

PART 212—COMPETITIVE SERVICE AND COMPETITIVE STATUS

Subpart A—Competitive Service

Sec.

212.101 Definitions.

212.102 Authority to make determinations.

Subpart B [Reserved]

Subpart C—Competitive Status

212.301 Competitive status defined.

Subpart D—Effect of Competitive Status on Position

212.401 Effect of competitive status on position.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218.

SOURCE: 33 FR 12408, Sept. 4, 1968, unless otherwise noted.

Subpart A—Competitive Service

§ 212.101 Definitions.

In this chapter:

(a) *Competitive service* has the meaning given that term by section 2102 of title 5, United States Code, and includes:

(1) All civilian positions in the executive branch of the Federal Government not specifically excepted from the civil service laws by or pursuant to statute, by the President, or by the Office of Personnel Management, and not in the Senior Executive Service; and

(2) All positions in the legislative and judicial branches of the Federal Government and in the government of the District of Columbia specifically made subject to the civil service laws by statute.

(b) *Competitive position* means a position in the competitive service.

(5 U.S.C. 2102)

[33 FR 12408, Sept. 4, 1968, as amended at 45 FR 62413, Sept. 19, 1980]

§ 212.102 Authority to make determinations.

OPM determines finally whether a position is in the competitive service.

Subpart B [Reserved]

Subpart C—Competitive Status

§ 212.301 Competitive status defined.

In this chapter, competitive status means an individual's basic eligibility for noncompetitive assignment to a competitive position. Competitive status is acquired by completion of a probationary period under a career-conditional or career appointment, or under a career executive assignment in the former executive assignment system, following open competitive examination, or by statute, Executive order, or the Civil Service rules, without open competitive examination. An individual with competitive status may be, without open competitive examination, reinstated, transferred, promoted, reassigned, or demoted, subject to conditions prescribed by the Civil Service rules and regulations.

[33 FR 12408, Sept. 4, 1968, as amended at 57 FR 10123, Mar. 24, 1992]

Subpart D—Effect of Competitive Status on Position

§ 212.401 Effect of competitive status on position.

(a) An employee is in the competitive service when he has competitive status and is in a competitive position under a nontemporary appointment.

(b) An employee in the competitive service at the time his position is first listed under Schedule A, B, or C remains in the competitive service while he occupies that position.

PART 213—EXCEPTED SERVICE

Subpart A—General Provisions

Sec.

213.101 Definitions.

213.102 Identification of positions in Schedule A, B, or C.

213.103 Publication of excepted appointing authorities in Schedules A, B, and C.

213.104 Special provisions for temporary, intermittent, or seasonal appointments in Schedule A, B, or C.

Subpart B [Reserved]

Subpart C—Excepted Schedules

SCHEDULE A

- 213.3101 Positions other than those of a confidential or policy-determining character for which it is impracticable to examine.
- 213.3102 Entire executive civil service.
- 213.3199 Temporary organizations.

SCHEDULE B

- 213.3201 Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination.
- 213.3202 Entire executive civil service.

SCHEDULE C

- 213.3301 Positions of a confidential or policy-determining nature.
- 213.3302 Temporary transitional Schedule C positions.

AUTHORITY: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; §213.101 also issued under 5 U.S.C. 2103; §213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; 38 U.S.C. 4301 et. seq.; and Pub. L. 105-339.

SOURCE: 46 FR 20147, Apr. 3, 1981, unless otherwise noted.

Subpart A—General Provisions

§213.101 Definitions.

In this chapter:

(a) Excepted service has the meaning given that term by section 2103 of title 5, United States Code, and includes all positions in the executive branch of the Federal Government which are specifically excepted from the competitive service by or pursuant to statute, by the President, or by the Office of Personnel Management, and which are not in the Senior Executive Service.

(b) *Excepted position* means a position in the excepted service.

(5 U.S.C. 2103)

§213.102 Identification of positions in Schedule A, B, or C.

(a) The Office of Personnel Management will decide whether the duties and requirements of any particular position justify exception from the competitive service. Upon favorable determination, OPM will authorize the position to be filled by excepted appointment under Schedule A, B, or C. Unless otherwise specified in a particular ap-

pointing authority, an agency may make Schedule A, B, or C appointments on either a permanent or non-permanent basis, with any appropriate work schedule (i.e., full-time, part-time, seasonal, on-call, or intermittent).

(b) When OPM establishes eligibility requirements (e.g., residence, family income) for appointment under particular Schedule A or B exceptions, an individual's eligibility for appointment must be determined before appointment and without regard to any conditions that will result from the appointment.

[59 FR 46897, Sept. 13, 1994]

§213.103 Publication of excepted appointing authorities in Schedules A, B, and C.

