Secretary level or above in departments, or an equivalent official above the director of personnel in other agencies, the authority to certify to OPM that the agency does not have a vacant SES position for a RIF'd employee or that a RIF'd employee referred by OPM is not qualified for the referred position. Current regulations do not permit any delegation.

SEA commented that since the law states that the "agency head" shall make these determinations, there is no authority under the law for any delegation. There is general authority in title 5 of the U.S. Code, however, for agency heads to delegate personnel authorities. Under 5 U.S.C. 302(b), "the head of an agency may delegate to subordinate officials the authority vested in him—(1) by law to take final action on matters pertaining to the employment, direction, and general administration of personnel under his agency \* \* \*." Delegation would be prohibited only if a law governing a particular authority specifically stated that the authority could not be delegated, or if OPM in exercising its regulatory authority under a law stated there could be no delegation.

SEA also wanted to have the agency head make the determinations because it believed that an official at the Assistant Secretary level would be subject to peer pressures that could preclude a correct determination. Individuals at the Assistant Secretary level make many decisions that affect managers throughout the agency (such as those affecting budget and personnel), and we believe these officials will be able to act in an impartial manner and protect employee rights, absent any facts to the contrary.

### **Waiver of Delay in Effective Date**

I find that good cause exists for making this rule effective on February 2, 1995. The delay in the effective date of this rule is being waived since the requirements established in the rule are not new. They previously were contained in the provisionally retained Federal Personnel Manual, which sunset on December 31, 1994. The regulations need to be made effective immediately to avoid any significant break in the application of the affected requirements.

### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will only affect Federal Government employees who are in executive positions.

#### **List of Subjects**

5 CFR Parts 214, 317, 319, and 359 Government employees.

5 CFR Part 534

Government employees, hospitals, students, wages.

U.S. Office of Personnel Management.

### James B. King,

Director.

Accordingly, OPM is amending 5 CFR parts 214, 317, 319, 359, and 534 as follows:

# PART 214—SENIOR EXECUTIVE SERVICE

1. The authority citation for part 214 continues to read as follows:

Authority: 5 U.S.C. 3132.

2. In subpart B, § 214.203 and § 214.204 are added to read as follows:

#### **Subpart B—General Provisions**

### § 214.203 Reporting requirements.

Agencies shall report such information as may be requested by OPM relating to positions and employees in the Senior Executive Service.

### § 214.204 Interchange agreements.

- (a) In accordance with 5 CFR 6.7, OPM and any agency with an executive personnel system essentially equivalent to the Senior Executive Service (SES) may, pursuant to legislative and regulatory authorities, enter into an agreement providing for the movement of persons between the SES and the other system. The agreement shall define the status and tenure that the persons affected shall acquire upon the movement.
- (b) Persons eligible for movement must be serving in permanent, continuing positions with career or career-type appointments. They must meet the qualifications requirements of any position to which moved.
- (c) An interchange agreement may be discontinued by either party under such conditions as provided in the agreement.

# PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

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

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

4. In subpart C, § 317.301 is amended by redesignating paragraph (a)(4) as paragraph (a)(5) and by adding a new paragraph (a)(4) to read as follows:

## Subpart C—Conversion to the Senior Executive Service

#### § 317.301 Conversion coverage.

(a) \* \* \*

(4) The implementation of the SES in a formerly excluded agency when OPM determines that the agency is an "Executive agency" under 5 U.S.C. 3132(a)(1).

5. In subpart D, the current paragraph in § 317.401 is designated as paragraph (a), and paragraph (b) is added to read as follows:

### Subpart D—Qualifications Standards

### §317.401 General.

\* \* \* \* \*

- (b) A written qualification standard must be established for a position before any appointment is made to the position. If a position is being filled competitively, the standard must be established before the position is announced.
- 6. In subpart E, § 317.501 is amended by revising the last sentence of paragraph (a), revising paragraph (b)(2), and by adding paragraph (f) to read as follows:

### **Subpart E—Career Appointments**

## § 317.501 Recruitment and selection for initial SES career appointment.

(a) \* \* \* The ERB shall, in accordance with the requirements of this section, conduct the merit staffing process for initial SES career appointment.

(b) \* \*

- (2) Announcements of SES vacancies to be filled by initial career appointment must be included in the OPM SES vacancy announcement system for at least 14 calendar days, including the date of publication.
- (f) *OPM review*. OPM may review proposed career appointments to ensure that they comply with all merit staffing requirements and are free of any impropriety. An agency shall take such action as OPM may require to correct an action contrary to any law, rule, or regulation.
- 7. Section 317.502 is amended by removing the last sentence of paragraph (b), revising paragraph (d), redesignating paragraph (e) as paragraph (f), and by adding a new paragraph (e) to read as follows:

## § 317.502 Qualifications Review Board certification.

\* \* \* \* \*

(d) OPM may determine the disposition of agency QRB requests