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**UNITED STATES DEPARTMENT OF COMMERCE**  
**Chief Financial Officer and**  
**Assistant Secretary for Administration**  
Washington, D.C. 20230

January 14, 2021

RE: DOC-OS-2021-000391

This letter is in response to your FOIA request to the U.S. Department of Commerce seeking:

“An electronic copy of the Department of Commerce Executive Personnel Policy Manual.”

Thank you for your cooperation and patience. After a search of the Agency records, we are providing you with the results of our search. Three (3) records containing a total of two hundred and ninety-eight (298) pages have been found and is now being released to you in its entirety.

I trust that this information fully satisfies your request. If you need any further assistance or would like to discuss any aspect of your request, please do not hesitate to contact the analyst who processed your request, Daphney Barnes by e-mail at [dbarnes1@doc.gov](mailto:dbarnes1@doc.gov). You may also contact the Department’s FOIA Public Liaison:

Bobbie Parsons  
U.S. Department of Commerce  
Office of Privacy and Open Government  
1401 Constitution Ave. NW  
Room 61013  
Washington, DC 20230  
(202) 482-3257  
[bparsons@doc.gov](mailto:bparsons@doc.gov)

Please refer to your FOIA request tracking number, DOC-OS-2021-000391, when contacting us.

In addition, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS

College Park, Maryland 20740-6001

e-mail at [ogis@nara.gov](mailto:ogis@nara.gov);

telephone at 202741-5770; toll free at 1 877-684-6448; facsimile at 202-741-5769

You have the right to appeal this determination of your FOIA request. An appeal must be received within 90 calendar days of the date of this response letter. Address your appeal to the following office:

Assistant General Counsel for Employment, Litigation and Information  
U.S. Department of Commerce  
Office of the General Counsel, Room 5896  
1401 Constitution Ave., NW  
Washington, D.C. 20230

An appeal may also be sent by e-mail to [FOIAAppeals@doc.gov](mailto:FOIAAppeals@doc.gov) or by FOIAonline, if you have an account in FOIAonline, at <https://foiaonline.regulations.gov/foia/action/public/home#>. The appeal should include a copy of the original request and initial determination, if any. All appeals should include a statement of the reasons why the records requested should be made available and why the determination was in error.

The appeal letter, the envelope, and the e-mail subject line should be clearly marked "Freedom of Information Act Appeal." The e-mail, FOIAonline, and office mail are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, FOIAonline, or the office after normal business hours will be deemed received on the next normal business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

Your request is now closed.

Thank you for your cooperation and patience.

Sincerely,

**ROBERTA** Digitally signed by  
ROBERTA PARSONS  
**PARSONS** Date: 2021.01.14  
14:19:35 -05'00'

Bobbie Parsons  
Acting Deputy Chief FOIA Officer and  
Acting Deputy Director for FOIA/PA Operations  
Office of Privacy and Open Government

Enclosures

### **FOIAonline Record Access Instructions**

1. Go to <https://www.foiaonline.gov/foiaonline/action/public/home> and select “Search request” button located on the left side of the page; you may also click on the “Search” tab at the middle of the page.
2. Enter the search term, in this case enter “DOC-OS-2021-000391” in the “\*Quick Search” box.
3. The results of the search term will appear once the “GO” button is selected.
4. Click on the “Tracking Number” for example, DOC-OS-2021-000391 located in the first column of the search results. This will take you to the next screen titled “Request Details.”
5. On the “Released Records” screen:
  - a. Click on the ‘DOWNLOAD ALL’ button to save the file(s) to a location of your choice, or
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## **EXECUTIVE PERSONNEL POLICY MANUAL**

The manual sets forth Department of Commerce (DOC) policies that govern the management of executive personnel who are in positions above the GS-15, or equivalent rank, regardless of pay plan and Foreign Commercial Service positions. Positions filled by an appointment by the President, with the advice and consent of the Senate (PAS) are excluded. In addition, United States Patent and Trademark positions are not covered by this manual.

The manual identifies the authorities delegated to the Secretarial Officers, by the Chair of the Departmental Executive Resources Board (DERB), for managing executive personnel. The delegated authorities are limited to the Secretarial Officers and may not be otherwise delegated beyond the Chair's initial authority, unless specifically authorized in this manual.

The manual is based on the executive personnel provisions of Public Law 95-454 (Civil Service Reform Act) and Defense Authorization Act of 2004 as codified in Title 5, U.S. Code; directions from the Office of Personnel Management OPM; and the Executive Personnel Delegation Performance Agreement between the DOC and OPM that was approved on April 19, 1979, and extended indefinitely on September 27, 1979. The contents of this manual supersede previously issued DOC policies, procedures and DERB bulletins.

This manual makes significant changes from the 1997 manual in several respects: it eliminates a requirement for senior executive recertification (repealed by the Homeland Security Act of 2002; updated IG section as a result of the IG Reform Act of 2008; combined all detail information under the Staffing chapter; added language for the recent regulation change in ST/SL leave; eliminated some of the awards information that no longer applies; added information on Recruitment, Relocation and Retention initiatives; and added requirement for bureaus to track aggregate salaries for their employees under "Aggregate Compensation" and "Awards Payment."

The Director for Human Resources Management shall be responsible for issuing supplemental guidance in the form of bulletins and modifications and revisions to this manual, as approved by the DERB.

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Deputy Chief Human Capital Officer  
and Director for Human Resources  
Management

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Vice Chair,  
Departmental Executive Resources  
Board

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## CHAPTER 1. EXECUTIVE RESOURCES BOARDS

### 1.1 DEPARTMENTAL EXECUTIVE RESOURCES BOARD (DERB)

- A. The DERB consists of four members. The Deputy Secretary of Commerce serves as the Chair, the Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA) serves as the Vice Chair, and the General Counsel and Chief of Staff for Commerce fill the third and fourth positions on the DERB. The Department's Director for Human Resources Management (HRM) shall serve as the Executive Secretary.
- B. The DERB is responsible for establishing the policies and procedures for managing the Department's executive resources, which include positions above the GS-15, or its equivalent rank, regardless of pay plan; i.e., SES, SL, ST and AD. **The DERB does not establish policy procedures for select positions (PAS positions) filled by a Presidential appointment, with the advice and consent of the Senate and (PA positions) without the advice and consent of the Senate; DOC Demonstration Project positions above the GS-15, or equivalent rank; Foreign Commercial Service positions; and the NIST Alternative Personnel System.**
- C. Executive resource policies are approved by the DERB Chair, unless otherwise delegated herein, and issued in the Executive Personnel Policy Manual.

### 1.2 OPERATING UNIT EXECUTIVE RESOURCES BOARD (OERB)

- A. The following organizations shall establish an OERB, which shall perform the responsibilities outlined in section 1.2D of this Manual.
  - (1) Office of the Secretary (OS) \*
  - (2) Economics and Statistics Administration (ESA) \*\*
  - (3) National Institute of Standards and Technology (NIST) \*\*\*
  - (4) Economic Development Administration (EDA)
  - (5) Office of Inspector General (OIG)

- (6) International Trade Administration (ITA)
- (7) National Oceanic and Atmospheric Administration (NOAA)
- (8) Bureau of Industry and Security (BIS)
- (9) National Telecommunications and Information Administration (NTIA)

\* Includes, for the purposes of this Manual, all of the components of the Office of the Secretary, the Office of the General Counsel (OGC), the Office of the CFO/ASA, the Office of the Chief Information Officer (CIO), and the Immediate Office of the Secretary, and Minority Business Development Agency (MBDA).

\*\* Includes all components of the Economics and Statistics Administration, Bureau of Economic Analysis and the Bureau of the Census.

\*\*\* Includes all components of the National Technical Information Service and NIST.

## B. Charter

Each OERB shall develop a written charter that outlines the specific functions and procedures to be performed. Mandatory functions such as those required under 5 CFR 317.501 and 5 CFR 362 must be included. The Secretarial Officer of the respective body will submit the proposed charter to the Director for OHRM, for final approval and shall be responsible for updates.

## C. Membership

Each OERB shall have a minimum of three members appointed by the Secretarial Officer, who shall also designate one member to serve as the OERB Chair. One member of the OERB must be from outside the Organization(s) reporting to the Secretarial Officer. The names of the members shall be submitted to the DERB Vice Chair through the Director for HRM for final approval. The CFO /ASA in his capacity as DERB Vice Chair approves membership on behalf of the Chair of the DERB.

#### D. Responsibilities of Operating Unit Executive Resources Boards

The primary responsibilities of OERBs (subject to the policy direction of the DERB) are to conduct the merit staffing process for the SES, assist the operating unit head in managing the executive resources and programs of their respective organizations, and develop internal procedures and guidance.

Listed below are typical functions and responsibilities which the Secretarial Officer or Head of the Operating Unit could delegate to the OERB. The role of the OERB is principally advisory.

##### A. Personnel Planning

- (1) Determining operating unit executive allocations needs.
- (2) Distributing executive allocations.
- (3) Developing executive staffing procedures.
- (4) Forecasting executive requirements.
- (5) Establishing executive development objectives.

##### B. Staffing

- (1) Monitoring the executive merit staffing process.
- (2) Evaluating candidates' qualifications.
- (3) Establishing rating/ranking panels.

##### C. Training and Development

- (1) Selecting candidates.
- (2) Approving Individual Development Plans.
- (3) Evaluating candidates' performance.
- (4) Certifying program completion for Senior Executive Service Candidate Development Program (CDP) and Presidential Management Fellow (PMF) participants.

- D. Position Management
  - (1) Establishing priorities for use of vacant executive positions.
  - (2) Recommending SES position status designations.
- E. Pay Management
  - (1) Recommending pay for initial appointments and position changes.
  - (2) Recommending non-performance related SES pay rate adjustments.
- F. Discipline and Removal Policy Development
- G. Diversity
  - (1) Ensuring diversity on the OERB.
- H. Performance and Incentive Awards
- I. Performance Appraisal System Policies and Procedures

The above listing is not inclusive and intends that OERB's will be involved in operations which may include individual executive personnel management actions.

### **1.3 SENIOR FOREIGN SERVICE**

The functions of the OERB related to the Senior Foreign Service are performed by the Senior Selection Board and by the U.S. and Foreign Commercial Service Assignments Panel, as prescribed by the Foreign Service Act of 1980 and the Personnel Bulletin 430-4 (Revision No. 2), Precepts for the Foreign Service Selection.

### **1.4 NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION COMMISSIONED CORPS**

Unless specifically stated, members of the NOAA Commissioned Corps are excluded from coverage by this Manual.

The NOAA Corps is one of seven uniformed services. 5 U.S.C § 2101(3); 10 U.S.C. § 101(a)(5)(b); 37 U.S.C.§101(a). The NOAA Corps is comprised of commissioned officers, who are appointed and promoted to permanent grades by the President, with the advice and consent of the Senate. 33 U.S.C § 3001, 3026. The Personnel System of the NOAA Corps is governed by various statutes, regulations and executive orders. Executive Order 11023 delegates certain statutory functions vested in the President to the Secretary. The President, through Executive Order 11023, has vested in the Secretary temporary appointment and promotion authority. This authority is non-delegable below the Secretary. The approval process for NOAA Corps actions is coordinated among the Under Secretary for Oceans and Atmosphere, NOAA's Office of Human Resources Management, Office of General Counsel and the Departmental Office of Human Resources Management (OHRM). The NOAA Corps Appointments and Promotions Manual covers the administrative process and procedures for NOAA Corps actions. Other policies governing the Commissioned Corps can be found in the NOAA Corps Personnel Manual and Directives.

## CHAPTER 2. DELEGATION OF AUTHORITIES

### 2.1 DEPUTY SECRETARY

The Deputy Secretary, as DERB Chair, serves as the adjudicating authority on executive personnel actions, at the request of Secretarial Officers. The Deputy Secretary also serves as the Senior Assessment Official (SAO) (5 CFR 430.404).

### 2.2 DEPARTMENTAL EXECUTIVE RESOURCES BOARD

The DERB makes recommendations to the Secretary on executive resources policies and actions associated with the end of the performance cycle and other policy decisions. These actions include the following:

- A. Performance ratings
- B. Performance-based pay adjustments
- C. Bonuses
- D. Presidential Rank Awards
- E. Executive Pay Policy

### 2.3 CHIEF FINANCIAL OFFICER AND ASSISTANT SECRETARY FOR ADMINISTRATION

The DERB Chair delegates approval authority to the CFO/ASA for the following:

- A. Executive classification and designation of executive positions.
- B. Appointment to executive positions.
- C. Salary decisions for executive positions other than those exceeding Executive Level III, which must be approved by the SAO (5 CFR 534.404.(g)).
- D. Special Act Awards for Senior Executives given in rare situations.
- E. Involuntary reassignments to executive positions.

- F. All details of executives, including details to classified or unclassified positions, between bureaus, to and from outside agencies, and of GS-15, or equivalent rank employees to executive positions.
- G. Executive ceiling allocations.
- H. Use of noncareer SES appointment authorities.
- I. Intergovernmental Personnel Agreements for executive appointees.
- J. Sabbaticals.
- K. Certification of qualifications for general SES positions in OS, filled using noncareer SES appointment authority.
- L. Membership to OERBs.

## **2.4 APPOINTING AUTHORITIES**

For the purposes of this Manual, the following list constitutes those positions that meet the definition of "Appointing Authority" (See also DAO 202-250, Delegation of Authority for Human Resources Management, Section 2.b.):

- A. Deputy Secretary
- B. Chief of Staff (for all offices in the immediate Office of the Secretary)
- C. General Counsel
- D. Chief Financial Officer and Assistant Secretary for Administration
- E. Chief Information Officer (for Office of the Secretary)
- F. Deputy Human Capital Officer and Director for Human Resources Management
- G. Under Secretary for Economic Affairs
- H. Assistant Secretary for Communications and Information
- I. Assistant Secretary for Economic Development

- J. Under Secretary for International Trade
- K. Under Secretary for Oceans and Atmosphere
- L. Under Secretary for Industry and Security
- M. National Director, Minority Business Development Agency
- N. Under Secretary for Standards and Technology

The DERB Chair delegates to the Appointing Authorities in collaboration with the Director for Human Resources Management, the authority to approve the following executive personnel actions:

- A. Proposals or decisions on adverse actions.
- B. Removals of executive appointees during, and after, the probation period when such removal is performance related.
- C. Certification of qualifications of general SES positions filled using noncareer SES appointment authority.

Appointing Authorities must submit their ERB Charters and membership, and PRB Charters and membership to the Department's OHRM to coordinate approval.

The Principal Human Resources Manager (PHRM), or designee, serves in an advisory capacity as Executive Secretary to the OERB.

All other actions affecting executive employees or positions, except those covered herein by section 2.7 Inspector General, require approval from the Office of the Secretary prior to any commitment or announcement being made.

## **2.5 CHAIRS, OPERATING UNIT EXECUTIVE RESOURCES BOARDS**

The DERB Chair delegates to the OERB Chairs the authority to approve the following:

- A. Qualifications Standards for executive positions.
- B. Management development of executive appointees and candidates.
- C. Certification of qualifications of career SES candidates and



Presidential Management Fellows (PMF), PMF and CDP participant Individual Development Plans (IDP's); and certification of program completion.

## **2.6 DIRECTOR FOR HUMAN RESOURCES MANAGEMENT**

The DERB Chair delegates to the Director for HRM, through the CFO/ASA, the authority to approve the following:

- A. Recruitment Plans for executive positions.
- B. Executive development programs.
- C. OERB and Operating Unit Performance Review Board (PRB) Charters.
- D. Membership to Operating Unit PRBs.
- E. Resignations and retirements.

## **2.7 INSPECTOR GENERAL**

The Inspector General Reform Act of 2008, Public Law 110-409, October 14, 2008 clarified the authority of the IG. Under the this law, each Office of Inspector General shall be considered to be a separate agency and have the functions, powers and duties of an agency head or appointing authority. The IG has the authority to take the following actions for executive members within the OIG.

- A. Recruit for executive positions.
- B. Select and appoint individuals to executive positions within the OIG.
- C. Fix the rate of pay pursuant to 5 USC 5383 for senior executives appointed by the IG.
- D. Appraise the performance of executives pursuant to 5 USC 4314.
- E. Remove executives due to poor performance pursuant to 5 USC 3592.
- F. Discipline executives for misconduct pursuant to 5 USC 7542.

- G. Detail non-executive employees to executive positions in the OIG.
- H. Approve sabbaticals for executive employees.
- I. Accept resignations and retirements of executive employees.
- J. Request from OPM allocation of SES, ST and SL positions and certification of SES, ST and SL performance appraisal systems.

These authorities should be implemented through applicable Departmental policy regarding executive-level positions. Copies of the actions processed are to be provided to the Director for HRM, whose office maintains consolidated Department records.

Request for Certification of OIG selectees' Executive Core Qualifications (ECQs)s by the Office of Personnel Management (OPM) Qualifications Review Board (QRB) will be transmitted to OPM by the OIG Human Resources Office.

## **CHAPTER 3. EXECUTIVE RESOURCES MANAGEMENT**

### **3.1 RESPONSIBILITIES**

Appointing Authorities are responsible for developing and implementing an effective position management system that, at a minimum, delegates authority and responsibility for executive position management; ensures that vacant executive positions are filled in a timely manner; and measures executive position management effectiveness towards mission objectives.

### **3.2 REORGANIZATIONS AND NEW POSITION REQUESTS**

Appointing Authorities, or designees, will consult with the Director for HRM, the Office of Budget, and the Office of Management and Organization on proposed organization changes that will affect the functions performed by executive personnel. This joint consultation process should take place prior to any formal submission to the Department. The Appointing Authority, or designee, will provide a “cross walk” of executive positions showing placement from the current organizational structure to the proposed organizational structure. Discussions shall include, but not be limited to, program functional statements, staffing structure, and draft position descriptions for the affected executive personnel. Absent exceptional circumstances, (i.e. congressional directive, etc.) final approvals on proposed positions will not be given until Congress has approved the reprogramming/reorganization and the Departmental Organizational Order (DOO) has been signed.

### **3.3 USE OF EXECUTIVE ALLOCATIONS**

OPM provides SES allocations (also sometimes referred to as “slot”) to Agency Heads on a biennial cycle. In the Department, the Secretary, through the DERB, has delegated authority to the CFO/ASA to centrally manage the allocation of executive resources. Bureaus must submit requests to the CFO/ASA through the Director for HRM for any increase in allocation. Executive ceiling allocations may not be used to establish part-time or intermittent positions.

### **3.4 SES POSITION DESIGNATIONS**

SES positions are designated as either General or Career Reserved. A General position may be filled by a career, noncareer, or limited appointee. The same General position may be filled by a career appointee at one time

and by a noncareer or limited appointee at another time. A Career Reserved position must always be filled by a career appointee.

A. Criteria for Career Reserved Positions

A position shall be designated Career Reserved if it must be filled by a career appointee to ensure the impartiality, or the public's confidence in the impartiality, of the Government (5 USC 3232(b)).

Career Reserved positions include those having duties which involve day-to-day operations, without responsibility for substantial involvement in the determination of public advocacy of the major controversial policies of the administration or agency, in these occupational disciplines: adjudication and appeals; audit and inspection; civil or criminal law enforcement and compliance; contract administration and procurement; grants administration; investigation and security matters; and tax liability, including the assessment or collection of taxes and the preparation or review of interpretive opinions. Career Reserved positions also include:

- Scientific or other highly technical or professional positions where duties and responsibilities of the position are such that it must be filled by a career appointee to ensure impartiality;
- Other positions requiring impartiality, or the public's confidence in impartiality, as determined by the agency in light of its mission; and
- Positions that are specifically required by law to be Career Reserved or to be filled by a career appointee.

B. Changing Position Designations

The Department may not change the designation of an established position from career reserved to general, or from general to career reserved without the prior approval of the OPM. Any request to change the designation must be submitted to the Departmental OHRM.

## CHAPTER 4. STAFFING

### 4.1 RECRUITMENT FOR CAREER APPOINTMENTS

- A. Bureaus may request approval from the Director for HRM through the Office of Executive Resources (OER), to recruit for all SES positions currently established and designated as career reserved when no changes in a position's duties, professional technical qualifications, or reporting relationships are proposed. With their e-mail request bureaus should also submit electronically a copy of the vacancy announcement, position description and recruitment plan.

Establishment of new SES positions (general and career reserved) or any changes to existing positions, e.g., changes to professional technical qualifications or duties, require Departmental approval via the process described below.

- B. Any request for recruitment involving any changes must be submitted on bureau letterhead and signed and dated (original) by the Appointing Authority, or designee, and directed to the Director for HRM with the following documentation:
- (1) Request/Justification Memo Signed by the Appointing Authority.
  - (2) Form CD-590. (See Section 4.9)
  - (3) Position Description. The original with current signatures and signed classification evaluation statement.
  - (4) Qualifications Standard. (See Section 4.4 C) The original approved by the OERB Chair.
  - (5) Rating Plan. Must include the factors to be used to rate/rank applicants and the elements which will be considered in determining whether the applicant is *not qualified, qualified, or best qualified* (ascending rank order).
  - (6) Recruitment/Outreach Plan. A statement that the operating unit will use USA Jobs, and describes the additional sources that will be used, such as paid advertisement and

colleges/universities and address outreach efforts to attract minority and women candidates.

(7) Vacancy Announcement

(8) Organizational and Staffing Chart

- C. The Director for HRM is responsible for approving operating unit executive recruitment plans for all SES positions.
- D. Upon approval, OHRM will notify the requesting bureau's servicing human resources management office (HRMO).

#### **4.2 COMPETITIVE RECRUITMENT GUIDELINES**

- A. The HRMO will enter announcements into the OPM USA Jobs website (<http://www.usajobs.opm.gov>).
- B. Recruiting should be reasonably extensive and systematic and include a positive effort to reach a diverse applicant pool. Operating units are required to recruit from all qualified citizens.
- C. SES vacancies to be filled by career appointments must be advertised for a minimum of 30 calendar days, including the date of publication. The announcements must include the opening and closing dates, the official position title, the duty location, pay range, a brief description of duties, a brief statement of the essential qualifications (i.e., ECQs and relevant Professional Technical Qualifications (PTQs)) requirements and evaluation method, the appropriate Equal Employment Opportunity statement, reasonable accommodation statement, and information on how to apply and to request additional information.
- D. Internally-developed mailing lists, paid advertisements, trade magazines or journals, and contacts with colleges and universities, etc., may be used as a way to increase the circulation of the vacancy announcement.
- E. The above guidelines also apply when filling positions authorized under 5 USC 3104, but are not required when the appointment is based upon rare or unique qualifications of the proposed appointee.

### 4.3 SELECTION PROCEDURE GUIDELINES

- A. A Human Resources Specialist conducts a preliminary assessment of each candidate and screens out those who do not meet the ECQs and PTQs. Initial career executive appointments must be submitted to OPM for QRB approval within 90 business days of the closing date of the position's vacancy announcement. Failure to meet this timeline will require that the bureau reissue a new vacancy announcement and repeat the competitive selection process.
- B. The OERB Chair must:
- (1) Convene the OERB to rate and rank applicants; or
  - (2) Delegate to a screening panel of executives or equivalent subject matter specialists, responsibility for preliminary qualifications screening, rating, and ranking of applicants.
- C. The OERB or screening panel shall rate and rank the qualifications of each qualified applicant. The written recommendations, at a minimum, will rate the applicants into three categories: *not qualified*, *qualified*, and *best qualified*. The use of numerical ratings and rankings is discouraged. The OERB screening panel shall prepare a summary rating of qualifications for each applicant. If differences cannot be resolved, the Human Resources Manager will be responsible for resolving them.
- D. A list of *Best Qualified* applicants shall be submitted to the interviewing official(s) or selecting official. *Best Qualified* applicants are those who were identified by the OERB as *Best Qualified* and recommended to the Appointing Official in writing. The Chair of the OERB must certify that the candidates included on the list are the *Best Qualified* applicants. Upon tentative selection, the interviewing official(s) shall forward the list to the Appointing Authority(s) for selection if the Appointing Authority is not the interviewing official. Selection must be made from the *Best Qualified* group. The OERB's summary rating sheets and information on ineligibles must be retained as part of the merit staffing file, but need not be provided to the interviewing official.

By law, the ECQs of a proposed career appointee must be approved by an OPM QRB prior to the operating unit appointing the individual (5 USC 3393). Operating units may not make any form of final

employment offer to the tentative selectee being considered for appointment until the QRB approval has been obtained. A tentative offer may be made, however, contingent upon appropriate security clearance and OPM QRB approval.

- E. Specific procedures to fill executive vacancies competitively must be available and open to review by anyone requesting this information. Veterans Preference may not be used as a factor in selection for SES positions (5 U.S.C.2108 (3)).
- F. The procedures should provide for adequate differentiation among candidates on the basis of the PTQs and ECQs as reflected in the Qualification Standard for the position. Such qualifications must be measurable and the source of information regarding the applicant's possession of the same must be determined (application documents, references, personal interviews, assessment centers, etc.) and documented.
- G. The Chair of the OERB must certify, in writing, that each Candidate proposed for an SES career appointment to a senior executive position meets the Qualification Standard for that position. The Appointing Authority or the OERB Chair must also certify that appropriate merit staffing procedures were followed for proposed career appointments.
- H. Operating units must submit the required selection and appointment documents to the Director for HRM when requesting OPM approval of an initial SES career appointee's ECQs. The *Executive Document Checklist* is available at <http://hr.commerce.gov/practitioners/sespolicies/index.htm>.
- I. Per 5 CFR 317.501 (d), operating units must keep records for two years after a competitive vacancy is filled or as necessitated by other conditions, such as direction by OGC, to allow reconstruction of each competitive action. The records must include:
  - (1) Documentation of the job analysis process sufficient to allow a reviewer to clearly follow the thought process and decisions made during the development of the Qualifications Standard and the applicant evaluation plan;
  - (2) The OPM Control Number for the vacancy listing in the **USAJOBS**, a copy of the vacancy announcement, position



description and evaluation statement, Qualifications Standard and Certification Statement;

- (3) A list of organizations and addresses where the vacancy announcement was distributed, and distribution rationale, e.g., a Recruitment/Outreach Plan;
- (4) The written selection procedures applied to the case, including the rating schedule or candidate evaluation plan, and names and organizational titles of rating panel members.;
- (5) Written recommendations made by the OERB (signed and dated) to the Appointing Authority on each qualified candidate for the SES position (including a copy of the SF-171/OF-612/resume upon which the recommendation is based); including a list of the groupings of all applicants and the supporting rationale, or rating sheets:
- (6) Any and all complaints or appeals to the OERB or Appointing Authority and the findings related thereto, and response;
- (7) Original copies of all applications received;
- (8) Any references or qualification questionnaires or inquiries obtained on the candidates;
- (9) Record of which, if any, candidates were interviewed;
- (10) Any recommendations by a selecting official to the appointing authority if the two are different individuals;
- (11) The signed and dated appointment action; SF-52 and documented certificate/*Best Qualified* listing; and
- (12) The appointing authority certification that the appointee meets the qualifications requirements of the position; and for competitive selections that appropriate merit staffing procedures were followed. (Certification Statement—see 4.4 D)

#### **4.4 PROCEDURES FOR REQUESTING APPROVAL FOR SELECTIONS**

The following documents must be provided when requesting approval for selections:

A. Request Memorandum to the CFO/ASA through Director for HRM requesting approval - A signed (original) memorandum from the Appointing Authority, or designee, on letterhead indicating a selection has been made with the title, series and location of the position and the name of the selectee. The requestor must explain reason for the selection.

B. Approval Document CD-590

Form CD-590 is required for all executive appointment approval requests and must include citations in the Remarks Section as follows:

- (1) The statement, "I approve the appointment of (Name of Appointee) to the SES (general or career reserved) position of (Title)," should appear on initial appointments, non-career appointments, limited appointments, reassignments, transfers and reinstatements.
- (2) If an individual is selected for an initial appointment as a career SES appointee, one of the following three citations must be included:
  - o 5 USC 3393(c)(2)(A), Demonstrated Executive Experience
  - o 5 USC 3393(c)(2)(B), Completion of Executive Development Program
  - o 5 USC 3393(c)(2)(C) Special Unique Qualifications (Potential)
- (3) The vacancy announcement closing date and FJOB number must be included on all initial appointments of career SES appointees.

C. Qualifications Standards

- (1) Qualifications Standards must be developed for all senior executive positions in accordance with this guide, OPM instructions, and Federal regulations when a new position is established; an existing position is substantially altered; a vacancy occurs; or when an existing Qualification Standard for

a position to be filled has a Qualifications Standard that was not prepared in accordance with these guidelines. The Qualifications Standard must be approved by the Chairperson, OERB, and applied to all candidates equally and impartially.

The operating unit human resources staff shall provide assistance to management officials in preparing a Qualifications Standard.

- (2) The Qualifications Standard identifies the position's essential requirements and allows for impartial assessment of the relative capacity and fitness of candidates. The OERB approved Qualifications Standard must be:
  - (a) Based on a job analysis, (utilizing sources such as position descriptions, performance plans, and the supervisor's knowledge of the position) to identify the managerial/executive and professional/technical knowledge and other factors required;
  - (b) Specific enough to identify qualified candidates and make qualitative distinctions among them when referring candidates to the selecting officials;
  - (c) Job-related and reflecting a clear relationship to the duties to be performed; and
  - (d) Consistent with the job analysis.
- (3) The following ECQs must be included in the SES Qualifications Standards. They provide the focus for the OPM QRB analysis of managerial/executive qualifications of candidates proposed for initial career appointments to SES positions.
  - (a) Leading Change:  
<http://www.opm.gov/ses/recruitment/ecq.asp#ecq1>
  - (b) Leading People:  
<http://www.opm.gov/ses/recruitment/ecq.asp#ecq2>
  - (c) Results Driven:  
<http://www.opm.gov/ses/recruitment/ecq.asp#ecq3>

- (d) Business Acumen:  
<http://www.opm.gov/ses/recruitment/ecq.asp#ecq4>
- (e) Building Coalitions:  
<http://www.opm.gov/ses/recruitment/ecq.asp#ecq5>

Proficiency levels for the ECQs are available at:

<http://apps.opm.gov/ADT/ContentFiles/LeadershipCompProficiencyLevels.pdf>.

- (4) A Qualifications Standard may not include:
  - (a) A minimum length of experience requirement beyond that authorized for similar positions in the General Schedule (5 CFR 317.402 (d)(1).
  - (b) Any criterion prohibited by law or regulation, e.g., age, sex, race, color, religion, national origin, marital status, handicapping conditions or political affiliation; or
  - (c) A minimum educational requirement beyond that authorized for similar positions in the General Schedule (5 CFR 317.402 (d)(2).

#### D. Certification Statement

The OERB Chair must sign a statement certifying that the proposed appointee or candidate's qualifications meet the ECQs and PTQs contained in the Qualifications Standard, and that merit staffing procedures were followed.

#### E. Qualifications Analysis

The selection of an individual for initial appointment as a career executive must be based on one of the following three citations, and for each criterion, the case must be submitted to OPM's QRB for approval.

- (1) Criterion A Case - 5 USC 3393(c)(2)(A), Demonstrated Executive Experience. The proposed appointee's experience, as analyzed against the five ECQs and the applicable PTQs, were qualifying.

- (2) Criterion B Case - 5 USC 3393(c)(2)(B), Completion of Executive Development Program. The proposed appointee has completed an OPM-approved SES CDP. The IDP links the completed developmental activities to the five ECQs. The OERB Chair must sign a letter certifying that the OERB has reviewed the graduate's performance during the program and approves the submission; and the individual has successfully completed all scheduled activities under the IDP.
- (3) Criterion C Case - 5 USC 3393(c)(2)(C), Special Unique Qualifications (Potential). States the appointee's managerial qualifications, the formal managerial developmental activities planned during the executive probationary period, and references the appointee's executive potential using the five ECQs, and listed in the Qualifications Standard.

F. Optional Form (OF) 612, Resume or Standard Form (SF) 171

The appointee must complete an OF-612, resume, or SF-171. The information contained in the selected document must comply with the information contained in the qualifications analysis.

G. Biography

See Section 4.8 of this manual.

H. Pay Rate Analysis

Salary recommendations should be made pursuant to requirements set forth in 5 CFR 534.404 (setting and adjusting pay for senior executives). While position to position comparison may be used for classification evaluation purposes, pay rate analyses must be done on a case-by-case basis for each appointee. A pay rate analysis must include the information below:

Pay Rate Analysis

Operating Unit: \_\_\_\_\_

Proposed Appointee: \_\_\_\_\_

Position Title: \_\_\_\_\_

Proposed Salary: \_\_\_\_\_

Appointee's Current Salary: \_\_\_\_\_

Operating Unit Average Salary: \_\_\_\_\_

Actual Dollar Increase: \_\_\_\_\_

Percentage of Pay Increase: \_\_\_\_\_

Pay Setting Analysis:

(In consideration of 5 CFR 534.404, provide the rationale for salary proposed above.)

\_\_\_\_\_  
Signature/Title  
Operating Unit Appointing Authority or  
Designee

I. Reference

OPM only requires references (addressing the five ECQs in the Qualification Standards) for the proposed appointee in Criterion C cases. For Criterion B cases, there may be instances when mentor's attestations would be helpful to the candidate.

**4.5 NON-COMPETITIVE SES APPOINTMENTS**

A. Noncareer SES Appointment

OPM approval is required for a non-competitive, noncareer, or limited appointment. The appointee, however, must meet the qualification requirements for the position, as determined in writing by the Appointing Authority. The appointee must also have the appropriate security clearance for the position.

The Appointing Authority must certify the qualifications for SES noncareer appointments. The CFO/ASA certifies the qualifications for noncareer SES positions in the Office of the Secretary Immediate Office and CFO/ASA. The Appointing Authority must sign certification statements for noncareer SES appointments.

B. Reassignment

- (1) An executive appointee may be noncompetitively reassigned to fill any vacant executive position in the Department, provided that the appointee meets the PTQs established for the position. Only career appointees, however, are eligible for reassignment into career reserved positions.
- (2) A noncareer executive appointee may only be reassigned with the prior approval of the DOC White House Liaison, White House Presidential Personnel and OPM. All noncareer reassignments require Departmental approval.
- (3) A career executive appointee may be reassigned to any executive position in the Department, *within the commuting area*, provided that the appointee receives a written notice at least 15 days in advance of the proposed effective date of the reassignment. The appointee may elect to waive, in writing, the advance notification requirement. An executive's refusal to accept reassignment to another executive position within the commuting area shall result in an involuntary separation.
- (4) A career executive appointee may be reassigned to any executive position under the Department, *outside the commuting area*, provided the operating unit has:
  - (a) Consulted with the appointee on the reasons for the reassignment;
  - (b) Provided the appointee with a written letter detailing the specific reasons for the reassignment, at least 60 days in advance of the proposed effective date of the reassignment.

The appointee may elect to waive, in writing, the advance notification requirement. An executive's refusal to accept a directed reassignment to another executive position outside the commuting area may be the basis for an involuntary separation.

- (5) For SES reassignments, other than those involving OIG executives, the Appointing Authority proposes the reassignment. If the executive agrees, the reassignment

action is processed through normal channels after receipt of Departmental approval. If the executive declines, the Appointing Authority may request that the CFO/ASA issue a letter of directed reassignment to the appointee.

- (6) Involuntary reassignments may not be made within 120 days after the appointment of a new Secretary of Commerce, or within 120 days after the appointment of a new, noncareer supervisor who has the authority to make the initial performance appraisal of the career executive. A 15-day or 60-day advance notice, as described in paragraphs (3) and (4) of this section, may be issued during the 120-day moratorium on the involuntary reassignment of a career appointee, however, an involuntary reassignment may not be effected until the moratorium has ended.
- (7) The limitations set forth in subparagraph (6) of this section do not apply if the reassignment is in connection with an unsatisfactory performance rating or a disciplinary action initiated prior to an appointment referred to above.

C. Reinstatement

- (1) Career appointees who leave executive service after having successfully completed the one-year probationary period are eligible for reinstatement to any executive position for which they are technically qualified. Appointees initially converted to the executive service without the requirement of having to serve a probationary period are also eligible for reinstatement to any executive position. The Appointing Authority may recommend the pay of a former executive service member be set at any amount within the SES pay band upon reappointment to the executive service, in accordance with the conditions specified in 5 CFR 534.404 (pay). However, former executives cannot be reinstated after having separated from executive service with less than a Fully Successful performance rating; for reasons of misconduct, neglect of duty, or malfeasance; for national security reasons; by order of the Merit Systems Protection Board (MSPB), upon the recommendation of the Special Counsel; or following a resignation to avoid such an action. Former career executives who were appointed by the President to a civil service position outside of the senior executive service, without a break in



service, and who leave the Presidential appointment for reasons other than misconduct, neglect of duty or malfeasance, are entitled to placement as career senior executives. If the individual retained executive service pay benefits during the Presidential appointment, reinstatement must be at the current pay rate if an adjustment has been made within the previous 12 months. All reinstatement actions require Departmental approval.

- (2) Reinstatement eligibility acquired in the non-SES competitive service is limited to such positions and is not transferable to the SES. Similarly, persons in, or who were in, the excepted service cannot be reinstated to the SES based on their employment in the excepted service. The SES is a separate personnel system with its own statutory requirements. A senior executive who voluntarily accepts a noncareer SES appointment has no guaranteed placement rights to career SES positions.
- (3) Applicants with reinstatement eligibility must meet the PTQs for the SES position.

D. Reemployed Annuitants

- (1) A person who retires from the SES with career status may be reemployed as an annuitant with appropriate limitations on tenure and compensation.
- (2) A reemployed annuitant is:
  - (a) Eligible for appointment to either an SES general or career reserved position.
  - (b) Considered a “reinstatement-SES career,” serving at the pleasure of the Appointing Authority.
  - (c) Compensated in the same manner as a reemployed annuitant in the General Schedule.
  - (d) Eligible to receive SES performance awards, if serving in an SES career appointment, in accordance with policies and procedures governing such awards.

E. Transfer

A career SES member may be permanently assigned or appointed to a career SES position in a different executive agency or military department. 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. The executive must be qualified for the position to which transferred.

F. Completion of Candidate Development Program (CDP)

- (1) An individual who successfully completes an OPM-approved CDP, and receives OPM QRB certification, may be selected for a SES position without further competition, provided that the individual's initial competition into the approved CDP was in accordance with the merit staffing procedures prescribed by OPM regulations.
- (2) For SES CDPs conducted under 5 CFR 412.104 (a)(2) and restricted to agency participants only, competition is required, but a second OPM QRB certification is not.

G. Interchange Agreements

- (1) OPM and any agency with an executive personnel system, which is essentially equivalent to the SES system established under the Federal Government, may enter into an agreement providing for the movement of executives between their equivalent system and the SES system. The agreement shall define the status and tenure that the affected executive shall acquire under the movement.
- (2) Executives eligible for movement must be serving in permanent, continuing positions with career or career-type appointments.
- (3) An interchange agreement may be discontinued by either party under such conditions as provided for in the agreement.

**4.6 TRANSFER OF FUNCTION**

- A. Per 5 CFR 359.608(a) a career appointee affected by a transfer of function between agencies has rights comparable to a competitive

service employee, and is entitled to accompany the function if the alternative would be removal from the SES under Reduction In Force.

- B A career appointee who fails to accompany a transfer of function may be removed from the SES. As an alternative to removal, the losing agency may reassign the appointee to another SES position in a different function.

#### 4.7 **DETAILS**

##### A Purpose:

A detail is the temporary movement of an employee within, into, or out of the SES for a specified period, usually with the expectation that the employee will return to his/her regular position at the end of the period. Administratively, for purposes of pay and benefits, the employee continues to be the incumbent of the position from which detailed. The SES is a distinct personnel system which is not interchangeable with other personnel systems. SES appointees may not be detailed into established GS-15 or equivalent, ST, SL or AD positions.

##### B. Requirements:

- (1) Details are approved by the CFO/ASA through the Director for HRM.
- (2) Details may be within Commerce or negotiated with other federal agencies.
- (3) An SES appointee may be detailed to an unclassified or unestablished position up to 240 days. OPM regulation prohibits extension beyond 240 days. The initial appointment cannot exceed 120 days with a second appointment up to another 120 days.
- (4) Details of career SES members should not be used to circumvent the advance notice requirement for reassignments or the 120-day moratorium on involuntary reassignments following the appointment of a new agency head or noncareer supervisor. Any detail during these periods should be made judiciously and only when there is a clear, bona-fide need for

the individual to serve in the position. In all cases, the reason for the detail must be documented.

- (5) Only career SES employees and career-type non-SES Employees may be detailed to a Career Reserved position.
- (6) The detail of non-SES employees requires competition if it is anticipated that the detail will be for greater than 240 days.

C. Requesting Approval

Each request for approval of a detail shall include the following:

- (1) Request memorandum from Appointing Authority directed to the CFO/ASA through the Director for HRM addressing:
  - (a) Budgetary impact of proposed detail;
  - (b) Employee's name, title, grade, occupational series code, and salary;
  - (c) The operating unit in which the employee is employed;
  - (d) The need for the detail and nature of the work to be performed (including organizational and geographic location);
  - (e) The proposed length/beginning and ending date of detail; and
  - (f) Whether the detail is reimbursable or non-reimbursable
- (2) CD-590
- (3) Position Description. If the detail is to unclassified duties, submit a Statement of Duties rather than a position description.
- (4) Current resume, OF-612, or SF-171
- (5) Memorandum of Understanding to be signed by the employee's Appointing Authority and gaining office official.

The Office of Human Resources Management will obtain OGC approval for SES details before forwarding the request to the CFO/ASA for final approval. After approval, a copy of the SF-52 and Memorandum of Understanding must be placed in the detailed employee's Official Personnel Folder.

Once the detail is completed, the responsible Human Resources Office will process a personnel action to terminate the individual's detail.

D. Details of Limited Term SES Employees

An SES limited term appointee may be detailed to an SES general position the duties of which will expire at the end of 3 years or fewer.

An SES limited term appointee may not be detailed to a continuing SES position because the continuing duties to which the individual would be assigned would not satisfy the statutory conditions for SES limited term. The statutory basis for the SES limited term appointment would disappear and the SES limited term appointment would need to be terminated. This does not preclude a reasonable temporary "acting" assignment, e.g., during the short term absence of another executive, that does not become the individual's new continuing assignment or prevent his or her timely return to the SES position and completion of the tasks for which SES limited term appointment was approved.

E. Details of Non-executives

- (1) Details of non-executives to SES positions should not be used as a means of providing a specific employee the opportunity to acquire the qualifications required for entry into the SES (other than in accordance with an OPM-approved SES candidate development program.) Requests must be submitted to the CFO/ASA through the Director for HRM. The request must include a justification memo, Form CD-590 and a current OF-612, resume, or SF-171.
- (2) Approved details are limited to 240 days and may only be extended if there is adequate justification, subject to the review and approval of the CFO/ASA, and competitive merit promotion procedures have been followed.

F. Senior Foreign Service Officers

- (1) When a Senior Foreign Service Officer is to be assigned or detailed to a current or former executive position in the United States, the Office of Foreign Service Personnel will coordinate with the appropriate operating unit personnel office to ensure the position is available.
- (2) The Office of Foreign Service Personnel, with the concurrence of the Principal Human Resources Manager for the gaining operating unit, shall develop the necessary documentation (request justification, OPM Form CD-590, and OF- 612, resume or SF-171). The proposed action shall be submitted to the CFO/ASA for approval, in accordance with established executive personnel policy and procedure.

G. NOAA Commissioned Corps Officers

- (1) The CFO/ASA shall be the Approving Authority for NOAA Corps Commissioned Officers' assignments, details or detail extensions to executive, proposed executive, or former executive positions located outside the organizational boundaries of the NOAA Corps.
- (2) The approval document will be Form CD-590.

**4.8 EXECUTIVE BIOGRAPHY**

- A. A one-page biography is required for Presidential appointees and senior executives who occupy a position that is classified above the GS-15 level.
- B. Biographies must be included as part of the executive submissions for:
  - (1) Proposed appointments
  - (2) Reassignments (updated to reflect new position)
  - (3) Transfers in
  - (4) Details

C. Sample Executive Biography

**EXECUTIVE BIOGRAPHY**

Name:

Proposed Position: (position candidate will encumber with DCES-####)

Include a paragraph briefly describing proposed position's responsibilities

Previous Experience: (current position)

Most Recent Experience:

20\_\_ - 20\_\_  
Earliest Experience

Education

**4.9 COMPLETION OF FORM CD-590**

Form CD-590, Executive Personnel Action, is used to document all senior executive actions involving positions or individuals in the Executive Schedule (EX), Senior Executive Service (ES), as well as Scientific and Professional (ST), Senior Leader (SL) and Administratively Determined positions. Form CD-590 is located at <http://www.osec.doc.gov/forms>.

How To Complete The Form

I. Type of Transaction

Effective date will be inserted in the original CD-590 by the Department after approval by the CFO/ASA and OPM.

A. Actions Involving Position

This section should be completed in terms of executive positions only. For instance, if a former GS-15 position is upgraded to an SES position, the action should be reported as "Establish new position." Use the following codes for specific actions identified:

- (1) Establish new position. Use when establishing a position never previously reported. For a newly

established Executive Schedule position, give legal authority (e.g., public law number and date) in Agency Remarks in Section VII.

- (2) Reestablish old position. Use when reestablishing a position that was previously canceled.
- (3) Change grade of established position. Use for EX, GS, or OT positions only.
- (4) Redescribe established position. Use to change the title or organizational location of a position, without a change in pay plan or grade.
- (5) Cancel position (permanent). Use when it is expected that the position will not be reestablished as an executive position. Fill out information about canceled position under Section II-A, "Former Position." If an Executive Schedule position is the canceled, give the legal authority in Agency Remarks in Section VII.
- (6) Cancel position (temporary). Use when it is expected the position will be reestablished in the future. Fill out information about the canceled position under Section II-A, "Former Position." A temporarily canceled position does not count against an agency's position allocation.
- (7) Authorization for SES limited appointing authority. Use to request authority.
- (8) Change SES career reserved position to general. Use to request approval.
- (9) Change SES general position to career reserved. Use to request approval.
- (10) Other (specify) Use for reporting position changes not otherwise covered.

B. Actions Involving Individual

- (1) Individual appointed to position (no qualifications approval needed). Use any time an individual is



appointed to an executive position (whether by appointment from outside the government, reassignment, promotion, demotion, or transfer) where OPM approval is not required or where the appointment was effected after OPM approval of the action. If the action is a temporary promotion, show the length of the promotion in Agency Remarks in Section VII.

(2) Individual proposed for position. Use when prior OPM or QRB approval of the individual's qualifications for appointment, including executive qualifications of candidates for SES position are required and has not yet been obtained. When requesting approval of SES executive qualifications, indicate in Agency Remarks in Section VII if the basis for consideration is:

A - demonstrated executive experience,

B - successful participation in an approved candidate development program, or

C - special or unique qualities.

After receiving OPM approval, a new Form CD-590 should be submitted for information showing effective date of the appointment (transaction IB-01). If for some reason an individual is not appointed to a position for which approved, OPM should be notified.

(3) Individual leaving covered position. Use when the individual is leaving an executive position, but not going into another one (e.g., leaving government or going to a GS-15 or equivalent position). If the individual is going to a non-executive position, Section II-A should show the former executive position and Section II-B the new position.

(4) Conversion under Section 413, CSRA. Use for a conversion after July 13, 1979, but under the conversion provisions of Section 413 of Public Law 95-454, the Civil Service Reform Act of 1978, or other public law.

