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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: These regulations amend the Schedule A excepted service appointing authority for research positions filled through the Research Associate Program of the National Research Council to permit appointments of 2-year duration. These changes implement suggestions by the National Research Council and agencies participating in the program to reflect more accurately the actual duration of most projects and to make the program more attractive to potential associates.

EFFECTIVE DATE: April 21, 1983.

FOR FURTHER INFORMATION CONTACT: William Bohling, Noncompetitive Staffing Branch, Staffing Group, (202) 632-6000.

SUPPLEMENTARY INFORMATION: The National Research Council each year announces competition for postdoctoral research associateships in participating scientific organizations. The Council evaluates and ranks the applicants and refers them to the participating organizations. Federal organizations participating in this program appoint associates under 5 CFR 213.3102(aa), which permits initial appointment for 1 year, with a possible 1-year extension. Participating agencies and the National Research Council have found that projects undertaken by research associates typically require 2 years to complete and that appointments are routinely extended.

To reflect more accurately the actual employment which research associates

may expect, proposed regulations permitting 2-year appointments, subject to satisfactory research progress during the first year, were published on December 7, 1982, (47 FR 54974) for a 60-day comment period. Only two comments were received, both from Federal agencies supporting the proposal.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only the length of appointment of certain nonpermanent Federal employees.

List of Subjects in 5 CFR Part 213

Government employees.
Office of Personnel Management.
Donald J. Devine,
Director.

PART 213—[AMENDED]

Accordingly, the U.S. Office of Personnel Management is revising 5 CFR 213.3102(aa), to read as follows:

§ 213.3102 Entire executive civil service.

* * *

(aa) Scientific and professional research associate positions at GS-11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

* * *

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218)

[FR Doc. 83-7309 Filed 3-21-83; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: Positions filled by National Guard Technicians who are applying for or receiving an annuity based on a disability that disqualifies them from National Guard membership or from holding a military grade required by their technician employment, or by promotion, reassignment or demotion of former National Guard Technicians initially appointed under this authority, are excepted from the competitive service under Schedule A because it is impracticable to examine for them. Establishment of this appointing authority is necessary to implement the provisions of 5 U.S.C. 8337(h).

EFFECTIVE DATE: April 21, 1983.

FOR FURTHER INFORMATION CONTACT: William Bohling, Noncompetitive Staffing Branch, Staffing Group, 202-632-6000.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 8337(h) provides: (1) That a National Guard Technician who is required as a condition of employment to be a member of the National Guard or to hold a certain military grade may be eligible for disability retirement based on a disability that disqualifies the individual from membership in the National Guard or from holding the required military grade; and (2) that any individual applying for or receiving an annuity under this provision "shall, in accordance with regulations prescribed by the Office, be considered by any agency of the Government before any vacant position in the agency is filled if—(A) the position is located within the commuting area of the individual's former position; (B) the individual is qualified to serve in such position as determined by the head of the agency; and (C) the position is at the same grade or equivalent level as the position from which the individual was separated." Interim regulations for referral and consideration of such Technicians for appropriate vacancies are being published in 5 CFR Part 330. However, because National Guard Technicians are appointed under 32 U.S.C. 709(a), which confers no status or eligibility for

movement to other agencies, a special appointing authority is needed to give full effect to the consideration provisions.

Interim regulations published October 1, 1982 (47 FR 43634) established a Schedule A excepted service appointing authority to permit placement of disabled National Guard Technicians in other agencies. Comments on this authority were invited. Only one comment was received from a Federal agency. It suggested: (1) That noncompetitive appointments in the competitive service be authorized instead of Schedule A; (2) that initial appointments be limited to positions at or below the level of an individual's National Guard Technician position; and (3) that provision be made for promotion, demotion or reassignment to other positions in the same agency following initial appointment. The latter two suggestions have been adopted. Provision for noncompetitive appointments in the competitive service would, however, exceed both the letter and intent of 5 U.S.C. 8337(h).

Previous laws and Executive orders which have formed the basis for noncompetitive appointing authorities in the competitive service have stated explicitly that certain persons were to be appointed in the competitive service without regard to the requirements governing competitive appointments. 5 U.S.C. 8337(h) contains no such statement. The statutory intent of controlling retirement outlays by encouraging continued employment of and providing comparable employment opportunities for Technicians who become disabled for military, but not civilian, duties can be met without giving the Technicians benefits of competitive status which they could not have earned in their original appointments.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains solely to the conditions for appointment of certain employees by Federal agencies.

