

EMPLOYMENT IN THE EXCEPTED SERVICE

I. Purpose

This Directive establishes the Department of Homeland Security's (DHS or the Department) policy, responsibilities, and requirements for the employment of positions in the excepted service.

II. Scope

- A. This Directive applies to positions that are in the excepted service and are subject to the provisions of title 5, United States Code (U.S.C.), or subject to a statutory requirement to follow the veterans' preference provisions of Title 5.
- B. This Directive does not apply to positions or appointments required by the Congress to be confirmed by, or made with the advice and consent of, the Senate.
- C. This Directive does not apply to the positions exempt from appointment procedures and identified under title 5, Code of Federal Regulations (CFR) § 302.101(c).
- D. This Directive applies to DHS-specific excepted service authorities, unless specifically exempted from 5 CFR Part 302 appointment procedures by the Office of Personnel Management (OPM) at the time of approval.
- E. This Directive does not apply to positions or appointments authorized under the Aviation and Transportation Security Act, Public Law 107-71 (ATSA).

III. Authorities

- A. Title 5, United States Code (U.S.C.) § 2103, The Excepted Service
- B. Title 5, U.S.C., § 3320, "Excepted Service; Government of the District of Columbia; Selection"
- C. Title 5, U.S.C., § 7511(a), "Definitions; application"
- D. Title 5, CFR, Part 6, "Exceptions from the Competitive Service (Rule VI)"
- E. Title 5, CFR, Part 211, "Veteran Preference"

- F. Title 5, CFR, Part 213, “Excepted Service”
- G. Title 5, CFR, § 300.301, “Details of Employees”
- H. Title 5, CFR, Part 302, “Employment in the Excepted Service”
- I. Title 5, CFR, Part 330, Subpart F, “Agency Career Transition Assistance Plan (CTAP) for Local and Displaced Employees”
- J. Title 5, CFR, Part 330, Subpart G, “Interagency Career Transition Assistance Plan (ICTAP) for Displaced Employees”
- K. OPM Memorandum for Chief Human Capital Officers, Clarification of Procedures for Passover of Compensably-Disabled Preference Eligibles in the Excepted Service, March 12, 2009

IV. Responsibilities

A. **DHS Chief Human Capital Officer (CHCO):**

1. Develops Department-wide policy and guidance pertaining to excepted service employment, including DHS-specific excepted service authorities, consistent with DHS and OPM policies, procedures, guidance, and all applicable federal laws and regulations.
2. Oversees the establishment of the Department’s goals and objectives for employment in the excepted service.
3. Submits requests to OPM for approval to pass over preference eligibles with a 30% or more compensable service-connected disability for positions that are covered under this Directive.
4. Submits requests to OPM for approval to detail an excepted service employee, covered under 5 CFR § 300.301(c), to the competitive service.
5. Periodically reviews Component excepted service procedures, actions, qualification standards, and reports to assure conformance with DHS and OPM policies, procedures, guidance, and all applicable federal laws and regulations.

B. **Component heads:**

1. Comply with this Directive, any DHS and OPM policies, procedures, guidance, and all applicable federal laws and regulations regarding employment in the excepted service.

2. Ensure adherence to DHS and OPM policies, procedures, and guidance regarding the use of DHS-specific excepted service authorities.
3. Ensure the development and maintenance of Component procedures for the acceptance of applications and employment in the excepted service.
4. Provide for an open, systematic, and equitable assignment system that ensures positions covered under this Directive are filled according to merit factors and gives appropriate consideration to equal employment opportunity and veterans' hiring objectives.
5. Ensure that pass over/objection requests that require OPM approval are forwarded to the Office of the Chief Human Capital Officer (OCHCO) for review and submission to OPM.
6. Approve or deny pass over/objection requests that do not require OPM approval, and forward to the OCHCO, upon request, a periodic report of all actions taken. This approval may not be redelegated below the Component Human Resources (HR) Director level.
7. Ensure that requests to detail excepted service employees to the competitive service, who are covered by 5 CFR § 300.301(c), are forwarded to the OCHCO for review and submission to OPM.

C. **Executive Director, Headquarters Human Resources Management and Services (HRMS)** assume the responsibilities listed under section IV.B. for all Support Components with the exception of the National Protection and Programs Directorate (NPPD), Office of Inspector General (OIG), and the Federal Law Enforcement Training Center (FLETC).

D. **Heads of the NPPD, OIG, and FLETC** assume the responsibilities listed under Section IV.B. for their respective Support Component.

