Federal Register
Vol. 57, No. 57
Tuesday, March 24, 1992

Presidential Documents

Title 3—

The President

Proclamation 6415 of March 20, 1992

National Safe Boating Week, 1992

By the President of the United States of America

A Proclamation

America's marine resources are a national treasure. The vast systems of lakes, rivers, and bays across this great land, and the oceans which touch our shores have played a pivotal role in the development of United States industry, agriculture, energy production, and commerce. Beautiful and inviting, our Nation's inland waterways and coastal regions have also provided generations of Americans with opportunities for relaxation and fun. This year, it is anticipated that more than 19 million Americans will engage in recreational boating.

While we Americans are fortunate to have the freedom to enjoy boating and related activities on the open water, at the same time, it is important to remember that an improperly handled watercraft can be dangerous or even deadly. Tragically, about 900 persons die each year on our Nation's waterways. All too often, these deaths are caused by human carelessness and neglect.

To help prevent boating-related accidents, the United States Coast Guard is working together with other government agencies and with private organizations around the country to encourage Americans to "Boat Smart." Smart boating begins with making safety the first priority of every pilot and passenger. Every watercraft operator should know his or her vessel—its equipment, its condition, and its capabilities—as well as the rules and courtesies of navigation. Pilots should have knowledge of and respect for the marine environment in which they will be operating, and all boaters should be aware of prevailing and forecasted weather conditions. Pilots and passengers alike should be equipped with life jackets and know what to do in the event of an emergency. Moreover, because the ability to "Boat Smart" requires clear judgment and physical readiness, no one should operate a watercraft while under the influence of alcohol or drugs.

As these fundamentals of safety indicate, smart boating goes hand in hand with common sense—and with a sense of personal responsibility and concern for others.

To help promote safe boating practices, the Congress, by joint resolution approved June 4, 1958 (36 U.S.C. 161), as amended, has authorized and requested the President to proclaim annually the week beginning on the first Sunday in June as "National Safe Boating Week."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning June 7, 1992, as National Safe Boating Week. I encourage the Governors of the 50 States and the Commonwealth of Puerto Rico and officials of other areas subject to the jurisdiction of the United States to provide for the observance of this week. I also urge all Americans to take this opportunity to learn more about boating safety.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of March, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.

[FR Doc. 92-7023
Filed 3-23-92; 11:35 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 57, No. 57
Tuesday, March 24, 1992

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 9, 212, 213, 214, 300, 305, 317, 319, 335, 338, 352, 353, 359, 432, 534, 536, 591, and 630

RIN 3206-AE27

Senior-Level and Senior Executive Service Positions

AGENCY: Office of Personnel Management.

ACTION: Final regulations

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations governing pay setting and employment procedures for senior-level, scientific and professional, and Senior Executive Service positions under the Federal Employees Pay Comparability Act of 190 (FEPCA). FEPCA abolished grades GS-16, 17, and 18 of the General Schedule; made changes affecting the pay of positions formerly at these grades, scientific and professional positions established under 5 U.S.C. 3104, and Senior Executive Service positions; and also made certain other changes affecting these positions and their incumbents. The regulations are intended to assure that all rights and benefits are maintained for covered employees.

EFFECTIVE DATE: April 23, 1992.

FOR FURTHER INFORMATION CONTACT: Neal Harwood at 202-606-1610 (FTS 266-1610).

SUPPLEMENTARY INFORMATION: The Federal Employees Pay Comparability Act of 1990 (FEPCA), Public Law 101-509 of November 5, 1990, and Executive Order 12748 of February 1, 1991, made a number of changes affecting the pay and employment conditions of executive positions and personnel. Interim regulations implementing these changes were published on April 23, 1991 (56 FR 18658). We received comments from seven agencies, one group of employees, and an executive organization. Comments are summarized below, along with any revisions that have been made in the interim regulations.

