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5 U.S. Code § 3133 - Authorization of positions; authority for appointment

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(a) During each even-numbered calendar year, each agency shall—

(1) examine its needs for Senior Executive Service positions for each of the 2 fiscal years beginning after such calendar year; and

(2) submit to the Office of Personnel Management a written request for a specific number of Senior Executive Service positions for each of such fiscal years.

(b) Each agency request submitted under subsection (a) of this section shall—

(1) be based on the anticipated type and extent of program activities and budget requests of the agency for each of the 2 fiscal years involved, and such other factors as may be prescribed from time to time by the Office; and

(2) identify, by position title, positions which are proposed to be designated as or removed from designation as career reserved positions, and set forth justifications for such proposed actions.

(c) The Office of Personnel Management, in consultation with the Office of Management and Budget, shall review the request of each agency and shall authorize, for each of the 2 fiscal years covered by requests required under subsection (a) of this section, a specific number of Senior Executive Service positions for each agency. Beginning in 2023, the number of such positions authorized under the preceding sentence for the Department of Defense may not exceed the limitation provided in section 1109 of the National Defense Authorization Act for Fiscal Year 2017.

(d)

(1) The Office of Personnel Management may, on a written request of an agency or on its own initiative, make an adjustment in the number of positions authorized for any agency. Each agency request under this paragraph shall be submitted in such form, and shall be based on such factors, as the Office shall prescribe.

(2) The total number of positions in the Senior Executive Service may not at any time during any fiscal year exceed 105 percent of the total number of positions authorized under subsection (c) of this section for such fiscal year.

(e)

(1) Not later than July 1, 1979, and from time to time thereafter as the Director of the Office of Personnel Management finds appropriate, the Director shall establish, by rule issued in accordance with section 1103(b) of this title, the number of positions out of the total number of positions in the Senior Executive Service, as authorized by this section or section 413 of the Civil Service Reform Act of 1978, which are to be career reserved positions. Except as provided in paragraph (2) of this subsection, the number of positions required by this subsection to be career reserved positions shall not be less than the number of the positions then in the Senior Executive Service which, before the date of such Act, were authorized to be filled only through competitive civil service examination.

(2) The Director may, by rule, designate a number of career reserved positions which is less than the number required by paragraph (1) of this subsection only if the Director determines such lesser number necessary in order to designate as general positions one or more positions (other than positions described in section 3132(b)(3) of this title) which—

> **(A)** involve policymaking responsibilities which require the advocacy or management of programs of the President and support of controversial aspects of such programs;

> **(B)** involve significant participation in the major political policies of the President; or

> **(C)** require the senior executives in the positions to serve as personal assistants of, or advisers to, Presidential appointees.

> The Director shall provide a full explanation for his determination in each case.

(Added Pub. L. 95–454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1158; amended Pub. L. 114–328, div. A, title XI, § 1109(c), Dec. 23, 2016, 130 Stat. 2449.)