- (5) Change in ST/SL salary or SES pay rate. Use for any change in ST/SL salary or SES pay rate.
- (6) Nomination to SES Meritorious Senior Executive or Senior Professional Rank. Attach justification.
- (7) Nomination to SES Distinguished Senior Executive or Senior Professional Rank. Attach justification.
- (8) Detail or long-term training. Use for details within the Executive Branch or long-term training if the detail or training is for 120 days or more. Check "Begin" if the form is being submitted to show scheduled detail or detail in progress and enter actual starting date in "Effective date." Check "End" if form is being submitted to show termination of detail previously reported, and enter termination date in "Effective date." Enter the regular assignment under Section II-A and the detail under Section II-B.
- (9) SES sabbatical. Check whether sabbatical is beginning or ending. Show the length of the sabbatical, and nature of activity if known, in "Agency Remarks" in Section VII.
- (10) Temporary assignment outside the Executive Branch. This code includes intergovernmental personnel assignments and assignments to international organizations when the executive will remain on the agency's rolls. (If the executive is separated from the agency's rolls while on the assignment, use B-03 even if the executive has reemployment rights to the agency.) Check whether the assignment is beginning or ending. Describe the nature of the assignment, including anticipated length, in "Agency Remarks" in Section VII.
- (11) Other (specify). Use for reporting executive changes not otherwise covered, e.g., a change in name.

## II. Position Information

- A. Former position. This covers only an individual's former position or information on a position being canceled.

Complete only if an action involving an individual has been checked under IB and the individual's former position is in the Federal service or if IA-05 or 06 has been entered. If the individual is coming from outside the Federal service, leave blank. When filling out, follow instructions under B, immediately below.

B. Current or proposed position. Complete in all cases as follows:

- Position title - Enter official title.
- Position number - Enter the number assigned to the position in accordance with the instructions below:
  - The first two spaces show the agency code.
  - The third and fourth spaces show the pay plan as abbreviated in the introduction to these instructions. Administrative Law Judges, though in the General Schedule, are treated as a separate pay plan ("AJ") under the position numbering system. The "Other pay plans" all have a position number symbol of "OT."
  - The last four spaces show the number of the position within the pay plan.

Keep the same number for the same position as long as it exists. Do not reuse the number of a permanently or temporarily canceled position for another position. If a canceled position is reestablished, the old position number should be used.

If an agency wants to use its position numbering system to keep track of its allocations, it is possible to use one of the digits in the position number to show that a canceled number is being reused. (For example, if XXES0020 is permanently canceled, the agency could use XXES1020 for a new position using that space. When that position is canceled, the next position would be number XXES2020.) Position numbers are assigned by the Office of Executive Resources.

- Pay plan - Enter EX for Executive Schedule, ES for Senior Executive Service, GS for General Schedule (including ALJs), and ST for ungraded scientific or professional positions engaged in research and development.
- Grade - If position is EX, enter 01 through 05. If position is in another graded pay plan, fill in appropriately. If position is ES or ST, leave blank.
- Occupational series - Enter most appropriate occupational series, except leave blank for EX positions.
- Appointment authority - Enter appropriate code from list below for positions in EX, GS, ST, and OT pay plans. Leave blank for SES positions, since the type of appointment for these positions can vary with the incumbent.

Presidential Appointment with Senate approval	PAS
Presidential Appointment without Senate approval	PA
Career Executive Assignment	CE
Limited Executive Assignment	LE
Noncareer Executive Assignment	NC
Schedule A	SA
Schedule B	SB
Schedule C	SC
Excepted by statute	XS
Competitive	CO
(use for competitive EX or ST position)	
Career or Career Conditional	CC
(use for competitive GS-15 or equivalent and below position)	

- Manager, supervisor, all others - Use the definitions in the General Schedule Supervisory Guide.
- Position Designation - 1) General or 2) Career Reserved
- Geographic location - Enter city and state where position is located.

III. Information about the Individual

- A. Name, Sex.
- B. Current or proposed pay rate, grade, or salary. For individuals who did not convert to SES, the actual (“status quo”) pay plan and grade or salary should be shown.
- C. Previous pay rate, grade, or salary. Complete if there is any change in pay plans or if the individual’s pay rate, grade, or salary changes within a pay plan.

IV. Staffing Information

- A. Where recruited from. If an individual is changing agencies, only the gaining agency should complete this item.
- B. Reason left federal service. Complete only if the individual left the Federal service. Do not complete if the individual went to another agency or to the legislative or judicial branch.

Code 3 - Retirement: Discontinued Service (RIF, reorganization, transfer of function) - Also use this code when retirement based on position abolishment, early retirement authorized by OPM, or declination of a geographic reassignment.

- C. Where plans to work. Complete if the individual left federal service as a result of a voluntary action (e.g., resignation or retirement).

V. Information about SES Members Only

- A. Type of appointment. Enter the appointment code.
- B. Five-years current continuous service in the civil service. Complete only for individuals receiving their initial appointment to the SES, no matter what the appointment authority. Disregard breaks in service of 3 days or less.
- C. Leaves SES for another Federal position. Complete whether the other position is an executive position (e.g., Executive

Schedule) or a non-executive position (e.g., GS-15 or equivalent)

- D. Conversion to Presidential appointment with Senate confirmation. Complete only for a career SES appointee.
- VI. Documents Submitted - See Executive Document Checklist to see what documents must be submitted with what actions.
- VII. Agency Remarks
- A. Use the Remarks section to provide any needed explanations, including any waivers to normal regulations, such as those regarding employment of retired military officers. Cite appropriate section of the form to which the remarks refer.
  - B. If the individual is being submitted for QRB approval, cite the number and date of the OPM vacancy list on which the position was announced, and the USA Jobs number.
  - C. Do not document the Race/National Origin code on the Form CD-590.
  - D. Each form must be signed by the authorized submitting official.
- VIII. OER Actions and Remarks - This section shows the individual who prepared the action.

Special Instructions

- 1. Individuals entering SES candidate development programs. The CD-590 should be filled out as indicated below.
  - A. Type of Transaction - In Section B:
    - Enter below B11: Specify "Individual Being Developed for SES"
    - This is an "N" transaction.
    - The effective date is the date the individual entered the candidate development program.

B. Position Information

- Give current Position Title, Pay Plan, Grade, Occupational Series, Appointing Authority, Managerial Code, Agency, Bureau, Division, and city and state.

C. Information about the Individual

- Give Name, x, and Grade or Salary

D. Agency Remarks -- Enter the following items:

- Date of Birth: YYMMDD (year, month, day)
- Service Computation Date: YYMMDD
- Development Program: XXXXXX (e.g., DYRS87)

Position 1-2 Agency Key (e.g., DY = Department of Treasury)

Position 3-4 Alphabetic code if program operates at the Bureau level (e.g., RS = IRS in Department of Treasury). Put 00 if program does not operate at the Bureau level.

Position 5-6 Fiscal Year individual started the program

#### **4.10 EFFECT OF 120-DAY MORATORIUM ON PERSONNEL ACTIONS**

The 120-day moratorium was established to prevent preemptory actions during periods of transition by new appointees without adequate knowledge of their career SES subordinates.

A. Qualification Review Boards

In accordance with 5 CFR 317.502(d), the Office of Personnel Management (OPM) may determine the disposition of agency SES Qualifications Review Board (QRB) cases when the agency's head departs or announces his or her departure. This is done to ensure that the incoming head of that agency will have the full opportunity to exercise their prerogative to make or approve executive resource decisions that will impact the agency's performance during his or her tenure. To that end, OPM has stated it will impose a moratorium on the processing of a particular agency's SES QRB cases when the head of that agency departs for any reason, effective immediately upon the effective date of his or her departure. A QRB moratorium

will also be imposed when the head of an agency announces his or her intention to leave that office, effective immediately upon that announcement.

B. Performance Appraisals

Performance appraisals and ratings for career appointees may not be made within 120 days after the beginning of a new Presidential administration (i.e., the administration of a President other than the one in office immediately before the beginning of the current administration) [5 U.S.C. 4314(b)(1)(C)]. When the new President is inaugurated on January 20, appraisal actions may not be taken until May 20.

The moratorium applies to all phases of the formal appraisal process leading to an annual summary rating: the initial summary rating recommendation by the supervisory official, any review by a higher level official, review and recommendation by the Performance Review Board (PRB) and the annual summary rating by the appointing authority. The length of the performance appraisal period is not extended by the moratorium, which merely delays the appraisal and rating actions.

The moratorium does not preclude the issuance of a written appraisal when an executive changes positions, as required by 5 CFR 430.307, or when the supervisor leaves if agency regulations require a rating at that time. A progress review is not subject to the moratorium. Additionally, a reduction in pay based on a less than Fully Successful annual summary rating assigned prior to the beginning of a new Presidential administration is not subject to the moratorium.

C. Involuntary Reassignments

Statute: 5 U.S.C 3395(e)

Regulations: CFR 317.901(c)

To prevent preemptory reassignments by new appointees without adequate knowledge of the individuals involved, the law provides that an agency may not involuntarily reassign an SES career appointee:

- within 120 days after an appointment of the head of the agency; or



- within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who is a noncareer appointee, and has the authority to make an initial appraisal of the career appointee's performance under 5 U.S.C Chapter 43, subchapter II.

D. Details During Moratorium

In calculating the 120-day moratorium, the agency should not count 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. The moratorium provision does not restrict the total length of a detail, which may exceed 60 days. Details should not be used to circumvent the 120-day moratorium. Any detail during the moratorium should be made only when there is a clear, bona-fide need.

If a career appointee is detailed during the moratorium, or already on detail at the start of a moratorium, the first 60 days of the detail (or any combination of details) do not count against the 120 days.

E. New Agency Head

The appointment of a new agency head (including a recess appointment) always initiates the 120-day moratorium, and an action may not be taken by another official even if that official has been in office more than 120 days.

F. "Acting" Designations

The designation of an "acting" agency head or noncareer supervisor (e.g., by a detail or when a deputy acts in the position) is not legally an appointment (except in the case of a recess appointment). Therefore, the statutory moratorium is not technically applicable. However, the agency at its discretion may provide in its instructions that it will apply the moratorium in such situations. If the individual later receives a permanent appointment to the position without a break in service, any days spent under an agency applied moratorium in an acting capacity, shall be counted toward the 120-day moratorium initiated by the permanent appointment.

G. New Noncareer Supervisor

A moratorium initiated by the appointment of a noncareer supervisor applies only to those career appointees for whom the supervisor gives the initial performance appraisal. It does not apply to other career appointees, even if the noncareer appointee is their higher level supervisor and functions as a reviewing official or final rater, or has the authority to reassign them. If a moratorium is initiated by the appointment of a noncareer supervisor, an involuntary reassignment action may not be taken by the agency head even if the agency head has been in office more than 120 days.

H. Realignments

The 120-day restriction does not apply to realignment, which is the movement of an employee and the employee's position when a transfer of function or an organization change occurs within the same agency and there is no change in the employee's position.

I. Reassignment Based on Performance

When an executive is reassigned as a result of an unsatisfactory performance rating under 5 U.S.C 4314(b)(3), the 120-day moratorium does not apply if the reassignment was issued before the appointment that initiated the moratorium. When a final rating of unsatisfactory has already been issued, the reassignment may proceed even if a new agency head or noncareer supervisor (with authority to make an initial appraisal) is subsequently appointed. However, any moratorium that is already underway at the time the final unsatisfactory rating is issued must be allowed to run its course before the reassignment action can be taken.

--Reassignment Notice: The 15- and 60-day advance notices pertaining to reassignment may run concurrently with the 120-day moratorium. However, if the advance notice is issued after the moratorium begins; an involuntary reassignment may not be effected until the moratorium ends. [CFR 317.901(d)]

If an advance notice is issued before the moratorium begins, but the notice has not yet expired, an involuntary reassignment may be effected at the end of the notice period even if the moratorium has not ended. However, it would not appropriate for a proposed agency head or noncareer supervisor to have some other official issue a

reassignment notice before appointment to avoid application of the moratorium. The action needs to be taken independent of the incoming agency head or noncareer supervisor.

J. Removals

(1) Probationers for Disciplinary Reasons.

The removal of a probationer under Part 359, Subpart D, for disciplinary reasons is subject to the 120-day moratorium, with the following exceptions:

- The disciplinary action was initiated before the appointment of the agency head or SES noncareer supervisor (i.e., before the appointment which initiated the moratorium); or
- There is reasonable cause to believe that the probationer committed a crime punishable by a prison sentence, or that retention of the probationer may pose a threat to the appointee or others; may result in loss of or damage to Government property; or may otherwise jeopardize legitimate Government interests. When the exception is invoked, the following additional procedural requirements must be met:
  - (a) the agency's notice shall include the reasons for invoking the exception. The probationer shall be given a reasonable time (not less than seven days) to respond regarding the propriety of the exception. The agency shall give the probationer a notice of decision on the propriety of using the exception at or before the time the action will be effective; and
  - (b) when circumstances require immediate action, the agency may place the probationer in a nonduty status with pay for such time as necessary to effect the removal.

Imposing a moratorium does not extend the probationary period. Thus, it is possible for a probationer against whom an agency is contemplating disciplinary action to complete the probationary period during a moratorium.

In such case a subsequent disciplinary removal action could not be processed under 5 CFR Part 359, Subpart D, but would have to be taken under 5 CFR 752, Subpart F (Adverse Actions).

**Guaranteed Placement:** A probationer removed for disciplinary reasons is not entitled to placement in a position outside the SES.

**Appeal:** The removal of a probationer for disciplinary reasons under 5 CFR Part 359, Subpart D, is not appealable to the Merit Systems Protection Board.

- (2) **Probationers for Conditions Arising Before Appointment.**  
The removal of a probationer for pre-appointment conditions is subject to the 120-day moratorium described at the beginning of this chapter. The moratorium may be waived under the same conditions previously described in this section.

**Guaranteed Placement:** A probationer removed for pre-appointment conditions is not entitled to placement in a position outside the SES.

**Appeal:** The removal of a probationer for pre-appointment conditions under 5 CFR Part 359, Subpart D, is not appealable to the Merit Systems Protection Board.

- (3) **Probationers Under a Reduction in Force (RIF).**  
The removal of a probationer from the SES by RIF is not subject to the moratorium.

**Guaranteed Placement:** The probationer's placement rights outside the SES, if any, are governed by 5 CFR Part 359, Subpart G. Guaranteed placement upon removal from the SES by RIF is limited to those probationers who, at the time of appointment to the SES, held a career or career-conditional appointment, or an appointment of equivalent tenure as defined in 5 CFR 359.701(a)

- (4) **Probationers for Performance Reasons**  
Pursuant to 5 USC 3592(b)(1), removals of career appointees during the probationary period for performance reasons after completion of the probationary are prohibited:

- within 120 days after an appointment of the head of the agency; or

- within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who is a noncareer appointee and has the authority to remove the career appointee. Time spent "acting" in the supervisory position does not count toward the 120 day time period.

Guaranteed Placement: Guaranteed placement at GS-15 or above (e.g., Senior Level) upon removal from the SES is limited to those probationers who, at the time of appointment of equivalent tenure as defined in 5 CFR 359.701(a). Probationers who are not entitled to guaranteed placement are separated from the Federal service.

Appeal: The removal of a probationer for performance reasons is not appealable to the MSPB and does not entitle the employee to an informal hearing before the Board.

## CHAPTER 5. PAY AND LEAVE ADMINISTRATION

### 5.1 REGULATIONS ON PERFORMANCE-BASED PAY SYSTEM

In accordance with the National Defense Authorization Act for Fiscal Year 2004, the Office of Personnel Management issued final regulations effective December 6, 2004, that provided for new, higher basic pay for members of the SES. The new regulations also provided for the higher aggregate limitation on pay for SES members and employees in ST and SL positions.

With these new regulations, agencies that have certified performance appraisal systems for senior executives are permitted to pay their highest-performing SES members above the rate for level III of the Executive Schedule, up to the rate for level II of the Executive Schedule. Agencies that have certified performance appraisal systems for senior executives and ST/SL employees may also apply a higher aggregate limitation on pay, up to the Vice President's salary.

#### A. General Setting and Adjusting of Pay

Pay setting and adjustments are based on individual performance and/or contribution to the agency's performance as determined under a rigorous performance management system. The agency may consider such things as unique skills, qualifications, or competencies that the individual possesses, and their significance and contribution to the agency's performance. Pursuant to 5 CFR 534.404(g), rates of pay higher than the rate for level III of the Executive Schedule must be approved by the Secretary or CFO/ASA in consultation with the Senior Assessment Official, and generally are reserved for those senior executives who have demonstrated the highest levels of individual performance and/or made the greatest contributions to the agency's performance, or in the case of newly-appointed senior executives, those who possess superior leadership or other competencies.

#### B. 12-Month Rule

Pursuant to 5 CFR 534.404 (c), a senior executive's rate of basic pay may not be adjusted more than once during a 12-month period. This is commonly referred to as the 12-month rule. In certain circumstances, however, a determination may be made to increase

a senior executives pay. Specifically, 5 CFR 534.404 (c)(4)(ii) allows that a senior executive's pay may be increased if the agency head or designated senior assessment official determines that a pay increase is necessary to reassign a senior executive to a position with substantially greater scope and responsibility or to recruit a senior executive with superior leadership or other competencies from a position in another agency.

Pursuant to 5 CFR 534.404 (c)(4), the CFO/ASA, in consultation with the Senior Assessment Official, may approve an increase more than once during a 12-month period for the following reasons:

- (1) for an exceptionally meritorious accomplishment,
- (2) when it is necessary to reassign an executive to a position with substantially greater scope and responsibility or to recruit a senior executive with superior leadership or other competencies from a position in another agency,
- (3) for a senior executive who is critical to the mission of the agency and who would be likely to leave the agency in the absence of a pay increase, or
- (4) to align a senior executive with the agency's senior executive appraisal and pay adjustment cycle.

Bureaus wishing to provide more than one pay adjustment in a 12-month period must specify in their selection or reassignment request transmittals that they are seeking an exception to the 12-month rule and specifically address why the exception is justified. The pay rate analysis should also note the rationale supporting the request. The CD-590 "Agency Remarks and Approval" must include the following information:

(Bureau name) requests a (number) percent increase in (employee name) salary from (current salary) to (proposed salary). The Department's Senior Assessment Official has determined that pursuant to 5 CFR 534.404 (c)(4)(ii), this pay increase, an exception to the 12- month rule, is necessary to (insert reason, i.e. reassign (employee name) to this position of substantially greater scope and responsibility.)

OR

(Bureau name) requests a (number) percent increase in (employee name) salary from (current salary) to (proposed salary). The Department's Senior Assessment Official has determined that pursuant to 5 CFR 534.404 (c)(4)(ii), this pay increase, an exception to the 12- month rule, is necessary to (insert reason, i.e. recruit (Employee name) a senior executive with superior leadership or other competencies from a position in another agency.)

A pay increase made as a result of a determination to approve an exception to the 12-month rule is considered a pay adjustment and begins a new 12-month period.

#### Pay Increases That Do Not Count Against the 12-Month Rule

- (1) Conversion of senior executive to the SES pay system;
- (2) A zero adjustment in pay;
- (3) A determination to provide an additional pay increase when there is an increase in the Executive Schedule rates of pay;
- (4) A determination to provide a pay increase to allow a senior executive to maintain his or her relative position in the SES rate range; and
- (5) An increase in pay equivalent to the minimum amount necessary to ensure that a senior executive's rate of basic pay does not fall below the minimum rate of the SES rate range.

#### C. Reduction in Pay

Pursuant to 5 CFR 534.404 (j), an executive's basic pay may not be reduced by more than 10% in any 12-month period for performance or disciplinary reasons.

#### D. Transfer or Suspension of Certification

Pursuant to 5 CFR 534.403(3)(b), a senior executive whose rate of basic pay is higher than the rate for level III of the Executive Schedule may not suffer a reduction in pay as a result of transferring to an agency where the maximum rate of basic pay for the applicable SES rate range is equal to the rate for level III of the Executive Schedule or as the result of a decision to suspend



certification of the applicable performance appraisal system. However, the employee would not be eligible for a pay adjustment until the performance appraisal system is certified.

## **5.2 EXECUTIVE SALARY DETERMINATION**

### **A. SES Initial Appointments**

Pay may be at any rate within the SES rate range upon initial appointment to the SES, subject to the limitation on the maximum rate of basic pay per 5 USC 534.403(a). In accordance with 5 CFR 534.403(3), rates of basic pay above the rate for level III of the Executive Schedule, but less than or equal to the rate for level II of the Executive Schedule generally are reserved for those newly appointed senior executives who possess superior leadership or other competencies, as determined by the agency within the context of its strategic human capital plan. In setting a new senior executive's rate of basic pay, per 5 CFR 534.404(a), an agency must consider:

- The nature and quality of the individual's experience,
- Qualifications, and accomplishments as they relate to the requirements of the SES position, as well as
- The individual's current responsibilities.

### **B. Other Executive-Level Pay Systems**

This section reflects Departmental policy for implementing provisions of the FEPCA (Reference 5 CFR 531), above GS-15. These include SL and ST positions.

- Minimum pay must be at least equivalent to 120% of a GS-15, Step 1.
- Maximum pay must not exceed level EX-IV.
- Increases in pay under these provisions may not be made retroactive and must be approved by the agency head or the designee.
- Limited to one pay adjustment per 12-month period.

- Requests to set pay above the cap will only be considered in unusual situations where the position is especially important to the Department and/or the qualifications of the individual are unusually high.
- Consistent with SES pay setting policy, initial appointments to either of the above pay ranges should represent an increase over current salary and consider such criteria as listed in Section 5.1. A.
- Initial pay setting proposals should include an analysis using the above criteria in Section 5.1. A when appointment packages (including Form CD-590) are submitted to the Director for HRM. As with SES cases, the final approval authority for all senior positions is vested with the CFO/ASA. No commitments on pay setting should be made until approval is received from the CFO/ASA through the Director for HRM.
- Adjustments to pay for these employees will be considered at the end of the fiscal year performance rating cycle.

Adjustment recommendations should be reviewed by the operating unit PRB, endorsed by the senior operating unit Appointing Authority, and be based on such criteria as changes in position responsibilities, personal performance and length of service, and increased professional stature.

- Pay of an ST/SL employee may not be adjusted more than once in a 12-month period.
- Final approval of these adjustments will be subject to DERB deliberations.
- Request for adjustments with brief narrative justification (not to exceed one page in length) must be submitted to the DERB at the same time as SES bonus and pay rate adjustment requests.
- All future salary adjustment requests or performance-related adjustments must also be submitted to the

CFO/ASA using the Form CD-590 as the approval document.

- Operating units wishing to supplement these provisions should submit proposed documentation to the Director for HRM for approval.

(1) Critical Pay:

- Section 102 of the Federal Workforce Flexibility Act of 2004 shifted primary responsibility for the Federal Government's critical pay authority from the Office of Management and Budget (OMB) to OPM to facilitate increased application of this flexibility as a means of attracting talented individuals to critical positions in the Federal Government who would not otherwise accept or stay in Government jobs at lower rates of pay. This provision became effective on October 30, 2004.
- Under the critical pay authority, OPM may upon the request of an agency head, and after consultation with OMB, grant authority to fix the rate of basic pay for one or more critical positions in an agency at not less than the rate that would otherwise be payable for that position, up to the rate of level I of the Executive Schedule. Under this same provision of law, a higher rate of pay may be established upon the President's written approval. In order to apply the critical pay authority, the position must require a very high level of expertise in a scientific, technical, professional, or administrative field and be crucial to the accomplishment of an agency's mission. Requests to use the critical pay authority should continue to use the criteria provided by OMB Bulletin 91-90, "Critical Pay Position Authority," dated March 7, 1991, except that all requests must be submitted from the Appointing Authority through the Director for HRM, to the CFO/ASA, and OPM, in consultation with OMB, will make the determination to approve such a request.

### 5.3 RECRUITMENT, RELOCATION, AND RETENTION INCENTIVES

- A. Recruitment: An agency may pay a recruitment incentive to a newly appointed senior executive (excluding a noncareer appointee) if the agency has determined that the position is likely to be difficult to fill in the absence of an incentive. For this purpose, “newly appointed” is defined at 5 CFR 575.102 and essentially refers to an individual newly appointed to the Federal Government rather than an individual newly appointed to the SES. A recruitment incentive may not exceed 25 percent of the executive’s annual rate of basic pay in effect at the beginning of the service period multiplied by the number of years (including fractions of a year) in the service period (not to exceed 4 years).
- B. Relocation: An agency may pay a relocation incentive to a current senior executive (excluding a noncareer appointee) who must relocate to accept a position in a different geographic area if the agency determines that the position is likely to be difficult to fill in the absence of an incentive. A relocation incentive may be paid only when the executive’s annual summary rating under an official performance appraisal or evaluation system is at least “Fully Successful” or equivalent. A relocation incentive may not exceed 25 percent of the executive’s annual rate of basic pay in effect at the beginning of the service period multiplied by the number of years (including fractions of a year) in the service period (not to exceed 4 years).
- C. Retention: An agency may pay a retention incentive to a current senior executive (excluding a noncareer appointee) if (1) the agency determines that the unusually high or unique qualifications of the executive or a special need of the agency for the executive’s services makes it essential to retain the executive, and that the executive would be likely to leave the Federal service in the absence of a retention incentive or (2) the agency has a special need for the employee’s services that makes it essential to retain the employee in his or her current position during a period of time before the closure or relocation of the employee’s office, facility, activity, or organization and the employee would be likely to leave for a different position in the Federal service in the absence of a retention incentive. A retention incentive may be paid only when the executive’s annual summary rating under an official performance appraisal or evaluation system is at least “Fully Successful” or equivalent. A retention

incentive rate, expressed as a percentage of the executive's rate of basic pay, must not exceed 25 percent.

#### **5.4 PRFORMANCE-RELATED PAY ADJUSTMENTS**

- A. The following are guidelines to be followed when recommending a performance-based SES pay adjustment.
  - (1) The senior executive's current performance rating is at least Fully Successful.
  - (2) Each performance element identified in the senior executive's current performance plan received an element rating of at least 3 or equivalent.
  - (3) The senior executive has not had an SES performance-based pay increase or decrease during the past 12 months.
- B. All recommendations for performance-based pay increases, with the exception of OIG employees, must be submitted to the CFO/ASA through the Director for HRM in accordance with annual guidance provided by the Office of the Secretary. Recommendations should include:
  - (1) The Senior executive's current performance appraisal and rating with appropriate signatures;
  - (2) A brief narrative justification not-to-exceed one page in length; and
  - (3) The PRB chair's signature and Appointing Authority's approval of the recommendation on the rating form.
- C. Decisions concerning performance-based pay decreases are limited to a ten percent decrease and will be made at the discretion of the Appointing Authority, with prior discussion with the Director for HRM. The basis for a pay decrease includes receipt of a performance rating below Fully Successful. The Appointing Authority must provide the senior executive with at least a 15-day advance written notice prior to effecting the downward adjustment.
- D. Adjustments to decrease base pay may also occur with disciplinary actions resulting from conduct-related activities; e.g., misconduct,

neglect of duty, or malfeasance. Any such action must be coordinated with the Director for HRM and the OGC.

## **5.5 PAY FOR CAREER APPOINTEES REMOVED FROM THE SES**

A career appointee who, for reasons other than misconduct, neglect of duty, malfeasance, national security reasons or by action of the MSPB upon recommendation of the Special Counsel, is removed from the SES during the probationary period; after completing the probationary period and for less than fully successful executive performance; or as a result of a reduction in force; shall be entitled to be placed in a civil service position (other than an SES position) which shall be a continuing position at GS-15 or above the General Schedule if the appointee is eligible for reinstatement.

- (1) Pursuant to 5 CFR 359.705, any career appointee placed under the above provisions shall be entitled to receive basic pay at the highest of:
  - (a) The rate of basic pay in effect for the position in which placed;
  - (b) The rate of basic pay in effect at the time of the placement for the position the career appointee held in the civil service immediately before being appointed to the SES; or
  - (c) The rate of basic pay in effect for the career appointee immediately before being removed from the SES position.
- (2) When an employee is entitled to a payable rate of basic pay that exceeds the maximum payable rate of basic pay for the grade or level of the employee's position after placement, the resulting saved rate is subject to special pay adjustment and termination rules. In general, when the maximum payable rate of basic pay for the grade or level of an employee's position is increased while the employee is receiving a saved rate, the employee is entitled to a pay adjustment equal to 50 percent of the amount of the increase in that maximum payable rate.
- (3) Per 5 CFR 359.705(e), pay received under this section shall terminate if:

- (a) The employee has a break in service of 1 workday or more; or
- (b) The employee is demoted based on conduct or unacceptable performance or at the employee's request.
- (c) The employee becomes entitled to a rate of basic pay that is equal or higher than the saved rate.

## **5.6 RETENTION OF SES PROVISIONS**

- A. If a career appointee is appointed by the President, by and with the advice and consent of the Senate, to a civilian position in the executive branch that is not in the SES, and with a rate of basic pay payable that is equal to or greater than the rate payable for EX-V, the career appointee may elect to retain some, all, or none of the following SES provisions: basic pay; performance awards; eligibility for rank awards; severance pay; leave; and retirement. This will apply as if the career appointee remained in the career SES position from which he/she was appointed. This election must be made in writing and shall remain in effect for no less than one year, unless the appointee leaves the position sooner.
- B. The employee may make a new election on an annual basis. The employee must wait 12 months from the anniversary date of the initial election to make a change for purposes of adding or dropping coverage. The employee may do so no more than once during any 12-month period.
- C. The PHRM is responsible for advising the appointee of the election opportunity. The election decision must be in writing.
- D. Upon reappointment to the SES, the rate of pay of a former senior executive may be set at any rate within the SES rate range, subject to the limitations in 5 CFR 534.403(a), if there has been a break in SES service of more than 30 days. If there has been a break in SES service of 30 days or less, the senior executive's rate of basic pay may be set at any rate within the SES rate range (without regard to whether the employee received a pay adjustment during the previous 12-month period), but not higher than the senior executive's former SES rate of basic pay. Where there has been a break in service of 30 days or less, the Secretary or SAO may

approve a higher rate of basic pay, if warranted. Setting a rate of basic pay upon reappointment to the SES is considered a pay adjustment under 5 CFR 534.404(c).

## **5.7 AGGREGATE COMPENSATION LIMITATION**

In accordance with 5 CFR 530.201, the aggregate annual compensation of employees in the ES, SL, and ST pay systems may not exceed the rate payable for EX-I or the Vice President's salary on the last day of that calendar year, whichever is applicable based on the certification status of the organization. This limitation is applied on a calendar year basis and in addition to base pay, performance awards, rank awards, and comparability allowances, it also covers incentive awards, recruitment and relocation bonuses, retention allowances, and other forms of compensation.

An employee covered by a performance appraisal system that has been certified under 5 CFR Part 430, subpart D, may not receive any allowance, differential, bonus, award, or other similar cash payment under title 5 USC, in any calendar year which, in combination with the employee's basic pay, would cause the employee's aggregate compensation to exceed the total annual compensation payable to the Vice President under 3 USC 104 on the last day of that calendar year. Any amount which is not paid to an employee in a calendar year because of this limitation shall be paid in a lump sum at the beginning of the following calendar year.

Appointing Authorities are responsible for tracking the salaries of their executives to ensure that SES, ST, and SL annual salaries do not exceed the legal aggregate, and for taking appropriate action as necessary to avoid payments in excess of the aggregate limit.

## **5.8 ALTERNATIVE WORK SCHEDULES / PREMIUM PAY**

- A. SES employees may participate in an AWS program, subject to the approval of the bureau or operating unit's Appointing Authority, and consistent with program requirements.
- B. Per 5 CFR 610.408, SES employees cannot earn or use credit hours.
- C. Since SES members are not eligible for overtime pay, they are not eligible for compensatory time in lieu of overtime pay. They are eligible, however, for compensatory time off for religious purposes when their personal religious beliefs require the abstention from



work during certain periods of time. To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of an agency's mission, all employees shall be afforded the opportunity to work compensatory overtime for time taken to meet those religious requirements.

## **5.9 SES AND ST/SL ANNUAL LEAVE ACCRUAL**

- A. The Federal Workforce Flexibility Act of 2004 provides that members of the Senior Executive Service (SES), employees in Senior Level (SL) and Scientific and Professional positions (ST) positions, and employees covered by an equivalent pay system, as determined by the Office of Personnel Management, will accrue annual leave at the rate of 1 day (8 hours) for each full biweekly pay period. This provision became effective October 30, 2004.
- B. The National Defense Authorization Act of 2008 provides that the annual leave carryover ceiling for employees in SL and ST positions is 90 days (720 hours), the same annual leave ceiling that applies to members of the SES. This provision became effective April 8, 2008.

## **5.10 SENIOR FOREIGN SERVICE PAY POLICY**

### Senior Foreign Service (SFS) Pay Schedule

- A. Executive Order 12293 of March 14, 2005, established the following salary classes, upon certification by the Secretary of an appraisal system that makes meaningful distinctions based on relative performance. The USDOC Senior Foreign Service Performance Management System was certified by the Secretary on March 8, 2005.
  - (1) Career Minister (CM)

Ranges from 100 percent of the minimum rate of basic pay for senior-level positions under 5 USC 5376 to 100 percent of the rate payable to level II of the Executive Schedule.
  - (2) Minister-Counselor (MC)

Ranges from 100 percent of the minimum rate of basic pay for senior-level positions under 5 USC 5376 to 107 percent of the rate payable to level III of the Executive Schedule.

(3) Counselor

Ranges from 100 percent of the minimum rate of basic pay for senior-level positions under 5 USC 5376 to 102 percent of the rate payable to level III of the Executive Schedule.

B. Pay-Setting for Promotions

(1) Newly Promoted Officers

Officers promoted into the SFS would receive either a 6 percent pay increase to their FS-01 pay, (plus locality pay for officers promoted while assigned overseas), or a minimum rate of 90% of EX-III, whichever would provide a greater benefit. If the promotion is effective after December 31<sup>st</sup> of the Selection Board year, the salary rate used to calculate the promotion will be the salary of the individual on December 31<sup>st</sup> of the Selection Board year.

This does not apply to limited noncareer appointees. Only career SFS are eligible for promotions into the SFS.

(2) Promotions within the SFS

Promotions within the SFS to the MC and CM classes will be made in accordance with rankings as recommended by the Selection Board and approved as performance-based pay adjustments by the Secretary. A recommendation for promotion excludes the candidate from any additional performance-based pay adjustment that cycle.

C. Performance-Based Pay Adjustments and Performance Pay (Bonuses)

The SFS performance management system serves a number of purposes, including serving as a basis for determinations regarding promotions and time-in-class, as well as measuring an executive's performance in a given year. As part of this process, the Selection Board rates each executive's performance for the performance cycle in one of four categories, which are roughly analogous to the distinctions made in the SES system:

Level 3 - distinguishes the highest performers within the SFS, taking into account both individual and organizational performance. While the SFS system does not include overall adjectival ratings, this level of performance would roughly comport to the "Outstanding" level for SES employees. These individuals would receive pay increases up to 6 percent.

Employees in this category would also be eligible to receive bonuses up to 20 percent of salary and/or Presidential Rank Awards.

Level 2 - recognizes high performers with respect to both individual and organizational performance. This would be roughly analogous to the "Commendable" category in the SES system. Individuals would receive salary adjustments of up to 4 percent.

Employees in this category would be eligible to receive bonuses up to 14 percent.

Level 1 - recognizes good performers based on individual and organizational performance. Roughly analogous to the "Fully Successful" category in the SES system, employees in this group would receive up to a 2 percent salary increase.

Employees in this category would be eligible for bonuses up to 8 percent.

Level 0 - these individuals will not receive any pay adjustment or bonus.

D. Final Approval of Pay-for-Performance and Performance-Pay (Bonus) Actions

The Secretary, or designee, approves the pay-for-performance adjustments and performance pay awards based on the Selection Board rankings/recommendations with the Director General and Under Secretary's concurrence.

The Secretary, or designee, approves retroactive salary adjustments, where necessary and appropriate, on a case-by-case basis.

In accordance with the Foreign Service Act as amended, the Secretary may not adjust the basic salary rate of a member of the

SFS more than once during a 12-month period except under certain circumstances, which include to align DOC pay policies with those of the other foreign affairs agencies and /or to the extent possible to be consistent with regulations governing the SES. The Secretary, or designee, approves these exceptions on a case-by-case basis.

## CHAPTER 6. CLASSIFICATION OF SENIOR EXECUTIVE AND PROFESSIONAL POSITIONS

### 6.1 SENIOR EXECUTIVE POSITIONS

- A. Per 5 USC 3132(a)(2) within the allocation the OPM authorizes, a position is designated as senior executive when the duties and responsibilities are classifiable above the GS-15 level and it meets the SES functional criteria.
- B. Functional Criteria: A position meets the SES functional criteria if its incumbent engages in any of the following activities:
- (1) Directs the work of an organizational unit;
  - (2) Is held accountable for the success of one or more specific programs or projects;
  - (3) Monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to such goals;
  - (4) Supervises the work of employees (other than personal assistants); or
  - (5) Otherwise exercises important policy-making, policy-determining, or other executive functions.
- C. Positions that are classifiable above the GS-15 level, but do not meet the SES functional criteria, are placed in the Scientific/Professional (ST) system, in accordance with 5 USC 3104 or the Senior Level (SL) system, depending on the nature of the work.
- D. National Security Professional (NSP) Qualification for NSP SES: OPM and the NSP Executive Steering Committee (ESC) encourages agencies to implement a qualification requirement for NSP-designated SES positions for demonstrated ability to lead inter-agency, inter-departmental, inter-governmental activities, or comparable cross-organizational activities. The Department has discretion and flexibility in defining and elaborating upon the qualification requirement based on its positions and mission demands. OPM and the ESC recommend a multi-agency or equivalent experience for selection into NSP SES positions. OPM and the ESC have defined the qualifying "inter-agency" experience as follows:

Individuals should have “inter-agency” experience related to national security serving in a leadership capacity (formal or otherwise) on a temporary permanent assignment, on a multi-agency task force, in an inter-agency liaison capacity, and/or as a volunteer. The experience should meet the following criteria:

- extensive involvement (i.e., substantial time commitment or decision-making responsibility);
- tangible results or accomplishments; and
- separate experiences in at least two organizations or a single experience involving multiple organizations.

## **6.2 SCIENTIFIC AND PROFESSIONAL POSITIONS**

- A. Positions that are classifiable above the GS-15 level, but do not meet the SES functional criteria, are appropriately placed in the ST (scientific and professional) system if they involve performance of high-level research and development in the physical, biological, medical, or engineering sciences, or a closely-related field. ST positions are established under 5 USC 3104. All ST positions are in the competitive service.
- B. Research and development positions are characterized by the following features:
- (1) Systematic investigation of theory, experimentation, or simulation of experiments;
  - (2) Application of the scientific method, including problem exploration and definition, planning of the approach and sequence of steps, execution of experiments or studies, interpretations of findings, and documentation or reporting of findings; and
  - (3) Exercise of creativity and critical judgment, variation in which may materially affect the nature of the end product.

## **6.3. SENIOR-LEVEL POSITIONS**

The senior-level pay system was established under the Federal Employees Pay Comparability Act of 1990 (FEPCA) and replaced grades GS-16, 17, and 18 of the General Schedule. Positions in the SL system

are classified above GS-15, but do not meet the executive criteria characteristic of the SES nor do they involve the fundamental research and development responsibilities that are characteristic of the ST pay system. SL positions may be in either the competitive or excepted service.

#### **6.4 POSITION DESCRIPTIONS**

Senior executive and professional position descriptions must address, at a minimum, five basic areas:

- (1) Introduction. Includes information on the position title, organizational location and position designation; i.e., ES, SL, ST. If ES, the status designation must be explained/supported for either career reserved or general.
- (2) Duties and Responsibilities. Clearly states the scope and complexity of functions and authorities delegated to the position in their order of importance or priority.
- (3) Supervision. Identifies the levels of supervision exercised and received.
- (4) Position Designation. SES positions are designated as either General or Career Reserved. A General position may be filled by a career, noncareer, or limited appointee. The same General position may be filled by a career appointee at one time and by a noncareer or limited appointee another time. However, a Career Reserved position must be filled by a career appointee.

If a position is Career Reserved, the following statement must be included:

In accordance with 5 CFR 214.402, the position is designated as CAREER RESERVED in that it is necessary to restrict appointment to career employees "in order to ensure impartiality, or the public's confidence in the impartiality of the Government."

- (5) Professional/Technical Qualifications. Identifies the factors required for successful performance in the position. These factors should be identical to those listed in the approved Qualifications Standard for the position. Executive Core

Qualifications are not to be included in the position description, as OPM has prescribed the same five ECQs for SES positions.

## **6.5 CLASSIFICATION EVALUATION STATEMENT**

- A. Each senior executive position requires a signed classification evaluation statement that supports the position's placement in the SES in terms of both the SES functional and grade level criteria. Two analytical methods serve as key support.
- (1) Comparison with Classification Guides and Standards. The evaluation statement must include an analysis of the position's duties and responsibilities with a comparison against the appropriate published OPM Classification standard(s). In the absence of a directly applicable standard, OPM-issued guidance and guidelines may be used.

Note, however, that a position that appears to exceed the GS-15 level in a classification standard does not in itself mean that the position is classifiable above the GS-15 and warrants placement in the SES. Standards generally provide a minimum threshold for classification within grade levels. Further, because grade level criteria may be met without functional criteria being met, placement in the SES is not automatic.

- (2) Comparison with Existing SES Positions. Comparison of the position with one or more existing SES positions within or outside the organization must be used to support classification; however, these comparisons may not serve as the sole basis for a position's classification in the SES.

### **B. Additional Classification Evaluation Statement Requirements**

When a position that is classified at the GS-15 or equivalent level is proposed for classification in the SES, the evaluation statement must identify those additional duties and responsibilities which, when compared the GS-15 grade level duties and responsibilities, support classification in the SES.

When a new position is being established, the source of the duties should be identified. If the position places an additional organizational layer over other SES positions, or takes away duties



from an additional position, the affected positions should also be reviewed to determine if they remain appropriately classified in the SES.

When a position is proposed for classification in the SES based primarily upon the impact of the proposed incumbent, this should be noted in the evaluation statement so when the position is vacated, it may be reviewed to ascertain whether it still supports SES classification.

When a position is being established at a lower organizational level than that at which SES positions existed previously, the basis for doing so must be provided.

## **6.6 STAFFING CHART**

A staffing chart must be attached to the classification evaluation statement, and must include a list of all subordinate positions at the GS-13 level or equivalent and above by:

- (1) Organizational element; and
- (2) Title, series and grade.

## CHAPTER 7. EXECUTIVE EMPLOYEE RELATIONS AND PERFORMANCE-RELATED ACTIONS

### 7.1 PROBATIONARY PERIOD - CAREER SES ONLY (5 CFR 317.503)

- A. In accordance with 5 CFR 317.503, an individual's initial SES career appointment becomes final only after the individual has successfully completed a 1-year probationary period, which begins on the effective date of the SES appointment.
- B. During this 1-year period, supervisors are responsible for closely monitoring and reviewing new executives' performance and conduct on the job in order to make a determination that performance is acceptable for retention in the SES.
- C. Responsibilities

A new SES appointee must:

- (1) Identify any professional/technical and/or managerial/executive training that will be needed for successful performance and discuss training needs with the supervisor;
- (2) Understand assigned duties and responsibilities and how they relate to the strategic and mission goals of the organization(s);
- (3) Learn how one is expected to perform these duties and responsibilities;
- (4) Perform the duties and responsibilities in an acceptable manner;
- (5) Recognize when performance may not meet acceptable standards and take corrective action; and
- (6) Adhere to all Federal regulations governing conduct, fitness, suitability, and ethics.

To help the executive meet performance and conduct expectations during the probationary period, supervisors must:

- (1) Within 30 days of initial career appointment, provide the executive with a written copy of the performance expectations for the position and when and how performance and conduct will be appraised.
- (2) Advise the executive of the duties and responsibilities of the Position and the manner in which the executive is expected to perform and conduct him/herself. Ensure the executive understands how his/her position relates to the strategic and mission critical goals of the organization(s).
- (3) Personally monitor and review the executive's performance and conduct to determine whether problems are developing that might raise a question about retention in the position, SES, or federal service beyond the probationary period. Promptly contact the servicing Employee Relations Specialist and the PHRM for advice about addressing and correcting any noted performance and/or conduct problems.
- (4) Conduct a mid-point progress review with the executive to discuss performance.
- (5) When contacted by the responsible human resources staff near the end of the probationary period, complete a Form CD-364, Probationary Period Certification, which documents the decision whether the executive should be retained in the position, removed from the SES and placed in a GS-15 or equivalent position, or in some cases, removed from federal service.

D. The following conditions apply to crediting service towards completion of the probationary period.

- (1) Time on leave with pay while in an SES position is credited. Earned leave for which the employee is compensated by lump-sum payment upon separation is not credited.
- (2) Time in a nonpay status while in an SES position is credited up to a total of 30 calendar days (or 22 work days). After 30 calendar days, the probationary period is extended by adding to it time equal to that served in a nonpay status.

- (3) Time absent on military duty or due to compensable injury is credited upon restoration to the SES when no 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. 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.
- F. 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.
  - (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 Section 7.1 D(3) was not sufficient to complete the probationary period.

## **7.2 REMOVAL DURING PROBATIONARY PERIOD**

- A. A career appointee who is serving a probationary period may be removed from the SES for unacceptable performance or conduct, conditions arising prior to SES appointment, or reduction in force. Failure to accept a directed reassignment or to accompany a position in a transfer of function are also reasons for removal.

- (1) Prior to effecting the removal of a probationary career appointee, the supervisor must notify the applicable Principal Human Resources Manager, and consult the Director, Office of Executive Resources (OER), and the responsible OGC, Employment and Labor Law Division representative to coordinate the action and ensure legal and procedural requirements are met.

B. At a minimum, career appointees who held a career or career-conditional appointment, or an appointment of equivalent tenure as determined by OPM at the time of appointment into the SES shall:

- (1) Receive written notification from the Appointing Authority at least 1 day before the effective date of the removal action. (See 5 USC 7511 and 5 USC 7543 for specific coverage requirements and provisions.)

The notification shall:

- (a) Specifically identify the rationale for removal within the context of the specific executive core or professional/technical qualification that the candidate failed to fulfill and state the agency's conclusions as to the inadequacies of the performance or the basis for the removal action, including the act(s) of misconduct, neglect of duty, or malfeasance, if these factors are involved;
  - (b) Indicate whether the employee has placement rights and, if so, the position to which the appointee will be assigned; and
  - (c) Provide the effective date of the action.
- (2) Be entitled to placement in a civil service position (other than SES) which is at the GS-15 or equivalent level, or a position of equal tenure to that held immediately before SES appointment if the removal was for a reason other than misconduct, neglect of duty, malfeasance or other disciplinary reasons. The career appointee must be qualified for the position.
  - (3) Placement under this section shall not cause the separation or reduction in grade of any other employee.

- (4) A career appointee placed under this section shall be entitled to receive basic pay at the highest of:
  - (a) The rate of basic pay for the non-SES position to which assigned;
  - (b) The current rate of basic pay for the civil service position which the employee held immediately before entry into the SES; or
  - (c) The rate of basic pay held in the SES immediately before being removed from the SES position.
  
- C. If the career appointee did not previously hold a career or career-conditional appointment, or appointment of equivalent tenure as determined by OPM, the career appointee shall receive written notification from the Appointing Authority at least 1 day before the effective date of the removal action. The notification action shall:
  - (1) State the agency's conclusions as to the inadequacies of the performance or the basis for the removal action, including the act of misconduct, neglect of duty, or malfeasance, if these factors are involved; and
  - (2) Provide the effective date of the removal action.
  
- D. The removal of a probationer for performance reasons, or disciplinary action, is subject to the restrictions detailed in Section 7.4.