Senior Executive Service (SES) Aggregate Compensation

FEPCA established in 5 U.S.C. 5307 a Governmentwide limitation on certain payments during the calendar year when the payments together with basic pay would exceed pay for Executive Level I as of the end of the calendar year. These payments included allowances (including physicians comparability allowances and retention allowances), differentials, bonuses (including recruitment and relocation bonuses), awards (including SES performance and rank awards), and other similar cash payments. In the interim regulations we interpreted the limitation in 5 U.S.C. 5307 as impliedly superseding the fiscal year limitation on aggregate compensation that was in 5 U.S.C. 5383(b)(1) for SES employees alone because 5 U.S.C. 5307 was the broader, more general, and more recent law. Therefore, we revised 5 CFR 534.402 to provide that SES employees are subject to the aggregate compensation limitations in the new 5 CFR part 530, subpart B, which implemented 5 U.S.C. 5307, in lieu of the 5 U.S.C. 5383(b)(1) limitation.

The executive organization objected to applying the 5 U.S.C. 5307 limitation to SES employees and argued that they should still be subject to the limitation in 5 U.S.C. 5383(b)(1). It further argued that SES employees should continue to be able to carry over compensation in excess of Executive Level I to the next year as they were able to do under 5 U.S.C. 5383(b)(1). For the reasons stated at the time the interim regulations were published, it is still our interpretation that 5 U.S.C. 5383(b)(1) is superseded by 5 U.S.C. 5307. It should be noted, however, that all excess payments that could be carried over to the next year under 5 U.S.C. 5383(b)(1) by SES employees (i.e., performance awards, Presidential rank awards, and physicians comparability allowances) can still be carried over under 5 U.S.C. 5307. Further, under Public Law 102-77 of July 26, 1991, recruitment and relocation bonuses and retention allowances also can be carried over to the next calendar year by SES employees.

Section 534.403 of the regulations on SES performance awards has been revised to change the reference to the aggregate limitation on compensation from fiscal year to calendar year to conform with 5 U.S.C. 5307.

Senior-Level (SL) and Scientific and Professional (ST) Pay

(1) Background

FEPCA established a new 5 U.S.C. 5376 on pay setting for (a) senior-level (SL) positions classified above GS-15 (i.e., positions formerly graded at GS-16, 17, and 18 that were not administrative law judges or members of agency boards of contract appeals), and (b) scientific and professional (ST) positions engaged in research and development and established under 5 U.S.C. 3104 (these positions were formerly paid under 5 U.S.C. 5371). The interim regulations established a new subpart E of part 534 to cover pay for these two categories of positions.

(2) Effective Date of Pay Increases

The interim regulations provided in § 534.503 that agencies must adopt written procedures to show how pay for employees subject to 5 U.S.C. 5376 will be set. Under the interim regulations and FPM Letter 534-9, pay could not be increased until agency written procedures were established, except to meet the minimum rate established by the section; and increases in pay could be made on a prospective basis only.

The executive organization, one agency, and the group of employees who commented argued that agencies should be allowed to make pay increases on a retroactive basis. The various dates that were proposed were the effective date of the regulations (the first full pay period beginning on or after April 23, 1991); February 10, 1991, the first date that the regulations issued under FEPCA for SL and ST positions could have been effective; and the first full pay period in January 1991, when the most recent SES pay increases were effective.

It should be noted that SL employees in fact did receive a pay increase in January 1991 when they were in the General Schedule and the General Schedule salary rates were adjusted by an average 4.1 percent. Further, with the increase in the Executive Level V ceiling on General Schedule pay in January 1991, all salary rates through GS–18 became fully payable; and employees at GS–16, step 6, and above received increases in payable salaries that exceeded 4.1 percent. Agencies in January 1991 also had the authority to increase ST pay, which at the time could be set between GS–16, step 1, and GS–18.

