

Proposed Rules

Federal Register

Vol. 64, No. 146

Friday, July 30, 1999

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 Part 317

RIN 3206-AI75

Employment in the Senior Executive Service

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend its regulations governing career and limited appointments to the Senior Executive Service (SES) and Qualifications Review Board (QRB) certification. The proposed regulations emphasize the importance of executive leadership qualifications in agency SES selection criteria; strengthen merit principles; increase SES staffing flexibilities to help agencies recruit the brightest and most diverse executive cadre possible; and provide for delegating QRB administration to agencies via individual delegation agreements. In addition, there will be procedural modifications to streamline the SES application process, reduce paperwork requirements, and improve the QRB certification process.

DATES: Comments on the proposed regulations must be received on or before September 28, 1999.

ADDRESS: Send or deliver written comments to Ms. Joyce Edwards, Director, Office of Executive Resources Management, Room 6484, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Marcia K. Staten at 202-606-1832, FAX 202-606-2126, or email to mkstaten@opm.gov.

SUPPLEMENTARY INFORMATION: The success of the Senior Executive Service (SES) rests in the ability of agencies to employ highly competent, motivated, and diverse professionals dedicated to public service with the requisite leadership expertise to meet the

challenges facing the Government and the Nation into the next century.

In April 1998, OPM widely circulated a "Draft Framework for Improving the Senior Executive Service" to focus attention on the importance of executive leadership and to stimulate discussion about the SES. OPM wanted stakeholders to think about whether the way the senior executive cadre is selected, developed, and managed today will produce the kind of executives equipped to meet the leadership challenges of the 21st century. The Framework was an outline of ideas in four broad areas: SES structure, staffing flexibility, performance management and accountability, and development and continuing learning.

From April through November, OPM held briefings and discussions with nearly 40 different groups of stakeholders, including senior executives and candidates, the human resources community, public administration organizations, and professional associations. OPM also received over 50 written comments from departments and agencies, individual executives and other interested persons, and various organizations. Although stakeholder views varied widely, there was consensus on many ideas, including increasing agency flexibility for SES staffing. Specifically, there was general support for improving the SES selection process to ensure that leadership and executive qualifications are the major selection criteria, reducing the paperwork burden on applicants and agencies, considering options for delegating QRB administration, and increasing agency authority to make limited term appointments.

OPM formed a work group of agency human resources professionals, who administer executive resources programs, to help identify solutions to the staffing issues raised by the Framework initiative. OPM also sought the views of senior executives who have served as members of QRBs. Some solutions will require changes to OPM regulations, while others may be accomplished administratively through procedural or process changes. These regulatory proposals are the result of the comments and suggestions from the senior executives and the work group. The proposed regulations require agency selection criteria to address executive leadership expertise, provide

for delegating QRB administration on an agency-by-agency basis via written delegation agreements, clarify current restrictions on converting noncareer appointees in their current or successor positions, increase agency focus on performance during the probationary period, and expand the pool of limited appointment authorities currently delegated to agencies.

In addition to the improvements achieved through regulatory change, OPM will make modifications to internal procedures and other requirements to streamline the SES application process, reduce paperwork requirements, and improve the QRB certification process. These modifications will include alternative methods for documenting executive qualifications for presentation to QRBs, improved guidance and instructions to QRBs to ensure that members fully understand their role and responsibilities, and more specific and detailed feedback to agencies on QRB disapprovals.

These flexibilities were designed to facilitate agency efforts to hire a diverse and talented cadre of senior executives.

Emphasis on Executive Leadership

The law at 5 U.S.C. 3393 requires agency Executive Resources Boards to conduct the merit staffing process for career entry into the SES, including reviewing the executive qualifications of each career SES candidate. During the discussions of the Framework on improving the SES, it was confirmed that, in many agencies, the selection criteria focus primarily on candidates' professional or technical qualifications, and therefore consideration of executive qualifications is not getting the full attention intended by the legislation. The key characteristics of an SES position are the executive leadership responsibilities, and therefore selection criteria should focus primarily on these qualifications. In order to strengthen that focus and encourage agencies to fully integrate consideration of executive leadership qualifications into their selection processes, the proposed regulations incorporate the statutory requirements. Agency latitude to design the merit staffing process, including how to consider executive qualifications in the merit staffing process, is unchanged.

In addition to the regulatory change, OPM is modifying procedural

requirements for documenting executive qualifications for presentation to QRBs to provide alternative methods and options for agency use. These changes are intended to give agencies additional flexibility, reduce the paperwork burden on applicants, and improve the QRB certification process.

