

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 317 and 412

RIN 3206-AF96

#### Executive and Management Development

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed regulations.

**SUMMARY:** The Office of Personnel Management (OPM) is proposing to amend part 317 of its regulations governing initial career appointment to the Senior Executive Service (SES) and Qualifications Review Board certification. The proposed changes to part 317 would eliminate the 3-year limitation on the validity of Qualifications Review Board (QRB) certification for appointment to the Senior Executive Service and simplify the Executive Resources Board (ERB) certification of candidates. The Office is also proposing to amend part 412 of its regulations governing executive and management development. The coverage will be expanded to include supervisory development. The revised regulations present broad program criteria on the systematic development of executives, managers, supervisors, and candidates. They also establish minimum requirements for formal Senior Executive Service candidate development programs. The changes proposed promote training and development activities which foster a corporate perspective of Government.

**DATES:** Written comments will be considered if received no later than February 9, 1996.

**ADDRESSES:** Send or deliver written comments to the Ms. K. Joyce Edwards, Assistant Director, Office of Executive Resources, Office of Personnel Management, Room 6484, 1900 E Street NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Constance Maravell, 202-606-1832.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management (OPM) issued proposed regulations on executive and management development on March 2, 1993 (58 FR 11988). We received comments from 23 agencies, 9 individuals and the Federal Executive Institute Alumni Association. Most comments expressed support for including the development of supervisors along with that of managers and executives. The proposed regulations were withdrawn on February 11, 1994 (59 FR 6593) to see which objectives of the regulations could be achieved through alternative means and so they could be reviewed in the context of the sunseting of the Federal Personnel Manual in December 1993.

#### General

In keeping with the spirit of Executive Order 12861 on "Elimination on One-Half of Executive Branch Internal Regulations," we re-examined the proposed regulations. This has resulted in the elimination of regulations on needs assessments for the management profession and for individuals and formal candidate development programs for supervisors and managers. Proposed requirements in these areas have been removed, not because we have found such activities to be ineffective, but because agencies should be free to engage in them without being required to do so. Well selected developmental experiences enhance the competence and broaden the perspective of the managerial workforce. We encourage agencies to undertake these activities on a systematic basis.

We are also deleting regulations that are covered by statute which require no further clarification such as OPM's responsibility for the review of agency programs. We would like to draw agency attention to two provisions of statute which will not be regulated further. The first is the use of sabbaticals in general, 5 U.S.C. 3396(c). The second is, 5 U.S.C. 3396(d), authorizing sabbaticals, training, or details or other temporary assignments in other agencies, State or local governments, or the private sector for the continuing training and development of incumbent career SES members.

The earlier proposed regulations also provided for the reactivation of expired QRB certifications for graduates of

formal SES candidate development programs (CDP). Reactivation was accomplished by a variation to the regulations in December 1993, which extended certifications until December 31, 1996. The current proposed regulations in part 317 would remove the present 3-year time limit on all QRB certifications. The removal would apply to certifications issued before the regulations as well as those issued afterwards.

In response to a recommendation from the Executive Resources Management Group work group on staffing, we propose to simplify procedural requirements for the ERB certification of SES candidates. Specifically, when there are less than 10 eligible candidates for an SES position, an ERB would be permitted to refer all candidates to the appointing authority without further ranking. The statutory requirement that ERB's make written recommendations must be observed regardless of the number of candidates.

What remains in the regulations is a clear set of criteria which promote a corporate perspective of governance through the systematic development of candidates for the SES and the continuing development of supervisors, managers, and executives. Public managers with a corporate perspective respect and embrace the dynamics of American democracy; they recognize their fundamental responsibility for balancing change and continuity. Their values encompass a respect for both diversity and merit. Their commitment to Government service transcends their agency mission and individual profession. Executives with a corporate perspective will play a critical role in the reinvention of Government.

These regulations recognize and give meaning to the findings of OPM's 1992 Leadership Effectiveness Study. The 10,000 managers who responded identified 22 generic competencies essential to successful performance as leaders in any government position. The study found that effective supervisors, managers and executives have a shared base of competencies. As individuals move from supervisors to managers and executives they must acquire additional enhanced competencies. For this reason, the preparation of supervisors and managers is considered integral to the development of candidates for the SES.

The criteria in section 412.103 are designed to enable agencies to run strong supervisory, managerial and executive development programs to provide a corporate perspective in the context of their succession planning systems. This assures that there are enough prepared and qualified employees as candidates for SES positions. This section requires agencies to provide initial and continuing training and development to their management corps. Formal SES candidate development programs are one option, but not the only one for assuring that agencies have enough candidates for the SES.