FEPCA provided that the pay provisions could be made effective not earlier than 90 days and not later than 180 days after enactment. There was no requirement in FEPCA that pay for SL and ST employees be increased, unless an employee's former rate of pay was less than the minimum rate provided under 5 U.S.C. 5376, in which case the increase to the minimum rate was to be made effective as of the effective date of the regulations. That was the only basis in law for making SL and ST pay increases retroactive. Since all other pay increases were optional with the agency, they had to be made on a prospective basis only, following necessary approvals within the agency.

(3) Definition of "Agency" for Pay-Setting Purposes

Two of the military departments recommended that "agency" for pay setting purposes be defined in subpart E of part 534 as including an executive agency or a military department as it is in § 534.401(a) of the regulations for the Senior Executive Service. The Department of Defense, however, has indicated it prefers that policies and procedures for setting SL and ST pay be established at the Department level and that the authority for individual pay setting be delegated by the Department to the military departments. Unlike the SES, where the law specifies that employees will be paid based on specific pay rates established by the President, in the SL and ST pay systems agencies may establish whatever pay structure they like within the minimum and maximum rates established by law. In view of the Department of Defense's wish to establish common policies and procedures for SL and ST pay throughout the Department, we have not defined "agency" to include a military department.

(4) Pay Setting Procedures

Under the interim regulations, agencies could use any dollar amount within the minimum and maximum amounts established by 5 U.S.C. 5376 (120 percent of GS–15, step 1, and Executive Level IV), establish a fixed number of specific rates, or establish a series of pay ranges. The executive organization stated that OPM should establish pay levels comparable to the six rates in the SES rather than allowing agencies to use the full pay range provided in the law. The organization argued that individuals should be paid based on their duties and responsibilities, that in most instances the duties and responsibilities of SL and ST employees are identical to those of SES employees, and that individuals performing similar duties in different agencies should receive the same pay.

In fact, if the duties and responsibilities of SL and ST positions were the same as for SES positions, the positions would have to be placed in the SES in accordance with 5 U.S.C. 3132(a) unless the agency or the positions were excluded from the SES by statute or by the President.

In any event, however, unlike the former GS–16, 17, and 18 pay system, the SL and ST pay systems do not base pay solely on the position the individual occupies. As in the SES, the duties and responsibilities of the position are one factor that an agency may take into account in adjusting pay; but agencies are supposed to consider other factors as well, such as performance.

Although by law there must be a fixed number of pay rates for SES positions, no such requirement exists for SL and ST positions. In view of the factors discussed above, we believe it is appropriate to continue to use the full pay range provided in law for SL and ST positions.

(5) Twelve-Month Waiting Period Between Pay Adjustments

The interim regulations at § 534.503(c) provided that pay for SL and ST employees may be adjusted only once every 12 months, similar to the restriction for pay setting in the SES. The regulations also provided that any annual adjustment in pay each January at the time General Schedule pay rates are adjusted would not be considered to start a new 12-month period if it did not exceed the General Schedule adjustment.

One agency stated that it would like to be able to increase the pay of an executive who is given additional responsibilities immediately, even if the executive had received a pay increase within the previous 12 months. Another agency recommended that temporary pay increases should be permitted when an employee assumes substantial additional duties for a specified period of time without regard to the 12-month waiting period and without regard to the adverse action procedures in 5 CFR part 752 when the employee is returned to the former pay level. We have not made either of these changes, however, since pay under the SL and ST systems is not based directly on the position that the executive occupies, but also takes into account qualifications, performance, etc.

Several agencies requested that agencies be allowed to increase pay at the time of the January adjustments up to the higher of either the General Schedule or SES adjustment that occur at the same time without regard to the 12-month waiting period. At least one agency wants to link certain of its SL and ST rates to the SES rates, and this would not be possible if the SES increases exceeded the General Schedule increases. The maximum pay rate for the SES may not exceed level IV of the Executive Schedule, and it is possible that the annual Executive Schedule increase could exceed the General Schedule increase, although for the January 1992 pay adjustment, the increase for the General Schedule was 4.2 percent and for the Executive Schedule 3.5 percent.

