



OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213, 302, 317, 359, 362, 432, 550, 731, 920, and 930

[Docket ID: OPM-2026-0166]

RIN: 3206-AO92

Employment in the Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend its regulations governing the excepted service, Pathways Programs, and administrative law judge (ALJ) appointments. The proposed rule would conform OPM regulations to current excepted-service schedules, including Schedules E, Policy/Career, and G; modernize part 302 procedures while preserving veterans' preference, compensable-injury restoration rights, and other priority placement rights; authorize and clarify Pathways conversions to Schedule Policy/Career; and make related conforming amendments.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments by using the Federal eRulemaking Portal:

<https://www.regulations.gov>. Follow the instructions for submitting comments.

All submissions must include the agency name and docket number or RIN for this *Federal Register* document. Please arrange and identify your comments about the regulatory text by subpart and section number. If your comments relate to the supplementary information, please refer to the heading and page number in the supplementary section. All comments must be received by the end of the comment period for them to be considered. All comments and other submissions received generally will be posted on the internet at <https://www.regulations.gov> as they are received, without change, including any personal information provided. However, OPM

retains discretion to redact personal or sensitive information, including but not limited to personal or sensitive information pertaining to third parties. As required by 5 U.S.C. 553(b)(4), a summary of this rule may be found in the docket for this rulemaking at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ms. Katika Floyd at (202) 606-9531 or by email at employ@opm.gov.

SUPPLEMENTARY INFORMATION:

I. Background

OPM proposes to revise several civil service regulations to conform them to current excepted service schedules, recent Executive orders, and the statutory framework governing excepted service appointment procedures. These amendments are intended to modernize excepted service hiring rules, remove obsolete or unnecessarily complex procedures, preserve statutory veterans' preference and restoration rights, update regulations governing Pathways Programs and ALJ appointments, and simplify the priority reemployment list provisions. This proposal to overhaul excepted service employment is supplemented by another OPM regulation – Shared Certificates and Pooled Hiring Actions – that includes additional enhancements to 5 CFR part 302 (Employment in the Excepted Service) that align with changes being made to the regulations governing recruitment and hiring in the competitive service. 91 FR 58347; Sept. 15, 2026.

A. Excepted service appointments and 5 U.S.C. 3320

Section 3320 of title 5, United States Code, provides that the nominating or appointing authority must select for each excepted service vacancy from qualified applicants “in the same manner and under the same conditions” required for the competitive service by the veterans' preference and related provisions referenced in that section, and excludes appointments requiring Senate confirmation or advice and consent. OPM's regulations in part 302 have long implemented this requirement for positions in the excepted service. Current part 302 contains

detailed procedures for accepting applications, examining applicants, maintaining employment lists, applying orders of consideration, and making selections.

OPM now proposes to simplify part 302 while preserving the statutory core of the rule: veterans' preference, job-related qualification requirements, and legally required priority consideration. The proposed rule would remove the legacy structure of priority reemployment lists, reemployment lists, regular employment lists, Orders A, B, and C, professional orders, and unranked orders. In place of that structure, the rule would require agencies to identify and consider qualified and available priority candidates before selecting non-priority candidates, subject to any available and lawful exception. The rule also would retain and clarify restoration and priority-placement protections for employees recovering from compensable injuries under 5 U.S.C. 8151.

B. Recent Executive orders affecting excepted service schedules

Several recent Executive orders require conforming amendments to part 213 and related civil service regulations.

First, Executive Order (E.O.) 13843 of July 10, 2018, "Excepting Administrative Law Judges From the Competitive Service," (83 FR 32755) directed that appointments of ALJs under 5 U.S.C. 3105 be made under Schedule E of the excepted service. The order amended Civil Service Rule VI to create Schedule E and stated that appointment to an ALJ position is not subject to part 302 examination and rating requirements, though agencies must follow the principle of veterans' preference as far as administratively feasible.

Second, E.O. 13957 of October 21, 2020, "Creating Schedule F in the Excepted Service," (85 FR 67631) created Schedule F in the excepted service for career positions of a confidential, policy-determining, policy-making, or policy-advocating character. E.O. 14171 of January 20, 2025, "Restoring Accountability to Policy-Influencing Positions Within the Federal Workforce," (90 FR 8625) reinstated and amended E.O. 13957, including by replacing Schedule F terminology with Schedule Policy/Career.

Third, E.O. 14317 of July 17, 2025, “Creating Schedule G in the Excepted Service,” (90 FR 34753) created Schedule G for noncareer positions of a policy-making or policy-advocating character normally subject to change as a result of a Presidential transition. The order also revised Civil Service Rule VI to identify Schedules A, B, C, D, E, Policy/Career, and G, and distinguished Schedule G from Schedule C and Schedule Policy/Career.

Fourth, E.O. 14410 of June 3, 2026, “Implementing Schedule Policy/Career in the Excepted Service,” (91 FR 34893) further implemented Schedule Policy/Career by placing identified positions in Schedule Policy/Career and amending the Civil Service Rules and prior Executive orders. Among other things, the order:

- Amended Civil Service Rule I to clarify retention of competitive status when an employee’s competitive service position is first listed under Schedule A, B, C, Policy/Career, or G;
- Amended Civil Service Rule III to recognize a basis for appointment without competitive examination for an employee whose initial appointment was to a Pathways Program position in Schedule D and who was later converted to Schedule Policy/Career without a break in service of 1 day;
- Amended Civil Service Rule VI to require at least annual publication of excepted-service schedules;
- Provided for acquisition of competitive status by certain employees serving probationary periods when their positions are first placed in Schedule Policy/Career;
- Amended Civil Service Rule XI to provide that individuals appointed to positions in Schedule C, Schedule E, Schedule Policy/Career, and Schedule G are not subject to trial periods; and
- Amended E.O. 13562 (75 FR 82585, Dec. 30, 2010) to provide that Pathways career appointments may include positions in Schedule Policy/Career, subject to OPM review.

Together, these Executive orders require conforming amendments to several parts of

OPM's regulations to ensure that the Code of Federal Regulations (CFR) accurately reflects the current structure of the excepted service and the legal consequences of appointments under Schedules C, E, Policy/Career, and G.

C. Purpose of this proposed rule

The proposed rule has four principal purposes.

First, it would conform part 213 to the current excepted service schedule structure by adding express regulatory text for Schedule E ALJ appointments and Schedule G appointments, and by conforming provisions governing publication, temporary and time-limited appointments, unique identifiers, and certain Schedule A authorities. It would also make conforming amendments to parts 317, 359, 432, 550, 731, and 920 to account for the creation of Schedule G.

Second, it would modernize part 302 by replacing outdated and difficult-to-administer list and order-of-consideration procedures with a simpler framework centered on veterans' preference, qualification requirements, job-related evaluation methods, and priority consideration for employees with legally required restoration or reemployment rights.

Third, it would implement conforming changes to Pathways and Schedule Policy/Career regulations so that eligible Pathways Participants may be converted to permanent Schedule Policy/Career appointments where authorized.

Fourth, it would conform ALJ regulations in part 930 to Schedule E by removing obsolete competitive-examination and list-of-eligibles terminology for new ALJ appointments, while preserving applicable statutory protections for ALJs, including 5 U.S.C. 3105 and 7521. It would also update the part 930 regulations relating to reductions in force (RIFs) involving ALJs, conforming those regulations to the status of ALJs appointed after July 10, 2018 as excepted service employees.

OPM previously proposed amendments to its ALJ regulations to implement E.O. 13843 and conform the regulations governing ALJ appointment and employment to the creation of Schedule E. See *Administrative Law Judges*, 85 FR 59207 (Sept. 21, 2020). On April 2, 2026,

OPM withdrew that proposed rule, explaining that the comments received in response to the 2020 proposal were more than five years old, that agencies had already implemented E.O. 13843, and that OPM intended to propose Schedule E regulatory changes as part of a broader excepted-service rulemaking under RIN 3206-AO92. See *Administrative Law Judges; Withdrawal*, 91 FR 16584 (Apr. 2, 2026). Consistent with that withdrawal notice, this proposed rule now addresses Schedule E as part of the broader overhaul of OPM’s excepted service regulations.

II. Proposed Changes

A. Part 213—Excepted Service

OPM proposes to revise part 213 to reflect the current schedules in the excepted service: Schedules A, B, C, D, E, Policy/Career, and G.

Proposed amendments to § 213.102 would update the heading and conform the provision governing OPM placement of positions into excepted service schedules.

OPM proposes to revise § 213.103 to eliminate the requirement that OPM publish a monthly Federal Register notice identifying each establishment or revocation of an agency-specific Schedule A, B, C, Policy/Career, or G authority. Current § 213.103 requires governmentwide excepted-service authorities to be published as regulations in the Federal Register and the CFR, requires monthly notice of agency-specific Schedule A, B, C, and Policy/Career authorities, and requires an annual consolidated listing of all such agency-specific authorities current as of June 30. The proposed rule would retain publication of governmentwide authorities in the Federal Register and CFR and would retain an annual consolidated Federal Register notice for agency-specific authorities, but would remove the monthly notice requirement.

OPM has tentatively determined that monthly publication is no longer necessary to provide meaningful transparency or oversight, or effective administration of agency-specific excepted-service authorities. Agency-specific authorities do not have general applicability across the Government and historically have not been codified in the CFR. OPM has instead used

notices to inform the public of the existence and status of these authorities. The annual consolidated notice is a more complete and useful transparency mechanism because it provides a single authoritative listing of agency-specific authorities, with assigned authority numbers or other unique identifiers, rather than requiring agencies, applicants, employees, and the public to reconstruct the current state of agency-specific authorities from a series of monthly notices. OPM's annual consolidated notices have historically served this function by identifying the agency-specific authorities current as of a specified date and explaining that governmentwide authorities are codified in the CFR while agency-specific authorities are not.

OPM believes that the annual consolidated Federal Register notice satisfies Civil Service Rule VI because Rule VI requires Federal Register publication of notice of OPM's decision granting authority to make excepted-service appointments, but does not prescribe monthly publication. Further, proposed § 213.103(b) would continue to provide public Federal Register notice of all current agency-specific authorities in a single consolidated annual notice, with additional notices available when OPM determines they would promote sound administration or public transparency.

OPM notes that removing the monthly publication requirement does not reduce OPM's substantive oversight of agency-specific authorities. OPM will continue to approve, deny, limit, condition, modify, or revoke agency-specific authorities as appropriate under Civil Service Rule VI, part 213, and applicable Executive orders. Agencies must continue to use the proper authority number or unique identifier when documenting appointments, and OPM will continue to maintain internal records of current agency-specific authorities. In addition, OPM is proposing that it may publish additional notices concerning agency-specific authorities when OPM determines that additional notice would promote sound administration or public transparency.

Proposed § 213.104 would update terminology for temporary, time-limited, intermittent, or seasonal appointments and clarify applicable service limits for appointments in Schedules A, B, C, D, and G. OPM also is not including Schedule E or Schedule Policy/Career in the operative

§ 213.104 amendments because these appointments are not intended to be temporary, time-limited, intermittent, or seasonal.

OPM also proposes targeted amendments to § 213.3102. Proposed § 213.3102(i)(1) would modernize the Schedule A authority for positions in remote or isolated locations where examination is impracticable. Proposed § 213.3102(u) would update the Schedule A authority for individuals with intellectual disabilities, severe physical disabilities, or psychiatric disabilities, including by revising the structure of the provision and proof-of-disability language.

The proposed rule would amend § 213.3301 to replace the reference to a Schedule C “number” with the phrase “unique identifier.” This change is intended to modernize appointment-record terminology while preserving OPM’s position-specific authorization process for Schedule C.

The proposed rule would revise § 213.3402(b) to raise the default Recent Graduates appointment ceiling to GS-11 or equivalent, while preserving a GS-12 exception for certain scientific and professional research positions requiring a directly related Ph.D. or equivalent degree. This revision would conform to the changes made in the Pathways Programs final regulation published at 89 FR 25751 (Apr. 12, 2024).

The proposed rule would add a new Schedule E heading and new § 213.3501 for ALJ positions appointed under 5 U.S.C. 3105. Proposed § 213.3501 would provide that new ALJ appointments made on or after July 10, 2018, must be made under Schedule E; would preserve the competitive-service status of incumbents whose status is preserved under § 6.8(d); would exempt Schedule E appointments from part 302 appointment procedures, including examination and rating; would require agencies to follow veterans' preference as far as administratively feasible; would cross-reference the professional license requirement in Civil Service Rule VI and applicable ALJ statutory and regulatory requirements; and would provide that Schedule E ALJs are not subject to a trial period under part 11.

Proposed § 213.3601 would revise the Schedule Policy/Career regulation. Proposed §

213.3601 would revise paragraphs (b) and (c) to clarify the procedures for making appointments under Schedule Policy/Career. The language formerly found in paragraph (d) of this section will be incorporated into paragraph (b). Paragraphs (e) and (f) of this section will be redesignated as paragraphs (d) and (e) of this section.

Proposed § 213.3601 would revise the newly designated paragraph (e) to make clear that Schedule Policy/Career appointments are not subject to a trial period, in alignment with E.O. 14410's revision to Civil Service Rule XI. Revised paragraph (e) also would restate that an individual appointed under § 213.3601(b) in the same manner as an appointment in the competitive service acquires competitive status after completing 2 years of continuing service in the same or similar positions, and would preserve the retention of competitive status under § 1.3(d) and the acquisition of competitive status under § 3.1(a)(5) or § 6.8(e).

Proposed § 213.3601(f) would address positions in statutory personnel systems outside title 5 that may be designated as Schedule Policy/Career. The proposed paragraph would provide that, to the extent permitted by the statute governing the position and any applicable E.O., such a position may be designated as Schedule Policy/Career if the position is of a confidential, policy-determining, policy-making, or policy-advocating character. For positions otherwise covered by chapters 23, 43, or 75 of title 5, designation in Schedule Policy/Career would affect coverage under those chapters to the extent provided by 5 U.S.C. 2302(a)(2)(B)(i), 4301(2)(G), 4303(e)(3), and 7511(b)(2), and applicable implementing regulations. The designation would not otherwise alter the governing statutory personnel system unless expressly provided by statute, E.O., or regulation.

Finally, the proposed rule would add a new Schedule G heading and new § 213.3701 for noncareer positions of a policy-making or policy-advocating character normally subject to change as a result of a Presidential transition. Section 213.3701 would retain OPM's position-specific authorization process and would require a unique identifier for positions authorized under Schedule G.

B. Part 302—Employment in the Excepted Service

OPM proposes to revise part 302 extensively. Proposed part 302 would replace the current employment-list and order-of-consideration structure with a simpler framework that preserves the substantive requirements of 5 U.S.C. 3320. Section 3320 requires excepted service selections to be made from qualified applicants “in the same manner and under the same conditions” required for the competitive service by 5 U.S.C. 3308 through 3319, but it does not require OPM to retain the specific legacy labels and procedures in current part 302, such as regular employment lists or Orders A, B, and C. Although section 3320 incorporates the competitive-service requirements of 5 U.S.C. 3308 through 3319, current § 302.302(b)(2) also permits category rating consistent with the principles of 5 U.S.C. 3319, and proposed §§ 302.201(b), 302.302(d), and 302.401(c) would continue to permit category rating, applied with the pass-over protections of 5 U.S.C. 3319(c)(6).

