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**DEPARTMENTAL MANUAL**

Personnel

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Subchapter 3. OPM Approval in Filling Positions in the Senior Executive Service (SES) by a Career Appointment.

3.1 Initial Career Appointments in SES must be approved by a Qualifications Review Board established by Office of Personnel Management. (See 370 DM 920 for detailed instructions for the submission of cases involving initial Career Appointments in SES.)

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**Subchapter 4. Maintaining Control on the Number of Permanent Employees.**

**4.1 Excepted Positions.** To comply with the requirements for the establishment of an appointment system to maintain a ceiling for permanent full-time employees, the Department established a three year career-conditional appointment system for excepted positions. This system is comparable to that for the competitive service under civil service regulations.

A. The appointment system is used to fill all excepted positions in the Department, including those which are excepted for the purpose of employing individuals with Indian preference. The general provisions for filling positions under this system and the appointing authorities for the excepted service are contained in 370 DM 213 and 302 and FPM 213 and 302.

B. Under the provisions of the Indian preference law (Indian Reorganization Act of June 18, 1934), the Department established and is responsible for maintaining a career service for the employment of Indians in positions outside of the competitive civil service regulations. The Department is authorized to appoint Indians with established Indian preference without competitive action under Schedule A, excepted appointing authority, section 213.3112(a)(7). (See 370 DM 213, and FPM 213 ) The appointments must be in positions that are established in organizational units where it has been determined that the application of Indian preference is appropriate. Subchapter W, Miscellaneous Activities of Chapter 1, Title 25, Code of Federal Regulations established the new criteria for Indian preference.

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**Subchapter 6. Time-in-Grade Restrictions.**

**6.1 Scope.** The time-in-grade regulations in 5 CFR Part 300, Subpart F (also FPM Supplement 990-1, Book III, Part 300, Subpart F) which apply to positions in the competitive service will be applied to excepted positions in the Department.

**A. Authority Delegated for Competitive Service Waivers.** Under the terms of a Master Delegation Agreement effective June 20, 1980, between OPM and the Department, the Department is delegated authority to waive time-in-grade requirements for positions in the competitive service based on a determination of either hardship to the Department or inequity to the employee, subject to the following restrictions:

(1) Waivers authorized by the Department may total no more than three grades for an employee during any one service year. (For example, promotion from GS-9 to GS-12 or from GS-5 to GS-8; regardless of whether the series is one or two grade interval.) Generally, waivers must be limited to no more than one grade beyond the maximum advancement an employee could have attained under the existing regulations during any one service year. OPM would not expect to see waivers of three grades except in unusual cases where extreme hardship or inequity had been demonstrated.

(2) Prior OPM approval is still required to advance any employee beyond this three-grade limit during any one service year.

(3) Delegation of this authority applies to waiver of time-in-grade requirements only, not to waiver of qualifications requirements. Waivers involving qualifications for a position to which promotion is proposed require prior OPM approval.

(4) There must be negotiation or consultation, as appropriate, with recognized labor organizations where application of this authority would result in either a change in past personnel practice or an effect on negotiated promotion procedures.

(5) This authority may not be redelegated below the level of Assistant Secretary. (See 205 DM 8.2K(1))

(6) The use of this authority will be included in the internal personnel management evaluation program.

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B. Authority Delegated for Excepted Service Waivers. Time-in-grade requirements for excepted positions may be waived under the circumstances and subject to restrictions as described in 370 DM 300,6.1A, except that no OPM approvals are required for time-in-grade and qualifications waivers for excepted positions; and

(1) Prior approval of the Secretary is required to advance any employee more than three grades during any service year.

(2) Prior approval of the Director of Personnel (PPM) is required before waiver of any qualification standard for an excepted position.

C. Annual Report Requirement. Summary records on all uses of delegated authority to waive time-in-grade requirements, for competitive and excepted positions, must be maintained by each Assistant Secretary. By January 15 of each year, each Assistant Secretary will submit to the Director of Personnel (PPM) a report outlining the number of waivers authorized for competitive positions, significant problems encountered (if any), and the benefits derived from delegation. The same kind of information on waivers authorized for excepted positions must be included separately in the report. (Report Control Symbol 3-DOI-81-052 has been assigned to this reporting requirement.)

6.2 Normal Line of Promotion. The standards used to determine the normal line of promotion for two-grade promotions in the competitive service will be applied to excepted positions. (See FPM Chapter 300, Appendix A.) The basis for determination of all two-grade promotions made under normal line of promotion procedures must be recorded in the personnel folders of the promoted employees. Qualification standards, excepted or competitive, which are prescribed for the positions involved must be observed in effecting actions of this type. Prior approval must be obtained from the Office of the Assistant Secretary - Policy, Budget and Administration for a promotion in the excepted service which does not meet the criteria of the two-grade promotion standards in FPM Chapter 300, but is considered justified under normal line of promotion provisions. A full description of the special circumstances of the case should be furnished.

