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other break in SES service has occurred.

(4) Time following transfer to an SES position in another agency is credited, i.e., the individual does not have to start a new probationary period.

(e) Removal of a career appointee during the probationary period is covered by subpart D of part 359 of this chapter.

(f) A career appointee who resigns or is removed from the SES before completion of the probationary period may not receive another SES career appointment unless selected under SES merit staffing procedures. The individual, however, need not be recertified by a QRB unless the individual was removed for performance or disciplinary reasons.

(g) An individual who separated from the SES during the probationary period and who has been out of the SES more than 30 calendar days must serve a new 1-year probationary period upon reappointment and may not credit previous time in a probationary period. In the following situations, however, there is an exception and the individual is only required to complete the remainder of the previously served probationary period.

(1) The individual left the SES without a break in service for a Presidential appointment and is exercising reinstatement rights under 5 U.S.C. 3593(b).

(2) The individual left the SES without a break in service for other civilian employment that provides a statutory or regulatory reemployment right to the SES when no other break in service occurred.

(3) The break in SES service was the result of military duty or compensable injury, and the time credited under paragraph (c)(3) of this section was not sufficient to complete the probationary period.

[54 FR 9758, Mar. 8, 1989, as amended at 60 FR 6386, Feb. 2, 1995; 65 FR 33740, May 25, 2000]

§ 317.504 Agency recertification.

(a) *General.* (1) Section 3393a of title 5, U.S.C., provides that each career SES appointee shall be subject to recertification by his or her employing agency "to ensure that the performance of career appointees demonstrates

the excellence needed to meet the goals of the Senior Executive Service as set forth in section 3131 * * *."

(2) For purposes of this section, "agency" is an executive agency as defined in 5 U.S.C. 105 or a military department as defined in 5 U.S.C. 102.

(b) *Coverage.* (1) This section covers SES career appointees who have been continuously employed in the SES for the 156 weeks preceding the end of the recertification period. One or more breaks in SES service of a total of 6 months or less do not interrupt the 156 weeks of continuous employment.

(2) This section does not apply to SES noncareer, limited emergency, or limited term appointees. It also does not apply to former SES career appointees who took Presidential appointments with Senate confirmation and elected to retain SES benefits under subpart H of this part.

(c) *When recertification takes place.* (1) The initial recertification shall take place in calendar year 1991. Future recertifications shall take place every 3rd calendar year thereafter.

(2) The agency head shall determine when in the calendar year recertification shall take place and shall establish a date for calculating the 156-week employment period. Recertification may take place at different times during the calendar year for different components within the agency. For recertification actions in calendar year 1991, agencies must consider performance during the annual performance appraisal period ending in calendar year 1991 unless an exception is granted by OPM.

(3) If an individual is recertified in one agency and then transfers to another agency during the calendar year, the individual is not subject to recertification in the new agency. If an individual transfers to another agency during the calendar year and no recertification decision was made in the old agency, a recertification decision must be made in the new agency.

(d) *Standard for recertification.* (1) To be recertified, the career appointee must perform at the level of excellence expected of a senior executive. Excellence means that the executive has demonstrated over the recertification

period that he or she has achieved excellence in:

(i) Planning for, substantially advancing, and attaining Presidential, agency, or organizational goals and objectives that required a sustained superior effort;

(ii) Taking specific initiatives that advanced a major policy and/or significantly improved delivery of services;

(iii) Taking the necessary actions to ensure the achievement of a quality product in a timely manner;

(iv) Making significant technical, scientific, or professional contributions; and, as appropriate

(v) Achieving substantial savings in the execution of programs under his or her direction;

(vi) Maintaining the high quality and effectiveness of a program under his or her direction with reduced resources; and/or

(vii) Providing strong leadership to enhance the development, utilization and achievements of subordinate personnel, including achievement of equal employment opportunity goals.

(2) Agencies may add other criteria, as appropriate, in their written recertification procedures.