Section 3315(a) of title 5, United States Code, provides that a preference eligible who has been separated or furloughed without delinquency or misconduct is entitled, upon request, to have the individual’s name placed on appropriate registers and employment lists for every position for which the individual’s qualifications have been established, in the order prescribed by 5 U.S.C. 3313. Section 3320 applies that requirement to covered appointments in the excepted service by requiring selection from qualified applicants in the same manner and under the same conditions required by 5 U.S.C. 3308 through 3319.

OPM therefore interprets sections 3315 and 3320 as requiring agencies to preserve the reemployment-priority rights established by those provisions. OPM does not interpret those statutes, however, as requiring agencies to retain the particular list architecture or terminology prescribed by current § 302.303. Current § 302.303 implements the statutory requirements through three separately denominated categories: a priority reemployment list, a discretionary reemployment list, and a regular employment list. Those categories are an administrative means of implementing the statute; the terms themselves do not appear in 5 U.S.C. 3315. Section 3315

also does not prescribe a particular paper or electronic format, database structure, or personnel-management system through which an agency must maintain the required information. Section 1302(c) directs OPM to prescribe regulations administering veterans' preference in the excepted service and therefore permits OPM to modernize the administrative mechanism used to carry out the statutory entitlement, provided that the revised mechanism does not diminish that entitlement.

In subpart A, proposed § 302.101 would restate the coverage of part 302 for purposes of veterans' preference and compensable-injury restoration rights, clarify that Senate-confirmed or advice-and-consent appointments are not covered, and update the list of positions exempt from part 302 appointment procedures. OPM proposes to add law clerk trainee positions filled under 5 CFR 213.3102(e) to the list of positions exempt from the appointment procedures of 5 CFR part 302. Section 213.3102(e) authorizes time-limited appointments of law clerk trainees for law school graduates or persons with equivalent experience pending admission to the bar, while § 213.3102(d) covers attorney positions. Current § 302.101(c) already exempts attorney positions from the appointment procedures of part 302, but it does not expressly identify law clerk trainee positions. Law clerk trainee appointments are closely related to attorney hiring and often serve as a temporary, pre-bar status before an individual may be appointed to an attorney position. OPM therefore proposes to expressly exempt law clerk trainee positions filled under § 213.3102(e) to provide additional flexibility in hiring for these positions and to promote consistency with attorney hiring procedures.

OPM proposes to amend 5 CFR 302.101(c) to add three other categories of positions to the list exempt from the appointment procedures of part 302: positions in remote or isolated locations filled under 5 CFR 213.3102(i)(1), positions in Schedule G, and ALJ positions in Schedule E. These additions would promote clarity and consistency by aligning part 302 with appointing authorities and excepted-service schedules where the application of ordinary part 302 examining, rating, and selection procedures is impracticable, unnecessary, or inconsistent with

the nature of the position. Remote or isolated location appointments are expressly limited to circumstances where examination is impracticable; Schedule G positions are policy-making or policy-advocating positions normally subject to change as a result of a Presidential transition; and Schedule E ALJ appointments are already treated under 5 CFR part 6 as not subject to part 302 appointment procedures. In addition, proposed § 302.101(c)(12) would revise the reemployment exemption in current § 302.101(c)(9) to remove the redundant requirement limiting the exemption, which is already reflected in the introductory text to paragraph (c).

OPM proposes to amend 5 CFR § 302.101(c)(6) to make clear the circumstances under which OPM, in consultation with the agency involved, determines the applicability of part 302 procedures on an agency-specific exception to the competitive service. Over the years, this paragraph has had several interpretations. A final rule was published in October 2020, 85 FR 63191, to clarify the intent of the provision. However, agencies continue to seek clarification on the types of positions under paragraph (c)(6) that are exempt from the appointment procedures of part 302. Rather than identify the positions by a specific Schedule, OPM proposes to use its general authority to except positions from the competitive service under Civil Service Rule VI (5 CFR 6.1) to identify the positions for which an exemption may be warranted. This amendment will be reflected in this rule under a newly designated paragraph (c)(8).

The proposed exemptions would not relieve agencies of any obligation under § 302.101(c) to follow the principle of veterans' preference as far as administratively feasible or to honor applicable priority consideration rights.

Proposed § 302.103 would revise the definition of "person entitled to priority consideration," which currently is limited to certain individuals recovering from compensable injury who apply for reappointment within 30 days of the date of cessation of compensation, to cover any individual entitled to priority consideration under 5 U.S.C. 8151, part 353, §§ 302.303 and 302.304, a final order, or other applicable statute, regulation, or binding legal authority. Proposed § 302.104 would clarify when agencies must apply the provisions of part 302 to accord

veterans' preference and priority consideration. Proposed § 302.105 would replace the existing special agency plan provision with a broader alternative-procedures rule, allowing agencies to use written alternative procedures that are applied uniformly, are consistent with merit system principles, and provide preference eligibles and person entitled to priority consideration at least as much advantage as the default procedures in part 302.

Proposed § 302.105(e) would authorize OPM to establish procedures, consistent with 5 U.S.C. 3317(b), 5 U.S.C. 3318, 5 U.S.C. 3319, 5 U.S.C. 3320, and part 302, for rating, ranking, and selection of eligible candidates by participating agencies in OPM-administered cross-government shared hiring actions, including OPM-led pooled hiring actions under § 302.601. OPM increasingly uses shared hiring actions to help agencies fill common mission-critical positions across the Government. The proposed provision would support those actions by permitting OPM to establish documentation and administration procedures suited to multi-agency certificates while preserving veterans' preference, pass-over requirements, and other applicable statutory protections.

Proposed § 302.106 would retain the requirement in current § 302.106 that an excepted service vacancy announcement include a reasonable accommodation statement that complies with part 330, subpart A. Proposed § 302.106 also would clarify that part 302 does not itself require an agency to issue a public vacancy announcement unless public notice is required by statute, regulation, the applicable appointing authority, or agency policy, and would require an announcement for a position covered by part 302 to include, as applicable, instructions for claiming veterans' preference and priority consideration.

In subpart B, proposed § 302.201 would modernize the treatment of veterans' preference under numerical rating, category rating, and alternative procedures. Proposed § 302.202 would revise qualification requirements, including by retaining the statutory limitation on minimum educational requirements for scientific, technical, or professional positions whose duties cannot be performed without prescribed education. Proposed § 302.201 would not retain the separate

unranked-referral preference notations in current § 302.201(b) because unranked referral would no longer be a default evaluation method under proposed § 302.302; an agency could adopt a comparable approach only through an alternative procedure under proposed § 302.105 that provides preference eligibles and persons entitled to priority consideration at least as much advantage as the default procedures of part 302.

In subpart C, proposed §§ 302.301 through 302.304 would replace the various employment lists and order-of-consideration framework with a simplified model. Proposed § 302.303 eliminates the requirement for agencies to establish priority reemployment lists, by geographic area, consisting of priority candidates who had been rated eligible for positions being filled. Instead, priority candidates would apply for consideration for vacancies on a case-by-case basis similar to the requirements for receiving consideration under the career transition programs in part 330 of this chapter. Proposed § 302.303 also includes a requirement that each agency maintain documented priority-consideration procedures and records sufficient to demonstrate compliance with proposed §§ 302.303 and 302.304. Proposed § 302.303 would continue to require agencies to provide priority consideration for specified current or former employees, including preference-eligible employees furloughed or separated from continuing excepted service appointments by RIF or similar workforce reduction action, and current or former employees entitled to priority consideration because of recovery from compensable injury or disability. In addition, the proposal would include any other individual entitled to reemployment priority under statute, regulation, final order, or other binding legal authority.

Under proposed § 302.303(a), an agency would be required to maintain documented procedures sufficient to identify, notify, evaluate, and consider priority candidates for positions covered by part 302. Although an agency would no longer be required to maintain separate records designated as a priority reemployment list, reemployment list, or regular employment list, it would be required to maintain records sufficient to document compliance with §§ 302.303 and 302.304. Under proposed § 302.303(f), each agency's written procedures would be required

to address, at a minimum: how individuals, including preference eligibles covered by 5 U.S.C. 3315, may apply for priority consideration for specific vacancies; how individuals may update their availability, location, qualification, grade, pay level, work schedule, and other placement information; how the agency will determine whether an individual is a priority candidate for a specific vacancy; how the agency will evaluate and rank priority candidates and apply veterans' preference among them; and how the agency will notify priority candidates of the outcome of consideration. An agency could administer these requirements through a standing electronic registry, an automated vacancy-matching system, vacancy-specific rosters, or another documented mechanism, provided that the mechanism satisfies §§ 302.303 and 302.304.

For purposes of 5 U.S.C. 3315, the records an agency maintains under proposed § 302.303(a) and (f)—which must be sufficient to identify each individual entitled to priority consideration and to determine, for each vacancy, whether the individual is qualified, available, and within the scope of consideration—would perform the function of the appropriate registers and employment lists required by section 3315. When 5 U.S.C. 3318(d) applies, the registered preference eligibles whom the agency has determined under proposed §§ 302.303 and 302.304 to be qualified, available, and within the scope of consideration for a particular vacancy would constitute the reemployment list appropriate for the position to be filled. Agencies would remain required to order and consider covered individuals in accordance with 5 U.S.C. 3313 and 3318, as applicable, and the implementing requirements of part 302, including the requirements in proposed § 302.303(f)(5) and (6) that the agency establish how priority candidates will be evaluated and ranked and how veterans' preference will be applied among them, and the requirements in proposed § 302.304(b) governing selection among priority candidates.

The proposed rule would also preserve the operative consequences of placement on the statutory register or employment list. Before making a covered appointment, proposed § 302.304 would require an agency to determine whether a qualified and available priority candidate is within the scope of consideration for the vacancy. If one priority candidate is available, the

agency ordinarily would be required to select that candidate before selecting another applicant. If more than one priority candidate is available, the agency would be required to apply the evaluation method established for the vacancy and applicable veterans' preference requirements, and to select from among the priority candidates before considering non-priority candidates. An agency could depart from those requirements only when an exception authorized by statute, regulation, or other applicable law applies and the agency documents the basis for the exception.

The proposal therefore does not replace the statutory list entitlement with generalized or discretionary consideration. Proposed § 302.303(f) would require each agency to establish its priority-consideration procedures in advance, including the means by which individuals may apply for priority consideration and keep their placement information current; proposed § 302.301(d) would require the agency, when filling a covered position, to provide a means for individuals claiming priority consideration to identify their eligibility and submit the information necessary for the agency to determine whether they are priority candidates; and proposed § 302.304(a) would require the agency to determine whether a priority candidate exists before making any covered appointment and, under proposed § 302.304(f), to document that determination. Maintaining records only after a selection has been made would not satisfy proposed §§ 302.303 and 302.304 or 5 U.S.C. 3315.

OPM recognizes that 5 U.S.C. 3320 does not permit OPM to substitute materially lesser protections for procedures that Congress has made applicable to the excepted service. In *Gingery v. Department of Defense*, 550 F.3d 1347, 1352–54 (Fed. Cir. 2008), the Federal Circuit held that an OPM regulation could not replace the pass-over protections prescribed by 5 U.S.C. 3318 with lesser protections for an excepted-service applicant when the statutory procedures could be applied. The proposed rule follows that principle. It does not rely on a determination that compliance with 5 U.S.C. 3315 is administratively infeasible, and it does not reduce the registration, ordering, referral, selection, or pass-over protections required by 5 U.S.C. 3315, 3318, and 3320. It changes only the administrative form in which agencies maintain and use the

information necessary to provide those protections.

The proposed approach is also consistent with the flexibility recognized in current § 302.105, under which an agency may use a system that does not conform to every procedural requirement of part 302 only if eligible applicants entitled to veterans' preference or priority consideration receive at least as much advantage as they would receive under the default procedures. Proposed § 302.105 would retain that limiting principle and would additionally make clear that an alternative procedure may not waive any statutory requirement.

The requirement in current § 302.303 that all other applicants be entered on a regular employment list presents a different issue. Section 3315 establishes a specific entitlement for covered preference eligibles who have been separated or furloughed; it does not independently require an agency to maintain a separately denominated regular employment list containing every other applicant. Agencies would remain required to evaluate, arrange, refer, and select other applicants in accordance with the applicable provisions of 5 U.S.C. 3308 through 3319 and part 302, but they would not be required to preserve the current "regular employment list" as a separate administrative artifact. Proposed § 302.304 would require agencies to consider and select qualified and available priority candidates before non-priority candidates unless a lawful exception applies.

In subpart D, proposed § 302.401 would set out simplified rules for selection and appointment after priority consideration has been satisfied. The proposed rule would replace the existing § 302.401 with a simpler selection rule organized around priority consideration, the evaluation and referral method used for the vacancy, veterans' preference and pass-over protections, discontinuance of consideration, documentation, and special conditions for OPM-led pooled hiring actions, as set out in proposed § 302.401(a) through (h).

First, proposed § 302.401(a) would require agencies to satisfy the priority-consideration requirements in proposed §§ 302.303 and 302.304 before making any appointment to a position covered by part 302. This makes priority consideration the first step in the selection process.

Second, proposed § 302.401(b) would govern selections when an agency uses numerical rating. Agencies could refer candidates using a method established before applications are solicited and documented in the recruitment file. The referral method could include a cut-off score, a set number of the highest-ranked eligible candidates, a set percentage of the highest-ranked eligible candidates, or another job-related method consistent with § 302.105. Selecting officials could select any referred eligible candidate but could not pass over a higher-standing preference eligible to select a lower-standing nonpreference eligible unless the agency satisfies the pass-over requirements in § 302.401(e).

Third, proposed § 302.401(c) would govern selections when an agency uses category rating. Agencies could select from the highest quality category. If fewer than three candidates are in the highest category, the agency could merge the highest and second-highest quality categories and select from the merged category. Preference eligibles must be listed ahead of nonpreference eligibles within each category or merged category, and agencies may not select a nonpreference eligible over a preference eligible in the same category unless the pass-over requirements are satisfied.

Fourth, proposed § 302.401(d) would expressly allow agencies to make selections under alternative procedures authorized by § 302.105. Those procedures must provide preference eligibles and persons entitled to priority consideration at least as much advantage in consideration, referral, and selection as they would receive under the default part 302 procedures.

Fifth, proposed § 302.401(e) would consolidate the rule for passing over preference eligibles. Agencies proposing to select a nonpreference eligible over a preference eligible must comply with applicable requirements in 5 U.S.C. 3318(c), 5 U.S.C. 3319(c)(6), and OPM instructions.

Sixth, proposed § 302.401(f) would address discontinuing consideration of an eligible candidate as authorized by 5 U.S.C. 3318(e), § 302.105(e), or other applicable law, in accordance with the procedures set forth in § 332.405, which implements the three-consideration

rule of 5 U.S.C. 3318(e).

Seventh, proposed § 302.401(g) would add a documentation requirement. Agencies must document the selection method used, the application of veterans' preference, the application of priority consideration, any pass-over decision, and the basis for selection. The documentation must be sufficient to permit reconstruction or third-party review.

