

of a commuting area, (i) the agency must consult with the appointee on the reasons for, and the appointee's preferences with respect to, the proposed reassignment; and (ii) following such consultation, the agency must provide the appointee a written notice, including the reasons for the reassignment, at least 60 days before the effective date of the reassignment. This notice requirement may be waived only when the appointee consents in writing.

(c) A career appointee may not be involuntarily reassigned within 120 days after the appointment of the head of an agency, or within 120 days after the appointment of the career appointee's most immediate supervisor who is a noncareer appointee and who has the authority to make an initial appraisal of the career appointee's performance under subpart C of part 430 of this chapter.

(1) In this paragraph—

(i) *Head of an agency* means the head of an executive or military department or the head of an independent establishment.

(ii) *Noncareer appointee* includes an SES noncareer or limited appointee, an appointee in a position filled by Schedule C, or an appointee in an Executive Schedule or equivalent position that is not required to be filled competitively.

(2) These restrictions do not apply to the involuntary reassignment of a career appointee under 5 U.S.C. 4314(b)(3) based on a final performance rating of "Unsatisfactory" that was issued before the appointment of a new agency head or a new noncareer supervisor as defined in paragraph (c)(1) of this section. If a moratorium is already underway at the time the final rating is issued, then that moratorium must be completed before the reassignment action can be effected.

(3) A voluntary reassignment during the 120-day period is permitted, but the appointee must agree in writing before the reassignment.

(4) For the purpose of calculating the 120-day period, any days, not to exceed a total of 60, during which the career appointee is serving on a detail or other temporary assignment apart from the appointee's regular position shall not be counted. Any days in excess of 60 days on one or more details

or other temporary assignments shall be counted.

(5) The prohibition in this paragraph on involuntary reassignments may be applied by an agency, at its discretion, in the case of a detail of an individual as the head of an agency or of a non-career appointee as a supervisor, or when a noncareer appointee in a deputy position is acting as the agency head or in a vacant supervisory position. If the individual later receives a permanent appointment to the position without a break in service, the 120-day moratorium initiated by the permanent appointment shall include any days spent in the position on an acting basis.

(d) A 15 or 60-day advance notice described in paragraph (b) of this section may be issued during the 120-day moratorium on the involuntary reassignment of a career appointee described in paragraph (c) of this section, but an involuntary reassignment may not be effected until the moratorium has ended.

[54 FR 9760, Mar. 8, 1989, as amended at 57 FR 10124, Mar. 24, 1992; 58 FR 58261, Nov. 1, 1993; 60 FR 6387, Feb. 2, 1995; 63 FR 34258, June 24, 1998]

§ 317.902 Transfers.

(a) *Definition.* In this section, *transfer* means a permanent assignment or appointment to another SES position in a different executive agency or military department.

(b) *Requirements.* Transfers are voluntary and cannot occur without the consent of the appointee and the gaining agency, except transfers connected with a transfer of functions to another agency.

§ 317.903 Details.

(a) *Definition.* In this section, *detail* means the temporary assignment of an SES member to another position (within or outside of the SES) or the temporary assignment of a non-SES member to an SES position, with the expectation that the employee will return to the official position of record upon expiration of the detail. For purposes of pay and benefits, the employee continues to encumber the position from which detailed. The provisions of this section cover details within or outside of the employing agency.

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(b) *Time limits.* (1) Details within an executive agency or military department must be made in no more than 120-day increments.

(2) An agency may not detail an SES employee to unclassified duties for more than 240 days.

(3) An agency must use competitive procedures when detailing a non-SES employee to an SES position for more than 240 days unless the employee is eligible for a noncompetitive career SES appointment.

(4) An agency must obtain OPM approval for a detail of more than 240 days if the detail is of:

(i) A non-SES employee to an SES position that supervises other SES positions; or

(ii) An SES employee to a position at the GS-15 or equivalent level or below.

(c) *SES career reserved positions.* Only a career SES appointee or a career-type non-SES appointee may be detailed to a career reserved position.

(d) *SES general positions.* Any SES appointee or non-SES appointee may be detailed to a general position.

[54 FR 9760, Mar. 8, 1989, as amended at 60 FR 6387, Feb. 2, 1995]

§ 317.904 Change in type of SES appointment.

An agency may not require a career SES appointee to accept a noncareer or limited SES appointment as a condition of appointment to another SES position. If a career appointee elects to accept a noncareer or limited appointment, the voluntary nature of the action must be documented in writing before the effective date of the new appointment. A copy of such documentation must be retained permanently in the appointee's Official Personnel Folder.

Subpart J—Corrective Action

§ 317.1001 OPM authority for corrective action.

If OPM finds that an agency has taken an action contrary to law or regulation under this part, it may require the agency to take appropriate corrective action.

[54 FR 9761, Mar. 8, 1989]

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PART 319—EMPLOYMENT IN SENIOR-LEVEL AND SCIENTIFIC AND PROFESSIONAL POSITIONS

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AUTHORITY: 5 U.S.C. 1104, 3104, 3324, 3325, 5108, and 5376.

SOURCE: 60 FR 6387, Feb. 2, 1995, unless otherwise noted.

Subpart A—General

§ 319.101 Coverage.

(a) This part covers senior-level (SL) and scientific and professional (ST) positions that are classified above GS-15 and are paid under 5 U.S.C. 5376. See 5 CFR part 534, subpart E, for pay provisions.

(b) Positions that meet the criteria for placement in the Senior Executive Service (SES) under 5 U.S.C. 3132(a) may not be placed in the SL or ST system and are not covered by this part.

§ 319.102 Senior-level positions.

(a) SL positions are positions classified above GS-15 pursuant to 5 U.S.C. 5108 that are not covered by other pay systems (e.g. the SES and ST systems).

(b) Positions in agencies that are excluded from 5 U.S.C. chapter 51 (Classification) under section 5102(a), or positions that meet one of the exclusions in section 5102(c), are excluded from the SL system.