List of Subjects in 5 CFR Part 213

Government employees.

Office of Personnel Management.
Donald J. Devine,
Director.

PART 213—[AMENDED]

Accordingly, the Office of Personnel Management is revising 5 CFR 213.3102(j) to read as follows:

§ 213.3102 Entire executive civil service

(j) Positions filled by (1) appointment of persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) in positions at the same or equivalent grade level, or below, who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment; or (2) reassignment, promotion or demotion within the same agency of former National guard Technicians originally appointed under this authority.

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(5 U.S.C. 3301, 3302, 8337(h))
[PR Doc. 83-7306 Filed 3-21-83; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 359

Removal From the Senior Executive Service; Guaranteed Placement in Other Personnel Systems

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: These final regulations prescribe the procedures for making furloughs of career appointees (other than reemployed annuitants) in the Senior Executive Service and provide an appeal right to the Merit Systems Protection Board for such actions. The regulations will help to ensure that furlough actions are taken fairly, that employees have a means of redress if they believe the actions are not fair, and that furloughs are not used when adverse action, performance removal, or reduction in force is the appropriate action.

EFFECTIVE DATE: April 21, 1983.

FOR FURTHER INFORMATION CONTACT: Neal Harwood, (202) 632-4625.

SUPPLEMENTARY INFORMATION: On January 15, 1982, the Office of Personnel Management (OPM) published interim regulations on furloughs in the Senior Executive Service (SES) (47 FR 2283). The comment period of 60 days from the

date of publication ended on March 16, 1982. Three comments were received from agencies, two from individuals, and one from an organization representing SES members.

The Senior Executives Association (SEA) alleged that OPM did not have statutory authority to issue furlough regulations. As explained in the Supplementary Information section of the Federal Register carrying the interim regulations, although there is no specific statutory reference to SES furloughs, we believe that OPM has authority to regulate furloughs of career appointees under its SES administrative and oversight responsibility accorded by the Civil Service Reform Act of 1978. Further, as indicated in the Summary, the regulations help ensure that furlough actions are taken fairly and are not used in lieu of other personnel actions, such as adverse action.

The SEA raised this same allegation with the Merit Systems Protection Board (MSPB) pursuant to 5 U.S.C. 1205(e), which authorizes the Board to review rules and regulations issued by OPM to determine if they have required or would require any Federal employee to commit a prohibited personnel practice in violation of 5 U.S.C. 2302(b). On September 3, 1982, the Board issued an opinion stating that it had decided not to exercise its discretion to review the challenged regulations. The Board indicated that if the issue of a regulation's validity can or will reach the Board through the ordinary channels of its appellate jurisdiction, it will not review validity outside those channels. The Board pointed out that the regulations specifically allowed a furloughed SES member to appeal to the Board.

A notice of the Board's action was published in the Federal Register on October 8, 1982 (47 FR 44643).

The interim regulations stated that the furlough of a noncareer, limited term, or limited emergency appointee was not subject to the subpart. One commentator recommended adding for clarity purposes that such an appointee may be furloughed without regard to the regulations. This has been done.

One commentator recommended that reemployed annuitants with career appointments also be excluded from coverage of the regulations. They then could be furloughed without regard to competitive procedures and would not have an appeal right to the Merit Systems Protection Board. A reemployed annuitant serves at the pleasure of the agency and may be released permanently at any time without having an appeal right. We

agree, therefore, with the recommendation and have excluded reemployed annuitants from coverage of the regulations.

The interim regulations stated that furloughs result from "lack of work or funds or other nondisciplinary reasons." One commentator recommended eliminating "or other nondisciplinary reasons" as being too broad in meaning. We have retained the phrase to clarify that furloughs are nondisciplinary and to cover possible situations not involving lack of work or funds. Similar language is in 5 U.S.C. 7511(a)(5) governing furloughs of executives not in the Senior Executive Service.

Two commentators suggested editorial changes in the definition of "furlough."

The suggestion was that the definition be revised from the placing of an appointee "in a temporary status without duties and pay" to the placing of an appointee "temporarily in a nonduty and nonpay status." Although the suggested change may be somewhat clearer, we have retained the current definition since it is the same as in 5 U.S.C. 7511(a)(5) for furloughs outside the SES.