6.3 Excepted Positions and Actions Covered. All excepted positions in the Department at GS-15 and below or equivalent are subject to the time-in-grade restrictions.

6.4 Waivers Requiring Prior Approvals. Any request for OPM approval for an exception to time-in-grade requirements for a competitive position will be prepared for signature of the Secretary and submitted through the Office of Personnel (PPM) and the Office of the Assistant Secretary - Policy, Budget and Administration. Requests for exceptions to time-in-grade requirements for excepted positions are to be submitted to the Secretary through the Assistant Secretary - Policy, Budget and Administration. (See FPM 300,6.6.)

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Subchapter 7. Employment of Annuitants.

7.1 Employees Retired. An annuitant receiving annuity from the Civil Service Retirement and Disability Fund is not barred from employment in any position for which he/she is qualified. However, under 5 U.S.C. 3323(b) the annuitant serves at the will of the appointing officer. Regardless of the type of appointment a reemployed annuitant may be separated at any time at the discretion of the appointing officer.

7.2 Immediate Reemployment of Annuitant. An employee retired from a key position may not be reemployed in the position without prior Secretarial approval of the action. (See 370 DM 311 for positions designated as key positions.)

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**Subchapter 8. Detail of Employees.**

**8.1 Policy.** A detail of an employee shall not be made for the purpose of evading the intent of any law, rule, or regulation of the Office of Personnel Management (OPM) or the Department. It is the policy of the Department to limit the total period of a detail to one year or less except when a longer period is in the interest of the Department or is authorized by statute. Prior approval of OPM for extension as provided for in FPM 300, subchapter 8.3(b)2 is required. The request goes to the Area Office which services the installation to which the detail is made. For installations serviced by the Washington, D.C. Area Office the request is sent to the Associate Director, Staffing Services, OPM.

**8.2 Responsibility.**

**A. Secretarial.** The appropriateness of a detail of an employee in any of the following situations shall be determined at the Secretarial level. Requests for approval of such details shall be submitted to the Assistant Secretary - Policy, Budget and Administration.

(1) Detail to or from a position designated as a key position in 370 DM 311.

(2) Detail to other Federal agencies or organizations for periods in excess of 90 days.

(3) Detail to the Executive Office of the President.

(4) Extension of a detail beyond 120 days for employee holding a position that is excepted from the competitive service and the General Schedule System.

(5) Detail to a foreign government, to a foreign country or to an International Organization, if:

(a) The detail is for a period of three months or more, and

- The employee occupies a key position, or
- The employee is classified at GS-15 or above, or
- The employee is to be assigned as Chief or Head of a party or project.

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B. Bureau. The head of a bureau is responsible for maintaining control over details for the purpose of adhering to Departmental policy and instructions, the requirements set forth by the Office of Personnel Management in FPM 300, and other limitations and restrictions prescribed by laws and regulations cited in this chapter.

**8.3 Procedures and Instructions.**

A. Reimbursable Details. A detail on a reimbursable basis shall be covered by a written agreement negotiated in advance of the detail and signed by responsible administrative officials of both organizational units or agencies involved.

B. Records.

(1) An employee shall be given a written notice when a detail will extend beyond 30 days. Such a detail shall be recorded in the employee's official personnel folder in accordance with instructions in FPM 300.

(2) Personnel offices shall maintain appropriate records to insure that the time limit of a detail is not exceeded.

C. Details to Duties or Positions that have not been Classified. FPM 511 contains the requirements for classification action when employees are detailed beyond a period of 120 days to duties or positions which have not been classified.

D. Disciplinary Action. The office in which an employee is regularly employed is responsible for any disciplinary action taken during a detail to another position. Other than for a minor infraction of rules for which a reprimand may be given, the misconduct of an employee on detail shall be reported to his regular place of employment for appropriate action.

**8.4 Details Within the Department**. Employees may be detailed within the Department for periods not exceeding 120 days, except employees who are required by statute to be exclusively engaged on some specific work. (5 U.S.C. 3341) These details may be renewed by written order, in each particular case, for periods not exceeding 120 days, subject to the limitations established by the Office of Personnel Management in FPM 300.8. Under the delegation of authority in the Department, details of employees other than those falling in the categories listed in 370 DM 300,8.2A, may be approved by the head of the bureau or his/her designated representative. Details within the Department may be made in any of the following or similar circumstances.

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A. To relieve a temporary shortage of personnel.

(1) Details of employees from the bureaus to perform clerical-type help in the Office of the Secretary are coordinated by the Office of the Assistant Secretary - Policy, Budget and Administration. Copies of the SF-52s reporting details for periods in excess of 30 days shall be furnished the Office of Personnel, Office of the Assistant Secretary - Policy, Budget and Administration.