### **7.3 PERFORMANCE RELATED ACTIONS AFTER COMPLETION OF PROBATIONARY PERIOD**

- A. A career appointee who has been given an Unsatisfactory rating must be removed from his/her current position. The appointee shall be reassigned to another SES position or removed from the SES.
  - (1) If the SES appointee is to be reassigned, the Appointing Authority shall provide to the appointee a 15-day written notice in advance of the effective date, if within the commuting area; and a 60-day written notice in advance of the effective date, if outside of the commuting area. The notice shall provide the reason for the action, the position to which the appointee will

be assigned, and the effective date. In addition, the 120-day moratorium applies unless the Unsatisfactory rating was issued before the appointment of the person taking the reassignment action.

- (2) If the appointee is to be removed from the SES and, at the time of appointment to the SES, did not hold a career or career-conditional appointment or an appointment of equivalent tenure so as to have guaranteed placement rights, the requirements of Section 7.3 B shall apply, excluding 7.3 B(2).

B. A career appointee who has been given two final ratings of Unsatisfactory under the SES performance appraisal system within five consecutive years, or who has been given two final annual ratings of less than Fully Successful under the SES performance appraisal system within three consecutive years, must be removed from the SES. The Appointing Authority shall notify the appointee of his/her removal from the SES in writing at least 30 calendar days in advance of the effective date. The notification shall provide:

- (1) The basis for the action;
- (2) The position to which the appointee will be assigned (this may be issued as a supplementary notice not later than 10 calendar days before the effective date of the action);
- (3) The appointee's right to request an informal hearing before the MSPB (See Section 7.5);
- (4) The effective date of removal from the SES; and
- (5) When applicable, the appointee's retirement options.

#### **7.4 RESTRICTION ON REMOVAL ACTIONS**

A. Involuntary removal of a career senior executive may not be made effective within 120 days after:

- (1) The appointment of a new Department head; or
- (2) The appointment of the senior executive's immediate supervisor who is:

- (a) A noncareer appointee, and
  - (b) Has the authority for removing the senior executive.
- B. This limitation does not apply when the senior executive has received a final rating of Unsatisfactory before the appointment of a new Department head or immediate noncareer supervisor.

## **7.5 INFORMAL HEARING**

A career senior executive being removed from the SES is entitled to request an informal hearing at least 15 days before the removal, before an official designated by the MSPB. The informal hearing procedure requires that:

- The senior executive submit a request for an informal hearing to the MSPB no later than 15 days before the effective date of the action; and
- The informal hearing be conducted in accordance with regulations and procedures established by the MSPB.

The removal action need not be delayed as the result of the granting of such informal hearing.

## **7.6 APPEAL RIGHTS**

Removal actions under Section 7.2 and 7.3 are not appealable. Failure to meet the senior executive's entitlement to placement and pay would constitute a prohibited personnel practice and allegations of such violations may be submitted to the Special Counsel of the MSPB.

## **7.7 REINSTATEMENT RESTRICTION**

An individual whose last appointment in the SES ended in a removal based on unacceptable performance, misconduct, neglect of duty, malfeasance or for national security reasons; action of the MSPB upon the recommendation of the Special Counsel; any reason during the probationary period; an appointment in the SES that ended in a resignation after receipt of a notice proposing; or a directed removal under any of the preceding conditions, shall not be eligible for non-competitive reinstatement to a career appointment in the SES.



## **7.8 OTHER RIGHTS AND BENEFITS**

This Section applies to all members of the SES regardless of type of appointment.

- A. Grievances: SES appointees are covered by administrative grievance procedures of the Department of Commerce.
- B. Retirement: Retirement rules and regulations for SES are consistent with those for all government employees, except that by law, SES appointees who are removed from the SES for reasons of performance are eligible for an immediate annuity, if otherwise qualified; i.e., they have completed 25 years of service, or have completed 20 years of service and reached the age of 50.
- C. Last Move Home: Per 5 USC 5724(a)(3), P.L. 00-400, an SES career appointee is entitled to payment of travel, transportation, and household moving expenses upon separation from government service for retirement in relocating to the place where the individual will reside if the individual:
  - As the result of a reassignment or transfer, has been moved geographically as a career appointee in the SES; or who at the time of the move were going from an appointment outside of the SES (e.g., at GS-15 or equivalent) to career appointment in the SES and
  - At the time of the geographic move, was eligible for optional retirement or was within 5 years of optional retirement, or was eligible for discontinued service retirement.

## **7.9 SENIOR PROFESSIONAL APPOINTEES**

SL and ST executive appointees have the same annual leave entitlements as SES appointees, but are otherwise covered by rules and regulations that cover the general workforce.

## CHAPTER 8. ADVERSE ACTION

### 8.1 SES APPOINTEES

- A. This chapter covers career appointees who have completed the probationary period or who had coverage (i.e., rights to adverse action procedures) immediately prior to entering the SES. Essentially, 5 USC 7511 covers employees in the competitive service who are not serving a probationary period, preference eligible employees in the excepted service who have completed one year of current continuous service in an executive agency, and certain other employees in the excepted service who are not preference eligibles. Also covered are limited emergency and limited term appointees who were covered by 5 USC 7511 immediately before entering the SES and who received their limited appointment in the same agency. Adverse actions include removal from the Civil Service for misconduct, neglect of duty, or malfeasance, and suspension from work and loss of pay for more than 14 days. For purposes of this chapter, adverse actions do not include performance-based actions, actions by MSPB upon recommendation of the Special Counsel, reductions in force, and action taken for reasons of national security under 5 USC 7532. Adverse actions may only be taken for reason of misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.
- B. The following procedures will be followed when taking an adverse action against an SES appointee after coordination with the Office of Executive Resources and the Office of General Counsel:
- (1) If the adverse action is proposed:
    - (a) By an individual who is subordinate to the Appointing Authority, then the Appointing Authority shall receive and consider the reply of the appointee. At the earliest practicable date, but before the action will be effective, the Appointing Authority shall make a final decision on the proposed action, give a written decision with specific reasons, and if upholding the proposed action, the employee's appeal rights.

(b) By the Appointing Authority, then either of the following options are available:

- The Appointing Authority may propose the adverse action as well as receive and consider the reply of the appointee and, at the earliest practicable date but before the action will be effective, make the final decision on the proposed action, give a written decision with specific reasons, and if upholding the proposed action, the employee's appeal rights; or
- If having a different proposing official from that of the deciding official is desired, the PHRM may propose the adverse action and the Appointing Authority may receive and consider the reply of the appointee. At the earliest practicable date but before the action will be effective, a final decision on the proposed action must be made; a written decision with specific reasons must be provided to the employee, and if upholding the proposed action, appeal rights must be afforded to the employee.

Both options should be carefully considered, and the rationale for the choice evident.

- (2) The appointee must be given at least a 30-day advance written notice unless there is reasonable cause to believe that the appointee has committed a crime which carries a sentence of imprisonment. The notice must state specific reasons for the proposed action.
- (3) The appointee is entitled to be represented by an attorney or other representative, at the appointee's expense.
- (4) The appointee shall be notified of his/her right to review all the materials used to support the proposed action. Materials that cannot be disclosed to the appointee or their representative or attorney or physician, as appropriate, may not be used to support the adverse action.

- (5) The appointee shall be given a reasonable amount of official time to review the material used to support the proposed action; to prepare an answer orally and in writing; and to secure affidavits and other documentary evidence, if the appointee is in an active duty status.
  - (6) If the appointee wishes the agency to consider any medical conditions that may have affected the basis for the adverse action, the appointee shall be given reasonable time to furnish medical documentation of the condition.
  - (7) A hearing shall not be provided.
  - (8) An appointee against whom an adverse action is taken is entitled to appeal to the MSPB.
  - (9) Operating units shall maintain and furnish to the MSPB and to the affected appointee upon request, the following:
    - (a) A copy of the notice of proposed action;
    - (b) Documentation relied on to support the proposed action;
    - (c) A summary of the appointee's oral statement and/or their written statement;
    - (d) The notice of the decision, including reasons for the adverse action; and
    - (e) Any order affecting an action under this chapter.
- C. Removal or suspension for disciplinary reasons is not subject to the 120-day moratorium; appointees so removed are not entitled to placement outside the SES.
- D. Limited appointees, except as described in Section 8.1 E, may be removed at any time. They must be given a written notice at least 1 day prior to the effective date of the removal. A statement of the reason for the action may be provided, but is not required.
- E. A limited term or limited emergency appointee who received the limited appointment without a break in service in the same agency as the one in which the employee held a career or career-conditional

appointment (or appointment of equivalent tenure as determined by OPM) in a permanent civil service position outside the SES; and who was covered under 5 USC 7511 immediately before appointment to the SES, is covered under the procedures described in Section 8.1. B.

- F. Reemployed annuitants and SES Noncareer appointees serve at the pleasure of the Appointing Authority.

## **8.2 SL & ST APPOINTEES**

Adverse actions for SL and ST appointees shall be covered by rules and regulations which cover the general workforce.

## CHAPTER 9. REDUCTION-IN-FORCE IN THE SENIOR EXECUTIVE SERVICE

### 9.1 GENERAL INFORMATION

#### A. Purpose

This policy establishes, in accordance with applicable laws and regulations, the responsibilities, procedures and guidelines for conducting Reduction-in-Force (RIF) in the Senior Executive Service (SES) in the Department of Commerce in accordance with 5 CFR 359.601 (c). The procedures on competition for job retention in a RIF described in this chapter apply to both probationers and post-probationers.

As defined in 5 U.S.C. 3595(d), RIF includes the elimination or modification of a position due to reorganization, lack of funds, curtailment of work, or any other factor. These would include withdrawal of SES spaces, a total agency shutdown, or the determination that a position no longer meets the criteria for inclusion in the SES.

Commerce will conduct such actions based on careful consideration of legitimate management and mission-related requirements. This policy provides agency direction to be used in conjunction with the referenced statutory and regulatory requirements. The Office of Executive Resources, Office of Human Resources Management should be consulted for further information and guidance.

#### B. Applicability

This policy is applicable to all SES appointees in all bureaus and components of Commerce, with the exception of the Office of the Inspector General (OIG), which has independent authority pertaining to management of its human resources under Public Law 95-452, and the United States Patent and Trademark Office under P.L. 106-113.

#### C. Authorities

5 U.S.C. §3504 Preference eligibles; retention; physical qualifications; waiver  
5 U.S.C. §3595 Reduction-in-force in the Senior Executive Service  
5 CFR Part 351, Reduction-in-Force  
5 CFR Part 359, Removal from the Senior Executive Service; Guaranteed Placement in Other Personnel Systems  
5 CFR Part 430, Performance Management

## **9.2 RESPONSIBILITIES**

### **A. Secretary of Commerce**

Unless otherwise delegated, the Secretary of Commerce retains the authority to approve the following:

1. The need for a RIF in the SES.
2. All SES RIF staffing actions.

### **B. Departmental Executive Resources Board (DERB)**

1. Considers requests for internal placement assistance.
2. Approves changes to competitive areas.
3. Ensures that no displacement will be effected without review of the technical qualifications of the surplus appointees by the gaining Appointing Authority.
4. Recommends placements to be made to the Secretary.

### **C. Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA)**

The CFO/ASA is responsible for the following:

1. Ensuring that Commerce RIFs in the SES are based on concepts of efficiency and effective mission support and are carried out in accordance with governing regulations and Commerce policies and procedures.
2. Pursuant to the general duties regarding all human resources functions and operations being delegated by the Secretary, as contained in Departmental Organization Order 10-5 and Departmental Administrative Order 202-250, certifying in writing to the Office of Personnel Management (OPM) when SES positions are unavailable in the Agency for the placement of surplus SES employees.

### **D. Director for Human Resources Management**

The Director for Human Resources Management is responsible for the following:

1. Ensuring the actions taken under RIF procedures are in compliance with regulatory requirements and approving any competitive area.
2. Maintaining liaison with OPM on SES RIF policy and placement offers for affected SES employees.

3. Reviewing plans to conduct a RIF in the SES and providing advice, recommendations, and technical support for implementation of the RIF process.
4. Providing staff support for the implementation of the RIF process, including identifying vacant SES positions outside the organization having surplus position(s).
5. Directing the preparation of retention registers.
6. Developing and implementing Agency procedures for RIF and related personnel functions in the career SES consistent with appropriate laws and OPM regulations and providing a copy of those procedures to OPM.
7. Coordinating the issuance of appropriate notices and other required SES RIF documentation with executive managers and Appointing Authorities.

#### E. Appointing Authorities

Appointing Authorities are responsible for:

1. Ensuring that, prior to issuing any type of communication to the workforce or the public involving bureau RIF planning, preparation or implementation actions or activities, a copy of the draft communication will be sent to the Director for Human Resources Management for review and coordination with other Office of the Secretary organizations (ex. Office of Public Affairs, etc.) as necessary.
2. Recommending surplus SES positions in their organization(s) that will be modified or eliminated because of program curtailment, lack of funds, reorganization, reduction in personnel allocation, or any other causes affecting the size or composition of their SES workforce.
3. Recommending vacant existing positions in their organization as reassignment opportunities for qualified subordinate SES employees occupying surplus positions and effecting reassignment after obtaining required Departmental approval.
4. In the event no placement is possible under E.3 above, giving consideration to terminating the appointment of a subordinate SES employee serving as a reemployed annuitant or on a noncareer, limited-term or limited-emergency appointment, if the resulting vacancy could be used as a placement to avoid a RIF action involving a career post-probationary appointee.
5. Forwarding requests for personnel action along with appropriate documentation to support RIF actions affecting subordinate SES employees, to the Secretary or his/her designee for approval. Certification



that SES vacancies, to which executives in surplus positions can be reassigned, neither exist nor can be established within existing resources must be provided as part of the documentation.

6. In coordination with the OHRM, making a concerted effort to reassign SES employees from surplus positions to vacant positions during the complete RIF process, including during the 45-day period of Governmentwide placement assistance provided by OPM for post-probationary employees.

#### F. Office of General Counsel

Staff from the Office of General Counsel (OGC) will provide advice, guidance and legal clearance of any planned RIF guidance or RIF policy. OGC staff will also provide legal counsel to OHRM and CFO/ASA on issues that arise throughout the RIF process, and shall serve on any established RIF teams.

### 9.3 **REDUCTION-IN-FORCE IN THE CAREER SENIOR EXECUTIVE SERVICE**

#### A. Definitions

1. Reduction-in-Force (RIF). The elimination or modification of a position due to a reorganization, lack of funds or curtailment of work, or due to any other factor. See 5 CFR 359.601(b)(2).
2. Post-Probationary Career Appointee. A career individual in the SES whose appointment was based on conversion or approval by OPM of his/her executive qualifications and who, as of the effective date of the RIF, has completed or was not required under 5 CFR 359 Subpart B.
3. Probationary Career Appointee. A career individual in the SES whose appointment was based on conversion or approval by OPM of his/her executive qualifications but who, as of the effective date of the RIF, has not completed the 1-year probationary period required under 5 CFR 359, Subpart B.
4. Noncareer Appointment. This appointment is an executive appointment without time limitation, but the executive serves at the pleasure of the Appointing Authority. This appointment is used to fill a General SES position authorized by OPM. Noncareer appointees may be separated at any time and do not have appeal rights to MSPB.

5. Limited Term and Limited Emergency Appointments. These appointments are both time limited appointments used to fill General SES positions authorized by OPM. Limited appointees may be separated at any time and do not have appeal rights to MSPB.
6. Competitive Area. For the purposes of RIF in the SES, competitive areas are established for employees permanently assigned to Commerce Headquarters and its component facilities and each Commerce bureau and its component facilities (regardless of location) as indicated below.

Office of the Secretary will constitute one competitive area.

BIS will constitute one competitive area.

EDA will constitute one competitive area.

ESA/Census/BEA will constitute one competitive area.

ITA will constitute one competitive area.

MBDA will constitute one competitive area.

NIST and NTIS will constitute one competitive area.

NOAA will constitute a competitive area.

NTIA will constitute one competitive area.

7. Service Computation Date (SCD). A composite date representing an appointee's total creditable civilian and uniformed service for retention standing in RIF competition.
8. Performance Rating. An official SES performance rating as reviewed by the Performance Review Board, recommended by the Appointing Authority and approved by the Secretary. For an SES employee recently transferred from another Federal agency, the current final rating given by the former agency will be used. These are final ratings under 5 CFR Part 430, Subpart C.
9. Appointing Authority. For purposes of this Chapter, the following list constitutes those positions that meet the definition of "Appointing Authority":
  - A. Deputy Secretary
  - B. Chief of Staff (for all offices in the immediate Office of the Secretary)
  - C. General Counsel
  - D. Chief Financial Officer and Assistant Secretary for Administration
  - E. Chief Information Officer (for Office of the Secretary)
  - F. Director for Human Resources Management and Deputy Human Capital Officer
  - G. Under Secretary for Economic Affairs
  - H. Assistant Secretary for Communications and Information
  - I. Assistant Secretary for Economic Development

- J. Under Secretary for International Trade
- K. Under Secretary for Oceans and Atmosphere
- L. Under Secretary for Industry and Security
- M. National Director, Minority Business Development Agency
- N. Under Secretary for Standards and Technology

## B. Procedures

### 1. Pre-Reduction-in-Force Actions

a. The Appointing Authority will propose personnel actions resulting from the elimination or modification of a position due to a reorganization, lack of funds or curtailment of work, or any other appropriate factor. The Appointing Authority will make every effort to avoid RIF by reassignment of appointees in surplus positions to vacant SES positions within the immediate organization. In the absence of available vacancies, consideration will be given to placement in positions occupied by limited-term appointees and reemployed annuitants, since such individuals serve at the will of the appointing officer and do not compete in RIF. (However, the availability of such encumbered positions will not prevent the Department from requesting placement assistance from OPM.) When placement in a vacant SES position is not possible, the Appointing Authority must request placement assistance.

b. Requests for placement assistance will be forwarded from the Appointing Authority through the Director for Human Resources Management to the DERB. Such proposals must include the following:

1) A detailed discussion of the circumstances leading to the potential RIF situation, including consideration of reassignment to a position occupied by a limited-term appointee or a reemployed annuitant.

2) A discussion of the steps taken to avoid the potential RIF situation.

3) Certification that SES vacancies for which employees in surplus positions are qualified neither exist nor can be established within existing resources.

4) Recommendations, if any, regarding appropriate placements in other Department organizations.

c. The Director for Human Resources Management will identify vacant SES positions outside the organization having the surplus position(s) and

provide placement options to the DERB for its consideration. Appointing Authorities will be consulted on possible placement of surplus executives in their organizations prior to the DERB making placement recommendations to the Secretary. Employees in surplus positions who are not placed in continuing positions will be identified for RIF and will compete for retention and placement as described below.

2. Implementation of Reduction-in-Force (RIF). Career appointees who occupy Surplus positions and have not been identified for placement by reassignment into SES positions in accordance with B.1.c, above, will be subject to a formal RIF, conducted on the basis of retention competition.

- a. Retention Registers. Career appointees who occupy surplus positions are entitled to compete for job retention. A retention register will be compiled of the incumbents of all SES positions within the competitive area. Career appointees, including the incumbents of the surplus positions, will be listed on the retention register in accordance with the retention groups and subgroups described below, based on their standing on the RIF effective date. Veterans preference does not apply.

- b. Retention Standing. Career appointees on the retention register are listed by groups and subgroups, with probationary status and performance given primary consideration. Within each subgroup, appointees are listed in descending order of SCDs. Appointees will be assigned to retention subgroups based on an average of their four most recent SES performance ratings (Outstanding – 5; Commendable - 4; Fully Successful - 3; Minimally Successful - 2; Unsatisfactory - 1). For SES recently transferred from another Federal agency, the current final rating given by the former agency will be used, averaged with the previous three final ratings, if any. Only final SES ratings will be used; therefore, the subgroup of an appointee with only two ratings will be based on an average of the two ratings. The subgroup for an appointee with only one rating will be determined by that rating. SES career appointees will be placed in subgroups in the following order:

- 1) Group 1. Post –probationary career appointees with all performance ratings Fully Successful or higher listed in each subgroup in descending order of SCDs.

Subgroup 1A. Appointees with an average rating of 5.0.  
Subgroup 1B. Appointees with an average rating of 4.75.  
Subgroup 1C. Appointees with an average rating of 4.66.  
Subgroup 1D. Appointees with an average rating of 4.5.

Subgroup 1E. Appointees with an average rating of 4.33.  
Subgroup 1F. Appointees with an average rating of 4.25.  
Subgroup 1G. Appointees with an average rating of 4.0.  
Subgroup 1H. Appointees with an average rating of 3.75.  
Subgroup 1I. Appointees with an average rating of 3.66.  
Subgroup 1J. Appointees with an average rating of 3.5.  
Subgroup 1K. Appointees with an average rating of 3.33.  
Subgroup 1L. Appointees with an average rating of 3.25.  
Subgroup 1M. Appointees with an average rating of 3.0.

2) Group 2. Probationary career appointees with all performance ratings Fully Successful or higher, listed in each subgroup in descending order of SCDs.

Subgroup 2A. Appointees with an average rating of 5.0.  
Subgroup 2B. Appointees with an average rating of 4.75.  
Subgroup 2C. Appointees with an average rating of 4.66.  
Subgroup 2D. Appointees with an average rating of 4.5.  
Subgroup 2E. Appointees with an average rating of 4.33.  
Subgroup 2F. Appointees with an average rating of 4.25.  
Subgroup 2G. Appointees with an average rating of 4.0.  
Subgroup 2H. Appointees with an average rating of 3.75.  
Subgroup 2I. Appointees with an average rating of 3.66.  
Subgroup 2J. Appointees with an average rating of 3.5.  
Subgroup 2K. Appointees with an average rating of 3.33.  
Subgroup 2L. Appointees with an average rating of 3.25.  
Subgroup 2M. Appointees with an average rating of 3.0.  
Subgroup 2N. Appointees who have no SES ratings.

3) Group 3. Appointees with at least one rating below Fully Successful, listed in each subgroup in descending order of average rating and SCDs.

Subgroup 3A. Post-probationary appointees.

Subgroup 3B. Probationary appointees.

In case of a tie in retention standing, Commerce SCD will be used.

c. Displacement and Consequence of Competition

1). If there are appointees on the retention register occupying positions for which the surplus appointee meets the established qualification requirements who are in a lower retention group, or in

the same retention group but in a lower retention subgroup based on an average rating, the appointee of the surplus position will be offered reassignment to the position of the appointee with the lowest retention standing. The appointee who is displaced may, in turn, displace anyone on the retention register with lower standing as described above. If there are no appointees on the retention register in such positions who have lower retention standing, there is no displacement.

2) Appointees in surplus positions and displaced employees are given consideration for exercise of any assignment right, offers of reinstatement where eligible to a vacant General Schedule or equivalent position, and where eligible, certification to OPM for placement assistance as described in paragraph e below. The DERB will ensure that no displacement will be effected without review of the technical qualifications of the surplus appointees by the gaining Appointing Authority.

d. Assignment Rights. Although consideration for placement into vacant SES positions occurs as part of the pre-RIF activity, SES career appointees who can displace other appointees through the formal RIF process instead may be offered vacant SES positions for which they meet the technical qualifications, in any bureau, at any point in the RIF process.

1) If there are fewer vacancies than appointees with assignment rights, the DERB will recommend to the Secretary the placements to be made, giving priority to post-probationary executives over those still serving a probationary period.

2) Appointees who fail to accept a directed reassignment may be removed from the Federal service under adverse action procedures.

e. Commerce Certification to OPM and OPM Placement Effort

1) When Commerce is unable to place a post-probationary appointee occupying a surplus position or a post-probationary displaced appointee in a vacant SES position for which he or she is qualified, the CFO/ASA must certify in writing to OPM that no such position is available.

2) OPM has 45 days from receipt of the Agency certification to attempt placement of an identified post-probationary career appointee in any agency. These career appointees remain on

Commerce rolls during this period. If an appointee declines a reasonable offer of placement (i.e., a career SES appointment in any agency), OPM placement efforts will cease and the appointee may be removed from the SES at the end of the Commerce notice period described in g. 2) below. Should a vacancy occur for which the appointee is qualified, Commerce has continuing placement responsibility during the OPM assistance period.

f. Guaranteed Placement (“Fallback”) Outside the SES

1) If the appointee is not placed in an SES position after the above process has been completed, eligible appointees will be considered for placement outside the SES (“fallback”) in accordance with 5 CFR 359, Subpart G.

2) Appointees who fail to accept a directed placement outside the SES may be removed from the Federal service under adverse action procedures.

3) The placement must meet the following conditions:

- the offer must be to a continuing position; (To be “continuing” a position must be at least 3 months.)
- the position must be one at GS-15 or above, or equivalent, even if the individual entered the SES from a position below the GS-15 level;
- the individual must meet the qualification requirements for the position; and
- the tenure of the appointment must be equivalent to the tenure of the appointment held by the individual at the time of entry into the SES, if it was a career or career-conditional appointment (or appointment of equivalent tenure). This provision does not apply if the Department does not have a position with an appointment of equivalent tenure or if the appointee is willing to accept a position have a different tenure.

If a post-probationer does not have reinstatement eligibility in the competitive service and if there is no regular excepted appointment authority the agency can use, the Department may use the Schedule B authority under 5 CFR 213.3202(m).

The placement may not cause the separation or reduction in grade of any other employee. If there is no current vacant position for which the individual is qualified, the Department must create one.

g. Notice to Post-Probationary Appointee

1) Reassignment Notice. Offers of reassignment to other SES positions in the same geographic area will be made at least 15 days prior to the effective date. Offers of reassignment to other SES positions in a different geographic area will be made at least 60 days prior to the effective date.

2) First SES Removal Notice. An appointee identified for RIF, who cannot be placed in another SES position within the Agency, will be given a written notice of removal from the SES at least 45 days before the date of removal and no later than the date of Commerce certification to OPM (see paragraph B 2 e. requesting 45-day placement assistance.) At a minimum, the notice will specify the following:

- a) The action to be taken and its proposed effective date.
- b) The nature of the competition, including the appointee's competitive area and standing on the retention register.
- c) The place where the appointee may inspect the regulations and records pertinent to the action.
- d) Placement rights within Commerce and through OPM.
- e) The appointee's appeal rights, including the time limit for appeal and the location of the Merit Systems Protection Board (MSPB) office to which an appeal should be sent.
- f) The name and telephone number of the individual who is available to provide counseling concerning the appointee's rights.

3) Second SES Removal Notice. An appointee who received the notice described in paragraph B.g.2) will be given a second written notice at least 1 day before removal from the SES. At a minimum, this notice will state the following:

- a) The basis for the removal (e.g. expiration of the 45-day OPM placement period (5 U.S.C. 3595(b)(5)) or declination of a reasonable offer of a position in another agency (5 U.S.C. 3595(b)(4)), including position offered and date declined.
- b) The effective date of the removal.



- c) Placement rights outside the SES and, when applicable, the appointee's eligibility for discontinued service retirement in lieu of placement.
- d) Reminder of the appointee's appeal rights.

#### 4) Notice to Probationary Appointee

- a) Reassignment Notice. Offers of reassignment to other SES position in the same geographic area will be made at least 15 days prior to the effective date. Offers of reassignment to other SES positions in a different geographic area will be made at least 60 days prior to the effective date.
- b) Removal Notice. A probationary appointee identified for RIF and who cannot be placed in another SES position in Commerce will be notified in writing prior to the effective date of the action. At a minimum, the notice will specify the following:
  - Whether the appointee has placement rights to a position outside the SES and if so, the position to which the appointee will be assigned.
  - Effective date of action.
  - The appointee's appeal rights, including the time limit for appeal and the location of the MSPB office to which an appeal should be sent.
  - The name and telephone number of the individual who is available to provide counseling concerning the appointee's rights.

#### **9.4 APEAL RIGHTS TO MERIT SYSTEMS PROTECTION BOARD (MSPB)**

A career appointee may appeal to the MSPB as to whether the RIF complied with competitive procedures as required by 5 CFR 359.405(a) for probationary employees and 5 CFR 359.602(a) for post-probationary employees.

#### **9.5 NONCAREER, LIMITED APPOINTEES AND REEMPLOYED ANNUITANTS**

Under a RIF situation, the Department does not use competitive procedures in making reductions from among these groups of employees.

The removal of an employee covered by this section is effected under 5 CFR Part 359, Subpart I. The employee is not entitled to receive placement assistance from OPM, to be placed in a position outside the SES (except a limited appointee with “fallback” rights), or to appeal to the MSPB.

## **9.6 RECORDS**

All records pertaining to an SES RIF will be retained by Commerce for at least 2 years following the effective date of the separation or placement action or until appeals are decided, whichever is later.

## CHAPTER 10. FURLOUGH IN THE SENIOR EXECUTIVE SERVICE

### 10.1 GENERAL INFORMATION AND RESPONSIBILITY

#### A. Purpose

This policy establishes, in accordance with applicable laws and regulations, the responsibilities, procedures, and guidelines for conducting a furlough for Commerce members of the Senior Executive Service (SES) in compliance with 5 CFR 359 Part H. Commerce will conduct such actions based on careful consideration of legitimate budget, management and mission-related requirements. This policy provides agency direction to be used in conjunction to the referenced statutory and regulatory requirements. The Office of Executive Resources, Office of Human Resources Management should be consulted for further information and guidance.

#### B. Applicability

This policy is applicable to all SES career appointees, including career appointees serving in a probationary period in all bureaus and components of Commerce, with the exception of the Office of Inspector General (OIG), which has independent authority pertaining to management of OIG human resources under Public Law 95-452 and United States Patent and Trademark Office under P.L. 106-113.

Noncareer, limited term, and limited emergency SES appointees, as well as reemployed annuitants, may be furloughed without regard to these provisions.

Former career SES appointees who accepted appointments at Level V of the Executive Schedule or higher and elected to retain SES leave benefits under 4 U.S.C. 3392(c) are subject to furlough at the Department's discretion.

#### C. Authorities

5 U.S.C §3595a, Furlough in the Senior Executive Service

5 CFR Part 359, Subpart H, Furloughs in the Senior Executive Service

### 10.2 DEFINITIONS

A. Furlough. A furlough is the placement of an employee in a temporary status without duties and pay because of lack of work or funds, or for other nondisciplinary reasons. There are two types of furloughs.

1. An emergency furlough most commonly is implemented in situations when the Department no longer has the necessary funds to operate and by law must shut down all activities which are not excepted by standards issued by the Office of Management and Budget. The Department will usually have very little lead time to plan for an emergency furlough, and therefore may be unable to provide advance notice or to determine how many furlough days will be required. An example of a situation which warrants an emergency furlough is when there is neither appropriations legislation nor a continuing resolution in place at the beginning of a fiscal year to fund activities.
  
2. A planned furlough is a planned event designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any other event which requires the Department to save money. A planned furlough differs from an emergency furlough in that the Department has sufficient time to give adequate notice of its specific furlough plan and how many furlough days will be required. An example of a situation which warrants a planned furlough is if, as a result of Congressional budget decisions, the Department is required to absorb spending reductions over the course, or a portion of the course, of a fiscal year.

There are two types of planned furloughs.

- a. A short furlough is one that will last for 30 consecutive calendar days or fewer or for 22 workdays or fewer (within a 12-month period beginning on the first day of the furlough) if the furlough does not cover consecutive days

An agency need not use competitive procedures in selecting the SES appointees to be furloughed for short periods. However, it should make its selections for sound management reasons.

- b. A long furlough is one that will last for 30 consecutive calendar days or more or for 22 workdays or more (within a 12-month period beginning on the first day of the furlough) if the furlough does not cover consecutive days. The furlough may not exceed one year.

A SES appointee may be furloughed for more than 30 days only when the Department intends to recall the appointee to a duty status with pay within one year from the beginning of the furlough. A furlough should not be used when it is known that the SES appointee will have to be separated through a RIF action when the furlough ends.

- B. Noncareer Appointment. This is an executive appointment to a General SES position, without time limitation, that is made in coordination with the White House in which the executive serves at the pleasure of the Appointing Authority. Noncareer appointees may be furloughed under agency designated procedures and do not have appeal rights to MSPB.
- C. Limited Term and Limited Emergency Appointments. These are time limited appointments used to fill General SES positions authorized by OPM. Limited appointees may be furloughed under agency designated procedures and do not have appeal rights to MSPB.

### **10.3 POLICY**

It is the Department's intent to implement a furlough in the career SES only when: immediate cost savings are imperative, a reduction in force is neither necessary nor warranted, circumstances indicate that the affected executives can be recalled at the end of the furlough, and that the furlough will last less than one year.

### **10.4 COMPETITION FOR FURLOUGH**

Furloughs lasting 30 consecutive calendar days or fewer (or 22 non-consecutive work days or fewer) may be conducted without competitive procedures. Appointing Authorities/OU Heads, through the Director for Human Resources Management, recommend to the CFO/ASA which career SES appointees will be affected by furloughs of less than 30 days. Recommendations for selections should be made for sound management reasons.

Furloughs which last more than 30 consecutive calendar days, or more than 22 work days if the furlough does not cover consecutive calendar days, must be conducted under the competitive procedures established for reduction-in-force (RIF) in the SES. The competitive procedures are used to identify which executives will be furloughed.

### **10.5 LENGTH OF FURLOUGH**

A furlough may not last more than one year. Reduction-in-force procedures may need to be implemented when curtailment of work or lack of funds is expected to last for more than one year.

## **10.6 RESPONSIBILITIES**

### **A. Departmental Executive Resources Board (DERB)**

1. Approve SES furlough plans.
2. Approve implementation of a furlough in the SES.

### **B. Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA)**

Pursuant to Departmental Organization Order 10-5 and Departmental Administrative Order 202-250, the CFO/ASA is responsible for the following:

1. Approve which executives will be furloughed based on recommendations from Appointing Authorities/OU Heads.

### **C. Director for Human Resources Management**

The Director for Human Resources Management is responsible for the following:

1. Developing and implementing Agency procedures for furlough in the SES consistent with appropriate laws and Office of Personnel Management (OPM) regulations.
2. Reviewing plans to conduct a furlough in the SES and providing advice, recommendations, and technical support for implementation of the furlough process.
3. Coordinating the issuance of appropriate notices and other required SES furlough documentation with executive managers and Appointing Authorities.
4. Ensuring the actions taken under SES furlough procedures are in compliance with regulatory requirements.

### **D. Appointing Authorities/Operating Unit (OU) Heads**

Appointing Authorities/OU Heads are responsible for:

1. Ensuring that, prior to issuing any type of communication to the workforce or the public involving bureau furlough planning, preparation or implementation actions or activities, a copy of the draft communication will be sent to the Director for Human Resources Management for review and approval.

2. Through the Director for Human Resources Management, requesting DERB approval for a planned furlough within their organizations. Requests must be supported by a furlough plan. (See Section 10.7)

E. Office of General Counsel

Staff from the office of General Counsel (OGC) will provide advice, guidance and legal clearance of any planned Furlough guidance or Furlough policy. OGC staff will also provide legal counsel to OHRM and CFO/ASA on issues that arise throughout the Furlough process, and shall serve on any established Furlough team.

**10.7 IMPLEMENTING A FURLOUGH IN THE SES**

The DERB has the responsibility to approve the implementation of a furlough in the SES. The DERB will make the decision to implement an emergency furlough and will direct the Department's Office of Human Resources Management to manage the emergency furlough procedures Department-wide.

Through the Director for Human Resources Management, Appointing Authorities/OU Heads will request DERB approval to conduct a planned furlough within their organizations. Such requests must be supported by a furlough plan, which includes:

- A. the reasons for the proposed furlough, a rationale supporting why a furlough is the best mechanism to resolve the situation, and an accounting of the savings to be accrued;
- B. the organizational units to be involved;
- C. the names, position titles, and ES pay rates of the career SES appointees proposed for furlough;
- D. the length of the proposed furlough;
- E. the beginning and ending dates of the proposed furlough; and
- F. a draft notice to executives who would be affected by the proposed furlough.

**10.8 NOTICE**

Career SES appointees identified for furlough will receive a written advance notice at least 30 calendar days prior to the effective date of the start of the

furlough. In the case of a planned furlough, the advance notice will be provided by the appropriate Appointing Authority/OU Head. In the case of an emergency furlough, the notice will be provided by the Director for Human Resources Management acting on behalf of the DERB.

The 30-day notice period may be shortened or waived in the event of unforeseen circumstances, such as sudden emergencies requiring immediate curtailment of activities, or when furlough of employees is necessary to avoid violation of the Anti-Deficiency Act. If the notice period is shortened or waived, the agency must include the reason in the notice.

The written advance notice will include:

- A. the reason for the furlough action;
- B. the expected duration and the effective dates of the furlough;
- C. the basis for selecting the appointee for furlough when some, but not all SES appointees in the organizational unit are being furloughed;
- D. the reason if the notice period is fewer than 30 days;
- E. the place where the executive may inspect the regulations and the records pertinent to the action;
- F. the appointee's appeal rights, including the time limit for the appeal and the location of the Merit Systems Protection Board office to which the appeal should be sent; and
- G. if the appointee is service a probationary period, the effect (if any) on the duration of the probationary period.

#### **10.9 APPEAL RIGHTS TO MERIT SYSTEM PROTECTION BOARD (MSPB)**

A career SES appointee who has been furloughed and who believes that the provisions of this policy have not been correctly applied may appeal to the MSPB under provisions of the Board's regulations.

The furlough of noncareer and limited appointees, and reemployed annuitants is not appealable to MSPB.



#### **10.10 REQUIREMENTS FOR NONCAREER AND LIMITED TERM APPOINTEES AND REEMPLOYED ANNUITANTS**

The Department may furlough an SES noncareer or limited term appointee, or a reemployed annuitant holding a career appointment. Recommendations for selection for furloughs will be made by the Appointing Authorities and approved by the DERB. The appointee should be given a written notice, delivered at least one day prior to the beginning of the furlough, and it should indicate the reasons for, the duration of, and the effective dates of the furlough.

#### **10.11 RECORDS**

Bureau servicing Human Resources Offices will maintain copies of all regulations and records pertinent to an SES furlough in their organizations.

The Department's Office of Human Resources Management will maintain all records relating to SES furlough actions for at least 2 years from the effective dates of the actions.

## CHAPTER 11. EXECUTIVE DEVELOPMENT

### 11.1 SENIOR EXECUTIVE SERVICE CANDIDATE DEVELOPMENT PROGRAM

A. The SES Candidate Development Program (CDP), when offered, is administered by the Department. As necessary, the DERB will determine whether SES vacancy forecasts necessitate conducting an SES CDP. The Director for HRM will monitor the Program for the DERB.

(1) Purpose:

- (a) In accordance with 5 CFR 412.102(2), the SES CDP will provide learning through development and training in the context of succession planning and corporate perspective to prepare individuals for advancement, thus supplying the agency with an adequate number of well qualified candidates to fill supervisory, managerial, and executive positions.
- (b) The SES CDP will address mission-critical succession planning.

(2) Program Requirements

Detailed requirements are contained at 5 CFR 412.104.  
Highlights include:

- (a) When required, the Department must request in writing OPM's approval of its CDP.
- (b) The ECQs of candidates who successfully complete the CDP must be certified by OPM's QRB. These candidates cannot be non-competitively assigned to the SES without further merit competition unless the program was advertised to at least all government sources.
- (c) Intensive developmental activities will concentrate on the ECQs:
  - (1) Leading Change

- (2) Leading People
  - (3) Results Driven
  - (4) Business Acumen
  - (5) Building Coalitions
- (d) Recruitment may be advertised to all sources unless the Department requests an exception and demonstrates that during the 5-year period prior to the announcement of the program, the Department has made at least 15 percent of their career SES appointments from sources outside the agency.

## **11.2 SABBATICALS**

A career appointee may apply through the OERB to the Department for a sabbatical to engage in full-time study or uncompensated work experience, for up to 11 months, which is intended to contribute to the appointee's development and effectiveness. The Director for HRM, will review proposals for sabbaticals and make approval recommendations to the CFO/ASA.

### **A. Departmental Requirements**

Requests for sabbaticals will be submitted by the bureau or operating unit head to the Director for HRM. The submission will be reviewed for legal and regulatory compliance prior to referral to the CFO/ASA for an approval determination. The submission must identify to which position the executive will return, the duties and responsibilities of the position to be fulfilled in the executive's absence, and the benefits to the civil service. Candidates must have a current performance rating of at least Commendable. Applications will be coordinated by the appropriate OERB, ranked in priority order, and cost estimates must accompany the submission.

### **B. Legal Requirements**

- (1) To be eligible for a sabbatical, the executive must have completed 7 years of service:
  - (a) in one or more positions in the SES;

- (b) in one or more other positions in the civil service equivalent to positions in the SES; or
  - (c) in any combination of such positions, except that not less than 2 years of such 7 years of service must be in the SES.
- (2) The executive agrees, as a condition of accepting the sabbatical, to serve in the civil service upon completion of the sabbatical for a period of at least 2 consecutive years.
  - (3) A sabbatical shall not result in loss of, or reduction of, pay, leave, credit for time of service, or performance rating.
  - (4) Travel expenses (including per diem) may be authorized.
  - (5) SES career members who are eligible for voluntary retirement with an immediate annuity cannot be granted a sabbatical.
  - (6) Sabbaticals may only be granted to an individual once in any 10-year period.
  - (7) The candidate must sign a written Continue-in-Service agreement as a condition for being granted a sabbatical.

The agreement shall read:

I,           (candidate's full name)          , agree as a condition of accepting the sabbatical, as a/the           (give official position title)           with           (provide official name of granting organization)           in           (location by city and state)          , to serve in the civil service upon completion of the sabbatical for a period of at least two consecutive years. I further agree that if I fail to carry out this agreement (except for good and sufficient reasons as determined by the Secretary or designee), I am liable to the United States for payment of all expenses (including salary) of the sabbatical. The amount shall be treated as a debt due to the United States.

### **11.3 INTERGOVERNMENTAL PERSONNEL ACT ASSIGNMENTS**

- A. Career SES appointees are eligible for temporary assignments to State, local, and Indian Tribal governments, institutions of higher education, and other eligible organizations, under provisions of the Intergovernmental Personnel Act (IPA) and title VI of the Civil Service Reform Act, in accordance with requirements in 5 CFR Part 334. Assignments may be made for up to two years and may be extended by the Secretary (or designee) for another two years. Upon completion of the assignment, the individual returns to his position of record before the assignment, or the individual may be reassigned to another SES position.
  
- B. The individual must agree in writing to serve with the Federal Government upon completion of the IPA assignment for a period equal to the length of the assignment. The individual and the organization to which he or she is temporarily assigned shall enter into a written agreement that records the obligations and responsibilities of all parties, as specified in 5 USC 3373 and 3375. The participating organizations determine the cost-sharing arrangements in an IPA assignment. The Department/Bureau may pay all, some, or none of the costs of assignments.

### **11.4 INCUMBENT DEVELOPMENT**

Each SES appointee is encouraged to continue with his/her executive development through training courses, formal training programs and mobility assignments.

## CHAPTER 12. SES PERFORMANCE MANAGEMENT SYSTEM

### 12.1 GENERAL INFORMATION AND RESPONSIBILITIES

#### A. Purpose

This framework establishes the Department of Commerce's Performance Management System (PMS) for SES employees.

#### B. Scope

The Department has one SES PMS which covers all SES employees in the DOC, with the exception of the U.S. Patent and Trademark Office. The OIG manages and evaluates its own operational program. All SES members are subject to the SES PMS without regard to type of appointment (career, noncareer, or limited) or the type of position (general or career reserved) occupied.

#### C. Policy

The DOC SES PMS is established to hold senior executives accountable for their individual and organizational performance in order to drive organizational excellence and results, including improving the overall efficiency of the DOC. DOC recognizes the importance of aligning its strategic planning, budget and performance integration, performance appraisal, pay, and other award programs into the management of its human resources to promote efficient and effective attainment of its mission, program objectives, and strategic goals and initiatives. DOC's SES PMS provides a documented record of management expectations and an individual's achievement of, or contribution to meeting those expectations. DOC expects to achieve excellence in senior executive performance by:

- (1) Linking performance management with the results-oriented goals of the Government Performance and Results Act of 1993 and other strategic planning initiatives;
- (2) Setting and communicating individual and organizational goals and expectations;
- (3) Systematically appraising senior executive performance using measures that balance organizational results with

customer, employee, or other perspectives;

- (4) Using performance results as a basis for pay, awards, development, retention, removal and other personnel decisions.
- (5) Identifying individual accountability for accomplishing DOC goals and objectives, and;
- (6) Providing an annual assessment of agency performance overall and for each of its major program and functional areas.

#### D. Authorities

The SES PMS is established in accordance with the following authorities:

- (1) Performance Appraisal - Chapter 43 of title 5, United States Code (U.S.C.), subchapter II (Performance Appraisal in the Senior Executive Service); 5 Code of Federal Regulations (CFR), Part 430, Subpart D;
- (2) National Defense Authorization Act (Public Law 108-136); and
- (3) Records of Employee Performance - 5 CFR Part 293, Subpart D.

#### E. Major Responsibilities

The following are the responsibilities of key officials in the DOC's SES PMS.

- (1) The Secretary of Commerce<sup>1</sup> develops and communicates the DOC's strategic plan, and as the DOC "appointing authority" for the SES:
  - (a) Approves individual annual summary ratings at the end of the appraisal period, after the Appointing Authorities' recommendations are considered by the DERB and the

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<sup>1</sup> The responsibilities listed for the Secretary of Commerce do not apply to employees of the DOC Office of the Inspector General. The Inspector General Act of 1978, as amended, 5 U.S.C. App.

recommendations of the Department's SAO are made. This is the official rating;

- (b) Approves all performance-based bonuses and performance-based pay adjustments; and
  - (c) Nominates DOC executives for Presidential Rank Awards; and
  - (d) Approves all aspects of the SES program.
- (2) The Deputy Secretary:
- (a) Chairs the Secretary's DERB;
  - (b) Chairs the Secretary's Departmental Performance Review Board (DPRB);
  - (c) As the Senior Assessment Official (SAO), designated by the Secretary, pursuant to 5 CFR 430.404 (5), provides rigorous oversight of the appraisal process; conducts an annual assessment of the Department's performance; issues guidelines for performance evaluation; certifies that the results of the appraisal process make meaningful distinctions; and assures that pay adjustments and levels of pay accurately reflect and recognize performance and/or contribution to the Department's performance; and
  - (d) Manages the SES appraisal process, including the issuance of the Secretary's guidance and direction on performance expectations at the beginning of the appraisal process and throughout the appraisal cycle, as required.
- (3) The CFO/ASA, who also serves as the Department's Chief Human Capital Officer (CHCO), and Vice Chair of the DERB, coordinates for the Secretary all aspects of the SES appraisal process. This role is carried out in coordination with the Secretary and applicable DOC Secretarial Officers and Operating Unit Heads, and includes the following responsibilities:



- (a) Coordinating with key DOC officials who have responsibility for strategic and performance planning to ensure that the appraisal process aligns with strategic planning initiatives as required by law;
  - (b) Developing and implementing training on SES-related issues, including training for Performance Review Boards' (PRB) and Executive Resource Boards' (ERB) members on their roles and responsibilities, as required;
  - (c) Establishing PRBs at the beginning of the appraisal year to monitor individual and organizational performance and ensuring that the PRB membership is published in the Federal Register as required by 5 USC 4314;
  - (d) Providing support for and oversight of the appraisal process and the functions of the PRBs and DERB;
  - (e) Conducting an annual assessment of the SES program on behalf of the Secretary; and
  - (f) Appointing members to the Secretary's DERB, Departmental Performance Review Board (DPRB), and the Chairperson of the DPRB.
- (4) Rating Officials (executives' supervisors) are responsible for:
- (a) Developing performance plans in consultation with senior executives and communicating performance elements and requirements to executives within 30 days of the beginning of the appraisal period (Note: Although the senior executive being rated should actively participate in setting goals and identifying elements, the rating official's decision will prevail in any disagreement on elements or performance standards.);
  - (b) Ensuring that standards reflect the goals and objectives identified in the DOC strategic plan and agency strategic planning initiatives, and are supported by work plans at the agency or bureau level;
  - (c) Conducting at least one progress review with the executive, by July 1. The supervisor, however, may

conduct as many progress reviews as determined necessary. This review may be used to improve communications, to provide guidance, or to provide assistance to improve performance if below fully successful. The progress review may also provide an opportunity to modify elements and standards;

- (d) Ensuring that performance appraisals and documentation for recommended awards and performance-based salary adjustments are completed, reviewed by a higher level official, if required, and submitted to the servicing human resources office by the required DOC due dates;
  - (e) Ensuring that the executive is aware that he/she may respond to the initial rating, in writing, and that his/her comments become a part of the appraisal package submitted to the PRB.
- (5) Chairpersons of the PRBs are responsible for a variety of activities. Annual guidelines regarding the PRB and the role of the chairperson will be issued to supplement information contained in individual PRB Charters.
- (6) The Inspector General<sup>2</sup> is responsible for:
- (a) Appointing SES members to serve on the OIG PRB;
  - (b) Approving performance agreements for all career executives in the OIG;
  - (c) Approving Special Act awards for all career executives in the OIG;
  - (d) Approving ratings, performance-based bonuses, and performance-based pay adjustments for all career executives in the OIG; and
  - (e) Reporting final ratings, pay and bonus information to

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<sup>2</sup> The Inspector General has separate authorities under the Inspector General Act of 1978, as amended, 5 U.S.C. App

the SAO for inclusion in required reports to OPM.

