a position. The restriction is in the regulation because in this situation there is no genuine vacancy for which to compete since the position is currently occupied. Therefore, we do not believe it appropriate to extend the restriction to other positions that are vacant, even though they may be similar, or to eliminate the restriction.

(3) Section 317.601, Limited Appointments

The section provides a pool of limited appointment authorities equal to 2 percent of an agency's SES position allocation (with a minimum of one authority for each agency) that agencies can use without getting prior OPM approval as long as the appointee is currently a career or career-type appointee outside the SES.

Two agencies wanted to use the pool to make appointments from outside the Government. We have restricted the pool to career and career-type appointees to assure that it is used appropriately and not for noncareer or political-type appointments. As we noted in the proposed regulations, where appropriate OPM could still give an agency a separate quota for use in making limited appointments on its own under specified circumstances, e.g., to make appointments to scientific positions where there was a critical or emergency need.

(4) Section 317.901, Reassignments

Paragraph (d) states the authority of agencies to run 15-day (nongeographic) and 60-day (geographic) advance notices on reassignments of career SES appointees concurrently with the 120-day moratorium on involuntary reassignments following the appointment of a new agency head or noncareer supervisor (5 U.S.C. 3395(e)).

SEA stated that under 5 U.S.C. 3395(e) advance notices should not be issued until after the 120 days have expired. SEA argued that the intent of the law is to assure that the noncareer supervisor has at least 120 days to observe the performance of the career appointee before making a reassignment decision. We noted in the proposed regulations that if the notice could not be issued until after the moratorium, the moratorium in effect would be extended by the length of the notice period. SEA stated that the agency could detail the employee immediately after the moratorium expired until the notice period was over. That still extends by up to 60 days, however, the time before an official reassignment could be made.

Allowing the advance notice to run during the moratorium is not new. The authority had been explicitly stated in the former FPM since 1989. We see no conflict with the statutory provision on moratoriums, which governs when the reassignment can be effected. We want to note that agencies are still free to wait until after the moratorium to issue the advance notice, or to cancel a proposed reassignment before it is effected if the notice is issued during the moratorium.

(5) *Section 317.903, Details*

Paragraph (b) modifies time limits on details that previously existed in the FPM in order to reduce paperwork, provide greater flexibility for the SES as a separate service, and protect the rights of employees.

One agency recommended eliminating all regulations on the duration of details. SEA, on the other hand, recommended retaining the current provisions.

SEA argued as follows. Allowing details of SES members to unclassified duties for up to 240 days (in lieu of the current 120 days) would permit political appointees to place career SES appointees ''on the shelf'' for the prolonged periods. Allowing non-SES employees to be detailed to the SES noncompetitively for up to 240 days (in lieu of the current 120 days) violates the concept of equal pay for equal work. Requiring OPM approval of the details of non-SES employees to the SES only if the detail exceeds 240 days (in lieu of the current 120 days) and only if the person on detail supervises other SES employees (in lieu of also including nonsupervisory details) will encourage agencies to use details, which involve no adjustment in pay, rather than limited SES appointments for temporary assignments.

We understand SEA's concerns. Details, however, are a legitimate method of temporarily staffing a position. Providing additional flexibility in personnel operations, one of the stated goals of the National Performance Review, does not automatically mean that agencies will abuse their increased authority. We believe these provisions still adequately protect employee rights. As we noted in the proposed regulations, we believe changes we have made in the regulations on limited SES appointments will in fact lead to greater use of those appointments in lieu of details.

Part 319—Employment in Senior-Level and Scientific and Professional Positions

(1) *Subpart D, Recruitment and Examination*

The subpart delegates authority to agencies to recruit and examine applicants and establish civil service registers for SL positions in the competitive service in accordance with criteria prescribed in the regulations. The criteria implement provisions in statute (5 U.S.C. chapter 33, subchapter I) and elsewhere in the regulations for examination, certification, and selection of individuals who do not have status in the competitive service.

One agency said that all the procedures should be issued as guidance rather than incorporated in the regulations. Under 5 U.S.C. 1104, however, OPM is required to establish standards which shall apply to the activities of any agency under delegated authority.

Two agencies specifically recommended that the requirement to use a numerical rating scale of 100 points with 70 as passing in establishing a civil service register for competitive appointment be deleted. They said agencies should have the freedom to use any examining method they deem appropriate, provided all legal requirements are met.

The procedures in the regulations for staffing senior-level positions are based on existing statutory and regulatory provisions that govern the selection of non-status persons for competitive service positions. OPM is considering a number of proposed statutory and regulatory changes in the competitive examining system to make it less prescriptive in light of the National Performance Review recommendations on Federal staffing. One of the proposed changes would authorize agencies to examine for jobs using either the existing system of ranking candidates based on numerical ratings or a new method of placing candidates in quality groups based on qualifications (veterans would receive preference within quality groups). Under current law, numerical rating and ranking is required for competitive examining.

In order to simplify the regulations, however, we have deleted from subpart D the specific provisions in the proposed regulations covering establishment of a roster of eligibles, selection, and applicant rights. These provisions are covered elsewhere in 5 CFR where competitive examining for the civil service in general is discussed (e.g., section 337.101 on using a numerical rating scale of 100, section 332.404 on selecting from the highest three eligible on a certificate and section 300.104 on handling applicant complaints.)

Part 359—Removal From the SES; Guaranteed Placement in Other Personnel Systems

(1) *Subpart F, Reduction in Force*

Sections 359.603(a)(1) and (d)(2) are revised to permit the agency head to delegate to an official at the Assistant