

determines that the agency is an “Executive agency” under 5 U.S.C. 3132(a)(1).

(5) The exercise of a reemployment right by an individual who at the time of his/her former agency’s implementation of the Senior Executive Service was under a reemployment agreement to a position in that agency which meets the grade level and functional criteria for inclusion under the Senior Executive Service. The effective date of a conversion under this authority is prescribed by § 317.302(d)(5).

(b) *Employees covered.* This subpart covers:

(1) An employee serving in a position at the time it is designated a Senior Executive Service position;

(2) An individual appointed or reinstated to a position after it has been designated a Senior Executive Service position;

(3) An employee transferred, promoted, voluntarily reassigned or voluntarily demoted to a position after it has been designated a Senior Executive Service position;

(4) An employee involuntarily reassigned or involuntarily demoted to a position after it has been designated a Senior Executive Service position; and

(5) An employee serving in a position which meets the grade level but not the functional criteria for designation as a Senior Executive Service position.

(6) An employee appointed in his/her former agency under a reemployment right provided, however, that the employee was under a reemployment agreement at the time the Senior Executive Service was implemented in his/her former agency and that the reemployment right was to a position which meets the grade level and functional criteria for inclusion under the Senior Executive Service.

(c) *Employees excluded.* The following employees are excluded from coverage of this subpart and are not entitled to conversion to the Senior Executive Service.

(1) An employee in a position designated as Senior Executive Service who is serving under a time limited appointment which will terminate before the operational date of the Senior Executive Service.

(2) An employee serving under a temporary promotion, detail, or temporary assignment in a position designated as Senior Executive Service unless the position which the employee encumbered on a permanent basis just prior to the current temporary action has been designated as Senior Executive Service.

[45 FR 8541, Feb. 8, 1980, as amended at 60 FR 6385, Feb. 2, 1995]

#### § 317.302 Conversion procedures.

(a) *Employees appointed prior to designation; employees involuntarily reassigned or demoted after designation—*(1) *Notice.* Each employee covered by this subpart who was appointed prior to the designation of his/her position as a Senior Executive Service position, or who was involuntarily reassigned or involuntarily demoted to a position after it was designated a Senior Executive Service position, shall be given a written notice which includes the following information:

(i) A statement that the employee’s position has been designated as either “general” or “career reserved”;

(ii) A statement that the employee is being offered an appointment under the Senior Executive Service or that the employee is not being offered an appointment under the Senior Executive Service but will be separated from the civil service pursuant to § 317.305(b)(4) or § 317.306(b)(4); If the employee is offered conversion, the notice shall also include:

(iii) A statement that the employee has 90 calendar days from the date of receipt of the written notice to elect either to join the Senior Executive Service or to remain in his/her current appointment system;

(iv) Identification of the position, SES pay rate, and kind of appointment which the employee will receive if the employee elects to convert to the Senior Executive Service;

(v) For excepted appointees who have reinstatement eligibility to a position in the competitive service, or, as determined by the Office of Personnel Management, have substantial career-oriented service under career-type appointments as defined in § 317.304(a)(2), a statement that the employee may request conversion to career appointment;

(vi) For employees under limited executive assignment who have reinstatement eligibility to a position in the competitive service, or as determined by the Office of Personnel Management, have substantial career-oriented service under career-type appointments as defined in §317.304(a)(2), and who are covered under §317.306(b)(3), a statement that the employee may request conversion to career appointment;

(vii) A summary of the features of the Senior Executive Service (this can be accomplished by appending descriptive material prepared by the Office);

(viii) A statement that the employee must submit his/her decision with regard to paragraphs (a)(1)(iii), (v) and (vi) of this section, in writing, on or before the end of the notice period; and

(ix) A statement of the right of an employee who is aggrieved to appeal an action under this subpart to the Merit Systems Protection Board.

An employee whose involuntary reassignment or involuntary demotion to a designated position occurs less than 90 days before the operational date of the Senior Executive Service, shall be given this notice at the time of the personnel action. The employee shall have 90 calendar days from the date of receipt of the notice to make an election on conversion.

(2) *Pay.* Upon conversion to the Senior Executive Service, an employee's SES rate will be determined under 5 CFR part 534, subpart D.

(3) *Freedom of choice.* The employee shall decide whether he/she accepts conversion to the Senior Executive Service. The employing agency shall not attempt to influence the employee's decision through coercion, intimidation or duress.

(4) *Employee's election.* On or before the end of the notice period, the employee shall signify in writing his/her decision to accept or to decline an appointment under the Senior Executive Service. An excepted or limited assignment employee covered under §317.305(b)(3) or §317.306(b)(3), respectively, shall also indicate whether he/she requests conversion to career appointment. Failure to respond shall be deemed a declination.