There is no automatic adjustment for SES pay rates each January, however, as there is for General Schedule and Executive Schedule rates based on changes in the Employment Cost Index. Rather, the President has the authority to adjust the rates within the minimum and maximum rates permitted by law; and it is possible for there to be different percentage increases for each of the rates. We do not believe it is appropriate, therefore, to link the SL and ST increases directly to the SES increases.

What we have done instead is to revise the regulations to provide that agencies may adjust SL and ST pay at the time of the annual January adjustments without regard to the 12-month waiting period if the adjustment does not exceed the greater of the General Schedule or the Executive Schedule increase at the time. In that case, the individual's pay may be increased even if the individual has had a pay adjustment within the previous 12 months; and the increase does not start a new 12-month waiting period.

The regulations also have been revised to clarify that the 12-month waiting period applies only to pay changes within an agency and not when an individual transfers between agencies. A similar provision already exists for pay setting in the SES.

Senior-Level (SL) and Scientific and Professional (ST) Employment Procedures

(1) Background

With the abolishment of the executive assignment system by Executive Order

12748, positions and incumbents formerly under the system became subject to the normal procedures governing the competitive and excepted services, except where special procedures are provided in regulation or the Federal Personnel Manual. A new part 319 was established covering employment procedures for scientific and professional (ST) and senior-level (SL) positions classified above GS-15 in the executive branch.

(2) Position Allocations

The interim regulations provided in §§ 319.201 and 319.301 that SL and ST positions could be established only under an allocation approved by OPM.

Two agencies recommended eliminating the requirement that OPM allocate SL position spaces to agencies on the basis that there is no statutory requirement that OPM provide allocations, elimination would simplify administration, and allocation will impede agencies in responding effectively to new program requirements and unduly lengthen the hiring process. Even though there is no statutory requirement for the allocation of SL positions, there is statutory authority in 5 U.S.C. 5108; and we consider it appropriate that SL positions be allocated as are ST and SES positions. Once an agency has its allocation, it may establish positions without the further approval of OPM. Advance planning should forestall any long delay in filling positions.

For the purpose of simplification, the allocation provisions in §§ 319.201 (SL positions) and 319.301 (ST positions) in the interim regulations have been combined at § 319.102(a); and the remaining paragraphs in § 319.102 have been renumbered accordingly. Further, the provision in 5 U.S C. 5108 that OPM may allocate SL positions only in executive agencies has been specified in the regulations.

(3) Competitive Appointments

Under the provisions of 5 U.S.C. 1104, the regulations delegate to agencies the authority to recruit and examine for SL positions in the competitive service, establish competitor inventories (registers), and issue certificates of eligibles. All actions must be taken in conformance with requirements of law, regulation, and FPM instructions. Most agencies have had this authority since 1979 under individual delegation agreements for GS-16, 17, and 18 positions.

Under 5 U.S.C. 3325, all ST positions are in the competitive service, but appointments are made without competitive examination. Therefore, there is no need to delegate examination authority for the filling of ST positions.

(4) Movements Between Pay Systems

One agency recommended that noncompetitive movements be allowed between senior-level (SL) and equivalent systems. These movements are allowed if both the old and new positions are in the competitive service (e.g., from an ST position to a career SL position), or if a career SES employee is moving to a career SL position and has reinstatement rights in the competitive service. (The agency is not required to use merit promotion procedures for such movements.) It should be noted, however, that any movement of a career SES employee to an SL (or ST) position must be voluntary unless the action is taken under reduction-in-force procedures.

Noncompetitive movements are not allowed of an SL or ST employee to a career SES appointment unless the individual has reinstatement rights in the SES since 5 U.S.C. 3393 requires competition for initial career appointment to the SES.

