

§ 214.403

met, the Office may establish a minimum number of career reserved positions for individual agencies. An agency must maintain or exceed this number unless it is adjusted by the Office.

[45 FR 62414, Sept. 19, 1980; 45 FR 83471, Dec. 19, 1980]

§ 214.403 Change of position type.

An agency may not change the designation of an established position from career reserved to general, or from general to career reserved, without the prior approval of the Office of Personnel Management.

PART 230—ORGANIZATION OF THE GOVERNMENT FOR PERSONNEL MANAGEMENT

Subparts A-C [Reserved]

Subpart D—Agency Authority to Take Personnel Actions in a National Emergency

Sec.

230.401 Agency authority to take personnel actions in a national emergency disaster.

230.402 Agency authority to make emergency-indefinite appointments in a national emergency.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302; E.O. 10577; 3 CFR 1954–1958 Comp., p. 218; sec. 230.402 also issued under 5 U.S.C. 1104.

Subparts A-C [Reserved]

Subpart D—Agency Authority to Take Personnel Actions in a National Emergency

§ 230.401 Agency authority to take personnel actions in a national emergency disaster.

(a) Upon an attack on the United States, agencies are authorized to carry out whatever personnel activities may be necessary to the effective functioning of their organizations during a period of disaster without regard to any regulation or instruction of OPM, except those which become effective upon or following an attack on the United States. This authority applies only to actions under OPM jurisdiction.

(b) Actions taken under this section shall be consistent with affected regulations and instructions as far as pos-

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sible under the circumstances and shall be discontinued as soon as conditions permit the reapplication of the affected regulations and instructions.

(c) An employee may not acquire a competitive civil service status by virtue of any action taken under this section.

(d) Actions taken, and authority to take actions, under this section may be adjusted or terminated in whole or in part by OPM.

(e) Agencies shall maintain records of the actions taken under this section.

[35 FR 5173, Mar. 27, 1970]

§ 230.402 Agency authority to make emergency-indefinite appointments in a national emergency.

(a) *When a national emergency exists—*
(1) *Definition.* A national emergency must meet *all* of the following conditions:

(i) It was declared by the President or Congress.

(ii) It involves a danger to the United States' safety, security, or stability that results from specified circumstances or conditions and that is national in scope.

(iii) It requires a national program specifically intended to combat the threat to national safety, security, or stability.

(2) *Termination of a national emergency.* A national emergency no longer exists if it is officially terminated by the President or Congress, or if the *specific* circumstances, conditions, or program cited in the original declaration are terminated or corrected.

(b) *Basic authority.* Agencies may make emergency-indefinite appointments without OPM approval during any national emergency as defined in paragraph (a) of this section. The head of an agency with a defense-related mission may request OPM's approval to make emergency-indefinite appointments without a declared national emergency when the President has authorized the call-up of some portion of the military reserves for some military purpose. The request must demonstrate that normal hiring procedures cannot meet surge employment requirements and that use of emergency-indefinite appointments is necessary for economy and efficiency. Except as provided by

paragraphs (c) and (d) of this section, agencies must make emergency-indefinite appointments from appropriate registers of eligibles as long as there are available eligibles.

(c) *Appointment outside the register.* An agency may make emergency-indefinite appointments under this section outside registers of eligibles when all the following conditions are met:

(1) A number of vacancies must be filled immediately as a result of conditions created by the national emergency;

(2) Either the number of vacancies to be filled exceeds the number of immediately available eligibles or emergency conditions do not allow sufficient time to make this determination; and

(3) Available eligibles on registers are given prior or concurrent consideration for appointment to the extent possible within emergency time considerations.

(d) *Appointment noncompetitively.* An agency may give emergency-indefinite appointments under this section to the following classes of persons without regard to registers of eligibles and the provisions in §332.102 of this chapter:

(1) Persons who were recruited on a standby basis prior to the national emergency;

(2) Members of the National Defense Executive Reserve, designated in accordance with section 710(e) of the Defense Production Act of 1950, Executive Order 11179 of September 22, 1964, and applications issued by the agency authorized to implement the law and Executive Order; and

(3) Former Federal employees eligible for reinstatement.

(e) *Tenure of emergency-indefinite employees.* (1) Emergency-indefinite employees do not acquire a competitive status on the basis of their emergency-indefinite appointments.

(2) An emergency-indefinite appointment may be continued for the duration of the emergency for which it is made.

(f) *Trial period.* (1) The first year of service of an emergency-indefinite employee is a trial period.

(2) The agency may terminate the appointment of an emergency-indefinite employee at any time during the trial

period. The employee is entitled to the procedures set forth in §315.804 or §315.805 of this chapter as appropriate.

(g) *Eligibility for within-grade increases.* An emergency-indefinite employee serving in a position subject to the General Schedule is eligible for within-grade increases in accordance with subpart D of part 531 of this chapter.

(h) *Applications of other regulations.* (1) The term “indefinite employee” as used in the following includes an emergency-indefinite employee: Section 316.801, part 351, part 353, subpart G of part 550, and part 752 of this chapter.

(2) The selection procedures of part 333 of this chapter apply to emergency-indefinite employees appointed outside the register under paragraph (c) of this section.

(3) Despite the provisions in §831.201(a)(11) of this chapter, an employee serving under an emergency-indefinite appointment under authority of this section is excluded from retirement coverage, except as provided in paragraph (b) of §831.201 of this chapter.

(i) *Promotion, demotion, or reassignment.* An agency may promote, demote, or reassign an emergency-indefinite employee to any position for which it is making emergency-indefinite appointments.

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))

[44 FR 54691, Sept. 21, 1979, as amended at 60 FR 3057, Jan. 13, 1995]

PART 250—PERSONNEL MANAGEMENT IN AGENCIES

Subpart A—Authority for Personnel Actions in Agencies

Sec.

250.101 Standards and requirements for agency personnel actions.

250.102 Delegation agreements.

250.103 Taking corrective action or suspending or withdrawing agency authority.

AUTHORITY: 5 U.S.C. 1101 note, 1104, 1302, 3301, 3302; E.O. 10577, 12 FR 1259, 3 CFR, 1954-1958 Comp., p. 218.

SOURCE: 58 FR 36119, July 6, 1993, unless otherwise noted.