One commentator recommended adding a section providing that an appointee may voluntarily request a furlough. We do not believe this addition is appropriate as it may cause confusion with requests for leave without pay.

One commentator recommended that competitive procedures for furloughs be required only if the furlough exceeds 60 calendar days, rather than the 30 calendar days in the interim regulations. We have retained the 30-day requirement as it is consistent with 5 CFR Part 351 procedures for employees outside the SES.

One commentator recommended that in the absence of any agency policy as to SES furlough competitive procedures, the agency shall follow the SES RIF competitive procedures. We do not believe this is necessary, since an agency must specify prior to a furlough what procedures it will use.

The interim regulations provided that an employee may appeal to the Merit Systems Protection Board if the regulations have not been correctly applied. One commentator recommended that the regulations be amended to provide that an employee may also appeal if the agency's procedures have not been correctly applied. This is implied in the interim regulations, but has been specified in the final regulations.

One commentator recommended that the regulations state that appeals shall not be submitted to the MSPB until after the effective date of the furlough and

state the time limits for submitting appeals. Since the determination of what the time limits for an appeal are and when it will be accepted are within the jurisdiction of the Board itself, it would not be appropriate for OPM to regulate on these matters. As a matter of information, current Board regulations provide that an appeal may be submitted within 20 calendar days of the effective date of the action.

One commentator recommended that instead of a single 30-day advance written notice, there should be provisions for general and specific written notices as management options. There is nothing to prevent this under the present regulations where appropriate. For example, an agency may provide a general notice explaining that a furlough may be necessary and giving the reasons, and then provide a specific notice with the effective dates if the dates are not known at the time of the first notice.

One commentator recommended that the notice give the reason if the notice period is less than 30 days. This change has been made. Another recommendation was to require that the notice explain any changes in retirement, health insurance, or life insurance benefits. Although an agency should provide this information to employees, we do not believe the notice is the only means for doing so and have not included the recommendation in the final regulations.

One commentator asked about the effect of a furlough on the completion of the Senior Executive Service probationary period and recommended providing credit for up to 22 work days. We agree with the credit suggestion, but believe it would be more appropriate to incorporate it in the forthcoming FPM Supplement 920-1 on the Senior Executive Service than in these regulations.

E. O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it deals with the Senior Executive Service of the executive branch of the Federal Government.

List of Subjects in 5 CFR Part 359

Government employees.

Office of Personnel Management.

Donald J. Devine,
Director.

Accordingly, the Office of Personnel Management is amending 5 CFR Part 359 by:

1. Revising the heading for Part 359 to read as follows:

PART 359—REMOVAL FROM THE SENIOR EXECUTIVE SERVICE; GUARANTEED PLACEMENT IN OTHER PERSONNEL SYSTEMS

2. Revising Subpart H, §§ 359.801 through 359.807, to read as follows:

Subpart H—Furloughs in the Senior Executive Service

Sec.	
359.801	Agency authority.
359.802	Definitions.
359.803	Competition.
359.804	Length of furlough.
359.805	Appeals.
359.806	Notice.
359.807	Records.

Authority: 5 U.S.C. 3133 and 3136.

Subpart H—Furloughs in the Senior Executive Service

§ 359.801 Agency authority.

This subpart sets the conditions under which an agency may furlough career appointees in the Senior Executive Service. The furlough of a noncareer, limited term, or limited emergency appointee is not subject to this subpart. The furlough of a reemployed annuitant holding a career appointment also is not subject to the subpart.

§ 359.802 Definitions.

For the purpose of this subpart, "furlough" means the placing of an appointee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

§ 359.803 Competition.

Any furlough for more than 30 calendar days shall be made under competitive procedures established by the agency. The procedures shall be made known to the SES members in the agency.

§ 359.804 Length of furlough.

A furlough may not extend more than one year. It may be made only when the agency intends to recall the appointee within one year.

§ 359.805 Appeals.

A career appointee who has been furloughed and who believes this subpart or the agency's procedures have

not been correctly applied may appeal to the Merit Systems Protection Board under provisions of the Board's regulations.

§ 359.806 Notice

(a) An appointee is entitled to a 30 days' advance written notice of a furlough. The full notice period may be shortened, or waived, only in the event of unforeseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities.