## **12.2 PERFORMANCE MANAGEMENT PRINCIPLES**

The DOC has adopted the following set of principles to guide performance management within the SES:

- A. The DOC and its component bureaus create the conditions for economic growth and opportunity by promoting innovation, entrepreneurship, competitiveness, and stewardship. The SES PMS provides the leadership framework necessary to achieve this mission.
  
- B. The DOC leaders and managers create a climate for excellence by communicating their vision, values, and expectations clearly and by:
  - (1) Creating an environment in which every employee may excel, regardless of race, color, religion, sex, age, national origin, disability, sexual preference, or parental status, and which is free of sexual harassment;
  - (2) Creating an environment for continual learning;
  - (3) Working in partnership with employees to ensure they reach their full potential;
  - (4) Recognizing and rewarding excellence with financial incentives and non-financial incentives, such as increased flexibility to do jobs, more meaningful work, and achieving a sense of accomplishment;
  - (5) Taking timely action to both reward and correct performance appropriately, and ensuring that excellence is the standard for all;
  - (6) Holding individuals personally responsible for being results-oriented, performance-based, and customer-focused;
  - (7) Holding executives responsible for aligning subordinate Performance Agreements with organizational goals and for Rigorously appraising employee performance and ensuring that Employees were appraised realistically against clear, measurable standards of performance and within established timeframes;

- (8) Holding executives responsible for balancing organizational Results with the perspectives of distinct groups, including customers and employees; and
- (9) Recognizing that leaders, managers, and employees have a mutual obligation to provide value and excellence. This requires each individual to be continually challenged to perform his/her best. Taking action to improve the performance of each individual is imperative to achieving DOC's mission.

### **12.3 PERFORMANCE-BASED PAY ADJUSTMENT AND BONUS ELIGIBILITY**

- A. All SES members (career, noncareer, and limited) are eligible for base salary increases (if no adjustment has been made within a 12-month period). On an exception basis, a waiver request to the 12-month rule may be approved by the Secretary, or designee, if it is determined that an additional increase is warranted.
- B. Performance Awards (Bonuses) and Presidential Rank Awards (PRAs). Only SES members holding career appointments are eligible for performance awards and PRAs.

### **12.4 PERFORMANCE APPRAISAL PERIOD**

- A. The DOC's performance appraisal period begins annually October 1 and ends the following September 30, unless advanced or delayed by the appropriate authority. By law, rating officials of executives must communicate performance elements and requirements to executives at or before the beginning of each rating period. Written performance plans must normally be provided to the executive within 30 calendar days after the beginning of the rating period.
- B. The minimum performance appraisal period is 90 days. Every senior executive who occupies a covered position must be covered by performance standards for a minimum of 90 days as of the end of the appraisal cycle in order to receive an annual performance appraisal. When a senior executive transfers jobs within and outside the DOC, after completing the minimum appraisal period, the supervisor must appraise the executive's performance, in writing, before the executive leaves. Similarly, any departing supervisor of a senior executive must appraise subordinate executives' performance or provide an interim narrative rating prior to separation from DOC.

- C. The senior executive's rating official may end the appraisal period any time after the minimum appraisal period is completed, if there is adequate basis on which to appraise and rate the senior executive's performance.
- D. There is no minimum period that the rating official needs to be in place before doing a rating as long as he/she was in place on the last day of the rating period.
- E. A career appointee's performance may not be appraised or rated within 120 days after the beginning of a new Presidential administration.
- F. If a senior executive fails to complete the established minimum appraisal period because of reassignment or other reasons, the issue should be discussed with the DOC's OER on a case-by-case basis to determine the appropriate course of action.
- G. When a senior executive is detailed for more than 90 days, the gaining agency must set performance goals and requirements, and appraise the executive's overall performance, in writing, which is to be considered by the rating official in determining a final recommended summary rating into the overall summary rating.

## **12.5 DETAILS AND JOB CHANGES**

- A. Position Changes Within the Department. When the senior executive occupies two or more positions in the DOC during the appraisal cycle (in which the executive served under written elements and performance requirements for the minimum appraisal period), an interim narrative must be prepared for each position the executive encumbered prior to the position in which he concluded the rating period. This interim narrative rating, along with the Performance Agreement (see Section 12.6 for information on Performance Agreement(s) upon which it was based, must be forwarded to the new rating official for incorporation to the rating of record due at the end of the appraisal cycle. The weight given to the interim narrative(s) should generally be proportionate to the amount of the appraisal period the executive was covered by it. When such an interim narrative is used to develop a rating of record, both the interim narrative and the Performance Agreements upon which it is based must be included with the materials furnished to the PRB. The PRB recommends one final annual summary rating.

- B. Temporary Assignments Within the Department. If the senior executive is detailed within DOC, and if the assignment is expected to last the minimum appraisal period or longer, written critical elements and performance requirements are to be provided to the senior executive, and a narrative assessment prepared based on the executive's performance during the assignment. The narrative assessment will be considered in the overall assessment of the senior executive's performance at appraisal time.
- C. Temporary Assignments Outside the Department. If the senior executive has been detailed or temporarily assigned outside the DOC, a reasonable effort must be made to obtain a narrative assessment from the organization to which the senior executive was detailed. The narrative assessment will be considered in the overall assessment of the senior executive's performance at the conclusion of the appraisal cycle.
- D. Transfers From Other Agencies. If the senior executive transfers from another agency into the DOC during the appraisal cycle, any rating(s) or narrative assessments which are forwarded from the losing agency (and which encompass periods of time included in the DOC's appraisal cycle) must be considered in deriving the rating of record. Weight given to any such rating should be proportionate to the amount of time covered during the appraisal cycle.
- E. Transfers To Other Agencies. If a senior executive transfers to a new agency at any time during the appraisal period, a summary (interim) narrative must be prepared by the senior executive's rating official and provided to the gaining agency.

## **12.6 PERFORMANCE AGREEMENTS**

The Performance Agreement consists of performance elements and associated performance requirements, formerly often referred to as standards. The Senior Executive Performance Agreement describes the individual and organizational expectations for the executive during the appraisal period and establishes the requirements against which performance will be evaluated. Performance Agreements must:

- (1) describe elements (all of which are critical);
- (2) describe performance requirements; and
- (3) link the elements and performance requirements to the strategic planning initiatives based on DOC and agency strategic plans, subordinates' annual performance plans, organizational work plans,

and any other related initiatives.

- A. Each senior executive must have a written Performance Agreement which describes the individual and organizational expectations for the appraisal period and sets the requirements against which performance will be evaluated. The DOC will issue annual guidance on the SES performance work plans and procedures to ensure that plans appropriately reflect strategic initiatives, address developmental requirements as necessary, and communicate procedural changes, as appropriate. Performance Agreements should be supplemented by agency or office level work plans to clearly identify priorities and expected results.
- B. The Performance Agreement is the written aggregation of an executive's critical elements and performance requirements.
- C. In accordance with 5 CFR 430.305 (a), rating officials must develop Performance Agreements in consultation with senior executives.
- D. Rating officials must communicate the performance requirements and provide the written agreement to the executive within 30 days after the beginning of the rating period or their employment in a covered position.
- E. Elements must reflect both individual and organizational performance requirements. They may be either aspects of the most important duties and responsibilities associated with the SES position or specific projects or tasks which can be logically inferred from the duties and responsibilities cited in the senior executive's position description. Accomplishment of organizational objectives must be included in Performance Agreements by incorporating objectives, goals, program plans, work plans, or by other similar means that account for program results.
- F. Final authority for establishing the elements and requirements rests with the rating official, even if the executive doesn't agree with the plan contents. The Performance Agreement can be modified, as appropriate, at any time during the appraisal period to reflect changing priorities or shifts in workload.

## **12.7 ESTABLISHING SES PERFORMANCE ELEMENTS AND REQUIREMENTS**

DOC prescribes two mandatory elements for all SES executives, which

account for 40 percent of an executive's total Performance Agreement. Bureaus have the option to add up to three bureau-specific elements accounting for 60 percent of the Performance Agreement dedicated to business results.

A. Performance Elements: A performance element is a key component of a position consisting of one or more duties and responsibilities, which contribute toward accomplishing organizational goals and objectives.

(1) Mandatory Elements. All senior executives must be rated on the following mandatory elements which represent 40 percent of the overall Performance Agreement:

(a) Leadership/Management (25 percent). This element is the primary tool for assessing the individual's exercise of executive competencies.

(b) Customer/Client Service Responsiveness (15 percent). This element highlights accomplishments in collaborating with external and internal customers.

(2) Business Results Elements. Rating Officials may add up to three bureau-specific critical elements which represent **60** percent of the overall Performance Agreement and are dedicated to business results.

(a) Requirements for Unique Positions

Congressional, Legislative and Intergovernmental Affairs Positions

Pursuant to DOO 10-12, dated February 7, 2006, the Assistant Secretary for Legislative and Intergovernmental Affairs will provide the critical element (part of business results) for operating unit congressional, legislative and intergovernmental affairs directors' Performance Agreements. The Assistant Secretary's rating input will represent 50 percent of the overall rating.

Public Affairs Positions

Pursuant to DOO 15-3, dated February 23, 1995, the Director of the Office of Public Affairs will share responsibility for



preparing periodic performance evaluations on each operating unit's senior Public Affairs Officer. The Director will provide narrative input on the employees' performance to the employees' rating official who must consider this input in developing a final rating of record.

#### Chief Financial Officer Positions

Pursuant to DOO 10-5, date December 31, 2003, established the Deputy CFO's authority to, in consultation with the CFO/ASA, serve as the supervisor of record for a critical element entitled "Financial Operations and Management," which focuses on support of Department- and Government-wide goals, and accounts for 25 percent of the bureau CFOs' Performance Agreement and annual rating.

#### Chief Information Officer Positions

Pursuant to 15-23, dated February 7, 2007, established the Chief Information Officer's (CIO's) authority to serve as the supervisor of record for a critical element entitled "Information Technology (IT) Management," which focuses on the bureau's contribution to achieving the Department's IT security and management goals, and accounts for 25 percent of the bureau CIO position Performance Agreement and annual rating. These elements align with the Departmental and bureau mission and incorporate the mandatory CFO, CIO, Public Affairs, and Congressional, Legislative and Intergovernmental Affairs, elements and input as applicable.

#### Human Resources Manager Positions

Pursuant to DAO 202-250 dated April 30, 2009, authorizes the Department's Director for Human Resources Management to participate in the annual performance evaluation of bureau Principal Human Resources Managers, covering 25% of the overall rating for the critical performance element, "Human Capital Management."

- (3) If an element is so important that unsatisfactory performance would make the executive's overall job performance unsatisfactory, then that element is considered "critical." Because all DOC SES elements are critical, an "Unsatisfactory" rating in any one of them would result in an overall Unsatisfactory performance

rating in the position. Collectively, critical elements should cover the major duties and responsibilities of the position.

F. Performance requirements:

- (1) At the end of the rating period, each element will be rated at one of five levels. The Department's performance requirement definitions for the five levels listed below are provided as Appendix B of Form CD-518 and agree with the Standard for Senior Executive Excellence.

*Outstanding (5)* Meets or exceeds requirements written at this level.

*Commendable (4)* Meets requirements written at this level.

*Fully Successful (3)* Meets requirements written at this level.

*Minimally Acceptable (2)* Meets requirements written at this level.

*Unsatisfactory (1)* Meets (or falls below) requirements written at this level.

- (2) A performance requirement or standard is a statement of the expectations or requirements established by management for a performance element at a particular rating level. These requirements are the standards against which the senior executive's performance will be appraised. Standards may be based on outcomes and/or work behaviors, as appropriate to the element. It is important that a standard describe performance that is:

- (a) Observable - can be witnessed;
- (b) Measurable - can be assessed at different levels; and
- (c) Achievable - can be accomplished within the timeframe specified.

- (3) At a minimum, the standard for the "Fully Successful" level is described in writing in the SES Performance Agreement. Like critical elements, performance requirements must be consistent with the goals and performance expectations in the DOC's strategic planning initiatives. The absence of a written

performance requirement at a given level does not preclude the assignment of a rating at that level.

## **12.8 STANDARD OF SENIOR EXECUTIVE EXCELLENCE**

The following performance requirement definitions are designed to provide a uniform reference point for the assessment of executive performance across an organization. The applicability of each DOC mandatory element will vary from one executive to another, based on the actual scope of the executive's position. Raters should take this variability into account at the end of the rating period. Similarly, the elements are predicated on the development of bureau work plans and Performance Agreements for each executive in alignment with the Department's Strategic Plan.

Performance requirement definitions for the levels are:

Outstanding: This level exemplifies rare, high performance in fostering an organizational climate that sustains excellence and results. It should be thought of as the "exception." The senior executive's performance has made a positive and significant impact on organizational results in alignment with the mission of Commerce. All activities detailed in critical element are not only achieved, but completed in an exemplary manner. The senior executive has exerted a major positive influence on the organization through innovative and effective management practices, procedures and program implementation, building partnerships and coalitions, being responsive to internal and external customers, and leveraging scarce resources, which has contributed substantially to mission accomplishment.

Commendable: The senior executive demonstrates consistently high performance. Performance has exceeded expectations at the Fully Successful level in accomplishing critical element activities and sustained results that support the mission.

Fully Successful: The senior executive's performance meets expectations. The senior executive demonstrates sound performance. All critical element activities have at least been satisfactorily completed. The senior executive has contributed positively to organizational goals and achieved meaningful results.

Minimally Acceptable: The senior executive does not consistently meet performance expectations. This level of performance, while demonstrating some positive contributions to the organization, shows notable

deficiencies. It is below the level expected for the position and requires corrective action. The quality, quantity, or timeliness of the senior executive's work is less than Fully Successful, jeopardizing attainment of the element's objective.

Unsatisfactory: The senior executive does not meet performance expectations on critical elements. Job performance produces unacceptable work products. Minimum requirements of the critical elements are not met. Performance deficiencies adversely impact accomplishment of mission goals and objectives.

## **12.9 REVIEW OF PERFORMANCE AGREEMENTS**

- A. The Secretarial Officer or Head of the Operating Unit is encouraged to review Performance Agreements to ensure appropriate levels of quality and difficulty of performance requirements.
- B. The executive, the rating official, and the reviewing official, must sign the Performance Agreement. The employee's signature acknowledges that he/she has had an opportunity to provide input into the development of the plan, that it was discussed; and that the employee received a copy of the plan. It does not necessarily signify agreement. It also certifies that the employee understands how his/her individual performance is linked to the organization's mission and goals.

## **12.10 PROGRESS REVIEWS**

- A. Rating officials must monitor each senior executive's performance during the appraisal period and provide ongoing, timely, and honest feedback to the senior executive on progress in accomplishing the performance elements and requirements described in the performance plan to sustain and reinforce expected performance.
- B. A progress review shall be held for each SES member at least once during the appraisal period, before July 1. At a minimum, senior executives must be informed about how well he/she is performing by comparing his/her performance with the elements and performance requirements established for his/her position.
- C. The rating official must provide advice and assistance to senior executives on how to improve their performance.
- D. If either the rating official or the executive believes that modifications to

previously established elements or performance requirements are warranted because of unforeseen shifts in workload or changes in priorities, he/she must be prepared to discuss possible alternatives. If the rating official believes that performance in one or more of the established elements is lacking, he/she should discuss possible corrective actions as well as the ramifications of unimproved performance. The progress review should not be viewed solely as a discussion of performance weaknesses or deficiencies, but should also serve as a forum for encouraging employees whose performance is Fully Successful to strive for even greater achievement.

- E. If modifications in either elements or requirements are warranted, they must be discussed and recorded during the progress review process. At the end of the review session, both the rating official and the executive should share a common understanding of where the employee stands in relationship to his/her Performance Agreement, what is expected of the senior executive through the remainder of the rating period, and what actions, if any, will be initiated as a result of performance to date. The executive and the rating official each sign and keep a copy of the Performance Agreement or progress reviews, acknowledging that the progress review was conducted.

## **12.11 APPRAISING PERFORMANCE**

- A. Annual Appraisals. In accordance with 5 CFR 430.304 (b)(4), rating officials must appraise senior executives' performance at least annually and assign an initial summary rating at the end of the appraisal period. If a senior executive has received an interim summary performance narrative for service in another covered position within DOC or another agency during the appraisal period, then the summary narrative(s) must be considered in determining the executive's annual summary rating.

- (1) Senior executives must be appraised on the performance of critical elements in the Performance Agreement using the established summary performance levels.
- (2) Appraisals of senior executives must be based on both individual and organizational performance, taking into account such factors as:
  - (a) Results achieved in accordance with the goals of the Government Performance and Results Act of 1993 and

other DOC strategic planning initiatives;

- (b) Customer satisfaction;
- (c) Employee perspectives;
- (d) Compliance with the merit system principles set forth under section 2301 of title 5, U.S.C.; and
- (e) Effectiveness, productivity, and performance quality of the employees for whom the senior executive is responsible.

- (3) With regard to number 2 (e) above, bureaus must institute a process for ensuring that the senior executive's rating (as well as subordinate employees' performance expectations and ratings for those with supervisory responsibilities) appropriately reflect performance measures and any other relevant factors.

B. Methodology for Deriving Summary Ratings. The following approach will be followed to obtain a summary rating. The rating officials must prepare and discuss an initial written rating of performance with each senior executive they supervise. This rating must be based on an assessment of the senior executive's performance against the requirements established at the beginning of the rating period (or as modified and documented in the Performance Agreement during a progress review) and must include a written rating for each individual performance element based on the following:

*Outstanding (5)* Meets or exceeds requirements written at this level.

*Commendable (4)* Meets requirements written at this level.

*Fully Successful (3)* Meets requirements written at this level.

*Minimally Acceptable (2)* Meets requirements written at this level.

*Unsatisfactory (1)* Meets (or falls below) requirements written at this level.

- (1) If an individual's performance falls between two rating levels, e.g., Commendable (4) and Outstanding (5), the rating official may give a 4.5 element rating. No other incremental assignment is

permissible other than .5.

- (2) Each element must be rated using the five-level element rating scale shown above. All ratings of elements must be supported by a narrative justification. If an element is rated as Fully Successful, the rating official need only document that 1) the Fully Successful requirements were met, and 2) the rating was discussed with the senior executive.
- (3) To obtain the overall summary rating, each element must be rated using the five-level element rating scale (Outstanding = 5, Commendable = 4, Fully Successful = 3, Minimally Acceptable = 2, and Unsatisfactory = 1). Then, each individual element rating is multiplied by the weight assigned to that element. The summary rating points assigned to the individual elements are then totaled to determine an overall summary rating based on the following scale:

Outstanding 470 - 500

Commendable 380 - 469

Fully Successful 290 - 379

\*Minimally Acceptable 200 - 289

\*Unsatisfactory 0 - 199

- \* Under DOC policy, a covered senior executive who fails to meet at least the Fully Successful level requirements in one (or more) element(s) must **not** be given a Fully Successful or above rating, regardless of the point total. For example, a summary rating of Unsatisfactory must be assigned to any senior executive who is given an Unsatisfactory rating on one or more elements. The same applies for a senior executive who was assigned a rating of Minimally Acceptable on an element; the summary rating may not be Fully Successful.

## **12.12 PROCESS FOR RATING PERFORMANCE**

- A. Initial Summary Rating. The rating official must develop an initial summary rating of the senior executive's performance, in writing, and share that rating with the senior executive. The senior executive may respond in writing. Any response shall be made to the rating official within 5 calendar days after the executive receives the initial rating. A rating official may change the initial rating after considering the response received from the executive.

B. Higher Level Review. If, after considering the senior executive's response, the rating official does not change the senior executive's rating per 5 CFR 430.308(b), the senior executive may ask for a higher level official to review the initial summary rating before the initial rating is given to the PRB for its review. Any such request must be made within 5 calendar days after receipt of the rating official's determination. The senior executive is entitled to one higher level review. The senior executive may request this higher level review by contacting the PHRM within 5 calendar days after the rating has been received. The PHRM will appoint a higher level review official within the bureau. The reviewer should be an individual who was not involved in the initial rating process.

If there is no higher level official between the senior executive and the Appointing Authority, the PHRM will forward the request to the Department's Office of Human Resources Management (OHRM). The Department's Director for HRM will appoint a member from the DPRB for the review. The higher level review official will consider the initial rating and narrative assessment, if any, and the written response, if any, made by the senior executive. The higher level review official will not consider any written comments by the senior executive to the initial rating which were not provided to the rating official within 5 calendar days from receipt of the rating. The higher level review official cannot change the rating official's initial summary rating, but may recommend a different rating to the rating official, PRB, and the Appointing Authority. Copies of the higher level review official's findings and recommendations must be given to the senior executive at the same time it is given to the rating official and the PRB.

C. PRB Review. The initial summary rating, the senior executive's response to the initial rating, if any, and the higher level review official's recommendations must be given to the PRB. The PRB must review the rating, the response, if any, from the senior executive and the higher level review official's recommendation, and make recommendations to the Appointing Authority. A PRB has the authority to make any inquiry it deems necessary; however, there is no right for the senior executive to make a presentation to the PRB or provide any written comments to the PRB not previously provided to the rating official and the higher level review official.

D. Annual Summary Rating. The Appointing Authority recommends the annual summary rating of the senior executive's performance, in



writing, after considering any PRB recommendations. Departmental approval of the recommendation is required before the rating can be finalized. This is the official rating.

- E. Extending the Rating Period. When a rating official cannot prepare an annual summary rating at the end of the appraisal period because the senior executive has not completed the minimum appraisal period or for other reasons, the performance of the executive during the time served will extend the new rating period.

### **12.13 INTERIM SUMMARY RATINGS**

- A. When a senior executive has served in a covered position for 90 days or more in an appraisal period and changes to another covered position within the Department, an interim rating must be completed by the executive's supervisor, and signed by the Appointing Authority. Interim ratings must also be completed when a senior executive completes a detail within the Department of 90 days or more in a covered position. In such cases, the rating must be based on the elements and standards established for the position the senior executive is leaving. Copies of the interim rating must be given to the senior executive, the gaining supervisor, and the servicing human resources management office of the gaining organization. Interim ratings are not reviewed by the PRB, but copies should be furnished to the PRB when it reviews annual ratings of record. Rating officials must consider interim ratings in determining final ratings of record.
- B. When a senior executive transfers from the Department to another Federal agency after serving in a covered position in the Department for more than 90 days, the senior executive's supervisor and the Appointing Authority must complete an interim rating. The interim rating must be transferred to the gaining agency for consideration in the senior executive's next rating of record.
- C. When the supervisor of an SES employee vacates his/her position before the end of the rating cycle, the supervisor must prepare an interim narrative rating for each employee he/she supervises and provide a copy to the employee, the Appointing Authority and the Department's Office of Executive Resources. The interim rating must be considered by the new Rating Official when he/she prepares the final ratings of record.

### **12.14 USING PERFORMANCE RESULTS**

- A. Per 5 CFR 430.309 (a), rating officials will use the results of performance appraisals and ratings as the basis for making recommendations for adjusting pay, granting awards, and other personnel decisions. Performance information will also be a factor in assessing a senior executive's continuing development needs.
- B. An annual summary rating of at least Fully Successful for a career executive will provide the basis for an executive's retention in the SES and will establish the executive's eligibility for consideration for performance-based bonuses and performance-based pay adjustments. All bonus recommendations must comply with the requirements and deadlines established by the Department. Only career executives are eligible to receive SES bonuses. The PRB must make recommendations to the Appointing Authority on which senior executives should receive bonuses and on the amounts of these bonuses. Consideration for bonuses should be based on the performance agreement and rating for the current appraisal period. Executives on Limited Term or Limited Emergency appointments and noncareer executives are not eligible for bonuses, but are eligible for performance-based salary adjustments.
- C. An executive may be removed from the SES for performance reasons, subject to the provisions of 5 CFR Part 359, Subparts D and E per 5 USC 4314(b):
  - (1) An executive who receives an Unsatisfactory annual summary rating must be reassigned or transferred within the SES or removed from the SES;
  - (2) An executive who receives two Unsatisfactory annual summary ratings in any 5-year period must be removed from the SES; and
  - (3) An executive who receives less than a Fully Successful annual summary rating twice in any 3-year period must be removed from the SES.
- D. Executives with a final rating of Minimally Acceptable or Unsatisfactory may have their base salary decreased. Per 5 CFR 534.404 (j) and subject to the restrictions of 5 CFR 534.406 (b) and 534.403 (a), SES performance-related downward pay adjustments are limited to no more than 10 percent of base pay and will be made at the discretion of the

Appointing Authority, with prior consultation with the Director for HRM, and approval of the DERB, and the SAO.

## **12.15 RIGHTS OF THE EXECUTIVE**

Per 5 CFR 430.308(f), a senior executive may not appeal the final rating, and the rating is not grievable. An executive, however, may request a higher level review as detailed in Section 12.12.

## **12.16 GUIDELINES FOR PERFORMANCE REVIEW BOARDS and the DEPARTMENTAL PERFORMANCE REVIEW BOARD**

A. These guidelines should be supplemented by specific operating unit requirements defined in individual PRB charters or the DPRB Charter. PRBs must be diligent in the review process to ensure meaningful distinctions based on relative performance, thereby strengthening the link between performance and pay. PRBs must also look at the linkage to strategic goals, alignment, and performance distinctions in executives' subordinate ratings. PRBs and the DPRB must review initial performance appraisals and ratings and make recommendations to Appointing Authorities for:

- Final performance ratings:
- SES performance-based bonuses;
- SES performance-based pay adjustments; and
- Presidential Rank Awards

PRBs make recommendations to their respective Appointing Authorities on the performance and performance awards of its senior executives. The DPRB reviews only those senior executives who report directly to Appointing Authorities and, as necessary, those requesting a higher level review.

### **B. DPRB Review Panels**

- (1) Members of the DPRB will be notified regarding the establishment of separate DPRB panels and specific meeting dates.
- (2) Each panel will consist of three DPRB members.

- (3) In order to participate in PRB or DPRB deliberations, each Federal PRB or DPRB member must have at least a Fully Successful or high rating.
- (4) Materials for each DPRB panel will be provided to panel members before the scheduled meeting.
- (5) DPRB members will not be eligible to serve on a panel reviewing their own appraisals, that of their supervisors or subordinates or those for whom they have already provided input.
- (6) After completing their reviews, DPRB panels will make written recommendations for the Appointing Authority's approval for each executive's performance rating, bonus and pay adjustment.

#### C. DPRB Procedures

- (1) Performance appraisals for DPRB review must include proposed ratings and performance-based pay adjustment and bonus recommendations.
- (2) DPRB panel members will indicate if they concur based on the documentation submitted.
- (3) The DPRB panel will not initiate recommendations of its own.
- (4) In cases where no explicit recommendations are made, the DPRB will interpret the actions of the supervisor as follows:
  - Bonus: Lack of a recommendation or mention of a performance-based bonus by the supervisor is considered as an implicit recommendation that no bonus be awarded.
  - Pay Adjustment: Lack of a recommendation or mention of a performance-based pay adjustment by the supervisor is considered an implicit recommendation that no pay adjustment be made.

#### D. Criteria For Review of Performance Appraisals and Ratings

- (1) Performance appraisals, initial summary ratings, senior executives'

written responses, if any, and recommended performance-based pay adjustments and bonuses are to be reviewed and compared to criteria identified in PRB charters. The Office of Personnel Management provides the following criteria:

- Alignment - Performance expectations are linked to or derived from the agency's mission, strategic goals, program/policy objectives and/or annual performance plan.
- Consultation - Performance expectations are based on senior employees' involvement and input and were communicated to the employee at the beginning of the appraisal period and appropriate times thereafter.
- Results - Performance expectations for senior employees apply to their respective areas of responsibility; reflect expected agency or organizational performance; clearly describe performance that is measurable, demonstrable, or observable; and focus on tangible outputs, outcomes, milestones, or other deliverables.
- Balance - Performance expectations for senior employees include appropriate measures or indicators of results; customer/stakeholder feedback; quality, quantity, timeliness, and cost effectiveness as applicable; and competencies or behaviors that contribute to and are necessary to distinguish outstanding performance.
- Assessment and Guidelines - The agency head, or designee, provides assessments of performance of the agency overall, as well as each of its major program and functional areas, such as Government Performance and Results Act (GPRA) goals and other program performance measures and indicators, and evaluation guidelines issued and based, in part, upon those assessments provided to senior employees, senior employee rating and reviewing officials and PRB members. Assessments and guidelines are to be provided at the conclusion of the appraisal period but before ratings are recommended.
- Oversight - Rigorous oversight of the appraisal process is provided by the agency head, or designee who certifies that: 1) the senior employee appraisal process makes meaningful distinctions based on relative performance; 2) results of the process take into account, as appropriate, the agency's assessment of its

performance against program performance measures; and 3) pay adjustments, cash awards, and levels of pay accurately reflect and recognize both individual and organizational performance.

- Accountability - The senior employee's rating (as well as subordinate employee's performance expectations and ratings for those with supervisory responsibilities) appropriately reflect the employee's performance measures, and any other relevant factors.
- Performance Differentiation - 1) the appraisal system includes a rating level that reflects outstanding performance and provides for clear differentiation of outstanding performance, as defined in the regulations; and 2) the appraisal process results in meaningful distinctions in relative performance based on senior employees' actual performance against rigorous performance expectations. "Relative performance" in this context does not require ranking senior employees against each other. Indeed, such ranking is prohibited for the purpose of determining performance ratings. Rather it is defined as the performance of a senior employee with respect to the performance of other senior employees, including their contribution to agency performance, where appropriate, as determined by the application of a certified appraisal system.
- Pay Differentiation - Individual pay rates and pay adjustments, as well as overall distribution, reflect meaningful distinctions among executives based on their relative contribution to agency performance. Agencies must ensure transparency in the process for making decisions. The highest performing senior employees should receive the largest pay adjustments and or highest pay (including both basic pay and performance awards), particularly above the rate for level III of the Executive Schedule.

(2) Other Factors

- Balanced measures - Refers to an approach to performance measurement that balances organizational results with the perspectives of other distinct groups, such as customers, stakeholders, and employees. The Balanced measure approach includes: 1) the Employee Perspective, which focuses attention on the performance of the key internal processes that drive the organization. This perspective directs attention to the basis of all future successes – the organization's people and infrastructure; 2) the Customer Perspective, which considers the

organization's performance through the eyes of a customer, so that the organization retains a careful focus on customer needs and satisfaction; and 3) the Business Perspective, which considers *outcomes*, or social/political impacts which define the role of the agency/department within the government and American society, and the *business process* needed for organizational efficiency and effectiveness.

#### E. Operating Unit PRB Procedures

##### (1) Membership

- (a) Each Operating Unit PRB must have three or more members, one of whom must be assigned from outside the Appointing Authority's organizational portfolio, who are appointed by the Appointing Authority or his/her designee acting on behalf of the bureau. Bureaus are encouraged to include women, minorities and persons of disability on their PRBs. Greater than one half of the PRB membership must be career SES appointees.
- (b) PRB members must be appointed in a way that assures consistency and objectivity in SES performance appraisal.
- (c) When appraising a career appointee's performance or recommending a career appointee for a performance award, more than one-half of the PRBs members must be SES career appointees.
- (d) Per 5 CFR 430.310 (a) (4), bureaus must publish notice of PRB appointments in the Federal Register before PRB members' service begins.

##### (2) Functions

- (a) Per 5 CFR 430.310 (b) (1), each PRB must review and evaluate the initial summary rating, the senior executive's response, and the higher level review official's recommendations on the initial summary rating, and conduct any further review needed to make its recommendations.

- (b) Per 5 CFR 430.310 (b) (2), the PRB must make a written recommendation to the Appointing Authority about each senior executive's annual summary rating and any performance-based bonus and pay adjustment. When the PRB does not concur with the initial rating given to a senior executive, or the record shows that the employee or reviewing official is in disagreement with the rating official's action, the PRB shall conduct such further review as it finds necessary.
- (c) A PRB member must not participate in a senior executive's performance review or discussions or recommendations on that review when:
- The review pertains to that PRB member;
  - The PRB member is the rating official of the senior executive whose performance appraisal is being reviewed;
  - The PRB member is the direct subordinate of the senior executive whose performance appraisal is being reviewed; or
  - The PRB member was the designated higher level review official of the senior executive whose performance is being reviewed.
- (d) There is no right to a hearing before the PRB for executives requesting a higher level review, nor may the executive provide any additional information not initially provided to the rating official.
- (e) The DPRB provides higher level review of individuals reporting directly to the Appointing Authority.
- (f) Each PRB must have a chairperson who is a DOC employee who will oversee the activities of the Board and assure that the PRB carries out functions contained in its charter in accordance with OPM and Departmental requirements.
- (g) Each PRB must have its organization's personnel



representative serve as Executive Secretary to provide personnel guidance and administrative support to the PRB.

## **12.17 TRAINING AND EVALUATION**

- A. Servicing Human Resources Offices must provide appropriate information and training to rating officials and senior executives on performance management, including planning and appraising performance.
- B. Information on changes in the operation of the SES PMS are conveyed to DOC management and affected senior executives through DOC's OHRM issuances.
- C. OHRM assesses the effectiveness of the SES PMS through an ongoing evaluation program. DOC organizations are evaluated on their technical compliance with law, the OPM performance management regulations, and DOC policy. Evaluations focus on the adequacy of performance plans and ratings as related to the bureau's accomplishments as reflected in DOC's strategic plan and bureau organizational assessments provided by the SAO.
- D. The SAO on behalf of the Secretary is responsible for evaluating data and feedback from the Office of Budget, and Office of Management and Organization on bureau organizational accomplishments relative to strategic objectives. The SAO will advise other key officials of any needed changes or corrective actions associated with the SES PMS. The Secretary, or his/her designee, will conduct an annual assessment of bureaus' systems to ensure that the performance appraisal process is an effective tool for the DOC, and that DOC's SES PMS meets all OPM regulatory requirements.

## **12.18 RECORD KEEPING**

- A. Employee Performance Folders (EPFs). EPFs must be established for each senior executive, retained as separate files, and maintained by the rating official. EPFs must contain the following:
  - (1) The senior executive's performance agreements;
  - (2) Documentation of progress review(s);

- (3) Summary appraisals and ratings;
  - (4) Written comments on ratings, if any;
  - (5) The higher level review official's written recommendations, if any.
  - (6) PRB/DPRB recommendations;
  - (7) Recommendations for performance-based pay adjustments, bonuses, and rank awards; and
  - (8) Decisions by the DERB.
- B. All performance related records contained in the EPF must be retained for 5 years.
- C. When a senior executive transfers to another operating unit within the DOC or to another federal agency, EPFs must be transferred with the senior executive.
- D. Disclosure of information contained in EPFs may be made only as permitted by the Privacy Act.

## CHAPTER 13. SPECIAL RECOGNITION PROGRAMS

### 13.1 TYPES OF EXECUTIVE RECOGNITION

The Department employs four primary means to recognize the performance and accomplishments of its senior executives and senior professionals: Presidential Rank Awards (PRAs), performance-based bonuses, performance-based pay adjustments and Special Act or Service Awards.

A. Presidential Rank Awards - The President awards the rank of Distinguished Executive, Distinguished Senior Professional, Meritorious Executive and Meritorious Senior Professional each year to a select number of SES career executives and senior career employees who have provided exceptional service to the American people over an extended period of time.

(1) Purpose

To recognize long term, high quality accomplishment, the Civil Service Reform Act of 1978 (CSRA) authorizes the President to approve the awarding of ranks and accompanying monetary awards to a select number of career members of the SES. In 2001, the award statute was amended to extend eligibility to certain senior career employees (Senior Professionals) who have a sustained record of exceptional professional, technical and scientific achievement. The following awards are available:

- (a) Distinguished Executive and Distinguished Senior Professional - recognize sustained extraordinary accomplishment and include a lump sum payment of 35 percent of base pay.
- (b) Meritorious Executive and Meritorious Senior Professional - recognize sustained accomplishment and include a lump sum payment of 20 percent of base pay.

(2) Eligibility for Senior Executives

Executive nominees must:

- (a) Hold a career appointment in the SES, with at least three years of career or career-type Federal civilian service at the SES level. Service does not have to be continuous. Qualifying service includes appointments in the SES, Senior Foreign Service, and the Defense Intelligence Senior Executive Service. Appointments not qualifying include SES noncareer, limited term and limited emergency, and Scientific-Professional and Senior-Level.
- (b) Be an employee of the nominating agency.
- (c) Nominees must have had a performance rating of at least Commendable for the preceding three years.
- (d) An individual who receives a PRA of either Meritorious or Distinguished Executive is not eligible for that same award during the following four fiscal years.
- (e) A Distinguished or Meritorious PRA recipient may not be nominated for or receive a performance-based bonus in the same calendar year.
- (f) The combination of a Meritorious PRA and performance-based Bonus cannot exceed 35 percent of an appointee's base pay in the same calendar year.
- (g) To provide for progression in the awarding of PRAs a nominee for Distinguished Executive and Distinguished Senior Professional would normally have received the PRA of Meritorious Executive in a previous year. It may be appropriate to confer the PRA of Distinguished Executive without regard to progression when only the highest PRA would serve as fitting recognition.
- (h) Pursuant to Section 5 of the Inspector General Act of 2008 (P.L. 110-409), an Inspector General of an establishment or Federal entity may not receive a PRA. SES IG office members other than the IG may be nominated for PRAs by the Council of the Inspectors General on Integrity and Efficiency established under the Act.

### (3) SES PRA Nomination Criteria

A nominee must have demonstrated (a) sustained extraordinary accomplishment for Distinguished or sustained accomplishment for Meritorious, over the last three years. Nominees' performance will be assessed against the following two criteria, using measures that balance results-oriented performance with customer satisfaction and employee perspectives to help support the nomination.

- (a) Program Results: The executive has an exceptional record of achieving major program goals and exceeding customer expectations by marshaling internal and external human, financial and technological resources to attain high quality outcomes that are technically sound and cost-effective, and yield rewards commensurate with the level of risk.
- (b) Executive Leadership: The executive possesses a sound strategic overview of the public sector environment and has shown creativity, adaptability, and resilience in his or her efforts to align program efforts with the organization's vision, mission, and goals, and in partnering with stakeholders inside and outside the organization. The executive has also demonstrated the ability to lead people effectively by fostering employee development, cooperation and teamwork, and by constructive resolution of conflicts.

#### Other Considerations

In addition, nominees will be evaluated against, but need not be limited to, the following. For each criterion offered, specific examples must be cited:

- (a) Career achievements that are recognized throughout the agency or are acknowledged on a national or international level;
- (b) Specific achievement of significant cost reduction or

cost avoidance enabling the agency to reallocate resources to high priority activities;

- (c) Successful use of human resources exhibited through high workforce productivity and/or effective development and recognition of subordinates;
- (d) Demonstration of personal initiative and innovation;
- (e) Substantial improvements in quality of work, efficiency and/or timeliness of service;
- (f) Unusual levels of cooperative effort with other Federal agencies, governmental jurisdictions, and/or the private sector;
- (g) Especially successful efforts in affirmative action;
- (h) Major career related awards and honors received.

In addition to the above criteria, it must be clear that the nominee has demonstrated qualities of strength, leadership, integrity, industry and relentless commitment to public service. Through his/her personal conduct and results-oriented leadership, the nominee has earned and kept a high degree of public confidence and trust. The nominee demonstrated his/her success in balancing the needs and perspectives of customers, stakeholders, and employees with organizational results. 5 USC 4313 also contains general guidelines which may be helpful in structuring an award nomination.

Nomination Limits: Per 5 CFR 451.301 (c). Appointing Authorities may nominate up to 9 percent of their career SES appointees for rank awards.

#### (4) Eligibility for Senior Career Employees

Senior Career Employee Nominees must:

- (a) Hold a career appointment in an OPM-allocated Senior-Level (SL) or Scientific-Professional (ST) position, with at least 3 years of career or career-type

Federal civilian service above the GS-15 or equivalent level. Service does not have to be continuous. Qualifying service does not include appointments that are time limited or positions that are excepted from the competitive service because of their confidential or policy-making character.

- (b) Be an employee of the nominating agency.
- (c) An individual who receives a rank of either Distinguished or Meritorious Senior Professional is not eligible for the same award during the following four years.
- (d) Nominees must have had a performance rating of at least Commendable for the preceding three years.

(5) Senior Career Employee PRA Nomination Criteria

A nominee must have demonstrated sustained extraordinary accomplishment for Distinguished Senior Professional or sustained accomplishment for Meritorious Senior Professional, over the last three years. Nominees' performance will be assessed against the following two criteria.

- (a) Program Results: The senior professional has an exceptional record of achieving major program goals and exceeding customer expectations by marshaling internal and external human, financial and technological resources to attain high-quality outcomes that are technically or scientifically sound and cost-effective, and yield rewards commensurate with the level of risk.
- (b) Stature in Professional Field: The senior professional is consistently recognized nationally or internationally as a leader or authority in a field or discipline. He or she has influenced others in or beyond the field or discipline; is regularly sought as an advisor and consultant on scientific, technical, or professional programs, and problems of fundamental interest and extraordinary difficulty which extend well beyond his or her field or discipline; and has received major honors

or awards or published works that have had a major impact in the field or discipline.

In addition to the above criteria, it must be clear that the nominee has demonstrated qualities of strength, leadership, integrity, industry and relentless commitment to public service. Through his/her personal conduct and results-oriented leadership, the nominee has earned and kept a high degree of public confidence and trust. The nominee demonstrated his/her success in balancing the needs and perspectives of customers, stakeholders and employees with organizational results. 5 USC 4313 also contains general guidelines which may be helpful in structuring an award nomination.

Nominations Limit: Per 5 CFR 451.302 (c), Appointing Authorities may nominate up to 9 percent of their senior career employees for PRAs.

(6) Nomination Procedures for PRAs

- (a) The Department will announce the PRA program to Appointing Authorities who will then request nominations from within their organizations.
- (b) Operating unit PRBs will review nominations and submit them to the appropriate Appointing Authority, with written recommendations on the approval or disapproval, and stating the reasons for its recommendations. A PRB member who has been nominated for a PRA may not participate in any PRA deliberations.
- (c) The Appointing Authority shall, after considering the PRBs recommendations, submit nominations to the Department, in accordance with the timetable and procedures established annually.
- (d) In any fiscal year, Government-wide, the number of Distinguished PRA recipients may not exceed 1%, and Meritorious award recipients may not exceed 5% of the total number of SES positions authorized; the number of Distinguished Senior Professional PRA



recipients may not exceed 1 percent, and Meritorious Senior Professional PRA recipients may not exceed 5 percent of the total number of Senior Career Employees.

(7) Submission Requirements for PRAs

Nominations shall be signed by the head of the operating unit and the appropriate Secretarial Officer prior to submission to the Executive Secretary of the Departmental Executive Resources Board (Director for HRM). The documentation required with each case must include the following as a minimum:

- (a) Form CD-590, Executive Personnel Transaction;
- (b) PRA Program Nomination Template. Complete the appropriate nomination form (SES Appointee or Senior Career Employee) for each nominee. You must check all the boxes that apply to the nominee's current employment status. Each nomination form must be signed by the Appointing Authority;
- (c) Biographical Summary. Briefly list the nominee's current position, career highlights, and other biographical information, including significant honors, awards, etc. Use no more than one half page of text.
- (d) Career Accomplishments. In bullet format, summarize the nominee's accomplishments as an SES member or ST/SL employee. These should relate to the achievements described in greater detail in the justification statement. Use no more than one half page of text.
- (e) Justification Statement. Concisely describe the nominee's career achievements for each of the PRA criteria. The justification statement may not exceed three pages in length.
- (f) A summary data sheet listing rank nominees showing name, current and three previous years' performance ratings, years of service with the Department,

previous recognition, including PRAs for which nominees were recommended by not approved.

- (g) The accounting classification code number from which the PRA would be paid. The code will be listed in this order: one digit fiscal year code, two digit fund code, 7 digit project code and 3 digit task code (no hyphens, dashes or spaces).

(8) PRA Review Procedures

- (a) The Executive Secretary of the DERB reviews nominations to assure compliance with regulatory and Departmental requirements. Nominations which do not comply with OPM and DOC regulatory and quality requirements will be returned to the submitting Appointing Authority.
- (b) The DERB screens nominations for PRAs and recommends nominees to the Secretary. The DERB may establish an ad hoc group or panel to assist in the initial screening process.
- (c) After review, the DERB submits to the Secretary documentation on those nominees recommended by the Board and a priority order listing of the nominees. A list of those individuals not recommended by the DERB will also be forwarded to the Secretary.
- (d) The Secretary forwards the selection of the Department's final nominees to the Office of Personnel Management for further consideration and potential selection by the President.

(9) PRA Payments

- (a) If full receipt of a Meritorious PRA amount would cause the recipient's aggregate compensation (base salary plus bonuses plus PRA and any other payments) for the calendar year to exceed Level I of the Executive Schedule, then the amount in excess of Executive Level I will be paid at the beginning of the next calendar year.

- (b) The amount paid in excess in the next calendar year, when added to the recipient's base salary, bonuses and PRAs, and any other compensation, may not cause the recipient's aggregate compensation to exceed the pay rate of Executive Level I.
- (c) A nominee who meets the PRA eligibility requirements but leaves the SES, ST or SL position before being selected as a recipient may still receive the award. A nominee who dies before being selected may receive the PRA posthumously.
- (d) OPM regulations will determine the method for distributing PRA carry-over amounts to deceased recipients.

B. Performance-Based Bonuses (Performance Awards) may be granted to career executives after the end of the SES performance appraisal period. Bonuses range from 5 percent to 20 percent of base pay as of the end of the performance appraisal period.

(1) Purpose

Bonuses are used to recognize career senior executives for excellence in performance during the SES performance appraisal period.

(2) Eligibility

- (a) To be eligible for a bonus, the individual must have been an SES career appointee as of the end of the performance appraisal period, September 30, and have had a performance agreement in place for the minimum appraisal time (90 days).
- (b) Only career senior executives with performance ratings of at least Fully Successful are eligible for SES bonuses.
- (c) Individuals eligible for an SES bonus include:
  - 1 A former SES career appointee who elected to retain award eligibility under Chapter 5.8 of this manual.

- 2 A reemployed annuitant with an SES career appointment.
- 3 An SES career appointee who is on detail.

- (d) Pursuant to Section 5 of the Inspector General Reform Act of 2008 (P.L. 110-409), an Inspector General of an establishment or a designated Federal entity may not receive any cash award or cash bonus.