Eighth, proposed § 302.401(h) would establish special conditions for OPM-led pooled hiring actions, including when OPM may discontinue the consideration of a candidate from a shared certificate after documented bona fide consideration for three separate appointments for the same position. Nothing in those provisions would authorize passing over a preference eligible except as permitted by § 302.401(e) and applicable law. These conditions would apply to OPM-led pooled hiring actions under § 302.601, as added by OPM's interim rule on shared certificates and OPM-led pooled hiring actions (91 FR 58347), and would supplement, not displace, the three-consideration provisions of §§ 302.502(b), 302.603(d), and 302.604(e).

The proposed rule would also revise § 302.402 to preserve a streamlined reappointment option while making clear that it cannot be used to bypass the new priority-consideration framework. Proposed § 302.402(a) would allow an agency, subject to §§ 302.303 and 302.304, to reappoint a current or former nontemporary executive-branch employee who is a preference eligible to a covered position without applying the examination, rating, ranking, and referral procedures of part 302. Proposed § 302.402(b) would clarify that this reappointment authority does not permit an agency to bypass a qualified and available person entitled to priority consideration unless a lawful exception under § 302.304 applies. Proposed § 302.402(c) would further clarify that any reappointment must still be consistent with statute, regulation, the applicable appointing authority, and agency reemployment policy.

Proposed §§ 302.201, 302.302, and 302.401 would continue to apply the same statutory veterans' preference protections through the rating method used for the vacancy: preference points would be added when numerical rating is used; preference eligibles would receive the

statutory ordering and placement advantages when category rating is used; and any alternative procedure would have to provide preference eligibles and persons entitled to priority consideration at least as much advantage in evaluation, referral, and selection as the default procedures in part 302. The proposed rule also would preserve applicable pass-over requirements before an agency may select a nonpreference eligible over a preference eligible. Accordingly, OPM views the proposed framework as a modernization of the mechanics for accepting, evaluating, referring, and selecting applicants, not a reduction in the veterans' preference and related protections required by 5 U.S.C. 3320.

Proposed § 302.701 would update the appeals provision for individuals asserting compensable-injury restoration rights. The proposed amendment would clarify that the relevant restoration or priority-consideration entitlement may arise under 5 U.S.C. 8151, part 353, or part 302, while preserving the existing limitation that an appeal must involve an alleged violation of restoration rights and factual information showing that the individual was denied restoration or priority consideration because another person was employed. Proposed § 302.701 also would clarify that a preference eligible or person entitled to priority consideration may appeal an action taken under part 302 only to the extent an appeal right is provided by statute, Merit Systems Protection Board (MSPB) regulation, or other applicable law, and that part 302 does not create an appeal right not otherwise provided by law.

OPM's interim rule on shared certificates and OPM-led pooled hiring actions redesignated subpart E of part 302 (Appeals) as subpart G and added new subparts E and F governing shared excepted service certificates and OPM-led pooled hiring actions. The references in this proposed rule reflect that redesignation, and, apart from the conforming cross-reference amendments described below, nothing in this proposed rule would alter the new subparts E and F. This proposal would correct the authority citation for part 302 to include 5 U.S.C. 1104 and the section-specific authority for subparts E and F, which were inadvertently not included in the interim rule.

Consistent with the paragraph designations proposed for §§ 302.302 and 302.401, OPM proposes conforming amendments to the cross-references in subparts E and F. Proposed §§ 302.502(b), 302.603(d), and 302.604(e) would replace the references to § 302.302(b)(1) and § 302.302(b)(2) with references to § 302.302(c) and § 302.302(d), respectively, and proposed §§ 302.603(e) and 302.604(f) would replace the reference to § 302.401(b) with a reference to § 302.401(e). These conforming amendments would align the cross-references with the redesignated paragraphs proposed in this rule and would not alter the three-consideration or pass-over requirements those provisions impose.

OPM is not proposing changes to §§ 302.102, 302.107, 302.108, 302.203, or 302.403. Those provisions address related but distinct requirements that remain necessary under the proposed part 302 framework.

C. Part 317—Employment in the Senior Executive Service

In part 317, OPM proposes to amend provisions governing conversion to the Senior Executive Service (SES), Qualifications Review Board certification, and SES reassignments. The proposed amendments would clarify that Schedule G service would be treated consistently with Schedule C service when identifying noncareer-type or transition-linked service. Specifically, OPM proposes to amend §§ 317.304 and 317.305 to include Schedule G in the provisions governing conversion of certain appointees to SES appointments; § 317.502 to include Schedule G appointees within the category of “noncareer-type” employees whose conversion to career SES appointment would not be forwarded to a Qualifications Review Board; and § 317.901 to include Schedule G appointees in the definition of noncareer appointee for purposes of the 120-day restriction on involuntary reassignment of career SES appointees.

D. Part 359—Removal from the Senior Executive Service; Guaranteed Placement in Other Personnel Systems

In part 359, OPM proposes to amend §§ 359.406 and 359.503 to include Schedule G appointees in the definition of noncareer appointee for purposes of restrictions on certain SES

removals following the appointment of a new agency head or certain noncareer supervisors.

OPM also proposes to amend § 359.701 to clarify that service in a Schedule G position, or in a position meeting the same criteria as a Schedule G position, would not constitute an appointment of equivalent tenure for purposes of guaranteed placement rights following certain removals from the SES.

E. Part 362—Pathways Programs

OPM proposes to revise part 362 to permit eligible Pathways Participants to be converted to permanent positions in Schedule Policy/Career. OPM also proposes to eliminate the definition of “advanced degree” in § 362.102 because the phrase is no longer used in part 362.

Proposed § 362.107 would be revised to describe conversion to the competitive service or Schedule Policy/Career. It would authorize noncompetitive conversion of an eligible Pathways Participant to a term or permanent position in the competitive service, or to a permanent position in Schedule Policy/Career if the position is a career position described in § 213.3601(a) and the conversion is authorized by part 362 and applicable OPM policy or guidance. The proposed section would distinguish direct conversion to a competitive-service position from conversion to Schedule Policy/Career. It would clarify that conversion to Schedule Policy/Career does not itself confer competitive status, career tenure, or a career or career-conditional appointment and that pre-conversion Pathways service does not count toward the 2 years of continuing Schedule Policy/Career service required for acquisition of competitive status under § 213.3601(e).

Proposed § 362.107 also would address career-transition programs, probationary periods, trial periods, and no-entitlement principles. Pathways Participants converted to career or career-conditional appointments under § 315.713 would be subject to applicable probationary-period requirements under part 11 and would acquire competitive status upon completion of those requirements. Pathways Participants converted to permanent Schedule Policy/Career appointments would not be required to serve a trial period under part 11 and would obtain competitive status after 2 years of continuing service in the Schedule Policy/Career position, but

that conversion would not itself confer competitive status. Competitive status could be retained or acquired only as provided in § 213.3601(e), § 362.107(f), § 3.1(a)(5), § 6.8(e), part 315, or another applicable statute, E.O., civil service rule, or OPM regulation.

The proposed rule also would revise Pathways reporting requirements to capture the number of Pathways Participants converted to Schedule Policy/Career and separated and would add § 362.110 to authorize OPM to develop and administer a governmentwide Pathways Leadership Development Program under the Recent Graduates Program authority. That program may include formal training, career development, and rotational assignments across participating agencies, and would be administered consistent with part 362 and applicable OPM implementing instructions.

F. Part 432—Performance Based Reduction in Grade and Removal Actions

OPM proposes to amend § 432.102(f)(11), as redesignated by OPM’s final rule on probationary and trial period appeals (91 FR 49072, Aug. 3, 2026), to add employees occupying positions in Schedule G to the categories of employees excluded from coverage under part 432. Part 432 implements the procedures governing performance-based reductions in grade and removals under 5 U.S.C. chapter 43. Section 432.102(f)(11) currently excludes employees occupying positions in Schedule C or Schedule Policy/Career, as authorized under part 213 of this chapter. This amendment would add Schedule G to that same exclusion.

This change is a conforming amendment to reflect the establishment of Schedule G in the excepted service. E.O. 14317 created Schedule G for positions of a policy-making or policy-advocating character that are normally subject to change as a result of a Presidential transition and directed OPM to adopt implementing regulations, with particular attention to amendments to 5 CFR part 213. E.O. 14317 also amended Civil Service Rule VI to provide that, except as required by statute, the Civil Service Rules and Regulations do not apply to removals from positions listed in Schedule G.

Consistent with that framework, OPM proposes that employees occupying Schedule G

positions should be treated in the same manner as employees occupying Schedule C and Schedule Policy/Career positions for purposes of part 432 coverage. The amendment would clarify that the performance-based reduction in grade and removal procedures in part 432 do not apply to employees occupying positions in Schedule G. The amendment would not otherwise alter the coverage of part 432, and employees not expressly excluded under § 432.102(f) would remain covered in accordance with that section.

G. Part 550—Pay Administration (General)

In part 550, OPM is proposing to amend the definition of “nonqualifying appointment” in § 550.703 to include an excepted appointment under Schedule G. This change would align the definition of “nonqualifying appointment” with the existing definition of “qualifying appointment,” which excludes excepted appointments without time limitation under Schedule C or Schedule G.

H. Part 731 (Suitability and Fitness) and Part 920 (Timing of Criminal History Inquiries)

In parts 731 and 920, OPM proposes to amend the definition of “political appointment” to include appointments under Schedule G. These changes would ensure that Schedule G appointees are treated consistently with other political appointees for purposes of suitability and fitness regulations in part 731 and the timing of criminal history inquiries in part 920.

I. Part 930—Administrative Law Judge Program

OPM proposes to amend part 930, subpart B, to conform the Administrative Law Judge Program regulations to Schedule E. Current part 930, subpart B, retains provisions tied to competitive examination, lists of eligibles, and career appointments. The proposed amendments would revise those provisions to recognize that new ALJ appointments are made under Schedule E, remove or reserve the rule on cost of competitive examination, revise appointment provisions, update incumbent and reappointment provisions, revise promotion provisions, and remove references to positions being filled through competitive examination. The proposed amendments would preserve applicable ALJ statutory protections, including those under 5 U.S.C. 3105 and

OPM proposes to revise § 930.210 to conform the ALJ RIF regulation to the current status of ALJ positions. Effective July 10, 2018, ALJ positions appointed under 5 U.S.C. 3105 were placed in Schedule E of the excepted service, while incumbents who were in the competitive service on that date retain competitive-service status so long as they remain in their current positions. Current § 930.210 was written against the prior competitive-service ALJ framework and provides ALJs both agency RPL placement assistance and placement on OPM's ALJ priority referral list. The proposed revision would distinguish between legacy competitive-service ALJs whose status is preserved under § 6.8(d) and ALJs appointed in Schedule E after July 10, 2018.

Under proposed § 930.210(a), ALJs would remain subject to the RIF regulations in part 351, except as modified by § 930.210. Schedule E ALJs would compete as excepted-service employees if otherwise covered by part 351, while ALJs whose competitive-service status is preserved under § 6.8(d) would continue to be treated as competitive-service employees for RIF purposes. This distinction reflects the current legal structure of ALJ appointments and avoids treating post-July 10, 2018 Schedule E ALJs as if they remained in the competitive service.

Proposed § 930.210(b) would also update the rule for determining ALJ retention standing. Because agencies may not rate the job performance of ALJs under § 930.206, agencies may not prepare, assign, or use an ALJ performance rating for RIF purposes. The proposed rule would instead require agencies to determine ALJ performance credit in accordance with the rules in part 351 governing employees who do not have ratings of record. This approach preserves the prohibition on ALJ performance ratings while allowing ALJs to be placed on retention registers under the RIF framework. Section 3502 requires OPM to prescribe RIF regulations that give due effect to tenure, military preference, length of service, and efficiency or performance ratings; the proposed rule applies that framework to ALJs without requiring agencies to create ALJ ratings where another regulation prohibits them.

Proposed § 930.210(c) would clarify assignment rights. Competitive-service employees receive assignment rights under § 351.701, but excepted-service assignment rights are discretionary under § 351.705 and may be provided only under agency procedures that are consistent with part 351 and uniformly applied in the RIF. Accordingly, proposed § 930.210(c) would provide that Schedule E ALJs do not have mandatory assignment rights under § 351.701. An agency may, in its discretion, provide Schedule E ALJs assignment rights under § 351.705, but if the agency does not do so, it may release a Schedule E ALJ from the competitive level in accordance with the order of release under part 351 without offering assignment to another position. By contrast, an ALJ whose competitive-service status is preserved under § 6.8(d) would remain subject to the competitive-service assignment-right provisions in § 351.701 while that status remains preserved.

Proposed § 930.210(d) would revise ALJ placement-assistance provisions. Under current 5 CFR part 330, the RPL is a required placement program for current and former competitive-service employees who will be or were separated by RIF or who recovered from compensable injury after more than one year. Accordingly, proposed § 930.210(d)(1) would provide that an ALJ in the competitive service whose status is preserved under § 6.8(d) remains eligible for RPL placement assistance under part 330 if reached in a RIF and issued a separation notice.

For Schedule E ALJs, proposed § 930.210(d)(2) would clarify that a Schedule E ALJ who is separated, furloughed, or demoted by RIF does not, solely by virtue of service in a Schedule E ALJ position or appointment under 5 U.S.C. 3105, have a statutory entitlement to priority consideration, priority referral, or reemployment as an ALJ. This treatment aligns Schedule E ALJs with other excepted-service employees separated by RIF. Under current OPM regulations, excepted service employees separated or furloughed from continuing appointments generally do not have a mandatory priority reemployment entitlement. Current § 302.303 requires a priority reemployment list for certain categories, including preference-eligible former employees separated or furloughed from continuing appointments without delinquency or

misconduct and certain compensable-injury cases, while agency priority consideration for nonpreference eligibles separated or furloughed from continuing appointments is discretionary.

Thus, the proposed rule would treat Schedule E ALJs like similarly situated excepted-service employees: a Schedule E ALJ would not receive a mandatory priority reemployment list or priority-referral entitlement merely because the position is an ALJ position, but the individual would retain any priority, restoration, or placement right that arises from another source of law. Proposed § 930.210(d)(3) would expressly preserve rights under 5 U.S.C. 8151, part 353, 5 U.S.C. 3315, 5 U.S.C. 3320, the Uniformed Services Employment and Reemployment Rights Act (USERRA), a final order, or another applicable statute, regulation, or binding legal authority. This savings clause is intended to ensure, for example, that a preference-eligible Schedule E ALJ or an ALJ with compensable-injury restoration rights receives any priority consideration required by the applicable authority.

OPM also proposes to remove the current mandatory ALJ-specific OPM priority referral list as a regulatory entitlement for Schedule E ALJs. OPM has determined that this special list is no longer necessary as a mandatory rule for employees appointed under Schedule E, particularly because Schedule E ALJs are now part of the excepted service and because current law does not provide an ALJ-specific statutory reemployment entitlement after a RIF. Section 7521 provides special good-cause protections for certain actions against ALJs, but expressly excludes RIF actions under 5 U.S.C. 3502 from those procedures. RIF actions involving ALJs are therefore governed by part 351 and § 930.210, not by the good-cause procedures applicable to disciplinary or adverse actions against ALJs. As a conforming change, OPM also proposes to remove § 930.201(e)(9), which describes OPM's authority to maintain and administer the ALJ priority referral program under § 930.210(c) and to redesignate the remaining paragraphs of § 930.201(e) accordingly.

