, and to all positions except the employees and positions excluded pursuant to § 253.8.

(b) *Exclusions.* The Assistant Secretary of Army may exclude employees or positions from any or all provisions of this part and may revoke such exclusions.

**§ 253.5 Central Examining Office.**

(a) There is established the Central Examining Office.

(b) The purpose of the Central Examining Office is to assist in implementing the Panama Canal Treaty and related agreements with respect to recruitment, examination, determination of qualification standards, and similar matters.

(c) Authority of the Central Examining Office. The CEO may, subject to policy direction of the PAPB:

(1) Develop examination rating guides.

(2) Conduct, or arrange for, such recruitment and examining programs as may be required to insure an adequate supply of qualified eligibles.

(d) The Central Examining Office shall serve all agencies equally, and shall not give preference to any agency.

**§ 253.6 Review by the Office of Personnel Management.**

The Office of Personnel Management shall make periodic reviews of the operations of the Panama Canal Employment System for conformity with the

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requirements of applicable portions of Title 5, United States Code, this part, and part 251, and shall report its findings to the Panama Area Personnel Board.

### §253.7 Deviations.

Whenever strict compliance with the letter of the regulations in this part would create practical difficulties or undue hardships, the Panama Area Personnel Board may permit a deviation from these regulations. Such authority may be exercised only if the deviation is within the spirit of the regulations, and the efficiency of the U.S. Government and the integrity of the Panama Canal Employment System are protected and promoted. Any deviation authorized, and the reasons therefor, shall be made a matter of record.

### §253.8 Exclusions.

(a) Pursuant to the provisions of §253.4(b), the positions specified by paragraphs (b), (c), (d), and (e) of this section, and incumbents thereof, are excluded, to the extent indicated, from the provisions of Subchapter II and the regulations in this part, with the exception of §253.47, and in part 251 of this chapter.

(b) The following positions are excluded from all the provisions of subchapter II (except sections 1217 and 1218) and from the regulations in this part and in part 251 of this chapter (except for §§251.25, 251.31 and 251.32 of this chapter):

(1) The Administrator, Deputy Administrator, Chief Engineer, Chief Financial Officer, Inspector General, Assistant to the Chairman and Secretary, and Assistant to the Secretary for Congressional Affairs of the Panama Canal Commission.

(2) Persons in the active military, naval, or public health service of the United States appointed to the Panama Canal Commission.

(3) Consultants and experts when employed under the provisions of 5 U.S.C. 3109 or other statutory authority.

(4) Any employee excluded by 5 U.S.C. 2105(c) from coverage under laws administered by the Office of Personnel Management.

(5) The Ombudsman.

(6) Positions in the Panama Canal Commission and the incumbents thereof, if a substantial portion of the duties and responsibilities are performed in the United States. All of the rights and privileges which are provided by applicable laws and regulations for citizens of the United States employed in the competitive service, except Title 5 U.S. Code, Chapter 43 pertaining to performance appraisal, are extended to the incumbents of such positions, other than the Secretary and the Assistant to the Secretary for Congressional Affairs of the Panama Canal Commission.

(c) The following positions, and the incumbents thereof, are excluded from the provisions of section 1212 of the Panama Canal Act which provide for merit selection for employment, section 1213 of the said Act and Subparts B and C of the regulations in this part:

(1) Attorneys.

(2) Positions designated as fee-rate positions within the Special Category established by §251.24.

(3) Positions requiring part-time or intermittent services in which the individual appointee will receive during his service year compensation that aggregates not more than 40 percent of the annual salary rate for the first step of grade 3 in the applicable Non-Manual schedule.

(4) Positions designated by the agency as appropriate for use as Student Trainee positions and which are filled under a cooperative work-study agreement between an agency and a college or university approved for participation in such a program by the agency.

(5) Positions that are filled by mentally retarded or severely physically handicapped persons pursuant to regulations issued by the agency. Such regulations shall conform, in substance, to those utilized to authorize appointment of the aforesaid classes of persons in Federal employment in the United States.

(6) The positions in the Panama Canal Commission of Deputy Chief Engineer and Associate Ombudsman.

(7) Student assistant positions.

(8) Any service employee assigned to the residence of the Administrator of the Panama Canal Commission when so designated by the Administrator.

(9) Liaison Services Specialists of the General Services Bureau of the Panama Canal Commission.

(10) Positions at non-manual grade 5 and grade 7 level (not to exceed 35 in number) designated for use by the Panama Canal Commission for filling positions in the Professional and Administrative Career Intern Program with high-potential Panamanian citizens.

(d) All Bureau Directors and Heads of Independent Units of the Panama Canal Commission are excluded from the provisions of sections 1212, 1213, 1215 and 1216 of subchapter II, subparts B and C of this part and subpart B of part 251, except for §§251.25, 251.31 and 251.32 of this chapter.