(3) General Guidelines

- (a) SES Bonuses are limited to a funding distribution equal to a fixed percentage of the Department's aggregate payroll for career executives on board as of the end of the fiscal year.
- (b) Bonus amounts are computed as percentages of payable salary and range from a minimum of 5 percent to a maximum bonus of 20 percent of the appointee's rate of basic pay as of the end of the performance appraisal period.
- (c) Bonuses shall be paid in a lump sum except in those instances when it is not possible to pay the full amount because of the Executive Level I ceiling on aggregate compensation during a calendar year. In that case, any amount in excess of the ceiling shall be paid at the beginning of the following calendar year. The full bonus, however, is charged against the agency bonus pool for the fiscal year from which the initial payment was made.
- (d) The Department will provide operating units with bonus pool amounts.
- (e) A Meritorious PRA winner may receive a bonus up to the amount that when combined with the PRA would not exceed 35 percent of base pay.
- (f) Superior Accomplishment Awards under 5 CFR Part 451 which are based on the senior executive's most recent appraisal are prohibited.

(4) Process for Submission of Performance Award Nominations

- (a) In October of each year the CFO/ASA will issue overall bonus pool funding and nomination limits for the Department and for each operating unit. At this time a separate bonus pool will be established for the Secretary to recognize outstanding executive performance by organizations or individuals.
- (b) Appointing Authorities must submit their bonus nominations to the Executive Secretary of the DERB (the Director for HRM) annually in accordance with the annual end of year scheduling activity. Subordinate Appointing Authorities (operating unit heads) who report through higher level Secretarial Officers, must clear bonus recommendations through the Secretarial Officer. (e.g., the Under Secretary for Economic Affairs and Director, National Institute of Standards and Technology). This clearance must be documented in writing and provided to the Director for HRM.
- (c) The Executive Secretary of the DERB reviews all operating unit bonus submissions for compliance with regulatory and Departmental requirements. Submissions which do not comply will be returned to the appropriate Appointing Authority for necessary changes.
- (d) The Executive Secretary may be asked to develop options for distributing bonuses to each operating unit. These options are incorporated into an overall bonus submission package provided to the DERB for its deliberations. During these deliberations the DERB may request personal presentations by Appointing Authorities to justify their bonus recommendations.
- (e) The Executive Secretary makes final recommendations on bonuses to the Secretary in early December. The Secretary must consider the recommendations, but has the final authority as to who is to receive an SES bonus and the amount of the bonus.

- (f) The Inspector General will be responsible for approving SES Bonuses for career senior executives in his/her organization after appropriate review by the DERB.
- C. SES Performance-Based Pay Adjustments may be granted to career or noncareer senior executives under circumstances outlined in Section 5.3 of this Manual.
- D. Special Act Awards are given in rare instances and must be approved by the CFO/ASA. (See the Performance Management System Handbook, Chapter 6 for more detailed information.)
- E. Suggestion and Invention Awards may be granted to recognize contributions by employees or groups of employees which result in tangible benefits or savings or intangible benefits to the Government. A suggestion or invention award for a career SES employee must be approved by the CFO/ASA.

## **13.2 RECOGNITION PROCESS**

The Departmental process for granting recognition to senior executives requires a series of reviews and clearances prior to final approval. This assures that appropriate recognition is granted only to the most deserving senior executives. The awards process includes the following steps for awards other than the PRA:

- A. The immediate supervisor of the executive recommends recognition based on the employee's performance or other accomplishment(s).
- B. The recommendation is transmitted through clearance channels to the operating unit PRB.
- C. It is then transmitted to the operating unit Appointing Authority for concurrence or rejection.
- D. All recommendations for executive recognition are submitted to the Director for HRM. Each submission is reviewed for adherence to legal and regulatory requirements, for compliance with Departmental policy, and quality.
- E. The Executive Secretary either returns all recommendations to the submitting Appointing Authority (if they do not comply with established requirements, and criteria) or forwards them to the CFO/ASA.

### **13.3 FUNDING**

Each awards program will be funded by the operating units. Payment of any award to any senior executive may not be made unless authorized by the Secretary.

### **13.4 AWARDS PAYMENT**

- A. Cash payments for PRAs, SES Bonuses, and incentive awards are not subject to retirement fund contributions or creditable for inclusion in the "high three" average pay computation for retirement benefits. These payments are, however, subject to withholding for income tax.
- B. In accordance with 5 CFR 451.304 (c), an employee covered by a *certified* performance appraisal system may not receive any allowance, differential, bonus, award, or other similar cash payment under title 5 USC, in any calendar year which, in combination with the employee's basic pay, would cause the employee's aggregate compensation to exceed the total annual compensation payable to the Vice President under 3 USC 104 on the last day of that calendar year. For employees covered by a *non certified* appraisal system, the aggregate limitation is Executive Level I.
- C. Appointing Authorities are responsible for tracking the salaries of their executives to ensure that SES, ST, and SL annual salaries do not exceed the legal aggregate, and for taking appropriate action as necessary to avoid payments in excess of the aggregate limit. Any amount in excess of the aggregate limitation will be deferred to the beginning of the following calendar year.

### **13.5 DOCUMENTATION**

OHRM will collect data from each operating unit on PRAs, SES Bonuses, incentive awards and other related pay and performance information. Operating units must maintain sufficient records to respond to requests for data and for documentation supporting any award recommendations. PRAs should be documented on an SF-50 and filed on the right side of the Official Personnel Folder (OPF).

### **13.6 ST 3104: ADMINISTRATIVELY DETERMINED: SL POSITIONS**

All cash awards for SL and ST employees must be submitted for review in accordance with Section 13.2 of this manual. Performance related awards

should be submitted following completion of the annual appraisal cycle. Annual funding for these awards should not exceed the fixed percentage of the aggregate salaries of all such employees in a given operating unit.



## CHAPTER 14. ETHICS

The Secretary or his designee is responsible for administering the Ethics Program, which is operated by the Department's Office of the Assistant General Counsel for Administration. This Office, primarily through the Ethics Law and Programs Division, serves Department of Commerce employees by:

- providing counseling and advisory services;
- providing ethics education and training programs;
- reviewing financial disclosure reports; and
- monitoring administrative actions and sanctions for ethics violations.

### A. Ethics Rules

Conflicts of interest statutes and ethics regulations include:

- disqualification requirements that bar Department employees from participating in matters affecting their personal financial interests (although there are some exceptions, such as for publicly traded stock valued at \$15,000 or less);
- disqualification requirements that bar Department employees from participating in matters in which one of the parties is someone with whom the employee has a "covered relationship" (a close personal or business relationship) (although exceptions may be authorized based on agency needs);
- restrictions on the acceptance of gifts from anyone with interests before the Department (although there are some exceptions, such as for gifts of \$20 or less (if not offered to a political appointee by a registered lobbyist) and for invitations to widely-attended gatherings (if approved by a supervisor and if not offered to a political appointee by a registered lobbyist);
- restrictions on the acceptance of gifts from subordinates (although there are some exceptions, such as if less than \$10 or if related to a major life event);
- restrictions on outside employment and activities, such as if with someone whose interests could be affected by performance of the employee's duties;
- restrictions on political activities by employees, including a bar on engaging in fund-raising for a political party or candidate in a partisan election (and broader restrictions on off-duty political activities by career members of the Senior Executive Service);
- restrictions on the use of Government resources, including a requirement that such resources not be used for political purposes or

any other purpose that is not authorized (although some personal use of access to e-mail and the Internet is authorized, if not political or commercial);

- disqualification requirements regarding participating in matters in which a prospective employer has an interest; and
- restrictions on post-employment activities, including:
  - a one-year bar on a senior employee representing someone before the former employee’s agency,
  - bars on representational activities before the Executive or Judicial Branches regarding specific party matters on which a former employee participated (or a subordinate of a former employee participated); and
  - restrictions on the use or disclosure of protected nonpublic information.

B. Source for Additional Guidance

- Information on these rules may be found at the website of the Ethics Law and Programs Division at [www.doc.gov/ethics.html](http://www.doc.gov/ethics.html).
- Guidance and counseling can be provided from the Ethics Law and Programs Division at 202-482-5384.

## CHAPTER 15. MERIT SYSTEM PRINCIPLES

### 5 USC 2301

Executives must carefully adhere to the following:

1. Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge and skills, after fair and open competition which assures that all receive equal opportunity.
2. All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.
3. Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.
4. All employees should maintain high standards of integrity, conduct, and concern for the public interest.
5. The Federal work force should be used efficiently and effectively.
6. Employees should be retained on the basis of adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.
7. Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.
8. Employees should be-
  - protected against arbitrary action, personal favoritism, or coercion for partisan political purposes; and

- prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.
9. Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences-
- a violation of any law, rule, or regulation, or
  - mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

## GLOSSARY OF TERMS

Agency means the Department of Commerce.

Alignment means performance expectations linked to or derived from the DOCs mission, strategic goals, program/policy objectives, and/or annual performance plan.

Aggregate Compensation Limitation mean that no executive branch employee may receive any allowance, differential, bonus, award, or other similar cash payment under title 5, USC, in any calendar year which, in combination with the employee's basic pay would cause the employee's aggregate compensation to exceed the rate of level I of the Executive Schedule on the last day of the calendar year.

Alternative Personnel System means the Demonstration project that DOC approved for a bureau as an alternative to the existing Departmental ST/SL Performance Management System.

Appointing Authority means the Secretary of Commerce or his/her designee, such as a Secretarial Officer or the head of a primary operating unit, or an official so designated by the Secretary of Commerce. For purposes of this guidance, the following list constitutes those positions which meet the definition of "Appointing Authority".

- Deputy Secretary
- Chief of Staff (for all offices in the Office of the Secretary)
- General Counsel
- Chief Financial Officer and Assistant Secretary for Administration
- Chief Information Officer (for Office of the Secretary)
- Deputy Human Capital Officer and  
    Director for Human Resources Management
- Under Secretary for Economic Affairs
- Assistant Secretary for Communications and Information
- Assistant Secretary for Economic Development
- Under Secretary for International Trade
- Under Secretary for Oceans and Atmosphere
- Under Secretary for Industry and Security
- National Director, Minority Business Development Agency

Appraisal Period means the period of time for which a senior executive's performance will be appraised and rated.

Approving Official means the approving official for a senior executive's Summary Evaluation Ratings, and base salary increases. The DOC approving official is the Secretary of Commerce who receives recommendations from the PRB.

Balance means performance expectations for senior executives that include appropriate measures or indicators of results, customer/stakeholder feedback; quality, quantity, timeliness, and cost effectiveness, as applicable; and competencies or behaviors that contribute to and are necessary to distinguish outstanding performance.

Balanced Measures means an approach to performance measurement that balances organizational results with the perspectives of other distinct groups, such as customers, stakeholders, and employees.

Base Salary means the continuing annual salary paid to an executive.

Base Salary Decrease means a decrease resulting from an executive's annual summary rating of Minimally Acceptable or Unsatisfactory.

Base Salary Increase means an increase resulting from a senior executive's final annual summary rating. The Secretary of Commerce approves base salary increases based on recommendations from the DERB.

Basic Pay means the rate of pay fixed by law or administrative action for the position held by a senior executive before any deductions are made and exclusive of additional pay of any kind.

Bureau means the following operating units: OS, BIS, ESA, BEA, CENSUS, EDA, MBDA, OIG, ITA, NOAA, NIST, NTIA.

Candidate Development Program (CDP) means the Department's program to provide SES candidates with the training and development opportunities needed to enhance their executive competencies and increase their sensitivity to the wide range of Government programs and issues beyond their individual organizations and professions.

Consultation means the supervisor's discussion of performance expectations with the senior executive before the performance agreement is finalized.

Critical Performance Element means a key component of a senior executive's work that contributes to organizational goals and results and is so important that unsatisfactory performance of the element would make the senior executive's overall job performance Unsatisfactory.

Department or DOC means the Department of Commerce.

Departmental Executive Resources Board (DERB) means the board responsible for establishing the policies and procedures for managing the Department's executive resources.

Departmental Performance Review Board (DPRB) means a group of executives designated to make recommendations on the performance of executives requesting higher level reviews and those executives reporting directly to bureau Appointing Authorities.

Director for Human Resources Management means the senior career official responsible for the development and management of all human resources policies and programs, the delegation and redelegation of authority to other officials of the Department, and the provision of personnel and payroll advice and services to the Office of the Secretary and designated components of the Department. The Director also serves as the rating official of record for bureau PHRMs' critical performance element "Human Capital Management" covering 25 percent of the overall rating.

Excess Annual Compensation Amounts means any sum of money that an executive receives beyond the statutory limitation on the total aggregate amount of money an Executive Branch employee may receive in any one calendar year.

Executive Core Qualifications (ECQs) means the statutory qualifications that must be certified by a Qualifications Review Board for all initial career appointments to the SES. These qualifications are in addition to specific, professional/technical qualifications established for individual jobs.

Executive Resources Board (ERB) means a group comprised of DOC senior executives which oversees aspects of the SES and advises the Senior Assessment Official (SAO) and the Secretary of Commerce.

Fully Successful Rating means the performance rating for a senior executive who meets the Fully Successful standard and the responsibilities and commitments in his/her Performance Agreement. A Fully Successful senior executive is eligible for base salary increase.

Generic Elements means mandatory Department-wide critical elements. These elements are 1) Leadership/Management and 2) Customer/Client Service Responsiveness.

Higher Level Review means the review of a senior executive's initial summary rating at a higher level before it goes to the PRB. This is requested by the executive. A higher level review is also done in cases where this is no intervening supervisor between the senior executive and the Appointing Authority.

Human Resources Management Office (HRMO) means the office that provides assistance to managers in implementing the human resources policies and programs of their operating units, and provides a full range of human resources services to one or more components of the Department.

Individual Development Plan (IDP) means the specific development and training plan for the senior executive.

Interim Rating means a rating that is issued for senior executives on detail to another agency, transferring to another agency before the end of the rating cycle and ratings issued by supervisors who vacate their positions prior to the end of the rating cycle. Interim Ratings are also issued to senior executive on detail within the Department of Commerce. The interim rating is not a rating of record. It must be considered by the rating official before preparation of the final summary rating.

Minimally Acceptable Rating means the performance rating for a senior executive who fails to meet the retention standard, responsibilities, and/or commitments in his/her Performance Agreement. Base salary reductions may be required.

Minimum Appraisal Period means the minimum number of days a senior executive must be under a Performance Agreement for their position, before the senior executive is eligible for a rating. That minimum is 120 days.

Office of Human Resources Management (OHRM) means the office that implements Government-wide and Departmental policies, employee programs and activities in all aspects of human resources management and administration.

Official Rating is the final annual summary rating.

Outstanding Performance means performance that exemplifies rare, high performance in fostering an organizational climate that sustains excellence and results. It should be thought of as an exception. The senior executive's outstanding performance has made a positive and significant impact on organizational results in alignment with the mission of DOC. All critical element activities are not only achieved, but completed in an exemplary manner. The senior executive has exerted a major positive influence on the organization



through innovative and effective management practices, procedures and program implementation, building partnerships and coalitions, being responsive to internal and external customers, and leveraging scarce resources, which has contributed substantially to mission accomplishment.

Pay Adjustment is a monetary adjustment to base pay that may be given to a senior executive with at least a Fully Successful annual final summary rating.

Performance means the accomplishment of the work described in the senior executive's Performance Agreement.

Performance Agreement describes the individual and organizational expectations for the appraisal period and sets the requirements against which the senior executive's performance will be evaluated. Rating officials must develop Performance Agreements in consultation with senior executives and communicate them on or before the beginning of the appraisal period. Performance Agreements must: (1) describe critical elements; (2) describe measurable performance requirements; and (3) link performance requirements to strategic planning initiatives.

Performance Appraisal means the review and evaluation of a senior executive's performance against performance elements and requirements, and may take into account their contribution to agency performance, where appropriate.

Performance Cycle means the period, typically starting October 1 and ending September 30 for senior executives, during which a senior executive's performance is evaluated (generally 1 year).

Performance Management System means the framework of policies and practices that the DOC establishes for planning, monitoring, developing, evaluating, and rewarding both individual and organizational performance, and for using resulting performance information in making personnel decisions.

Performance Requirement means a statement of the performance expected for a critical element.

Performance Review Board means a group of executives who make recommendations to an Appointing Authority on the performance of executives under the Appointing Authority's supervision. PRBs have appointed members in accordance with 5 CFR 430.310. PRB membership must be published in the Federal Register before service begins.

Progress Review means a review of the senior executive's progress in meeting performance requirements. This review is conducted at least once in the performance cycle before June 1. A progress review is not a performance rating.

Presidential Rank Award means an award (Distinguished for sustained extraordinary accomplishment and Meritorious for sustained accomplishment) given to career SES and Senior Professionals, to recognize exceptional performance over a period of time. Nominations are submitted by the Secretary of Commerce to the OPM, which, in turn, makes recommendations to the President for approval.

Principal Human Resources Manager (PHRM) means the appointing officer designated to provide human resources management advice and support to heads of operating units in the development of policies and programs in addition to the delivery of human resources services.

Qualifications Review Board (QRB) means the independent board administered by OPM to determine whether a candidate possesses sufficient breadth and depth of executive qualifications to be able to assume an SES assignment within appropriate occupational or functional areas.

Rating Official means the senior executive's supervisor who is responsible for evaluating performance and proposing the ratings for each performance expectation and the initial summary rating.

Ratings:

Initial Summary Rating means an overall rating level the rating official derives from appraising the executive's performance during the appraisal period and forwards to the PRB.

Annual Summary Rating means the final overall rating level that an Appointing Authority assigns at the end of the appraisal period after considering a PRBs recommendations and receiving DOC approval. This is the official rating.

Relative Performance means the performance of a senior executive with respect to the performance of other executives, including his/her contribution to agency performance, where appropriate.

Results mean the outcome of performance expectations for senior executives that apply to his/her respective areas of responsibility; reflect expected agency and/or organizational outcomes and/or outputs, performance targets or metrics,

policy/program objectives and/or milestones; and are stated in terms of measurable, demonstrable, or observable performance.

Reviewing Official means a manager in the organization at a higher level than the Rating Official, who reviews the self-assessments, summary narratives, and ratings assigned. After this review, the reviewing official endorses or disapproves the performance rating and/or pay range increase using the Performance Agreement and forwards endorsed package to the PRB.

Secretary of Commerce means` the Agency Head and Approving Official for summary evaluation ratings, performance-based salary increases, performance-based bonuses and for Presidential Rank Award nominations.

Senior Assessment Official means the person designated by the Secretary to provide rigorous oversight of the appraisal process; conduct an annual assessment of the Department's performance; issue guidelines for performance evaluation; certify that the results of the appraisal process make meaningful distinctions; and assure that pay adjustments and levels of pay accurately reflect and recognize performance and/or contributions to the Department's performance. It is usually the Deputy Secretary.

Senior Professional means any ST or SL employee.

Special Act Award means an award outside of the performance appraisal process granted to an employee, or group of employees to recognize accomplishments in the public interest that contribute to meeting organizational goals or improving the efficiency, effectiveness, economy, or improvements in Government operations.

Strategic Planning Initiatives means DOC strategic plans, annual performance plans, bureau/organizational work plans, and other related initiatives.

Work Plans means working documents supporting performance agreement elements and objectives.

## TABLE OF ACRONYMS

### **Departmental Boards and Panels**

Departmental Executive Resources Board (DERB)  
Departmental Performance Review Board (DPRB)  
Merit Systems Protection Board (MSPB)  
Operating Unit Executive Resources Board (OERB)  
Performance Review Board (PRB)  
Qualifications Review Board (QRB)

### **Departmental Organizations**

Bureau of Industry and Security (BIS)  
Department of Commerce (DOC)  
Economic Development Administration (EDA)  
Economics and Statistics Administration (ESA)  
Human Resources Management Organization (HRMO)  
International Trade Administration (ITA)  
Minority Business Development Agency (MBDA)  
National Institute of Standards and Technology (NIST)  
National Oceanic and Atmospheric Administration (NOAA)  
National Telecommunication and Information Administration (NTIA)  
Office of Executive Resources (OER)  
Office of General Counsel (OGC)  
Office of Human Resources Management (OHRM)  
Office of the Secretary (OS)  
Office of Management and Budget (OMB)  
Office of Personnel Management (OPM)  
Senior Foreign Service (SFS)  
The Office of Inspector General (OIG)

### **Pay Rates & Position Types**

Administratively Determined (AD)  
Executive Schedule (EX)  
Executive Service (ES)  
General Schedule (GS)  
Presidential Appointment & Senate Confirmed (PAS)  
Senior Executive Service (SES)  
Senior Level (SL)  
Scientific and Professional (ST)

### **Programs and Requirements**

Alternate Work Schedule (AWS)  
Candidate Development Program CDP)  
Employee Personnel Folder (EPF)  
Federal Job Opportunities Bulletin (FJOB)  
Executive Core Qualifications (ECQs)  
Individual Development Plan (IDP)  
Intergovernmental Personnel Act (IPA)  
Professional/Technical Qualifications (PTQs)  
Performance Management System (PMS)  
Presidential Management Fellows Program (PMF)  
Presidential Rank Award (PRA)  
Reduction in Force (RIF)

### **Laws and Regulations**

5 Code of Federal Regulations (5 CFR)  
Departmental Administrative Order (DAO)  
Departmental Organization Order (DOO)  
Federal Employees Pay Comparability Act (FEPCA)  
Federal Employees Retirement System (FERS)  
Government Employees Performance and Results Act (GPRA)  
Intergovernmental Personnel Act (IPA)  
Public Law (P.L.)  
Title 5 U.S. Code (5 USC)

### **Position Titles**

Director for Human Resources Management (HRM)  
Chief Financial Officer/Assistant Secretary for Administration (CFO/ASA)  
Chief Human Capital Officer (CHCO)  
Inspector General (IG)  
Principal Human Resources Manager (PHRM)  
Senior Assessment Official (SAO)



## **EXECUTIVE PERSONNEL POLICY MANUAL**

This manual sets forth Departmental policies that govern the management of executive personnel who are in positions above the grade 15 or equivalent, regardless of pay plan. Positions filled by an appointment by the President, by and with the advice and consent of the Senate, are excluded.

The manual identifies those authorities delegated by the Chair, Executive Resources Board to the Secretarial Officers to manage executive personnel. These delegated authorities are reserved to the Secretarial Officers and may not be redelegated unless so specifically stated in the Manual.

This manual is based on the executive personnel provisions of Public Law 95-454 (Civil Service Reform Act) as codified in Title 5, U. S. Code, directions from the Office of Personnel Management, the Executive Personnel Delegation Performance Agreement between the Office of Personnel Management and the Department of Commerce, approved on 4/19/79 and extended indefinitely on 9/27/79. The contents of this manual supersede all previously issued Executive Resources Board Bulletins, policies and procedures in the Department of Commerce.

The Director for Human Resources Management shall be responsible for modifications and revisions to this Manual as approved by the Executive Resources Board.

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Director, Office of Human Resources Management

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Chair, Executive Resources Board

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## CHAPTER 1. EXECUTIVE RESOURCES BOARDS

### 1.1 DEPARTMENTAL EXECUTIVE RESOURCES BOARD

- A. The Departmental Executive Resources Board (DERB) consists of three members and is chaired by the Deputy Secretary of Commerce. The Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA) shall serve as Vice Chair and the third member will be the Chief of Staff. The noncareer senior executive who chairs the Diversity Council shall serve as advisor. The Director, Office of Human Resources Management (OHRM) shall serve as the Executive Secretary to the DERB.
- B. The DERB is responsible for establishing the policies and procedures to manage the Department's executive resources which include positions above the grade 15 or equivalent, regardless of pay plan, i.e., Senior Executive Service (SES); Scientific and Professional (ST-3104); Senior-level (former Supergrade); and Administratively Determined (AD). **Exceptions to this are positions filled by an appointment by the President, by and with the advice and consent of the Senate (PAS), NIST Personnel Demonstration Project positions above the grade 15 or equivalent, and Foreign Service positions.**
- C. Executive resource policies are approved by the Chair, DERB, and issued in the Executive Personnel Policy Manual.

### 1.2 OPERATING UNIT EXECUTIVE RESOURCES BOARD

The following organizations shall establish an Operating Unit Executive Resources Board (OERB) which shall perform the responsibilities outlined in Appendix, Section 1, of this Manual:

- (1) Office of the Secretary\*
- (2) Economics and Statistics Administration\*\*
- (3) Technology Administration \*\*\*
- (4) Economic Development Administration
- (5) Office of Inspector General



- (6) International Trade Administration
- (7) National Oceanic and Atmospheric Administration
- (8) Patent and Trademark Office
- (9) Bureau of Export Administration
- (10) National Telecommunications and Information Administration

\* Includes, for the purposes of this Manual, all of the components in the Office of the Secretary, the Office of the General Counsel, the Minority Business Development Agency, the Office of Administration, as well as the Immediate Office of the Secretary.

\*\* Includes the Office of Policy Development, Office of Business and Industrial Analysis, Office of the Chief Economist, the Bureau of Economic Analysis and the Bureau of the Census.

\*\*\* Includes the Office of the Under Secretary for Technology, the Assistant Secretary for Technology Policy, the National Technical Information Service, and the National Institute of Standards and Technology.

- A. Each OERB shall develop a written charter which outlines the specific functions and procedures to be performed. The Secretarial Officer will submit the proposed charter to the Chair, DERB, through the Director, Office of Human Resources Management for final approval.
- B. Each OERB shall have a minimum of three members appointed by the Secretarial Officer who shall designate one member to serve as Chair. The names of the members shall be submitted to the Chair, DERB, through the Director, Office of Human Resources Management.

### **1.3 SENIOR FOREIGN SERVICE**

For the Senior Foreign Service, the functions of the OERB are performed by the Senior Selection Board and by the US&FCS Assignments Panel as prescribed by the Foreign Service Act of 1980 and Personnel Bulletin 430-4 (Revision No. 2), Precepts for the Foreign Service Selection.

### **1.4 NOAA COMMISSIONED CORPS**

Unless specifically stated, members of the NOAA Commissioned Corps are excluded from coverage by this Manual. Policies governing the Commissioned Corps can be found in NOAA Directives Manual 56-45.

## **CHAPTER 2. DELEGATIONS OF AUTHORITIES**

### **2.1 THE DEPUTY SECRETARY**

The Deputy Secretary, as Chair, DERB, serves as the adjudicating authority on executive personnel actions at the request of Secretarial Officers.

### **2.2 THE DEPARTMENTAL EXECUTIVE RESOURCES BOARD**

The DERB makes decisions on personnel actions associated with the end of the performance cycle. These include:

- A. Performance ratings.
- B. Pay level adjustments.
- C. Bonuses.
- D. Salary adjustments.
- E. Presidential Rank Awards.
- F. Recertification.

### **2.3 THE CHIEF FINANCIAL OFFICER AND ASSISTANT SECRETARY FOR ADMINISTRATION**

The Chair, DERB, delegates approval authority to the Chief Financial Officer and Assistant Secretary for Administration for the following:

- A. Executive classification and designation of executive positions.
- B. Appointment to executive positions.
- C. SES pay rate level and salary level for executive positions.
- D. Involuntary reassignments to executive positions.
- E. Details of executives to unclassified positions.

- F. Executive ceiling allocations.
- G. Use of noncareer appointment authorities.
- H. Intergovernmental personnel agreements for executive appointees.
- I. Positive recertification decisions.

#### **2.4 SECRETARIAL OFFICERS/APPOINTING AUTHORITIES**

For the purposes of this Manual, the following list constitutes those positions which meet the definition of "Appointing Authority" (See DAO 202-250, Delegation of Authority for Human Resources Management, Section 2.b.)

- (1) Chief of Staff (for all offices in the immediate Office of the Secretary)
- (2) General Counsel
- (3) Chief Financial Officer and Assistant Secretary for Administration
- (4) Under Secretary for Economics and Statistics Administration
- (5) Assistant Secretary for Communications and Information
- (6) Assistant Secretary for Economic Development
- (7) Inspector General
- (8) Under Secretary for International Trade
- (9) Under Secretary for Oceans and Atmosphere
- (10) Assistant Secretary and Commissioner, Patent and Trademark Office
- (11) Under Secretary for Export Administration
- (12) Under Secretary for Technology

The Chair, DERB, delegates to the Secretarial Officers (Appointing Authorities) the authority to approve the following executive personnel actions:

- A. Resignations and retirements of executive employees.

- B. Proposals or decisions on adverse actions.
- C. Furlough of SES appointees.
- D. Removal of an SES appointee during and after the probation period when such removal is performance related.
- E. Details and reassignments of executives to established SES positions within the Appointing Authority's area of responsibility. (This does not apply to movement from one bureau to another.)

The Principal Human Resources Manager or designee serves in an advisory capacity as Executive Secretary to the OERB.

All other actions affecting SES employees or positions, except those covered by paragraph 2.7, require approval from the Office of the Secretary before any commitment or announcement may be made.

Appointing Authorities who report through higher level Secretarial Officers (e.g., within Technology Administration or Economics and Statistics Administration) will be responsible for clearing any executive personnel action with the senior Secretarial Officer who will request Office of the Secretary approvals as necessary for SES activity within his/her operating unit.

## **2.5 CHAIRS, OPERATING UNIT EXECUTIVE RESOURCES BOARDS**

The Chair, DERB, delegates to the Chairs, OERB's, the authority to approve the following:

- A. Qualifications Standards for executive positions.
- B. Management development of SES appointees and candidates.

## **2.6 DIRECTOR, OFFICE OF HUMAN RESOURCES MANAGEMENT**

The Chair, DERB, delegates to the Director, Office of Human Resources Management through the CFO/ASA the authority to approve the following:

- A. Recruitment plans for executive positions.
- B. Details of grade 15 employees to executive positions.

- C. Executive development programs.
- D. OERB/PRB Charters.
- E. Resignations.
- F. Abolishment of positions.
- G. Changes in titles.

## **2.7 INSPECTOR GENERAL**

The Inspector General Act Amendments of 1988 (P.L. 100-504) expanded the authority of the Inspector General to take the following actions for Senior Executive Service members:

- A. Select and appoint individuals to SES positions within the Office of the Inspector General.
- B. Fix the rate of pay under Section 5383 of Title 5 for senior executives appointed by the Inspector General.
- C. Appraise the performance of senior executives under Section 4314 of Title 5.
- D. Remove senior executives because of poor performance under Section 3592 of Title 5.
- E. Authority to discipline senior executives because of conduct pursuant to 5 U.S.C. § 7542.
- F. Recruitment for executive positions.
- G. Detail of non-SES employees to an executive position.
- H. Approve sabbaticals for SES employees.
- I. Accept resignations of SES employees.

These authorities should be implemented through applicable Department policy regarding executive level positions with copies of actions processed provided to the Director, Office of Human Resources Management who maintains consolidated Department records.

## **CHAPTER 3. EXECUTIVE POSITION MANAGEMENT**

### **3.1 RESPONSIBILITIES**

Appointing Authorities are responsible for developing and implementing an effective position management system which as a minimum: delegates authority and responsibility for executive position management; ensures that vacant executive positions are filled in a timely manner; and measures executive position management effectiveness towards mission objectives.

### **3.2 REORGANIZATIONS/NEW POSITION REQUESTS**

Appointing Authorities or their designees will consult with the Director, Office of Human Resources Management and the Office of Budget, Management and Information on proposed organization changes which will affect the functions performed by executive personnel. This joint consultation process should take place before any formal submission to the Department. The Appointing Authority or designee will provide a “cross walk” of executive positions showing placement from the current to the proposed reorganization. Discussions shall include but not be limited to, program functional statements, staffing structure and draft position descriptions for the affected executive personnel.

### **3.3 SES VACANCY RECRUITMENT ACTIONS**

Initial career SES appointments must be submitted to OPM for Qualifications Review Board approval within nine months from the closing date of the vacancy announcement. Otherwise, the agency must issue a new vacancy announcement and repeat the competitive selection process.

### **3.4 USE OF SES SPACES**

SES ceiling spaces may not be used to establish part-time or intermittent positions.



## CHAPTER 4. STAFFING EXECUTIVE POSITIONS

### 4.1 RECRUITMENT PROCEDURES

- A. The Director, Office of Human Resources Management is responsible for approving operating unit executive recruitment plans.
- B. Each request for recruitment must be submitted to the Office of Human Resources Management with the following documentation:
  - (1) OPM Form 1390. When a position is established or redescribed.
  - (2) Position Description. The original with signed classification evaluation statement.
  - (3) Qualification Standard. The original approved by the Chair, OERB. (See Appendix, Section 2, for further guidance on the Development of Qualifications Standards.)
  - (4) Vacancy Announcement. Final version.
  - (5) Rating Plan. Must include the factors to be used to rate/rank applicants and the elements which will be considered in determining whether the applicant is not qualified, qualified, well qualified, or highly qualified (ascending rank order). (See Appendix, Section 4.)
  - (6) Area of Consideration. A statement that the operating unit will use OPM's distribution system. Please indicate if additional sources will be used, such as paid advertisement, colleges and universities.
- C. Upon approval, the Office of Human Resources Management will notify the operating unit's human resources management office. The operating unit's human resources management office will provide OHRM with the announcement number and the opening and closing dates and enter the announcement in the Federal Job Opportunities Board. (See Appendix, Section 3.)
- D. An agency may make a noncompetitive noncareer or limited appointment. The appointee, however, must meet the qualifications requirements for the position, as determined in writing by the appointing authority.

## **4.2 SELECTION PROCEDURES**

- A. The Chairperson, OERB, must:
  - (1) Convene the Board to rate and rank applicants; or
  - (2) Appoint a screening panel of SES or equivalent subject matter specialists who will rate and rank applicants.
- B. The OERB or screening panel shall rate and rank the qualifications of each qualified applicant. The written recommendations, as a minimum, will rate the applicants into three categories: Qualified, Well Qualified, and Highly Qualified. The OERB screening panel shall prepare a summary rating of qualifications of each applicant. If differences cannot be resolved, the Human Resources Manager will be responsible for resolving them.
- C. A list of all qualified applicants shall be submitted to the interviewing official. The best qualified candidates, however, are to be identified on the list. Upon tentative selection, the interviewing official shall forward the list to the appointing authority for selection. Selection must be made from the best qualified group. (For guidance on selection procedures, see Appendix, Section 4.)
- D. The executive/managerial qualifications of a proposed career SES appointee must be approved by an OPM Qualifications Review Board (QRB) before the operating unit may appoint the individual (5 USC 3393). Operating units are cautioned NOT to make any offer of employment, or what could appear to be an offer of employment, to the proposed appointee, until the QRB approval has been obtained.
- E. Operating units must keep records for two years after a competitive vacancy is filled (or until an OPM inspection, whichever occurs first) to allow reconstruction of each competitive action. (For further information, see Appendix, Section 4.)

## **4.3 PROCEDURES FOR REQUESTING APPROVAL**

- A. Approval Document - OPM Form 1390
  - (1) OPM Form 1390 is required for all executive appointment approval requests and must include citations in the Remarks Section as follows:

- (a) The statement "I approve the appointment of (Name of Appointee) to the executive position of (Title)" should appear on initial appointments, noncareer appointments, limited appointments, reassignments, transfers and reinstatements.
- (b) If an individual is selected for initial appointment as a career SES appointee one of the following three citations must be included:
  - o 5 USC 3393(c)(2)(A) Demonstrated Executive Experience
  - o 5 USC 3393(c)(2)(B) Completion of Executive Development Program
  - o 5 USC 3393(c)(2)(C) Special, Unique Qualifications (Potential)
- (c) The office address and work telephone number must be included whenever a name is entered in the 1390.
- (d) The vacancy announcement closing date must be included on all initial appointments of career appointees.

B. Qualifications Standard

See Appendix, Section 2, Guidelines for Developing and Establishing Qualifications Standards, for assistance in developing a standard.

C. Certification Statement

The Chair, OERB must sign a statement that the proposed appointee or candidate's qualifications meet those managerial and technical qualifications contained in the Qualifications Standard and that merit staffing procedures were followed.

D. Qualifications Analysis

- (1) The selection of an individual for initial appointment as a career SES must be based on one of the three citations listed below.
  - (a) 5 USC 3393(c)(2)(A), Demonstrated Executive Experience. The

proposed appointee's managerial qualifications as analyzed against the five executive core qualifications (ECQ) and technical qualifications.

(b) 5 USC 3393(c)(2)(B), Completion of Executive Development Program. The proposed appointee has completed an OPM approved SES candidate development program. The Individual Development Plan (IDP) links the completed developmental activities to the five ECQ's. The Chair, OERB, must sign a letter certifying that: (1) the OERB has reviewed the graduate's performance during the program and approves the submission; (2) the individual has successfully completed all scheduled activities in the IDP; and (3) participation in the DOC Executive Forum is encouraged.

(c) 5 USC 3393(c)(2)(C), Special Unique Qualifications (Potential). State the appointee's managerial qualifications, the formal managerial developmental activities planned during the probationary period, and references on the appointee's executive potential using the five ECQ's listed in the Qualifications Standard.

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(2) Cases meeting criteria *a* and *c* must be presented to the QRB within nine months of the closing date of the vacancy announcement. Criteria *b* cases must be submitted within nine months from the date the candidate completes the development program.

E. SF-171 or Resume and OF-612

The appointee must complete an SF-171 or resume and OF-612. The information contained in the SF-171 or resume and OF-612 must agree with the information contained in the qualifications analysis.

F. References

Although OPM only requires references (written around the five executive core qualifications in the Qualifications Standard) for the proposed appointee in Criterion *c* cases, proposed appointees may submit references to illuminate their records of achievement.

G. Biography

See Section 4.7.

H. Transmittal

Memorandum to the Director, Office of Human Resources Management, explaining any relevant relationships of the request to other pending or established positions, the source of the SES space, disposition of any vacated SES position, status of security action pending or completed for the incumbent and any other significant information that would aid in establishing and clearing the request.

**4.4 SES NONCOMPETITIVE APPOINTMENTS**

A. Reassignment

- (1) An SES appointee may be noncompetitively reassigned to fill any vacant SES position in the Department if the appointee meets the technical qualifications established for the position. Only career appointees, however, are eligible for reassignment into career reserved positions.
- (2) A noncareer SES appointee may only be reassigned with the prior approval of OPM.
- (3) A career SES appointee may be reassigned to any Departmental SES position within the commuting area if the appointee receives a written notice at least 15 days in advance of the reassignment. The appointee may waive in writing the advanced notification requirement. Failure to accept a reassignment within the commuting area shall result in an involuntary separation.
- (4) A career SES appointee may be reassigned to any SES position outside the commuting area within the Department provided the operating unit has:
  - (a) consulted with the appointee on the reasons for the reassignment;
  - (b) obtained the appointee's preferences to the reassignment;
  - (c) provided the appointee a written letter with the specific reasons for the reassignment at least 60 days in advance of the proposed effective date.

The career appointee may waive in writing the advance notification

requirement. Failure to accept a directed reassignment outside of the commuting area shall result in an involuntary separation.

- (5) SES reassignments, other than those involving OIG SES employees, may involve a two step process. The first step involves the Appointing Authority proposing the reassignment. If the SES appointee agrees, the reassignment action is processed through normal channels. If the appointee declines, the Appointing Authority may request that the CFO/ASA issue a letter of directed reassignment to the appointee.
- (6) Involuntary reassignments may not be made within 120 days after the appointment of a new Secretary, or within 120 days after the appointment of a new noncareer supervisor who has the authority to make the initial performance appraisal of the career appointee. A 15 or 60-day advance notice described in paragraph (3) and (4) of this section may be issued during the 120-day moratorium on the involuntary reassignment of a career appointee, but an involuntary reassignment may not be effected until the moratorium has ended.
- (7) The limitations set forth in subparagraph (5) do not apply if the reassignment is in connection with an unsatisfactory performance rating or a disciplinary action initiated before an appointment referred to above.

B. Reinstatement

- (1) Career appointees who leave the SES after having successfully completed the one year probationary period are eligible for reinstatement to any SES position for which they are technically qualified. Appointees initially converted to the SES without the requirement of serving a probationary period are also eligible for reinstatement to the SES. An appointing authority may set the pay of a former senior executive at any ES rate upon reappointment to the SES under the conditions specified in 5 CFR 534.401. Persons cannot be reinstated when they left the SES for less than fully successful performance or for reasons of misconduct, neglect of duty, or malfeasance, or for national security reasons or by order of the Merit Systems Protection Board upon the recommendation of the Special Counsel or resignation to avoid such an action. Former SES career appointees who were appointed by the President to a civil service position outside the SES without a break in service, and who leave the Presidential appointment for reasons other than misconduct, neglect of duty or malfeasance, are entitled to placement as career SES appointees. If

individuals retained SES pay benefits during the Presidential appointment, reinstatement must be at the current pay rate if an adjustment has been made within the previous 12 months.

- (2) Reinstatement eligibility acquired in non-SES competitive service is limited to such positions and is not transferable to the SES. Similarly, persons in, or who were in, the excepted service cannot be reinstated to the SES based on their employment in the excepted service. The SES is a separate personnel system with its own statutory requirements.
- (3) Applicants with reinstatement eligibility must meet the technical qualifications of the SES position.

C. Reemployed Annuitants

- (1) A person who retires from the SES with career status may be reemployed as an annuitant with appropriate limitations on tenure and compensation.
- (2) A reemployed annuitant is:
  - (a) Eligible for appointment to either an SES general or career reserved position.
  - (b) Considered a "reinstatement-SES career," serving at the pleasure of the Appointing Authority.
  - (c) Compensated in the same manner as a reemployed annuitant in the General Schedule.
  - (d) Eligible to receive SES performance awards, if serving in an SES career appointment, in accordance with policies and procedures governing such awards.

D. SES Candidate Development Program

- (1) An individual who successfully completes an SES candidate development program which was approved by OPM may be selected for an SES position without further competition provided that initial competition into the approved SES candidate development program was in accordance with the SES merit staffing procedures prescribed by OPM regulations.

- (2) Certification of the individual's executive qualifications by an OPM Qualifications Review Board normally occurs after successful completion of the development program.
- (3) Information on the Department's candidate development program is found in Appendix, Section 8.

E. Interchange Agreements

- (1) OPM and any agency with an executive personnel system essentially equivalent to the SES may enter into an agreement providing for the movement of persons between the SES and the other system. The agreement shall define the status and tenure that the persons affected shall acquire upon the movement.
- (2) Persons eligible for movement must be serving in permanent, continuing positions with career or career-type appointments.
- (3) An interchange agreement may be discontinued by either party under such conditions as provided in the agreement.

**4.5 TRANSFER OF FUNCTIONS**

- A. A career appointee affected by a transfer of function between agencies has rights comparable to a competitive service employee, and is entitled to accompany the function if the alternative would be removal from the SES.
- B. A career appointee who fails to accompany a transfer of function may be removed from the SES. As an alternative to removal, the losing agency may reassign the appointee to another SES position in a different function.

**4.6 DETAILS**

A. SES Appointees

- (1) Appointing Authorities are delegated the authority to detail SES appointees to established SES positions within their operating unit. All other details of SES appointees including, Intergovernmental Personnel Act, Exchange Programs, details of SES employees from other agencies into Commerce, etc., must be approved by the CFO/ASA on Form 1390 and accompanied by a narrative justification and current SF-171 or resume



and OF-612.

- (2) An SES appointee may not be detailed into an established GS-15 or lower graded position, a senior-level position, an Administratively determined position, or a Scientific and Professional position (ST-3104). The SES is a distinct personnel system which is not interchangeable with other personnel systems.
- (3) An SES appointee may be detailed to an unclassified or unestablished position up to 240 days. OPM regulation prohibits extension beyond 240 days. The initial appointment cannot exceed 120 days with a second appointment up to another 120 days.
- (4) Requests requiring approval by the CFO/ASA must be accompanied by narrative justification and a Form 1390 with beginning and ending dates of the detail.
- (5) An SES noncareer appointee may not be detailed to a career reserved SES position.

B. Non-SES Appointees

- (1) A request to detail a non-SES employee to an SES position must be submitted to the Director, Office of Human Resources Management, and include a justification, Form 1390, a current SF-171/resume and OF-612, and an SF-52.
- (2) Approved details are limited to 240 days and may only be extended if there is adequate justification, and competitive merit promotion procedures have been followed.

**4.7 EXECUTIVE BIOGRAPHY**

- A. A one-page biography is required for Presidential appointees and each senior executive who occupies a position which is classified above the GS-15. (See Appendix, Section 14, for a sample format.)
- B. Biographies must be included as part of the executive submissions for:
  - (1) proposed appointments;

- (2) reassignments (updated to reflect new position);
  - (3) transfer into the operating unit.
- C. The executive position's ceiling space control number shall be recorded in the lower right corner of the biography.

#### **4.8 FOREIGN SERVICE OFFICERS**

- (1) When a Senior Foreign Service Officer is to be assigned or detailed to a current or former executive position in the United States, the Office of Foreign Service Personnel will coordinate with the appropriate operating unit personnel office to ensure the position is available.
- (2) The Office of Foreign Service Personnel, with the concurrence of the Principal Human Resources Manager for the gaining operating unit, shall develop the necessary documentation (justification, Form 1390, SF-171/resume and OF-612). The proposed action shall be submitted to the CFO/ASA for approval in accordance with established SES procedures.

#### **4.9 NOAA COMMISSIONED CORPS OFFICERS**

- A. The CFO/ASA shall be the Approving Authority for the following personnel actions concerning NOAA Commissioned Corps Officers:

The assignment, detail or request for extension of detail of any NOAA Commissioned Corps Officer to any executive, proposed executive, or former executive position located outside the organizational boundaries of the NOAA Corps.

- B. The approval document will be the OPM Form 1390.

## **CHAPTER 5. ADMINISTRATION OF EXECUTIVE PAY**

### **5.1 CIVIL SERVICE REFORM ACT REGULATIONS**

- A. The aggregate amount received by a senior executive during any calendar year for basic pay, in combination with any allowance, differential, bonus, award, or similar cash payment, may not exceed the annual rate payable for positions at Level I of the Executive Schedule. If the senior executive receives a rank award or performance award and his/her aggregate salary exceeds Level I salary, the award amount in excess of Executive Level I, will be paid at the beginning of the next calendar year.
- B. The rate of basic pay may not be adjusted up or down more than once during any 12-month period. Initial appointment into SES is a pay rate adjustment. That appointee's pay rate level may not be adjusted until after the 12-month period.
- C. A senior executive's basic pay may not be reduced by more than one level in any 12-month period, and normally only as a result of performance or disciplinary action. It may not be reduced below the rate payable on the senior executive's initial conversion into SES.
- D. If the pay reduction is for performance reasons, the agency shall provide the executive at least 15 days of advance written notice. If the pay reduction is for disciplinary reasons, the agency shall provide the executive at least 30 days' advance written notice.

### **5.2 ALTERNATIVE WORK SCHEDULES (AWS)**

- A. Senior Executive Service appointees may participate in AWS programs subject to the approval of the operating unit Appointing Authority, and consistent with program requirements.
- B. Senior Executive Service (or equivalent) employees may not earn or use credit hours.
- C. Since SES members are not eligible for overtime pay, they also are not eligible for compensatory time in lieu of overtime pay for work performed as an SES member. They are eligible, however, for compensatory time off for religious purposes when their personal religious beliefs require the abstention from work during certain periods of time. To the extent that such modifications in work

schedules do not interfere with the efficient accomplishment of an agency's mission, employees shall be afforded the opportunity to work compensatory overtime for time lost for meeting those religious requirements.

### **5.3 EXECUTIVE SALARY DETERMINATION**

#### **A. Senior Executive Service**

- (1) Any employee initially appointed to an SES position shall be compensated at ES-1 or a level which represents an increase of no more than 6% over the individual's current salary rate.

Consider the following criteria:

- o alignment with other positions and incumbents with comparable responsibilities and qualifications;
  - o recent salary history (previous 2-3 years);
  - o current base salary (including any recurring payments that are routinely considered part of base compensation);
  - o any other unique characteristics of the incumbent and/or position under review (e.g., difficulty in filling the position; geographic differential for GS positions in the same area; use of a recruitment bonus).
- (2) Requests for pay increases over 6% and for appointments to the ES-4, 5 or 6 level must be justified in writing by the Appointing Authority.