Finally, proposed § 930.210(d)(4) would preserve flexibility for OPM or agencies to establish discretionary placement-assistance procedures for ALJs separated, furloughed, or

demoted by RIF. Any such discretionary procedure would have to be in writing and identify its coverage, duration, order of consideration, geographic scope, qualification requirements, and termination conditions. The proposed rule would also clarify that discretionary placement assistance does not create a statutory entitlement to priority consideration, priority referral, or reemployment. This approach preserves agency and OPM flexibility to provide additional assistance where appropriate, while aligning mandatory reemployment-priority rights for Schedule E ALJs with the treatment of other excepted-service employees under current OPM regulations.

Proposed § 930.211(c)(3) would conform the ALJ adverse-action regulation by clarifying that § 930.211 does not apply to RIF actions taken under 5 U.S.C. 3502, part 351, and § 930.210. This change preserves the distinction between ALJ disciplinary or adverse actions governed by 5 U.S.C. 7521 and RIF actions governed by 5 U.S.C. 3502, part 351, and § 930.210.

III. Requests for Comment

OPM requests comment on all aspects of this proposed rule. OPM is especially interested in comments on the following issues.

A. Governmentwide Schedule A and Schedule B authorities that may be obsolete, duplicative, or better handled differently

OPM requests comment on whether the following governmentwide Schedule A authorities in § 213.3102 remain necessary; whether any should be removed, reserved, consolidated with another authority, or converted to agency-specific Schedule A authorities; and whether agencies currently rely on these authorities for mission-critical hiring:

§ 213.3102(l) — temporary or intermittent professional, scientific, or technical experts for consultation purposes;

§ 213.3102(n) — local physicians, surgeons, or dentists employed under contract or on a part-time or fee basis;

§ 213.3102(o) — scientific, professional, or analytical positions filled by bona fide faculty

members of accredited colleges or universities with special qualifications, with employment limited to 130 working days per year;

§ 213.3102(x) — positions filled by inmates of penal or correctional institutions under work-release programs where a local recruiting shortage exists;

§ 213.3102(aa) — temporary scientific and professional research associate positions at GS-11 and above filled through the National Research Council post-doctoral research associate program; and

§ 213.3102(ff) — not more than 24 positions filled under an agreement between OPM and the Department of Justice (DOJ) by persons in programs administered by the Attorney General under Public Law 91-452 and related statutes.

Current § 213.3102 includes these authorities, including the expert/consultant, local physician/surgeon/dentist, faculty, work-release, National Research Council associate, and DOJ program authorities. OPM also requests comment on whether any of these authorities overlap with other statutory or regulatory hiring authorities, whether agencies continue to use them, and whether any program-specific authority should be narrowed, modernized, or moved from a governmentwide authority to an agency-specific authority.

OPM also requests comment on whether the governmentwide Schedule B authority in § 213.3202(n) remains necessary. That provision applies to positions filled by preference eligibles or veterans separated under honorable conditions after three or more years of continuous active military service who applied under merit-promotion procedures when applications were accepted from outside the agency's own workforce; the regulation states that no new appointments may be made under this authority after November 30, 1999. OPM requests comment on whether this authority should be removed and reserved, retained only for legacy status purposes, revised, or addressed through another regulatory mechanism.

OPM may, in a final rule, remove, reserve, consolidate, or narrow any of the identified authorities based on comments received, and interested parties should comment now if they rely

on any of these authorities and would be affected by such action. Also, OPM requests that agencies identify any current employees, mission-critical hiring pipelines, workforce-planning needs, or legal obligations that would be affected if any of these authorities were removed, reserved, consolidated, narrowed, or converted to agency-specific authority.

B. Additional Schedule A authorities that may warrant exemption from part 302 appointment procedures

Proposed § 302.101(c) would update the list of positions exempt from the appointment procedures of part 302 while preserving the principle of veterans' preference as far as administratively feasible and preserving legally required restoration and priority-consideration rights. OPM requests comment on whether additional governmentwide Schedule A appointing authorities should be exempt from part 302 appointment procedures.

C. Priority consideration framework in part 302/Reliance interests

OPM requests comment on whether the proposed priority-consideration framework in §§ 302.303 and 302.304 adequately preserves rights of employees who are furloughed, separated by RIF or similar workforce reduction action, or entitled to restoration or priority consideration because of recovery from compensable injury. OPM also requests comment on whether the proposed framework provides sufficient flexibility for agencies while preserving veterans' preference and legally required restoration and priority-placement rights.

OPM requests comment on whether the proposed rule, if finalized, should apply only to vacancies announced on or after the effective date, and how agencies should treat pending recruitment actions, existing employment lists, certificates, priority reemployment lists, and agency plans established under current part 302.

OPM further requests comment on any reliance interests implicated by the proposed rule and will address them with particularity in any final rule that it issues.

IV. Expected Impact of This Proposed Rule

A. Statement of Need

OPM is issuing this proposed rule to modernize and clarify the regulations governing appointments in the excepted service while preserving the statutory protections required by 5 U.S.C. 3320. Current part 302 relies on legacy employment-list and order-of-consideration procedures that are more complex than necessary to implement the veterans' preference, rating, ranking, referral, and pass-over requirements incorporated by 5 U.S.C. 3320. This proposed rule would replace those procedures with a simpler, more transparent framework that allows agencies to use numerical rating, category rating, or other job-related procedures consistent with 5 U.S.C. 3308 through 3319, while continuing to protect veterans' preference, compensable-injury restoration rights, and other legally required priority-placement rights. The rule is also needed to conform OPM's regulations to current excepted-service schedules and related Executive orders, including provisions governing Schedule E, Schedule G, Schedule Policy/Career, Pathways conversions, career-transition exceptions, merit-promotion rules, and ALJ appointments.

B. Impact

This proposed rule would primarily affect Federal agencies and Federal applicants or employees subject to the covered excepted service appointment authorities. OPM expects the rule to reduce administrative burden by simplifying part 302 appointment procedures and eliminating legacy employment-list and order-of-consideration structures. Agencies would retain responsibility for applying veterans' preference, establishing job-related qualification requirements, identifying and clearing priority candidates, documenting selection decisions, and complying with restoration rights and other applicable law.

OPM expects the conforming amendments to part 213, part 317, part 359, part 362, part 432, part 550, part 731, part 920, and part 930 to improve regulatory clarity by aligning the CFR with current Executive orders, Pathways conversion policy, Schedule Policy/Career implementation, Schedule G, and Schedule E ALJ appointments. OPM requests comment on the expected implementation costs and benefits of these changes, including any costs associated with revising agency excepted service hiring procedures, updating human resources (HR) systems and

personnel-action coding, training HR staff and selecting officials, and documenting priority-consideration and veterans' preference determinations.

C. Regulatory Alternatives

OPM considered retaining the current part 302 framework but rejected that approach because the existing procedures are more complex than necessary to implement the statutory requirements governing veterans' preference and excepted service appointments. OPM also considered preserving the employment-list and order-of-consideration terminology while simplifying specific provisions, but concluded that a more direct priority-consideration model would be clearer for agencies and applicants and would better align part 302 with modern hiring practices.

OPM further considered whether to address Schedule E, Schedule G, Schedule Policy/Career, Pathways conversions, and ALJ conforming amendments in separate rulemakings. OPM proposes to address them together because the provisions interact across parts 213, 302, 317, 359, 362, 432, 550, 731, 920, and 930. Addressing them in a single rulemaking promotes consistency and reduces the risk of conflicting regulatory text.

D. Costs

This proposed rule, once finalized, will affect the operations of approximately 80 Federal agencies—ranging from cabinet-level departments to small independent agencies. OPM will provide guidance on implementing this proposed rule in the form of a fact sheet or frequently asked questions. OPM estimates that this rulemaking will require individuals employed by these agencies to modify policies and procedures to implement the rulemaking and train HR practitioners and hiring managers on its use. For this cost analysis, OPM assumed an average salary rate of Federal employees performing this work using the rate in 2025 for GS-14, step 5, from the Washington, DC, locality pay table (\$161,486 annual locality rate and \$77.38 hourly locality rate). We assumed that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in an assumed labor cost of

\$154.76 per hour. To comply with the regulatory changes in the proposed rule, affected agencies will need to review the rule and update their policies and procedures. We estimate that, in the first year following publication of any final rule, doing so will require an average of 100 hours of work by employees per agency with an average hourly cost of \$154.76. This work would result in estimated costs in that first year of implementation of about \$15,476 per agency, and about \$1,238,080 in total governmentwide. Some agencies may incur additional costs because they have to establish excepted service employment policies where none have existed. We do not believe this rulemaking will substantially increase the ongoing administrative costs to agencies (including the administrative costs of using these new procedures and training new staff) because the rulemaking is streamlining existing procedures and processes.

E. Benefits

OPM expects this proposed rule to improve the clarity, consistency, and administrability of excepted service hiring regulations. The proposal would replace legacy employment-list and order-of-consideration procedures in part 302 with a more direct framework for identifying qualified applicants, applying veterans' preference, clearing priority candidates, documenting selection decisions, and preserving restoration and other legally required placement rights. This simplified structure should reduce agency burden, make excepted-service hiring procedures easier for HR staff and selecting officials to apply, and improve transparency for applicants and employees. The proposed amendments to parts 213, 317, 359, 362, 432, 550, 731, 920, and 930 would also align OPM's regulations with current excepted-service schedules, Pathways conversion rules, Schedule Policy/Career implementation, Schedule G, and Schedule E ALJ appointments, reducing ambiguity and the risk of inconsistent agency application. Overall, OPM expects the rule to support faster and more reliable hiring administration while preserving the statutory protections that apply to excepted service appointments.

F. Severability

If any provision of this rule is held to be invalid or unenforceable by its terms, or as

applied to any person or circumstance, OPM intends that it shall be severable from its respective section(s) and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances, unless such holding is that the provision is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this part and shall not affect the remainder thereof. Should provisions related to one of the sections be held to be invalid we believe that the other sections should be severable and would not be impacted.

V. Regulatory Compliance

1. Regulatory Review

OPM has examined the impact of this rule as required by E.O.s 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for rules that have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rulemaking does not reach that threshold but has otherwise been designated as a “significant regulatory action” under section 3(f) of E.O. 12866, as supplemented by E.O. 13563. This rulemaking is not expected to be considered an E.O. 14192 regulatory action because it imposes no more than de minimis costs.

2. Regulatory Flexibility Act

The Director of the Office of Personnel Management certifies that this regulation will not have a significant impact on a substantial number of small entities because it applies only to Federal agencies and employees.

3. Federalism

OPM has examined this proposed rule under E.O. 13132 and has determined that it will

not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

4. Civil Justice Reform

This rule meets the applicable standard set forth in section 3(a) and (b)(2) of E.O. 12988.

5. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that would impose spending costs on State, local, or tribal governments in the aggregate, or on the private sector, in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold is currently approximately \$193 million. This rulemaking will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, in excess of the threshold. Thus, no written assessment of unfunded mandates is required.

6. Congressional Review Act

OPM will submit the final rule, if issued, to Congress and the Comptroller General under 5 U.S.C. 801. OPM has preliminarily determined that this proposed rule would not be a “major rule” as defined in 5 U.S.C. 804(2).

7. Paperwork Reduction Act (PRA)

This proposed rule does not impose a new collection of information from the public within the meaning of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. 3501 et seq.). The proposed rule primarily governs internal Federal agency personnel procedures, documentation, and administration. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

List of Subjects

5 CFR Part 213

Government employees, Reporting and recordkeeping requirements.

5 CFR Part 302

Administrative practice and procedure, Authority delegations (Government agencies), Government contracts, Government employees, Investigations.

5 CFR Part 317

Administrative practice and procedure, Government employees.

5 CFR Part 359

Government employees.

5 CFR Part 362

Administrative practice and procedure, Colleges and universities, Government employees.

5 CFR Part 432

Government employees.

5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

5 CFR Part 731

Administrative practice and procedure, Authority delegations (Government agencies), Government contracts, Government employees, Investigations.

5 CFR Part 920

Administrative practice and procedure, Government employees.

5 CFR Part 930

Administrative practice and procedure, Computer technology, Government employees, Motor vehicles.

Alexys Stanley,

Federal Register Liaison.

Accordingly, for the reasons stated in the preamble, OPM proposes to amend 5 CFR parts 213, 302, 317, 359, 362, 432, 550, 731, 920, and 930 as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3161, 3301, and 3302; 38 U.S.C. 4301 et seq.; E.O. 10577, 19 FR 7521, 3 CFR, 1954-1958 Comp., p. 218; E.O. 13843, 83 FR 32755; E.O. 14171, 90 FR 8625; E.O. 14317, 90 FR 34753; E.O. 14410, 91 FR 34893.

Sec. 213.101 also issued under 5 U.S.C. 2103.

Sec. 213.3102 also issued under 5 U.S.C. 3307, 8337(h), and 8456; 38 U.S.C. 4301 et seq.; E.O. 12125, 44 FR 16879, 3 CFR, 1979 Comp., p. 375; E.O. 13124, 64 FR 31103, 3 CFR, 1999 Comp., p. 192; E.O. 13562, 75 FR 82585, 3 CFR, 2010 Comp., p. 291; E.O. 14217, 90 FR 10577; and Presidential Memorandum of May 11, 2010, 75 FR 27157, 3 CFR, 2010 Comp., p. 327.

Sec. 213.3202 also issued under 5 U.S.C. 3304.

Subpart A—General Provisions

2. Amend § 213.102 by revising the section heading and paragraph (b)(3)(i) to read as follows:

§ 213.102 Identification of positions in Schedules A, B, C, D, or G.

* * * * *

(b) * * *

(3) * * *

(i) Upon determining that any position or group of positions, as defined in paragraph (c) of this section, should be excepted indefinitely or temporarily from the competitive service, the Office of Personnel Management will authorize placement of the position or group of positions into Schedule A, B, C, D, or G, as applicable. Unless otherwise specified in a particular appointing authority, an agency may make Schedule A, B, C, D, or G appointments on either a permanent or nonpermanent basis, with any appropriate work schedule (*i.e.*, full-time, part-time, seasonal, on-call, or intermittent).

* * * * *

3. Revise § 213.103 to read as follows:

§ 213.103 Publication of excepted appointing authorities in Schedules A, B, C, D, E, Policy/Career, and G.

(a) Schedule A, B, C, D, E, Policy/Career, and G appointing authorities available for use by all agencies will be published as regulations in the Federal Register and the Code of Federal Regulations.

(b) OPM will publish annually, as a notice in the Federal Register, a consolidated listing of all agency-specific Schedule A, B, C, Policy/Career, and G authorities current as of June 30 of each year, with assigned authority numbers or other unique identifiers. The annual notice will also identify agency-specific authorities established, modified, or revoked during the preceding reporting period. OPM may publish additional notices concerning agency-specific authorities when OPM determines that additional notice would promote sound administration or public transparency.