(a) Schedule A, B, and C appointing authorities available for use by all agencies shall be published as regulations in the FEDERAL REGISTER and the Code of Federal Regulations.

(b) Establishment and revocation of Schedule A, B, and C appointing authorities applicable to a single agency shall be published monthly in the Notices section of the FEDERAL REGISTER.

(c) A consolidated listing of all Schedule A, B, and C authorities current as of June 30 of each year, with assigned authority numbers, shall be published annually as a notice in the FEDERAL REGISTER.

[47 FR 28902, July 2, 1982, as amended at 62 FR 18505, Apr. 16, 1997]

§213.104 Special provisions for temporary, intermittent, or seasonal appointments in Schedule A, B, or C.

(a) When OPM specifies that appointments under a particular Schedule A, B, or C authority must be temporary, intermittent, or seasonal, or when agencies elect to make temporary, intermittent, or seasonal appointments in Schedule A, B, or C, those terms have the following meanings:

(1) *Temporary appointments*, unless otherwise specified in a particular Schedule A, B, or C exception, are made for a specified period not to exceed 1 year and are subject to the time limits in paragraph (b) of this section. Time-limited appointments made for

more than 1 year are not considered to be temporary appointments, and are not subject to these time limits.

(2) *Intermittent positions* are positions in which work recurs at sporadic or irregular intervals so that an employee's tour of duty cannot be scheduled in advance of the administrative workweek.

(3) *Seasonal positions* involve annually recurring periods of employment lasting less than 12 months each year.

(b) Temporary appointments, as defined in paragraph (a)(1) of this section, are subject to the following limits:

(1) *Service limits.* Agencies may make temporary appointments for a period not to exceed 1 year, unless the applicable Schedule A, B, or C authority specifies a shorter period. Except as provided in paragraph (b)(3) of this section, agencies may extend temporary appointments for no more than 1 additional year (24 months of total service). Appointment to a successor position (i.e., a position that replaces and absorbs the original position) is considered to be an extension of the original appointment. Appointment to a position involving the same basic duties, in the same major subdivision of the agency, and in the same local commuting area is also considered to be an extension of the original appointment.

(2) *Restrictions on refilling positions under temporary appointments.* Except as provided in paragraph (b)(3) of this section, an agency may not fill any position (or its successor) by a temporary appointment in Schedule A, B, or C if that position had previously been filled by temporary appointment(s) in either the competitive or excepted service for an aggregate of 2 years, or 24 months, within the preceding 3-year period. This limitation does not apply to programs established to provide for systematic exchange between a Federal agency and nonfederal organizations.

(3) *Exceptions to the general limits.* The service limits and restrictions on refilling positions set out in this section do not apply when:

(i) Positions involve intermittent or seasonal work, and employment in the same or a successor position under one or more appointing authorities totals

less than 6 months (1,040 hours), excluding overtime, in a service year. The service year is the calendar year that begins on the date of the employee's initial appointment in the agency. Should employment in a position filled under this exception total 6 months or more in any service year, the general limits set out in this section will apply to subsequent extension or reappointment unless OPM approves continued exception under this section. An individual may be employed for training for up to 120 days following initial appointment and up to 2 weeks a year thereafter without regard to the service year limitation.

(ii) Positions are filled under an authority established for the purpose of enabling the appointees to continue or enhance their education, or to meet academic or professional qualification requirements. These include the authorities set out in paragraphs (r) and (s) of § 213.3102 and paragraph (a) of § 213.3202, and authorities granted to individual agencies for use in connection with internship, fellowship, residency, or student programs.

(iii) OPM approves extension of specific temporary appointments beyond 2 years (24 months total service) when necessitated by major reorganizations or base closings or other rare and unusual circumstances. Requests based on major reorganization, base closing, restructuring, or other unusual circumstances that apply agencywide must be made by an official at the headquarters level of the Department or agency. Requests involving extension of appointments to a specific position or project based on other unusual circumstances may be submitted by the employing office to the appropriate OPM service center.

[59 FR 46897, Sept. 13, 1994, as amended at 59 FR 64841, Dec. 16, 1994; 62 FR 18505, Apr. 16, 1997; 62 FR 55725, Oct. 28, 1997; 62 FR 63628, Dec. 2, 1997]

Subpart B [Reserved]

Subpart C—Excepted Schedules

SCHEDULE A

§213.3101 Positions other than those of a confidential or policy-determining character for which it is impracticable to examine.

Upon specific authorization by OPM, agencies may make appointments under this section to positions which are not of a confidential or policy-determining character, and which are not in the Senior Executive Service, for which it is not practicable to examine. Examining for this purpose means application of the qualification standards and requirements established for the competitive service. Positions filled under this authority are excepted from the competitive service and constitute Schedule A. For each authorization under this section, OPM shall assign an identifying number from 213.3102 through 213.3199 to be used by the appointing agency in recording appointments made under that authorization.

