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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 410 and 412

RIN 3206-AK75

#### Training; Supervisory, Management, and Executive Development

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is amending its regulations to implement certain training and development requirements contained in the Federal Workforce Flexibility Act of 2004 (Pub. L. 108-411) and to make other revisions in OPM regulations. The Act makes several significant changes in the law governing the training and development of Federal employees, supervisors, managers, and executives. The first change requires each agency to: evaluate, on a regular basis, its training programs and plans with respect to the accomplishment of its specific performance plans and strategic goals, and modify its training plans and programs as needed to accomplish the agency's performance plans and strategic goals. Public Law 108-411 requires agencies to consult with OPM to establish comprehensive management succession programs designed to provide training to employees to develop managers for the agency. It also requires agencies, in consultation with OPM, to establish programs to provide training to managers regarding actions, options, and strategies a manager may use in relating to employees with unacceptable performance, mentoring employees, improving employee performance and productivity, and conducting employee performance appraisals. Another change we are including, not related to the Act, is the removal of the extension for submitting training data. This change is

the result of a policy decision by OPM as the extension request is no longer valid—requests were only granted up to December 2007.

**DATES:** *Effective Date:* December 10, 2009.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Ndunguru at (202) 606-4063 or [cheryl.ndunguru@opm.gov](mailto:cheryl.ndunguru@opm.gov), or Julie Brill at (202) 606-5067 or [Julie.Brill@opm.gov](mailto:Julie.Brill@opm.gov).

**SUPPLEMENTARY INFORMATION:** OPM published proposed regulations to make changes in parts 410 and 412 on September 2, 2008 (73 FR 51248). We received comments from 12 agencies and 1 union. Many commenters were supportive of the changes, but there were substantial questions and comments about requirements for supervisory training, succession management, SES candidate development programs and executive development plans.

#### Comments

##### General Issues

One commenter expressed concern about the ability to fully carry out the proposed requirements identified in parts 410 and 412 due to the lack of both financial and human resources. OPM understands the budgetary constraints some agencies are under, but the requirements are in law. OPM will work with agencies to help them reduce their costs of compliance to the extent possible.

Another commenter suggested that additional regulations are necessary to comply with section 1103 of title 5, United States Code, because nothing within proposed parts 410 or 412 holds agency managers or human resources leaders accountable for effective human resources management. We disagree. Section 1304 of the Chief Human Capital Officers (CHCO) Act authorizes OPM to develop an assessment system, including standards and metrics, for agency human resources management. OPM published regulations at 5 CFR part 250, subpart B (73 FR 23012) on April 28, 2008, which set forth new OPM and agency responsibilities and requirements to enhance and improve the strategic management of the Federal Government's civilian workforce, as well as the planning and evaluation of agency efforts in that regard. Those regulations establish the framework for

OPM's leadership in holding agencies accountable for efficient and effective human resources management in accordance with merit system principles.

One commenter contended the proposed regulations go beyond the purpose and scope of the training provisions of the Federal Workforce Flexibility Act but did not specify in what way. The commenter suggested OPM convene a working group of agency training officials to determine the need for and benefits from any additional changes to 5 CFR parts 410 and 412. In addition to requirements in the Workforce Flexibility Act, OPM has general regulatory authority over training. In exercising that authority, OPM has consulted with agencies on changes to the regulation outside those specified in the Workforce Flexibilities Act (but within OPM's general authority) prior to publishing the proposed regulations. We have incorporated that feedback into the regulation.

One commenter observed the preamble to the proposed regulation indicates changes were made to subpart C of part 410 pertaining to Continued Service Agreements (CSAs), but the proposed rule does not include any changes. The commenter was correct—the statement in the preamble was an error. OPM did not propose any changes to subpart C. Another commenter indicated “something is wrong with the wording in the third-to-last sentence” of § 412.302(a) but did not indicate what was wrong. Upon reviewing the language, we determined the sentence required clarification and changed the wording to read, “The ERB also must oversee development, evaluation, progress in the program, and graduation of candidates, and submit for QRB review within 90 workdays of graduation those candidates determined by the ERB to possess the executive core qualifications.”