(e) Positions of student assistant, apprentice and learner, and the incumbents thereof, are excluded from the provisions of section 1225(b)(2) of the Panama Canal Act.

(5 U.S.C. 5102, E.O. 12173, 12215)

[47 FR 12956, Mar. 26, 1982, as amended at 49 FR 41025, Oct. 19, 1984; 51 FR 25693, July 16, 1986; 51 FR 33262, Sept. 19, 1986; 51 FR 37182, Oct. 20, 1986; 54 FR 4019, Jan. 27, 1989; 56 FR 1924, Jan. 18, 1991; 56 FR 40556, Aug. 15, 1991]

PANAMA CANAL BOARD OF APPEALS

**§ 253.11 Establishment; composition; appointment of members; alternates; employees.**

(a) There is established a Panama Canal Board of Appeals to review and determine the classification appeals of employees.

(b) The Board shall consist of five members, all of whom shall be civilians employed by the Federal Government and appointed by the Assistant Secretary of the Army as follows:

(1) One member shall be nominated by the Office of Personnel Management.

(2) Two members shall be selected from among employees of U.S. Government agencies in the Republic of Panama (one from a Department of Defense agency and the other from the Panama Canal Commission) and shall be appointed only after appropriate consultation with the advice from organizations representing such employees.

(3) The remaining members (one from Department of Defense and one from

Panama Canal Commission) will be selected by the Assistant Secretary of the Army.

(c) The Assistant Secretary of the Army shall appoint one of the members as Chairman of the Board.

(d) For each member of the Board, two alternate members shall be appointed, following the same criteria as for appointment of members. An alternate shall serve on the Board whenever the member for whom he is the alternate is unable to serve for any reason.

(e) The Panama Area Personnel Board will provide administrative and logistical support necessary to accomplish Board functions.

**§ 253.12 Decisions of the Board.**

(a) Decisions of the Board on any question or other matter relating to an appeal shall be made by majority vote of its members.

(b) Decisions of the Board are final and conclusive and the agency concerned shall take action in accordance with the decision.

**§ 253.13 Classification appeals.**

(a) Any employee may request at any time that his employing agency review and revise or adjust the classification, grade, and pay level of his position, or any of them, as the case may be. Such requests for review and revision or adjustment shall be submitted and adjudicated in accordance with the regularly established procedures of the employing agency.

(b) In the event of adverse classification decision by the employing agency, an employee shall have the right to appeal, in writing, to the Panama Canal Board of Appeals.

**§ 253.14 Terms of members.**

The term of service for each member or alternate member of the Panama Canal Board of Appeals shall be for 2 years, provided that the Assistant Secretary of the Army may, in his discretion, terminate or extend the term of service of any member or alternate member at any time. Individuals who are designated as members or alternate members shall be detailed to the Panama Canal Board of Appeals for such periods as their services are required.

Any hearings on employee appeals will be heard in the Republic of Panama.

**§ 253.15 Appeals procedures.**

The Panama Canal Board of Appeals shall formulate the procedures necessary to the performance of the functions prescribed by section 1222 of the Panama Canal Act. Those portions of the procedures establishing time limits for filing appeals, the form in which appeals are to be submitted, and the circumstances under which the personal appearance of an employee or his representative will be authorized, shall be published for the information of all employees.

**§ 253.16 Effective date of decisions.**

(a) Decisions of the Panama Canal Board of Appeals shall be binding upon all employing agencies, and shall be effective not later than the beginning of the fourth pay period following the receipt of the decision in the employing agency unless a specific date is stated in the decision in accordance with paragraph (b) of this section.

(b) When the appeal to the Panama Canal Board of Appeals is made within 30 calendar days from the date of an employee's receipt of an adverse decision from his employing agency on a classification appeal provided by § 253.13, if it is from an action lowering the grade or pay level of the employee's position, and the decision of the Panama Canal Board of Appeals raises the grade or pay level of the position, the effective date shall be retroactive to the date of the action which lowered the grade or pay level. However, when the decision of the Panama Canal Board of Appeals raises the grade or pay level of the position above the grade or pay level in effect immediately preceding the lowering thereof, retroactivity will apply only to the extent of restoration to the grade or pay level in effect immediately preceding the lowering thereof. Retroactivity may be based only on duties and responsibilities existing at the time of the lowering of the grade or pay level and not on the basis of duties and responsibilities later assigned.

(c) The right to a retroactive effective date under paragraph (b) of this section may be preserved in the discre-

tion of the Panama Canal Board of Appeals upon a showing by the employee that reasons beyond his control prevented him from appealing within the 30-day period referred to in that subparagraph and that he did appeal as promptly as circumstances permitted.

**Subpart B—Filling Positions**

**§ 253.31 Authority of appointing officers; methods of filling vacancies.**

(a) Appointing officers of an agency shall effect personnel actions in accordance with the regulations in this part.

