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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 317 and 335

RIN 3206-AH92

Employment in the Senior Executive Service; Promotion and Internal Placement

AGENCY: Office of Personnel
Management.

ACTION: Interim regulations with request
for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to correct existing regulations which are inconsistent with statutory provisions governing the 120-day moratorium on involuntary reassignments of career Senior Executive Service (SES) appointees following the appointment of a new agency head or a new noncareer immediate supervisor; and to authorize agencies to reinstate SES career appointees who have competitive service reinstatement eligibility to career appointments in any competitive service position for which qualified, including Senior Level (SL) positions.

EFFECTIVE DATE: July 24, 1998.

COMMENTS DUE: August 24, 1998.

ADDRESSES: Send or deliver comments to Ms. K. Joyce Edwards, Assistant Director for Executive Policy and Services, Office of Executive Resources, Room 6484, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Mr. Bede Bender (202) 606-1784.

SUPPLEMENTARY INFORMATION:

120-Day Moratorium on Involuntary Reassignments

The law in 5 U.S.C. 3395(e)(1) provides for a 120-day moratorium on involuntary reassignments of SES career

appointees following the appointment of a new agency head or the career appointee's most immediate supervisor who is a noncareer appointee and who has the authority to make an initial appraisal of the career appointee's performance. The law also provides in § 3395(e)(2) for an exception to the moratorium by permitting involuntary reassignments during the 120-day period when the reassignment results from a final unsatisfactory performance rating issued prior to the appointment that triggered the moratorium. In situations which meet this criterion for exception, it does not matter if a new agency head or noncareer supervisor (with authority to make an initial performance appraisal) is appointed subsequently, i.e., after issuance of a final unsatisfactory performance rating, nor does it matter if there has been a change in the agency official responsible for taking the reassignment action (the language of the current regulation). The reassignment action may proceed if the conditions for the exception are met.

In instances where there is a change in agency head, it is possible that career appointees will be subject to more than one moratorium—which almost certainly will not run concurrently but may overlap to some degree, i.e., appointment of a new agency head often results in some turnover among noncareer appointees. When applying the regulation in these instances, it is important to look at the starting date of each moratorium independently, in relation to the date on which the unsatisfactory rating was issued. For example, if a final rating of unsatisfactory is issued after the appointment of a new agency head, the moratorium initiated by that appointment must be allowed to run its course before any involuntary reassignment action can be effected. If a new noncareer supervisor is appointed after the new agency head, and also after the issuance of the unsatisfactory rating (i.e., when the rating is issued between the appointment of the new agency head and the new noncareer supervisor), then the second moratorium (i.e., the moratorium triggered by the appointment of the new noncareer supervisor) does not apply to an involuntary reassignment resulting from the unsatisfactory rating.

Conversion From Career SES to Career SL Appointment

Senior Level (SL) positions established under 5 CFR Part 319 are in the competitive service and are covered by OPM regulations governing the competitive service generally. Currently, under 5 CFR 335.103(c)(1)(vi), agencies must follow competitive procedures in agency merit promotion plans in order to reinstate a person to a permanent or temporary position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service. This means that career SES members may be reinstated to competitive service positions only at the same grade or pay level as the highest position they held previously in the competitive service.

By law, SES and SL positions are above the GS-15 level. In nearly all cases, career SES appointees have already competed at least Governmentwide. This regulatory change will recognize that fact by permitting reinstatement of career SES appointees to competitive service positions above the GS-15 level.

Waiver of Notice of Proposed Rulemaking

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking for the following reasons: (1) The purpose of the interim regulations pertaining to the 120-day moratorium on involuntary reassignments is to correct existing regulations which are inconsistent with statutory provisions governing the involuntary reassignment of career Senior Executive Service appointees. Because this change is taken directly from statute, public comment is unnecessary. (2) The provision pertaining to conversion of SES career to Senior Level career appointments was originally incorporated in proposed Promotion and Internal Placement regulations published in the **Federal Register** on February 20, 1996, in Volume 61, Number 34, page 6327. No comments were received pertaining to the proposed regulatory change.

Regulatory Flexibility Act

I certify that this regulation will not have a significant impact on a substantial number of small entities

because it pertains only to Federal agencies and employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Parts 317 and 335

Government employees.

U.S. Office of Personnel Management.

Janice R. Lachance,
Director.