#### **B. Senior-Level and Related Pay Systems**

This section reflects Department policy for implementing provisions of the Federal Employees Pay Comparability Act of 1990 (FEPCA) primarily affecting positions previously at, or the equivalent of, grades GS-16, 17, and 18. These include former supergrade (SL) positions, administratively determined (AD) positions in the Patent and Trademark Office, and scientific and professional (ST) positions.

(1) Legal/Regulatory Requirements:

- o Minimum pay is 120% of GS-15, Step 1.
- o Maximum pay is Executive Level IV.
- o Increases in pay under these provisions may not be made retroactive, and must be approved by the agency head or designee.
- o Only 1 adjustment in pay may be made in a 12 month period.

(2) Policy Requirements:

- o Pay for ST, SL, and AD positions will normally be set at any dollar amount within the following two pay ranges:
  - Former GS-16 positions and equivalents (NIST ST-3104 Fellow; PTO Attorney-Examiner; GS-16 supergrades) = 120% of GS-15 step 1 up to ES-3.
  - Former GS-17 positions and equivalents (NIST ST-3104 Senior Fellow; PTO Examiner-in-Chief; supergrades above GS-16) = 135% of GS-15 step 1 up to ES-4.
- o Requests to set pay above ES-4 will be considered in unusual situations where the position is especially important to the Department and/or the qualifications of the individual are unusually high.

[These pay levels are summarized in a Senior Pay Table distributed annually by the Office of Human Resources Management.]

- o Consistent with SES pay setting policy, initial appointments to either of the above pay ranges should represent a 6% or smaller increase over current salary and consider such elements as listed in Section 5.3 A. (1) above.
- o Initial pay setting proposals should include an analysis using the above criteria when appointment packages (including Form 1390) are submitted to the Director, Office of Human Resources Management. As with SES cases, the final approval authority for

all senior positions is vested with the CFO/ASA. No commitments on pay setting should be made until approval is received from the Office of the Secretary through the Director, Office of Human Resources Management.

- o Adjustments to pay for these employees will be considered at the end of the FY performance rating cycle. Adjustment recommendations should be reviewed by the operating unit performance review board, endorsed by the senior operating unit Appointing Authority, and be based on such criteria as changes in position responsibilities, personal performance and length of service, and increased professional stature. They may be effected only once in a 12-month period.
- o Final approval of these adjustments will be subject to Departmental Executive Resources Board (DERB) deliberations and will not exceed 4% of an individual's base salary.
- o Request for adjustments with brief narrative justification must be submitted to the DERB at the same time as SES bonus and pay rate adjustment requests.

All future salary adjustment requests, or performance-related adjustments must also be submitted to the CFO/ASA using the OPM Form 1390 as the approval document.

Operating units wishing to supplement these provisions should submit proposed documentation to the Director for Human Resources Management for approval.

\_\_\_\_\_ (3) Critical Pay:

- o FEPCA authorizes up to 800 critical positions governmentwide. Basic pay for these positions may not exceed the rate payable for Executive Level I, except upon written approval of the President.
- o Requests should be submitted to the Director, Office of Human Resources Management from the senior operating unit Appointing Authority and include all information required by OMB Bulletin No. 91-09 dated March 7, 1991.
- o This authority is to be requested only when alternative means of

recruiting or retention of exceptionally well qualified individuals are unsuccessful.

#### **5.4 SES PERFORMANCE RELATED PAY ADJUSTMENTS**

- A. The following are guidelines to be followed when recommending an SES pay rate level adjustment based on performance.
- (1) The senior executive's current performance rating is at least Commendable, and the senior executive has had performance ratings of at least Commendable for the past two years.
  - (2) Each performance element identified as critical in the senior executive's current performance plan received an element rating of at least 4.
  - (3) The senior executive has not had an SES rate level increase or decrease during the past 12 months.
  - (4) The senior executive did not receive a bonus during the same performance rating cycle.
- B. All recommendations for performance related upward pay rate level adjustments, with the exception of OIG employees, must be submitted to the CFO/ASA through the Director, Office of Human Resources Management, as spelled out in annual guidance provided by the Office of the Secretary. Recommendation actions should include:
- (1) OPM Form 1390,
  - (2) Senior executive's current performance appraisal and rating,
  - (3) PRB's approval of the recommendation, and
  - (4) A priority order listing of nominees.
- C. Performance related pay level adjustments are limited to a one level increase.
- D. Decisions concerning performance related downward pay rate level adjustments are limited to a one level decrease and will be made at the discretion of the Appointing Authority, with prior discussions with the Director, Office of Human Resources Management. The basis for a downward pay level adjustment includes

receipt of a less than fully successful performance rating or failure to be recertified or conditionally recertified pursuant to 5 C.F.R. § 317.504. The Appointing Authority must provide the senior executive at least 15 days advance written notice.

- E. Downward pay level adjustments may also occur with disciplinary actions resulting from conduct-related activities, e.g., misconduct, neglect of duty, or malfeasance. Any such action must be coordinated with the Director, Office of Human Resources Management and the Office of General Counsel.

## **5.5 SES PAY ADJUSTMENTS BASED ON INCREASED RESPONSIBILITY**

Heads of operating units may recommend an SES appointee, who has not had an adjustment during the preceding 12 months for a pay rate level adjustment. Recommendations, except those for OIG employees, must be made to the CFO/ASA through the Director, Office of Human Resources Management. Justification must specifically address (1) or (2) below.

- (1) The senior executive is reassigned to a position where the managerial authority and technical qualification requirements clearly exceed those requirements of the predecessor position; or
- (2) The levels of authority and responsibility have significantly expanded in the existing position by the addition of new programs and increases in budget and personnel resulting from legislation, new initiatives and/or reorganizations.

## **5.6 PAY FOR CAREER APPOINTEES REMOVED FROM THE SES**

A career appointee who, for reasons other than misconduct, neglect of duty, or malfeasance or national security reasons or by action of the Merit Systems Protection Board upon recommendation of the Special Counsel, is removed from the SES during the probationary period; after completing the probationary period and for less than fully successful executive performance; or as a result of a reduction in force; shall be entitled to be placed in a civil service position (other than an SES position) which shall be a continuing position at GS-15 or above of the General Schedule if the appointee is eligible for reinstatement.

- (1) Any career appointee placed under the above provisions shall be entitled to receive basic pay at the highest of:



- (a) The rate of basic pay in effect for the position in which placed;
  - (b) The rate of basic pay in effect at the time of the placement for the position the career appointee held in the civil service immediately before being appointed to the SES; or
  - (c) The rate of basic pay in effect for the career appointee immediately before being removed from the SES position.
- (2) An appointee who is receiving basic pay under paragraph (1)(b) or (c) is entitled to have the basic pay rate increased by 50 percent of the amount of each statutory increase in the maximum rate of basic pay for the grade of the position in which the employee is placed until the rate is equal to the rate in effect under paragraph (1) (a) for the position in which the employee is placed.
- (3) Pay received under this section shall terminate if:
- (a) The employee has a break in service of 1 workday or more; or
  - (b) The employee is demoted based on conduct or unacceptable performance or at the employee's request.

## **5.7 RETENTION OF SES PROVISIONS**

- A. If a career appointee is appointed by the President, by and with the advice and consent of the Senate, to a civilian position in the executive branch which is not in the SES, and the rate of basic pay payable which is equal to or greater than the rate payable for Level V of the Executive Schedule, the career appointee may elect to retain in writing some, all, or none of the following SES provisions: basic pay, performance awards, awarding of rank, severance pay, leave, and retirement. This will apply as if the career appointee remained in the SES career position from which he/she was appointed. This election shall remain in effect for no less than one year, unless the appointee leaves the position sooner.
- B. A career appointee, appointed under provisions of Section 5.6A, is permitted to make an election for purposes of adding or dropping coverage no more than once during any twelve-month period.
- C. The Appointing Authority is responsible for advising the appointee of the election opportunity. The election decision must be in writing.

- D. If the appointee elects to retain SES basic pay, the appointee is entitled to receive locality-based comparability payments if such pay is applicable to SES employees in the locality pay area, and any applicable special pay adjustment for a law enforcement officer even though the appointee may be in an Executive Schedule position otherwise excluded from such payment.
- E. A career executive appointed under provisions of Section 5.6A who is reinstated in the SES following termination of the Executive Schedule assignment will normally retain the SES pay level he/she elected to retain while on the ES assignment.

## **5.8 AGGREGATE COMPENSATION LIMITATION**

In accordance with 5 U.S.C. 5307, the aggregate compensation of SES, ST, and SL employees during a calendar year may not exceed the rate payable for Level I of the Executive Schedule on the last day of that calendar year. This limitation is applied on a calendar year basis and in addition to base pay, performance awards, rank awards, and comparability allowances, it also covers incentive awards, recruitment and relocation bonuses, retention allowances, and other forms of compensation.

## **CHAPTER 6. CLASSIFICATION OF SENIOR EXECUTIVE POSITIONS**

### **6.1 SENIOR EXECUTIVE POSITION**

A position is designated as senior executive when the duties and responsibilities are classifiable above the grade 15 level. Within the Department of Commerce, such positions fall into four categories: Senior Executive Service (SES), Senior-Level (SL), Scientific and Professional (ST-3104), and Administratively Determined (AD).

### **6.2 POSITION DESCRIPTION**

Senior executive positions will be described in narrative and as a minimum, include four basic areas:

- (1) Introduction. Includes information on the position title, organizational location and position designation (SES,SL, R&D-3104, AD). If SES, explain the status designation - career reserved or general.
- (2) Duties and Responsibilities. Clearly states the scope and complexity of functions and authorities delegated to the position in order of importance or priority.
- (3) Technical Qualifications. Identifies the factors required for successful performance. These factors should be identical to those listed in the approved Qualifications Standard. Managerial qualifications need not be included in the position description as OPM has prescribed five core executive qualifications for all SES positions.
- (4) Supervision. Identifies the levels of supervision exercised and received.

### **6.3 CLASSIFICATION EVALUATION STATEMENT**

- A. Each senior executive position description requires a signed classification evaluation statement which includes an analysis of the position duties and responsibilities with a comparison against the appropriate published OPM Classification Standard. In the absence of directly applicable standard, OPM issued guidance and guidelines may be used.

- B. Comparison of the proposed senior executive position with existing or previously existing senior executive positions may be used as supporting documentation but not as the sole basis for classifying or designating the position.

#### **6.4 STRENGTHENING OF DUTIES STATEMENT**

- A. A statement is required when the position was previously classified at the GS-15 grade level and is now being proposed for senior executive status.
- B. This statement should identify those additional duties and responsibilities which, when compared to the GS-15 grade level duties and responsibilities, now support a senior executive designation.

#### **6.5 STAFFING CHART**

A staffing chart must be attached to the classification evaluation statement and include a list of all subordinate GS-13 and above positions by:

- (1) organizational element;
- (2) title;
- (3) series and grade.

#### **6.6 IMPACT STATEMENT**

- A. The operating unit Appointing Authority must prepare an impact statement on all requests for the establishment of senior executive positions which identifies potential upgrading, downgrading, consolidation of functions, separation of functions, etc.
- B. If upgrading occurs, a list of those positions shall be included along with a projection of the increased cost in salaries.
- C. Proposed changes to Departmental Organization Orders which impact senior executive positions must be accompanied by an impact statement section specifically addressing the crosswalk (i.e., a listing showing current and proposed positions) of all existing positions, as well as any new positions.

## **CHAPTER 7. EXECUTIVE EMPLOYEE RELATIONS AND PERFORMANCE RELATED ACTIONS**

### **7.1 PROBATIONARY PERIOD - CAREER SES ONLY**

- A. An individual who receives an initial career appointment into the SES is required to serve a one year probationary period starting on the effective date of the appointment.
- B. The career appointee must receive a mid-point review to discuss performance. The operating unit human resources manager will notify the Appointing Authority of the mid-point performance review.
- C. The following conditions apply to crediting service towards completion of the probationary period.
  - (1) Time on leave with pay while in an SES position is credited. Earned leave for which the employee is compensated by lump-sum payment upon separation is not credited.
  - (2) Time in a nonpay status while in an SES position is credited up to a total of 30 calendar days (or 22 work days). After 30 calendar days, the probationary period is extended by adding to it time equal to that served in a nonpay status.
  - (3) Time absent on military duty or due to compensable injury is credited upon restoration to the SES when no 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.
- D. 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 within 3 years of the previous QRB certification, unless the individual was removed for performance or disciplinary reasons.
- E. 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.
- (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.

## **7.2 REMOVAL DURING PROBATIONARY PERIOD**

- A. A career appointee who is serving a probationary period may be removed from the SES for unacceptable performance or conduct. Failure to accept a directed reassignment or to accompany a position in a transfer of function are also reasons for removal.
- B. As a minimum, career appointees who held a career or career-conditional appointment, or an appointment of equivalent tenure as determined by OPM at the time of appointment into the SES shall:
  - (1) Receive written notification from the Appointing Authority before the effective date of the removal action. (See 5 U.S.C. 7511 and 7543 for specific coverage requirements and provisions.)

The notification action shall:

- (a) state the agency's conclusions as to the inadequacies of the performance or the basis for the removal action, including the act of misconduct, neglect of duty, or malfeasance, if these actions are involved;
- (b) indicate whether the employee has placement rights and, if so, the position to which the appointee will be assigned; and

- (c) provide the effective date of the action.
  - (2) Be entitled to placement in a Civil Service position (other than SES) which is at GS-15 or above in the General Schedule or a position of equal tenure to that held immediately before SES appointment if removal was for a reason other than misconduct, neglect of duty, malfeasance or other disciplinary reasons. The career appointee must be qualified for the position.
  - (3) Placement under this section shall not cause the separation or reduction in grade of any other employee.
  - (4) A career appointee placed under this section shall be entitled to receive basic pay at the highest of:
    - (a) the rate of basic pay in effect for the position in which placed;
    - (b) the rate of basic pay in effect at the time of the placement for the position the career appointee held in the Civil Service immediately before being appointed to the Senior Executive Service; or
    - (c) the rate of basic pay in effect for the career appointee immediately before being removed from the Senior Executive Service position.
- C. If the career appointee did not hold a career or career-conditional appointment, or appointment of equivalent tenure as determined by OPM, the career appointee shall receive written notification from the Appointing Authority at least one day before the effective date of the removal action. The notification action shall:
- (1) state the agency's conclusions as to the inadequacies of the performance or the basis for the removal action, including the act of misconduct, neglect of duty, or malfeasance, if these actions are involved; and
  - (2) provide the effective date of the removal action.
- D. The removal of a probationer for performance reasons, or disciplinary action, may not be made effective within 120 days after:
- (a) The appointment of a new Department head; or

- (b) The appointment of an appointee's most immediate supervisor who is a noncareer appointee and has the authority to remove the appointee.
- (c) An exception to (a) and (b) above is authorized when a career appointee has received a final rating of unsatisfactory under the OPM-approved performance appraisal system before the appointment of the new agency head or noncareer appointee.

**7.3 PERFORMANCE RELATED ACTIONS AFTER COMPLETION OF PROBATIONARY PERIOD**

- A. A career appointee who has been given an Unsatisfactory rating must be removed from his/her position. The appointee shall be reassigned to another SES position or removed from the SES.
  - (1) If the SES appointee is to be reassigned, the Appointing Authority shall provide a 15-day written notice in advance of the effective date, if within the commuting area; and a 60-day written notice in advance of the effective, if outside of the commuting area, to the appointee. The notice shall give the reason for the action, the position in which the appointee will be placed, and the effective date. In addition, the 120-day moratorium applies unless the unsatisfactory rating was issued before the appointment of the person taking the reassignment action.
  - (2) If the appointee is to be removed, the requirement of Section 7.3B, excluding (2) shall apply. If the appointee is to be removed from the SES and, at the time of appointment to the SES did not hold a career or career-conditional appointment or an appointment of equivalent tenure so as to have guaranteed placement rights, the requirements of Section 7.3B, excluding (2) shall apply.
- B. A career appointee who has been given two final ratings of Unsatisfactory under the SES performance appraisal system within five consecutive years, or who has been given two final annual ratings of less than Fully Successful under the SES performance appraisal system within three consecutive years, must be removed from the SES. The Appointing Authority shall notify the appointee in writing at least 30 calendar days in advance of the effective date. The notification shall state:
  - (1) the basis for the action;
  - (2) the position to which the appointee will be assigned (can be issued as a



supplementary notice not later than 10 calendar days before the effective date of the action);

- (3) the appointee's right to request an informal hearing from the Merit System Protection Board (See Section 7.6.);
- (4) the effective date of removal from the SES; and
- (5) when applicable, the appointee's retirement options.

#### **7.4 RESTRICTION ON PERFORMANCE RELATED ACTIONS**

- A. Involuntary removal of a career senior executive may not be made effective within 120 days after:
  - (1) the appointment of a new Department head; or
  - (2) the appointment of the senior executive's most immediate supervisor who:
    - (a) is a noncareer appointee, and
    - (b) has the authority to remove the senior executive.
- B. This limitation does not apply when the senior executive has received a final rating of unsatisfactory before the appointment of a new Department head or the appointment of the senior executive's most immediate noncareer supervisor who has the authority to remove the senior executive.

#### **7.5 INFORMAL HEARING**

A career senior executive being removed from the Senior Executive Service is entitled to request an informal hearing at least 15 days before the removal, before an official designated by the Merit Systems Protection Board (MSPB). The informal hearing procedure requires that:

- o the senior executive submit a request for an informal hearing to the MSPB no later than 15 days before the effective date of the action; and
- o the informal hearing be conducted in accordance with regulations and procedures established by the MSPB.

The removal action need not be delayed as the result of the granting of such informal hearing.

## 7.6 **APPEAL RIGHTS**

Removal actions under Section 7.2 and 7.3 are not appealable. Failure to meet the senior executive's entitlement to placement and pay would constitute a prohibited personnel practice and allegations of such violations may be submitted to the Special Counsel of the MSPB.

## 7.7 **REINSTATEMENT RESTRICTION**

An individual whose last appointment in the SES ended in a removal based on unacceptable performance, misconduct, neglect of duty, malfeasance or for national security reasons or by action of the Merit Systems Protection Board upon the recommendation of the Special Counsel, or for any reason during the probationary period, or whose appointment in the SES ended in a resignation after receipt of a notice proposing or directing removal under any of the preceding conditions, shall not be eligible for non-competitive reinstatement to a career appointment in the SES.

## 7.8 **OTHER RIGHTS AND BENEFITS**

This Section applies to all members of the SES regardless of type of appointment.

- (1) **Grievances.** SES appointees are covered by administrative grievance procedures of the Department.
- (2) **Annual Leave.** There is a 90 day (720 hours) limitation on the amount of annual leave which may be accumulated by an SES appointee. SES employees who had annual leave in excess of 720 hours prior to the start of the first pay period beginning after October 13, 1994, are allowed to retain that leave as a personal leave ceiling. Annual leave, in excess of 240 hours that was earned prior to an SES appointment, however, is subject to forfeit if not used by the end of the leave year preceding appointment to SES.
- (3) **Retirement.** Retirement rules and regulations for SES are consistent with those for all government employees, except that by law SES appointees who are removed from the SES for reasons of performance are eligible for an immediate annuity, if otherwise qualified (i.e., have completed 25 years of service, or have completed 20 years of service and reached the age of

50).

7.9 **OTHER EXECUTIVE APPOINTEES**

Other executive appointees (Senior-Level, ST-3104, Administratively Determined) shall be governed by rules and regulations which cover the general workforce.

## CHAPTER 8. ADVERSE ACTION

### 8.1 SENIOR EXECUTIVE SERVICE

- A. This Chapter covers SES career appointees who have completed the probationary period or who had coverage (rights to adverse action procedures) immediately prior to entering the SES. Adverse actions include removal from the Civil Service for misconduct, neglect of duty, or malfeasance, and suspension from work and pay for more than fourteen days. For purposes of this Chapter, adverse actions do not include performance-based actions, actions by the Merit Systems Protection Board upon recommendation of the Special Counsel, reductions in force, and action taken for reasons of national security under 5 U.S.C. 7532. Adverse actions may only be taken for reason of misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.
- B. The following procedures will be followed when taking an adverse action against an SES appointee and after coordination with the Office of the General Counsel:
- (1) If the adverse action is proposed:
    - (a) By an individual who is subordinate to the Appointing Authority, then the Appointing Authority shall receive and consider the reply of the appointee. At the earliest practicable date, but before the action will be effective, the Appointing Authority shall make a final decision on the proposed action, give a written decision with specific reasons, and if upholding the proposed action, the employee's appeal rights.
    - (b) By the Appointing Authority, then either of the following options are available:
      - o the Appointing Authority may propose the adverse action as well as receive and consider the reply of the appointee and, at the earliest practicable date but before the action will be effective, make the final decision on the proposed action, give a written decision with specific reasons, and if upholding the proposed action, the employee's appeal rights; or
      - o if having a different proposing official from deciding

official is desired, the servicing Human Resources Manager may propose the adverse action and the Appointing Authority may receive and consider the reply of the appointee and, at the earliest practicable date but before the action will be effective, make the final decision on the proposed action, give a written decision with specific reasons, and if upholding the proposed action, the employee's appeal rights. decide.

Both options should be carefully considered, and the rationale for the choice evident.

- (2) The appointee must be given at least a 30 day advance written notice unless there is reasonable cause to believe that the appointee has committed a crime for which a sentence of imprisonment can be imposed. The notice must state specific reasons for the proposed action.
- (3) The appointee is entitled to be represented by an attorney or other representative, at the appointee's expense.
- (4) The appointee shall be notified of his/her right to review all the material used to support the proposed action. Materials which cannot be disclosed to the appointee, or to his/her representative or attorney or physician in the case of medical records, may not be used to support the adverse action.
- (5) The appointee shall be given a reasonable amount of official time to review the material relied on to support the proposed action, to prepare an answer orally and in writing and to secure affidavits and other documentary evidence, if the appointee is in an active duty status.
- (6) If the appointee wishes the agency to consider any medical conditions that may have affected the basis for the adverse action, the appointee shall be given reasonable time to furnish medical documentation of the condition.
- (7) A hearing shall not be provided.
- (8) An appointee against whom an adverse action is taken is entitled to appeal to the MSPB.

- (9) Operating units shall maintain and furnish to the MSPB and to the affected appointee upon his/her request, the following:
  - (a) A copy of the notice of proposed action;
  - (b) Documentation relied on to support the proposed action;
  - (c) The answer of the appointee when written, and a summary thereof when made orally;
  - (d) The notice of the decision including reasons for the adverse action; and
  - (e) Any order affecting an action under this Chapter.
- C. Removal or suspension for disciplinary reasons is not subject to the 120 day moratorium; appointees so removed are not entitled to placement outside the SES.
- D. Noncareer and limited appointees (except as described in E below) may be removed at any time. They must be given a written notice at least 1 day prior to the effective date of the removal; a statement of the reason for the action may be provided, but is not required.
- E. A limited term or limited emergency appointee who received the limited appointment without a break in service in the same agency as the one in which the employee held a career or career-conditional appointment (or appointment of equivalent tenure as determined by the Office of Personnel Management) in a permanent civil service position outside the SES; and who was covered under 5 U.S.C. 7511 immediately before appointment to the SES, is covered under the procedures described in B above.
- F. Reemployed annuitants serve at the pleasure of the Appointing Authority.

## **8.2 OTHER EXECUTIVE APPOINTEES**

Adverse actions on other executive appointees (Senior- Level, ST-3104, Administratively Determined) shall be governed by rules and regulations which cover the General workforce.

## CHAPTER 9. REDUCTION IN FORCE

(RESERVED)

**Reduction in force provisions are under revision by the Office of Personnel Management. Therefore, this section will be provided at a later date. However, it is the Department's policy that the abolishment of an executive level position requires the approval of the Director, Office of Human Resources Management, and that every effort will be made to place any affected employee.**

## **CHAPTER 10. SES FURLOUGH REGULATIONS**

**Furlough provisions are under revision by the Office of Personnel Management. Therefore, this section will be provided at a later date.**



## **CHAPTER 11. EXECUTIVE DEVELOPMENT**

### **11.1 CANDIDATE DEVELOPMENT**

- A. As necessary, the DERB will determine whether SES vacancy forecasts necessitate announcing an SES Candidate Development Program.
- B. If announced, individuals will be competitively selected and placed into full time positions at either the Department or operating unit level. Additional guidance is found in Appendix, Section 8.
- C. Intensive developmental activities will focus on the following areas:
  - (1) Strategic vision;
  - (2) Human resources management;
  - (3) Program development and evaluation;
  - (4) Resources planning and management; and
  - (5) Organizational representation and liaison.
- D. The Director, Office of Human Resources Management will monitor this program for the DERB.
- E. It is anticipated that program graduates will be offered SES positions, generally by the organization which endorsed their candidacy. If no SES positions are available at the end of the program, candidates will be given reemployment rights at the same grade level in the operating unit which endorsed their candidacy and will be given consideration for any SES position for which they qualify.

### **11.2 SABBATICALS**

A career appointee may apply through the Operating Unit Executive Resources Board (OERB) to the Department for a sabbatical to engage in study or uncompensated work experience for up to eleven months which will contribute to the appointee's development and effectiveness. The Director, Office of Human Resources Management will review proposals for sabbaticals and make a recommendation to the CFO/ASA.

- A. Departmental Requirements

Requests for sabbaticals will be submitted by the Head of the operating unit to the Director for Human Resources Management. These will be reviewed for legal and regulatory compliance prior to referral to the CFO/ASA for decision and must address how the position will be filled, the position the executive will return to, and the benefits to the service. Candidates must have a current performance rating of at least Commendable. Applications will be coordinated by the cognizant OERB, ranked in priority order, and cost estimates developed prior to submission.

B. Legal Requirements

- (1) To be eligible for a sabbatical, the appointee must have completed seven years of service:
  - (a) in one or more positions in the SES;
  - (b) in one or more other positions in the civil service equivalent to positions in the SES; or
  - (c) in any combination of such positions, except that not less than two years of such seven years of service must be in the SES.
- (2) The appointee agrees, as a condition of accepting the sabbatical, to serve in the civil service upon completion of the sabbatical for a period of two consecutive years.
- (3) The Secretary may grant a sabbatical for up to 11 months.
- (4) A sabbatical shall not result in loss of, or reduction of, pay, leave, credit for time of service, or performance rating.
- (5) Travel expenses (including per diem) may be authorized.
- (6) SES career members who are eligible for voluntary retirement with an immediate annuity cannot be granted a sabbatical.
- (7) Sabbaticals may only be granted to an individual once in any 10 year period.
- (8) The selectee must sign a written continue-in-service agreement as a condition for being granted a sabbatical.

The agreement shall read:

I, \_\_\_\_\_, agree as a condition of accepting the sabbatical, to serve in the civil service upon completion of the sabbatical for a period of two consecutive years. I further agree that if I fail to carry out this agreement (except for good and sufficient reasons as determined by the Secretary or Designee), I am liable to the United States for payment of all expenses (including salary) of the sabbatical. The amount shall be treated as a debt due to the United States.

### **11.3 INCUMBENT DEVELOPMENT**

Each SES appointee is encouraged to continue with his/her executive development through training courses, formal training programs and mobility assignments. The OERB shall approve an individual development plan for each appointee.

## **CHAPTER 12. SENIOR EXECUTIVE SERVICE PERFORMANCE APPRAISAL SYSTEM**

### **12.1 COVERAGE**

The Senior Executive Performance Appraisal System applies to all senior executives of the Department who occupy Senior Executive Service (SES) positions, including career, noncareer, and SES limited appointees (Additional information may also be found in DAO 202-430, Appendix A.). Other non-SES executive appointees shall be governed by the General Work Force Performance Appraisal System.

### **12.2 TIMETABLE OF PERFORMANCE MANAGEMENT ACTIVITIES**

- A. The Department's performance appraisal period begins on October 1 and ends the following September 30. In unusual circumstances, the performance appraisal period may be ended early provided the 120-day minimum period is met and provided an adequate basis to rate the executive's performance exists.
- B. The minimum performance appraisal period is 120 days.
- C. Performance elements and standards based on the requirements of the senior executives' positions must be communicated to all senior executives at or before the beginning of the appraisal period. A written plan must be developed, approved, and provided to each senior executive, normally within 30 days of the beginning of the appraisal period.
- D. When a senior executive enters a covered position or changes positions after the start of the appraisal period, a performance plan must be established and approved within 30 days of the effective date of the appointment to the new position.
- E. When a senior executive is detailed or temporarily assigned to a covered position within the Department and is expected to serve in the position for 120 days or more, he or she must have an approved performance plan within 30 days of the beginning of the detail.
- F. Interim summary performance ratings are required when a senior executive changes positions after serving in a covered position for at least 120 days, or when a senior executive completes a detail within the Department of at least 120 days during the appraisal period, and must be completed within 30 days of the change of position or end of the detail.

- G. Appraisals and annual ratings of record must be completed within 45 days of the end of the appraisal period, except that senior executives who are unratable at the end of the appraisal period because they have not served in a covered position for at least 120 days of the appraisal period, must be rated after completing 120 days in a covered position.
- H. Appointing Authorities must complete the Department's annual performance plan completion report and forward it to the Department by November 30 each year.
- I. Performance ratings of record for senior executives are effective on the last day of the appraisal cycle (September 30) each year. For those senior executives who enter into a covered position within the last 120 days of the appraisal period (see G above), the rating of record is effective the first day of the first pay period after the senior executive completes 120 days in the new position.
- J. Notwithstanding any other requirements of this document, a career senior executive may not be appraised and rated within 120 days after the beginning of a new Presidential Administration.

### **12.3 PERFORMANCE APPRAISAL PROCESS**

The appraisal process involves three distinct stages: performance planning, progress review, and appraisal. Each covered senior executive must receive a performance rating annually. The appraisal process is used to communicate organizational goals, reinforce senior executive accountability for those goals, and track and evaluate individual and organizational results.

#### **A. Performance Planning**

- (1) Approximately four weeks before the start of the appraisal period, rating officials (supervisors) and senior executives should begin developing written performance plans for the next appraisal period. The process must include consultation with the senior executive about the contents of the plan. Performance plans must be recorded on form CD-516, "Classification and Performance Management Record." Performance plans must be completed and signed by the rating official and the senior executive at the beginning of the appraisal period.

Performance plans must include:

- (a) Critical elements which reflect the senior executive's major duties

and responsibilities and which are consistent with current job assignments and with the level of duties described in the senior executive's position description. If the element relates to a Secretarial level objective, it must be designated on Form CD-516 as critical and as being tracked at the Department level. The number of critical job elements should be kept to a manageable level, normally not more than five or six.

- (b) Organizational objectives must be included in performance plans by incorporating objectives, goals, program plans, work plans, or by other similar means that account for program results. Elements may be drawn from a number of sources including: mission and functional statements, position descriptions, management-by-objectives (MBO's) and other planning documents, operating budget justifications, and affirmative action plans.
- (c) Other factors that must be accounted for in performance plans for senior executives include: improvement in efficiency, productivity, quality of work or service; any significant reduction in paperwork; cost efficiency; timeliness of performance; other indicators of effectiveness, productivity, and performance quality of the employees supervised; or meeting affirmative action goals and achievement of equal employment opportunity requirements.
- (d) An objective, specifying the overall result each element is expected to accomplish, along with the major activities the senior executive must undertake to accomplish each element, must be communicated in writing in the senior executive's performance plan.
- (e) For any job designated as supervisory, duties such as recommending or making personnel decisions, developing and appraising subordinates, fulfilling equal opportunity and affirmative action responsibilities, and other supervisory duties must be addressed as a critical element (or as major activities of a critical element). Additionally, supervisors and managers who fail to meet performance appraisal deadlines (including development of performance plans) as specified in this document should have their own appraisals so documented. Developing generic elements is strongly encouraged.

- (2) Weights must be assigned to each element on the basis of the amount of time required to accomplish the element and/or its importance. The total of the weights must be 100%. Assigning weights to the major activities listed under an element is not permitted. Non-critical elements may be included in performance plans, but must be assigned very low weights and represent a small percentage of the total plan. In no case may a non-critical element be assigned a higher weight than any critical element included in the performance plan.
- (3) Performance standards must be used to evaluate levels of accomplishment for critical (and any non-critical) elements. Standards should define performance in terms of results (what is to be accomplished) and process (how it is to be accomplished). (Note: The results may already be expressed under the major activities listing. In such a case they do not need to be repeated as standards since they are already specified for the senior executive.) The generic performance standards (GPS) attached to the performance plan are defined at each of the five required rating levels and must be used to evaluate the performance of all senior executives covered by this system. Specific quantitative, timeliness, cost-effectiveness, and qualitative standards, if they apply to a particular critical element and if they will be used to evaluate a senior executive's performance, must be included as supplemental standards. (If these standards are specified in operational manuals or other documents made available to the senior executive, those documents may simply be referenced in the performance plan.) Such standards need be written only at the Fully Successful level, since the GPS are written at all five performance levels and refer generically to different levels of quality, timeliness, quantity, and cost-effectiveness.
- (4) If a rating official and a covered senior executive disagree on the contents of the performance plan, the rating official and senior executive should attempt to resolve the disagreement on an informal basis. However, the rating official must make the final decision regarding the contents of the plan.
- (5) When developing performance plans, the following factors should be considered:
  - (a) Criticality/Relevance. Have appropriate critical elements been identified? Are the elements derived from the overall mission of the work unit?

- (b) Comprehensiveness. Does the plan cover all of the senior executive's major duties and responsibilities?
  - (c) Clarity. Are critical elements and performance standards clearly and fully described?
  - (d) Quantification. Can achievements be measured with the standards identified?
- (6) When a senior executive enters a covered position or moves from one covered position to another after the start of the appraisal period, and when a senior executive serves on a detail of 120 days or more, a performance plan must be established and approved for the senior executive, following the guidelines in A (5) of this section.

B. Progress Reviews

- (1) At a minimum, rating officials must conduct a formal progress review with their senior executives at approximately the midpoint of the appraisal period. Senior executives may also request (or rating officials may schedule) additional progress reviews. The progress review must include discussion of:
  - (a) The senior executive's progress toward meeting the objectives of the elements included in his or her performance plan;
  - (b) The need for changes in the plan based on changes in responsibilities; and
  - (c) The identification of any performance deficiencies and recommendations on how to improve them by the rating official.
- (2) There must be a record of the progress review. Both the supervisor and senior executive should date and initial the performance plan to indicate the review took place.
- (3) Progress reviews should also be scheduled and conducted for senior executives who enter covered positions after the start of the appraisal period. These progress reviews should be completed near the midpoint of the shortened appraisal period.



- (4) A progress review must also be initiated by the rating official if a senior executive's performance on one or more critical elements falls below the Fully Successful level. In such a case the rating official must discuss the instances of less than Fully Successful performance and should outline in writing what is required by the senior executive to bring his or her performance up to the Fully Successful level.

C. Appraisal

- (1) Senior executives must be appraised annually. Every senior executive who occupies a covered position on the last day of the appraisal cycle and who has been in a covered position for at least 120 days during the appraisal cycle must receive an annual performance appraisal rating of record, in accordance with the following:

- (a) Rating officials must prepare and discuss with each senior executive they supervise an initial written rating of performance. This rating must be based on an assessment of the merit of the senior executive's performance against the standards set at the beginning of the period (or as modified and documented during a progress review) in the performance plan and must include a written rating for each individual performance element based on the following:

Outstanding (5)	Meets or exceeds standards written at this level.
Commendable (4)	Meets standards written at this level.
Fully Successful (3)	Meets standards written at this level.
Minimally Satisfactory (2)	Meets standards written at this level.
Unsatisfactory (1)	Fails to meet standards written at the minimally satisfactory level.

- (b) Each critical (and non-critical) element must be rated using the above five-level element rating scale. Ratings of elements above and below Fully Successful must be supported by a narrative justification. If an element is rated as Fully Successful, the rating official need only document in writing that: (1) the Fully

Successful standards were met, and (2) that the rating was discussed with the senior executive, unless the senior executive requests written justification of the Fully Successful rating. In such a case, the rating official must provide written justification of the rating.

- (c) To obtain the overall summary rating, each element must be rated using the five-level element rating scale (Outstanding = 5, Commendable = 4, Fully Successful = 3, Minimally Satisfactory = 2, and Unsatisfactory = 1). (No fractional scores or weights may be used.) Then, each individual element rating is multiplied by the weight assigned to that element (e.g., critical element #1 is weighted at 30% and receives a rating of Commendable or 4;  $4 \times 30\% = 120$  points). The points assigned the individual elements are then totaled to determine an overall summary rating based on the following scale:

Outstanding                      460 - 500

Commendable                      380 - 459

Fully Successful                      290 - 379

\*Minimally Satisfactory                      200 - 289

\*Unsatisfactory                      A summary rating of Unsatisfactory must be assigned to any senior executive who is given an Unsatisfactory rating on one or more critical elements.

\*A covered senior executive who fails to meet at least the Fully Successful level standards in one (or more) critical element(s) must not be given a Fully Successful or above rating, no matter what point total the senior executive earns.

- (d) If a senior executive has received an interim summary performance rating for service in another covered position within the Department during the appraisal period (as provided for in Section 12.2 F. of this chapter), then that summary rating (or ratings) must be considered as follows in determining the senior executive's final rating of record:

The rating official completes his or her appraisal of the senior executive on his/her current position (if in that position for 120 days or more of the appraisal period) and assigns a total score. That score is doubled and added to the interim rating score(s) given by any other supervisor(s). This new total is then divided by the number of positions occupied for 120 days or more plus 1, i.e., either 3 or 4, and a final total score is assigned. (Scores with decimals should be rounded to the next highest number.) For example:

Example 1:

Interim rating score:	$360 \times 1 = 360$
Current rating official's score:	$480 \times 2 = 960$

1320  
 $1,320 / 3 = 440$

The senior executive's recommended rating would be 440 or Commendable.

Example 2:

Interim rating score:	$390 \times 1 = 390$
Interim rating score:	$375 \times 1 = 375$
Current rating official's score:	

$450 \times 2 = 900$   
1,665  
 $1,665 / 4 = 417$

The senior executive's recommended rating would be 417 or Commendable.

In computing an overall performance rating using this formula, the rating assigned by the current supervisor (the one that is to be doubled) must be checked carefully to make sure that a non-critical element is not given more weight (because of the doubling) than any critical element in the other interim ratings. (OPM regulations prohibit giving more weight to non-critical elements than to critical elements in deriving final ratings.) If, because of the doubling, the non-critical element score exceeds that of any of the critical element scores, the point score of the non-critical element must be reduced to its original total (before the doubling) and the summary point total adjusted

appropriately.

- (e) If a senior executive has served in a covered position for more than the minimum appraisal period in another Federal agency, that agency is required to provide an interim summary rating of performance and forward it to the Department's employing office with the senior executive's Official Personnel Folder. The rating official must consider the interim rating when determining the senior executive's initial rating at the end of the appraisal cycle. If a senior executive has served on a detail to another Federal agency for more than 120 days during the appraisal cycle, a sabbatical, or an assignment in a Federally-sponsored program such as an IPA or Executive Exchange, the human resources management office must make a reasonable effort to obtain an interim summary rating from the other agency on the senior executive's performance on the detail, assignment, or sabbatical. If the interim rating is obtained, it must be considered in deriving the senior executive's initial rating at the end of the appraisal cycle. If the senior executive has served for the entire rating cycle on detail to another agency and an appraisal of performance cannot be obtained despite reasonable efforts, the senior executive's current rating of record must be extended. If the senior executive has no current rating of record, then he or she must be given a presumptive rating of Fully Successful.
- (f) The senior executive must sign the initial rating to indicate that it has been discussed. A copy must be given to the senior executive. The senior executive may comment on the rating in writing to the rating official within five working days of receipt of the appraisal and rating. If the rating official changes a rating at this point, he/she must document the reasons for the change on Form CD-96A and provide a copy to the senior executive.
- (g) A senior executive may request a review of his/her rating by an official in a position higher than the rating official, unless there is no one at a higher level within the Department. If the senior executive requests a higher level review, his or her written response to the initial rating must be provided to the reviewer. The reviewer may comment on and must make a recommendation regarding the initial rating, but may not change it. A copy of the reviewer's comments and recommendations must be provided to the senior executive, the rating official, and the Performance Review Board (PRB).
- (h) The appropriate PRB must review each senior executive's initial rating, and if any, the senior executive's written response and the higher level reviewer's comments and recommendations. The PRB is also authorized to conduct any

further review or investigation that it finds necessary. The PRB must then recommend in writing a final rating to the Appointing Authority.

- (i) The Appointing Authority must consider the recommendations of the PRB and issue final ratings in writing. A copy of the final rating must be provided to each senior executive.
  - (j) Appointing Authorities must ensure that senior executives are not given awards under 5 CFR 451.101 (superior accomplishment award) for accomplishments properly recognized through the granting of an SES performance award (bonus).
- (2) Senior executives who are serving in covered positions on the last day of the appraisal period, but who are unratable because they have not served for at least 120 days during the appraisal period in a covered position must be given an annual rating of record in accordance with the provisions of paragraph C (1) above (including PRB review) as soon as they have served for the minimum period. A senior executive may be unratable because of entry into a covered position within the last 119 days of the appraisal period; time in a non-pay status; long-term training; service on a Federally-sponsored program such as an Intergovernmental Personnel Act or President's Executive Exchange assignment for which appraisal information is not available; service on detail to another Federal agency for which appraisal information is not available; or the departure of the senior executive's supervisor from the agency, when no other higher level supervisor can reasonably appraise the senior executive's performance.
- (3) The current ratings of record of senior executives who are unratable on the last day of the appraisal period are extended if they are not then working in a covered position that can serve as a basis for an appraisal (for example, they are continuing on long-term training) and they are not expected to return to such a position within 120 days. If these senior executives have no ratings of record, they receive a presumptive rating of Fully Successful.

D. Interim Summary Ratings

- (1) When a senior executive who has served in a covered position for 120 days or more and the appraisal period changes to another covered position within the Department, an interim rating must be completed by the executive's supervisor, and signed by the Appointing Authority. Interim ratings must also be completed when a senior executive completes a detail within the Department of 120 days or more in a covered position. In such cases, the

rating must be based on the elements and standards established for the position the senior executive is leaving. Copies of the interim rating must be given to the senior executive, the gaining supervisor, and the servicing human resources management office of the gaining organization. Interim ratings are not reviewed by the PRB, but copies should be furnished to the PRB when it reviews annual ratings of record. Rating officials must consider interim ratings in determining final ratings of record.

- (2) When a senior executive transfers from the Department to another Federal agency after serving in a covered position in the Department for more than 120 days, the senior executive's supervisor and the Appointing Authority must complete an interim rating. The interim rating must be transferred to the gaining agency for consideration in the senior executive's next rating of record.
- (3) Interim ratings are not ratings of record for reduction in force or other purposes.

E. The following summary performance ratings constitute ratings of record:

- (1) The annual performance appraisal rating provided for in 12.3C(1); and
- (2) Ratings given after the minimum appraisal period an executive is unratable at the end of the appraisal cycle, as provided for in 12.3C(2).

No other summary rating given to a senior executive of the Department constitutes a rating of record.

- F. When a senior executive is rated below the Fully Successful level, the operating unit must attempt to help the senior executive improve his or her performance. Assistance may include, but is not limited to, formal training, on-the-job training, counseling, and closer supervision.
- G. The Department does not prescribe a distribution of ratings, and does not permit a distribution to be prescribed. The Department assures that only senior executives whose performance exceeds normal expectations are rated at levels above Fully Successful by the higher level review process, by PRB review, by review of plans by the human resources management office, and by Departmental oversight reviews.

#### **12.4 PERFORMANCE REVIEW BOARDS**

A. Operating Unit PRB's

- (1) Each operating unit may establish one or more internal PRB's or combine with other operating units to establish one for mutual use.
- (2) Each PRB must have at least three members and must develop a written charter (subject to approval by the Director for Human Resources Management) which:
  - (a) Lists required and discretionary functions;
  - (b) Lists criteria to be used by PRB members to review individual performance appraisals;
  - (c) Lists the operating procedures used by the PRB; and
  - (d) Identifies the PRB's membership composition, selection process, and terms of office.
- (3) Appointing Authorities must appoint members to the PRB designating one member, who must be a Commerce employee as chairperson. Sufficient career senior executives must be appointed so that more than one-half of the members are career appointees. The Appointing Authority must ensure that at least one member appointed is not under his or her jurisdiction. Each member appointed must have a current performance rating of at least Fully Successful.
- (4) A PRB member must not participate in a performance appraisal review when:
  - (a) The review pertains to that PRB member;
  - (b) The PRB member is the rater of the senior executive whose performance appraisal is being reviewed;
  - (c) The PRB member is the direct subordinate of the senior executive whose performance appraisal is being reviewed; or
  - (d) The PRB member was the designated higher level reviewer of the senior executive whose performance is being reviewed.
- (5) The names of individuals appointed to the PRB must be published in the Federal Register within 45 days after the appointment is approved. No

member may serve until this is done. (For additional information, see Appendix, Sections 12 and 13.)

B. Departmental Performance Review Board (DPRB)

- (1) A DPRB must be established to provide a "higher level" review of the appraisal, ratings and recommendations of executives evaluated by the Appointing Authority. Review by the DPRB is by request of the executive.
- (2) The Secretary of Commerce or his or her designee serves as the Chairperson of the DPRB and selects the other members of the Board. Members of this Board may be appointed from within or outside the Department. Provisions contained in A (2)-(4) of this section apply to this Board with the exception that the Board is not required to have at least one member who is not under the jurisdiction of the Appointing Authority. (For additional information, see Appendix, Sections 12 and 13.)

**12.5 FAILURE TO MEET PERFORMANCE REQUIREMENTS**

- A. A senior executive who receives a Level 1 rating of record, Unsatisfactory, must be reassigned or transferred within the SES, or removed from the SES.
- B. A senior executive who receives two Level 1 ratings of record, Unsatisfactory, in any period of five consecutive years must be removed from the SES.
- C. A senior executive who twice in any period of three consecutive years receives less than a Level 3, Fully Successful, rating of record must be removed from the Senior Executive Service.



- D. Any action taken under this section is subject to the provisions of 5 U.S.C. 3591-95 and 5 CFR Part 359.

## **12.6 TRAINING AND INFORMATION**

- A. Servicing human resources management offices are responsible for communicating the purpose and procedures of the Senior Executive Service Performance Appraisal System by establishing appropriate training and orientation programs. These programs must emphasize performance plan development, supervisory/management responsibility for carrying out the program, and the linkage between performance ratings and senior executive recognition and other personnel decisions.
- B. Information on changes in the operation of the Senior Executive Service Performance Appraisal System are conveyed to Department management and affected senior executives through Office of Human Resources Management issuances and newsletters.

## **12.7 EVALUATION**

The Office of Human Resources Management assesses the effectiveness of the Senior Executive Service Performance Appraisal System through its ongoing Oversight Program. Commerce organizations are reviewed to determine their technical compliance with law, Office of Personnel Management regulations, and Department policy. Reviews focus on the adequacy of performance plans and ratings as well as each organization's performance rating distribution as related to its organizational accomplishments.

## **12.8 RECORD KEEPING**

- A. Employee Performance Folders (EPF's) must be established for each senior executive, be retained as separate files, and maintained by the operating unit. EPF's must contain at least the following information:
  - (1) the individual performance plans;
  - (2) documentation of progress review(s);
  - (3) summary appraisals and ratings;
  - (4) written comments on ratings, if any;

- (5) PRB/DPRB recommendations; and
- (6) nominations for bonuses and ranks.

Operating units, at their discretion, may require that additional information be kept in the EPF.