[46 FR 20147, Apr. 3, 1981, as amended at 46 FR 45323, Sept. 11, 1981, 59 FR 64841, Dec. 16, 1994; 62 FR 19900, Apr. 24, 1997]

§213.3102 Entire executive civil service.

- (a) Positions of Chaplain and Chaplain's Assistant.
- (b) [Reserved]
- (c) Positions to which appointments are made by the President without confirmation by the Senate.
- (d) Attorneys.
- (e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admission to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment which was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.
- (f) Chinese, Japanese, and Hindu interpreters.
- (g) Any nontemporary position the duties of which are part-time or intermittent in which the appointee will receive compensation during his/her serv-

ice year that aggregates not more than 40 percent of the annual salary rate for the first step of grade GS-3. This limitation on compensation includes any premium pay such as for overtime, night, Sunday, or holiday work. It does not, however, include any mandatory within-grade salary increases to which the employee becomes entitled subsequent to appointment under this authority. Appointments under this authority may not be for temporary project employment.

(h) Positions in Federal mental institutions when filled by persons who have been patients of such institutions and have been discharged and are certified by an appropriate medical authority thereof as recovered sufficiently to be regularly employed but it is believed desirable and in the interest of the persons and the institution that they be employed at the institution.

(i) Temporary and less-than-full time positions for which examining is impracticable. These are:

(1) Positions in remote/isolated locations where examination is impracticable. A remote/isolated location is outside the local commuting area of a population center from which an employee can reasonably be expected to travel on short notice under adverse weather and/or road conditions which are normal for the area. For this purpose, a population center is a town with housing, schools, health care, stores and other businesses in which the servicing examining office can schedule tests and/or reasonably expect to attract applicants. An individual appointed under this authority may not be employed in the same agency under a combination of this and any other appointment to positions involving related duties and requiring the same qualifications for more than 1,040 working hour in a service year. Temporary appointments under this authority may be extended in 1-year increments, with no limit on the number of such extensions, as an exception to the service limits in §213.104.

(2) Positions for which a critical hiring need exists. This includes both short-term positions and continuing positions that an agency must fill on an interim basis pending completion of competitive examining, clearances, or

other procedures required for a longer appointment. Appointments under this authority may not exceed 30 days and may be extended for up to an additional 30 days if continued employment is essential to the agency's operations. The appointments may not be used to extend the service limit of any other appointing authority. An agency may not employ the same individual under this authority for more than 60 days in any 12-month period.

(3) Other positions for which OPM determines that examining is impracticable.

(j) Positions filled by current or former Federal employees eligible for placement under special statutory provisions. Appointments under this authority are subject to the following conditions.

(1) *Eligible employees.* (i) Persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) who are entitled to placement under §353.110 of this chapter, or who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) or 8456 by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment.

(ii) Executive branch employees (other than employees of intelligence agencies) who are entitled to placement under §353.110 but who are not eligible for reinstatement or non-competitive appointment under the provisions of part 315 of this chapter.

(iii) Legislative and judicial branch employees and employees of the intelligence agencies defined in 5 U.S.C. 2302(a)(2)(C)(ii) who are entitled to placement under §353.110.

(2) *Employees excluded.* Employees who were last employed in Schedule C or under a statutory authority that specified the employee served at the discretion, will, or pleasure of the agency are not eligible for appointment under this authority.

(3) *Position to which appointed.* Employees who are entitled to placement under §353.110 will be appointed to a position that OPM determines is equivalent in pay and grade to the one the individual left, unless the individual elects to be placed in a position of

lower grade or pay. National Guard Technicians whose eligibility is based upon a disability may be appointed at the same grade, or equivalent, as their National Guard Technician position or at any lower grade for which they are available.

(4) *Conditions of appointment.* (i) Individuals whose placement eligibility is based on an appointment without time limit will receive appointments without time limit under this authority. These appointees may be reassigned, promoted, or demoted to any position within the same agency for which they qualify.

(ii) Individuals who are eligible for placement under §353.110 based on a time-limited appointment will be given appointments for a time period equal to the unexpired portion of their previous appointment.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, or technical experts for consultation purposes.

