

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 213 and 335 RIN 3206-AI51

#### Excepted Service; Promotion and Internal Placement

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim regulations with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations to implement the staffing provisions of S. 1021, The Veterans Employment Opportunities Act of 1998. This Act allows preference eligibles or veterans who have been honorably discharged from the armed forces after 3 or more years of active service to compete for vacant positions under merit promotion procedures when an agency is accepting applications from individuals outside its own workforce. **DATES:** Effective Date: December 3, 1998. **Comments:** Comments are due January 4, 1999.

**ADDRESSES:** Send or deliver written comments to Mary Lou Lindholm, Associate Director for Employment, Office of Personnel Management, Room 6500, 1900 E Street, NW., Washington, DC 20415-9000.

**FOR FURTHER INFORMATION CONTACT:** Karen Jacobs or Sylvia Cole on (202) 606-0830, TDD (202) 606-0023, or FAX (202) 606-2329.

**SUPPLEMENTARY INFORMATION:** On October 31, 1998, the President signed into law S. 1021, The Veterans Employment Opportunities Act of 1998. Public Law 105-339, which will be codified in section 3304 of title 5, United States Code, allows preference eligibles or veterans who have been honorably discharged from the armed forces after 3 or more years of active

service to compete for vacant positions under merit promotion procedures, if the hiring agency is accepting applications from individuals outside its own workforce. The law also requires OPM to create a special appointing authority to permit the appointment of these individuals if they are selected. Because the law did not specifically place these individuals in the competitive service, we are creating a Schedule B, excepted appointing authority under 5 CFR part 213 to permit their placement in agencies. A Schedule B appointing authority, under which positions are subject to basic qualification standards established by OPM, is appropriate in view of the language of the public law. Therefore, agencies should use Schedule B, section 213.3202 (n) and cite Legal Authority Code "YKB/Sch B 213.3202(n)" when making appointments. The new law does not provide for noncompetitive conversion into the competitive service.

#### Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to waive the delay in effective date and make these regulations effective in less than 30 days. The delay in effective date is being waived because the staffing provisions of this law became effective upon enactment, *October 31, 1998*.

#### 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 213 and 335

Government employees, Reporting and record keeping requirements.

U.S. Office of Personnel Management.

**Janice R. Lachance,**  
*Director.*

Accordingly, OPM is amending parts 213 and 335 of title 5, Code of Federal Regulations, as follows:

## PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 is revised 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.

2. In § 213.3202, paragraph (n) is added to read as follows:

**§ 213.3202 Entire executive civil service.**  
\* \* \* \* \*

(n) Positions when filled by preference eligibles or veterans who have been separated from the armed forces under honorable conditions after 3 years or more of continuous active service and who, in accordance with 5 U.S.C. 3304(f) (Pub. L. 105-339), applied for these positions under merit promotion procedures when applications were being accepted by the agency from individuals outside its own workforce. These veterans may be promoted, demoted, or reassigned, as appropriate, to other positions within the agency but would remain employed under this excepted authority as long as there is no break in service.

## PART 335—PROMOTION AND INTERNAL PLACEMENT

3. The authority citation for part 335 is revised to read as follows:

**Authority:** 5 U.S.C. 3301, 3302, 3330; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; Pub. L. 105-339.

4. Section 335.106 is added to subpart A to read as follows:

**§ 335.106 Special selection procedures for certain veterans under merit promotion.**

Preference eligibles or veterans who have been separated under honorable conditions from the armed forces after 3 or more years of continuous active service may compete for vacancies under merit promotion when an agency accepts applications from individuals outside its own workforce.

[FR Doc. 98-32082 Filed 12-2-98; 8:45 am]

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