- B. All performance-related records contained in the EPF must be retained for five years.
- C. When a senior executive transfers to another operating unit within the Department, or to another Federal agency, EPF records must be transferred with the employee.
- D. Disclosure of information contained in EPF's may be made only as permitted by the Privacy Act.

## **CHAPTER 13. SPECIAL RECOGNITION PROGRAMS**

### **13.1 TYPES OF EXECUTIVE RECOGNITION**

The Department uses four types of recognition to reward its senior executives:

- A. Presidential Rank Awards are granted only to career SES appointees. Two categories of rank awards - Meritorious Executive (\$10,000) and Distinguished Executive (\$20,000) - are used to recognize prolonged high quality executive performance covering a period of at least three years. (See Appendix, Section 9, Presidential Rank Awards.)
- B. Performance Awards (SES Bonuses) are granted after the end of the SES performance appraisal period. Awards range from 5-20% of base pay as of the end of the performance appraisal period. The rate of basic pay does not include locality - based comparability payments or special law enforcement adjustments under the Federal Employees Pay Comparability Act of 1990, and recognize only career executives for their performance during the last appraisal period. (See Appendix, Section 10, Performance Awards).
- C. SES Pay Rate Adjustments, based on performance, may be granted to career or noncareer senior executives under circumstances outlined in Chapter 5, Section 5.3 of this Manual.
- D. It is the Department's policy that Special Act or Service awards not be granted to executive personnel. However, Suggestion and Invention awards may be granted to recognize contributions by employees or groups of employees which result in tangible benefits or savings or intangible benefits to the Government. (See Appendix, Section 11.)

### **13.2 PROCESS**

The Departmental process for granting recognition to senior executives requires a series of reviews and clearances prior to final approval. This assures that appropriate recognition is granted only to the most deserving senior executives. The awards process includes the following steps:

- A. The immediate supervisor of the executive recommends recognition based on the employee's performance or other accomplishment(s).
- B. The recommendation is transmitted through clearance channels to the operating

unit PRB or the DPRB for review (Presidential Ranks, bonuses and performance related pay rate level adjustments only).

- C. It is then transmitted to the operating unit Appointing Authority for concurrence or rejection. Recommendations for Presidential Rank Awards, SES Performance Awards (Bonuses) and performance related pay rate level adjustments are arranged in priority order by the Appointing Authority before being submitted to the Department.
- D. All recommendations for executive recognition are submitted to the Director, Office of Human Resources Management in his/her capacity as Executive Secretary for the Departmental Executive Resources Board (DERB). Each submission is reviewed for adherence to legal and regulatory requirements and for compliance with Departmental policy.
- E. The Executive Secretary either returns all recommendations to the submitting Appointing Authority (if they do not comply with established requirements and criteria) or forwards them to the DERB.
  - (1) The DERB then performs a final review and forwards its recommendations for recognition (in priority order) for Presidential Rank Awards and SES Bonuses to the Secretary.
  - (2) The Secretary forwards Presidential Rank award nominees for consideration by the Office of Personnel Management.

### **13.3 FUNDING**

Each awards program will be funded by the operating units. Payment of any award to any senior executive may not be made unless authorized by the Secretary.

### **13.4 AWARDS PAYMENT**

- A. Cash payments for Presidential Rank Awards, SES Bonuses, and incentive awards are not subject to retirement fund contributions or creditable for inclusion in the "high three" average pay computation for retirement benefits. These payments are subject to withholding for income tax.
- B. A career senior executive can receive both an SES Bonus and a Meritorious Presidential Rank Award, but the total of an employee's basic salary combined with these forms of recognition may not in any one calendar year exceed the

annual rate payable for Executive Level I in effect at the end of the same fiscal year. ( Note that Office of Personnel Management policy allows the payment of both an SES Bonus and a Meritorious Rank Award in the same calendar year if the combined amount of both awards does not exceed 20% of base pay.)

- C. In accordance with 5 U.S.C. 5307, the aggregate compensation of SES, ST, and SL employees during a calendar year may not exceed the rate payable for Level I of the Executive Schedule on the last day of that calendar year. This limitation is applied on a calendar year basis and in addition to base pay, performance awards, ranks awards, and comparability allowances, it also covers incentive awards, recruitment and relocation bonuses, retention allowances, and other forms of compensation.

### **13.5 DOCUMENTATION**

The Office of Human Resources Management will collect data from each operating unit on Presidential Rank awards, SES Bonuses, incentive awards and other related pay and performance information. Operating units must maintain sufficient records to respond to requests for data and for documentation supporting any award recommendations.

### **13.6 ST 3104; ADMINISTRATIVELY DETERMINED; SL-STAFF**

All cash awards for these employees must be submitted for review in accordance with Section 13.2 A through E. Performance related awards should be submitted following completion of the annual appraisal cycle. Multiple awards should be listed in priority order. Annual funding for these awards should not exceed 3% of the aggregate salaries of all such employees in a given operating unit.

## CHAPTER 14. EXAMINER-IN-CHIEF AND ATTORNEY-EXAMINER POSITIONS

### 14.1 BOARD OF PATENT APPEALS AND INTERFERENCES

- A. Background: On February 11, 1985, the Board of Patent Interferences and the Board of Appeals were merged to form the Board of Patent Appeals and Interferences. The function of this Board is to review adverse decisions of examiners upon applications for patents and determine priority and patentability of invention in interferences declared under Section 135(a) of 35 USC. Each appeal and interference shall be heard by at least three members, Examiners-in-Chief, of the Board of Patent Appeals and Interferences. Only the Board of Patent Appeals and Interferences has the authority to grant rehearings. Examiners-in-Chief are persons of competent legal knowledge and scientific ability appointed to the competitive service.
- B. Authority: The Secretary of Commerce is authorized to fix the per annum rate of basic compensation of each Examiner-in-Chief in the Patent and Trademark Office. This authority has been delegated to the CFO/ASA. These positions are exempt from the provisions of 5 USC 3104 and 5 USC 3133 and appointments are made through the authority of Title 35. Although Examiners-in-Chief have Civil Service status, the salary for their positions is administratively determined.
- C. Recruitment Procedures: The following procedures will be followed when recruiting for Examiners-in-Chief:
- (1) The Director for Human Resources Management is responsible for approving operating unit executive recruitment plans, and has approved a standardized recruitment plan for Examiner-in-Chief positions.
  - (2) The PTO standardized recruitment plan consists of the following:
    - (a) Vacancy Announcement. A copy of the announcement must be submitted to the Office of Human Resources Management, where it will be transmitted to OPM after obtaining opening and closing dates.
    - (b) Position Description.

- (c) Qualification Standard. Only technical qualifications shall be entered into the qualification standard, as positions of Examiner-in-Chief are not managerial in nature.
- (d) Rating Plan.
- (e) Area of Consideration. OHRM must be notified if additional sources to the OPM distribution system, such as paid advertisement or notices to colleges or universities, are used.

D. Selection Procedures

- (1) The Chairperson, OERB, must:
  - (a) Convene the Board to rate and rank applicants; or
  - (b) Appoint a screening panel of equivalent subject matter specialists who will rate and rank applicants.
- (2) The OERB or screening panel shall prepare written recommendations on the qualifications of each applicant. The written recommendations, as a minimum, will rate the applicants into four categories: Not Qualified, Qualified, Well Qualified, or Highly Qualified.
- (3) A list of the Highly Qualified applicants and the OERB's written recommendations shall be submitted to the Appointing Authority for selection. For guidance on selection procedures, see Appendix, Section 4. Veterans preference will be adhered to insofar as practicable.

E. Procedures For Requesting Approval: The following material must be submitted to the Director for Human Resources Management for each proposed appointee for each Examiner-in-Chief position:

- (1) Approval Document - OPM Form 1390
  - (a) OPM Form 1390 is required for all executive appointment approval requests and must include citations in the Remarks Section as follows:
    - o The statement, "I approve the appointment of (Name of Appointee) to the executive position of (Title)," should

appear on initial appointments, reassignments, transfers and reinstatements.

- o The work address and telephone number must be included whenever a name is entered in the 1390.
  - o The vacancy announcement closing date must be included on the 1390 for all initial appointments of career appointments.
- (2) **Qualifications Standard.** The Qualifications Standard published in the approved vacancy recruitment plan will be forwarded with the approval document.
- (3) **Certification Statement.** The Chair, OERB must sign a statement that the proposed appointee or candidate's qualifications meet the technical qualifications contained in the Qualifications Standard.
- (4) **Qualifications Analysis.** A short qualifications analysis shall be prepared which compares the proposed appointee's technical qualifications against those technical qualifications contained in the approved Qualifications Standard for the position.
- (5) **Application.** The application must be signed and dated and clearly show the experience of the proposed appointee.
- (6) **Biographical Sketch.** A short biographical sketch will be developed for the proposed appointee.

F. Probationary Period

- (1) Each individual selected for appointment to an Examiner-in-Chief position is required to successfully complete a one year probationary period. Satisfactory completion of the prescribed probationary period is a prerequisite to continued service in the position.
- (2) Each career appointee who successfully completes the one year probationary period will receive a final appointment notification on Form CD-363b.
- (3) A career appointee who is serving a probationary period may be removed from the Board of Patent Appeals and Interferences at any time during the



probationary period for unacceptable performance or conduct. Board appointees who held a career or career-conditional appointment, or an appointment of equivalent tenure prior to appointment with the Board shall:

- (a) Receive written notification from the Appointing Authority at least 30 days before the effective date of removal action. The notification shall:
  - o state the inadequacies of the performance or conduct;
  - o indicate placement rights, if any; and
  - o provide the effective date of the action.
- (b) An employee who does not satisfactorily complete the probationary period will be assigned to a position of equivalent tenure for which he or she qualifies if one is available. An employee who is assigned to a position under this provision has no appeal rights.
- (c) Placement under this part shall not cause the separation or reduction in grade of any other employee.
- (d) An appointee placed under this part shall be entitled to receive pay at the same rate the employee had been receiving prior to appointment to the Board of Patent Appeals and Interferences or the rate of basic pay in effect for the position in which placed, whichever is higher, except that compensation under this section cannot exceed the tenth step of the grade in which placed.
- (e) If the career appointee does not qualify for any vacant positions within the Patent and Trademark Office or a position is not available, the appointee shall receive written notification from the Appointing Authority at least 30 days before the effective date of the removal action.

The notification shall:

- o state the inadequacies of the performance or conduct; and
- o provide the effective date of the removal action.

- (4) A career appointee who is serving a probationary period and did not hold a career or career conditional appointment, or appointment of equivalent tenure as determined by OPM, immediately prior to appointment as an Examiner-in-Chief, shall receive written notification from the Appointing Authority at least 30 days before the effective date of the discharge action.

The notification shall:

- (a) state the inadequacies of the performance or conduct; and
- (b) provide the effective date of the discharge action.

G. Senior-Level and Related Pay Systems

See Chapter 5, Section 5.3B.

H. Performance Appraisal System. All Examiners-in-Chief are subject to the General Workforce Appraisal System of the Department of Commerce.

I. Reduction-in-Force. In the event of a reduction-in-force, the Department's policy covering executive positions will be followed, as outlined in Chapter 9.

J. Travel to First Post of Duty. These positions have been determined to be shortage category positions and the payment of travel and transportation expenses in accordance with appropriate travel regulations is authorized depending upon circumstances and the availability of funds.

K. Adverse Actions. Members of the Board of Patent Appeals and Interferences are subject to the procedures pertaining to career civil service employees established by Chapter 75 of title 5 of the United States Code.

## 14.2 TRADEMARK TRIAL AND APPEAL BOARD

A. The Trademark Trial and Appeal Board (TTAB) is responsible for hearing and deciding adversary proceedings involving interfering applications, oppositions to registration,

cancellations, and concurrent use proceedings and for hearing and deciding appeals for final refusals of trademarks. The members of the Board hear and decide ex parte cases on appeal and inter parte cases as provided by statute. Section 3 of title 35 of the United States Code provides that members of the TTAB each be paid at a rate not to exceed the maximum rate of basic pay payable for GS-16 of the General Schedule.

- B. Authority. 15 U.S.C. 1067 states: "The Trademark Trial and Appeal Board shall include the Commissioner, the Deputy Commissioner, the Assistant Commissioners, and members appointed by the Commissioner. Employees of the Patent and Trademark Office and other persons, all of whom shall be competent in trademark law, shall be eligible for appointment as members." 35 U.S.C. 3(e) provides "members of the Trademark Trial and Appeal Board of the Patent and Trademark Office shall each be paid at a rate not to exceed the maximum rate of basic pay payable for GS-16 of the General Schedule under Section 5332 of Title 5."
- C. Recruitment Procedure
- (1) The Director, Office of Human Resources Management, is responsible for approving operating unit executive recruitment plans, and has approved a standardized recruitment plan for the positions of TTAB members.
  - (2) The PTO standardized recruitment plan consists of the following:
    - (a) Vacancy Announcement. A copy of the announcement must be submitted to OHRM for transmission to OPM after obtaining opening and closing dates.
    - (b) Position Description.
    - (c) Qualification Standard. Only technical qualifications shall be entered into the Qualification Standard as the positions of members of the TTAB are not managerial in nature.
    - (d) Rating Plan
    - (e) Area of Consideration. OHRM must be notified if additional sources to the Federal Job Opportunities Board, such as paid advertisement or notices to colleges and universities, are to be used.
- D. Selection Procedures. The selection procedure outlined in 14.1.D will be followed.

- E. Procedures for Requesting Approval. The procedure for requesting approval outlined in 14.1.E will be followed.
  
- F. Trial Period
  - (1) Each individual selected for appointment as a member of the TTAB is required to successfully complete a one-year trial period. Satisfactory completion of the prescribed trial period is a prerequisite to continued service in the position.
  - (2) Each appointee who successfully completes the one-year trial period will receive a final appointment notification on Form CD-364b.
  - (3) A member of the TTAB serving a trial period may be removed at any time during the trial period for unacceptable performance or conduct. The procedures followed will be those normally used for the removal of attorneys from the excepted service.
  
- G. Senior-Level and Related Pay Systems

See Chapter 5, Section 5.3B.
  
- H. Performance Appraisal System. All TTAB members are subject to the General Workforce Appraisal System of the Department of Commerce.
  
- I. Reduction-in-Force. In the event of a reduction-in-force, provisions in effect for attorney positions in the excepted service will be applied.
  
- J. Travel and First Post of Duty. These positions have been determined to be shortage category positions and the payment of travel and transportation expenses in accordance with the appropriate travel regulations is authorized depending upon the circumstances and the availability of funds.
  
- K. Adverse Actions. The provisions of Chapter 75 of Title 5 of the United States Code applicable to the excepted service will be applied.

## **CHAPTER 15. U.S. DEPARTMENT OF COMMERCE SENIOR EXECUTIVE SERVICE RECERTIFICATION PLAN**

### **15.1 AUTHORITY**

Under Sec. 506 of the Ethics Reform Act of 1989 (Public Law 101-194, November 30, 1989), Senior Executive Service (SES) career appointees are subject to recertification by their agencies. [Title 5 U.S.C. 3393a] [5 CFR 214, 317, 359, 842]

### **15.2 OBJECTIVE**

SES recertification ensures that the performance of career appointees demonstrates the excellence needed to meet the goals of the Senior Executive Service.

### **15.3 RELATIONSHIP TO ANNUAL PERFORMANCE APPRAISAL PROCESS**

The SES recertification process and the agency annual performance appraisal process are complementary but separate. While the annual appraisal looks at how well the executive has met the specific standards for his or her position for the year, the recertification process looks at the executive's performance over a period of three years. At the highest levels of Government management occupied by SES members, it often is not possible to fully judge the performance of an individual in as short a time span as one year since the impact of an executive's activities may not be known until a later time.

### **15.4 COVERAGE**

- A. SES career employees who have been continuously employed in the SES for 156 weeks preceding the end of the recertification period are subject to recertification. This period includes any service as an SES noncareer or limited appointee. It also includes service in any agency.
- B. One or more breaks in SES service of a total of 6 months or less do not interrupt the 156 weeks of continuous employment. A break is defined as a time period during which the SES career employee was not being officially counted against the agency's SES position allocation.
- C. SES career appointees who are on extended assignment or absence from their positions at the time of recertification are subject to recertification, generally, as long as they are officially occupying an SES position at the end of the

recertification period as a career appointee and meet the 156 week length of service requirement.

- D. This recertification plan does not apply to SES noncareer or limited appointees. Nor does it apply to former SES career appointees who took Presidential appointments at Executive Level V or higher with Senate confirmation and elected to retain SES benefits.

### **15.5 RECERTIFICATION PERIOD**

- A. The initial recertification period shall end on September 30, 1991, coincident with the end of the annual performance appraisal period. Subsequent recertification shall take place every third calendar year thereafter. September 30 shall serve as the date for calculating the 156-week employment period.
- B. If an executive is recertified in another agency and then transfers to Commerce during the calendar year, the executive is not subject to recertification in Commerce.
- C. If an executive transfers from another agency during the calendar year and no recertification decision was made in that agency, a recertification decision must be made in Commerce. All necessary relevant information on the executive's performance during the recertification period, in addition to performance ratings completed, will be requested of the executive's previous agency.

### **15.6 STANDARD FOR RECERTIFICATION**

- A. 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:
  - (1) Planning for, substantially advancing, and attaining Presidential, agency, or organizational goals and objectives that required a sustained superior effort;
  - (2) Taking specific initiatives that advanced a major policy and/or significantly improved delivery of services;
  - (3) Taking the necessary actions to ensure the achievement of a quality product in a timely manner; and
  - (4) Making significant technical, scientific, or professional contributions.

- B. Also, if applicable to the responsibilities of the senior executive, excellence is demonstrated by:
- (1) Achieving substantial savings in the execution of programs under his or her direction;
  - (2) Maintaining the high quality and effectiveness of programs under his or her direction with reduced resources; and/or
  - (3) Providing strong leadership to enhance the development, utilization and achievements of subordinate personnel, including achievement of equal employment opportunity goals.

### **15.7 RECERTIFICATION RECOMMENDATION AND DETERMINATION PROCEDURES**

- A. Recommendation by the Supervising Official
- (1) The supervising official of the career appointee shall submit to the operating unit Performance Review Board, a recommendation, on the form provided at the end of this plan, whether the career appointee's performance justifies recertification as a senior executive. The recommendation shall be based on the executive's overall performance during the recertification period in relation to the standard for recertification in paragraph F, including consideration of such factors as the following:
    - (a) The appointee's SES performance ratings for the 3 preceding years. SES career appointees do not necessarily have to have received annual performance ratings above Fully Successful to be recertified, nor do Fully Successful ratings guarantee recertification.
    - (b) Any award or other recognition received by the executive. These include awards from both inside the government (e.g. Presidential rank awards and superior accomplishment incentive awards) and outside the government. Awards recognizing performance over a period of years that are received during the recertification period even though some of the achievements recognized may have occurred before the recertification period are included. Also included are awards received after the recertification period, but before the recertification determination, if the award recognizes performance that took place during the recertification period.

- (c) Any developmental activities of the executive. These include professional, educational, or self-developmental activities. Supervising officials should consider funding availability and the stage of the executive's career, that is, long term executive vs. newly appointed executive, when evaluating the extent to which an executive participates in developmental activities.
  - (d) Significant accomplishments on task forces or Boards outside of program responsibilities; reputation in field of expertise as reflected by speaking engagements and publications; SES pay increases and bonuses when they are specifically related to performance.
- (2) The factors identified above should be used as a measure of whether the standard for recertification has been met in relation to the written performance requirements for the career appointee's senior executive position. Supervising officials may not make a recommendation solely on the basis of performance ratings.
  - (3) There is no specific length of time that an official must serve as an executive's supervisor before making a recertification determination.
  - (4) Prior to making a recommendation, supervising officials may request, or the executive may provide, a written statement of accomplishments from the executive in relation to the standard for recertification.
  - (5) If the supervising official recommends recertification, no written justification is required. However, a recommendation proposing conditional recertification or no recertification shall include a narrative justification. The narrative should specify those aspects of the standard for recertification that have not been met. Supervising officials should contact their servicing human resources management office for technical advice and assistance prior to preparing such a narrative.
  - (6) The executive shall be given a copy of the recommendation provided on the form at the end of this plan. He/she shall be requested to acknowledge receipt of the form, and advised of the right to submit to the Performance Review Board (PRB), a statement of accomplishments and other documentation giving evidence of the quality of his/her performance in relation to the standards set forth in paragraph F. The statement of accomplishments provided to the PRB may be the same as that provided in paragraph d. above, or amended at the executive's discretion.



- (7) The executive may request a review of the recommendation (if other than to recertify) by an official in a position higher than the supervising official, unless there is no one at a higher level within the Department, prior to the recommendation being forwarded to the PRB. If the executive requests a higher level review, he/she must have the opportunity to respond in writing to the recommendation and have the response provided to the reviewer. The reviewer may comment on and must make a recommendation regarding the initial recommendation, but may not change it. A copy of the reviewer's comments and recommendation must be provided to the executive, the supervising official, and the PRB, and follow the case to the deciding official. This review will be performed by the Departmental Performance Review Board (DPRB) for executives who are supervised directly by the senior operating unit appointing authority.
- (8) The recertification form and any appropriate written documentation, (i.e. the executive's statement of accomplishments if provided to the supervising official; a narrative justification for a recommendation other than to recertify) shall be forwarded to the Performance Review Board. Documentation for the annual performance appraisal process may be forwarded along with the recertification materials to facilitate most efficient use of PRB time. Separate documentation is required for each process.

B. Recommendation by the Performance Review Board

- (1) More than one-half of the members of the Board shall consist of SES career appointees. Board members may not take part in any deliberations or actions regarding recommendations on their own recertification, or of those of immediate supervisors and subordinates.
- (2) After receiving and reviewing the recommendation of the supervising official and any appropriate written documentation (provided by the executive, the supervisor, or a reviewing official) the Board shall submit to the senior appointing authority in the operating unit a recommendation, on the form provided at the end of this plan, whether the appointee should be recertified, conditionally recertified, or not recertified.
- (3) If the PRB needs more information to make its recommendation, it may request additional documentation from the supervising official or the executive, and/or request that either appear before the Board.
- (4) If the Board proposes to recommend conditional recertification or no

recertification, the appointee shall:

- (a) be notified in writing, specifying the Board's rationale, in sufficient detail, for its proposed recommendation. If the PRB chooses to use the same rationale as provided by the supervising official, it need only indicate its concurrence on the supervising official's justification, and have the Chair sign the appropriate block on the recertification documentation form;
  - (b) have the opportunity to appear before the Board prior to the forwarding of the recommendation to the senior appointing authority in the operating unit. The appointee shall be given a minimum of 5 days advance notice of the proposed scheduled appearance. If the appointee requests, he/she may be given a reasonable amount of official time to prepare for his or her appearance.
- (5) If the Board recommends recertification, it may also recommend that the appointee's rate of basic pay be increased to a higher ES pay rate. If the Board recommends conditional recertification, it may also recommend that the appointee's rate of basic pay be reduced to the next lower ES pay rate. These recommendations are to be documented on the recertification determination form. A rate adjustment recommendation should take into consideration any proposal for adjustment made as part of the current performance appraisal cycle. Only one adjustment may be made during a 12 month period.
- (6) In addition to its recommendation, the Board shall provide the senior operating unit appointing authority with the recommendation from the supervising official and any information received from the appointee and the reviewing official (if the executive requested higher level review).
- (7) A copy of the recertification determination form reflecting the Board's final recommendation shall be forwarded to the appointee.

C. Recommendation by the senior operating unit appointing authority

- (1) If, after receiving and reviewing the recommendations of the supervising official and the Performance Review Board (including any information received from the appointee), the senior operating unit appointing authority determines that the appointee's performance during the three preceding years demonstrates the excellence expected of a senior executive and warrants recertification, he/she will record this recommendation on the recertification determination

form along with any pay rate adjustment recommendation (again, consistent with any current performance appraisal recommendation).

- (2) If the senior operating unit appointing authority determines that the appointee's performance has not demonstrated the excellence expected of a senior executive, he/she shall recommend that the appointee be conditionally recertified or not be recertified, and record this recommendation on the recertification determination form.
- (3) Written reasons must be provided for any recommendation to conditionally recertify or not recertify if these have not been provided by either the supervising official or the Performance Review Board. If the PRB had not provided the executive an opportunity for a personal appearance because it had made a positive recertification recommendation, the senior operating unit appointing authority will provide the executive an opportunity to make a presentation in writing and/or in person before taking further action. Notification and official time provisions are the same as those provided in section 15.7B(4).
- (4) Determinations will not be based on a prescribed distribution of how many or what percentage of executives will be recertified, conditionally recertified, or not recertified.

D. Determination by the Deputy Secretary or CFO/ASA

- (1) The CFO/ASA shall review all recommendations from the supervising official, the PRB, and the senior operating unit appointing authority and will be the deciding official for executives determined to meet the standard for recertification. He/she will also decide on any recommended pay rate increases. For executives in the Office of the Inspector General (OIG), and those who report to the CFO/ASA, recommendations will be submitted to the Deputy Secretary who will be the deciding official for determining recertification. Under the Inspector General Act, the IG sets the pay for OIG executives.
- (2) A determination that the appointee's performance warrants recertification will be recorded on the recertification determination form along with the appropriate annotation if a positive pay rate change is decided upon. The completed form will be returned to the operating unit human resources management office for filing.
- (3) Written reasons must be provided for any recommendation or decision to

conditionally recertify or to not recertify a career appointee. The documentation for such recommendations will be reviewed by the CFO/ASA, but must be approved by the Deputy Secretary. The reasons must be specific enough so that the executive will be able to understand why the action was taken, and adequate to support a case if the executive appeals a removal action. The Deputy Secretary or CFO/ASA need not provide additional reasons if he or she agrees with those of the recommending official(s) and deems them sufficient.

- (4) If a decision to conditionally recertify or not recertify is being considered and the executive has not had an opportunity for a personal appearance because all previous deliberations have considered only a recommendation to recertify, the Deputy Secretary or CFO/ASA will provide an opportunity to the executive to make a presentation in writing and/or in person before taking further action.

## **15.8 RECERTIFICATION DETERMINATIONS**

### **A. Decision to Recertify**

- (1) If the CFO/ASA or the Deputy Secretary determines that the appointee's performance warrants recertification, the appointee shall continue in the SES.
- (2) The appointee's rate of basic pay may not be reduced at the time of recertification.
- (3) If the decision is made to increase the appointee's rate of basic pay, the statutory restriction that an SES member's pay level may be changed only once in a 12 month period remains applicable.

### **B. Decision to Conditionally Recertify**

- (1) If the Deputy Secretary determines that the appointee's performance warrants conditional recertification, the appointee:
  - (a) Shall be notified in a letter enclosing the completed recertification determination form and necessary supporting documentation.
  - (b) Shall remain a career appointee in the SES.
  - (c) Shall be subject to continuing close review of the appointee's performance by the supervising official in coordination with the Operating Unit Executive Resources Board (OERB).

- (d) Shall be subject to a performance improvement plan developed by the supervising official, subject to the approval of the OERB, and provided to the appointee within 30 days of his/her notification of conditional recertification. The performance improvement plan should include a description of the deficiencies in the executive's performance, what constitutes satisfactory completion of the plan, a statement of the support and assistance to be provided by the supervising official, and any training initiatives planned. It shall conform with performance standards the executive is required to attain during the period. Periodic progress review discussions shall be held and documented at least once, and at additional times if warranted.
  - (e) May, if the Deputy Secretary so determines, be reduced to the next lower ES pay rate, once 12 months have elapsed since the appointee's last pay adjustment.
  - (f) May not appeal to the Merit Systems Protection Board, as the law does not provide such a right.
- (2) At the end of the 12 months following conditional recertification, the operating unit shall initiate a new recertification determination. The process for making the new determination shall be the same as for the initial recertification decision, including review and recommendation by the operating unit Performance Review Board.
- (a) The individual shall be retained in the SES if recertified and shall have any reduction in ES pay level made under paragraph H-2-a-(5) restored as of the beginning of the first pay period following recertification when 12 months have elapsed since the pay reduction.
  - (b) The individual shall be removed from the SES if not recertified at the end of the 12-month period following the conditional recertification.

C. Decision Not to Recertify

- (1) If the Deputy Secretary determines that the appointee's performance does not warrant recertification or conditional recertification, the appointee shall be removed from the SES in accordance with applicable law and regulation. (5 CFR 359)
- (2) The appointee shall be notified in writing before the effective date of the

action. If the appointee has completed the SES probationary period, or was not required to serve a probationary period, the notice shall be at least 30 calendar days before the effective date of the removal from the SES.

- (3) The notice shall include the completed recertification determination form and advise the appointee of:
  - (a) The basis for the action.
  - (b) The appointee's placement rights provided under 5 CFR 359.701-705. The position to which the appointee will be assigned shall be identified either in the advance notice or in a supplementary notice issued no later than 10 calendar days before the effective date of the action.
  - (c) The appointee's right to appeal to the Merit Systems Protection Board, including the time limit for appeal, the office to which an appeal should be sent, and that there is no provision for a stay in the removal action pending the appeal process.
  - (d) The effective date of the removal from the SES.
  - (e) When applicable, the appointee's eligibility for immediate discontinued service retirement, in lieu of placement rights, with no annuity reduction based on age (CSRS) and eligibility for an annuity supplement regardless of age (FERS).
- (4) Removal from the SES as a result of not being recertified may not be made effective within 120 days after the appointment of a new Secretary of Commerce, or within 120 days after the appointment in the Department of the career appointee's most immediate supervisor who is a noncareer appointee and has the authority to remove the career appointee.

#### **15.9 RECERTIFICATION PLAN CONSULTATION, APPROVAL, AND DISTRIBUTION**

- A. In accordance with regulations, Commerce has developed the recertification procedures described in this plan in consultation with its SES career appointees.
- B. Changes to the Department's Recertification Plan require OPM approval.

- C. Copies of the approved plan, and any subsequent changes, will be provided to all agency SES appointees.

#### **15.10 TRAINING**

Before the beginning of each recertification determination process, executives who supervise career SES appointees, and PRB members, will be given training on the objectives and procedures of the recertification process. Also, during this same time period, Commerce will inform SES career appointees about the agency's recertification plan provisions.

#### **15.11 RECORDS**

Recertification documentation shall be maintained in the appointee's Employee Performance Folder (EPF) for 5 years from the date of the recertification determination. (If an individual is conditionally recertified, documentation for the final recertification determination shall be maintained for 5 years from the date of the conditional recertification.) EPF's shall be maintained in accordance with provisions in the SES Performance Appraisal Plan. Information contained in the EPF is protected under the provisions of the Privacy Act.

#### **15.12 REPORTS AND EVALUATION**

Commerce will report to the Office of Personnel Management (OPM) such information, and take such corrective action as OPM may direct as a result of its oversight and evaluation responsibilities.

U.S. DEPARTMENT OF COMMERCE  
SENIOR EXECUTIVE SERVICE RECERTIFICATION CY 199\_\_

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Name of Executive: \_\_\_\_\_

Position Title and Organization: \_\_\_\_\_

Current Pay Rate: ES-\_\_\_\_\_

Recertification Period From: \_\_\_\_\_

To: \_\_\_\_\_

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Standard for Recertification

1. 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:
    - a. Planning for, substantially advancing, and attaining Presidential, agency, or organizational goals and objectives that required a sustained superior effort.
    - b. Taking specific initiatives that advanced a major policy and/or significantly improved delivery of services.
    - c. Taking the necessary actions to ensure the achievement of a quality product in a timely manner.
    - d. Making significant technical, scientific, or professional contributions.
  2. Also, if applicable to the responsibilities of the senior executive, excellence is demonstrated by:
    - a. Achieving substantial savings in the execution of programs under his or her direction.
    - b. Maintaining the high quality and effectiveness of programs under his or her direction with reduced resources.
    - c. Providing strong leadership to enhance the development, utilization and achievements of subordinate personnel, including achievement of equal employment opportunity goals.
- 

The following recommendations/decision are based on an assessment of the executive's overall performance during the recertification period in relation to the above Standard for Recertification stipulated in law, regulation, and agency written procedures.

Supervising Official's Recommendation:

Recertify \_\_\_\_\_

Conditionally Recertify \_\_\_\_\_

Not Recertify \_\_\_\_\_

Recommend pay rate adjustment to ES-\_\_\_\_\_

No pay rate adjustment recommended \_\_\_\_\_

In making these recommendations, I have given due consideration to the executive's overall performance during the recertification period, including performance ratings, awards and other recognition, developmental activities, and other relevant qualitative factors specified in the agency SES recertification plan. If the above recommendation is to conditionally recertify or not recertify, I have attached the required written justification specifying the standard for recertification not met and other relevant supporting documentation.

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Signature and Title

Date



U.S. DEPARTMENT OF COMMERCE  
SENIOR EXECUTIVE SERVICE RECERTIFICATION CY 199\_\_  
(Continued)

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Performance Review Board (PRB) Recommendation:

Recertify \_\_\_\_\_ Conditionally Recertify \_\_\_\_\_ Not Recertify \_\_\_\_\_

Recommend pay rate adjustment to ES- \_\_\_\_\_ No pay rate adjustment recommended \_\_\_\_\_

In making these recommendations, we have given due consideration to the executive's overall performance during the recertification period, including performance ratings, awards and other recognition, developmental activities, other relevant qualitative factors specified in the agency SES recertification plan, and the supervising official's recommendation. If the above recommendation is to conditionally recertify or not recertify, we have provided the executive the rationale for our proposed recommendation, an opportunity to appear before the PRB and/or provide it a written statement of accomplishments, and have attached the required written justification and other relevant supporting documentation.

\_\_\_\_\_  
PRB Chairperson's Signature

\_\_\_\_\_  
Date

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Appointing Authority's Recommendation:

Recertify \_\_\_\_\_ Conditionally Recertify \_\_\_\_\_ Not Recertify \_\_\_\_\_

Pay rate adjustment to ES- \_\_\_\_\_ No pay rate adjustment \_\_\_\_\_

In making these determinations, I have given due consideration to the executive's overall performance during the recertification period, including performance ratings, awards and other recognition, developmental activities, other relevant qualitative factors specified in the agency SES recertification plan, and the supervising official's and PRB's recommendation. If the above determination is to recommend conditional recertification or not to recertify, the executive has been provided the rationale for such action, an opportunity to appear before me or the PRB and/or provide a written statement of accomplishments. I have attached the required written justification and other relevant supporting documentation.

\_\_\_\_\_  
Signature and Title

\_\_\_\_\_  
Date

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Agency Head (or designee) Decision:

Recertify \_\_\_\_\_ Conditionally Recertify \_\_\_\_\_ Not Recertify \_\_\_\_\_

Pay rate adjustment to ES- \_\_\_\_\_ No pay rate adjustment \_\_\_\_\_

In making these decisions, I have given due consideration to the executive's overall performance during the recertification period, including performance ratings, awards and other recognition, developmental activities, other relevant qualitative factors specified in the agency SES recertification plan, and the supervising official's and PRB's recommendation. If the above decision is to conditionally recertify or not recertify, the executive has been provided the rationale for such action, an opportunity to appear before me or the PRB and/or provide a written statement of accomplishments. I have attached the required written justification and other relevant supporting documentation.

\_\_\_\_\_  
Signature and Title (if designee)

\_\_\_\_\_  
Date

U.S. DEPARTMENT OF COMMERCE

SENIOR EXECUTIVE SERVICE RECERTIFICATION CY 199\_\_  
(Continued)

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FOR OPTIONAL USE (to be provided by the human resources management office):

Annual SES Performance Ratings

19 \_\_\_\_\_  
Performance Rating Level

19 \_\_\_\_\_  
Performance Rating Level

19 \_\_\_\_\_  
Performance Rating Level

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Executive's Acknowledgment of Supervising Official's Recommendation:

\_\_\_\_ I have received a copy of my supervising official's recommendation and wish to submit a statement of accomplishments to the Performance Review Board.

\_\_\_\_ I have received a copy of my supervising official's recommendation and DO NOT wish to submit a statement of accomplishments to the Performance Review Board.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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**Awards and Other Recognition**  
(continue on back if necessary)

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**Developmental Activities**  
(continue on back if necessary)

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**Other Relevant Qualitative Factors**  
(continue on back if necessary)

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**APPENDIX**

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**Section 1: Responsibilities of the Operating Unit Executive  
Resources Board (OERB)**

The primary responsibilities of OERB's (subject to the policy direction of the Departmental ERB) are to conduct the merit staffing process for the Senior Executive Service, assist the operating unit head in managing the executive resources and programs of their respective organizations, and develop internal procedures and guidance.

Listed below are typical functions and responsibilities which the Secretarial Officer or Head of the Operating Unit could delegate to the OERB. The role of the OERB is advisory.

**A. Executive Personnel Planning.** This could include:

- (1) Determining operating unit executive allocations needs.
- (2) Distributing of executive allocations.
- (3) Developing of executive staffing procedures.
- (4) Forecasting executive requirements.
- (5) Establishing executive development objectives.

**B. Executive Position Staffing.** This could include:

- (1) Monitoring executive merit staffing process.
- (2) Evaluating candidates' qualifications.
- (3) Establishing rating/ranking panel.

**C. Executive Development.** This could include:

- (1) Establishing Executive Development Programs.
- (2) Selecting candidates.
- (3) Approving individual development plans
- (4) Evaluating candidates' performance.

- D. Position Management.** This could include:
  - (1) Establishing priorities for use of vacant executive positions.
  - (2) Determining SES position status designations.
- E. Pay Management.** This could include:
  - (1) Setting pay for initial appointees.
  - (2) Recommending non-performance related SES pay rate adjustments.
- F. Development of policy on discipline and removal.**
- G. Affirmative action.**
- H. Performance and incentive awards.**
- I. Performance appraisal system policies and procedures.**

The above listing is not inclusive and intends that OERB's will be involved in operations which may include individual executive personnel management actions.

## **Section 2: Guidelines for Developing and Establishing Qualifications Standards**

- A. Qualifications Standards shall be developed for all senior executive positions in accordance with this guide, OPM instructions; and Federal regulations when: a new position is established; an existing position is substantially altered; or a vacancy occurs and the position to be filled has a Qualifications Standard which was not prepared in accordance with these guidelines. The Qualifications Standard must be approved by the Chairperson, OERB, and applied to all candidates equally and impartially.

The operating unit personnel staff shall provide professional assistance to management officials in preparing a Standard. In addition, Departmental staff is available to provide assistance.

- B. The Qualifications Standard identifies the position's essential requirements and allows for impartial assessment of the relative capacity and fitness of candidates. The OERB approved Qualifications Standard must be:

- (1) Based on a job analysis, (utilizing sources such as position descriptions, performance plans, and the supervisor's knowledge of the position) to identify the managerial/executive and professional/technical skills, knowledges, abilities, and other factors (SKAF's) required.
- (2) Specific enough to identify qualified candidates and make qualitative distinctions among them when referring candidates to the selecting officials.
- (3) Job related, reflecting a clear relationship to the duties to be performed.
- (4) Consistent with the SKAF's identified in the job analysis as being important to the position.

- C. A Qualifications Standard may not include:

- (1) A minimum length of experience as an essential element for any position;
- (2) Any criterion prohibited by law or regulation, e.g., age, sex, race, color, religion, national origin, marital status, handicapping conditions or political affiliation; or

- (3) A minimum educational requirement beyond that authorized for similar positions in the General Schedule.

D. The following executive core qualifications must be included in the SES Qualifications Standard. They provide the focus for the OPM Qualifications Review Board (QRB) analysis of executive qualifications of candidates proposed for initial career appointments to SES positions.

(1) **Strategic Vision**

This core qualification involves the ability to ensure that key national and organizational goals, priorities, values, and other issues are considered in making program decisions and exercising leadership to implement and to ensure that the organization's mission and strategic vision are reflected in the management of its people.

Key Characteristics include:

- (a) Identifying and integrating key issues affecting the organization, including political, economic, social, technological, and administrative factors.
- (b) Understanding the roles and relationships of the components of the national policy making and implementation process, including the President, political appointees, Congress, the judiciary, state and local governments, and interest groups.
- (c) Exercising leadership and motivating managers to incorporate vision, strategic planning, and elements of quality management into the full range of the organization's activities.

(2) **Human Resources Management**

This core qualification involves the ability to design human resource strategies to meet the organization's mission, strategic vision, and goals and to achieve maximum potential of all employees in a fair and equitable manner.

Key Characteristics include:

- (a) Acquiring a diverse workforce with the necessary knowledges, skills, abilities and/or potential through appropriate planning, recruitment/outreach and selection processes.
- (b) Assessing employees' unique developmental needs and providing developmental opportunities which maximize employees' capabilities and contribute to the achievement of organizational goals.
- (c) Fostering a working environment where people who are culturally diverse can work together cooperatively and effectively in achieving organizational goals.
- (d) Providing leadership in setting the work force's expected performance levels commensurate with the organization's strategic plan objectives.
- (e) Promoting quality through effective use of the organization's performance management system (e.g., establishing performance standards, appraising staff accomplishments using the developed standards, and taking action to reward, counsel, or remove employees, as appropriate).
- (f) Dealing effectively with employee/labor management relations matters, including resolving conflicts, attending to morale and organizational climate issues, handling administrative, labor management, and EEO issues, and taking disciplinary actions when other means have not been successful.

**(3) Program Development and Evaluation**

This core qualification involves the ability to establish program/policy goals and the structure and processes necessary to implement the organization's mission and strategic vision. Inherent in this process is ensuring that programs and policies are being implemented and adjusted as necessary, that the appropriate results are being achieved, and that a process for continually examining the quality of program activities is in place.

Key Characteristics include:



- (a) Assessing policy, program, and project feasibility.
- (b) Formulating short- and long-term goals and objectives and integrating them into a strategic plan.
- (c) Structuring and organizing work and setting priorities.
- (d) Anticipating and identifying, diagnosing, and consulting on potential or actual problem areas relating to program implementation and goal achievement; selecting from alternative courses of corrective action; and/or taking action from developed contingency plans.
- (e) Setting effectiveness, efficiency, productivity, evaluation and management/internal control standards.
- (f) Establishing and utilizing procedures and processes to monitor progress toward organizational objectives.
- (g) Taking any necessary corrective action to ensure an effective, efficient, and productive organizational unit.

**(4) Resources Planning and Management**

This core qualification involves the ability to acquire and administer financial, material, and information resources. It also involves the ability to accomplish the organization's mission, support program policy objectives and promote strategic vision.

Key Characteristics include:

- (a) Managing the budgetary process; including, preparing and justifying a budget and operating the budget under organizational and Congressional procedures.
- (b) Overseeing procurement and contracting procedures and processes.
- (c) Integrating and coordinating logistical operations.
- (d) Overseeing the allocation of financial resources.
- (e) Establishing and assuring the use of internal controls for financial

systems.

- (f) Ensuring the development and utilization of management information systems and other technological resources that meet the organization's needs.

**(5) Organizational Representation and Liaison**

This core qualification involves the ability to explain, advocate, and negotiate with individuals and groups internally and externally. It also involves the ability to develop an expansive professional network with other organizations and organizational units.

Key Characteristics include:

- (a) Representing and speaking for the organizational unit and its work (e.g., presenting, explaining, selling, defending, and negotiating) to those within and outside the agency (e.g., agency heads and other political and career executives; Office of Management and Budget; Congressional members, staffs, and committees; the media; clientele and professional groups).
- (b) Establishing and maintaining working relationships with internal organizational units (e.g., other program areas and staff support functions).
- (c) Developing and enhancing alliances with external groups (e.g., other agencies and governments, Congress, and clientele groups).
- (d) Working in groups and teams; conducting briefings and other meetings.
- (e) Seeing that reports, memoranda, and other documents reflect the position and work of the organizational unit.
- (f) Getting understanding and support from higher level management.

**Section 3: Competitive Recruitment Guidelines**

- A. Recruiting should be reasonably extensive and systematic and include a positive effort to locate qualified minorities and women. 5 USC requires that the search

for SES career candidates include all groups of qualified individuals within the civil service (5 USC 2101 defines civil service to include executive, judicial, and legislative branches). Recruitment should not be limited to persons within the agency nor to those with competitive status. Operating units are encouraged to broaden their searches to include all groups of qualified individuals whether or not within the civil service.

- B. Senior executive service vacancies to be filled by career appointments must be included in the OPM SES vacancy announcement system for at least 14 calendar days, including the date of publication. The announcements shall include position title, job location, brief description of duties, information about grade and pay (for SES positions pay should be stated in general terms rather than a particular pay level), essential (but brief) qualifications requirements and evaluation method, equal employment opportunity statement, how to apply and to request additional information, and opening and closing dates. The announcement must remain open for a minimum of fourteen calendar days.
- C. The Operating Unit's human resources management office will provide OHRM with the announcement number and the opening and closing dates and enter their announcements into the Federal Job Opportunities Board.
- D. When seeking applications from persons outside the Federal service, internally developed mailing lists, paid advertisement, trade magazines or journals, colleges, universities, etc., may be used to increase the circulation of the vacancy announcement.
- E. The above guidelines also apply to filling supergrade and Administratively Determined positions by career appointments. Such procedures may also be used when filling positions authorized under 5 USC 3104 but are not required when the appointment is based upon rare or unique qualifications of the proposed appointee.

#### **Section 4: Selection Procedures Guidelines**

- A. Specific procedures to fill executive vacancies competitively must be available and open to review by anyone requesting this information. Veteran preference may not be used as a factor in selection for SES positions.
- B. The procedures should provide for adequate differentiation among candidates on the basis of the skills, knowledges, abilities and other factors (SKAF's) as reflected in the Qualifications Standard for the position. Such SKAF's must be measurable and the source of information regarding the applicant's possession of such SKAF's must be determined (application papers, references, personal interviews, assessment centers, etc.) and documented.
- C. A Human Resources Specialist conducts a preliminary assessment of each candidate and screens out those who do not meet the mandatory Executive Core Qualifications and the mandatory technical qualifications.
- D. Candidates should be grouped into at least three categories (e.g., Qualified, Well Qualified, Highly Qualified). Use of numerical rating and ranking is discouraged.
- E. The OERB provides the interviewing official with a list of all highly qualified applicants. The OERB's summary rating sheets and information on ineligible must be retained as part of the merit staffing action but need not be provided to the interviewing official.
- F. Upon tentative selection, the interviewing official shall forward the list to the Appointing Authority for selection. Selection must be made from the best qualified group.
- G. The Appointing Authority must certify in writing that each candidate proposed for either a career or noncareer appointment to a senior executive position meets the Qualifications Standard for that position. The appointing authority or the OERB must certify that appropriate merit staffing procedures were followed for proposed career appointments.
- H. The executive/managerial qualifications of a proposed career SES appointee must be approved by an OPM Qualifications Review Board (QRB) before the operating unit may appoint the individual (5 USC 3393). Operating units are cautioned NOT to make any offer of employment, or what could appear to be an offer of employment, to the proposed appointee, until the QRB approval has been obtained.

Operating units must send to the Director, Office of Human Resources Management the following documentation when requesting OPM approval of initial SES career appointee's managerial qualifications:

- (1) OPM Form 1390
  - (2) Qualifications Standard
  - (3) Certification statement that the proposed appointee meets the Qualifications Standard
  - (4) Qualification Analysis
  - (5) SF-171/Resume and OF-612
  - (6) Letter of Reference (mandatory for Criterion C cases)
  - (7) Biographical Sketch
  - (8) One hard copy of full-text vacancy announcement with control number
- I. Operating units must keep records for two years after a competitive vacancy is filled (or until an OPM inspection, whichever occurs first) to allow reconstruction of each competitive action. The records must include:
- (1) Documentation of the job analysis process sufficient to allow a reviewer to clearly follow the thought process and decisions made during the development of the Qualifications Standard and the applicant evaluation plan.
  - (2) Copy of the vacancy announcement and the Qualifications Standard.
  - (3) List of organizations and addresses where the vacancy announcement was distributed, and distribution rationale, e.g., a recruitment plan.
  - (4) Selection procedures applied including the rating schedule or candidate evaluation plan.
  - (5) Written recommendations made by the OERB to the Appointing Authority on each qualified candidate for an SES position (including a copy of the SF-171/resume and OF-612 upon which the recommendation is based).