Miscellaneous

In addition to the changes in the interim regulations that were made to take into account the abolishment of grades GS-16, 17, and 18 and the executive assignment system, the following technical changes have been made in the final regulations.

(1) 5 CFR 212.301, which defines "competitive status," has been revised to indicate that career executive assignments under the former executive assignment system no longer exist, but were a basis previously for acquiring competitive status.

(2) 5 CFR 300.402, 317.901(c)(1)(ii), 335.102(a) and (f)(2), 338.101(b), 352.307(b), 352.703(b)(3), 352.803 (c) and (d), 352.904(b)(3), 359.406(b), 359,503(b), 359.701(a), and 432.102(f) have been revised to remove references to the former executive assignment system.

(3) 5 CFR 591.203 has been revised to make editorial corrections.

E.O. 12291, Federal Regulation

I have 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 will only affect Federal Government employees who are in executive positions.

List of Subjects

5 CFR Parts 9, 212, 213, 214, 300, 305, 317, 319, 335, 338, 352, 353, 359, 432, and 630

Government employees.

5 CFR Parts 534, 536, and 591

Government employees, Wages.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director

Accordingly, OPM's interim regulations removing 5 CFR parts 9 and 305, amending 5 CFR parts 213, 214, 300, 317, 353, 534, 536, 591, and 630, and adding 5 CFR part 319, published April 23, 1991 (56 FR 18658), are adopted as final with the following changes; and conforming amendments are made to 5 CFR parts 212, 335, 338, 352, 359, and 432 as set forth below:

PART 212—COMPETITIVE SERVICE AND COMPETITIVE STATUS

1. The authority citation for part 212 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

2. In § 212.301, the first two sentences are revised to read as follows:

§ 212.301 Competitive status defined.

In this chapter, competitive status means an individual's basic eligibility for noncompetitive assignment to a competitive position. Competitive status is acquired by completion of a probationary period under a career-conditional or career appointment, or under a career executive assignment in the former executive assignment system, following open competitive examination, or by statute, Executive order, or the Civil Service rules, without open competitive examination.* * *

PART 300—EMPLOYMENT (GENERAL)

3. The authority citation for part 300 continues to read as follows:

Authority: 5 U.S.C. 552, 3301, and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 11478, 3 CFR 1966–1970 Comp., page 803.

Secs. 300.401 through 300.408 also issued under 5 U S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U S.C. 1104.

4. Section 300.402 is revised to read as follows.

§ 300.402 Coverage.

This part applies to filling positions in the competitive service; positions in the expected service under Schedules A, B, and C; and positions in the Senior Executive Service.

PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

5. The authority citation for part 317 continues to read as follows:

Authority: 5 U.S.C. 3392, 3393, 3393a, 3395, 3397, 3593, and 3595.

6. Section 317.901 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 317.901 Reassignments.

* * * * *

(c) * * *

(1) * * *

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

* * * * *

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

7. The authority citation for part 319 continues to read as follows:

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

8. Section 319.102 is revised to read as follows:

§ 319.102 Procedures.

The following procedures apply to positions subject to this part:

(a) SL positions in an executive agency and ST positions in any agency may be established only under a position allocation approved by OPM. Prior approval of OPM is not required to establish individual positions within the allocation, but the positions must be established in accordance with standards and procedures established by OPM in the Federal Personnel Manual. OPM reserves the right to require the prior approval of individual positions if the agency is not in compliance with these standards and procedures.

(b) Agency heads are responsible for establishing qualifications standards for SL and ST positions in accordance with criteria established by OPM in the Federal Personnel Manual.

(c) Agency heads are delegated authority to approve the qualifications of individuals appointed to SL and ST positions.

(d) Agency heads are delegated authority to recruit and examine applicants for SL positions in the competitive service, establish competitor inventories, and issue certificates of eligibles in conformance with the requirements of law, regulations, and Federal Personnel Manual instructions. ST positions are filled without competitive examination under 5 U.S.C. 3325.

