

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR PARTS 3, 213, 315

RIN 3206-AI94

#### Appointments of Persons With Psychiatric Disabilities

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations creating a new Governmentwide excepted appointing authority, with noncompetitive conversion to the competitive service authorized by Executive Order 13124, for persons with psychiatric disabilities. The regulations also abolish two excepted service appointing authorities that relate to persons with psychiatric disabilities, and make technical corrections.

**EFFECTIVE DATES:** August 7, 2000.

*Conformity date:* For all new appointments under 5 CFR 213.3102(gg), agencies may begin to use the authority on August 7, 2000. All individuals who are currently serving under the 2 authorities that will be abolished by this regulation, 5 CFR 213.3102(h) and 213.3202(k), must be converted to the new appointment, 5 CFR 213.3102(gg), by January 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** John Riedel-Alvarez or Kitty Kobert on (202) 606-1059, TTY (202) 606-0023, or FAX (202) 606-0927.

**SUPPLEMENTARY INFORMATION:** The Presidential Task Force on Employment of Adults with Disabilities was created in 1998 to address the underemployment of people with disabilities. Its first report, "Recharting the Course," recommended that OPM look into paralleling the excepted service hiring standards of adults with

psychiatric disabilities with the excepted service hiring standards of individuals with mental retardation and severe physical disabilities. After careful review of the standards, we agreed they all should be the same.

As a result, we issued proposed regulations on March 17, 2000, to amend the Civil Service Rules to reflect Executive Order 13124, June 4, 1999, permitting persons with psychiatric disabilities to be converted to the competitive service after 2 years of satisfactory service. In order to ensure that as many people with psychiatric disabilities are covered as possible, we proposed creating a new excepted service appointing authority for persons with psychiatric disabilities. To avoid confusion and duplication, we also proposed abolishing 2 existing excepted service appointing authorities for persons with psychiatric disabilities that were not broadly defined.

We received comments on the regulations from 4 Federal agencies, 2 advocacy organizations, 1 State agency, and 1 individual.

#### Comments

One Federal agency was confused about how the authority will be implemented based on the proposed wording. Specifically, it was unclear whether those who have certification in subparagraph (2) are the only ones eligible for noncompetitive conversion. It was also unclear whether temporary appointments may be made under the (gg) authority. Therefore, we are revising the authority to clarify a number of items as follows:

(1) We are eliminating the subparagraphs to make it clear that either individuals who served under temporary appointments or those who receive certification may be appointed under the (gg) authority. After 2 years of satisfactory service under the authority, they are eligible for noncompetitive conversion to the competitive service.

(2) On the effective date of this regulation, and through an OPM Notice of Policy Information (being issued concurrently and available on OPM's website, [www.opm.gov](http://www.opm.gov)), agencies may use 5 CFR 213.3102(i)(3) to make temporary appointments of persons with psychiatric disabilities. These temporary appointments may be used to fulfill the requirements of the new (gg) authority. [Temporary appointments are defined for the excepted service in 5

CFR 213.104(a)(1).] This flexibility, and adding the language to (gg), will make it clear that temporary appointments are not authorized under (gg), but under (i)(3).

(3) We are also clarifying that noncompetitive conversion of those who have 2 years of satisfactory performance under (gg) is at the discretion of the agency, rather than a right of the individual.

One Federal agency suggested that time under temporary appointments is permissible for noncompetitive conversion to a permanent position in the competitive service, changing the conversion requirement in 5 CFR 315.709. We did not adopt this suggestion. There is no basis for a contention that temporary status in the excepted service confers permanent status in the competitive service.

Two advocacy organizations favored language found in the ADA that refers to certifying individuals under the (gg). We agree it is hard to assess and certify that an individual with a psychiatric illness is "likely to succeed in the performance of duties." Instead, we will use the language suggested by the 2 organizations.

Two advocacy organizations also suggested adding community rehabilitation programs to the list of those who may certify individuals with psychiatric disabilities. We are not changing the authority at this time; we want to research this further before adopting it as an option for agencies.

One Federal agency recommended that OPM add language to describe how the disabilities are evidenced, similar to language in the abolished 5 CFR 213.3202(k). We believe a better place to provide more information is in the "People with Disabilities in the Federal Government—An Employment Guide." OPM will update this resource guide to add more information for agencies on psychiatric disabilities.

#### Implementation

Agencies must move those who are currently serving under the soon-to-be-abolished 5 CFR 213.3102(h) and 5 CFR 213.3202(k) authorities to the new authority, 5 CFR 213.3102(gg), as soon as possible. Those individuals may serve the remaining time under the (gg) and be eligible for noncompetitive conversion. A current employee's service under 5 CFR 213.3102(h) or 5 CFR 3202(k) will count toward the 2-

year period needed for noncompetitive conversion.