4. Amend § 213.104 by revising the section heading and paragraphs (a) introductory text, (a)(1), (a)(2), (b)(1), and (b)(3)(iii) to read as follows:

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

(a) When OPM specifies that appointments under a particular Schedule A, B, C, D, or G authority must be temporary, intermittent, or seasonal, or when agencies elect to make temporary, intermittent, or seasonal appointments in Schedule A, B, C, D, or G, those terms have the following meaning:

(1) *Temporary appointments*, unless otherwise specified in a particular Schedule A, B, C, D, or G exception, are made for a specified period not to exceed 1 year and are subject to the time limits in paragraph (b) of this section. Time-limited appointments made for more than 1 year are not considered to be temporary appointments and are not subject to these time limits.

(2) *Intermittent positions* are positions without a regular tour of duty.

* * * *

(b) * *

(1) *Service limits*. Agencies may make temporary appointments for a period not to exceed 1 year, unless the applicable Schedule A, B, C, D, or G authority specifies a shorter period. Except as provided in paragraph (b)(3) of this section, agencies may extend temporary appointments for no more than 1 additional year (24 months of total service). Appointment to a successor position (*i.e.*, a position that replaces and absorbs the original position) is considered to be an extension of the original appointment. Appointment to a position involving the same basic duties, in the same major subdivision of the agency, and in the same local commuting area is also considered to be an extension of the original appointment.

* * * *

(3) * *

(iii) OPM may approve extension of specific temporary appointments beyond 2 years (24 months total service) for specific positions, projects or other unusual circumstances.

Subpart C—Excepted Schedules

Schedule A

5. Amend § 213.3102 by revising paragraphs (i)(1) and (u) to read as follows:

§ 213.3102 Entire executive civil service.

* * * * *

(i) * * *

(1) Positions in remote/isolated locations where examination is impracticable. A remote/isolated location is outside the local commuting area of a population center from which an employee can reasonably be expected to travel on short notice under adverse weather or road conditions that are normal for the area. For this purpose, a population center is a town with housing, schools, health care, stores and other businesses in which the government can reasonably expect to attract applicants. An individual appointed under this authority may not be employed in the same agency under a combination of this and any other appointment to positions involving related duties and requiring the same qualifications for more than 1,040 working hours in a service year. Temporary appointments under this authority may be extended in 1-year increments, with no limit on the number of such extensions, as an exception to the service limits in § 213.104.

* * * * *

(u) *Appointment of persons with intellectual disabilities, severe physical disabilities, or psychiatric disabilities —*

(1) *Purpose.* An agency may appoint, on a permanent, time-limited, or temporary basis, a person with an intellectual disability, a severe physical disability, or a psychiatric disability according to the provisions described below.

(2) *Proof of disability.*

(i) An agency must require proof of an applicant's intellectual disability, severe physical disability, or psychiatric disability prior to making an appointment under this section.

(ii) An agency may accept, as proof of disability, appropriate documentation (e.g., records, statements, or other appropriate information) issued by a licensed medical professional (e.g., a physician or other medical professional duly certified by a State, the District of Columbia, or a U.S. territory, to practice medicine); a licensed vocational rehabilitation specialist (State or private); or any Federal agency, State agency, or an agency of the District of Columbia or a U.S. territory that issues or provides disability benefits.

(3) *Permanent or time-limited employment options.* An agency may make permanent or time-limited appointments under this paragraph (u)(3) where an applicant supplies proof of disability as described in paragraph (u)(2) of this section and the agency determines that the individual is likely to succeed in performing the duties of the position for which he or she is applying. In determining whether the individual is likely to succeed in performing the duties of the position, the agency may rely upon the applicant's employment, educational, or other relevant experience, including but not limited to service under another type of appointment in the competitive or excepted services.

(4) *Temporary employment options.* An agency may make a temporary appointment when:

(i) The agency determines that it is necessary to observe the applicant on the job to determine whether the applicant is able or ready to perform the duties of the position. When an agency uses this option to determine an individual's job readiness, the hiring agency may convert the individual to a permanent appointment in the excepted service whenever the agency determines the individual is able to perform the duties of the position; or

(ii) The work is of a temporary nature.

(5) *Noncompetitive conversion to the competitive service.*

(i) An agency may noncompetitively convert to the competitive service an employee who has completed 2 years of satisfactory service under this authority in accordance with the

provisions of Executive Order 12125, as amended by Executive Order 13124, and § 315.709 of this chapter, except as provided in paragraph (u)(5)(ii) of this section.

(ii) Time spent on a temporary appointment specified in paragraph (u)(4)(ii) of this section does not count towards the 2-year requirement.

* * * * *

§ 213.3301 [Amended]

6. Amend § 213.3301 by removing the phrase “number from 213.3302 through 213.3399, or other appropriate number,” in paragraph (a) and adding in its place the phrase “unique identifier”.

7. Amend § 213.3402 by revising paragraph (b) to read as follows:

§ 213.3402 Entire executive civil service; Pathways Programs.

* * * * *

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

(1) Except as provided in paragraph (b)(2) of this section, initial appointments of Recent Graduates may be made at any grade level, not to exceed GS-11 (or equivalent level under another pay and classification system, including the Federal Wage System (FWS)), depending on the candidates' qualifications.

(2) Initial appointments may be made 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.

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

8. Add a new undesignated center heading after § 213.3402 to read as follows:

SCHEDULE E

9. Add new § 213.3501 below the undesignated heading SCHEDULE E to read as follows:

§ 213.3501 Positions of administrative law judge appointed under 5 U.S.C. 3105.

(a) An agency may appoint an individual under this section only to an administrative law judge position appointed under 5 U.S.C. 3105. Positions filled under this section are excepted from the competitive service and constitute Schedule E.

(b) A new appointment to an administrative law judge position made on or after July 10, 2018, must be made under Schedule E. This section does not alter the status of an incumbent administrative law judge whose competitive-service status is preserved under § 6.8(d) of this chapter.

(c) An appointment under this section is not subject to the appointment procedures of part 302 of this chapter, including examination and rating procedures. Each agency shall follow the principle of veterans' preference as far as administratively feasible.

(d) Appointments under this section must comply with § 6.3(b) of this chapter. At the time of application and any new appointment, an individual, other than an incumbent administrative law judge, must possess a professional license to practice law and be authorized to practice law under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territorial court established under the Constitution of the United States, subject to the license-status provisions in § 6.3(b) of this chapter.

(e) Appointments and personnel actions under this section remain subject to applicable statutory and regulatory requirements governing administrative law judges, including 5 U.S.C. 3105, 5 U.S.C. 7521, and subpart B of part 930 of this chapter.

(f) An individual appointed under this section is not subject to a trial period under part 11 of this chapter.

10. Amend § 213.3601 by:

a. Revising paragraphs (b) and (c);

b. Removing paragraph (d) and redesignating paragraphs (e) and (f) as paragraphs (d) and (e), respectively; and

c. Revising newly redesignated paragraph (e) and adding paragraph (f) to read as follows:

§ 213.3601 Career positions of a confidential, policy-determining, policy-making, or policy-advocating character.

* * * * *

(b)(1) Except as provided in paragraph (c) of this section, agencies must make appointments to positions in Schedule Policy/Career of the excepted service in the same manner as to positions in the competitive service, to include:

(i) Public notification of job opportunities;

(ii) Applicant evaluation based on valid, job-related assessments; and

(iii) Selections of highly qualified individuals based on merit.

(2) In making appointments under paragraph (b)(1) of this section, agencies must follow the principles of veterans' preference as far as administratively feasible based on the rating, ranking, and selection processes used for making appointments. Where numerical ratings are used in the evaluation and referral of candidates, agencies shall follow the regulations related to veterans' preference in part 302 and subpart A of part 337 of this chapter, as applicable. When category rating is used, agencies shall follow the procedures related to veterans' preference in part 302 and subpart C of part 337 of this chapter. Where another process is used in accordance with § 302.105 of this chapter, veteran status must be considered a positive factor.

(c) Agencies must make appointments to positions in Schedule Policy/Career of the excepted service that, but for their placement in Schedule Policy/Career, would be

listed in another excepted service schedule pursuant to the rules applicable to such positions in the corresponding schedule, including the application of veterans' preference as far as administratively feasible.

* * * * *

(e) Individuals appointed to positions in Schedule Policy/Career are not subject to trial periods under part 11 of this chapter. An individual appointed under paragraph (b) of this section in the same manner as an appointment in the competitive service acquires competitive status after completing 2 years of continuing service in the same or similar positions. Nothing in this paragraph limits the retention of competitive status under § 1.3(d) of this chapter or the acquisition of competitive status under § 3.1(a)(5) or § 6.8(e) of this chapter.

(f) To the extent permitted by the statute governing the position and any applicable Executive order, a position in a statutory personnel system outside title 5, United States Code, may be designated as Schedule Policy/Career if the position is of a confidential, policy-determining, policy-making, or policy-advocating character. For a position described in this paragraph that is otherwise covered by chapters 23, 43, or 75 of title 5, designation in Schedule Policy/Career affects coverage under those chapters to the extent provided by 5 U.S.C. 2302(a)(2)(B)(i), 4301(2)(G), 4303(e)(3), and 7511(b)(2), and applicable implementing regulations. Such designation does not otherwise alter the governing statutory personnel system unless expressly provided by statute, Executive order, or regulation.

11. Add a new undesignated center heading after § 213.3601 to read as follows:

SCHEDULE G

12. Add new § 213.3701 below the undesignated heading SCHEDULE G to read as follows:

§ 213.3701 Positions of a policy-making or policy-advocating character normally subject to change as a result of a Presidential transition.

Upon specific authorization by OPM, agencies may make appointments under this section to noncareer positions that are of a policy-making or policy-advocating character and are normally subject to change as a result of a Presidential transition. Positions filled under this authority are excepted from the competitive service and constitute Schedule G. Each position will be assigned a unique identifier to be used by the agency in recording appointments made under that authorization.

PART 302—EMPLOYMENT IN THE EXCEPTED SERVICE

13. The authority citation for part 302 is revised to read as follows:

Authority: 5 U.S.C. 1103, 1104, 1302, 3301, 3302, 3308, 3309, 3313, 3315, 3317, 3318, 3319, 3320, and 8151; E.O. 10577, 19 FR 7521, 3 CFR, 1954-1958 Comp., p. 218; E.O. 14171, 90 FR 8625.

Sec. 302.105 also issued under 5 U.S.C. 1104 and sec. 3(5), Pub. L. 95-454, 92 Stat. 1112.

Sec. 302.107 also issued under 5 U.S.C. 9201-9206 and sec. 1122(b)(1), Pub. L. 116-92, 133 Stat. 1605.

Secs. 302.108 and 302.203 also issued under E.O. 13764, 82 FR 8115, 3 CFR, 2017 Comp., p. 243.

Subparts E and F also issued under 5 U.S.C. 3318(c), 3319(c), and 3320; sec. 2(d), Pub. L. 114-137, 130 Stat. 312 (5 U.S.C. 3318 note).

Sec. 302.701 also issued under 5 U.S.C. chapter 77.

Subpart A—General Provisions

14. Revise § 302.101 to read as follows:

§ 302.101 Positions covered by regulations.

(a) *Positions covered.* With respect to the application of veterans' preference, this part applies to each position in the executive branch of the Federal Government that is not in the competitive service and that is subject to title 5, United States Code, or subject to a statutory requirement to follow the veterans' preference provisions of title 5. With respect to restoration rights due to compensable injury and appeals therefrom, this part applies to positions covered by 5 U.S.C. 8101(1) that are not in the competitive service.

(b) *Positions not covered.* This part does not apply to a position or appointment that is required by the Congress to be confirmed by, or made with the advice and consent of, the Senate.

(c) *Positions exempt from appointment procedures.* An agency is not required to apply the examination, rating, ranking, referral, and selection procedures of this part to the following positions or appointments. Each agency shall, however, follow the principle of veterans' preference as far as administratively feasible and, upon request of a qualified and available preference eligible, shall provide the reasons for the individual's nonselection. Nothing in this paragraph relieves an agency of any restoration, reemployment, or priority consideration obligation required by 5 U.S.C. 8151, part 353 of this chapter, this part, a final order, or other applicable law.

(1) Positions filled by persons appointed without pay or at pay of \$1 a year.

(2) Positions outside the continental United States and outside the State of Hawaii and the Commonwealth of Puerto Rico when filled by persons resident in the locality, and positions in the State of Hawaii and the Commonwealth of Puerto Rico when paid in accordance with prevailing wage rates.

(3) Positions that the exigencies of the national defense program require to be filled immediately before qualified applicants can be identified or considered, provided that appointments under this paragraph are temporary and may not exceed 1 year, with not more than 1 additional year of extension.

(4) Positions filled by appointees serving on an irregular or occasional basis whose hours or days of work are not based on a prearranged schedule and who are paid only for the time actually employed or for services actually performed.

(5) Positions paid on a fee basis.

(6) Attorney positions.

(7) Law clerk trainee positions filled under § 213.3102(e) of this chapter.

(8) Positions OPM excepts from the competitive service under § 6.1 of this chapter when OPM agrees with the agency that the positions should be included hereunder and provides in writing that an agency is not required to fill positions according to the procedures in this part.

(9) Positions included in Schedule C and Schedule G.

(10) Administrative law judge positions in Schedule E.

(11) Confidential, policy-determining, policy-making, or policy-advocating positions filled under Schedule Policy/Career. Appointments under this authority must be made in accordance with the provisions of § 213.3601 of this chapter.

(12) Positions filled by reemployment of an individual in the same agency, at the same or lower grade or pay level, and under the same appointing authority as the position last held.

(13) Positions in remote or isolated locations when filled under § 213.3102(i)(1) of this chapter.

(14) Positions for which a critical hiring need exists when filled under § 213.3102(i)(2) of this chapter.

(15) Positions filled under § 213.3102(u) of this chapter by persons with intellectual disabilities, severe physical disabilities, or psychiatric disabilities.

15. Revise § 302.103 to read as follows:

§ 302.103 Definitions.

For purposes of this part:

Person entitled to priority consideration means an individual who is entitled to priority consideration for appointment under 5 U.S.C. 8151, part 353 of this chapter, §§ 302.303 and 302.304, a final order, or other applicable statute, regulation, or binding legal authority.

16. Revise § 302.104 to read as follows:

§ 302.104 Applicability of regulations to applicants and employees.

Except as otherwise authorized in this chapter, an agency must apply the provisions of this part necessary to accord veterans' preference and priority consideration whenever a qualified preference eligible or a person entitled to priority consideration applies for appointment to a position covered by this part. When no qualified preference eligible or person entitled to priority consideration applies, the agency may use any lawful appointing procedure consistent with the applicable excepted service authority.

17. Revise § 302.105 to read as follows:

§ 302.105 Alternative procedures.

(a) *General.* An agency may use an alternative procedure for accepting, evaluating, referring, or selecting applicants for positions subject to this part if the procedure is in writing, is applied uniformly, is consistent with merit system principles, and provides preference eligibles and persons entitled to priority consideration at least as much advantage in consideration, referral, and selection as they would receive under the procedures otherwise set forth in this part.