(e) *Recommendation by the supervising official.* (1) The supervising official of the career appointee shall submit to an agency Performance Review Board established under 5 U.S.C. 4314 a written recommendation whether the career appointee's performance justifies recertification as a senior executive. The recommendation shall be based on the executive's overall performance over the 3 preceding years in relation to the standard for recertification in paragraph (d), including consideration of such factors as the career appointee's performance ratings, any award or other recognition received by the appointee, any developmental activities of the appointee, or other relevant qualitative factors.

(2) The recommendation shall reflect the official's view whether the appointee's overall performance for the preceding 3 years has demonstrated the excellence expected of a senior executive as defined in paragraph (d) of this section in relation to the written performance requirements for the career appointee's senior executive position.

(3) The appointee shall be given a copy of the recommendation and advised of the right to submit to the Performance Review Board a statement of accomplishments and other documentation giving evidence of the quality of the appointee's performance in relation to the standards set forth in paragraph (d) of this section.

(f) *Recommendation by the Performance Review Board.* (1) More than one-half of the members of the Board shall consist of SES career appointees, unless OPM determines that there exists an insufficient number of career appointees available to comply with this requirement. Board members may not take part in any deliberations or actions regarding recommendations on their own recertification.

(2) After receiving the recommendation of the supervising official and any information provided by the career appointee under paragraph (e)(3) of this section, the Board shall submit to the appointing authority a recommendation whether the appointee should be recertified, conditionally recertified, or not recertified for continued employment as a senior executive in the SES.

(3) If the Board proposes to recommend conditional recertification or non-recertification, the appointee shall be notified in writing and shall have the opportunity to appear before the Board prior to the forwarding of the recommendation to the appointing authority.

(4) If the Board recommends recertification, it may also recommend that the appointee's rate of basic pay be increased to a higher rate under 5 U.S.C. 5382. If the Board recommends conditional recertification, it may also recommend that the appointee's rate of basic pay be reduced to the next lower rate under 5 U.S.C. 5382.

(5) In addition to its recommendation, the Board shall also provide the appointing authority the recommendation from the supervising official and any information received from the appointee under paragraph (e)(3) or paragraph (f)(3) of this section.

(6) If the appointing authority is also the agency head, the recommendation of the Board shall go directly to the individual as the agency head.

(g) *Recommendation by the appointing authority.* (1) If the appointing authority determines that the appointee's performance during the 3 preceding years demonstrates the excellence expected of a senior executive, the appointing authority shall recommend to the agency head that the appointee be recertified as a senior executive.

(2) If the appointing authority determines that the appointee's performance has not demonstrated the excellence expected of a senior executive, the appointing authority shall recommend to the agency head that the appointee be conditionally recertified or not be recertified.

(h) *Determination by the agency head.*

(1) The agency head shall determine whether the appointee shall be recertified, conditionally recertified, or not recertified as a senior executive. An agency may not prescribe a distribution of how many or what percentage of executives will be recertified, conditionally recertified, or not recertified.

(2) If the agency head determines that the appointee's performance warrants recertification, the appointee shall continue in the SES. Further, the appointee's rate of basic pay may not be reduced at the time of recertification.

(3) If the agency head determines that the appointee's performance warrants conditional recertification, the appointee:

(i) Shall remain a career appointee in the SES;

(ii) Shall be subject to continuing close review of the appointee's performance by the supervising official in coordination with an Executive Resources Board established under 5 U.S.C. 3393, in accordance with a performance improvement plan developed by the supervising official and subject to the approval of the Executive Resources Board;

(iii) May, if the agency head so determines, be reduced to the next lower rate of basic pay established under 5 U.S.C. 5382, once 12 months have elapsed since the appointee's last pay adjustment, in accordance with § 534.401(c) of this chapter;

(iv) Shall be removed from the SES if not recertified at the end of the 12-

month period following the conditional recertification; and

(v) Shall be retained in the SES if recertified at the end of the 12-month period following the conditional recertification and shall have any reduction in basic pay made under paragraph (h)(3)(iii) of this section restored as of the beginning of the first pay period following recertification when 12 months have elapsed since the pay reduction.

(4) The process for determining whether to recertify at the end of the 12-month period an individual who has been conditionally recertified shall be the same as for the initial recertification decision, including review and recommendation by a Performance Review Board.