(b) In his discretion an appointing officer may fill any position either by competitive appointment from a Panama Canal Employment System register, by appointment or position change of a present or former Federal employee through noncompetitive action in accordance with the regulations in this part, or, when authorized under § 253.43, by temporary appointment. Except as otherwise provided in the regulations in this part, the appointing officer shall exercise his discretion in all personnel actions solely on the basis of merit and fitness. In determining merit and fitness of any person, there shall be no discrimination on the basis of nationality or citizenship, religious or political affiliations, marital status, physical handicap, race, color, sex, age, or national origin.

**§ 253.32 [Reserved]**

**§ 253.33 Positions restricted to veterans of United States Armed Forces.**

The provisions of 5 CFR 330.401, 330.402 and 330.403 apply in their entirety.

**§ 253.34 Disqualification of applicants.**

An applicant may be denied examination and an eligible may be denied appointment for any of the reasons set forth below. A person disqualified for any of the listed reasons may, in the discretion of the PAPB, be denied examination, or denied appointment to any position, for such period as it may determine.

(a) Dismissal from employment for delinquency or misconduct.

(b) Physical or mental unfitness for the position for which applied.

(c) Criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct.

(d) Intentional false statements or deception or fraud in examination or appointment.

(e) Habitual use of narcotics or habitual use of intoxicating beverages to excess.

(f) In the case of citizens of the United States, reasonable doubt as to the loyalty of the person involved to the Government of the United States.

(g) In the case of non-United States citizens, reasonable doubt that the person involved would refrain from committing acts inimical to the interests of the Government of the United States.

(h) Refusal to furnish testimony in regard to matters inquired of arising under the regulations in this chapter, or refusal to furnish testimony in connection with investigations conducted pursuant to Executive Order 10450 of April 1953. (3 CFR, 1949–1953 Comp., p. 936.)

(i) Any legal or other disqualification which makes the applicant unfit for the service.

**§ 253.35 Appointments subject to investigation.**

(a) All initial appointments or re-appointments made under this part shall be subject to such investigation as may be required to establish the appointee's qualifications and suitability for employment.

(b) Except in cases involving intentional false statements, or deception or fraud in examination or appointment, the condition "subject to investigation" automatically expires at the end of 1 year after the effective date of the appointment.

(c) For a period of 1 year after the effective date of any appointment subject to investigation, the head of the agency may remove the employee if investigation discloses that he is disqualified for any of the reasons listed in § 253.34. Thereafter removal may be required only on the basis of intentional false statements or deception or fraud in examination or appointment.

**§ 253.36 Prohibited practices.**

(a) *Coercion in competition.* An applicant for competitive examination, eligible on any register, or officer or employee in the executive branch of the Government may not directly or indirectly persuade, induce, or coerce, or attempt to persuade, induce, or coerce any prospective applicant to withhold filing application, or any applicant or eligible to withdraw from competition or eligibility for the purpose of either improving or injuring the prospects of any applicant or eligible for appointment. The penalty for violation of this section by applicants or eligibles shall be cancellation of application or eligibility, as the case may be. The penalty for violation of this section by an employee shall be as determined by the head of the agency.

(b) *Instruction of applicants.* Employees are forbidden to instruct, either directly or indirectly, or to be concerned in any manner with the instruction of any person or classes of persons with a view to their special preparation for examinations conducted pursuant to the regulations in this part, except as a part of a government authorized or sponsored program. Violations of this restriction shall be considered sufficient cause for removal from the service.

**§ 253.37 Examinations.**

The Manager, CEO shall be responsible for conducting open competitive examinations for entrance into the service which will fairly test the relative capacity and fitness of the persons examined for the position to be filled. When sufficient competent persons are not available to provide competition, the Manager, CEO may, with the consent of the employing agency, examine and certify for competitive appointment fewer than three individuals.

**§ 253.38 Rating competitors.**

(a) The subjects in examinations shall be given such relative weight as the Central Examining Office may prescribe and the same rating scale shall be applied to all persons competing in the same examination. Earned ratings will be augmented for eligible veterans in accordance with the provisions of 5

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CFR 337.101(b), (c). Eleven points will be added to the earned ratings of eligible Panamanians.

(b) In rating competitors, CEO shall, in the case of veteran's preference eligibles, provide for waiver of the physical standards and requirements in accordance with 5 U.S.C. 3312.

### **§ 253.39 Establishment of registers of eligibles.**

The names of eligibles (those competitors who meet minimum requirements and are rated as attaining the minimum required rating) shall be entered on appropriate registers in the order outlined below. In the judgment of CEO, eligibility on registers may be established on the basis of earned eligible ratings attained in appropriate examinations for positions in the competitive service.

(a) According to their ratings (including veteran preference and Panamanian preference).