(e) Pay is subject to subpart E of part 534 of this chapter.

8a. Part 319 is amended by removing subpart B, consisting of § 319.201, and subpart C, consisting of § 319.301.

PART 335—PROMOTION AND INTERNAL PLACEMENT

9. The authority citation for part 335 continues to read as follows:

Authority: 5 U.S.C. 3301, 3301, E.O. 10577; 3 CFR 1954–1958 Comp. p. 218.

10. The introductory text of § 335.102 and paragraphs (a) and (f)(2) are revised to read as follows:

§ 335.102 Agency authority to promote, demote, or reassign.

Subject to § 335.103 and, when applicable, to part 319 of this chapter, an agency may:

(a) Promote, demote, or reassign a career or career-conditional employee;

* * * * *

(f) * * *

(2) This paragraph applies to a career, career-conditional, status quo, indefinite, or term employee and to an employee serving under an overseas limited appointment of indefinite duration, or an overseas limited term appointment.

* * * * *

PART 338—QUALIFICATION REQUIREMENTS (GENERAL)

11. The authority citation for part 338 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, E.O. 10577, 3 CFR 1954–1958 Comp. p. 218.

12. Section 338.101 is amended by revising paragraph (b) to read as follows:

§ 338.101 Citizenship.

* * * * *

(b) A person may be given an appointment in the competitive service only if he or she is a citizen of or owes permanent allegiance to the United States. However, a noncitizen may be given an appointment in rare cases under § 316.601 of this chapter, unless the appointment is prohibited by statute.

* * * * *

PART 352—REEMPLOYMENT RIGHTS

Subpart C—Detail and Transfer of Federal Employees to International Organizations

13. The authority citation for subpart C of part 352 continues to read as follows:

Authority: 5 U.S.C. 3584, E.O. 11552, 3 CFR 1966–1970 Comp., p. 954; § 352.313 also issued under 5 U.S.C. 7701, et seq.

14. In subpart C, § 352.307 is amended by revising paragraph (b) to read as follows:

§ 352.307 Eligibility for transfer.

* * * * *

(b) A person serving in the executive branch in a confidential or policy-determining position excepted from the competitive service under Schedule C of part 213 of this chapter.

* * * * *

Subpart G—Reemployment Rights of Former Bureau of Indian Affairs and Indian Health Service Employees After Service Under the Indian Self-Determination Act in Tribal Organizations

15. The authority citation for subpart G of part 352 continues to read as follows:

Authority: Sec. 105(i), Pub. L. 93–638, 88 Stat. 2210 (25 U.S.C. 450); E.O. 11899; 41 FR 3459; § 352.707 also issued under 5 U.S.C. 7701, et seq.

16. In subpart G, § 352.703 is amended by revising paragraph (b)(3) to read as follows:

§ 352.703 Basic entitlement to reemployment rights on leaving Federal employment.

* * * * *

(b) * * *

(3) An employee serving under a Schedule C excepted appointment.

* * * * *

Subpart H—Reemployment Rights Under the Taiwan Relations Act

17. The authority citation for subpart H of part 352 continues to read as follows:

Authority: 22 U.S.C. 3310; E.O. 12143, 44 FR 37191; § 352.807 also issued under 22 U.S.C. 3310; E.O. 12143, 45 FR 37452.

18. In subpart H, § 352.803 is amended by revising paragraphs (c) (2) and (3), removing paragraph (c)(4), amending paragraph (d)(2) by replacing the comma at the end of the paragraph with a semicolon, revising paragraph (d)(3), removing paragraph (d)(4), and

redesignating paragraph (d)(5) as (d)(4) to read as follows:

§ 352.803 Basic entitlement to reemployment rights on leaving Federal employment.

* * * * *

(c) * * *

(2) A non-temporary excepted service employee; or

(3) An employee serving under a career appointment in the Senior Executive Service.