Delegating QRB Administration

The law at 5 U.S.C. 3393 requires OPM to establish QRBs to certify the executive qualifications of candidates for initial career appointment to the SES. In enacting this provision, Congress indicated that this would provide an independent peer review, which would ensure that appointments to the SES are based primarily on executive qualifications, rather than on technical or professional qualifications. While OPM's broad statutory authority at 5 U.S.C. 1104 includes the authority to delegate QRB administration to agencies, OPM has traditionally held that OPM-convened QRBs assured that the focus of the certification is on the executive qualifications and safeguarded Congressional intent. However, as we have moved in recent years toward increasing agencies' flexibility to manage their executive resources, OPM has agreed to consider delegating QRB administration to agencies, on an agency-by-agency basis via individual delegation agreements; provided that the focus on leadership and executive expertise is maintained and merit system principles are preserved. The proposed regulation authorizes delegated agreements, under specific conditions. The agreements will be designed to ensure an independent peer review, set the scope of the delegation, address agency QRB operations, prescribe reporting requirements, and provide for OPM oversight.

In addition to this regulatory change, OPM is modifying procedures and paperwork associated with QRB administration to address concerns that the process focuses on paper over substance and to provide more specific and detailed feedback to agencies on QRB disapprovals.

Noncareer Conversion Restriction

The current regulation at 5 CFR 317.502(e) precludes QRB certification of a noncareer SES employee for career appointment in the employee's current position or a successor to that position, because there is no bona-fide vacancy for which to hold competition. This regulation was intended to preserve the merit principle of fair and open competition in merit selections. Since the regulation was promulgated,

however, questions have arisen about the definition of "noncareer SES employee." The proposed regulation strengthens and clarifies the intent of the current regulation by expanding coverage to noncareer-type employees, including noncareer SES appointees and Schedule C appointees, or the equivalent.

SES Probationary Period

Performance Assessment

The SES statute (Pub. L. 95-454) establishes a 1-year probationary period for new career SES appointees. It requires that an individual's initial appointment as a career SES appointee could not become final until that individual completes one year of service as a career appointee (5 U.S.C. 3393(d)). OPM has long held that the probationary period is an extension of the examining process to be used to determine an individual's ability to actually perform as an executive. The law also includes provisions to facilitate removal of appointees during probation for unacceptable performance or conduct (5 U.S.C. 3592).

During the Framework discussions, stakeholders expressed concern about the lack of attention that agencies have given to SES probation and explored options for making more effective use of the probationary period as the vehicle for assessing whether or not the new appointees are performing as executives. The proposed regulation requires agencies to assess the performance of career appointees before the end of the probationary period and make an official determination that the appointee is performing at the level of excellence expected of a senior executive.

Training and Development

By law (5 U.S.C. 3393(c)(2)), OPM prescribes criteria for establishing executive qualifications for career appointment, but these criteria must provide for consideration of demonstrated executive experience, successful participation in an OPM-approved candidate development program, and possession of special or unique qualities that indicate a likelihood of executive success. In support of candidates with special or unique qualities, OPM requires a detailed development plan for obtaining the full complement of executive qualifications. Stakeholders indicated that stronger oversight is needed in cases where the QRB certifies candidates on the basis of special and unique qualifications to verify that the executive development activities promised by the agency are

accomplished. The proposed regulation requires agencies to address the executive development activities outlined in the development plans during the appointee's probationary period.

Pool of Limited Appointment Authorities

Under 5 CFR 317.601, agencies currently have been provided a pool of limited appointment authorities equal to 2 percent of their total SES space allocation that they may use without prior OPM approval. Use of these pool authorities is restricted to appointments of individuals with career or career-type appointments outside the SES. Agencies have found this flexibility very helpful. Many have made full use of the delegated pool of authorities and have expressed a need for increased authorities. The proposed regulation increases the delegated pool of limited authorities from 2 percent to 3 percent.

In exercising these authorities, agencies must continue to comply with all other statutory and regulatory provisions affecting limited appointments, e.g., that an appointment be made only to a general position; that the appointee must meet the qualifications required for the position; and that the appointment is to a non-continuing, project-type position. OPM will continue to monitor use of this appointment to ensure compliance with the statutory 5 percent limit on SES limited appointments Governmentwide and that appointments are being made in accordance with statutory and regulatory provisions.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 317

Government employees.
Office of Personnel Management.
Janice R. Lachance,
Director.