(b) An individual entitled to veteran preference shall be entered ahead of all others having the same rating.

(c) All veterans who have a compensable service-connected disability of 10 percent or more shall be entered at the top of the register in the order of their ratings, except for professional and scientific positions comparable in pay level to positions in grades Non-Manual 9 and above.

(d) When establishing registers, or making certifications therefrom, CEO will provide for priority consideration for career and career-conditional employees of agencies operating in the Republic of Panama who have been separated by reduction in force. However, such priority consideration shall not extend to any position which is in a pay level higher than that from which the employee was separated. Any benefits conferred pursuant to this section are in addition to those conferred by entry of the employee's name on the employing activity's reemployment priority list.

(e) CEO will take appropriate action to insure that veterans of, or persons serving in, the Armed Forces of the United States, receive the same consideration in examinations and entry upon registers as are provided for the

competitive service by 5 CFR 332.311, 332.312, 332.313, 332.321, 332.322.

(f) CEO will establish appropriate time periods and procedures for terminating the eligibility of individuals on a register.

### **§ 253.40 Certificate for appointment.**

(a) Upon receipt of a request for certification of eligibles, a sufficient number of names to permit the appointing officer to consider three eligibles in connection with each vacancy shall be certified from the top of the appropriate register. Certificates may contain fewer than three names, if fewer than three eligibles are available and the requesting agency consents to issuance of such a certificate.

(b) [Reserved]

(c) If the number of eligibles on the register is insufficient, CEO, in consultation with the employing agency, will determine whether selective certification is to be made from another register, whether a recruiting campaign to attract applicants for examination should be initiated, or whether examining action is to be taken in accordance with § 253.37 or a temporary appointment authorized in accordance with § 253.43.

(d) When there is no register appropriate as a whole for certification for filling a particular position, there may be certified selectively from the most nearly appropriate existing register the names of eligibles who are qualified for the particular position. Such eligibles shall be certified in the order of their ranking. Eligibles on the register may, when appropriate, be rerated on the basis of the particular requirements of the position.

(e) Certification shall be made without regard to sex, unless the appointing officer requests and justifies referral of eligibles of a specified sex.

(f) Certification must be limited to eligibles residing in the Republic of Panama except when persons possessing the requisite skills and qualifications are not found in the Republic of Panama.

### **§ 253.41 Selection from certificates.**

Selections from certificates are made by application of either the rule of three or the rule of ten.

(a) *Rule of three.* When selecting from a certificate of eligibles, an appointing official shall, with sole reference to merit and fitness, make the selection for the first vacancy from the highest three eligibles available for appointment on the certificate. For the second vacancy, the selecting official must make selection from the three highest eligibles remaining on the certificate. Each succeeding vacancy must be filled in like manner subject to the rules in §253.40. The rule of three applies to selections involving:

(1) All United States Wage Base positions except those of apprentice, floating equipment trainees at the grade FE-5 and FE-7 levels and marine engineer trainees at the grade ME-7 level; and

(2) United States citizens.

(b) *Rule of ten.* When selecting from a certificate of eligibles, an appointing official shall, with sole reference to merit and fitness, make the selection for the first vacancy from the highest ten eligibles available for appointment on the certificate. For the second vacancy, the selecting official must make selection from the ten highest eligibles remaining on the certificate. Each succeeding vacancy must be filled in like manner subject to the rules in §253.40. The rule of ten applies to selections involving:

(1) All Canal Area Wage Base positions filled from pre-rated inventories which includes the positions of firefighter and firefighter trainee, and

(2) United States Wage Base positions of apprentice, floating equipment trainees at the grade FE-5 and FE-7 levels and marine engineer trainees at the grade ME-7 level.

The rule of ten shall not be applied in any situation where a United States applicant is among the top three candidates available.

(c) An appointing officer is not required to consider any eligible:

(1) Who has been considered for three or ten separate appointments, as applicable, from the same or different certificates for the same position, or

(2) To whose certification for the particular position the officer makes an objection that is sustained by the CEO for any of the reasons stated in §253.34 or for other reasons considered by the

CEO to be disqualifying for the particular position. The length of a non-Panamanian candidate's previous service or residence in foreign areas may be a valid qualification and selection factor in filling positions in an agency having an established policy for periodic rotation of non-Panamanian citizens.

(d) When an appointing officer passes over a veteran-preference eligible and tentatively selects a non-preference eligible, the provisions of 5 CFR 332.406 apply except that the CEO shall exercise the authority vested in the Office of Personnel Management.

[56 FR 1924, Jan. 18, 1991]

**§253.42 Appointments from registers.**

(a) Except as provided by paragraph (d) of this section, a "Canal Area Career-Conditional Appointment" shall be given to an eligible selected from a register for other than temporary or term appointment.