(m) [Reserved]

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional, or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p)-(q) [Reserved]

(r) Positions established in support of fellowship and similar programs that are filled from limited applicant pools and operate under specific criteria developed by the employing agency and/or a non-Federal organization. These programs may include: internship or fellowship programs that provide developmental or professional experiences to individuals who have completed their formal education; training and associateship programs designed to increase the pool of qualified candidates in a particular occupational specialty; professional/industry exchange programs that provide for a

cross-fertilization between the agency and the private sector to foster mutual understanding, an exchange of ideas, or to bring experienced practitioners to the agency; residency programs through which participants gain experience in a Federal clinical environment; and programs that require a period of Government service in exchange for educational, financial or other assistance. Appointments under this authority may not exceed 4 years.

(s) Positions with compensation fixed under 5 U.S.C. 5351-5356 when filled by student-employees assigned or attached to Government hospitals, clinics or medical or dental laboratories. Employment under this authority may not exceed 4 years.

(t) Positions when filled by mentally retarded persons in accordance with the guidance in Federal Personnel Manual Chapter 306. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing instructions issued by the Office.

(u) Positions when filled by severely physically handicapped persons who: (1) Under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or (2) have been certified by counselors of State vocational rehabilitation agencies or the Veterans Administration as likely to succeed in the performance of the duties. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by the Office.

(v)-(w) [Reserved]

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial

appointments under the authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed 1 additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1-year beyond the date of that person's release from custody.

(y) [Reserved]

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS-11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of the Office except when the authority is specifically included in a delegated examining agreement with the Office.

(cc)-(ee) [Reserved]

(ff) Not to exceed 24 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Public Law 91-452 and related statutes. A person appointed under this authority may continue to be employed under it after he ceases to be in a qualifying program only as long as he remains in the same agency without a break in service.

(gg)-(hh) [Reserved]

(ii) Positions of Presidential Intern, GS-9 and 11, in the Presidential Management Intern Program. Initial appointments must be made at the GS-9 level. No one may serve under this authority for more than 2 years, unless extended with OPM approval for up to one additional year. Upon completion of 2 years of satisfactory service under

Office of Personnel Management

§ 213.3202

this authority, the employee may qualify for conversion to competitive appointment under the provisions of Executive Order 12364, in accordance with the provisions of § 315.708 of this chapter and requirements published in the Federal Personnel Manual.

(jj)–(kk) [Reserved]

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full time, part-time, or intermittent basis.

(5 U.S.C. 3301, 3307, 8337(h); 5 U.S.C. 3301, 3302; EO 12364, 47 FR 22931)

[47 FR 28902, July 2, 1982, as amended at 47 FR 43634, Oct. 1, 1982; 48 FR 2115, Jan. 18, 1983; 48 FR 11923, 11924, Mar. 22, 1983; 48 FR 24857, June 3, 1983; 50 FR 11145, Mar. 20, 1985; 52 FR 37762, Oct. 9, 1987; 54 FR 2985, Jan. 23, 1989; 57 FR 17847, Apr. 28, 1992; 59 FR 64841, Dec. 16, 1994; 60 FR 10006, Feb. 23, 1995; 60 FR 55174, Oct. 30, 1995; 60 FR 55653, Nov. 2, 1995; 62 FR 55725, Oct. 28, 1997]

§ 213.3199 Temporary organizations.

(a) Positions on the staffs of temporary boards and commissions which are established by law or Executive order for specified periods not to exceed 4 years to perform specific projects. A temporary board or commission originally established for less than 4 years and subsequently extended may continue to fill its staff positions under this authority as long as its total life, including extension(s), does not exceed 4 years. No board or commission may use this authority for more than 4 years to make appointments and position changes unless prior approval of the Office is obtained.

(b) Positions on the staffs of temporary organizations within continuing agencies when all of the following conditions are met:

(1) The temporary organization is established by an authority outside the agency, usually by law or Executive order;

(2) The temporary organization is established for an initial period of 4 years or less and, if subsequently extended, its total life including extension(s) will not exceed 4 years;

(3) The work to be performed by the temporary organization is outside the agency's continuing responsibilities; and

(4) The positions filled under this authority are those for which other staffing resources or authorities are not available within the agency.

An agency may use this authority to fill positions in organizations which do not meet all of the above conditions or to make appointments and position changes in a single organization during a period longer than 4 years only with prior approval of the Office.

[47 FR 28904, July 2, 1982, as amended at 62 FR 18505, Apr. 16, 1997]

SCHEDULE B

§ 213.3201 Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination.

(a) Upon specific authorization by OPM, agencies may make appointments under this section to positions which are not of a confidential or policy-determining character, and which are not in the Senior Executive Service, for which it is impracticable to hold open competition or to apply usual competitive examining procedures. Appointments under this authority are subject to the basic qualification standards established by the Office of Personnel Management for the occupation and grade level. Positions filled under this authority are excepted from the competitive service and constitute Schedule B. For each authorization under this section, OPM shall assign a number from 213.3202 through 213.3299 to be used by the appointing agency in recording appointments made under that authorization.

