

made the erroneous payment. Accordingly the Comptroller General no longer has authority to promulgate the regulations at 4 CFR parts 91 and 92 (Subchapter G—Standards for waiver of claims for erroneous payments of pay and allowances, and of travel, transportation, and relocation expenses and allowances). Individuals seeking a waiver should no longer contact GAO but should direct a request for waiver to their employing agency.

Accordingly, as set forth in the preamble and under the authority of Public Law 104–53, sec. 211(a), 109 Stat. 535, and secs. 103(c), 103(d), 105(b), 116, 125, and 127 of Public Law 104–316, 110 Stat. 3826, GAO amends 4 CFR Chapter I as follows:

1. Subchapter C, consisting of parts 30 through 36, Subchapter D, consisting of parts 51 through 53 and part 56, and Subchapter G, consisting of parts 91 through 93, are removed and reserved.

Dated: May 19, 2000.

**Robert P. Murphy,**

*General Counsel, General Accounting Office.*

[FR Doc. 00–13192 Filed 5–24–00; 8:45 am]

BILLING CODE 1610–02–P

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 317

RIN 3206–A158

#### Employment in the Senior Executive Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is amending its regulations governing career and limited appointments to the Senior Executive Services (SES). The amended regulations emphasize the importance of executive leadership qualifications in agency SES selection criteria, strengthen merit principles, and increase SES staffing flexibilities to help agencies recruit the brightest and most diverse executive cadre possible.

**EFFECTIVE DATE:** June 26, 2000.

**FOR FURTHER INFORMATION CONTACT:** Daliza Salas (202–606–1274, email [desalas@opm.gov](mailto:desalas@opm.gov)) or Marcia Staten (202–606–1832, email [mkstaten@opm.gov](mailto:mkstaten@opm.gov)).

**SUPPLEMENTARY INFORMATION:** The success of the Senior Executive Service (SES) rests on the ability of agencies to employ highly competent, motivated, and diverse professionals dedicated to

public service who have the requisite leadership expertise to meet the challenges facing the Government and the Nation now and into the future.

The final regulations and accompanying guidance to agencies are an outcome of extensive discussions with stakeholders about improving the SES. These discussions challenged stakeholders to think about the future and whether the way we develop, select, and manage the SES cadre produces the kind of executives the Government needs to meet the leadership challenges of the 21st century. Although stakeholder views varied widely, there was consensus on many ideas, including increasing agency flexibilities 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 terms appointments.

On July 30, 1999, OPM published a proposed rule in the **Federal Register** (64 CFR 41334) to amend the regulations governing career and limited appointments to the Senior Executive Service (SES) and Qualifications Review Board (QRB) certification. We received 24 written comments during the comment period: 16 from departments and agencies, 4 from professional organizations, and 4 from individuals. There was broad support for the changes, although some respondents had serious reservations about the proposal to delegate QRB administration to individual agencies via delegation agreement.

In addition to these regulatory changes, we have modified internal procedures and other requirements to streamline the SES application process, reduce paperwork requirements, and improve the QRB certification process. These modifications provide alternative methods for documenting executive qualifications for presentation to QRBs and improved guidance and instructions to QRBs to ensure that members fully understand their role and responsibilities. We have also suggested ways for agencies to improve their recruitment and selection procedures. OPM's administrative modifications and the suggested changes at the agency level will help agencies and candidates focus on substance rather than process and format, and they reinforce the goal of achieving a highly-qualified, diverse SES corps. We have summarized these procedural modifications and

flexibilities in supplemental guidance to agencies.

#### Emphasis on Executive Leadership

The key characteristic of an SES position is executive leadership, and therefore selection criteria should focus primarily on leadership qualifications. Further, 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 discussions on improving the SES, stakeholders confirmed that, in many agencies, the selection criteria focuses mainly on candidates' professional or technical qualifications, and therefore consideration of executive qualifications is not getting the full attention intended by the SES legislation. To strengthen that focus and encourage agencies to fully integrate consideration of executive leadership qualifications into their selection processes, the proposed regulations amended the current provisions to incorporate the statutory requirements.

