

CHAPTER IV—OFFICE OF PERSONNEL MANAGEMENT AND OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

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PART 1400—DESIGNATION OF NATIONAL SECURITY POSITIONS

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Subpart A—Scope

§ 1400.101 Purpose.

(a) This part sets forth certain requirements and procedures which each agency shall observe for determining national security positions pursuant to Executive Order 10450—Security Requirements for Government Employment (April 27, 1953), 3 CFR 1949-1953 Comp., p. 936.

(b) All positions must be evaluated for a position sensitivity designation commensurate with the responsibilities and assignments of the position as they relate to the impact on the national security, including but not limited to eligibility for access to classified information.

§ 1400.102 Definitions and applicability.

(a) In this part—

(1) *Critical infrastructures* are systems and assets, whether physical or virtual,

so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.

(2) *Key resources* are publicly or privately controlled resources essential to the minimal operations of the economy and government.

(3) *National security* refers to those activities which are directly concerned with the foreign relations of the United States, or protection of the Nation from internal subversion, foreign aggression, or terrorism.

(4) *National security position* includes any position in a department or agency, the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security.

(i) Such positions include those requiring eligibility for access to classified information.

(ii) Other such positions include, but are not limited to, those whose duties include:

(A) Protecting the nation, its citizens and residents from acts of terrorism, espionage, or foreign aggression, including those positions where the occupant's duties involve protecting the nation's borders, ports, critical infrastructure or key resources, and where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security;

(B) Developing plans or policies related to national defense or military operations;

(C) Planning or conducting intelligence or counterintelligence activities, counterterrorism activities and related activities concerned with the preservation of the military strength of the United States;

(D) Protecting or controlling access to facilities or information systems where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security;

(E) Controlling, maintaining custody, safeguarding, or disposing of hazardous materials, arms, ammunition or explosives, where the occupant's neglect, action, or inaction could bring about a

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material adverse effect on the national security;

(F) Exercising investigative or adjudicative duties related to national security, suitability, fitness or identity credentialing, where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security;

(G) Exercising duties related to criminal justice, public safety or law enforcement, where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security; or

(H) Conducting investigations or audits related to the functions described in paragraphs (a)(4)(ii)(B) through (G) of this section, where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security.

(b) The requirements of this part apply to positions in the competitive service, positions in the excepted service where the incumbent can be non-competitively converted to the competitive service, and Senior Executive Service (SES) positions held by career appointees in the SES within the executive branch. Departments and agencies may apply the requirements of this part to other excepted service positions within the executive branch and contractor positions, to the extent consistent with law.

§ 1400.103 Implementation.

OPM and the Security Executive Agent designated pursuant to Executive Order 13467 or any successor order may set forth policies, general procedures, criteria, standards, quality control procedures, and supplementary guidance for the implementation of this part.

Subpart B—Designation and Investigative Requirements

§ 1400.201 Sensitivity level designations and investigative requirements.

(a) For purposes of this part, the head of each agency must designate, or cause to be designated, a position within the department or agency as a national security position pursuant to § 1400.102(a). National security positions

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must then be designated, based on the degree of potential damage to the national security, at one of the following three sensitivity levels:

(1) Noncritical-Sensitive positions are national security positions which have the potential to cause significant or serious damage to the national security, including but not limited to:

(i) Positions requiring eligibility for access to Secret, Confidential, or "L" classified information; or

(ii) Positions not requiring eligibility for access to classified information, but having the potential to cause significant or serious damage to the national security.

(2) Critical-Sensitive positions are national security positions which have the potential to cause exceptionally grave damage to the national security, including but not limited to:

(i) Positions requiring eligibility for access to Top Secret or "Q" classified information;

(ii) Positions not requiring eligibility for access to classified information, but having the potential to cause exceptionally grave damage to the national security;

(iii) Positions involving development or approval of war plans, major or special military operations, or critical and extremely important items of war;

(iv) National security policy-making or policy-determining positions;

(v) Positions with investigative duties, including handling of completed counterintelligence or background investigations, the nature of which have the potential to cause exceptionally grave damage to the national security;

(vi) Positions involving national security adjudicative determinations or granting of personnel security clearance eligibility;

(vii) Positions involving duty on personnel security boards;

(viii) Senior management positions in key programs, the compromise of which could result in exceptionally grave damage to the national security;

(ix) Positions having direct involvement with diplomatic relations and negotiations;

(x) Positions involving independent responsibility for planning or approving continuity of Government operations;

(xi) Positions involving major and immediate responsibility for, and the ability to act independently without detection to compromise or exploit, the protection, control, and safety of the nation's borders and ports or immigration or customs control or policies, where there is a potential to cause exceptionally grave damage to the national security;

(xii) Positions involving major and immediate responsibility for, and the ability to act independently without detection to compromise or exploit, the design, installation, operation, or maintenance of critical infrastructure systems or programs;

(xiii) Positions in which the occupants have the ability to independently damage public health and safety with devastating results;

(xiv) Positions in which the occupants have the ability to independently compromise or exploit biological select agents or toxins, chemical agents, nuclear materials, or other hazardous materials;

(xv) Positions in which the occupants have the ability to independently compromise or exploit the nation's nuclear or chemical weapons designs or systems;

(xvi) Positions in which the occupants obligate, expend, collect or control revenue, funds or items with monetary value in excess of \$50 million, or procure or secure funding for goods and/or services with monetary value in excess of \$50 million annually, with the potential for exceptionally grave damage to the national security;

(xvii) Positions in which the occupants have unlimited access to and control over unclassified information, which may include private, proprietary or other controlled unclassified information, but only where the unauthorized disclosure of that information could cause exceptionally grave damage to the national security;

(xviii) Positions in which the occupants have direct, unrestricted control over supplies of arms, ammunition, or explosives or control over any weapons of mass destruction;

(xix) Positions in which the occupants have unlimited access to or control of access to designated restricted areas or restricted facilities that main-

tain national security information classified at the Top Secret or "Q" level;

(xx) Positions working with significant life-critical/mission-critical systems, such that compromise or exploitation of those systems would cause exceptionally grave damage to essential Government operations or national infrastructure; or

(xxi) Positions in which the occupants conduct internal and/or external investigation, inquiries, or audits related to the functions described in paragraphs (a)(2)(i) through (xx) of this section, where the occupant's neglect, action, or inaction could cause exceptionally grave damage to the national security.

(3) Special-Sensitive positions are those national security positions which have the potential to cause inestimable damage to the national security, including but not limited to positions requiring eligibility for access to Sensitive Compartmented Information (SCI), requiring eligibility for access to any other intelligence-related Special Sensitive information, requiring involvement in Top Secret Special Access Programs (SAP), or positions which the agency head determines must be designated higher than Critical-Sensitive consistent with Executive order.

(b) OPM and ODNI issue, and periodically revise, a Position Designation System which describes in greater detail agency requirements for designating positions that could bring about a material adverse effect on the national security. Agencies must use the Position Designation System to designate the sensitivity level of each position covered by this part. All positions receiving a position sensitivity designation under this part shall also receive a risk designation under 5 CFR part 731 (see 5 CFR 731.106) as provided in paragraphs (c) and (d) of this section.

(c) Any position receiving a position sensitivity designation under this part at the critical-sensitive or special-sensitive level shall automatically carry with that designation, without further agency action, a risk designation under 5 CFR 731.106 at the high level.