(b) Upon completion by the appointee of 3 years of creditable service, his career-conditional appointment shall be automatically converted to a "Canal Area Career Appointment." As used in this paragraph, "creditable service" means all substantially continuous service with the Federal Government since initial non-temporary civilian appointment, including any service in the competitive or excepted service, or intervening service in the legislative or judicial branches or in the Armed Forces of the United States. A break in service of 30 days or less shall be considered substantially continuous service. Breaks in service of more than 30 days shall not be considered substantially continuous service unless the head of the agency excepts particular types of cases from this requirement. In making such exceptions, the agency will be guided by the instructions published for the competitive service in the Federal Personnel Manual.

(c) An eligible given a Canal Area Career-Conditional Appointment shall be required to serve a probationary period of 1 year. Prior Federal service may be counted toward completion of the probationary period as provided in the Federal Personnel Manual. The employing agency shall utilize the probationary period as fully as possible to determine the fitness of the employee

and shall terminate his services during such period if he fails to demonstrate fully his qualifications for continued employment. The employee shall automatically acquire a merit status upon satisfactory completion of probation.

(d) An eligible selected from a register for other than a temporary or term appointment shall be given a Canal Area Career Appointment if:

(1) He is a Federal employee serving under a career appointment in the competitive service, a permanent appointment in the excepted service, or a Canal Area Career Appointment;

(2) He is a former Federal employee who once met the service requirement for a career appointment in the competitive service, a permanent appointment in the excepted service, a Canal Zone Career Appointment, or a Canal Area Career Appointment.

(e) An eligible selected from a register for career appointment shall be required to serve a probationary period, subject to the same conditions as apply to a career-conditional appointment.

**§253.43 Temporary and term appointments.**

(a) An agency may make temporary limited appointments for periods not in excess of 1 year, and term appointments for periods of more than 1, but not in excess of 4 years. In making such appointments, the agency will be guided by the instructions published for the competitive service in the Federal Personnel Manual. A person so appointed shall not acquire merit status by reason of such appointment.

(b) Term employees are required to serve a 1-year trial period, during which they shall be entitled to the same limited protection as is accorded probationers under the Panama Canal Employment System. In adverse actions, term employees are entitled to the rights accorded career and career-conditional employees under the Panama Canal Employment System except while they are serving the 1-year trial period and when the term appointment has expired.

**§253.44 Noncompetitive appointments.**

(a) Appointing officers may non-competitively appoint a current Fed-

eral employee who has a merit status, a competitive status, or who is serving probation at the time of appointment. Appointing officers may noncompetitively reappoint a former Federal employee who has a merit status, a competitive status, or who was serving probation at the time of separation. Eligibility for such reappointment will be subject to the following conditions:

(1) Former Federal employees who have never completed the service requirement for Canal Zone or Canal Area career appointment or for career appointment in the competitive service may be reappointed only within 3 years following the date of their separation, except that periods of temporary employment shall serve to extend the three-year period. This time limit does not apply to former employees entitled to veteran preference.

(2) Former employees who have once completed the service requirement for Canal Zone or Canal Area career appointment or for career appointment in the competitive service may be reappointed without time limitation.

(b) Appointing officers may non-competitively appoint an individual who is certified by the Director of ACTION as having served satisfactorily as a Volunteer or Volunteer Leader under the Peace Corps Act, or as a VISTA volunteer under the Economic Opportunity Act. Such appointments shall be made in accordance with the procedures and regulations in effect for the appointment of such persons to positions in the competitive service.

(c) A Student Trainee who has successfully completed his cooperative work-study program may be appointed noncompetitively to a position at grade 5 or grade 7 in the applicable Non-Manual schedule for which he meets the qualification requirements, with the exception of any written test requirements, in the field of work in which he received his training, provided:

(1) He has successfully completed all the requirements for a bachelor's degree, including any specialized courses required for the particular position for which he has been in training;

(2) He has completed at least 6 months work experience (i.e., 6 months in a pay status) as a Student Trainee

in the agency that recommends his appointment; and

(3) His employing agency recommends him for noncompetitive appointment within 90 days after completion of his work-study program.

(d) Employees appointed to positions excluded from this subpart pursuant to § 253.8(c)(5) may have their appointments converted to career or career-conditional appointments in accordance with regulations prescribed by the PAPB. Such regulations shall generally conform to the regulations of the Office of Personnel Management for conversion of excepted service appointments of physically or mentally handicapped persons to career or career-conditional appointments.

(e) A Professional and Administrative Career Intern Program participant who has successfully completed at least one year of the prescribed training may be noncompetitively appointed to a position at non-manual grades 7 and above for which he/she meets the qualification requirements.