#### SES Candidate Development Programs (CDP)

If an agency desires graduates of its SES candidate development program to receive Qualifications Review Board certification, the program must meet the minimum standards in § 412.104. OPM will review all programs prior to announcement for the first time under these regulations regardless of whether they have been approved under the previous regulations. After the initial announcement, OPM will only review programs if there is a significant change in the program.

The standards meet statutory requirements and support the National Performance Review recommendation for promoting a corporate culture in the SES. During the time the candidates are in the program, they must attend at least 80 hours of formal interagency training programs; have developmental assignments totalling 4 months; and have a mentor. If an agency wishes to deviate from these minimum requirements, it must obtain an exception from OPM before the candidate starts the program.

OPM believes that even individuals who are well qualified for an SES appointment can benefit from this minimum training and development. It is not our intention to grant exceptions to the minimum requirements based on the fact that the candidate is already well qualified to enter the SES. OPM does not support the use of the formal SES candidate development program as a mechanism for "precertifying" fully qualified individuals for the SES.

These standards differ from the existing regulations in the following ways. Agencies can choose, under the standards, the formal interagency executive level training experience rather than be limited to OPM approved programs. An agency may substitute a work experience, longer than 80 hours, that involves multiple agencies for formal training; but this substitution

does not eliminate the requirement for a developmental assignment. The length of the developmental work assignments has been specified to eliminate confusion about what cases will be presented to the QRB.

One way to promote a corporate perspective in the SES is to encourage the selection of qualified applicants from outside the agency. The law, in 5 U.S.C. 3393(a), supports this goal by requiring at least governmentwide competition for initial appointment to the SES. While the proposed regulations on recruitment for SES CDP are consistent with this statutory requirement, they provide flexibility for those agencies which have demonstrated support for an SES corporate perspective.

Specifically, the exception from Governmentwide competition in the current regulations for agencies with 150 or fewer allocated SES positions for their candidate development programs has been changed in two ways. First, the exception is available to agencies which can show OPM that in the 5 years prior to announcing a CDP, at least 15% of the career SES members appointed come from outside the agency. An agency may be able to conduct one offering of a CDP under this exception but not another because the agency does not meet the criterion at that time. Second, when there has only been agencywide competition for the CDP, the graduates of these programs are required to compete Governmentwide for entry to the SES.

The regulations on "status" and "non-status" SES candidate development programs currently in subpart E have been rewritten in a new subpart B to eliminate redundancy. There is no change in the nature of the programs.

#### Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because they affect only Federal employees and agencies.

#### List of Subjects in 5 CFR Parts 317 and 412

Government employees.  
Office of Personnel Management.  
James B. King,  
*Director.*

Accordingly, the Office of Personnel Management proposes to amend 5 CFR parts 317 and 412 as follows:

#### PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

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

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

2. In section 317.501, paragraph (c)(5) is revised to read as follows:

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

\* \* \* \* \*

(c) \* \* \*  
(5) Provide that the ERB make written recommendations to the appointing authority on the eligible candidates and identify the best qualified candidates. If there are less than 10 eligible candidates, the ERB may refer to the appointing authority all candidates as "best qualified." Rating sheets may be used to satisfy the written recommendations requirement for individual candidates, but the ERB must certify in writing the list of candidates to the appointing authority.

\* \* \* \* \*

3. In section 317.502, paragraph (c) is revised to read as follows:

#### § 317.502 Qualifications Review Board certification.

\* \* \* \* \*

(c) Qualifications Review Board certification of executive qualifications must be based on demonstrated executive experience; successful completion of an OPM-approved candidate development program; or possession of special or unique qualities that indicate a likelihood of executive success. Any existing time limit on a previously approved certification is removed.

\* \* \* \* \*

#### PART 412—EXECUTIVE, MANAGEMENT, AND SUPERVISORY DEVELOPMENT

3. Part 412 is revised to read as follows:

#### PART 412—EXECUTIVE, MANAGEMENT, AND SUPERVISORY DEVELOPMENT

##### Subpart A—General Provisions

Sec.  
412.101 Coverage.  
412.102 Purpose.  
412.103 Criteria for programs for the systematic training and development of executives, managers, supervisors, and candidates.  
412.104 Formal candidate development programs for Senior Executive Service positions.