Most commenters supported the proposal. One agency felt there was not pressing need to revise the current wording, as what constitutes SES qualifications changes over time with new studies and emerging approaches and theories. We do not agree, given that the statute requires selection based on executive qualifications and our findings that many agencies are not considering executive expertise in their SES selections. An August 1999 survey of SES members reinforces these findings. Only 56 percent of the senior executives responding to the survey said that their agencies strongly emphasize executive qualifications in evaluating applications and use them as key factor in determining who is selected for the SES. Further, our research tells us that the emphasis on executive skills and expertise is even more critical than in the past and will continue to be of primary importance in the future. The survey findings supported this as well. When asked to rank qualifications for SES positions now and in five years, respondents rated executive qualifications as more important than technical qualifications today and even more important in five years.

One agency, while not opposing the proposal, was concerned that it might lead to overly prescriptive procedural requirements. This is not our intent. Agencies will continue to have the latitude to design merit staffing processes to meet their unique mission requirements, within the framework of

law and regulations, including determining how to ensure that SES selections are based on consideration of executive qualifications.

One agency objected to the requirement that the appointing authority certify the candidate's executive and technical qualifications. The certification requirement is not new—it is included in current regulations at § 317.502(b). The same agency recommended adding a statement that the appointing authority can approve the appointment of a candidate who does not meet the executive qualifications but has special or unique qualities that indicate a likelihood of executive success. Selection of a candidate on this basis is already provided in statute (5 U.S.C. 3393(c)(2)) and current regulations (§ 317.502(c)).

Two professional organizations recommended that we require equal consideration of executive and technical qualifications to ensure that technical qualifications are not favored over executive qualifications. Since the statute does not make this specification, we have not adopted the recommendation. Further, “equal consideration” would indicate that technical qualifications should carry the same weight in SES selections, which is not the case. Executive qualifications should be the primary factor. The final regulations concerning executive qualifications are adopted as proposed in order to reinforce the primacy of executive expertise and encourage agencies to fully integrate consideration of executive leadership qualifications into their selection processes.

Three professional organizations recommended additional language to emphasize that recruitment and selection for initial SES career appointments should be achieved from the brightest and most diverse executive cadre possible. We have added language to the final regulations that stresses the importance of reaching out to women, minorities, and people with disabilities in SES recruitment and selection. We have also addressed this in the supplemental guidance to agencies on the staffing flexibilities and procedural modifications.

#### **Delegating QRB Administration**

During stakeholder discussions on improving the SES, several agencies recommended delegating QRB administration to agencies to give them more flexibility to manage their executive resources. Some were critical of the paperwork and procedures connected with QRB certification and felt that agencies could make process

improvements if the authority were delegated. OPM agreed to consider the recommendation, incorporated it into the proposed regulations, and formally asked for stakeholder views. The proposed regulatory changes provided for delegation of QRB administration to agencies, on an agency-by-agency basis via individual delegation agreements, provided that the focus on leadership and executive expertise would be maintained and merit system principles would be preserved.

Two-thirds of those commenting on the proposal either supported or voiced no objections to the proposal. However, very few indicated an interest in pursuing a delegation agreement. Supporters favored the increased flexibility to manage and be held accountable for the SES appointment process. Another commented that agencies have long records of merit-based selections of individuals with well-demonstrated SES qualifications.

A few supporters had some reservations. One stated that delegation might create undue pressure on QRB members to certify candidates. Another commented that fairness might be jeopardized under delegation and politicization heightened. A third commenter said that more benefit could be obtained through streamlining paperwork requirements than through QRB delegation.

One agency, three professional organizations, and four individuals strongly opposed the proposal. Key reasons given were serious concerns about the ability of agencies to guarantee an independent peer review, the potential for abuse of the merit staffing process and politicization of the career SES, and the possible adverse impact on efforts to increase the diversity of the SES cadre. In addition, one professional organization questioned OPM's authority to delegate QRB administration. Regarding this issue, we have determined that OPM's broad statutory authority at 5 U.S.C. 1104 for delegating personnel management functions permits the delegation of QRB administration.

Although more respondents supported the proposal than opposed it, the arguments against delegation were substantive and persuasive. The concerns about preserving the independence of QRB certification and the perceived potential for politicization of the career appointment process expressed by those opposed to the proposal outweighed comments in favor of delegation. Since the supporters did not offer compelling reasons for proceeding with the proposal, the final regulations do not include the proposed

amendment to § 317.502 regarding QRB delegation.