V. Policy and Requirements

- A. DHS excepted service authorities are subject to the appointment provisions of 5 CFR Part 302, unless specifically exempted by OPM at the time of approval.
- B. Unless specifically excluded under the applicable authority, excepted service positions covered under this Directive are classified using the OPM Classification Standards.
- C. Unless specifically excluded under the applicable excepted authority, the OPM's Qualification Standards are used when filling positions covered under this Directive. Component-developed qualification standards for positions covered under this Directive must adhere to 5 CFR § 302.202 and are reviewed by OCHCO for conformity under these regulations prior to use. Components maintain a permanent

record of such approved qualification standards.

- D. Components adhere to applicable DHS policy and guidance in applying career transition assistance to surplus and displaced excepted employees, in accordance with 5 CFR Part 330, Subparts F and G.
- E. Components check the DHS Priority Reemployment List (PRL) for former excepted service employees prior to determining order of consideration, in accordance with 5 CFR § 302.304, and filling positions.
- F. Components follow the provisions of 5 CFR Parts 211 and 302 relating to the examination, rating, and selection of an applicant, when a qualified preference eligible, non-preference eligible, or person entitled to priority consideration applies for appointment to a position covered by this Directive.
- G. Veterans' preference is granted in accordance with 5 CFR § 302.201.
- H. Components document application, assessment, and selection procedures, apply them uniformly, and furnish applicants information on such procedures upon request, in accordance with 5 CFR Part 302, Subpart C, when taking actions for positions covered under this Directive.
- I. Unless required by statutory or federal regulatory authority, public notice is not required for positions covered by 5 CFR Part 302; however, Components should notify applicants of excepted service vacancies within their organization, so that interested applicants have a reasonable opportunity to apply. Options include, but are not limited to, notification on the Component's website of existing or future excepted service vacancies; notices provided at job fairs; or traditional job opportunity announcements. Applications are accepted from 'Current [DHS or Component] employees' or 'All U.S. Citizens.'
- J. Components follow Order A under 5 CFR § 302.304(b) when applicants are assigned numerical ratings since DHS did not elect to establish a Reemployment List described under 5 CFR § 302.303(c). In cases where individuals have the same numerical rating, preference eligibles are listed ahead of non-preference eligibles, in accordance with 5 CFR 211.102(d)(3).
- K. Components may develop procedures similar to category rating (e.g., category grouping) to fill excepted service positions, in accordance with 5 CFR § 302.105.
- L. Components adhere to the selection procedures under 5 CFR § 302.401(a), or follow its category grouping procedures, when making selections. Components follow 5 CFR § 302.401(b) if passing over a preference eligible entitled to priority consideration, or discontinuing consideration of a preference eligible, when making selections.
- M. Pass overs of preference eligibles with a 30% or more compensable service connected disability for positions covered under this Directive require OPM approval.

Such requests are forwarded to OPM through, and with the concurrence of, the OCHCO. No correspondence is sent to the applicant until OCHCO concurrence is received. All pass over requests received each quarter are reported to OCHCO by the 15th of the month following the end of each quarter.

N. When making selections of employees for excepted appointments who are currently serving on non-temporary appointments in the competitive service, Components notify such employees in accordance with 5 CFR § 302.102(b).

O. Details of employees in the excepted service are made in accordance with 5 CFR § 300.301. Requests for OPM approval are forwarded through DHS OCHCO.

P. Components adhere to 5 CFR § 302.403 and V.C. in promotions and reassignments.

Q. Excepted service employees who meet the definition of 'employee' under 5 U.S.C. §§ 7511(a)(1)(B-C) have appeal rights to the Merit Systems Protection Board for adverse actions.

R. Former excepted service employees, specified under 5 CFR § 302.303(b)(1-4), are placed on DHS's PRL, consistent with 5 CFR Part 302, Subpart C. DHS does not elect to adopt discretionary items identified in 5 CFR § 302.303(a)(2), except to include on its PRL former DHS employees who are not preference eligibles and who meet the conditions described in 5 CFR § 302.303(b)(4). DHS also does not elect to establish a Reemployment List described under 5 CFR § 302.303(c). Consideration, selection, and appeal rights are given to eligible former employees in accordance with 5 CFR Part 302, Subparts C, D, E and applicable DHS policy and guidance.

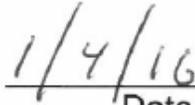
S. Records associated with personnel actions, including all documentation sufficient for third party reconstruction purposes, must be retained according to the record disposition schedule. All records created in a given year must be retained for a total of three full years. Records involved in litigation and grievance processes may be destroyed only after official notification is received from the Office of Personnel Management, Department of Justice, courts, etc. or if the time limits associated with grievance processes have passed, e.g., before the anniversary date.

VI. Questions

Address any questions or concerns regarding this Directive to the Office of the Chief Human Capital Officer.



Russell C. Deyo
Under Secretary for Management



Date