(b) *Employees receiving appointments after designation but before the operational date of the Senior Executive Service—(1) Condition of appointment.* Each individual appointed, reinstated, transferred, promoted, voluntarily reassigned or voluntarily demoted to a position after it has been designated a Senior Executive Service position shall be required to accept conversion to the Senior Executive Service. The agency shall advise the individual of this requirement prior to the appointment or other personnel action. The individual shall signify his/her acceptance of conversion in writing at the time of the personnel action.

(2) *Notice.* At the time of the personnel action, or 90 days before the Senior Executive Service becomes operational, whichever is later, the agency shall give the employee a written notice which identifies the position, SES pay rate, and kind of appointment the employee will receive under the Senior Executive Service.

(3) *Pay.* An employee's SES rate will be determined under 5 CFR part 534, subpart D.

(c) *Employees whose positions are not designated Senior Executive Service positions—Notice.* Each employee covered by §317.301(b)(5) shall be given a written notice advising the employee that his/her position is not designated a Senior Executive Service position; that the employee is not entitled to conversion to the Senior Executive Service; and that the employee has a right to appeal an action under this subpart to the Merit Systems Protection Board.

(d) *Employees appointed under a reemployment right—(1) Notice.* At the time the employee exercises his/her reemployment right, the agency shall give the employee a written notice which includes the following information:

(i) A statement that the employee meets the requirements of §317.301(b)(6) for eligibility for conversion to the Senior Executive Service and that he/she is being offered an appointment under the Senior Executive Service;

(ii) A statement that the employee has 90 calendar days from the date of receipt of the written notice to elect either to join the Senior Executive Service or to remain under the type of

appointment upon which the reemployment right was based;

(iii) Identification of the position, SES pay rate, and kind of appointment which the employee will receive if the employee elects to convert to the Senior Executive Service;

(iv) If the reemployment right is to a position in the excepted service and the employee has reinstatement eligibility to a position in the competitive service, or, as determined by the Office of Personnel Management, has substantial career-oriented service under career-type appointments as defined in § 317.304(a)(2), a statement that the employee may request conversion to career appointment;

(v) A summary of the features of the Senior Executive Service (this can be accomplished by appending descriptive material prepared by the Office); and

(vi) A statement that the employee must submit his/her decision with regard to paragraphs (d)(1)(ii) and (iv) of this section, in writing, on or before the end of the notice period.

(2) *Pay.* An employee's SES rate will be determined under 5 CFR part 534, subpart D.

(3) *Freedom of choice.* The employee shall decide whether he/she accepts conversion to the Senior Executive Service. The employing agency shall not attempt to influence the employee's decision through coercion, intimidation or duress.

(4) *Employee's election.* On or before the end of the notice period, the employee shall signify in writing his/her decision to accept or to decline an appointment under the Senior Executive Service. An excepted service employee shall also indicate whether he/she requests conversion to career appointment. Failure to respond shall be deemed a declination.

(5) *Effective date.* A conversion under this section for an employee who elects to join the SES shall become effective at the end of the notice period.

[45 FR 8541, Feb. 8, 1980, as amended at 45 FR 19213, Mar. 25, 1980; 69 FR 2050, Jan. 13, 2004]

**§ 317.303 Status of employees who decline voluntary conversion to the Senior Executive Service.**

(a) An employee who declines conversion pursuant to § 317.302(a)(4) or

§ 317.302(d)(4) shall remain in his/her current appointment and pay system, and shall retain the grade, seniority, and other rights and benefits associated with such type of appointment and pay system. The employee may continue in the current SES position or be reassigned to another position within or outside the Senior Executive Service.

(b) The assignment of an employee who declines conversion under this subpart shall not result in the separation or reduction in grade of any other employee in the agency.

(c) Nothing in these regulations affects an agency's right to terminate a limited executive appointment pursuant to Civil Service Rule IX.

[45 FR 8541, Feb. 8, 1980, as amended at 45 FR 19213, Mar. 25, 1980]

**§ 317.304 Conversion of career and career-type appointees.**

(a) *Coverage.* This section covers employees serving under:

(1) A career or career-conditional appointment; or

(2) A similar type of appointment ("career-type" appointment) in an excepted service position as determined by the Office. A career-type appointment is an appointment in the excepted service other than an appointment:

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

(ii) To a position authorized to be filled by noncareer executive assignment under part 305 of this chapter;

(iii) To a position which meets the same criteria as a Schedule C position or a position authorized to be filled by non-career executive assignment; or

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

(b) *Senior Executive Service appointment.* An employee covered by this section shall be converted to a Senior Executive Service career appointment. The employee may be assigned to either a "general" or a "career reserved" position.