(b) *Contents.* An alternative procedure must describe—

- (1) The positions or appointing authorities covered;
- (2) The method for accepting applications or expressions of interest;
- (3) The method for determining qualifications and evaluating applicants;
- (4) The method for applying veterans' preference;
- (5) The method for identifying and considering persons entitled to priority consideration;
- (6) The documentation the agency will maintain; and

(7) The circumstances under which the agency may use an exception to selection of a person entitled to priority consideration or pass over a preference eligible.

(c) *OPM review.* OPM may require an agency to submit an alternative procedure for review and may require the agency to modify or discontinue any procedure that does not satisfy this section.

(d) *No waiver of law.* An alternative procedure may not waive any statutory requirement, including any requirement concerning veterans' preference, pass-over of preference eligibles, restoration rights, priority consideration, suitability, fitness, or prohibited personnel practices.

(e) *OPM-led pooled hiring actions.* When OPM administers an OPM-led pooled hiring action under subpart F of this part, OPM may establish procedures, consistent with 5 U.S.C. 3317(b), 5 U.S.C. 3318, 5 U.S.C. 3319, 5 U.S.C. 3320, and this part, for the rating, ranking, and selection of eligible candidates by participating agencies.

18. Revise § 302.106 to read as follows:

§ 302.106 Vacancy announcements.

(a) This section does not require an agency to issue a public vacancy announcement unless public notice is required by statute, regulation, the applicable appointing authority, or agency policy.

(b) When an agency announces a vacancy for a position covered by this part, the announcement must also provide, as applicable, instructions for claiming veterans' preference and priority consideration.

(c) When an agency announces a vacancy in the excepted service, the announcement must include a reasonable accommodation statement that complies with part 330, subpart A of this chapter.

Subpart B—Eligibility Standards

19. Revise § 302.201 to read as follows:

§ 302.201 Persons entitled to veterans' preference.

In actions subject to this part, each agency shall grant veterans' preference as follows:

(a) *Numerical rating.* When numerical scores are used in evaluation and referral, the agency shall grant 5 additional points to preference eligibles under 5 U.S.C. 2108(3)(A) and (B), and 10 additional points to preference eligibles under 5 U.S.C. 2108(3)(C) through (G), consistent with 5 U.S.C. 3309.

(b) *Category rating.* When quality categories are used in evaluation and referral, preference eligibles do not receive additional points. The agency must apply veterans' preference consistent with 5 U.S.C. 3319(b) and (c)(6). Within each quality category, preference eligibles must be listed ahead of individuals who are not preference eligibles. For positions other than scientific and professional positions at the GS-9 level or equivalent or higher, qualified preference eligibles with a compensable service-connected disability of 10 percent or more must be listed in the highest quality category.

(c) *Alternative procedures.* When an agency uses an alternative procedure under § 302.105, the agency must provide preference eligibles at least as much advantage in evaluation, referral, and selection as they would receive under the procedures otherwise set forth in this part.

20. Revise § 302.202 to read as follows:

§ 302.202 Qualification requirements.

(a) *General.* Before making an appointment to a position covered by this part, each agency must establish qualification requirements that are job-related and consistent with the duties to be performed. Qualification requirements may include requirements relating to experience, training, competencies, knowledge, skills, abilities, citizenship, minimum age, physical condition, or other lawful job-related factors.

(b) *Documentation and uniform application.* Each agency must make its qualification requirements a matter of record, include the requirements in any vacancy announcement for the position, apply the requirements uniformly to all applicants, and furnish information concerning the requirements to an applicant upon request.

(c) *Minimum education.* An agency may not include a minimum educational requirement in qualification requirements unless the position is scientific, technical, or professional and the agency determines that the duties of the position cannot be performed by a person who does not have the prescribed minimum education.

(d) *Maximum age.* An agency may not establish a maximum age requirement for a position unless the requirement is authorized by statute or OPM regulation.

(e) *Waiver for preference eligibles.* Qualification requirements must include—

(1) A provision for waiver by the agency of requirements as to age, height, and weight for each preference eligible when the requirements are not essential to performance of the duties of the position; and

(2) A provision for waiver by the agency of physical requirements for each preference eligible when the agency, after giving due consideration to the recommendation of an accredited physician, finds that the applicant is physically able to discharge the duties of the position.

Subpart C—Accepting, Rating, and Arranging Applications

21. Revise § 302.301 to read as follows:

§ 302.301 Receipt of applications.

(a) Each agency shall determine the methods it will use to provide information concerning opportunities to apply for positions covered by this part. The agency shall provide applicants with information on how to apply, a description of the duties of the position, the applicable qualification requirements, and any other job-related information the agency determines is necessary.

(b) Each agency shall establish definite policies and procedures regarding the acceptance of applications for positions covered by this part and shall make those policies and procedures a matter of record.

(c) Each agency shall apply its application policies and procedures uniformly to all applicants being considered for employment and shall furnish information concerning those policies and procedures to an applicant upon request.

(d) When an agency fills a position covered by this part and priority consideration under § 302.303 may apply, the agency shall provide a means for individuals claiming priority consideration to identify their eligibility and submit the information necessary for the agency to determine whether they are priority candidates for the vacancy.

22. Revise § 302.302 to read as follows:

§ 302.302 Examination and evaluation of applicants.

(a) *General.* An agency may evaluate the qualifications of applicants for positions covered by this part at any time before an appointment is made. The evaluation must be job-related and may be conducted using numerical rating, category rating, or an alternative evaluation method authorized under § 302.105, unless otherwise exempt from the procedures of this part under § 302.101.

(b) *Record of evaluation method.* The agency shall make the evaluation method used to rate and rank applicants a matter of record and shall make information concerning that method available to an applicant upon request.

(c) *Numerical rating.* When an agency uses numerical rating, scores must be assigned on a scale of 100. An applicant must meet the qualification requirements established under § 302.202 and receive an eligible rating of 70 or more to be eligible for appointment. Candidates with eligible ratings must receive additional points for veterans' preference as provided in § 302.201.

(d) *Category rating.* When an agency uses category rating, the agency must establish and define at least two quality categories before accepting applications. The quality categories must reflect the requirements to perform the job successfully and must distinguish differences in the quality of candidates' job-related competencies, knowledge, skills, and abilities. An agency may

not establish a “not qualified” category. Only qualified applicants may be placed in a quality category. Veterans’ preference must be applied as provided in § 302.201 and 5 U.S.C. 3319.

(e) *Alternative evaluation methods.* When an agency uses an alternative evaluation method authorized under § 302.105, the agency must apply the method in accordance with its written alternative procedure and must ensure that preference eligibles and persons entitled to priority consideration receive at least as much advantage in referral or selection as they would receive under the procedures otherwise set forth in this part.

(f) *Nonpreference applicants for certain positions.* An agency may not consider or rate an application for the position of elevator operator, messenger, guard, or custodian submitted by a nonpreference eligible as long as at least three qualified preference eligibles are available for the position.

(g) *Evaluating experience.* When experience is a factor in determining eligibility, an agency shall credit a preference eligible —

(1) With time spent in the military service of the United States if the position for which the preference eligible is applying is similar to the position the preference eligible held immediately before entering military service; and

(2) With all valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether pay was received therefor.

23. Revise § 302.303 to read as follows:

§ 302.303 Priority consideration.

(a) *General.* An agency shall maintain documented procedures sufficient to identify, notify, evaluate, and consider priority candidates for positions covered by this part. In addition, an agency shall maintain sufficient records to document compliance with this section and § 302.304. An agency is not required to maintain separate records designated as a priority reemployment list, reemployment list, or regular employment list.

(b) *Priority candidate.* For purposes of this subpart, a priority candidate is an individual described in paragraph (c) of this section who has applied for priority consideration under the agency's procedures, is within the scope of priority consideration established under this section, is qualified for the vacancy under § 302.202, and is available for appointment.

(c) *Mandatory priority consideration.* Subject to any available and lawful exception, an agency shall provide priority consideration to the following individuals before appointing any other candidate to a position covered by this part:

(1) A current or former employee of the agency who is a preference eligible, who is serving or served under a continuing excepted service appointment, who has been or will be furloughed or separated by reduction in force or other workforce reduction action not based on delinquency or misconduct, and who applies or registers for reemployment under the agency's procedures;

(2) A current or former employee who is entitled to restoration or priority consideration because of recovery from compensable injury under 5 U.S.C. 8151, part 353 of this chapter, or other applicable law; and

(3) Any other individual to whom the agency is required to provide reemployment priority under statute, regulation, final order, or other binding legal authority.

(d) *Scope of priority consideration.*

(1) Except as otherwise required by statute, regulation, final order, or other binding legal authority, priority consideration under paragraph (c)(1) of this section applies to positions in the agency in the local commuting area from which the individual was or will be furloughed or separated, at the same or lower grade or pay level, with no greater promotion potential, and with a work schedule no broader than the work schedule of the position from which the individual was or will be furloughed or separated.

(2) Priority consideration under paragraph (c)(2) of this section applies in accordance with 5 U.S.C. 8151, part 353 of this chapter, and other applicable law. Nothing in this section

limits an employee's right to immediate and unconditional restoration where such restoration is required by law or regulation.

(3) An agency may provide broader priority consideration than the minimum required by this section, including broader geographic consideration, additional grades or pay levels, different work schedules, or longer eligibility periods, if the agency establishes the broader consideration in written policy and applies it uniformly to similarly situated individuals.

(e) Duration of priority consideration.

(1) Priority consideration under paragraph (c)(1) of this section expires 2 years after the effective date of the furlough or separation, unless a longer period is required by statute, regulation, final order, or other binding legal authority, or the agency establishes a longer period in written policy.

(2) Priority consideration and restoration rights under paragraph (c)(2) of this section are governed exclusively by 5 U.S.C. 8151, part 353 of this chapter, and other applicable law, and continue for the period, and on the terms, established by that statute and those regulations. Nothing in this section imposes a 2-year or other durational limit on an entitlement arising under 5 U.S.C. 8151 or part 353 of this chapter, and nothing in this section shall be construed to shorten, condition, or otherwise diminish the restoration or priority-consideration rights provided by that statute and those regulations.

(3) Priority consideration under paragraph (c)(3) of this section continues for the period required by the applicable statute, regulation, final order, or other binding legal authority.

(f) Agency procedures. Each agency shall establish written procedures for administering priority consideration under this section. The procedures must address, at a minimum—

(1) How individuals may apply for priority consideration for specific vacancies;

(2) How the agency will determine the qualifications of individuals who may be eligible for priority consideration;

(3) How individuals may update availability, location, qualification, grade, pay level, work schedule, and other placement information;

(4) How the agency will determine whether an individual is a priority candidate for a specific vacancy;

(5) How the agency will evaluate and rank priority candidates, if more than one priority candidate is available for the same vacancy;

(6) How the agency will apply veterans' preference among priority candidates; and

(7) How the agency will notify priority candidates of the outcome of consideration.

24. Revise § 302.304 to read as follows:

§ 302.304 Applying priority consideration and considering other candidates.

(a) *Priority consideration before other candidates.* Before appointing any individual to a position covered by this part, an agency must determine whether there is a priority candidate under § 302.303 for the vacancy. Except as provided in paragraph (d) of this section, an agency may not appoint a non-priority candidate if a priority candidate is qualified, available, within the scope of priority consideration, and eligible for selection for the vacancy.

(b) *Selection among priority candidates.*

(1) If there is one priority candidate for a vacancy, the agency must select that candidate before selecting any other candidate, unless an exception under paragraph (d) of this section applies.

(2) If there is more than one priority candidate for a vacancy, the agency shall evaluate the priority candidates using the method established for the vacancy under § 302.302 or § 302.105 and shall apply veterans' preference under § 302.201. The agency shall select from among the priority candidates before selecting any non-priority candidate, unless an exception under paragraph (d) of this section applies.

(3) An agency may not pass over a preference eligible to select a nonpreference eligible from the same group of priority candidates unless the applicable pass-over requirements of this part, 5 U.S.C. 3318, 5 U.S.C. 3319, or other applicable authority are satisfied.

(c) *Consideration of non-priority candidates.* After an agency has satisfied the priority consideration requirements of this section or has documented that no priority candidate is available and qualified for the vacancy, the agency may consider other qualified applicants using the evaluation method established for the vacancy under § 302.302 or § 302.105. The agency must apply veterans' preference under § 302.201.

(d) *Exceptions.* An agency may appoint an individual other than a priority candidate only when an available and lawful exception applies. Such exceptions include—

(1) A position or appointment exempt from the appointment procedures of this part under § 302.101(c), provided that the exemption does not relieve the agency of any restoration or priority-placement obligation required by 5 U.S.C. 8151, part 353 of this chapter, this part, or other applicable law;

(2) An action required to satisfy an individual's superior statutory or regulatory restoration, reemployment, or placement right, including immediate restoration under part 353 of this chapter, restoration following military service, or compliance with a final order of the Merit Systems Protection Board, a court, or other competent authority;

(3) A determination, documented by the agency, that no priority candidate is qualified, available, or within the scope of priority consideration for the vacancy;

(4) A determination, documented by the agency, that the duties of the position cannot be taken over without undue interruption by any available priority candidate;

(5) A priority candidate's declination of an offer, failure to respond to a written inquiry regarding availability, or failure to appear for a scheduled interview, when the agency's written inquiry or notice advised the candidate of the consequence of nonresponse or nonappearance;

(6) A conversion, extension, reappointment, or other personnel action that is expressly excepted from priority consideration by statute, regulation, this chapter, OPM-approved plan, or the terms of the applicable appointing authority; or

(7) Any other exception authorized in writing by OPM or otherwise required by law.

(e) *Notice to affected priority candidates.* When an agency uses an exception under paragraph (d) of this section to appoint an individual other than a priority candidate, the agency shall notify each adversely affected priority candidate of the reason for the exception. The agency shall notify the individual of any appeal rights provided by subpart G of this part, part 1201 of this title, part 353 of this chapter, or other applicable law.

(f) *Documentation.* An agency shall maintain documentation showing—

- (1) The vacancy or personnel action filled;
- (2) Whether priority consideration applied;
- (3) The identity of each priority candidate considered;
- (4) The agency's qualification and availability determination for each priority candidate;
- (5) The evaluation method used;
- (6) The application of veterans' preference, if applicable;
- (7) The selection or nonselection decision; and
- (8) The basis for any exception used under paragraph (d) of this section.

Subpart D—Selection and Appointment; Reappointment; and Qualifications for Promotion

25. Revise § 302.401 to read as follows:

§ 302.401 Selection and appointment.

(a) *Priority consideration first.* Before making an appointment to a position covered by this part, an agency must satisfy the priority consideration requirements in §§ 302.303 and 302.304.

(b) *Numerical rating.* When an agency uses numerical rating, the agency may refer candidates for selection using a method established before applications are solicited and documented in the recruitment file. The method may include a cut-off score, a set number of the highest-ranked eligible candidates, a set percentage of the highest-ranked eligible candidates, or another job-related method consistent with § 302.105. A selecting official may select any referred eligible candidate, except that the selecting official may not pass over a higher-standing preference eligible to select a lower-standing nonpreference eligible unless the agency satisfies paragraph (e) of this section.

