

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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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:** Final regulations.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations that adopt without change interim regulations that corrected previous regulations which were inconsistent with statutory provisions that govern 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. These regulations also authorize agencies to reinstate SES career appointees who have competitive service reinstatement eligibility to career appointments in competitive service positions for which they qualify, including Senior Level (SL) positions.

**EFFECTIVE DATE:** December 7, 1998.

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

#### SUPPLEMENTARY INFORMATION:

#### 120-Day Moratorium on Involuntary Reassignments

On June 24, 1998, the Office of Personnel Management (OPM) published interim regulations (63 FR 34257) to correct existing regulations that were inconsistent with statutory provisions governing the 120-day moratorium on involuntary reassignments of Senior Executive Service (SES) career appointees. 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., the 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

The interim regulations published on June 24, 1998, also expanded the eligibility of SES career appointees for reinstatement to Senior Level (SL) positions. SL positions established under 5 CFR Part 319 are in the competitive service and are covered by OPM regulations governing the competitive service generally. Formerly, under 5 CFR 335.103(c)(1)(vi), agencies were required to follow competitive procedures in agency merit promotion plans in order to reinstate a person to a permanent or a 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 meant that career SES members could 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 recognized that fact by permitting reinstatement of career SES appointees to competitive service positions above the GS-15 level.

The 30-day comment period expired on August 24, 1998. OPM did not receive any comments during the comment period. Therefore, the interim rule is being adopted as a final rule.

#### Regulatory Flexibility Act

I certify that these regulations will not have a significant impact on a substantial number of small entities because they will apply 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, under the authority in 5 U.S.C. 3392, 3393, 3393a, 3395, 3397, 3593, and 3595, the interim regulations

amending 5 CFR Parts 317 and 335 (63 FR 34257) published on June 24, 1998, are adopted as final without any changes.

[FR Doc. 98-29768 Filed 11-5-98; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1499

RIN 0551-AA57

#### Foreign Donation of Agricultural Commodities

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** Commodity Credit Corporation (CCC) is issuing its final rule with respect to amendments to the regulations governing procedures for procuring ocean transportation for agricultural commodities provided under section 416(b) of the Agricultural Act of 1949 and the Food for Progress Act of 1985, published as an interim final rule in the **Federal Register** on February 23, 1998.

**EFFECTIVE DATE:** November 6, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ira D. Branson, Director, Commodity Credit Corporation, Program Support Division, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Avenue, S.W., Stop 1031; Washington, D.C. 20250-1031; telephone (202) 720-3573.

**SUPPLEMENTARY INFORMATION:** This final rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this final rule:

- (1) Will have an annual effect on the economy of less than \$100 million;
- (2) Will not 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;
- (3) Will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (4) Will not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or rights and obligations of recipients thereof; and
- (5) Will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

### Paperwork Reduction Act

This final rule does not contain any information collection requirements that require OMB approval under the provisions of the Paperwork Reduction Act.

### Executive Order 12372

This final rule is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 46 FR 29115 (June 24, 1983).

### Executive Order 12988

This final rule has been reviewed under the Executive Order 12988, Civil Justice Reform. The final rule will have pre-emptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The final rule will not have retroactive effect. Administrative proceedings are not required before parties may seek judicial review.

On February 23, 1998, CCC published an interim final rule to amend the regulations applicable to donations under section 416(b) of the Agricultural Act of 1949, and the Food for Progress Program to be consistent with the new title I, Pub. L. 480 requirements. In particular, the final interim rule deleted the prohibition in § 1499.8(b)(4) against "clarification or submission of additional information" under competitive freight invitations for bids and updated a cross reference to the title I, Pub. L. 480 regulations regarding information and certifications required from prospective shipping agents. CCC did not receive any comments regarding the interim final rule.

### List of Subjects in 7 CFR part 1499

Agricultural commodities, Exports, Foreign aid.

Accordingly, the interim rule amending 7 CFR part 1499 which was published at 63 FR 8837 on February 23,

1998, is adopted as a final rule without change.

**Christopher E. Goldthwait,**

*General Sales Manager, FAS, and Vice President, Commodity Credit Corporation.*

[FR Doc. 98-29726 Filed 11-5-98; 8:45 am]

BILLING CODE 3410-10-P

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1499

RIN 0551-AA56

#### Foreign Donation of Agricultural Commodities

**AGENCY:** Commodity Credit Corporation, USDA

**ACTION:** Final rule.

**SUMMARY:** This rule amends Commodity Credit Corporation (CCC) regulations governing foreign donations of agricultural commodities. This rule contains changes, corrections and clarifications to the regulations to achieve more effective management of foreign donations of agricultural commodities.

**EFFECTIVE DATE:** November 6, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ira D. Branson, Director, Commodity Credit Corporation Program Support Division, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Ave., S.W., Stop 1031; Washington, D.C. 20250-1031; telephone (202) 720-3573.

**SUPPLEMENTARY INFORMATION:** This rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this rule:

- (1) Will have an annual effect on the economy of less than \$100 million;
- (2) Will not 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;
- (3) Will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (4) Will not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or rights and obligations of recipients thereof; and
- (5) Will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.