- (6) Any complaints or appeals to the OERB or appointing official and the findings related thereto.

**Section 5: Executive Pay Rate Analysis**

Operating Unit: \_\_\_\_\_

Proposed Appointee: \_\_\_\_\_

Position Title: \_\_\_\_\_

Proposed Rate/Grade: ES-\_\_\_\_\_ AD-\_\_\_\_\_ ST-\_\_\_\_\_ SL-\_\_\_\_\_

Appointee's Current Salary: \_\_\_\_\_

Actual Dollar Increase: \_\_\_\_\_

Percentage of Pay Increase: \_\_\_\_\_

Pay Setting Analysis:

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Signature/Title  
Operating Unit Appointing Authority

**Section 6: Executive Documentation Checklist**

Forms Required (Originals Required)	Establish New Position	Initial Career Appt	LT LE NC Appt	Reassignment		Directed Reassignment	Redescribe	Recruit	Transfer In		Retire Transfer Out Abolish
				Est'd Pos	New Pos				Est'd Pos	New Pos	
Form 1390	X	X	X	X	X	X	X	X*	X	X	X
Position Description & Evaluation Statement	X	X	X		X	X	X	X		X	
Qualification Standard	X	X	X	X	X	X	X	X	X	X	
SF-171/Resume and OF-612		X	X	X	X	X			X	X	
Certification Statement		X	X	X	X	X			X	X	
Qualification Analysis		X									
Reference Letter		X**									
15/60 Day Advance Notification				X	X	X					
Biography		X	X	X	X	X			X	X	
Pay Rate Analysis		X	X***								
Rating/Ranking Plan								X			
Original Copies	1 2	1 4	1 2	1 2	1 2	1 2	1 2	1 1	1 2	1 2	1 0

\*Only if new position being established.

\*\* If submitting a case under Criterion C.

\*\*\*Not required for noncareer.



**Section 7: Instruction for Completing OPM Form 1390  
(Executive Personnel Transaction)**

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General Instructions

Use this form for all actions involving positions or individuals in the following pay plans and grades. (The codes for the pay plans are shown in parenthesis.)

Executive Schedule I through V (EX)  
Senior Executive Service (ES)  
Scientific and professional, under 5 USC 3104 (ST)  
Other pay plans for positions at these levels as appropriate

Use the form both to request approval from OPM where required (e.g., QRB cases) and to provide information on actions taken under agency authority. If the form is a correction, write "CORRECTION" at the top.

A single form normally should be used to show changes in only one position and/or incumbent. If a position is canceled, and the incumbent is moved to a newly established executive position, however, both transactions can be shown on the same form.

Submit the form within 5 workdays of the effective date of the action.

Submit two copies of the form, except that for QRB cases submit three copies.

Send the form to:

Assistant Director for Executive Policy Services  
Room 6484  
Office of Personnel Management  
1900 E Street, NW  
Washington, D.C. 20415

How To Fill Out The Form

I. Type of Transaction

If an action is submitted for information in items A or B, give effective date of action. If an action is submitted for OPM approval, leave effective date blank, but put proposed effective date under Agency Remarks in Section VII when known.

A. Actions Involving Position

This section should be filled out in terms of executive positions only. For instance, if a former GS-15 position is upgraded to an SES position, the action should be reported as “Establish new position.” Use the following codes for specific actions identified:

- 01 Establish new position. Use when establishing a position never previously reported. For a newly established Executive Schedule position, give legal authority (e.g., public law number and date) in Agency Remarks in Section VII.
- 02 Reestablish old position. Use when reestablishing a position that was previously canceled.
- 03 Change grade of established position. Use for EX, GS, or OT position only.
- 04 Redescribe established position. Use to change title or organizational location of a position, without a change in pay plan or grade.
- 05 Cancel position (permanent). Use when you do not expect to reestablish the position as an executive position. Fill out information about canceled position under Section II-A, “Former Position.” If an Executive Schedule position is canceled, give legal authority in Agency Remarks in Section VII.
- 06 Cancel position (temporary). Use when you expect to reestablish the position in the future. Fill out information about canceled position under Section II-A, “Former Position.” A temporarily canceled position does not count against an agency’s position allocation, but it will continue to print on Report 30 for information purposes.
- 07 New non-SES excepted appointing authority. Use if Schedule A, B, or C or Noncareer Executive Assignment authority is being requested from OPM or being established under delegated authority.
- 08 Authorization for SES limited appointing authority. Use to request authority. Attach justification.
- 09 Change SES career reserved position to general. Use to request approval. Attach justification.

- 10 Change SES general position to career reserved. Use to request approval. Attach justification.
- 11 Other (specify). Use for reporting position changes not otherwise covered.

B. Actions Involving Individual

- 01 Individual appointed to position (no qualifications approval needed). Use any time an individual is appointed to an executive position (whether by appointment from outside the Government, reassignment, promotion, demotion, or transfer) where OPM approval is not required or where the appointment was effected after OPM approval of the action. If the action is a temporary promotion, show the length of the promotion in Agency Remarks in Section VII. In effective date, give date employee entered or will enter on duty in this position.
- 02 Individual proposed for position. Use when prior OPM or QRB approval is required of the individual's qualifications for appointment, including executive qualifications of candidates for SES position. A qualification evaluation statement should be attached. When requesting approval of SES executive qualifications, indicate in Agency Remarks in Section VII if the basis for consideration is:
  - A - demonstrated executive experience,
  - B - successful participation in an approved candidate development program, or
  - C - special or unique qualities.After receiving OPM approval, a new Form 1390 should be submitted for information showing effective date of the appointment (transaction IB-01). If for some reason an individual is not appointed to a position for which approved, OPM should be notified.
- 03 Individual leaving covered position. Use when the individual is leaving an executive position, but not going into another one (e.g., leaving Government or going to a GS-15 position). If the individual is going to a non-executive position, Section II-A should show the former executive position and Section II-B the new position.
- 04 Salary rate above minimum. Use for appointments to GS position only.

- Show above minimum rate in Agency Remarks in Section VII. If OPM approval is needed, attach justification.
- 05 Conversion under Section 413, CSRA. Use for a conversion after July 13, 1979, but under the conversion provisions of Section 413 of Public Law 95-454, the Civil Service Reform Act of 1978, or other public law.
  - 06 Change in ST salary or SES pay rate. Use for any change in ST salary or SES pay rate.
  - 07 Time-in-grade exception. Use for promotions to GS positions only. If OPM approval is needed, attach justification.
  - 08 Nomination to SES Meritorious Executive Rank. Attach justification
  - 09 Nomination to SES Distinguished Executive Rank. Attach justification.
  - 10 Detail or long-term training. Use for details within the Executive Branch or long-term training if the detail or training is for 120 days or more. Check “Begin” if the form is being submitted to show scheduled detail or detail in progress and enter actual starting date in Effective date.” Check “End” if form is being submitted to show termination of detail previously reported, and enter termination date in “Effective date.” Enter the regular assignment under Section II-A and the detail under Section II-B.
  - 11 SES sabbatical. Check whether sabbatical is beginning or ending. Show the length of the sabbatical, and nature of activity if known, in Agency Remarks in Section VII.
  - 12 Temporary assignment outside Executive Branch. This code includes intergovernmental personnel assignments and assignments to international organizations when the executive will remain on the agency’s rolls. (If the executive is separated from the agency’s rolls while on the assignment, use B-03 even if the executive have reemployment rights to the agency.) Check whether the assignment is beginning or ending. Describe the nature of the assignment, including anticipated length, in Agency Remarks in Section VII.
  - 13 Other (specify). Use for reporting executive changes not otherwise covered, e.g., a change in name.
  - 14 Enter this code and “Individual being developed for SES” for individual

starting SES Candidate Development Program. (See section A under Special Instructions below for further information.)

## II. Position Information

A. Former position. This covers only an individual's former position or information on a position being canceled. Complete only if an action involving an individual has been checked under IB and the individual's former position is in the Federal service or if IA-05 or 06 has been entered. If the individual is coming from outside the Federal service, leave blank. When filling out, follow instructions under B, immediately below.

B. Current or proposed position. Complete in all cases as follows:

- o Position title - Enter official title.
- o Position number - Enter the number assigned to the position in accordance with the instructions below:
  - The first two spaces show the agency code.
  - The third and fourth spaces show the pay plan as abbreviated in the introduction to these instructions. Administrative Law Judges, though in the General Schedule, are treated as a separate pay plan ("AJ") under the position numbering system. The "Other pay plans" all have a position number symbol of "OT."
  - The last four spaces show the number of the position within the pay plan.

Keep the same number for the same position as long as it exists. Do not reuse the number of a permanently or temporarily canceled position for another position. If a canceled position is reestablished, the old position number should be used.

If an agency wants to use its position numbering system to keep track of its allocations, it is possible to use one of the digits in the position number to show that a canceled number is being reused. (For example, if XXES0020 is permanently canceled, the agency could use XXES1020 for a new position using that space. When that position is canceled, the next position would be number XXES2020.)

- o Pay plan - Enter EX for Executive Schedule, ES for Senior Executive Service, GS for General Schedule (including ALJs), ST for ungraded scientific or professional positions engaged in research and development.
- o Grade - If position is EX, enter 01 through 05. If position is in another graded pay plan, fill in appropriately. If position is ES or ST, leave blank.
- o Occupational series - Enter most appropriate occupational series, except leave blank for EX positions.
- o Appointment authority - Enter appropriate code from list below for positions in EX, GS, ST, and OT pay plans. Leave blank for SES positions, since the type of appointment for these positions can vary with the incumbent.

Presidential with Senate approval	PS
Presidential without Senate approval	PA
Career Executive Assignment	CE
Limited Executive Assignment	LE
Noncareer Executive Assignment	NC
Schedule A	SA
Schedule B	SB
Schedule C	SC
Excepted by statute	XS
Competitive	CO
(use for competitive EX or ST position)	
Career or Career Conditional	
(use for competitive GS-15 and below position)	

- o Manager, supervisor, all others - Use the definitions in the Supervisory Grade Evaluation Guide.
- o Geographic location - Enter nine digit code from GSA publication, "Worldwide Geographic Location Codes."
- o Organization code - Enter code in "For OPM use only." Do not use the first, shaded space, or the last space.

### III. Information about the Individual

- A. Name, Social Security Number, Sex.

- B. Current or proposed pay rate, grade, or salary. For individuals who did not convert to SES, the actual (“status quo”) pay plan and grade or salary should be shown.
- C. Previous pay rate, grade, or salary. Complete if there is any change in pay plans or if the individual’s pay rate, grade, or salary changes within a pay plan.

IV. Staffing Information

- A. Where recruited from. If an individual is changing agencies, only the gaining agency should complete this item.
- B. Reason left Federal service. Complete only if the individual left the Federal service. Do not complete if the individual went to another agency or to the legislative or judicial branch.  
  
Code 3 - Retirement: Discontinued Service (RIF, reorganization, transfer of function) - Also use this code when retirement based on position abolishment, early retirement authorized by OPM, or declination of a geographic reassignment.
- C. Where plans to work. Complete if the individual left Federal service as a result of a voluntary action (e.g., resignation or retirement).

V. Information about SES Members Only

- A. Type of appointment. Enter appointment code.
- B. Five-years current continuous service in the civil service. Complete only for individuals receiving their initial appointment to the SES, no matter what the appointment authority. Disregard breaks in service of 3 days or less.
- C. Leaves SES for another Federal position. Complete whether the other position is an executive position (e.g., Executive Schedule) or a non-executive position (e.g., GS-15)
- D. Conversion to Presidential appointment with Senate confirmation. Complete only for a career SES appointee.

VI. Documents Submitted - See instructions for IA and IB to see what documents have to be submitted with what actions.

- VII. Agency Remarks - Use the Remarks section to provide any needed explanations, including any waivers to normal regulations, such as those regarding employment of retired military officers. Cite appropriate section of the form to which the remarks refer.

If the individual is being submitted for QRB approval, cite the number and date of the OPM vacancy list on which the position was announced.

If the individual is receiving his or her initial executive appointment, provide the following information:

Date of Birth: YYMMDD (Year, Month, Day)  
Service Computation Date: YYMMDD (Year, Month, Day)  
Address: Home or office as preferred by the executive (indicate which)

Do not report the Race/National Origin code on the Form 1390. It should be reported separately.

Each form must be signed by the authorized submitting official.

- VIII. OPM Actions and Remarks - This section shows the official OPM (or QRB) action on any agency request for approval of an action.

#### Special Instructions

- A. Individuals entering SES candidate development programs. The OPM Form 1390 should be filled out as indicated below.

I Type of Transaction - In Section B:

- o Enter below B13: "B14 - Individual Being Developed for SES"
- o This is an "N" transaction.
- o The effective date is the date the individual entered the candidate development program.

II Position Information

- o Give current Position Title, Pay Plan, Grade, Occupational Series, Appointing Authority, Managerial Code, Agency, Bureau, Division, and Geographical Code.



III Information about the Individual

- o Give Name, Social Security Number, Sex, and Grade or Salary

VI Agency Remarks -- Enter the following items:

- o Date of Birth: YYMMDD (year, month, day)
- o Service Computation Date: YYMMDD
- o Development Program: XXXXXX (e.g., DYRS87)

- Position 1-2 Agency Key (e.g., DY = Department of Treasury)
- Position 3-4 Alphabetic code if program operates at the Bureau level (e.g., RS = IRS in Department of Treasury). Put 00 if program does not operate at the Bureau level.
- Position 5-6 Fiscal year individual started the program

B. Reemployed annuitants

If an individual retires and is reemployed in other than an executive position (e.g., GS-15), show the action on the Form 1390 as a B-03 only; and enter the type of retirement in Section IV-B.

If an individual retires and is immediately reemployed in an executive position, show the action on the Form 1390 as both a B-03 (for the retirement) and B1-01 (for the new appointment). Section II-A should show the position from which retired and Section II-B the position to which appointed, even if it is the same position. Enter the type of retirement in Section IV-B and "Reemployed Annuitant" in Agency Remarks in Section VII.

If an individual retires and is reemployed at a later date in the SES, show the reemployment action as a B-01 and enter "Reemployed Annuitant" in Agency Remarks in Section VII.

When a reemployed annuitant leaves the Government, show as a B-03 and enter the reason left in Section IV-B as either "Resignation" or "Other" (if terminated).

C. Administrative Law Judges

Before establishing a new ALJ position or appointing an individual to an ALJ position, an agency must submit a Standard Form 59 to the Office of Administrative Law Judges at OPM for approval.

Under guidelines issued by the Office of Administrative Law Judges, all vacant ALJ positions are to be reported to the Office of Executive Personnel as canceled rather than permanently canceled, if the agency has an active request pending with the Office of Administrative Law Judges for filling the position.

D. Executive Exchange Program participants

Normally, Executive Exchange Program participants who are placed in positions at the SES level receive SES limited term appointments; and the Form 1390 is processed like any other SES appointment. In Agency Remarks in Section VII, enter "Executive Exchange Program." In OPM Action and Remarks in Section VII, enter "C" in first INC block. The limited authority must be approved by OPM before the appointment is effected.

There is an experimental program that allows a certain number of participants to volunteer their services to the Government. If the service is voluntary, and the position to which the individual is appointed is equivalent to SES, on the Form 1390 show "OT" in the Position Number, "ZZ" in the Pay Plan, and "SA" in the Appointing Authority. In Agency Remarks in Section VII, enter "Voluntary service in the Executive Exchange Program under P.L. 99-424.

E. Terminal Sick Leave

If an executive is on terminal sick leave, an agency may submit a Form 1390 with a B-03 action showing the individual leaving the position. Enter in Agency Remarks in Section VII that the executive is on terminal leave and the date the leave is scheduled to end. The agency may cancel the position or refill it while the individual is still on leave, so that the individual will not be charged against one of the agency's allocated position spaces.

F. Major reorganization

If an agency has undertaken a major reorganization (e.g., one involving the reassignment of a significant number of executives or the abolition, creation, or realignment of a number of components), the agency should contact the Office of Executive Personnel before preparing Form 1390s. It is often possible to work out arrangements which will reduce the amount of paperwork for the agency and facilitate entry of changes by OPM.

**SUBMISSION OF RACE/NATIONAL ORIGIN DATA FOR EXECUTIVES**

Agency \_\_\_\_\_

Name (last, first) \_\_\_\_\_

SSN \_\_\_\_\_

Circle appropriate code. These are the same codes as used in the Central Personnel Data File.

- A American Indian or Alaskan Native
- B Asian or Pacific Islander
- C Black not of Hispanic Origin
- D Hispanic
- E White not of Hispanic Origin

It is important that the RNO information be kept separate from all data used in qualifications considerations and that the appropriate privacy protections be observed. Therefore, please do not send the information with the OPM Form 1390, but in a separate envelope addressed as follows:

To Be Opened Only By  
Assistant Director, Office of Executive Resources  
Room 6484  
Office of Personnel Management  
Washington, D.C. 20415

**Section 8: Senior Executive Service**  
**Candidate Development Program**

**I. INTRODUCTION**

**A. Purpose**

- (1) To develop a pool of highly qualified, screened, trained, experienced candidates for consideration for executive positions.
- (2) To pre-certify with the Office of Personnel Management (OPM) the executive qualifications of candidates who successfully complete the Candidate Development Program (CDP), in order that candidates selected for SES positions may be appointed to the SES without further merit competition.

NOTE: Operating units may add additional purpose statements in their implementing plans.

**B. Principles**

- (1) The CDP is a significant source of candidates for SES vacancies. It incorporates high selection and developmental standards.
- (2) The length of individual developmental time is flexible and a function of the individual candidate's experience, management skills, and progress in the CDP.

NOTE: Operating units' implementing plans must include a statement in this section declaring whether candidates participate in the CDP on a full time or part time basis, and a statement declaring the effects of noncompletion of the program.

**C. Program Offerings**

SES vacancies are projected biennially. The Operating Unit Executive Resources Board (OERB) determines the frequency and timing of program offerings based on the most recent vacancy projections and the number of candidates in the CDP pool.

## **D. Responsibilities**

- (1) The OERB makes policy, guides and oversees the CDP, determines the frequency and timing of program offerings, makes final selections--or recommendations for final selections--of program participants, approves Individual Development Plans (IDPs), monitors candidate progress, determines when a candidate has completed the program, and evaluates the efficacy of the CDP.
- (2) The Principal Human Resources Manager, or his/her designee, advises the OERB on technical and regulatory matters, secures necessary clearances, advertises the CDP, receives and screens applications, plans and conducts the SES Candidate Orientation Program, schedules other formal and informal training activities for candidates, provides advice to candidates and mentors on training and developmental options, and carries out such other administrative aspects of the CDP as may be required.
- (3) Mentors, who are currently members of the SES, guide and counsel candidates, facilitate rotational assignment, and monitor the candidates' progress and development.

## **II. FUNDING AND STAFFING**

- (1) Operating units must provide sufficient funds to support the CDP. Such funding includes all expenses for formal training, other developmental activities, conferences, travel for candidates, mentors, and staff supporting the program, and candidate salaries (if the CDP is a full time program). Funds for these activities must be separately identified and administered as a distinct activity.
- (2) Operating units must allocate sufficient staff to support the CDP.

NOTE: Operating units implementing plans must specify where in the operating unit budget the CDP funding is located.

## **III. RECRUITMENT AND SELECTION.**

### **A. Recruitment**

- (1) Applicants must be current Federal employees with career status serving in positions at the GS-14 or 15 level or equivalent, or current

Federal employees with career status who have repromotion eligibility to the GS-14 or 15 level or equivalent.

NOTE: Operating units may restrict eligibility to the GS-15 level or equivalent, and/or expand eligibility to include non-Federal employees. These variation, if they are chosen, must be declared in the implementing plan.

- (2) The CDP announcement must be entered into the OPM Federal Job Opportunities Board through the Department of Commerce distribution system as the primary distribution sources. Operating units must specify any additional recruitment sources.

**B. Selection**

- (1) The Principal Human Resources Management Office develops the CDP qualification standard, and submits it through the OERB to the Director for Human Resources Management for approval.
- (2) The CDP qualification standard must include the following items:
  - (a) Demonstrated effectiveness in oral and written communication;
  - (b) Demonstrated effectiveness in problem solving;
  - (c) Demonstrated effectiveness in the exercise of interpersonal skills;
  - (d) Demonstrated ability to be self-directed;
  - (e) Demonstrated ability to be flexible; and
  - (f) Evidence of leadership

NOTE: Operating units may add items to the CDP qualification standard.

- (3) The CDP qualification standard must include a rating plan that describes how the rating factors will be evaluated and the rating/ranking scheme that the Operating Unit uses.

- (4) The Principal Human Resources Management Office performs the preliminary qualifications review, and a panel, established by the OERB and comprised of current SES members, rates, ranks, and identifies Best Qualified applicants. Panels established under this section should include representation of minorities and women.

NOTE: Operating units may be more specific as to the composition of these panels. Any additional requirements must be declared in the implementing plan.

- (5) The OERB must interview each applicant ranked Best Qualified.

NOTE: The OERB may either make final selections of CDP participants, or recommend final selections to the head of the operating unit. Operating units must declare, in their implementing plan, which of these methods will be used.

- (6) Within 30 days of selection, The Principal Human Resources Manager shall inform the Director for Human Resources Management of each candidate's name and work telephone number.

#### **IV. CANDIDATE DEVELOPMENT**

##### **A. Overview**

- (1) Candidate development is centered on acquiring and developing the following executive competencies:
  - (a) Strategic vision;
  - (b) Human resources management;
  - (c) Program development and evaluation;
  - (d) Resources planning and management; and
  - (e) Organizational representation and liaison.

Section 2 of the Appendix provides complete information on the content of these competencies.

- (2) Candidates vary widely with respect to their developmental needs.

Therefore, a specialized training and development program must be developed for each candidate. This specialized program will be recorded in an Individual Development Plan (IDP) for each candidate.

- (3) Since the developmental needs of the candidates vary, so does the length of time it takes them to complete the program. All candidates must, however, either complete the program or be removed from it after 18 months. Discontinuance or withdrawal from the program does not prejudice a candidate's ability to compete for SES positions.

NOTE: Operating units may shorten the time candidates are allowed to remain in the program to not less than 12 months. If a shorter maximum time is selected, it must be declared in the Operating Unit's implementing plan.

## **B. Mentors**

Each CDP candidate must be assigned a mentor within 15 days of selection. Mentors must be current members of the SES, who are willing and able to provide guidance and counseling to candidates over the course of the program.

## **C. Orientation and Assessment**

- (1) Within 30 days of selection of candidates, the Principal Human Resources Management Office shall conduct a CDP Orientation. Attendance by candidates and their mentors is mandatory.
- (2) The orientation must contain the following elements:
  - (a) An explanation of the CDP program goals and expectations;
  - (b) An overview of the development process;
  - (c) A formal assessment of each candidate's developmental needs;
  - (d) An opportunity to draft Individual Development Plans;
  - (e) Identification and discussion of training options and resources; and
  - (f) A discussion of the role and responsibilities of mentors.



NOTE: Operating unit orientation programs may add elements to this core list. Additional areas of coverage must be declared in the implementing plan.

**D. Individual Development Plans**

The IDP is a key element of the Candidate Development Program. Each IDP is individually tailored to include formal training and developmental experiences which would be beneficial based on the candidate's background and the results of the developmental needs assessment. Candidates must complete an IDP and submit it to the Principal Human Resources Manager no later than 15 days following completion of the orientation program. IDPs must be approved by the OERB.

**E. Formal Training Programs**

- (1) A formal training program must provide an opportunity for the candidate to interact with individuals from other agencies, State and local governments, and private sector organizations. This training may be accomplished through 80 hours of formal interagency training or an interagency work experience substantially longer than 80 hours in duration.
- (2) The Federal Executive Institute's "Leadership for a Democratic Society" program is the preferred source of training for candidates. The Director for Human Resources Management will nominate each candidate to attend this program. Candidate flexibility in scheduling their attendance at this highly competitive program is a must.
- (3) The OPM Executive Development Seminar and approved programs offered by other institutions may be substituted for the FEI program with the approval of the OERB.
- (4) The Department of Commerce Executive Forum, or a substitute program approved by the Director for Human Resources Management, is a required element in the formal training of all candidates.
- (5) Candidates may also take advantage of other executive development opportunities which address theories, issues, and skill areas directly related to the candidate's training needs as reflected in the IDP.

NOTE: Operating units may specify additional formal training as mandatory, particularly if such training is directly related to the Operating unit's mission and programs. Any additional required training must be declared in the implementing

plan.

**F. Developmental Assignments**

- (1) Each candidate must complete developmental assignments that total at least four months of full time service outside the position of record.
  - (a) Understudy or “shadow” position, either within the operating unit or elsewhere in Commerce;
  - (b) Special projects or assignments designed to develop one or more of the executive competencies identified in Section IV.A.11;
  - (c) Appointment to DOC task forces or committees; and
- (2) Each candidate must complete at least one rotational assignment that is designed to broaden the candidate’s managerial experience. Examples of rotational assignments are:
  - (a) a candidate from the field to headquarters, or vice versa;
  - (b) a candidate from a line position to a staff or functional assignment, or vice versa;
  - (c) a similar position in a different organization; or
  - (d) an assignment to another agency or another branch of government.
- (3) Candidates must be evaluated in writing by the rotational assignment supervisor within 14 days of the conclusion of the assignment. The evaluation must cover the tasks performed, the managerial competencies enhanced, training received, and the effectiveness of the candidate’s performance in the position. Copies of the evaluation must be provided to the mentor and the OERB.

## **V. PROGRAM COMPLETION**

### **A. Criteria for Program Completion**

- (1) Successful completion of the CDP requires the completion of all training and developmental objectives specified in the IDP, and the concurrence of the OERB.
- (2) Upon the favorable recommendation of the OERB, the Head of the operating unit requests, through the Department of Commerce, OPM Qualifications Review Board (QRB) certification.

NOTE: Operating units must declare in their plans the documentation required for OERB review. Operating units may also require candidates to have an oral interview with the OERB before the Board makes its recommendation. Any requirement for an interview must be declared in the implementing plan.

### **B. OPM Certification**

- (1) Upon QRB certification, an OPM certificate will be presented to each candidate. The certificate is valid for appointment to the SES without further competition for the time period prescribed in OPM regulations.

## **VI PLACEMENT AND FOLLOW-UP**

### **A. Placement in an SES Position**

- (1) Successful candidates are not guaranteed appointment to an SES position. CDP graduates are, however, a significant source of applicants for career SES vacancies within Departmental operating units.
- (2) Graduates who apply for Departmental SES vacancies must be identified as CDP graduates on the list of eligibles sent to the selecting official, and the list of eligibles will include a notation that CDP graduates have been pre-certified by OPM.

NOTE: Operating units may provide additional assistance to CDP graduates. The nature of this assistance must be declared in the implementing plan.

**B. Other Assignments for Certified Candidates**

Operating units should make the best use of the skills of certified SES candidates, even at the non-SES level. Certified candidates may be considered for appropriate GS-15 vacancies, and for high level interagency or intra-agency task forces.

**C. Follow-Up**

Mentors are encouraged to assist former CDP participants who have been appointed to SES positions by providing consultative advice and support.

**D. Mobility Requirements**

Certified candidates may be offered an initial SES appointment in an organization other than the one to which they are assigned, or in a different geographical location. No candidate may be required to accept a particular SES position, but candidates should understand that mobility is one of the basic conditions of employment in the SES.

## **Section 9: Presidential Rank Awards**

### **A. PURPOSE**

To recognize prolonged, high quality accomplishment, the Civil Service Reform Act of 1978 (CSRA) authorizes the President to approve the awarding of ranks and accompanying monetary awards to a select number of SES career executives. Two types of awards are available:

- (1) Meritorious Executive - for sustained accomplishment, which includes a lump sum payment of \$10,000.
- (2) Distinguished Executive - for sustained extraordinary accomplishment, which provides a lump sum payment of \$20,000.

### **B. AWARD RESTRICTIONS**

Presidential Rank Awards shall not be granted during a Presidential election period to employees who are:

- (1) In an SES position and not a career appointee;
- (2) Appointed by the President with Senate confirmation who serve in:
  - (a) An Executive Schedule position, or
  - (b) A position for which pay is set in statute by reference to a section or level of the Executive Schedule.

### **C. ELIGIBILITY**

- (1) SES career appointees, with at least three years of SES or equivalent experience, are eligible for consideration for Rank Awards. Performance for which a nomination is submitted must show sustained accomplishments by a senior executive or equivalent position (such as Senior Foreign Service) over a minimum period of at least three years, preferably longer.
- (2) An individual who receives a rank of either Meritorious or Distinguished Executive is not eligible for that same award during the following four fiscal years.

- (3) A bonus recipient may not be nominated for or receive a Distinguished Rank Award in the same calendar year.
- (4) The combination of a Meritorious Rank Award and Bonus cannot exceed 20% of an appointee's base pay in the same calendar year.
- (5) Nominees must have had a performance rating of at least Commendable for the preceding three years, preferably with the most recent rating being Outstanding.
- (6) To provide for progression in the awarding of ranks, a nominee for Distinguished Executive would normally have received the rank of Meritorious Executive in a previous year. It may be appropriate to confer the rank of Distinguished Executive without regard to progression when only the highest rank would serve as fitting recognition.

**D. OPM CRITERIA FOR RANK NOMINATIONS**

A nominee must have demonstrated (a) sustained accomplishment for Meritorious Executive, or (b) sustained extraordinary accomplishment for Distinguished Executive. Criteria upon which nominees will be evaluated may include, but need not be limited to the following. For each criterion offered, specific examples must be cited:

- (1) Career achievements that are recognized throughout the agency or are acknowledged on a national or international level;
- (2) Specific achievement of significant cost reduction or cost avoidance enabling the agency to reallocate resources to high priority activities;
- (3) Successful use of human resources exhibited through high workforce productivity and/or effective development and recognition of subordinates;
- (4) Demonstration of personal initiative and innovation;
- (5) Substantial improvements in quality of work, efficiency and/or timeliness of service;
- (6) Unusual levels of cooperative effort with other Federal agencies, governmental jurisdictions, and/or the private sector;
- (7) Especially successful efforts in affirmative action;

- (8) Major career related awards and honors received.

In addition to the above criteria, it must be clear that the nominee has demonstrated qualities of strength, leadership, integrity, industry and personal conduct of a level that has established and maintained a high degree of public confidence and trust. 5 USC 4313 also contains general guidelines which may be helpful in structuring an award nomination.

**E. NOMINATION PROCEDURES**

- (1) The Department will announce the Rank Award program to Appointing Authorities who will then request nominations from within their organizations.
- (2) Operating unit PRBs will review nominations and submit them to the appropriate Appointing Authority, with written recommendations on the approval or disapproval, and stating the reasons for its recommendations. A PRB member who has been nominated for a Rank Award may not participate in any Rank Award deliberations.
- (3) The Appointing Authority shall, after considering the PRBs recommendations, submit nominations to the Department, in accordance with the timetable and procedures established annually. Nominations for each rank shall be submitted in priority order.
- (4) In any fiscal year, governmentwide, the number of Meritorious Executive awards may not exceed 5%, and Distinguished Executive awards may not exceed 1% of the total number of SES positions authorized. No operating unit of the Department of Commerce may submit nominations for more than 8% (rounded to the nearest whole number) plus one of its total authorized SES positions for both ranks. The following chart illustrates this concept:

<u>No. of SES Positions</u>	<u>8% Limit</u>	<u>Plus 1</u>	<u>TOTAL</u>
27	2	1	3
11	1	1	2
4	0	1	1

Nominations for the two ranks should be roughly proportional to the 5% to 1% ratio.

**F. SUBMISSION REQUIREMENTS**

Nominations shall be signed by the head of the operating unit and the appropriate Secretarial Officer prior to submission to the Executive Secretary of the Departmental Executive Resources Board (Director for Human Resources Management). The documentation required with each case must include the following as a minimum:

- (1) OPM Form 1390, Executive Personnel Transaction.
- (2) A nomination justification statement not to exceed approximately three pages in length which addresses the selection criteria in a concise, specific manner.
- (3) A concise summary, by date, agency, position, and grade, of the nominee's Federal employment history. Narrative descriptions of duties and responsibilities are not necessary. Included also are the nominee's home mailing address and an exact spelling of his/her full name as it would appear on an award certificate.
- (4) The appropriation code number from which the Rank Award Stipend would be paid.

F. **REVIEW PROCEDURES**

- (1) The Executive Secretary of the Departmental ERB reviews nominations to assure compliance with regulatory and Departmental requirements. Nominations which do not comply will be returned to the submitting Appointing Authority.
- (2) The Departmental ERB screens nominations for Rank Awards and recommends nominees to the Secretary. The ERB may establish an ad hoc group or panel to assist in the initial screening process.
- (3) After review, the ERB submits to the Secretary, documentation on those nominees recommended by the Board and a priority order listing of the nominees. A list of those individuals not recommended by the ERB will also be forwarded to the Secretary.
- (4) The Secretary forwards the selection of the Department's final nominees to the Office of Personnel Management for further consideration and potential selection by the President.

G. **AWARD PAYMENTS**



- (1) If a Meritorious Rank Award amount causes the recipient's aggregate compensation (base salary plus bonuses plus Rank Award) for the calendar year to exceed Level I of the Executive Schedule, then the amount in excess of Executive Level I will be paid at the beginning of the next calendar year.
- (2) The amount paid in excess in the next calendar year, when added to the recipient's base salary, bonuses and Rank Awards, may not exceed the payable rate of Executive Level I.
- (3) OPM regulations will determine the method for distributing Rank Award carry-over amounts to deceased recipients.

## **Section 10: SES Performance Awards (Bonuses)**

### **A. PURPOSE**

SES Performance Awards (Bonuses) are used to recognize career senior executives for their excellent performance during the SES performance appraisal period.

### **B. GENERAL**

- (1) To be eligible for an award, the individual must have been an SES career appointee as of the end of the performance appraisal period.
- (2) Only career senior executives with performance ratings of at least Fully Successful are eligible for SES Bonuses.
- (3) Individuals eligible for an SES bonus include:
  - (a) A former SES career appointee who elected to retain award eligibility under Chapter 5.6 of this manual. If the salary of the individual is above the ES-6 pay rate, the ES-6 rate is used for crediting the agency award pool and the amount the individual may receive under (5) below.
  - (b) A reemployed annuitant with an SES career appointment.
  - (c) An SES career appointee who is on detail.
- (4) SES Bonuses are limited to a funding distribution equal to 3% of the Department's aggregate payroll for career executives on board as of the end of the fiscal year.
- (5) Bonus amounts are computed as percentages of payable salary and range from a minimum of 5% to a maximum bonus of 20% of the appointee's rate of basic pay as of the end of the performance appraisal period. The rate of basic pay does not include locality based comparability payments or special law enforcement adjustments under the Federal Employees Pay Comparability Act of 1990.
- (6) Performance awards shall be paid in a lump sum except in those instances when it is not possible to pay the full amount because of the Executive Level I ceiling on aggregate compensation during a calendar year. In that case, any amount in excess of the ceiling shall be paid at the beginning of the following

calendar year. The full performance award, however, is charged against the agency bonus pool for the fiscal year in which the initial payment was made.

- (7) The Department will provide operating units with projected SES percentages and bonus pools.
- (8) Meritorious Rank Award winners may receive performance awards up to the amount that when combined with the Rank Award would not exceed 20% of base pay.
- (9) Superior Accomplishment Awards under 5 CFR Part 451 which are based on the senior executive's most recent appraisal are prohibited.

### **C. PROCESS AND NOMINATION REQUIREMENTS**

- (1) In October of each year the CFO/ASA will issue overall bonus pool funding and nomination limits for the Department and for each operating unit. At this time a separate bonus pool will be established for the Secretary to recognize outstanding executive performance by organizations or individuals.
- (2) Appointing Authorities must submit their bonus nominations to the Executive Secretary of the Departmental ERB annually in accordance with the annual end of year scheduling activity. Those Appointing Authorities who are part of an organizational cluster must clear bonus recommendations through the top officials of the cluster (e.g., the Under Secretary for Economic Affairs).
- (3) The operating unit submission of bonus nominations must include an original of the following information:
  - (a) On a single sheet:
    - o Name, title and organization of each bonus nominee;
    - o Brief paragraph summarizing the principal accomplishments which justify the bonus (highlighting those covered by the Departmental MBO System); and

- o Whether the bonus nominee is a member of any PRB and participated in PRB reviews that considered his/her proposed nomination;
  - (b) A copy of each performance plan and resulting rating associated with the nomination (no reference concerning bonus nomination or amount is to be made on the performance plan of any executive until formal approval of nominees is received from the Office of the Secretary); and
  - (c) A summary data sheet listing bonus nominees in priority order which includes name, social security number, appropriation code to be charged (if approved), proposed bonus amount, prior years' performance ratings, ES level, years of Departmental and Federal service and previous recognition.
- (4) The Executive Secretary of the Departmental ERB reviews all operating unit bonus submissions for compliance with regulatory and Departmental requirements. Submissions which do not comply will be returned to the appropriate Appointing Authority for necessary changes.
- (5) The Executive Secretary may be asked to develop options for distributing bonuses to each operating unit. These options are incorporated into an overall bonus submission package provided to the Departmental ERB for its deliberations in late November. During these deliberations the Departmental ERB may request personal presentations by Appointing Authorities to justify their bonus recommendations.
- (6) The Executive Secretary makes final recommendations on bonuses to the Secretary in early December. The Secretary must consider the recommendations, but has the final authority as to who is to receive an SES bonus and the amount of the bonus.
- (7) The Inspector General will be responsible for approving SES Bonuses to career senior executives in his/her organization after appropriate reviews by the Departmental Executive Secretary.

**D. SES PAY RATE LEVEL ADJUSTMENT BASED ON PERFORMANCE**

See Manual, Chapter 5, Section 5.4, Administration of Executive Pay for procedures on adjustments based on performance.

**Section 11: Superior Accomplishment Awards**

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**A. SUPERIOR ACCOMPLISHMENT AWARD GUIDANCE**

- (1) All employees in positions above grade GS-15 or equivalent, regardless of pay plan, including those positions that are filled by an appointment by the President by and with the advice and consent of the Senate, are eligible under law to receive all types of incentive awards with two exceptions:
  - (a) SES employees are not eligible for awards based on performance other than SES bonuses.
  - (b) OPM strongly recommends that Presidential appointees whose appointments require Senate confirmation receive honorary, rather than monetary awards. An exception can be made if a career SES member, who transfers into a Presidential appointment position, elects to retain SES benefits.
  
- (2) Requirements
  - (a) Agencies shall not grant awards under this section during a Presidential election period to employees who are in an SES position and not a career appointee.
  - (b) Agencies shall not grant cash awards under this section to employees appointed by the President with Senate confirmation who serve in
    - o An Executive Schedule position, or
    - o A position for which pay is set in statute by reference to a section or level of the Executive Schedule.
  - (b) Use of incentive cash awards as a means of circumventing either statutory language or OPM's guidance on the number and distribution of SES bonuses is prohibited.
  - (c) Either the Secretary or Deputy Secretary must approve personally all incentive award requests for SES members to ensure that the type of award is appropriate and that the individual SES member is deserving of the recognition.
  - (d) Superior Accomplishment Awards are monetary or non-monetary awards given for contributions resulting in tangible benefits or savings

or intangible benefits to the Government. The accomplishment must have been achieved through an individual or group effort in the form of a suggestion or invention or a special act or service in the public interest, connected with or related to official employment, that contributes to the efficiency, economy, or other improvements of Government operations, or achieves a significant reduction in paperwork. A special act or service is a contribution which is:

- o a non-recurring contribution either within or outside the senior executive's job responsibilities;
  - o a scientific achievement; or
  - o an act of heroism.
- (e) Contributions and accomplishments must not reflect sustained superior performance of duties and responsibilities of the employee's assigned position over a specified period of time as measured by the SES performance appraisal system.
- (f) A Superior Accomplishment Award for a Special Act or Service is to be granted at the time the contribution is made, or promptly following the contribution.

(3) Policy and Procedures

- (a) An award recommendation is not an entitlement. The decision to grant an award is a management prerogative and is not grievable.
- (b) Any such award must be reviewed by a special session of the Departmental Executive Resources Board.
- (c) In view of the severe restrictions on the use of Superior Accomplishment Awards for SES members, SES Appointing Authorities should give careful consideration to the senior executive's accomplishments and achievements before recommending this form of recognition.

- (d) All Superior Accomplishment Award recommendations should be forwarded to the Executive Secretary of the Departmental ERB after existing operating unit procedures have been used to process the award recommendation. A copy of the nominee's SES performance plan which covers the period of recognition must accompany any material submitted to the Department. Prior approval must be obtained from the Department before any award involving the payment of cash can be made to an SES member.
- (e) Identification of the various categories of incentive awards can be found in Department Administrative Order 202-451, Incentive Awards Program.
- (f) The amount of a Superior Accomplishment Award is based on tangible and/or intangible benefits realized as a result of the contributions (see DAO 202-451 for tables of award amounts).

**Section 12: Guidelines for Performance Review Boards (PRBS) and the  
Departmental Performance Review Board (DPRB)**

- A. These guidelines should be supplemented by specific operating unit requirements defined in individual PRB charters or the DPRB Charter. PRB's and the DPRB must review initial performance appraisals and ratings and make recommendations to Appointing Authorities for:
- o Final performance ratings;
  - o Retention, reassignment, transfer;
  - o Consideration for an SES Bonus;
  - o Consideration for a salary adjustment; or ES rate level adjustment based on performance; and
  - o Consideration for a Presidential Rank Award.

The DPRB reviews only those senior executives who report directly to Appointing Authorities.

**(1) DPRB Procedures**

- (a) Performance appraisals for DPRB review must include proposed ratings and recommendations.
- (b) DPRB panel members will indicate if they concur based on the documentation submitted, using the additional review criteria identified in Appendix, Section 13.
- (c) The DPRB panel will not initiate recommendations on its own.
- (d) In cases where no explicit recommendations are made, the DPRB will interpret the actions of the supervisor as follows:
  - o RETENTION. A recommendation for a Fully Successful rating or better, (e.g. Commendable or Outstanding) is considered as an implicit recommendation for retention by the supervisor.



- o BONUS. Lack of a recommendation or mention of a bonus by the supervisor is considered as an implicit recommendation that no bonus be awarded.
- o PAY ADJUSTMENT. Lack of a recommendation or mention of a performance-related pay adjustment by the supervisor is considered as an implicit recommendation that no pay adjustment be made.

**(2) DPRB Review Panels**

- (a) Members of the DPRB will be notified regarding the establishment of separate DPRB panels and specific meeting dates.
- (b) DPRB members will generally serve on one panel.
- (c) Each panel will consist of three DPRB members.
- (d) Each panel will complete its work within one day.
- (e) Materials for each DPRB panel will be provided to panel members before the scheduled meeting.
- (f) DPRB members will not be eligible to serve on a panel reviewing their own appraisals, or that of their supervisors or subordinates.
- (g) After completing their reviews, DPRB panels will make written recommendations for the Secretary's or Deputy Secretary's approval of each executive's performance rating.
- (h) The Secretary or Deputy Secretary will convey decisions and return the performance ratings to the respective Appointing Authorities.

**(3) PRB Procedures**

- (a) Each PRB must have a quorum of at least three members to carry out its functions.
- (b) When reviewing an appraisal of a career appointee, more than one-half of the members of the PRB must be SES career appointees.
- (c) Each PRB must have a chairperson who is a DoC employee who will

oversee the activities of the Board and assure that the PRB carries out the functions contained in its charter in accordance with OPM and Departmental requirements.

- (d) Each PRB must have its organization's personnel officer or that official's designee serve as Executive Secretary to provide personnel guidance and administrative support to the PRB.
- (e) Each PRB must make written recommendations to the Appointing Authority concerning senior executives' appraisals and ratings. When the PRB does not concur with the initial appraisal and rating given a senior executive, or the record shows employee or reviewing official disagreement with the rating official's actions, the PRB shall conduct such further review as it finds necessary.

**(4) Recommendations to Appointing Authorities (PRBs only)**

- (a) Written recommendations regarding senior executives' appraisals and ratings must be made to the Appointing Authority. When the PRB does not concur with the initial appraisal and rating or when there is a record of disagreement with the rating by the employee or the reviewing official, the PRB's recommendation must include a justification.
- (b) All bonus recommendations must comply with the requirements and deadlines established by the Department.
- (c) Only career executives are eligible to receive SES Bonuses. The PRB must make recommendations to the Appointing Authority on which senior executives should receive bonuses and on the amounts of these bonuses. Consideration for bonuses should be based only on the appraisal and rating for the current appraisal period.

**(5) Restrictions**

- (a) Although additional restrictions may be listed in PRB charters or the DPRB Charter, at a minimum, a PRB or DPRB member shall not participate in a performance appraisal review when he/she is:
  - o One of the senior executives being reviewed;

- o The rater of the senior executive whose performance is being reviewed;
  - o The direct subordinate of the senior executive whose performance is being reviewed; or
  - o The designated higher level reviewer of the senior executive whose performance is being reviewed.
- (b) In order to participate in PRB or DPRB deliberations, each Federal PRB or DPRB member must have at least a Fully Successful or higher performance rating.
- (c) Each PRB must have at least one member who is not under the jurisdiction of the Appointing Authority.

**Section 13: PRB and DPRB Criteria for Review of Performance  
Appraisals and Ratings**

- A. Performance appraisals, initial ratings, interim ratings and senior executive's written responses, if any, and recommended personnel actions should be reviewed and compared only against the criteria identified in PRB charters. Criteria should include:
- o Relationship to the performance plan. Appraisals and ratings must be based solely on elements and standards incorporated in the senior executive's performance plan.
  - o Thoroughness of the appraisal. The appraisal should evidence a thorough and objective assessment of the executive's total performance.
  - o Fairness. The initial ratings should reflect an accurate assessment of the performance of the senior executive as determined in the performance appraisal.
  - o Level of difficulty. The initial ratings should reflect the level of difficulty and presence of any complicating factors which affected expected outcomes.
  - o Relationship of the proposed rating to the standards for that rating. The proposed rating should be consistent with the generic performance standards and any supplemental standards included in the executive's plan.
  - o Weight given to critical elements. Minimally Satisfactory or Unsatisfactory performance against critical elements must not result in a rating of Fully Successful or better. Likewise, Minimally Satisfactory or Unsatisfactory performance against noncritical elements in the plan should not be given undue weight in the overall rating unless the Minimally Satisfactory or Unsatisfactory performance is recurring or chronic.
  - o Comparability. Assigned ratings given for similar performance should be comparable in all aspects, without regard to organizational lines.
  - o Equity. Recommended personnel actions should be equitable and consistent with regard to performance ratings.
  - o Relationship to MBO's and Departmental objectives.
  - o Level of performance. The highest levels of performance warrant

consideration for SES Performance Awards (Bonuses). Are these executives with recommended performance ratings at the highest levels being considered for SES Performance Awards (Bonuses)?

- o Opportunity to correct deficiencies. To the extent an appraisal includes deficiencies that contributed to a rating of less than Fully Successful, the PRB or DPRB should be provided with an indication whether the senior executive has been afforded an adequate opportunity to correct the deficiencies.

B. In addition to these criteria, PRBs and the DPRB may also have to consider special factors, such as how long performance plans have been in effect.

**Section 14: Sample Executive Biography**

**BIOGRAPHICAL SKETCH**

Name

Present Position

Include a paragraph briefly describing current position responsibilities

Previous Experience

Most Recent Experience

19\_\_ - 19\_\_

Earliest Experience

Education

DCES - \_\_\_\_