(5 U.S.C. 5102, E.O. 12173, 12215)

[47 FR 12956, Mar. 26, 1982, as amended at 51 FR 33262, Sept. 19, 1986]

**§ 253.45 Tenure following noncompetitive appointment.**

(a) The noncompetitive appointment of a current or former Federal employee who has not completed the service requirement for Canal Area or Canal Zone career appointment or career appointment in the competitive service shall be made as a Canal Area Career-Conditional Appointment. The appointment shall be automatically converted to a Canal Area Career Appointment upon completion of the service requirement. A merit status shall be acquired upon satisfactory completion of any required probationary period.

(b) The noncompetitive appointment of a former or current Federal employee who has once completed the service requirement for Canal Zone or Canal Area Career Appointment or for career appointment in the competitive service shall be made as Canal Area Career Appointment.

(c) Former or current Federal employees who did not complete any required probationary periods prior to

noncompetitive appointment shall be required to serve a probationary period of one year following appointment.

(d) The noncompetitive appointment of Volunteer or Volunteer Leader under the Peace Corps Act or VISTA volunteer under the Economic Opportunity Act shall be made as Canal Area Career-Conditional Appointment; shall be subject to satisfactory completion of a probationary period of one year; and shall be automatically converted to a Canal Area Career Appointment upon completion of the service requirement. A merit status shall be acquired upon satisfactory completion of probation.

(e) The noncompetitive appointment of a person who successfully completed a cooperative work-study program or a Professional and Administrative Career Intern Program under paragraph (c) or (e), respectively, of § 253.44 shall be made as a Canal Area Career-Conditional Appointment or Canal Area Career Appointment and may be subject to the satisfactory completion of a probationary period of one year. Canal Area Career-Conditional Appointments shall be automatically converted to Canal Area Career Appointments upon completion of the Service requirements.

(5 U.S.C. 5102, E.O. 12173, 12215)

[47 FR 12956, Mar. 26, 1982, as amended at 49 FR 41025, Oct. 19, 1984]

**§ 253.46 Promotion, demotion, reassignment, and transfer.**

(a) Appointing officers may, in their discretion, promote, demote, reassign, or transfer employees who are serving under Canal Area Career or Career-Conditional Appointments, subject to the provisions of this section and in accordance with the appropriate qualification standards established by the PAPB for the position. Such actions will be based solely on the merit of the employee and upon his qualifications and fitness to hold the positions concerned. Such actions for employees serving under temporary or term appointments will be subject to such regulations as the agency may prescribe. In preparing such regulations the agency will be guided by the instructions published for the competitive service in the Federal Personnel Manual.

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(b) Employing agencies shall establish a promotion plan for all employees which is consistent with the Panama Canal Treaty and insofar as practicable, with the provisions of the merit promotion plan developed by the Office of Personnel Management for the competitive service.

### § 253.47 Rotation of personnel.

(a) United States citizen employees and other non-Panamanian employees appointed to a position subject to this part after September 30, 1979 shall be subject to a policy of periodic rotation in accordance with the Panama Canal Treaty and related agreements, except that the following individuals shall not be subject to such policy:

(1) An individual who was a permanent employee of the Panama Canal Company or Canal Zone Government on September 30, 1979 and was transferred to a position in the Panama Canal Commission or another agency in the Republic of Panama on October 1, 1979 without a break in service.

(2) An individual who was separated from the Panama Canal Company or Canal Zone Government by reason of a reduction in force on September 30, 1979 and was appointed to a position in the Panama Canal Commission before April 1, 1980, or

(3) An individual who was employed by a department on September 30, 1979 and continues in employment with an agency, other than the Panama Canal Commission, without a break in service.

(b) The head of each agency shall establish a policy of periodic rotation in accordance with paragraph (a) of this section and other applicable law. Such policy may except positions from rotation for sound administrative reasons. This section shall not preclude an agency other than the Commission from adopting a policy of periodic rotation of employees pursuant to other authority.

(c) Notwithstanding any Canal Area Career or Career-Conditional Appointment or acquisition of merit status, an employee may, in accordance with an agency's rotation policy, be removed from service after completion of the

service period under the rotation policy established under this section.

[47 FR 12956, Mar. 26, 1982, as amended at 51 FR 33262, Sept. 19, 1986]

## Subpart C—Conversion to Canal Area Career or Career-Conditional Appointments

### § 253.71 Eligibility.

Incumbents of positions made subject to Subpart B of this part by revocation of an exclusion in § 253.8 or by other action, may be retained in their positions. Each retained incumbent without a personal or competitive status who is serving in a continuing position under a non-temporary appointment will become eligible for conversion to a Canal Area Career or Career-Conditional Appointment provided:

(a) He rendered 6 months satisfactory service in the position immediately prior to its inclusion under Subpart B of this part. Periods to be counted toward the 6-month period as an exception to the requirement for actual service shall be determined in accordance with the instructions applying to the competitive service as published in Chapter 315 of the Federal Personnel Manual.

(b) He meets the applicable qualification and suitability standards.