OPM's Guide to Personnel Data Standards and The Guide to Processing Personnel Actions will be updated to reflect the new changes. These Guides are available on OPM's website, [www.opm.gov](http://www.opm.gov).

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because the regulations apply only to appointment procedures for certain employees in Federal agencies.

### E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

### List of Subjects in 5 CFR Parts 3, 213, and 315

Government employees.

Office of Personnel Management.

Janice R. Lachance,  
Director.

Accordingly, OPM is amending parts 3, 213, and 315 of title 5, Code of Federal Regulations, as follows:

### PART 3—NONCOMPETITIVE ACQUISITION OF STATUS (RULE III)

1. The authority citation for part 3 continues to read as follows:

**Authority:** 5 U.S.C. 3301, 3302.

2. In § 3.1, paragraph (b)(3) is added to read as follows:

#### § 3.1 Classes of persons who may noncompetitively acquire status.

\* \* \* \* \*

(b) \* \* \*

(3) An employee with a psychiatric disability who completes at least 2 years of satisfactory service in a position excepted from the competitive service.

### PART 213—EXCEPTED SERVICE

3. The authority citation for part 213 continues to read as follows:

**Authority:** 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; 38 U.S.C. 4301 *et seq.*, and Pub. L. 105–339.

4. In § 213.3102, paragraph (h) is removed and reserved. Paragraph (gg) is added to read as follows:

#### § 213.3102 Entire executive civil service.

\* \* \* \* \*

(gg) Positions when filled by persons with psychiatric disabilities who have demonstrated their ability to perform satisfactorily under a temporary appointment [such as one authorized in 213.3102(i)(3)] or who are certified as likely to be able to perform the essential functions of the job, with or without reasonable accommodation, by a State vocational rehabilitation counselor, a U.S. Department of Veterans Affairs Veterans Benefits Administration or Veterans Health Administration psychologist, vocational rehabilitation counselor, or psychiatrist. Upon completion of 2 years of satisfactory service under this authority, the employee can be converted, at the discretion of the agency, to competitive status under the provisions of Executive Order 12125 as amended by Executive Order 13124.

\* \* \* \* \*

5. In § 213.3202, paragraph (k) is removed and reserved.

### PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

6. The authority citation for part 315 continues to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218, unless otherwise noted.

Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652.

Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104.

Sec. 315.603 also issued under 5 U.S.C. 8151.

Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp., p. 111.

Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp., p. 303.

Sec. 315.607 also issued under 22 U.S.C. 2506.

Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp., p. 293.

Sec. 315.610 also issued under 5 U.S.C. 3304(d).

Sec. 315.611 also issued under Section 511, Pub. L. 106–117.

Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp., p. 229.

Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp., p. 264.

7. Section 315.709 is amended by revising the section heading, the introductory text of paragraph (a), and paragraphs (a)(1), and (b)(2) to read as follows:

#### § 315.709 Employees who are mentally retarded, severely physically handicapped, or have psychiatric disabilities serving under Schedule A appointments.

(a) *Coverage.* Employees appointed under §§ 213.3102(t), (u), and (gg) of this chapter may have their appointments converted to career or career-conditional appointments when they:

(1) Complete 2 or more years of satisfactory service, without a break of more than 30 days, under nontemporary Schedule A appointments.

\* \* \* \* \*

(b) \* \* \*

(2) A career employee if he or she has completed 3 years of substantially continuous service in nontemporary appointments under §§ 213.3102(t), (u), or (gg) of this chapter, or has otherwise completed the service requirement for career tenure, or is excepted from it by § 315.201(c).

\* \* \* \* \*

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### OFFICE OF PERSONNEL MANAGEMENT

#### 5 CFR Part 550

RIN 3206–AI78

#### Payments During Evacuation

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations to raise the age requirement for payment of the maximum per diem rate for a dependent of an evacuated civilian employee from age 11 to age 12. This applies to evacuations in the United States because of natural disasters or for military or other reasons that create an imminent danger to life. This final rule makes OPM's regulations consistent with Department of Defense (DOD) evacuation regulations, which require that an evacuated dependent of a uniformed member be 12 years of age or older to receive the maximum per diem rate.

**DATES:** *Effective Date:* The regulations are effective and applicable on August 7, 2000.

**FOR FURTHER INFORMATION CONTACT:** Roger Knadle, (202) 606–2858, FAX: (202) 606–0824, or email at [payleave@opm.gov](mailto:payleave@opm.gov).

**SUPPLEMENTARY INFORMATION:** Office of Personnel Management (OPM) regulations on payments during evacuation are found in subpart D of 5