(d) * * *

(3) An employee serving under a Schedule C excepted appointment; or

* * * * *

Subpart I—Reemployment Rights After Service With the Panama Canal Commission

19. The authority citation for subpart I of part 352 continues to read as follows:

Authority: Pub. L. 96–70, 22 U.S.C. 3643.

20. In subpart I, § 352.904 is amended by revising paragraph (b)(3) to read as follows:

§ 352.904 Eligibility.

* * * * *

(b) * * *

(3) An employee who is serving in a position excepted from the competitive service under Schedule C of part 213 of this chapter, or under Presedential appointment; or

* * * * *

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

21. The authority citation for part 359 continues to read as follows:

Authority: 5 U.S.C. 1302 and 3596, unless otherwise noted.

22. Section 359.406 is amended by revising paragraph (b) to read as follows:

§ 359.406 Restrictions.

* * * * *

(b) For purposes of this section, a noncareer appointee includes an SES noncareer or limited appointee, an appointee in a position filled by Schedule C, or an appointee in an Executive Schedule or equivalent position other than a career Executive Schedule or equivalent position.

* * * * *

23. Section 359.503 is amended by revising paragraph (b) to read as follows:

§ 359.503 Restrictions.

* * * * *

(b) For purposes of this section, a noncareer appointee includes an SES noncareer or limited appointee, an appointee in a position filled by Schedule C, or an appointee in an Executive Schedule or equivalent position other than a career Executive Schedule or equivalent position.

* * * * *

24. Section 359.701 is amended by removing paragraph (a)(2), redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(2) and (a)(3) respectively, and revising newly designated paragraph (a)(2) to read as follows:

§ 359.701 Coverage.

* * * * *

(a) * * *

(2) To a position that meets the same criteria as a Schedule C position; or

* * * * *

PART 432—PERFORMANCE BASED REDUCTION IN GRADE AND REMOVAL ACTIONS

25. The authority citation for part 432 continues to read as follows:

Authority: 5 U.S.C. 4302a, 4303, and 4305.

26. Section 432.102 is amended by revising paragraph (f)(13), removing paragraph (f)(14), and redesignating paragraph (f)(15) as (f)(14) to read as follows:

§ 432.102 Coverage

* * * * *

(f) * * *

(13) An individual occupying a position in the excepted service for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12 month period; and

* * * * *

PART 534—PAY UNDER OTHER SYSTEMS

27. The authority citation for part 534 continues to read as follows:

Authority: 5 U.S.C. 1104, 5307, 5351, 5352, 5353, 5376, 5383, 5384, and 5385.

28. Section 534.403 is amended by revising paragraph (f) to read as follows:

§ 534.403 Performance awards

* * * * *

(f) 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 under subpart B of part 530 of this chapter. In that case, any amount in excess of the ceiling shall be paid at the beginning of the following calendar year in accordance with subpart B of part 530 of this chapter.

29. Section 534.501 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 534.501 Coverage.

(a) * * *

(1) Senior-level (SL) positions classified above GS–15 pursuant to 5 U.S.C. 5108; and

* * * * *

(b) * * *

(1) Senior Executive Service positions established under 5 U.S.C. 3132, unless the incumbent of the position declined to convert to the SES and under § 317.303 of this chapter remained at grade GS–16, 17, or 18 (now the SL pay system) or under the ST pay system;

* * * * *

30. Section 534.503 is amended by revising paragraph (c) to read as follows:

§ 534.503 Pay setting

* * * * *

(c) Pay of an individual may not be adjusted more than once in any 12-month period.

(1) A pay adjustment includes the assignment of a pay rate upon initial appointment.

(2) An annual adjustment in pay under § 534.504 of this subpart shall not be considered a pay adjustment under this paragraph if it does not exceed the greater of the annual General Schedule adjustment under 5 U.S.C. 5303 or the Executive Schedule adjustment under 5 U.S.C. 5318 effective the same date.