(c) His employing agency submits a timely recommendation which is approved by the PAPB.

### § 253.72 Procedure.

The employing agency shall recommend to the PAPB that the appointment of an eligible employee be converted. The recommendation shall be submitted not later than one year after the date that the position is brought within the coverage of Subpart B of this part. Upon approval by the PAPB, the conversion is effective as of the date of the employing agency's recommendation. Notice of the PAPB's decision together with the reasons therefor shall be given in writing to the agency and employee concerned and be made a part of the employee's official personnel folder.

**§ 253.73 Tenure.**

(a) *Preservation of tenure.* Neither a conversion action, nor a recommendation for conversion, shall serve to reduce an employee's retention standing for reduction-in-force purposes.

(b) *Tenure following recommendation.* Upon submission of a recommendation for conversion, the nominee's retention standing for reduction in force is in Retention Group I if he is already in that group or if he meets the service requirement for a Canal Area Career Appointment; otherwise, his retention standing is in Tenure Group II.

(1) An employee reverts to his previous tenure group if the recommendation is returned without final action, and remains in this group until such time as the recommendation is resubmitted.

(2) Irrespective of his previous retention standing, an employee is placed in Tenure Group III if the PAPB disapproves the recommendation for conversion.

(c) *Tenure following conversion.* Conversion will be to Canal Area Career Appointment if the employee meets the service requirement for such appointment; otherwise, conversion will be to Canal Area Career-Conditional Appointment. However, retention standing for reduction-in-force purposes will be governed by paragraph (a) of this section. All conversions will be subject to satisfactory completion of a one-year probationary period if such probation has not been completed prior to the time of conversion.

**§ 253.74 Acquisition of merit status.**

An employee who is converted under this subpart acquires a merit status upon completion of any required probationary period.

**§ 253.75 Employees not recommended for conversion.**

(a) Employees who are not recommended for conversion, or whose conversion is disapproved, will be retained in status quo and placed in Tenure Group III until separated or until they receive a competitive appointment.

(b) Employees retained in status quo may be noncompetitively changed to other positions upon meeting the re-

quirements established pursuant to § 253.46(a) for the noncompetitive movement of employees serving under temporary appointments.

(c) Employees retained in status quo are subject to displacement by eligibles on registers.

(d) Employees serving under temporary appointments on the date their positions are made subject to Subpart B of this part will be considered as having been converted to a temporary appointment under § 253.43 and may be retained until expiration of their current appointments.

**Subpart D—Conversion From Excluded and Temporary Appointments to Canal Area Career or Career-Conditional Appointments**

**§ 253.76 Eligibility.**

A temporary employee may be converted to a Canal Area Career or Career-Conditional Appointment provided:

(a) He rendered at least one year of satisfactory continuous service with the agency in which he is to be converted and the service immediately preceded the conversion;

(b) The conversion is to a position in the same wage category as that held by the employee prior to the conversion;

(c) The conversion is to either:

(1) A manual category position at any grade from MG-1 to MG-9 and the employee to be converted ranks among the top 50% of the register of eligibles or;

(2) A non-manual category position filled from a pre-rated inventory at any grade from NM-1 to NM-5 provided the employee to be converted ranks among the top 25% of the register of eligibles;

(d) There is no United States citizen within reach in accordance with the rule of three, and no preference eligible would be passed over; and

(e) The employee is not a United States citizen.

[56 FR 1924, Jan. 18, 1991]

**§ 253.77 Procedure.**

The employing agency shall obtain approval from the Central Examining Office prior to converting temporary

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employees to Canal Area Career or Career-Conditional Appointments. Employees converted under this subpart will be treated as if they had been appointed from a register as provided in § 253.42.

[56 FR 1924, Jan. 18, 1991]

### Subpart E—Performance Rating

#### § 253.181 Rating system.

Employing agencies shall establish a performance rating system for employees generally patterned after the Office of Personnel Management guidelines.

### Subpart F—Training

#### § 253.201 Training programs.

Agencies shall, in accordance with any obligation established by the Panama Canal Treaty or the agreements in implementation thereof, establish training programs for Panamanian employees and apprentices in order to increase the number of Panamanian nationals qualified to assume positions as positions become available. Except as provided in the said treaty and agreement, there shall be no discrimination on the basis of citizenship with regard to training.

### Subpart G—Military Service

#### § 253.221 Rights of employees.

The rights of employees called to active military duty in the Armed Forces of the United States will be determined in accordance with 5 CFR Part 353.

### Subpart H—Adverse Personnel and Reduction-in-Force Actions

#### § 253.241 Applicability of existing law and civil service regulations.

(a) The provisions of 5 U.S.C. 7501 are applicable to the removal or suspension of those employees to whom such provisions were applicable immediately prior to January 19, 1959.