##### Subpart B—Senior Executive Service Status and Nonstatus Candidate Development Programs

412.201 Purpose.  
412.202 "Status" programs.  
412.203 "Non-status" programs.

Authority: 5 U.S.C. 3397, 4101, *et seq.*

### Subpart A—General Provisions

#### § 412.101 Coverage.

This subpart applies to all incumbents of or candidates for supervisory, managerial, and executive positions in the General Schedule, the Senior Executive Service (SES), or equivalent pay systems who are also covered by part 410 of this chapter.

#### § 412.102 Purpose.

(a) This subpart implements for supervisors, managers, and executives the provisions of chapter 41 of title 5 of the United States Code related to training and section 3396 of title 5 related to the criteria for programs of systematic development of candidates for the SES and the continuing development of SES members.

(b) The subpart identifies a continuum of preparation starting with supervisory positions and proceeding through management and executive positions governmentwide. For this reason, the subpart establishes a comprehensive system that is intended to:

- (1) Provide the competencies needed by supervisors, managers, and executives to perform their current functions at the mastery level of proficiency; and
- (2) Provide learning through development and training in the context of succession planning and corporate perspective to prepare individuals for advancement, thus supplying the agency and the government with an adequate number of well prepared and qualified candidates to fill supervisory, managerial, and executive positions governmentwide.

#### § 412.103 Criteria for programs for the systematic training and development of executives, managers, supervisors, and candidates.

Each agency must provide for the initial and continuing development of individuals in executive, managerial, and supervisory positions, and candidates for those positions. The agency must issue a written policy to assure that their development programs:

- (a) Are designed as part of the agency's strategic plan and foster a corporate perspective.
- (b) Make assignments to training and development consistent with the merit system principles set forth in 5 U.S.C. 2301(b) (1) and (2).
- (c) Provide for:
  - (1) Initial training as an individual makes critical career transitions to become a new supervisor, a new

manager, or a new executive consistent with the results of needs assessments;

(2) Continuing learning experiences, both short- and long-term, throughout an individual's career in order for the individual to achieve the mastery level of proficiency for his or her current management level and position; and

(3) Systematic development of candidates for advancement to a higher management level. Formal candidate development programs leading to noncompetitive placement eligibility represent one, but not the only, type of systematic development.

#### § 412.104 Formal candidate development programs for Senior Executive Service positions.

Formal SES candidate development programs permit the certification of the executive qualifications of graduates by a Qualifications Review Board under the criterion of 5 U.S.C. 3393(c)(2)(B) and selection for the SES without further competition. The agency must have a written policy describing how the program will operate. The agency must obtain OPM approval of the program before it is conducted for the first time under these regulations and whenever there are substantive changes to the program. Agency programs must meet the following criteria.

(a) *Recruitment.* (1) Recruitment for the program is from all groups of qualified individuals within the civil service, or all groups of qualified individuals whether or not within the civil service.

(2) Agencies may request an exception to the provision in paragraph (a)(1) of this section if they can show that during the 5-year period prior to the announcement of a program they have made at least 15% of their career SES appointments from sources outside the agency. Notwithstanding this exception recruitment must be competitive and be announced at least agencywide. Graduates of these programs who have been certified by a QRB must then compete Governmentwide for entry to the SES, but do not have to obtain a second QRB certification before appointment.

(b) In recruiting, the agency, consistent with the merit system principles in 5 U.S.C. 2301(b) (1) and (2), takes into consideration the goal of achieving a diversified workforce.

(c) All candidates are selected through SES merit staffing procedures. The number selected shall be consistent with the number of expected vacancies.

(d) Each candidate has an SES development plan covering the period of the program. The plan is prepared from a competency-based needs

determination. It is approved by the Executive Resources Board.

(e) The minimum program requirements, unless an exception is obtained in advance of the beginning of the candidate's program, for an SES development plan are as follows:

(1) There is a formal training experience that addresses the executive core qualifications and their application to SES positions governmentwide. The training experience must include interaction with a wide mix of Federal employees outside the candidate's department or agency to foster a corporate perspective but may include managers from the private sector and state and local governments. The nature and scope of the training must have Governmentwide or multi-agency applicability. If formal interagency training is used to meet this requirement, it must total at least 80 hours. If an interagency work experience is used, it must be of significantly longer duration than 80 hours.

(2) There are developmental assignments that total at least 4 months of full-time service outside the candidate's position of record. The purpose of the assignments is to broaden the candidate's experience and/or increase knowledge of the overall functioning of the agency so that the candidate is prepared for a range of agency positions.

(3) There is a member of the Senior Executive Service as a mentor.

