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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 214, 317, 319, 359, and 534 RIN 3206-AG14

Executive Positions and Employment

AGENCY: Office of Personnel

Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations governing employment procedures for Senior Executive Service, senior-level, and scientific and professional positions as part of the implementation of Federal Personnel Manual (FPM) sunset. The regulations incorporate certain requirements that existed only in the provisionally retained FPM, which was sunset on December 31, 1994.

EFFECTIVE DATE: February 2, 1995. FOR FURTHER INFORMATION CONTACT: Neal Harwood at 202–606–2826.

SUPPLEMENTARY INFORMATION: On October 18, 1994, OPM issued proposed regulations [59 FR 52459] affecting Senior Executive Service (SES), seniorlevel (SL), and scientific and professional (ST) positions and employment. The proposed regulations continued (in some cases in modified form) certain requirements and authorities that would go out of existence when the provisionally retained FPM was sunset on December 31, 1994, because they were not specified in other regulations or statute. The proposed regulations also clarified certain existing regulatory provisions and deleted out-of-date provisions.

The comment period, which was 60 days from the date of publication, ended on December 19, 1994. Written comments were received from seven agencies and the Senior Executives Association (SEA).

Before reviewing the comments on specific provisions, we want to note that three agencies and SEA included comments supporting the regulations in general. One agency wanted to substantially reduce what was included in the regulations. SEA, on the other hand, in its comments on specific provisions recommended in a number of places that the regulations be made more restrictive.

As we stated in the proposed regulations, we have tried to take into account the recommendations in the Report of the National Performance Review to allow agencies more flexibility in managing their personnel system, while maintaining a "corporate approach to managing executive resources." Under such an approach, there are some basic features of executive personnel systems that need to be administered uniformly on a Governmentwide basis.

We have tried to hold these requirements to a minimum; but as we said in the proposed regulations "a basic regulatory framework (including certain procedural requirements) is necessary to assure an executive personnel system that meets statutory requirements and carries out merit system principles."

We recognize that different parties will have different views as to what are the basic requirements that need to be maintained. We believe the regulations provide an appropriate balance between agency flexibility and Governmentwide requirements. (As we pointed out in the proposed regulations, no requirements are imposed on agencies under the regulations that did not exist in the former FPM; and a number have been deleted or modified.) We will continue, however, to see how these requirements work in practice and will make necessary modifications in the future if there are problems that arise.

Part 317—Employment in the Senior Executive Service

(1) Section 317.501, Recruitment and Selection for Initial SES Career Appointment

Paragraph (b)(2) requires that vacancies must be included in an OPM listing of SES vacancies for at least 14 calendar days. One agency recommended that agencies be allowed to use a shorter period if they had a legitimate reason, and another agency recommended not having any minimum

period. We believe the 14-day notice period is needed to assure full and open competition and does not place an undue delay on any agency in filling its positions.

Subsequent to publication of the regulations a question arose whether the reannouncement of an SES vacancy after the original announcement has closed must also be included in OPM's listing for at least an additional 14 days. The regulations apply to all announcements, including reannouncements.

(2) Section 317.502. Qualifications Review Board (QRB) Certification

Paragraph (b) is revised to eliminate time limits on the submission of QRB cases. Currently, cases must be received by OPM within 9 months from the closing date of the vacancy announcement. The proposed regulations would have extended the deadline to 12 months. Elimination of the deadline for the submission of QRB cases responds to agency requests for more flexibility to make decisions on executive selections. Although OPM will not prescribe a deadline, we expect that most QRB cases will be submitted within 9 months of the closing date of the vacancy announcement. Agencies may, of course, establish internal deadlines to facilitate timely processing of QRB cases.

Paragraph (d) clarifies OPM's authority regarding the disposition of QRB cases when an agency head has changed or will be changing, or when there is a Presidential transition. One agency felt that a moratorium on QRB actions should not apply to it because of its national security functions and because the Deputy by law exercises the full powers of the agency head in the absence of the Secretary. The regulatory provision give OPM authority to hold or return QRB cases, but does not require such action. Particular situations can be addressed with the agency involved depending on the circumstances.

Paragraph (e) states that OPM will not submit to a QRB the conversion of a noncareer SES employee to a career SES appointment in the employee's own position or a successor to that position. One agency wanted to broaden the restriction to cover substantially similar positions. Another agency recommended eliminating the provision on the basis that it is a disenfranchising of the right to apply and be selected for