(b) The provisions of 5 CFR Part 752, and Title 5, United States Code, pertaining to adverse actions, are applicable to preference eligibles to the extent and in the manner specified therein.

(c) The provisions of 5 CFR Part 351 and Title 5, United States Code, pertaining to reductions in force, are applicable to all reduction-in-force actions.

(d) The provisions of 5 U.S. Code, section 5596 shall be applicable to any person whose removal or suspension under an agency's system established by § 253.262 is determined to have been unjustified or unwarranted after review in accordance with procedures of the employing agency.

#### § 253.242 Probationary employees.

Any employee serving a probationary period shall be given a full and fair trial in the duties of the position in which appointed. If the performance of his duties or his conduct during the probationary period is not satisfactory to the employing agency, his services may be terminated by notifying him in writing of the reasons for his separation and of its effective date. An employee's services may also be terminated during the probationary period for reasons based in whole or in part on conditions arising prior to his appointment. The employing agency shall notify him in writing of the reasons for his separation and its effective date.

### Subpart I—Grievances and Appeals

#### § 253.261 Grievance procedures.

Each employing agency shall make available to employees a grievance procedure established by the agency, except as may be otherwise provided by a negotiated grievance procedure.

#### § 253.262 Adverse actions and appeals.

Each agency shall establish an adverse action and appeals system under which the provisions of 5 CFR Part 752, are administratively extended to employees in categories corresponding to those in the U.S. competitive service to which that part applies. Appeals to the Merit Systems Protection Board shall not, however, be so extended by such administrative action.

#### § 253.263 Appeals from applicants or eligibles.

Applicants and eligibles who have reason to believe that the regulations

in this part were not followed in rating their examinations or in making selections for appointment may appeal to CEO. In the event they are not satisfied with CEO's decision, and they can show reason to believe that CEO's action was arbitrary, capricious, or in violation of these regulations, they may request a review of the decision by the PAPB.

**Subpart J—Records and Reports**

**§ 253.291 Applicability of Federal Personnel Manual.**

(a) The provisions of Chapter 296 of the Federal Personnel Manual will, except as indicated below, apply to the preparation of notifications of personnel action taken under the regulations in this chapter.

(1) All appointment and conversion actions will be prefaced by the term "Canal Area" or "CA" and will be identified as taken under the authority of the regulations in this chapter.

(2) The noncompetitive appointment of a former Federal employee under the provisions of § 253.44 will be termed a reappointment rather than a reinstatement.

(b) The provisions of Chapters 293 and 298 of the Federal Personnel Manual will apply, respectively, to the maintenance of employment records and the reporting of employment, except that the Official Personnel Folders of non-U.S. citizen employees who separate from service may be retained by the employing agency for not to exceed two years following separation. Upon expiration of this period, the Official Personnel Folders will be transferred to the National Personnel Records Center for permanent storage.

[51 FR 33262, Sept. 19, 1986]

**Subpart K—Labor Management Relations**

**§ 253.311 Labor-management and employee relations.**

Labor-management and employee relations of agencies, their employees and the exclusive representative of employees in an appropriate unit in an agency shall be governed and regulated solely by Chapter 71 of title 5, United

States Code and other applicable laws, rules and regulations of the United States.

**Subpart L—Equal Employment Opportunity**

**§ 253.331 Policy concerning equal employment opportunity.**

(a) All Personnel actions affecting employees or applicants for employment shall be made free from any discrimination based on race, color, religion, sex, age, national origin, handicapping condition or marital status.

(b) Agencies may adopt regulations to carry out the provisions of this subpart and may provide for appeals of personnel actions alleged to be based upon discrimination prohibited by this subpart.

(Secs. 1211 through 1225 of the Panama Canal Act of 1979; 93 Stat. 463; Executive Order 12215)

**PART 255—[RESERVED]**

**PART 256—SALARY OFFSET FOR FEDERAL EMPLOYEES WHO ARE INDEBTED TO THE UNITED STATES**

- Sec.
- 256.1 Collection of debts by offset; scope of regulations.
- 256.2 Definitions.
- 256.3 Pay subject to offset.
- 256.4 Advance notice of debt; request for records; submission of information.
- 256.5 Formal notice to employee.
- 256.6 Request for a hearing; prehearing submissions.
- 256.7 Hearings; time, date, and location.
- 256.8 Consequence of employee's failure to meet deadline dates.
- 256.9 Hearing procedures.
- 256.10 Representation.
- 256.11 Applicable legal principles.
- 256.12 Standards for determining extreme financial hardship.
- 256.13 Collection of debts on behalf of other agencies by offsetting the pay of a Commission employee.

AUTHORITY: 5 U.S.C. 5514, as amended by section 5 of Public Law 97-365, 96 Stat. 1751-1752.

SOURCE: 50 FR 34123, Aug. 23, 1985, unless otherwise noted.