Accordingly, OPM is amending 5 CFR part 317 as follows:

PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

1. The authority citation for part 317 continues to read as follows:

Authority: 5 U.S.C. 3392, 3393, 3393a, 3395, 3397, 3593, and 3595.

2. In § 317.901, the text in paragraph (c) and (c)(1) is republished for the convenience of the reader, paragraph (c)(2) is revised to read as follows:

§ 317.901 Reassignments.

* * * * *

(c) A career appointee may not be involuntarily reassigned within 120 days after the appointment of the head of an agency, or within 120 days after the appointment of the career appointee's most immediate supervisor who is a noncareer appointee and who has the authority to make an initial appraisal of the career appointee's performance under subpart C of part 430 of this chapter.

(1) *In this paragraph—*

(i) *Head of an agency* means the head of an executive or military department or the head of an independent establishment.

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

(2) These restrictions do not apply to the involuntary reassignment of a career appointee under 5 U.S.C. 4314(b)(3) based on a final performance rating of "Unsatisfactory" that was issued before the appointment of a new agency head or a new noncareer supervisor as defined in paragraph (c)(1) of this section. If a moratorium is already underway at the time the final rating is issued, then that moratorium must be completed before the reassignment action can be effected.

PART 335—PROMOTION AND INTERNAL PLACEMENT

2. The authority citation for part 335 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3330, and E.O. 10577 (3 CFR 1957–58 Comp., p. 218).

3. In § 335.103(c)(3) the text is republished for the convenience of the reader, a new paragraph (c)(3)(vii) is added to read as follows.

§ 335.103 Agency Promotion Programs.

* * * * *

(c) * * *

(3) *Discretionary actions.* Agencies may at their discretion except the following actions from competitive procedures of this section:

* * * * *

(vii) Appointments of career SES appointees with competitive service reinstatement eligibility to any position for which they qualify in the competitive service at any grade or salary level, including Senior-Level positions established under 5 CFR Part 319—Employment in Senior-Level and Scientific and Professional positions.

[FR Doc. 98–16825 Filed 6–23–98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

5 CFR Part 3501

43 CFR Part 20

RINS 1090–AA38, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of the Interior and Residual Employee Responsibilities and Conduct Regulations

AGENCY: Department of the Interior (Department).

ACTION: Final rule.

SUMMARY: The Department of the Interior, with the concurrence of the Office of Government Ethics (OGE), is issuing a final rule for employees of the Department that supplements the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) issued by OGE. This final rule is a necessary supplement to the Standards because it addresses ethical issues unique to the Department. The final rule adopts prior interim regulations as final, with amendments deleting the provision specifying the title of an employee to serve as the Designated Agency Ethics Official and a typographical correction. The portion of the interim rule concerning the

Department's separate employee responsibilities and conduct regulation is being amended by this final rule by changing the reference to the Designated Agency Ethics Official as well and by making technical revisions to the authority citation.

EFFECTIVE DATE: June 24, 1998.

FOR FURTHER INFORMATION CONTACT:

Mason Tsai or Linda T. Sullivan, Department Ethics Office, (202) 208–5916.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52583, and 60 FR 51667, and amended at 61 FR 42965–42970 (as corrected at 61 FR 48733), 61 FR 50689–50691 (interim rule revisions adopted as final at 62 FR 12531), and 62 FR 48746–48748, with additional grace period extensions at 59 FR 4779–4780, 60 FR 6390–6391, 60 FR 66857–66858, and 61 FR 40950–40952. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, establish uniform standards of ethical conduct for executive branch personnel.

On October 16, 1997, the Department, with OGE's concurrence, issued an interim rule with a request for comments, setting forth the Supplemental Standards of Ethical Conduct for Employees of the Department of the Interior and revising the Department's employee responsibilities and conduct regulations at 43 CFR part 20. See 62 FR 53713–53726. The Department's separate employee responsibilities and conduct regulations at 43 CFR part 20 had previously been revised in a final rule published on June 10, 1993 at 58 FR 32446–32449. The interim rule prescribed a 60-day comment period and invited comments from all interested parties. The Department received no comments in response to its requests for comments on the interim rule. The comment period closed on December 15, 1997.

The Department, with OGE's concurrence, is now publishing as final, with a few minor technical amendments, the interim Supplemental Standards of Conduct for Employees of the Department of the Interior and the Department's separate employee responsibilities and conduct interim regulations. The Department has determined that these supplemental regulations are necessary to the success of its ethics program.