We will strengthen efforts to encourage senior executives from diverse backgrounds to serve as QRB members to ensure that the boards are representative of the Nation's diversity. In addition, we have modified the procedures and streamlined 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 § 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. This generally refers to individuals in or from positions of a confidential, policy-determining, or policy-advocating nature.

Commenters concurred with the proposed revision. One agency recommended adding certain limited appointees to those considered to be noncareer-type employees. These would be limited appointees not appointed under an agency's delegated authority at § 317.601(c)(1), which restricts use of the authority to individuals with career or career-conditional appointments. Since limited appointees, regardless of the method of appointment, are not considered noncareer-type employees within the meaning intended by this provision, we are not adopting the recommendation.

One agency recommended that we delete “or equivalent” and restrict coverage to noncareer SES and Schedule C appointees only. We believe the additional language is needed to cover other categories that might meet the intent of the provision, so we have not adopted this recommendation. The final regulations are adopted as proposed.

#### **SES Probationary Period**

The proposal made two changes to the regulations governing the SES

probationary period. One would require agencies to assess the performance of new 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. The second change would require that, during the probationary period, agencies address the executive development activities outlined in development plans used to support QRB certification based on special and unique qualifications. Both requirements were an outcome of stakeholder discussions about making more effective use of the probationary period. Stakeholders had serious concerns about the lack of attention paid to performance during probation. They also felt that, when a QRB certifies candidates on the basis of special and unique qualifications, stronger oversight is needed to verify that the executive development activities promised by the agency are accomplished.

There was overall support for the proposals. One agency, while supporting the concepts, opposed placing the provisions in regulation. The agency felt that agencies should be trusted to manage their own executive resources effectively under their own administrative authority. Another supported the concepts, but said that the means should be left to each agency. Another agency opposed the provision, stating that performance issues can be addressed through the performance management system. While these views have merit, most stakeholders indicated that something more is needed to reinforce the importance of paying attention to performance during probation.

One professional organization recommended requiring training in succession planning and diversity leadership during probation. These are important issues, and we are using other venues to bring their importance to that attention of agency leadership and human resources directors. The training needs of individual appointees vary widely. While some may need training in succession planning or diversity leadership, there are other equally critical areas where training might be necessary, such as managing information technology or measuring business results. Agencies should have the flexibility to assess these needs and determine how to address them.

Two agencies recommended that the appointing authority be allowed to delegate the certification responsibility, and we agree. The final regulations provide that the appointing authority, or his or her designee, must certify that the appointee performed at the level of

excellence expected of a senior executive during the probationary period.

#### **Pool of Limited Appointment Authorities**

The proposed regulations would increase the pool of limited appointment authorities currently available to agencies from 2 percent to 3 percent of their total SES allocation. Use of this pool authority is restricted to appointments of individuals with career or career-type appointments outside the SES.

Most commenters supported this provision. One agency recommended that the pool be increased to 5 percent. One professional organization opposed the provision, stating that it would encourage and facilitate more temporary SES appointments and would jeopardize OPM's traditional oversight role. However, Congress intended that a number of appointments in the SES be temporary, and set a maximum of 5 percent of the Governmentwide SES allocation to prevent excessive use of the authority. Since the SES was established in 1978, no more than 2.5 percent have been limited appointees, well within the congressional limit. Increasing the agency pool authority by 1 percent gives agencies some additional flexibility, while giving OPM enough reserves to address other limited appointment needs that cannot be met with the agencies' delegated authority. The final rule adopts the amendment as proposed.

In exercising this delegated authority, 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 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 authority 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 requirements.

#### **E.O. 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

#### **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 is amending 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 section heading, the first sentence of paragraph (c)(2), and paragraph (c)(6), to read as follows:

**§ 317.501 Recruitment and selection for initial SEC career appointment be achieved from the brightest and most diverse pool possible.**

\* \* \* \* \*

(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. \* \* \*

\* \* \* \* \*

(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. Amend § 317.502 by revising paragraph (e) to read as follows:

**§ 317.502 Qualifications Review Board certification.**

\* \* \* \* \*

(e) 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.

\* \* \* \* \*

4. Amend § 317.403 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, or his or her designee, 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 qualification have been certified by a Qualifications Review Board on the basis of special or unique qualities, as described in § 317.502(c), the probationary assessment must address any executive development activities the agency identified in support of the request for QRB certification.

