

§ 359.702

5 CFR Ch. I (1–1–05 Edition)

(a) Removal during the probationary period under subpart C of this part or under subpart D of this part for other than misconduct, neglect of duty, malfeasance, or other disciplinary reasons under § 359.403, § 359.404, or part 752, subpart F, of this chapter, if at the time of appointment to the SES the individual held a career or career-conditional appointment or an appointment of equivalent tenure, as determined by OPM. An appointment of equivalent tenure is considered to be an appointment in the excepted service other than an appointment—

(1) To a Schedule C position established under part 213 of this chapter;

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

(3) To a position where the incumbent is traditionally changed upon a change in Presidential Administrations.

(b) Removal as the result of:

(1) Failure to be recertified under subpart C of this part;

(2) Less than fully successful executive performance under subpart E of this part; or

(3) A reduction in force under subpart F of this part. The appointee must have completed the required probationary period under the SES or was not required to serve a probationary period.

[54 FR 18876, May 3, 1989, as amended at 56 FR 172, Jan. 3, 1991; 57 FR 10125, Mar. 24, 1992]

§ 359.702 Placement rights.

(a) An appointee covered by this subpart is entitled to be placed in a vacant civil service position (other than an SES position) in any agency that is—

(1) A continuing position at GS-15 or above, or equivalent, that will last at least three months; and

(2) A position for which the appointee meets the qualifications requirements.

(b) A probationary appointee, or a nonprobationary appointee 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 § 359.701(a)), is entitled to be placed in a position of tenure equivalent to that of the appointment held at the time of appointment to the SES. This tenure requirement does not apply—

(1) If the agency taking the removal action does not have a position of equivalent tenure for which the appointee meets the qualifications requirements; or

(2) If the appointee is willing to accept a position having a different tenure.

§ 359.703 Responsibility for placement.

The agency taking the removal action is responsible for placing the appointee in an appropriate position within the agency, or for arranging a transfer to an appropriate position in another agency. Any transfer must be mutually acceptable to the appointee and the gaining agency.

§ 359.704 Restrictions.

Placement of an appointee under this subpart shall not cause the separation or reduction in grade of any other employee.

§ 359.705 Pay.

(a) An appointee placed under this subpart is entitled to receive basic pay at the highest of—

(1) The rate of basic pay in effect for the position in which the appointee is being placed;

(2) The rate of basic pay currently in effect for the position that the appointee held in the civil service immediately before being appointed to the SES; or

(3) The rate of basic pay in effect for the appointee immediately before removal from the SES.

(b) An employee who is placed under this subpart in a position outside the SES in another agency is entitled to receive basic pay under the provisions of this section.

(c) An employee who is placed under this subpart in a General Schedule position is not subject to the limitation on General Schedule basic pay in 5 U.S.C. 5303(f) of level V of the Executive Schedule. The employee is subject, however, to the limitation on General Schedule basic pay plus locality-based comparability payments in 5 U.S.C. 5304(g)(1) of level IV of the Executive Schedule.

(d) An employee receiving basic pay under paragraph (a)(2) or (a)(3) of this