B. To perform work of a highly specialized nature.

C. To render service pending permanent assignment when final administrative action is delayed.

D. To provide training for employees.

8.5 Details from Excepted to Competitive Positions. The Master Delegation Agreement of June 1980 between the Department and OPM allows redelegation of authority to approve details from the excepted service to the competitive service to the Assistant Secretary - Policy, Budget and Administration and the Director of Personnel. Prior approval of OPM is no longer required for details of employees serving under Schedule A, B and C or statutory appointments to positions in the competitive service.

8.6 Details to Sensitive Positions. Details of employees to fill sensitive positions are restricted subject to the requirements of Section 3 of Executive Order 10450, FPM Supplement 990-1, Book II, and the Department's security procedures as set forth in 441 DM 1.

8.7 Details of Employees Between Federal Agencies. Details of employees between agencies on a reimbursable basis are authorized by Section 601 of Economy Act of June 30, 1932. (31 U.S.C. 686) In the absence of advance written agreements for reimbursement, details between Federal agencies will be regarded as accommodations for which no reimbursement or transfer of appropriation funds will be made. (13 Comp. Gen. 234)

A. Heads of bureaus may obtain services of employees from other agencies through details in the following or similar circumstances.

(1) To perform expert or specialized duties for a brief period when there are no qualified employees of the bureau available to perform the work.

(2) To perform duties of positions pending formal action to effect appointments to the positions.



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B. Heads of bureaus may detail employees to other agencies to render service for short periods not to exceed 90 days, when the employee can be spared and the details will not delay or disrupt the work programs of the bureaus.

(1) Details in excess of 90 days require prior Secretarial approval.

**8.8 Details to Commissions, Councils, or Boards.** Employees may not be detailed to serve with any commission, council, board, or other similar body unless creation of the same is authorized by law. (31 U.S.C. 673) "Authorized by law" means authorized by Congressional statute, as interpreted by the Attorney General in 27 Op. Atty. Gen. 432.

**8.9 Details to Committees, Boards, and Other Interagency Groups.** Appropriations of Federal agencies are available for expenses of committees, boards, or other interagency groups engaged in authorized activities of common interest, and composed of representatives of the agencies. Employees who render service to such groups, as representatives or otherwise, shall receive no additional compensation by virtue of such service. (59 Stat. 134; 31 U.S.C. 691)

**8.10 Details to Congressional Committees.** Appropriations of executive agencies may not be used to detail an employee to a Congressional Committee except under one of the following conditions. (21 Comp. Gen. 954 and 1055)

A. The detail is specifically authorized by law. ( A House or Senate resolution does not have the force and effect of a law.)

B. A Committee's work is related to the program of the organizational unit from which the employee is detailed and the detail will aid the unit in accomplishing a purpose for which its appropriation was made.

C. The detail of the employee will be for a few days or a week or so, and such action will not necessitate the hiring of an additional employee or will not be of detriment to the work of the office from which detailed.

**8.11 Details to the White House Office.** Employees of the Department may be detailed from time to time to the White House Office for temporary assistance as authorized by 3 U.S.C. 107.

A. The Office of the Assistant Secretary - Policy, Budget and Administration is charged with the responsibility for such details from the Department.

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**8.12 Details of Hearing Examiners.** Employees appointed as hearing examiners may be detailed for periods not to exceed six months, provided that the duties to which detailed are not inconsistent with the duties and responsibilities of an examiner, and provided that an employee has not had an aggregate of more than six months of such assignments within the preceding twelve months. (5 U.S.C. 3344) Regulations governing such details are contained in FPM Supplement 990-1, Book III, Part 930.

A. Requests to the OPM for approval of details of hearing examiners to duties of a higher grade or for waiver of the above regulations shall be prepared for the signature of the Director of Personnel.

**8.13 Details to Positions in Which the Appointments are Made by the President.** The details of officers to perform the duties of such positions, in cases of death, resignation, sickness or absenteeism of the occupants, are governed by 5 U.S.C. 3345 through 3349.

**8.14 Details of Employees to International Organizations.**

A. Under the provisions of 5 U.S.C. 3343, the Department is authorized to detail employees to international organizations, for periods of up to five years, when such services are requested by the organizations. Under special circumstances, when the Secretary of State determines it to be in the national interest, the five-year period may be extended for up to an additional three years. An employee while on detail remains an employee of the Department for all purposes. The employee's pay, allowances, privileges, rights, seniority, and other benefits are preserved. They continue to receive their pay, allowances and benefits from funds available to the Department. Details under this authority may be made with or without reimbursement. (See FPM 352 and FPM Supplement 990-1, Book III for the instructions and regulations governing the detail of an employee to an international organization)