(b) [Reserved]

[46 FR 20147, Apr. 3, 1981, as amended at 47 FR 57655, Dec. 28, 1982; 53 FR 15353, Apr. 29, 1988]

§ 213.3202 Entire executive civil service.

(a) *Student Educational Employment Program—Student Temporary Employment Program.* (1) Students may be appointed to the Student Temporary Employment Program if they are pursuing any of the following educational programs:

(i) High school diploma or General Equivalency Diploma (GED);

- (ii) Vocational/Technical certificate;
- (iii) Associate degree;
- (iv) Baccalaureate degree;
- (v) Graduate degree; or
- (vi) Professional degree.

(2) *Definition of student.* A student is an individual who has been accepted for enrollment, or who is enrolled, as a degree (diploma, certificate, etc.) seeking student in an accredited high school, technical or vocational school, 2-year or 4-year college or university, graduate or professional school. If the student is enrolled, the student must be taking at least a half-time academic/vocational/ or technical course load. The definition of *half-time* is the definition provided by the school in which the student is enrolled. Students need not be in actual physical attendance, so long as all the other requirements are met. An individual who needs to complete less than the equivalent of half an academic/vocational or technical courseload in the class enrollment period immediately prior to graduating is still considered a student for purposes of this program.

(3) *Schedules.* Students may work full-time or part-time schedules at any time during the year. There are no limitations on the number of hours a student can work per week, but the student's work schedule should not interfere with the student's academic schedule.

(4) *Breaks in program.* A *break in program* is defined as a period of time when a program participant is working but is unable to go to school, or neither attending classes nor working at the agency. Agencies may use their discretion in either approving or denying a break in program.

(5) *Employment of minors.* Participation in this program must be in conformance with Federal, State, or local laws and standards governing the employment of minors.

(6) *Citizenship.* Agencies may appoint non-citizens provided that:

(i) The student is lawfully admitted to the United States as a permanent resident or otherwise authorized to be employed; and

(ii) The agency is authorized to pay aliens under the annual appropriations act ban and any agency specific enabling and appropriation statutes.

(7) *Employment of relatives.* In accordance with part 310 of this chapter, a student may work in the same agency with a relative when there is no direct reporting relationship and the relative is not in a position to influence or control the student's appointment, employment, promotion or advancement within the agency.

(8) *Financial need.* There is no requirement for students to meet any specific economic/income criteria to be eligible. However, agencies have the option to establish and use financial need as a criteria to select students, if they wish. OPM does not develop or distribute annual economic guidelines for use in determining financial need. An agency wishing to use the Department of Health and Human Services' poverty guidelines may call the Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation.

(9) *Training expenses.* Observing the prohibitions in 5 U.S.C. 4107, agencies may use their training authority in 5 U.S.C. chapter 41 and 5 CFR part 410 to pay all or part of training expenses directly related to students' official duties.

(10) *Appointments.* (i) Students are appointed to positions not to exceed 1 year. Appointments under this authority may be extended in one-year increments as long as the individual meets the definition of a student. Agencies may establish minimum academic requirements and on the job performance requirements for continuation in the program. Students under this appointment authority are excepted from the limitations under §213.104.

(ii) The nature of the duties does not have to be related to the student's academic/career goals.

(iii) Students are not eligible for non-competitive conversion to term, career, or career-conditional appointments. They may be converted to the Student Career Experience Program (refer to paragraph (a)(15) of this section).

(11) *Classification.* Classification of students is based on the occupational series for which they are hired. Grade

level is to be set according to the criteria in the appropriate General Schedule (GS) or wage grade (WG) classification standard.

(12) *Qualifications.* Students may be evaluated either by agency-developed standards or by the OPM qualification requirements for the position to which appointed. Students are eligible for promotions. Promotions should be documented as a conversion to another excepted appointment, citing the same authority used for the original appointment and maintaining the original not-to-exceed (NTE) date.

(13) *Benefits.* (i) Students under this program are eligible for annual and sick leave and are generally ineligible for retirement coverage. Refer to § 831.201 and § 842.105 of this chapter for specific information.

(ii) For rules on health and life insurance coverage refer to § 870.202, § 890.102, and § 890.502 of this chapter.

(14) *Reductions-in-Force (RIF).* Students are covered by § 351.502 of this chapter for purposes of RIF. Students, provided they have completed at least 1 year of current continuous service, are in excepted service Tenure Group III.

(15) *Conversion to Student Career Experience Program.* (i) Students may be noncompetitively converted to the Student Career Experience Program whenever they meet the requirements of that program and the agency has an appropriate position available.

