C, of this chapter for the appraisal period must have been "Fully Successful" or higher.

(2) Individuals eligible for a performance award include:

(i) A former SES career appointee who elected to retain award eligibility under 5 CFR part 317, subpart H. If the salary of the individual is above the ES–6 pay rate, the ES–6 rate is used for crediting the agency award pool under paragraph (b) of this section and the amount the individual may receive under paragraph (c) of this section.

(ii) A reemployed annuitant with an SES career appointment.

(iii) An SES career appointee who is on detail. If the detail is to another agency, eligibility is in the individual's official employing agency, i.e., the agency from which detailed. If the appointee is on a reimbursable detail, the agency to which the appointee is detailed may reimburse the employing agency for some or all of any award, as agreed upon by the two agencies; but the reimbursement does not affect the award pool for either agency as calculated under paragraph (b) or this section.

* * * * *

(4) The agency head must consider the recommendations of the Performance Review Board (PRB), but the agency head has the final authority as to who is to receive a performance award and the amount of the award.

(c) * * * The rate of basic pay does not include locality-based comparability payments under 5 U.S.C. 5304 and 5 CFR part 531, subpart F, or special law enforcement adjustments under section 404 of the Federal Employees Pay Comparability Act of 1990 and 5 CFR part 531, subpart C.

* * * * * * (f) * * * The full perf

(f) * * * The full performance award, however, is charged against the agency bonus pool under paragraph (b) of this section for the fiscal year in which the initial payment was made.

31. Section 534.405 is added to subpart D to read as follows:

§ 534.405 Restrictions on premium pay and compensatory time.

(a) Under 5 U.S.C. 5541(2)(xvi) and 5 CFR 550.101(b)(18), members of the Senior Executive Service (SES) are excluded from premium pay, including overtime pay.

(b) Since SES members are not eligible for overtime pay, they also are not eligible for compensatory time in lieu of overtime pay for work performed as an SES member. SES members are eligible, however, for compensatory time off for religious purposes under 5 U.S.C. 5550a and 5 CFR part 550, subject J.

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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RINs 3209-AA04, 3209-AA15

Further Grace Period Extension for Certain Existing Agency Standards of Conduct

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendment.

SUMMARY: The Office of Government Ethics is granting a further grandfathering grace period extension for up to eleven months for certain existing executive agency standards of conduct, dealing with financial interest prohibitions and prior approval for outside employment and activities, which have been temporarily preserved. This further action (one previous extension was granted last year) is necessary because many agencies have not been able to issue, with OGE concurrence and co-signature, interim or final supplemental regulations during the first two years' grace period. This further extension will help ensure that agencies which have submitted draft supplementals to OGE will have adequate time to issue, if they so desire, successor regulatory provisions to replace grandfathered financial interest prohibitions and prior approval requirements.

EFFECTIVE DATE: February 3, 1995. FOR FURTHER INFORMATION CONTACT: William E. Gressman, Office of Government Ethics, telephone: 202-523-5757, FAX: 202-523-6325. SUPPLEMENTARY INFORMATION: The Office of Government Ethics is granting under the executive branch standards of ethical conduct a further extension of time for up to eleven months, until January 3, 1996, for certain agencies' existing conduct standards dealing with prohibited financial interests and prior approval for outside employment and activities. When OGE published its ethical conduct standards for executive branch employees in the **Federal** Register on August 7, 1992 (as now codified at 5 CFR part 2635), it provided that most existing individual agency standards of conduct would be superseded once the executive branchwide standards took effect on February

3, 1993. However, OGE also provided, by means of notes following 5 CFR 2635.403(a) and 2635.803, that any existing agency standards dealing with the two types of restrictions noted above would be preserved for one more year, until February 3, 1994, or until the agency concerned issued (with OGE concurrence and co-signature) a supplemental regulation, whichever occurred first. See 57 FR 35006-35067, as corrected at 57 FR 48557 and 52583. Last year, OGE extended that original grace period for an additional year, until February 3, 1995 (or until agency issuance of a supplemental regulation), for those executive branch departments and agencies that had not yet had a chance to issue final or interim final successor rules. See 59 FR 4779-4780 (February 2, 1994) and, in particular, appendix A which was added to part 2635 at that time.

Through OGE's liaison efforts, the Office of the Federal Register (OFR) has assigned new chapters, including parts, at the end of title 5 of the Code of Federal Regulations to accommodate agencies' future supplemental standards regulations (on these two and other appropriate subject areas), as well as any supplemental agency regulations under OGE's executive branch-wide financial disclosure provisions at 5 CFR part 2634. Some 60 agencies have had such chapters reserved, including those which have by now already issued, with OGE concurrence and co-signature, interim final or final supplemental ethics regulations. However, many agencies have still not yet had the time to issue their planned supplemental standards regulations in interim or final form.

The Office of Government Ethics has therefore determined to permit a further preservation of existing agency regulatory standards of conduct setting forth financial interest prohibitions and outside employment and activities prior approval requirements for up to eleven more months, until January 3, 1996 (or until issuance by each agency of its supplemental regulation, whichever comes first), for those agencies which submitted draft supplemental standards regulations to OGE on or before January 25, 1995. This is the last grace period extension that OGE intends to grant. The agencies subject to this further grandfathering grace period extension, as provided in the notes (which are hereby being further amended) following 5 CFR 2635.403(a) and 2635.803, are enumerated at new appendix B which OGE is adding to part 2635. The agencies are listed in the order of the assignment of their chapter numbers at the end of 5 CFR. Agencies