B. Section 628 of P.L. 87-195, Foreign Assistance Act of 1961, as amended, authorizes the Department to detail employees to international organizations when such details are determined to be consistent with, and in furtherance of the purpose of the Act. (22 U.S.C. 2388) All privileges, rights, seniority, or other benefits as an employee of the Department will be preserved for the employee during the period of detail. (22 U.S.C. 2389) Details under this authority may be made with or without reimbursement. (22 U.S.C. 2390)

**8.15 Details of Employees to Agency for International Development Missions.**

A. Section 632(b) of P.L. 87-195, Foreign Assistance Act of 1961, as amended, authorizes the details of employees overseas for temporary duty on

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foreign assistance programs under Participating Agency Service Agreements negotiated between bureaus and the Agency for International Development. (22 U.S.C. 2392) Such details are without any change in the employment status of the individuals and are normally not in excess of six months. (See 370 DM 301.1, Exhibit 1, the General Agreement between the Agency for International Development and the Department for procedures in carrying out the provisions of section 632(b) of the Foreign Assistance Act of 1961, as amended)

B. Section 627 of P.L. 87-195, Foreign Assistance Act of 1961, as amended, authorizes the Secretary to detail an employee to any office or position in any foreign government or foreign government agency, where acceptance of such office or position does not involve the taking of an oath of allegiance to another government or the acceptance of compensation or other benefits from any foreign country by such an employee. (22 U.S.C. 2387) All privileges, rights, seniority, or other benefits as an employee of the Department shall be preserved for the employee during the period of detail. (22 U.S.C. 2389) Details under the authority may be made with or without reimbursement. (22 U.S.C. 2390)

8.16 Restrictions Against Details. Employees required by law to be exclusively engaged upon some specific work may not be detailed to other work. (5 U.S.C. 3341) For example, persons appointed as consultants may not be assigned to operating duties under the same appointment.

8.17 Details of Employees Between the Department and States, Local Governments, and Institutions of Higher Education Under the Intergovernmental Personnel Act of 1970, Public Law 91-648 (84 Stat. 1909). Upon request or with the concurrence of a State, of local government, or an institution of higher education, and with the consent of the employees concerned, details may be arranged to, or from, these installations to carry out work of mutual concern. These details may be for a period of up to two years with an extension of an additional two years in some circumstances. (5 U.S.C. 3372) The heads of bureaus or their designated representatives shall be responsible for the approval of details of employees under the mobility provisions of the Intergovernmental Personnel Act, to, or from, positions falling within their delegated authority. (See FPM 334 and Personnel Management issuances on Chapter 334 covering the assignment of employees under the Intergovernmental Personnel Act)

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Subchapter 10. Filling of Positions in the Senior Executive Service, GS-16, 17, and 18, and those authorized under 5 U.S.C. 3104.

10.1 Control of positions: 370 DM 920 sets forth the instructions and guidance on the Departmental control of positions established in the above three categories.

10.2 Pre-employment Interviews. The Department may pay candidates for SES, GS-16, 17, and 18, and 5 U.S.C. 3104 positions travel expenses incurred incident to preemployment interviews requested by the employing organization. (See FPM Chapter 571 )

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Subchapter 11. Employment of Noncitizens.

11.1 Employment in Excepted Positions. It is the policy of the Department to employ noncitizens in excepted positions only when there are no qualified citizens available or when there is a special need for a particular expertise not commonly acquired through training and work experience in the United States, such as, knowledge of high voltage transmission phenomena as experienced in the use of direct electric current, which is not yet used prevalently in the United States, or, the fundamentals of successful fish-rice farming, as carried out in oriental countries, etc.

11.2 Appropriation Act Restrictions. The appropriation act contains provisions which designate the conditions under which the funds may be used to employ noncitizens in the Department. Information as to the appropriateness of the employment of a national of a foreign country shall be obtained through the Office of Personnel, Division of Employment.

11.3 Definition of United States National as Contained in 8 U.S.C. 1408. Unless otherwise provided in 8 U.S.C. 1401, the following shall be nationals, but not citizens, of the United States at birth:

A. A person born in an outlying possession of the United States on or after the date of formal acquisition of such possession. Under this definition American Samoans and Swain Islanders are, as a general rule, nationals and not citizens of the United States, but are eligible for entry into the competitive service.

B. Some statutes exclude from their coverage noncitizens whose permanent duty station is outside a State or the District of Columbia, nationals are excluded under those statutes. The following statutes have language that excludes nationals from coverage.

- (1) 5 U.S.C. 5102(c)(11)--Classification of positions.
- (2) 5 U.S.C. 8701(a)(B)--Life insurance.
- (3) 5 U.S.C. 8901(1)(ii)--Health insurance.

C. For the purpose of the statutes cited above American Samoans and Swain Islanders whose permanent duty station is outside a State or the District of Columbia are excluded from such coverage.