(c) *Category rating.* When an agency uses category rating, the agency may select any eligible candidate in the highest quality category. If fewer than three candidates are in the highest quality category, the agency may merge the highest and second-highest quality categories and make selections from the merged category. Preference eligibles must be listed ahead of nonpreference eligibles within each category or merged category. A selecting official may not select a nonpreference eligible over a preference eligible in the same category unless the agency satisfies paragraph (e) of this section.

(d) *Alternative procedures.* When an agency uses an alternative procedure under § 302.105, selection must be made in accordance with that procedure. The procedure must provide preference eligibles and persons entitled to priority consideration at least as much advantage in consideration, referral, and selection as they would receive under the procedures otherwise set forth in this part.

(e) *Passing over a preference eligible.* When an agency proposes to pass over a preference eligible to select a nonpreference eligible, the agency must comply with the applicable requirements of 5 U.S.C. 3318(c), 5 U.S.C. 3319(c)(6), and OPM instructions.

(f) *Discontinuing consideration.* An agency may discontinue consideration of an eligible candidate only as authorized by 5 U.S.C. 3318(e), § 302.105(e), or other applicable law, consistent with the requirements in § 332.405 of this chapter. Nothing in this paragraph

authorizes passing over a preference eligible except as permitted by paragraph (e) of this section and applicable law.

(g) *Documentation.* The agency must document the selection method used, the application of veterans' preference, the application of priority consideration, any pass-over decision, and the basis for the selection. The documentation must be sufficient to permit reconstruction or third-party review.

(h) *Special conditions for OPM-led pooled hiring actions.*

(1) When OPM administers an OPM-led pooled hiring action under subpart F of this part, and determines, based on written documentation, that an eligible candidate has received bona fide consideration for three separate appointments from the same shared certificate for the same position, OPM may discontinue further referral of that candidate from that certificate for that position. For purposes of this paragraph, "the same position" means a position in the same occupational series, at the same grade or equivalent pay level, and involving substantially equivalent duties, qualification requirements, competencies, and, as applicable, duty location or other lawful position requirements. OPM's authority under this paragraph supplements, and does not limit, agency authority under §§ 302.502(b), 302.603(d), and 302.604(e).

(2) Before discontinuing referral under this paragraph, OPM must document the basis for the determination. The documentation must show that the candidate's application material was reviewed and considered, that the candidate received bona fide consideration for three separate appointments, and that discontinuing further referral is supported by a job-related skill, competency, location, availability, or other lawful requirement relevant to the position being filled. OPM must maintain documentation sufficient to reconstruct the action and must provide written notification to a candidate whose referral is discontinued under this paragraph upon request by the candidate.

(3) Nothing in this paragraph authorizes passing over a preference eligible except as permitted by § 302.401(e) and applicable law.

26. Revise § 302.402 to read as follows:

§ 302.402 Reappointment.

(a) Subject to §§ 302.303 and 302.304, an agency may reappoint a current or former nontemporary employee of the executive branch of the Federal Government who is a preference eligible to a position covered by this part without applying the examination, rating, ranking, and referral procedures of this part.

(b) This section does not authorize an agency to bypass a qualified and available person entitled to priority consideration unless a lawful exception under § 302.304 applies.

(c) A reappointment under this section must be otherwise consistent with statute, regulation, the applicable appointing authority, and any agency policy governing reemployment.

Subpart E—Shared Use of Excepted Service Certificates

§ 302.502 [Amended]

27. Amend § 302.502 in paragraph (b) by:

a. Removing the phrase “§ 302.302(b)(1)” and adding in its place the phrase “§ 302.302(c)”; and

b. Removing the phrase “§ 302.302(b)(2)” and adding in its place the phrase “§ 302.302(d)”.

Subpart F—OPM-Led Pooled Hiring Actions

§ 302.603 [Amended]

28. Amend § 302.603 by:

a. In paragraph (d), removing the phrase “§ 302.302(b)(1)” and adding in its place the phrase “§ 302.302(c)”, and removing the phrase “§ 302.302(b)(2)” and adding in its place the phrase “§ 302.302(d)”; and

b. In paragraph (e), removing the phrase “§ 302.401(b)” and adding in its place the phrase “§ 302.401(e)”.

§ 302.604 [Amended]

29. Amend § 302.604 by:

a. In paragraph (e), removing the phrase “§ 302.302(b)(1)” and adding in its place the phrase “§ 302.302(c)”, and removing the phrase “§ 302.302(b)(2)” and adding in its place the phrase “§ 302.302(d)”; and

b. In paragraph (f), removing the phrase “§ 302.401(b)” and adding in its place the phrase “§ 302.401(e)”.

Subpart G—Appeals

30. Revise § 302.701 to read as follows:

§ 302.701 Entitlement.

(a) *Restoration-rights appeals.* An individual who is covered by 5 U.S.C. 8101(1) and who is entitled to restoration or priority consideration under 5 U.S.C. 8151, part 353 of this chapter, or this part may appeal an alleged violation of restoration rights to the Merit Systems Protection Board under the Board’s regulations by presenting factual information that the individual was denied restoration or priority consideration because of the employment of another person.

(b) *Other appeals.* A preference eligible or person entitled to priority consideration may appeal an action taken under this part only to the extent an appeal right is provided by statute, MSPB regulation, or other applicable law. Nothing in this part creates an appeal right not otherwise provided by statute, regulation, or other applicable law.

PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

31. The authority citation for part 317 is revised to read as follows:

Authority: 5 U.S.C. 3392, 3393, 3395, 3397, 3592, 3593, 3595, 3596, 8414, and 8421; E.O. 14317, 90 FR 34753. Section 317.202 also issued under 5 U.S.C. 9201-9206 and Pub. L. 116-92, sec. 1122(b)(1).

32. Amend § 317.304 by revising paragraphs (a)(2)(i) and (iii) to read as follows:

§ 317.304 Conversion of career and career-type appointees.

(a) * * *

(2) * * *

(i) To a Schedule C or Schedule G position established under part 213 of this chapter;

* * * *

(iii) To a position which meets the same criteria as a Schedule C or Schedule G position or a position authorized to be filled by non-career executive assignment; or

* * * *

33. Amend § 317.305 by revising paragraph (a)(1) to read as follows:

§ 317.305 Conversion of excepted appointees.

(a) * * *

(1) In Schedule C or Schedule G of subpart C of part 213 of this chapter;

* * * *

34. Amend § 317.502 by revising paragraph (e) to read as follows:

§ 317.502 Qualifications Review Board certification.

* * * *

(e) An action to convert a “noncareer-type” employee to a career SES appointment in the employee’s current position or a successor to that position will not be forwarded to a QRB. A “noncareer-type” employee includes a noncareer SES appointee, a Schedule C appointee, a Schedule G appointee, or equivalent.

* * * *

35. Amend § 317.901 by revising paragraph (c)(1)(ii) to read as follows:

§ 317.901 Reassignments.

* * * * *

(c) * * *

(1) * * *

(ii) Noncareer appointee includes an SES noncareer or limited appointee, an appointee in a position filled under Schedule C or Schedule G, or an appointee in an Executive Schedule or equivalent position that is not required to be filled competitively.

* * * * *

**PART 359—REMOVAL FROM THE SENIOR EXECUTIVE SERVICE;
GUARANTEED PLACEMENT IN OTHER PERSONNEL SYSTEMS**

36. The authority citation for part 359 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3302, and 3596, unless otherwise noted; E.O. 14317, 90 FR 34753.

37. Amend § 359.406 by revising paragraph (b) to read as follows:

§ 359.406 Restrictions.

* * * * *

(b) For purposes of this section, a noncareer appointee includes an SES noncareer or limited appointee, an appointee in a position filled under Schedule C or Schedule G, or an appointee in an Executive Schedule or equivalent position other than a career Executive Schedule or equivalent position.

* * * * *

38. Amend § 359.503 by revising paragraph (b) to read as follows:

§ 359.503 Restrictions.

* * * * *

(b) For purposes of this section, a noncareer appointee includes an SES noncareer or limited appointee, an appointee in a position filled under Schedule C or Schedule G, or an appointee in an Executive Schedule or equivalent position other than a career Executive Schedule or equivalent position.

* * * * *

39. Amend § 359.701 by revising paragraphs (a)(1) and (2) to read as follows:

§ 359.701 Coverage.

* * * * *

(a) * * *

(1) To a Schedule C or Schedule G position established under part 213 of this chapter;

(2) To a position that meets the same criteria as a Schedule C or Schedule G position; or

* * * * *

PART 362—PATHWAYS PROGRAMS

40. The authority citation for part 362 is revised to read as follows:

Authority: E.O. 13562, 75 FR 82585, 3 CFR, 2010 Comp., p. 291, as amended by E.O. 14217, 90 FR 10577; and E.O. 14410, 91 FR 34893.

Subpart A—General Provisions

§ 362.102 [Amended]

41. Amend § 362.102 by removing the definition of “Advanced degree.”

42. Amend § 362.104 by revising paragraph (a)(8) to read as follows:

§ 362.104 Agency requirements.

(a) * * *

(8) Prescribe criteria and procedures on how the agency will determine whether it has the resources available to convert a Pathways Participant to a term or permanent position in the competitive service or, when authorized under § 362.107, to a permanent Schedule Policy/Career position. These procedures must specify the timeline for making the determination, which must include informing the Pathways Participant no later than 60 calendar days prior to the end of the appointment about whether the agency is able to convert them. If an agency is unable to convert a Pathways Participant, its procedures may include the actions it will take to assist a Participant in pursuing conversion at another agency, when appropriate.

* * * * *

43. Amend § 362.105 by revising paragraph (e)(2) to read as follows:

§ 362.105 Filling positions.

* * * * *

(e) * * *

(2) A Pathways Participant must be a United States citizen to be eligible for noncompetitive conversion to term or permanent employment in the competitive service or to permanent employment in Schedule Policy/Career.

* * * * *

44. Amend § 362.106 by revising paragraph (h) to read as follows:

§ 362.106 Participant Agreement.

* * * * *

(h) Minimum eligibility requirements for noncompetitive conversion to term or permanent competitive service employment, or to permanent Schedule Policy/Career

employment when authorized under § 362.107, according to the requirements of the applicable Pathways Program.

45. Revise § 362.107 to read as follows:

§ 362.107 Conversion to the competitive service or Schedule Policy/Career.

(a) *General conversion authority.* Subject to any limits on conversion imposed by the Director, and in accordance with the provisions of each Pathways Program, an agency may noncompetitively convert an eligible Pathways Participant to:

(1) A term or permanent position in the competitive service; or

(2) A permanent position in Schedule Policy/Career, if the position is a career position described in § 213.3601(a) of this chapter and the conversion is authorized under this part and any applicable OPM policy or guidance. A noncompetitive conversion to a permanent position is subject to review by OPM.

(b) *Competitive service term appointment.* A Pathways Participant who is noncompetitively converted to a competitive service term appointment may be subsequently converted noncompetitively to a permanent competitive service position.

(c) *Noncompetitive conversion.*

(1) An Intern may be converted to a position within the employing agency or any other agency within the Federal Government.

(2) A Recent Graduate may be converted to a position within the employing agency or any other agency within the Federal Government. Conversion to a position at a different agency is subject to § 362.305(c).

(d) *Reemployment-priority and career-transition programs.* The provisions of subparts B, F, and G of part 330 of this chapter do not apply to conversions made under this part.

(e) *Career tenure.* Time spent serving as a Pathways Participant counts toward career tenure when the individual is noncompetitively converted to a permanent position in the competitive service upon completion of the Pathways Program, with or without an intervening

term appointment, and without a break in service of 1 day, as provided in § 315.201 of this chapter.

(f) *Competitive status, probationary periods, and trial periods.*

(1) A Pathways Participant converted to a career or career-conditional appointment in the competitive service under § 315.713 of this chapter acquires competitive status upon completion of the probationary period requirements in part 11 of this chapter.

(2) A Pathways Participant converted to a Schedule Policy/Career position under paragraph (a)(2) of this section is not required to serve a trial period under part 11 of this chapter and obtains competitive status after 2 years of continuing service in the Schedule Policy/Career position.

(g) *No entitlement.* Service in a Pathways Program confers no right to further employment in either the competitive or excepted service. An agency wishing to convert a Pathways Participant must execute the required actions to do so. Nothing in this section confers a right to conversion to Schedule Policy/Career, conversion to the competitive service, competitive status, career tenure, a career or career-conditional appointment, or future appointment to the competitive service.

46. Amend § 362.109 by revising paragraph (c)(4) and adding paragraph (c)(5) to read as follows:

§ 362.109 Reporting requirements.

* * * * *

(c) * * *

(4) The number of Pathways Participants, per Program, converted to Schedule Policy/Career in the excepted service; and

(5) The number of Pathways Participants, per Program, who were separated.

47. Add § 362.110 to read as follows:

§ 362.110 Governmentwide Pathways Leadership Development Program.

OPM may develop and administer a governmentwide Pathways Leadership Development Program under the Recent Graduates Program authority. The program may include formal training, career development, and rotational assignments across participating agencies. The program must be administered consistent with this part, including the eligibility, appointment, participant agreement, performance, completion, and conversion requirements applicable to Recent Graduates. Responsibilities assigned to participants shall be consistent with the participant's qualifications, skills, competencies, career interests, agency needs, and the broader leadership development purpose of the program. OPM may issue implementing instructions governing the number of participants, participant selection, agency participation, training, rotations, certification of completion, and conversion review. Program Participants may be hired by agencies using the excepted service appointing authority provided by § 213.3402(b) of this chapter.

Subpart B—Internship Program

48. Amend § 362.203 by revising paragraph (g)(4) to read as follows:

§ 362.203 Filling positions.

* * * * *

(g) * * *

(4) Requirements for noncompetitive conversion to a term or permanent position in the competitive service, or to a permanent Schedule Policy/Career position when authorized under § 362.107, are understood by all parties.

* * * * *

49. Amend § 362.204 by revising the section heading and paragraphs (a), (b)(4), and (b)(5) to read as follows:

§ 362.204 Conversion to the competitive service or Schedule Policy/Career.

(a) An agency may noncompetitively convert an Intern who is a U.S. citizen to a term or permanent appointment in the competitive service or to a permanent appointment in Schedule Policy/Career under § 362.107.

(b) * * *

(4) Met the qualification standards for the position to which the Intern will be converted; and

(5) Met agency-specific requirements as specified in the agency's Participant Agreement with the Intern.

* * * * *

Subpart C—Recent Graduates Program

50. Amend § 362.303 by revising paragraphs (b)(3)(i) through (iii) to read as follows:

§ 362.303 Filling positions.

* * * * *

(b) * * *

(3) * * *

(i) An agency may make an initial appointment of a Recent Graduate to any position filled under the authority in this section for which the Recent Graduate qualifies, up to the GS-11 level (or equivalent under another pay and classification system, such as the Federal Wage System), except as provided in paragraph (b)(3)(ii) of this section.

(ii) Initial appointments may be made 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.

(iii) Positions must have progressively more responsible duties that provide career advancement opportunities (*i.e.*, positions must provide for career ladder advancement).

* * * * *

51. Amend § 362.304 by revising paragraphs (d) and (e) to read as follows:

§ 362.304 Movement between agencies.