(f) Each candidate's performance in the program is evaluated periodically, and there is a written policy for discontinuing a candidate's participation in the program. A candidate can be discontinued or may withdraw from the program without prejudice to his or her ability to apply directly for SES positions.

(g) Each candidate has a documented starting and finishing date in the program.

### Subpart B—Senior Executive Service Status and Nonstatus Candidate Development Programs

#### § 412.201 Purpose.

Section 3393 of title 5, United States Code, requires that career appointees to the SES be recruited either from all groups of qualified individuals within the civil service, or from all groups of qualified individuals whether or not within the civil service. This subpart sets forth regulations establishing two types of SES candidate development programs, "status" and "nonstatus."

**§ 412.202 "Status" programs.**

Only employees serving under career appointments, or under career-type appointments as defined in 5 CFR 317.304(a)(2), may participate in "status" candidate development programs.

**§ 412.203 "Nonstatus" programs.**

(a) Eligibility. Candidates are from outside Government and/or from among employees serving on other than career or career-type appointments within the civil service.

(b) *Requirements.* (1) Candidates must be appointed utilizing the Schedule B authority authorized by 5 CFR 213.3202(j). The appointment may not exceed or be extended beyond 3 years.

(2) Assignments must be to a full-time position created for developmental purposes connected with the SES candidate development program. Candidates serving under Schedule B appointment may not be used to fill an agency's regular positions on a continuing basis.

(3) Schedule B appointments must be made in the same manner as merit staffing requirements prescribed for the SES, except that each agency shall follow the principle of veteran preference as far as administratively feasible. Positions filled through this authority are excluded under 5 CFR 302.101(c)(6) from the appointment procedures of part 302.

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BILLING CODE 6325-01-M

**DEPARTMENT OF AGRICULTURE****Federal Crop Insurance Corporation****7 CFR Part 457**

RIN 0563-AB24

**Common Crop Insurance Regulations; Malting Barley Price and Quality Endorsement Crop Insurance Provisions**

**AGENCY:** Federal Crop Insurance Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation ("FCIC") hereby proposes to revise the Malting Barley Option Crop Insurance provisions. The intended effect of this action is to improve the insurance coverage now available for producers who grow malting barley under contract with a brewery, or business that sells malt or processed mash to a brewery; and to provide a new option that will allow producers without contracts (open market

producers) to obtain insurance for their malting barley.

**DATES:** Written comments, data, and opinions on this proposed rule must be submitted by the close of business December 21, 1995 to be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through February 5, 1996.

**ADDRESSES:** Written comments, data, and opinion on this proposed rule should be sent to Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250. Hand or messenger delivery should be made to 14th and Independence Avenue, S.W., Room 6097, South Building, Washington, D.C. Written comments will be available for public inspection and copying in the Office of the Manager, 14th and Independence Avenue, S.W., Room 6097, South Building, Washington, D.C., during regular business hours, Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** For further information and a copy of the Regulatory Economic Analysis of the Malting Barley Endorsement Crop Insurance provisions, contact Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250. Telephone (202) 720-0713.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under United States Department of Agriculture ("USDA") procedures established by Executive Order 12866 and Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 2000.

This rule has been determined to be "significant" for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget ("OMB").

A Regulatory Economic Analysis has been completed and is available to interested persons at the address listed above. In summary, the analysis finds that the expected benefits of this action outweigh the costs. The new Malting Barley Price and Quality Endorsement will simplify program operations, benefit FCIC and reinsured companies, and enhance the insurance coverage for malting barley producers.

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were submitted to OMB for their approval under section 3507(j) of the Paperwork Reduction Act of 1995, and received emergency approval through March 5, 1996. The agency is also seeking a valid approval for 3 years under section 3507(d). These requirements were previously approved by OMB under OMB control number 0563-0003 through September 30, 1998. Public comments are due by February 5, 1996.

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including General Crop Insurance Regulations, Common Crop Insurance Regulations; Malting Barley Price and Quality Endorsement Crop Insurance Provisions." The information to be collected includes: a crop insurance acreage report, an insurance application and continuous contract. Information collected from the acreage report and application is electronically submitted to FCIC by the reinsured companies. Some respondents may provide additional information for the purpose of selecting malting barley insurance coverage options. Potential respondents to this information collection are growers of malting barley that are eligible for Federal crop insurance.

The information requested is necessary for the insurance company and FCIC to provide insurance, provide reinsurance, determine eligibility, determine and collect premiums or other monetary amounts (or fees), and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

The comment period for information collections under the Paperwork Reduction Act of 1995 continues through February 5, 1996, on the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information