

## § 212.102

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.

## 5 CFR Ch. I (1–1–14 Edition)

## PART 213—EXCEPTED SERVICE

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### 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.

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#### SCHEDULE D

213.3401 Positions other than those of a confidential or policy determining character for which the competitive service requirements make impracticable the adequate recruitment of sufficient numbers of students attending qualifying educational institutions or individuals who have recently completed qualifying educational programs.

213.3402 Entire executive civil service; Pathways Programs.

AUTHORITY: 5 U.S.C. 3161, 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; Sec. 213.101 also issued under 5 U.S.C. 2103. Sec. 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h), and 8456; E.O. 13318, 3 CFR 1982 Comp., p. 185; 38 U.S.C. 4301 *et seq.*; Pub. L. 105–339, 112 Stat 3182–83; E.O. 13162; E.O. 12125, 3 CFR 1979 Comp., p. 16879; and E.O. 13124, 3 CFR 1999 Comp., p. 31103; and Presidential Memorandum—Improving the Federal Recruitment and Hiring Process (May 11, 2010).

Sec. 213.101 also issued under 5 U.S.C. 2103.

Sec. 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h), and 8456; 38 U.S.C. 4301 *et seq.*; and Pub. L. 105–339, 112 Stat. 3182–83.

## Office of Personnel Management

## § 213.103

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, C, or D.

(a) As provided in 5 U.S.C. 3302, the President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for—

(1) Necessary exceptions of positions from the competitive service; and

(2) Necessary exceptions from the provisions of sections 2951, 3304(a), 3321, 7202, and 7203 of title 5, U.S. Code.

(b) The President delegated authority to the Office of Personnel Management (OPM) in Civil Service Rule VI to except positions from the competitive service when OPM determines that:

(1) Appointments thereto through competitive examination are not practicable; or

(2) Recruitment from among students attending qualifying educational institutions or individuals who have recently completed qualifying educational programs can better be achieved by devising additional means for recruiting and assessing candidates that diverge from the processes generally applicable to the competitive service.

(3)(i) Upon determining that any position or group of positions, as defined in § 302.101(c), should be excepted indefinitely or temporarily from the competitive service, the Office of Personnel Management will authorize placement of the position or group of

positions into Schedule A, B, C, or D, as applicable. Unless otherwise specified in a particular appointing authority, an agency may make Schedule A, B, C, or D appointments on either a permanent or nonpermanent basis, with any appropriate work schedule (*i.e.*, full-time, part-time, seasonal, on-call, or intermittent).

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

(c) For purposes of making any such determinations, *positions* includes:

(1) Those that are intended to be removed indefinitely from the competitive service because the nature of the position itself precludes it from being in the competitive service (e.g., because it is impracticable to examine for the knowledge, skills, and abilities required for the job); and

(2) Those that are intended to be removed temporarily from the competitive service to allow for targeted recruiting and hiring from among a particular class of persons, as defined by the Office of Personnel Management, with the opportunity for the persons selected for those positions to convert to the competitive service at a later date.

[77 FR 28213, May 11, 2012]

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

(a) Schedule A, B, C, and D appointing authorities available for use by all agencies will 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