* * * * *

(d) Time served under the previous agency's Recent Graduates Program is credited toward the Program requirements for noncompetitive conversion eligibility to the competitive service or, when authorized under § 362.107, to Schedule Policy/Career. Because there is no break in service, the Recent Graduate does not begin a new period in the Program upon moving to the new agency.

(e) The new employing agency's plan must identify requirements for Program completion and eligibility for noncompetitive conversion to the competitive service or, when authorized under § 362.107, to Schedule Policy/Career.

52. Revise § 362.305 to read as follows:

§ 362.305 Conversion to the competitive service or Schedule Policy/Career.

(a) An agency may noncompetitively convert a Recent Graduate who is a U.S. citizen to a competitive service term or permanent position or to a permanent Schedule Policy/Career position under § 362.107 when the Recent Graduate has:

(1) Successfully completed at least 1 year of continuous service in addition to all the requirements of the Recent Graduates Program;

(2) Demonstrated successful job performance consistent with the applicable performance appraisal program established under the agency's approved performance appraisal system that results in a rating of record (or summary rating) of at least fully successful or equivalent and a recommendation for conversion by the first-level supervisor (or in the case of a participant in an OPM-administered governmentwide Pathways Leadership Development Program under § 362.110, has been certified as successfully completing the Program by both OPM and the employing agency's Executive Resources Board); and

(3) Met the OPM Qualification Standard for the position to which the Recent Graduate will be converted.

(b) An agency must make the noncompetitive conversion effective on the date the service requirement is met, or at the end of an agency-approved extension, if applicable.

(c) A Recent Graduate may be converted to a permanent or term position in the competitive service, or to a permanent Schedule Policy/Career position when authorized under § 362.107, at a different agency when the following conditions are met:

(1) The employing (or losing) agency is unable to convert the Recent Graduate to a term or permanent position in the competitive service or a permanent position in the excepted service under Schedule Policy/Career in the current organizational unit of the employing agency or another component within the same Department or agency. The reasons for conversion at another agency may include unforeseen budgetary constraints; reorganizations; abolishment of positions; completion of cohort-based Pathways programs; or other appropriate reasons. Such a conversion to another agency may not be due to issues related to misconduct, poor performance, or suitability;

(2) Conversion must occur on or before the end of the prescribed Program period, plus any agency-approved extension; and

(3) The position at the new agency must have a full performance level that is equivalent to or lower than the position to which the Recent Graduate would have been converted at the prior agency.

PART 432—PERFORMANCE BASED REDUCTION IN GRADE AND REMOVAL ACTIONS

53. The authority citation for part 432 is revised to read as follows:

Authority: 5 U.S.C. 4303, 4305; E.O. 14284, 90 FR 17729; E.O. 14317, 90 FR 34753.

54. Amend § 432.102 by revising paragraph (f)(11) to read as follows:

§ 432.102 Coverage.

* * * * *

(f) * * *

(11) An employee occupying a position in Schedule C, Schedule G, or Schedule Policy/Career as authorized under part 213 of this chapter;

* * * * *

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart G—Severance Pay

55. The authority citation for subpart G of part 550 is revised to read as follows:

Authority: 5 U.S.C. 5595; E.O. 11257, 30 FR 14353, 3 CFR, 1964-1965 Comp., p. 357; E.O. 14317, 90 FR 34753; E.O. 14410, 91 FR 34893.

56. Amend the definition of “Nonqualifying appointment” in § 550.703 by revising paragraph (e) to read as follows:

§ 550.703 Definitions.

* * * * *

Nonqualifying appointment * * *

(e) An excepted appointment under Schedule C or Schedule G; a noncareer appointment in the Senior Executive Service, as defined in 5 U.S.C. 3132(a); or an equivalent appointment made for similar purposes; and

* * * * *

PART 731—SUITABILITY AND FITNESS

57. The authority citation for part 731 is revised to read as follows:

Authority: 5 U.S.C. 1103, 1302, 2301, 2302, 3301, 7301. E.O. 10577, 19 FR 7521, 3 CFR, 1954-1958 Comp., p. 218, as amended. E.O. 13467, 73 FR 38103, 3 CFR, 2009 Comp., p. 198, as amended. E.O. 13488, 74 FR 4111, 3 CFR, 2010 Comp., p. 189, as amended. E.O. 13764, 82 FR 8115, 3 CFR, 2017 Comp., p. 243. E.O. 14210, 90 FR 9669. Presidential

Memorandum of January 31, 2014, 3 CFR, 2014 Comp., p. 340. Presidential Memorandum of March 20, 2025, 90 FR 13683. E.O. 14317, 90 FR 34753. 5 CFR parts 1, 2, 5, and 6.

58. Amend § 731.101 by revising the definition of “Political appointment” in paragraph (a) to read as follows:

§ 731.101 Purpose.

(a) * * *

Political appointment means an appointment by Presidential nomination for confirmation by the Senate, an appointment by the President without Senate confirmation (except those appointed under 5 CFR 213.3102(c)); an appointment to a position compensated under the Executive Schedule (5 U.S.C. 5312 through 5316); an appointment of a White House Fellow to be assigned as an assistant to a top-level Federal officer (5 CFR 213.3102(z)); a Schedule C appointment (5 CFR 213.3301 and 213.3302); a Schedule G appointment (5 CFR 213.3701); a noncareer, limited term, or limited emergency Senior Executive Service appointment (5 CFR part 317, subpart F); an appointee to serve in a political capacity under agency-specific authority; and a provisional political appointment.

* * * * *

PART 920—TIMING OF CRIMINAL HISTORY INQUIRIES

59. The authority citation for part 920 is revised to read as follows:

Authority: 5 U.S.C. 1103(a)(5)(A), 9201-9206; Pub. L. 116-92, sec. 1122(b)(1) (5 U.S.C. 9201 note); E.O. 14317, 90 FR 34753.

60. Amend § 920.101 by revising the definition of “Political appointment” to read as follows:

§ 920.101 Definitions.

* * * * *

Political appointment means an appointment by the President without Senate confirmation (except those appointed under 5 CFR 213.3102(c)); an appointment to a position

compensated under the Executive Schedule (5 U.S.C. 5312 through 5316); an appointment of a White House Fellow to be assigned as an assistant to a top-level Federal officer (5 CFR 213.3102(z)); a Schedule C appointment (5 CFR 213.3301, 213.3302); a Schedule G appointment (5 CFR 213.3701); a noncareer, limited term, or limited emergency Senior Executive Service appointment (5 CFR part 317, subpart F); an appointee to serve in a political capacity under agency-specific authority; and a provisional political appointment.

* * * * *

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

Subpart B—Administrative Law Judge Program

61. The authority citation for subpart B is revised to read as follows:

Authority: 5 U.S.C. 1104(a), 1302(a), 1305, 3105, 3301, 3304, 3323(b), 3344, 4301(2)(D), 5372, and 7521; E.O. 10577, 19 FR 7521, 3 CFR, 1954-1958 Comp., p. 218; E.O. 13843, 83 FR 32755, 3 CFR, 2018 Comp., p. 844; E.O. 14410, 91 FR 34893.

62. Amend § 930.201 by revising paragraphs (b), (d), and (e)(1), removing paragraph (e)(9), and redesignating paragraphs (e)(10) and (e)(11) as paragraphs (e)(9) and (e)(10), respectively. The revisions read as follows:

§ 930.201 Coverage.

* * * * *

(b) Administrative law judge positions appointed under 5 U.S.C. 3105 are in Schedule E of the excepted service, except that an administrative law judge whose competitive-service status is preserved under § 6.8(d) of this chapter remains in the competitive service for as long as that status is preserved under that section. Except as otherwise stated in this subpart or other applicable law or regulation, the rules and regulations applicable to administrative law judge positions apply without regard to whether the position is in Schedule E or whether the incumbent retains preserved competitive-service status.

* * * * *

(d) OPM may prescribe qualification, assessment, documentation, or other requirements for appointment to administrative law judge positions as necessary to administer this subpart, § 213.3501 of this chapter, and applicable statutes and Executive orders. OPM is not required to administer a competitive examination or to prescribe a competitive examination methodology for appointments to administrative law judge positions made under Schedule E.

(e) * * *

(1) Establish qualification standards, assessment requirements, documentation requirements, and other appointment-related requirements for administrative law judge positions under 5 U.S.C. 3105, § 213.3501 of this chapter, and this subpart B, including any requirements necessary to determine whether an individual meets the minimum appointment requirements for an administrative law judge position;

* * * * *

63. Remove and reserve § 930.203.

§ 930.203 [Reserved]

64. Amend § 930.204 by revising paragraphs (a), (c), (e), and (g) to read as follows:

§ 930.204 Appointments and conditions of employment.

(a) *Appointment.* An agency may appoint an individual to an administrative law judge position only under Schedule E in accordance with § 213.3501 of this chapter, this subpart, and any applicable OPM policy or guidance. An appointment under this paragraph is subject to investigation, and an administrative law judge is subject to the suitability requirements in part 731 of this chapter, as applicable. An individual appointed to an administrative law judge position under Schedule E is not subject to a trial period under part 11 of this chapter.

* * * * *

(c) *Appointment of incumbents of newly classified administrative law judge positions.* An agency may appoint an incumbent employee to an administrative law judge position under

Schedule E if the employee is serving in the position when it is classified as an administrative law judge position on the basis of legislation, Executive order, or a decision of a court and if—

(1) The employee is serving under a permanent appointment in the competitive service or excepted service;

(2) The employee is serving in the position on the day the legislation, Executive order, or decision of the court on which the classification of the position is based becomes effective;

(3) OPM receives a recommendation for the employee's appointment from the agency concerned; and

(4) OPM determines the employee meets the qualification requirements and minimum appointment requirements for an administrative law judge position, including the professional license requirement in paragraph (b) of this section and § 6.3(b) of this chapter.

* * * * *

(e) *Promotion.*

(1) Part 335 of this chapter does not apply to the promotion of administrative law judges appointed under Schedule E. Promotion of an administrative law judge appointed under Schedule E is governed by this subpart, § 213.3501 of this chapter, and applicable OPM policy or guidance.

(2) To reclassify an administrative law judge position at a higher level, the agency must submit a request to OPM. When OPM approves the higher-level classification, OPM will direct the promotion of the administrative law judge occupying the position prior to the reclassification.

(3) For an administrative law judge whose competitive-service status is preserved under § 6.8(d) of this chapter, promotion remains subject to this subpart and applicable OPM direction. Part 335 of this chapter applies only to the extent OPM determines it remains applicable to the preserved competitive-service status and is not inconsistent with this subpart, § 213.3501 of this chapter, or applicable Executive orders.

* * * * *

(g) *Reinstatement or reappointment.* Subject to OPM approval, an agency may reinstate or reappoint a former administrative law judge who served under 5 U.S.C. 3105 if the individual meets the qualification requirements and minimum appointment requirements for an administrative law judge position, including the professional license requirement in paragraph (b) of this section and § 6.3(b) of this chapter. A reinstatement or reappointment under this paragraph must be made under Schedule E unless the individual is otherwise entitled by law or regulation to preserved competitive-service status.

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65. Amend § 930.205 by revising paragraph (b) to read as follows:

§ 930.205 Administrative law judge pay system.

* * * * *

(b) Pay level AL-3 is the basic pay level for administrative law judge positions, except for positions placed at pay levels AL-2 or AL-1 with OPM approval under paragraph (c) of this section.

* * * * *

66. Revise § 930.210 to read as follows:

§ 930.210 Reduction in force.

(a) *Application of reduction in force regulations.*

(1) Except as modified by this section, the reduction in force regulations in part 351 of this chapter apply to administrative law judges.

(2) An administrative law judge appointed under Schedule E on or after July 10, 2018, is in the excepted service and, if otherwise covered by part 351 of this chapter, is a competing employee in the excepted service tenure group.

(3) An administrative law judge whose competitive-service status is preserved under § 6.8(d) of this chapter remains in the competitive service for reduction in force purposes for as long as that status is preserved under § 6.8(d).

(b) Determination of retention standing.

(1) An agency must determine the retention standing of administrative law judges in accordance with part 351 of this chapter, as modified by this section.

(2) Administrative law judges in the competitive service under § 6.8(d) of this chapter must be listed on a competitive-service retention register. Administrative law judges in Schedule E must be listed on an excepted-service retention register.

(3) Because an agency may not rate the job performance of an administrative law judge under § 930.206, an agency may not assign, prepare, or use an administrative law judge performance rating for reduction in force purposes. The agency must determine the administrative law judge's performance credit in accordance with the rules in part 351 of this chapter governing employees who do not have ratings of record.

(c) Assignment rights.

(1) An agency may, in its discretion, provide assignment rights to administrative law judges in Schedule E in accordance with § 351.705 of this chapter, under written agency procedures that are uniformly and consistently applied in the reduction in force.

(2) If an agency adopts assignment rights for Schedule E administrative law judges under § 351.705 of this chapter, any assignment right must be limited to positions under the same appointing authority and must otherwise comply with part 351 of this chapter and this subpart.

(3) If an agency does not adopt assignment rights for Schedule E administrative law judges under § 351.705 of this chapter, the agency may release a Schedule E administrative law judge from the competitive level in accordance with the order of release under part 351 of this chapter without offering assignment to another position.

(4) An administrative law judge whose competitive-service status is preserved under § 6.8(d) of this chapter is subject to the competitive-service assignment right provisions in § 351.701 of this chapter while that competitive-service status remains preserved. Nothing in this section requires an agency to assign a competitive-service administrative law judge to a Schedule

E position or to preserve competitive-service status in a position where such status is not preserved under § 6.8(d) of this chapter.

(d) *Placement assistance.*

(1) An administrative law judge in the competitive service who is reached in an agency's reduction in force and receives a notification of separation is eligible for placement assistance under the agency's reemployment priority list established and maintained in accordance with subpart B of part 330 of this chapter.

(2) A Schedule E administrative law judge who is separated, furloughed, or demoted by reduction in force does not, solely by virtue of service in a Schedule E administrative law judge position or appointment under 5 U.S.C. 3105, have a statutory entitlement to priority consideration, priority referral, or reemployment as an administrative law judge.

(3) Nothing in this section limits any restoration, reemployment, placement, or priority-consideration right that an individual may have under 5 U.S.C. 8151, part 353 of this chapter, 5 U.S.C. 3315, 5 U.S.C. 3320, the Uniformed Services Employment and Reemployment Rights Act, a final order, or another applicable statute, regulation, or binding legal authority.

(4) OPM or an agency may establish discretionary placement-assistance procedures for administrative law judges separated, furloughed, or demoted by reduction in force. Any discretionary placement-assistance procedure must be in writing and must state its coverage, duration, order of consideration, geographic scope, qualification requirements, and any conditions for termination of eligibility. A discretionary placement-assistance procedure does not create a statutory entitlement to priority consideration, priority referral, or reemployment.

67. Amend § 930.211 by revising paragraph (c) introductory text and paragraph (c)(3) to read as follows:

§ 930.211 Actions against administrative law judges.

* * * * *

(c) Exceptions from procedures. This section does not apply—

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(3) To reduction in force actions taken under 5 U.S.C. 3502, part 351 of this chapter, and
§ 930.210; or

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