(b) The written notice shall advise the appointee of:

(1) The reason for the agency decision to take the furlough action.

(2) The expected duration of the furlough and the effective dates;

(3) The basis for selecting the appointee for furlough when some but not all Senior Executive Service appointees in a given organizational unit are being furloughed;

(4) The reason if the notice period is less than 30 days;

(5) The place where the appointee may inspect the regulations and records pertinent to the action; and

(6) 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.

§ 359.807 Records.

The agency shall preserve all records relating to an action under this subpart for at least one year from the effective date of the action.

[FR Doc. 83-7304 Filed 3-21-83; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 271

Food Stamp Program; Eligibility Criteria and Reduction or Termination of Benefits

Correction

In FR Doc. 82-33824 beginning on page 55903 in the issue of Tuesday, December 14, 1982, make the following corrections:

In § 271.2, page 55908, center column, in the 19th line from the top, "benefits

states or" should have read "benefits stated or".

BILLING CODE 1505-01-M

Packers and Stockyards Administration

9 CFR Part 201

General Bonding Regulations

Correction

In FR Doc. 83-5207 beginning on page 8804 in the issue of Wednesday, March 2, 1983, make the following corrections.

1. On page 8807, third column, eighth line of the third complete paragraph, "to" should read "on".

2. On page 8808, first column, tenth line of the third paragraph, "other such" should read "such other". In the same column, the last word of the fifth line of paragraph (b) reading "of", should read "on".

3. On page 8808, second column, eleventh line of paragraph (c), "amounts" should read "amount"; and in the thirteenth line, "obtaining" should read "obtained".

BILLING CODE 1505-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

Agents and Associated Persons of Futures Commission Merchants; Statement of Policy

AGENCY: Commodity Futures Trading Commission.

ACTION: Statement of policy.

SUMMARY: Recent amendments to the Commodity Exchange Act ("Act") will eliminate the current category of unregistered "agents" of futures commission merchants ("FCMs") and will further require many of those agents to be registered with the Commodity Futures Trading Commission ("Commission") as "introducing brokers." In addition, individuals employed by such agents as associated persons ("APs") would no longer be required to be registered as APs of the sponsoring FCM but could instead be registered under the sponsorship of the introducing broker. The Commission has announced that it will continue to accept applications for registration and related reports filed in accordance with the Commission's existing regulations until such time as it makes effective

final regulations implementing the above-described statutory changes.

EFFECTIVE DATE: March 22, 1983.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Rosenzweig, Assistant Chief Counsel, or Robert P. Shiner, Assistant Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone: (202) 254-8955 or 254-8703, respectively.

SUPPLEMENTARY INFORMATION: The Futures Trading Act of 1982 ("FTA") has amended the Commodity Exchange Act, *inter alia*, to require the registration with the Commission of "introducing brokers" and to eliminate the former unregistered statutory category of "agents" of futures commission merchants.¹ As a result, most agents of FCMs will be required to register with the Commission as introducing brokers,² which is defined in the FTA to mean:

any person, except an individual who elects to be and is registered as an associated person of a futures commission merchant, engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.³

Section 212 of the FTA further provides generally that any person associated with an introducing broker in any capacity which involves the solicitation or acceptance of customers' orders or the supervision of any persons so engaged must be registered with the Commission as an AP of that introducing broker. By comparison, prior to the enactment of the FTA, Section 4k of the Act and § 3.12 of the Commission's regulations thereunder (17 CFR 3.12) specified that such an individual could be registered as an

¹ See Futures Trading Act of 1982, Pub. L. No. 97-444, sections 207, 208, 212, 96 Stat. 2302, 2303-04 (January 11, 1983), amending Sections 4d, 4f, and 4k of the Commodity Exchange Act (7 U.S.C. 6d, 6f, 6k).

² See, e.g., H.R. Rep. No. 97-565, 97th Cong., 2d Sess. 87 (1982).

³ Futures Trading Act of 1982, Pub. L. No. 97-444, section 201(1), 96 Stat. 2297, amending Section 2(a) of the Act (7 U.S.C. 2). Persons who now do business as agents of FCMs could, of course, become branch offices of an FCM if the agent and its employees were properly registered as associated persons and other conditions of the Commission's regulations (see, e.g., 17 CFR 3.10(c), 3.31) were met.