

**§ 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.**

As authorized by OPM, agencies may make appointments under this section to positions other than those of a confidential or policy-determining character for which the competitive service requirements make impracticable the adequate recruitment and selection of sufficient numbers of students attending qualifying educational institutions or individuals who have recently completed qualifying educational programs. These positions, which may be filled in the excepted service to enable more effective recruitment from all segments of society by using means of recruiting and assessing candidates that diverge from the rules generally applicable to the competitive service, constitute Schedule D Pathways Programs. Appointments under this authority are subject to the basic qualification standards established by the Office of Personnel Management for the occupation and grade level unless otherwise stated.

**§ 213.3402 Entire executive civil service; Pathways Programs.**

(a) *Internship Program; Positions in the Internship Program.* Agencies may make initial appointments of Interns under this authority at any grade level, depending on the candidates' qualifications. Appointments must be made in accordance with the provisions of subpart B of part 362 of this chapter.

(b) *Recent Graduates Program; Positions in the Recent Graduates Program.*

(1) Agencies may make initial appointments of Recent Graduates at any grade level, not to exceed GS-09 (or equivalent level under another pay and classification system, including the Federal Wage System (FWS)), depending on the candidates' qualifications, and the position's requirements except that:

(i) Initial appointments to positions for science, technology, engineering, or mathematics (STEM) occupations may

be made at the GS-11 level, if the candidate possesses a Ph.D. or equivalent degree directly related to the STEM position the agency is seeking to fill.

(ii) Initial appointments to scientific and professional research positions at the GS-11 level for which the classification and qualification criteria for research positions apply, if the candidate possesses a master's degree or equivalent graduate degree directly related to the position the agency is seeking to fill.

(iii) Initial appointments to scientific and professional research positions at the GS-12 level for which the classification and qualification criteria for research positions apply, if the candidate possesses a Ph.D. or equivalent degree directly related to the position the agency is seeking to fill.

(2) Appointments must be made in accordance with the provisions of subpart C of part 362 of this chapter.

(c) *Presidential Management Fellows Program.* Positions in the Presidential Management Fellows Program. Appointments under this authority may not exceed 2 years except as provided in subpart D of part 362 of this chapter. Agencies may make initial appointments of Fellows at the GS-09, GS-11, or GS-12 level (or equivalent under another pay and classification system such as the FWS), depending on the candidates' qualifications and the positions' requirements. Appointments must be made in accordance with the provisions of subpart D of part 362 of this chapter.

**PART 214—SENIOR EXECUTIVE SERVICE**

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## Office of Personnel Management

## § 214.402

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.

### Subpart D—Types of Positions

#### § 214.401 Types of positions.

There are two types of positions in the Senior Executive Service:

(a) General positions, which may be filled by a career, noncareer, limited emergency, or limited term appointee.

(b) Career reserved positions, which may be filled only by a career appointee.

#### § 214.402 Career reserved positions.

(a) The head of each agency is responsible for designating career reserved positions in accordance with the regulations in this section.

(b) A position shall be designated as a career reserved position if:

(1) The position (except a position in the Executive Office of the President):

(i) Was under the Executive Schedule, or the rate of basic pay was determined by reference to the Executive Schedule, on October 12, 1978;

(ii) Was specifically required under section 2102 of title 5, United States

## § 214.403

Code, or otherwise required by law to be in the competitive service; and

(iii) Entailed direct responsibility to the public for the management or operation of particular government programs or functions; or

(2) The position must be filled by a career appointee to ensure impartiality, or the public's confidence in the impartiality, of the Government.

(c) The head of an agency shall use the following criteria in determining whether paragraph (b)(2) of this section is applicable to an individual position:

(1) Career reserved positions include positions the principal duties of which involve day-to-day operations, without responsibility for or substantial involvement in the determination or public advocacy of the major controversial policies of the Administration or agency, in the following occupational disciplines:

- (i) Adjudication and appeals;
- (ii) Audit and inspection;
- (iii) Civil or criminal law enforcement and compliance;
- (iv) Contract administration and procurement;
- (v) Grants administration;
- (vi) Investigation and security matters; and
- (vii) Tax liability, including the assessment or collection of taxes and the preparation or review of interpretative opinions.

(2) Career reserved positions also include:

(i) Scientific or other highly technical or professional positions where the duties and responsibilities of the specific position are such that it must be filled by a career appointee to insure impartiality, of the Government.

(ii) Other positions requiring impartiality, or the public's confidence in impartiality, as determined by an agency in light of its mission.

(d) The Office of Personnel Management may review agency designations of general and career reserved positions. If the Office finds that an agency has designated any position as general that should be career reserved, it shall direct the agency to make the career reserved designation.

(e) The minimum number of positions in the Senior Executive Service Governmentwide that must be career

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reserved is 3,571 as determined by the Director of the Office of Personnel Management under section 3133(e) of 5 U.S.C. To assure that this figure is 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