(5) If the agency head determines that the appointee's performance does not warrant recertification or conditional recertification, the appointee shall be removed from the SES in accordance with 5 U.S.C. 3592 and part 359, subpart C, of this chapter.

(6) The decision to recertify a senior executive may be delegated by the agency head, but no lower than the appointing authority. The decision to conditionally recertify, or to not recertify, a senior executive must be made by the agency head, the deputy agency head, or the head of a major operating unit within a department; but the individual designated may not be at a lower level than the appointing authority. The agency's written recertification procedures must indicate who is to make the decision.

(i) *Procedures.* Written reasons must be provided for any recommendation or decision to conditionally recertify or to not recertify a career appointee.

(j) *Agency responsibilities.* Each agency that has career appointees subject to recertification:

(1) Shall develop written recertification procedures in consultation with its career appointees, shall have the procedures reviewed and approved by OPM before the recertification process is initiated, and shall provide its senior executives and OPM a copy of the final procedures upon issuance and upon any change;

(2) Shall provide for a program, under guidelines issued by OPM, to train its

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executives who supervise SES career personnel, and members of Performance Review Boards who will be making recertification recommendations, in the objectives and procedures of the recertification process;

(3) Shall maintain such records as OPM may require;

(4) Shall report to OPM such information as OPM may request relating to recertification actions or the training of SES supervisors; and

(5) Shall take such corrective action as may be directed by OPM if OPM finds that the agency's written procedures, or any actions taken by the agency, are contrary to law or regulation.

[56 FR 170, Jan. 3, 1991]

Subpart F—Noncareer and Limited Appointments

SOURCE: 45 FR 62414, Sept. 19, 1980, unless otherwise noted.

§ 317.601 Authorization.

(a) An agency may make a noncareer or limited appointment only to a general position.

(b) Each use of a noncareer appointment authority must be approved individually by the Office of Personnel Management, and the authority reverts to the Office upon departure of the incumbent, unless otherwise provided by the Office.

(c) Use of a limited appointment authority is subject to the conditions in this paragraph.

(1) Agencies are provided a pool of limited appointment authorities equal to 3 percent of their Senior Executive Service (SES) position allocation, or one authority, whichever is greater. An agency may use the pool to make a limited appointment only of an individual who has a career or career-conditional appointment (or an appointment of equivalent tenure) in a permanent civil service position outside the SES. If necessary, the Office of Personnel Management may suspend use of the pool authority.

(2) Each use of a limited appointment authority other than under paragraph (c)(1) of this section must be approved individually by the Office, and the au-

thority reverts to the Office upon departure of the incumbent, unless otherwise provided by the Office.

[60 FR 6386, Feb. 2, 1995, as amended at 65 FR 33741, May 25, 2000]

§ 317.602 Conditions of a limited appointment.

(a) Appointments authorized under this provision may be deemed provisional appointments for purposes of the regulations set out in parts 831, 842, 870, and 890 of this chapter if they meet the criteria set out in §§ 316.401 and 316.403 of this chapter.

(b) A limited appointment is not renewable. If an agency initially made the appointment for less than the maximum period authorized by the Office of Personnel Management, however, the agency may extend the appointment to the maximum period without the approval of the Office. The Office must be notified of the extension.

(c) A limited term or limited emergency appointee may not be appointed to, or continue to hold, a position under such an appointment if, within the preceding 48 months, the individual has served more than 36 months, in the aggregate, under any combination of limited term and limited emergency appointments.

[45 FR 62414, Sept. 19, 1980, as amended at 56 FR 10142, Mar. 11, 1991; 60 FR 6386, Feb. 2, 1995]

§ 317.603 Selection.

An agency may make a noncareer or limited appointment without the use of merit staffing procedures. The appointee, however, must meet the qualifications requirements for the position, as determined in writing by the appointing authority.

[45 FR 62414, Sept. 19, 1980, as amended at 60 FR 6386, Feb. 2, 1995]

§ 317.604 Reassignment.

(a) An agency may reassign a noncareer appointee only with the prior approval of the Office unless otherwise provided by the Office.

(b) An agency may make the following reassignments of limited appointees to positions for which qualified without the prior approval of the Office of Personnel Management. The