(ii) Work experience related to the student's academic program and career goals, gained while under the Student Temporary Employment Program, may be credited towards the 640 hour work experience necessary for noncompetitive conversion to a term, career, or career-conditional appointment.

(iii) Conversions are not subject to requirements of subparts C and D of part 302 of this chapter.

(b) *Student Educational Employment Program—Student Career Experience Program.* (1)(i) Students may be appointed to the Student Career Experience Program if they are pursuing any of the following educational programs:

- (A) High school diploma or General Equivalency Diploma (GED);
- (B) Vocational/Technical certificate;
- (C) Associate degree;
- (D) Baccalaureate degree;

(E) Graduate degree; or

(F) Professional degree.

(ii) Student participants in the Harry S. Truman Foundation Scholarship Program under the provision of Public Law 93-842 are eligible for appointments under the Student Career Experience Program.

(2) *Definition of student.* A student is an individual who has been accepted for enrollment, or who is enrolled, as a degree (diploma, certificate, etc.) seeking student in an accredited high school, technical or vocational school, 2-year or 4-year college or university, graduate or professional school. If the student is enrolled, the student must be taking at least a half-time academic/vocational/ or technical course load. The definition of *half-time* is the definition provided by the school in which the student is enrolled. Students need not be in actual physical attendance, so long as all the other requirements are met. An individual who needs to complete less than the equivalent of half an academic/vocational or technical courseload in the class enrollment period immediately prior to graduating is still considered a student for purposes of this program.

(3) *Schedules.* Students may work full-time or part-time schedules at any time during the year. There are no limitations on the number of hours a student can work per week, but the student's work schedule should not interfere with the student's academic schedule.

(4) *Breaks in program.* A *break in program* is defined as a period of time when a program participant is working but is unable to go to school, or neither attending classes nor working at the agency. Agencies may use their discretion in either approving or denying a break in program.

(5) *Employment of minors.* Participation in this program must be in conformance with Federal, State, or local laws and standards governing the employment of minors.

(6) *Citizenship.* (i) Agencies may appoint non-citizens provided that:

- (A) The student is lawfully admitted to the United States as a permanent resident or otherwise authorized to be employed; and

(B) The agency is authorized to pay aliens under the annual appropriations act ban and any agency specific enabling and appropriation statutes.

(ii) All students must be United States citizens at the time they are noncompetitively converted to a term, career, or career-conditional appointment.

(7) *Employment of relatives.* In accordance with part 310 of this chapter, a student may work in the same agency with a relative when there is no direct reporting relationship and the relative is not in a position to influence or control the student's appointment, employment, promotion or advancement within the agency.

(8) *Financial need.* There is no requirement for students to meet any specific economic/income criteria to be eligible. However, agencies have the option to establish and use financial need as a criteria to select students, if they wish. OPM does not develop or distribute annual economic guidelines for use in determining financial need. An agency wishing to use the Department of Health and Human Services' poverty guidelines may call the Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation.

(9) *Training expenses:* Observing the prohibitions in 5 U.S.C. 4107, agencies may use their training authority in 5 U.S.C. chapter 41 and 5 CFR part 410 to pay all or part of training expenses directly related to students' official duties.

(10) *Appointments.* (i) Appointments are subject to all the requirements and conditions governing term, career, or career-conditional employment, including investigation to establish an appointee's qualifications and suitability.

(ii) Appointments of participants who have met all the requirements of the program may be noncompetitively converted to term, career, or career-conditional appointments at any time within 120 days after satisfactory completion of the requirements for his/her diploma, certificate, or degree.

(11) *Program requirements for non-competitive conversion.* (i) *Students,* who are U.S. citizens, may be noncompetitively converted from the Student Career

Experience Program to a term, career or career-conditional appointment under Executive Order 12015 (as amended by Executive Order 13024) when students have:

(A) Completed within the preceding 120 days, at an accredited school, course requirements conferring a diploma, certificate, or degree;

(B) Completed at least 640 hours of career-related work (agencies have the option of increasing this requirement for some or all of its occupational fields), before completion of, or concurrently with, the course requirements;

(C) Been recommended by the employing agency in which the career-related work was performed; and

(D) Met the qualification standards for the targeted position to which the student will be appointed.

(ii) Conversions must be to an occupation related to the student's academic training and career related work experience.

(iii) The noncompetitive conversion may be to a position within the same agency or any other agency within the Federal Government.

(iv) Agencies who noncompetitively convert Student Career Experience Program participants to term appointments may also noncompetitively convert them to career or career-conditional appointments before the term appointments expire.

(12) *Agreement by all parties.* (i) The Student Career Experience Program is a formally structured program and requires a written agreement by all parties (agency, school, student) as to the:

(A) Nature of work assignments;

(B) Schedule of work assignments and class attendance;

(C) Evaluation procedures; and

(D) Requirements for continuation and successful completion of the program.