(3) Pay of an SL or ST employee transferring from another agency, or a military department, may be set at any rate. If the pay does not exceed the employee's former rate, the pay action does not start a new 12-month period.

* * * * *

31. Section 534.505 is amended by revising paragraph (b) to read as follows:

§ 534.505 Pay related matters.

* * * * *

(b) *Performance awards.* Performance awards may be paid under 5 U.S.C. 4505a and § 430.504 of this chapter.

PART 591—ALLOWANCES AND DIFFERENTIALS

32. The authority citation for part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10,000; 3 CFR 1943–1948 Comp., p. 792; E.O. 12,510; 3 CFR 1985 Comp., p. 338.

33. Section 591.203 is amended by revising paragraphs (a)(5) and (a)(6) and adding paragraph (a)(7) to read as follows:

§ 591.203 Agencies and employees covered.

(a) * * *

(5) Administrative law judges paid under 5 U.S.C. 5372.

(6) Senior Executive Service.

(7) Senior-level and scientific and professional positions paid under 5 U.S.C. 5376.

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[FR Doc. 92-6592 Filed 3-23-92; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-191-AD; Amendment 39-8196; AD 92-06-16]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 757 series airplanes, that requires inspection and repair or replacement, if necessary, of certain side-of-body floor panels. This amendment is prompted by reports of disbonded one-piece inserts in the side-of-body floor panels. The actions specified by this AD are intended to prevent side-of-body floor panels from breaking away from the floor beams during a 9g forward load event.

DATES: Effective April 28, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 28, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Rodriguez, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2779. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Boeing Model 757 series airplanes was published in the Federal Register on October 21, 1991 (56 FR 52488). That action proposed to require inspection for the installation of certain Hexcel side-of-body floor panels, and replacement or repair of those panels, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters questioned the number of work hours specified in the preamble to the notice that would be needed to accomplish the repairs required by this rule; one of the commenters states that the work hours were underestimated by approximately 150 hours. The FAA agrees with the commenter in part. The FAA estimated the number of work hours (18) based on the required actions only, namely, the inspection. The work hour estimate did not include the time necessary to open or close the access area, which is approximately 16 additional hours. The work hour estimate specified in the cost impact paragraph, below, is changed from 18 to 34 work hours to account for these actions. The economic analysis is limited only to the cost of procedures directly related to the required inspections, since replacement of the panels would be an "on condition" action. Not all airplanes are equipped with the subject panels; however, if the discrepant panels are installed on an airplane, the operator would be required to replace them with airworthy panels, regardless of AD direction, in order to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations.

One commenter requests that the proposed compliance time of 18 months be extended to 36 months; or that an 18-month compliance time for the inspection, followed by an 18-month compliance time for the repairs, be established. A 36-month compliance time would allow operators to accomplish the requirements of the AD during regularly scheduled maintenance, without disrupting service and avoiding special scheduling for the inspections. The FAA concurs that the compliance time may be extended somewhat. Based on the information available to date, the FAA finds that approximately 40 percent of the panels installed fleetwide could need repair or replacement. Therefore, in light of this data and the lengthy repair times, the FAA has determined that the compliance time may be extended to 24 months so that the inspection and any repair/replacement could be accomplished during regularly scheduled maintenance at a location where necessary special equipment and trained personnel would be available. This extension of 6 additional months will not adversely impact safety. The final rule has been revised accordingly.

The manufacturer requested that proposed paragraph (a) be revised to refer to replacement of the panel rather than to replacement of the one-piece inserts. The FAA notes that the only method for replacing these inserts is to replace the entire panel and, therefore, concurs that the clarification is appropriate. Paragraph (a) of the final rule has been revised and reformatted to clarify this point.

A third commenter concurs with the rule as proposed.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously describe. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 193 Boeing Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 113 airplanes of U.S. registry will be affected by this AD, that it will take approximately 34 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $211,310. This total cost figure assumes that no operator has yet accomplished the requirements of this AD action.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44