

## Office of Personnel Management

## § 212.301

and does not include training, determining physical fitness, or service in the Reserves or National Guard.

(g) *Discharged or released from active duty* means with either an honorable or general discharge from active duty in the armed forces. The Department of Defense is responsible for administering and defining military discharges.

(h) *Certification* means any written document from the armed forces that certifies the service member is expected to be discharged or released from active duty service in the armed forces under honorable conditions not later than 120 days after the date the certification is submitted for consideration in the hiring process, at the time and in the manner prescribed by the applicable job opportunity announcement. Prior to appointment, the service member's character of service and qualifying discharge or release must be verified through a DD form 214 or equivalent documentation.

[81 FR 83109, Nov. 21, 2016, as amended at 81 FR 94909, Dec. 27, 2016; 83 FR 63042, Dec. 7, 2018]

### § 211.103 Administration of preference.

Agencies are responsible for making all preference determinations except for preference based on a common law marriage. Such a claim must be referred to OPM's General Counsel for decision.

## 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,

## § 212.401

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, C, or D.

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

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

### 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.

## 5 CFR Ch. I (1–1–21 Edition)

### 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.

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