(ii) The work experience with the agency must be related to his/her academic/career goals.

(13) *Schedule.* Agencies, participating educational institutions, and students should agree on a formally-arranged schedule of school and work to ensure that:

(i) Work responsibilities do not interfere with academic performance;

(ii) Completion of the educational program (awarding of diploma/certificate/degree) and the Student Career Experience Program are accomplished in a reasonable and appropriate time-frame;

(iii) The agency is informed and prepared for the student's periods of employment; and

(iv) Requirements for non-competitive conversion to term, career, or career-conditional employment are understood by all parties.

(14) *Classification.* Students whose positions are covered by the General Schedule will be classified as student trainees, to the -99 series of the appropriate occupational group. Students whose positions are covered by the Federal Wage System will be classified as student trainees, to the -01 series of the appropriate occupational group.

(15) *Qualifications.* Students may be evaluated by either agency-developed standards or by the OPM qualifications requirements for the target position. Any OPM test requirements are waived. Students are eligible for promotion.

(16) *Benefits.* (i) Students appointed under this program earn annual and sick leave *and* with no prior service or with less than 5 years of prior civilian service, are generally covered by the Federal Employees Retirement System (FERS) (see part 842 of this chapter).

(ii) For life insurance and health benefits coverage refer to § 870.202 and § 890.102 of this chapter.

(17) *Tuition assistance.* Observing the prohibitions in 5 U.S.C. 4107, agencies may use their training authority in 5 U.S.C. chapter 41 and 5 CFR part 410 to pay all or part of training expenses directly related to students' official duties.

(18) *Travel and transportation.* Agencies may pay for other expenses directly related to training, such as travel and transportation between duty station and school, for participants.

(19) *Reduction-in-force (RIF).* (i) Students are in excepted service Tenure Group II for purposes of § 351.502. They are accorded the same retention rights as excepted service employees.

(ii) They may qualify for severance pay if involuntarily separated under part 550, subpart G of this chapter.

(c)-(i) [Reserved]

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding 3 years for one individual.

(k) Positions at grades GS-15 and below when filled by individuals who: (1) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disability; and (2) are certified to a specific position by a State vocational rehabilitation counselor or a Veterans Administration counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the positions to which they will be appointed, and that any residual disability is not job related. Employment of any individual under this authority may not exceed 2 years following each significant period of mental illness.

(l) [Reserved]

(m) Positions when filed under any of the following conditions:

(1) Appointment at grades GS-15 and above, or equivalent, in the same or a different agency without a break in service from a career appointment in the Senior Executive Service (SES) of an individual who:

(i) Has completed the SES probationary period;

(ii) Has been removed from the SES because of less than fully successful executive performance, failure to be recertified, or a reduction in force; and

(iii) Is entitled to be placed in another civil service position under 5 U.S.C. 3594(b).

(2) Appointment in a different agency without a break in service of an individual originally appointed under paragraph (m)(1).

(3) Reassignment, promotion, or demotion within the same agency of an individual appointed under this authority.

§ 213.3301

(n) Positions when filled by preference eligibles or veterans who have been separated from the armed forces under honorable conditions after 3 years or more of continuous active service and who, in accordance with 5 U.S.C. 3304(f) (Pub. L. 105-339), applied for these positions under merit promotion procedures when applications were being accepted by the agency from individuals outside its own workforce. These veterans may be promoted, demoted, or reassigned, as appropriate, to other positions within the agency but would remain employed under this excepted authority as long as there is no break in service.

[47 FR 28904, July 2, 1982, as amended at 47 FR 38258, Aug. 31, 1982; 52 FR 25194, July 6, 1987; 52 FR 43722, Nov. 16, 1987; 54 FR 15371, Apr. 18, 1989; 54 FR 18875, May 3, 1989; 55 FR 26419, June 28, 1990; 56 FR 170, Jan. 3, 1991; 59 FR 64841, Dec. 16, 1994; 62 FR 63628, Dec. 2, 1997; 63 FR 57045, Oct. 26, 1998; 63 FR 66705, Dec. 3, 1998]

SCHEDULE C

§ 213.3301 Positions of a confidential or policy-determining nature.

(a) Upon specific authorization by OPM, agencies may make appointments under this section to positions which are policy-determining or which involve a close and confidential working relationship with the head of an agency or other key appointed officials. Positions filled under this authority are excepted from the competitive service and constitute Schedule C. Each position will be assigned a number from § 213.3302 to § 213.3999, or other appropriate number, to be used by the agency in recording appointments made under that authorization.