\* \* \* \* \*

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

\* \* \* \* \*

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. 00-13053 Filed 5-24-00; 8:45 am]

BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Parts 360 and 361

[Docket No. 99-064-2]

#### Noxious Weeds; Update of Weed and Seed Lists

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the noxious weeds regulations by adding *Homeria* spp. (cape tulips) to the list of terrestrial weeds. Listed noxious weeds may be

moved into or through the United States or interstate only under a written permit and under conditions that would not involve a danger of dissemination of the weeds. This action is necessary to prevent the artificial spread of noxious weeds into noninfested areas of the United States.

**EFFECTIVE DATE:** June 26, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Polly Lehtonen, Botanist, Permits and Risk Assessment, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 734-8896.

#### SUPPLEMENTARY INFORMATION:

##### Background

The noxious weed regulations were promulgated under authority of the Federal Noxious Weed Act (FNWA) of 1974, as amended (7 U.S.C. 2801 *et seq.*), and are set forth in 7 CFR part 360. They contain restrictions on the movement of listed noxious weeds into or through the United States and interstate.

Under the authority of the Federal Seed Act (FSA) of 1939, as amended (7 U.S.C. 1551 *et seq.*), the U.S. Department of Agriculture (USDA) regulates the importation and interstate movement of certain agricultural and vegetable seeds and screenings. Title III of the FSA, "Foreign Commerce," requires shipments of imported agricultural and vegetable seeds to be labeled correctly and to be tested for the presence of the seeds of certain noxious weeds as a condition of entry into the United States. The Animal and Plant Health Inspection Service's (APHIS) regulations implementing the provisions of title III of the FSA are found in 7 CFR part 361. A list of noxious weed seeds is contained in § 361.6. Paragraph (a)(1) of § 361.6 lists species of noxious weed seeds with no tolerances applicable to their introduction into the United States.

On December 27, 1999, we published in the **Federal Register** (64 FR 72293-72296, Docket No. 99-064-1) a proposal to amend the noxious weed regulations by adding *Homeria* spp. (cape tulips) to the list of terrestrial noxious weeds in § 360.200(c) and to the list of seeds with no tolerances applicable to their introduction in § 361.6(a)(1).

We held a public hearing on the proposed rule on February 1, 2000. No one came to speak about the proposed rule. We also solicited comments concerning our proposal for 60 days ending February 25, 2000. We received one comment by that date. The comment was from a representative of a foreign government. We carefully

considered the comment, and have discussed its concerns below.

**Comment:** APHIS should conduct its own comprehensive review to assess the number of *Homeria* spp. already present in the United States and their distribution, by species.

**Response:** As stated in our proposed rule, APHIS has been unable to determine the number and distribution of *Homeria* spp. in the United States. Based on information available from literature and known herbarium collections, there are no known established, feral populations of *Homeria* spp. in the United States. In our proposed rule, we asked the public to provide us with information on what species of *Homeria* are being planted and where. Due to the limited resources available to fund monitoring and survey programs in regard to noxious weeds, we are unable to conduct additional reviews specific to *Homeria* spp. We will continue to monitor and conduct surveys at current levels, and as resources permit. If, in the future, we are able to determine that certain species of the genus *Homeria* have become widespread, then we will consider removing those particular species from the list of noxious weeds at that time.

**Comment:** APHIS should assess the potential for *Homeria* spp. to set seeds under the U.S. cultural practices and the potential for *Homeria* spp. to become established as weeds in agricultural areas of the United States.

**Response:** APHIS has no reason to doubt that most species of *Homeria* will set seed in the United States. Using a simulation model for predicting the effects of climate on the distribution of plants, we matched locations of infestations of *Homeria* spp. in Australia to locations with similar climate in the United States. Based on the results of the simulation, we have reason to believe that *Homeria* spp. presents a significant risk of becoming established as a weed in certain areas of the United States, especially along the west coast and in Texas.

Prolific seed production is only one indicator of high dispersal or spread potential. At least one species of the genus *Homeria*, *H. miniata*, does not produce viable seeds, but produces cormils in each leaf axil and around the developing corm at the base of the plant. The cormils may remain dormant and build up in established patches, serving as effective dispersal agents. If APHIS determines in the future that certain species of the genus *Homeria* do not produce seed or cormils, we will consider relieving restrictions on the importation of those species.