Accordingly, OPM proposes to amend 5 CFR part 317 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 3596.

Subpart E—Career Appointments

2. Amend § 317.501 by revising the first sentence of paragraph (c)(2) and paragraph (c)(6), to read as follows:

§ 317.501 Recruitment and selection for initial SES career appointment.

* * * * *

(c) * * *

(2) Provide that the ERB consider the executive and technical qualifications of each candidate, other than those found ineligible because they do not meet the requirements of the vacancy announcement. * * *

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(6) Provide that the appointing authority select from among the candidates identified as best qualified by the ERB and certify the candidate's executive and technical qualifications. * * *

3. Section 317.502 is revised to read as follows:

§ 317.502 Qualifications Review Board certification.

(a) This section covers Qualifications Review Boards convened by:

(1) The Office of Personnel Management (OPM); or

(2) An agency, under a written delegation agreement with OPM.

(b) General Provisions:

(1) A Qualifications Review Board (QRB) must certify the executive/managerial qualifications of a candidate before initial career appointment may be made to an SES position. More than one-half of the members of a QRB must be SES career appointees.

(2) Requests for certification of a candidate by a QRB must contain such information as prescribed by OPM, including evidence that merit staffing procedures were followed and that the appointing authority certified the candidate's executive and technical qualifications for the position.

(3) 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.

(4) OPM may determine the disposition of requests for QRB certification if the QRB has not yet acted when:

(i) The agency head leaves office or announces an intention to leave office;

(ii) The President has nominated a new agency head; or

(iii) There is a Presidential transition.

(5) An action to convert a "noncareer-type" employee to a career SES appointment in the employee's current position or a successor to that position will not be forwarded to a QRB. A "noncareer-type" employee includes a noncareer SES appointee, a Schedule C appointee, or equivalent.

(6) A new QRB certification is required for an individual to be reappointed as an SES career appointee following separation of the individual from an SES career appointment if:

(i) The individual was removed during the SES probationary period for performance or disciplinary reasons; or

(ii) The individual completed an SES probationary period, or did not have to serve one, and was removed for a reason that made the individual ineligible for reinstatement to the SES under subpart G of this part.

(c) Agencies may request the authority to convene Qualifications Review Boards. OPM may delegate such authority via written delegation agreement on an individual agency-by-agency basis. The delegation agreement will:

(1) Delegate the authority to the head of the agency;

(2) Provide for QRB operations that result in certification of candidates on the basis of executive qualifications and in the preservation of merit principles.

(3) Address the composition of the Boards to ensure an independent peer review.

(4) Prescribe documentation, reporting, and record retention requirements.

(5) Provide for OPM oversight.

4. Amend § 317.503 by revising paragraph (a); redesignating paragraphs (b) through (f) as paragraphs (c) through (g), respectively; adding a new paragraph (b); and revising the last sentence in newly redesignated paragraph (f) to read as follows:

§ 317.503 Probationary period.

(a) An individual's initial appointment as an SES career appointee becomes final only after the individual has served a 1-year probationary period as a career appointee; there has been an assessment of the appointee's performance during the probationary period; and the appointing authority has certified that the appointee performed at the level of excellence expected of a senior executive during the probationary period.

(b) When a career appointee's executive qualifications have been certified by a Qualifications Review Board on the basis of special or unique qualities, as described in

§ 317.502(b)(3), the probationary assessment must address any executive development activities the agency identified in support of the request for QRB certification.

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(f) * * * The individual, however, need not be recertified by a QRB unless the individual was removed for performance or disciplinary reasons.

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5. In subpart F, the heading for the subpart is revised to read as follows:

Subpart F—Noncareer and Limited Appointments

6. Amend § 317.601, paragraph (c)(1), by revising the first sentence to read as follows:

§ 317.601 Authorization.

* * * * *

(c) * * *

(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. * * *

[FR Doc. 99-19487 Filed 7-29-99; 8:45 am]

BILLING CODE 6325-01-P

DEPARTMENT OF AGRICULTURE**Federal Crop Insurance Corporation****7 CFR Part 457****Common Crop Insurance Regulations; Potato Crop Insurance Certified Seed Endorsement**

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby proposes to amend the Potato Crop Insurance Certified Seed Endorsement. The intended effect of this action is to improve the insurance coverage to better meet the needs of the insured.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business September 28, 1999 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Comments may also be sent via the Internet to DIRECTORPDD@RM.FCIC.USDA.GOV. A copy of each response will be