(b) When requesting Schedule C exception, agencies must submit to OPM a statement signed by the agency head certifying that the position was not created solely or primarily for the purpose of detailing the incumbent to the White House.

(c) The exception from the competitive service for each position listed in Schedule C by OPM is revoked immediately upon the position becoming vacant. An agency shall notify OPM

5 CFR Ch. I (1-1-00 Edition)

within 3 working days after a Schedule C position has been vacated.

[60 FR 35120, July 6, 1995]

§ 213.3302 Temporary transitional Schedule C positions.

(a) An agency may establish temporary transitional Schedule C positions necessary to assist a department or agency head during the 1-year period immediately following a change in presidential administration, when a new department or agency head has entered on duty, or when a new department or agency is created. These positions may be established only to meet legitimate needs of the agency in carrying out its mission during the period of transition associated with such changeovers. They must be of a confidential or policy-determining character and are subject to instructions issued by OPM.

(b) The number of temporary transitional Schedule C positions established by an agency cannot exceed either 50 percent of the highest number of permanent Schedule C positions filled by that agency at any time over the previous 5 years, or three positions, whichever is higher. In the event a new department or agency is created, the number of temporary transitional positions should be reasonable in light of the size and program responsibility of that department or agency. OPM may approve an increase in an agency's quota to meet a critical need or in unusual circumstances.

(c) Individual appointments under this authority may be made for 120 days, with one extension of an additional 120 days. They may be deemed provisional appointments for purposes of the regulations set out in parts 351, 831, 842, 870, and 890 of this chapter if they meet the criteria set out in §§ 316.401 and 316.403 of this chapter.

(d) An agency shall notify OPM within 5 working days after a temporary transitional Schedule C position has been encumbered and within 3 working days when it has been vacated. The agency must also submit to OPM a statement signed by the agency head certifying that the position was not

Office of Personnel Management

§ 214.301

created solely or primarily for the purpose of detailing the incumbent to the White House.

[60 FR 35120, July 6, 1995]

PART 214—SENIOR EXECUTIVE SERVICE

Subpart A [Reserved]

Subpart B—General Provisions

Sec.

- 214.201 Definitions.
- 214.202 Authority to make determinations.
- 214.203 Reporting requirements.
- 214.204 Interchange agreements.

Subpart C—Exclusions

- 214.301 Exclusions.

Subpart D—Types of Positions

- 214.401 Types of positions.
- 214.402 Career reserved positions.
- 214.403 Change of position type.

AUTHORITY: 5 U.S.C. 3132.

SOURCE: 45 FR 62414, Sept. 19, 1980, unless otherwise noted.

Subpart A [Reserved]

Subpart B—General Provisions

§ 214.201 Definitions.

For the purposes of this part:

Agency, Senior Executive Service position, career appointee, limited term appointee, limited emergency appointee, and noncareer appointee have the meanings set forth in section 3132(a) of title 5, United States Code.

Equivalent position as used in section 3132(a)(2) of title 5, United States Code, means a position under any pay system where the level of the duties and responsibilities of the position and the rate of pay are comparable to that of a position above GS-15 or at Executive Level IV or V.

Senior Executive Service has the meaning given that term by section 2101a of title 5, United States Code, and includes all positions which meet the definition in section 3132(a)(2) of title 5.

[45 FR 62414, Sept. 19, 1980, as amended at 56 FR 18661, Apr. 23, 1991]

§ 214.202 Authority to make determinations.

(a) Each agency is responsible for determining, in accordance with Office of Personnel Management guidelines, which of its positions should be included in the Senior Executive Service.

(b) Agency determinations may be reviewed by the Office of Personnel Management to ensure adherence with law and regulation.

§ 214.203 Reporting requirements.

Agencies shall report such information as may be requested by OPM relating to positions and employees in the Senior Executive Service.

[60 FR 6385, Feb. 2, 1995]

§ 214.204 Interchange agreements.

(a) In accordance with 5 CFR 6.7, OPM and any agency with an executive personnel system essentially equivalent to the Senior Executive Service (SES) may, pursuant to legislative and regulatory authorities, enter into an agreement providing for the movement of persons between the SES and the other system. The agreement shall define the status and tenure that the persons affected shall acquire upon the movement.

(b) Persons eligible for movement must be serving in permanent, continuing positions with career or career-type appointments. They must meet the qualifications requirements of any position to which moved.

(c) An interchange agreement may be discontinued by either party under such conditions as provided in the agreement.

[60 FR 6385, Feb. 2, 1995]

Subpart C—Exclusions

§ 214.301 Exclusions.

If not excluded from the Senior Executive Service by section 3132(a) (1) or (2) of title 5, United States Code, an agency, or unit thereof, may be excluded only under the provisions of section 3132 (c) through (f) of title 5.