#### Part 410

##### Training

One commenter recommended proposed § 410.201(d)(4) be set forth as a separate paragraph (e), and the language of this provision be revised because, as currently written, the language implies agencies will be required to conduct annual assessments of mission-critical occupations and

competencies, competency gaps and strategies to close competency gaps. The commenter believes this is a resource-intensive process that adds little value. Another commenter contended that while reviewing the overall curriculum on an annual basis is prudent, a full and thorough review of every program on a yearly basis would not be cost-effective. This commenter recommends changing this requirement to every 3 years. We believe § 410.201(d)(4) simply makes explicit obligations already imposed under Executive Order 11348 to perform periodic reviews of the overall program, at least annually. Executive Order 11348 requires every agency head to establish training programs in accordance with chapter 41 of Title 5 of the United States Code. Section 303 of E.O. 11348 requires that each agency head shall “[r]eview periodically, but not less often than annually, the agency’s program to identify training needed to bring about more effective performance at the least possible cost.” The Federal Workforce Flexibility Act of 2004 modified 5 U.S.C. 4103 to add a statutory requirement that the head of each agency regularly evaluate and modify training programs under chapter 41. Section 410.201(d)(4) of title 5, Code of Federal Regulations, references the plan or program an agency has established to identify the training needs within that agency, and requires an annual review, consistent with section 303 of E.O. 11348. The annual review is important, because it provides timely feedback on agency training programs and permits adjustments to meet changing agency mission and performance goals. The requirement of an annual review ensures that agencies take account of relevant developments and make timely adjustments. The requirement is also consistent with the requirement of the Human Capital Management Report as described in 5 CFR 250.203. To ensure the meaning of § 410.201(d)(4) is clear, we have added language to emphasize the annual assessment is of the overall agency talent management program.

## Part 412

### Succession Planning

Multiple commenters expressed confusion about the meaning of “in consultation with OPM” in § 412.201 which specifies that the head of each agency must develop a comprehensive management succession program. One commenter requested feedback on OPM’s role in the approval process and on issuance of guidance related to succession management programs. Currently, OPM has the responsibility to review and provide feedback on agency

succession management plans. OPM will use a variety of mechanisms, including the CHCO Council, the Human Resources Directors’ Forum, and OPM’s Human Capital Officers to assist agencies in developing plans and strategies to meet the requirements of 5 U.S.C. 4121 and 5 CFR part 250 for implementing management succession programs. In addition, OPM has provided, and will continue to provide, guidance to agencies on succession management including OPM’s April 2009 *A Guide to the Strategic Leadership Succession Management Model*, available on the Chief Human Capital Officers Council Web site (<http://www.chcoc.gov>).

One commenter objected to § 412.201, arguing it includes strict requirements for succession planning that could potentially lead to pre-selection. We disagree that the regulatory requirements will encourage pre-selection and we emphasize that management succession programs must be administered in a manner consistent with the merit systems principles, which dictate fair and open competition for all Federal positions. We do not find this language includes strict requirements or differs from the requirements in the original legislation (*i.e.*, the Federal Workforce Flexibility Act of 2004; Pub. L. 108–411). The law states each agency shall establish “a comprehensive management succession program to provide training to employees to develop managers for the agency.” Section 412.201 explains agencies should ensure an adequate number of qualified candidates are developed for leadership positions and that the training and development programs should focus on building leadership capacity across the organization. OPM has modified the language of the regulation to emphasize these points.

### Supervisory Training

Two commenters objected to the requirement for follow-up training for supervisors. Both commenters objected because they believe that the topics enumerated are unnecessarily restrictive, and that agencies should be given greater flexibility and discretion in establishing appropriate timeframes and topics for conducting such training, in accordance with the agency’s particular budgetary and workforce needs. One commenter supported the training requirement but objected to the specific topics. This commenter also suggested multiple training delivery methods be allowed. The specific training topics for supervisors are specified in the Federal Workforce

Flexibility Act of 2004, at 5 U.S.C. 4121(2), and the regulations were written to reflect the law. The effectiveness and efficiency of Government programs and services depend on well-trained managers. Mandatory supervisory training ensures managers receive training and will help develop effective managers who foster positive work environments that produce an efficient and responsive Government. Agencies have the discretion to offer training in addition to what is specified in the regulation based on individual needs. The proposed timeframe is reasonable and ensures managers receive appropriate training to supervise Federal employees. Lastly, the proposed regulation does not specify training delivery methods, thus leaving it to the discretion of the agency.

One commenter objected to the wording “individual’s potential” in § 412.202(c), explaining that assessing an individual’s potential in a valid manner is complex and administratively burdensome. This commenter recommends the language of proposed § 412.202(c) be amended to strike the phrase “\* \* \* and the individual’s potential”. Another commenter was not clear on the meanings of “critical career transitions”, “results of assessments of the agency’s needs”, and “individual potential” in § 412.202(c). OPM has revised the language to (1) explain critical career transitions, and (2) clarify that training should be consistent with assessments of the agency’s and the individual’s needs. The intent of § 412.202(c) is to convey the importance of ensuring employees moving into supervisory and managerial positions (critical career transitions) possess the skills and knowledge necessary to effectively manage people and carry out the work of the agency. Agencies can determine readiness by coupling an assessment of the agency’s need and the individual’s ability to meet those needs (individual’s potential).

### Senior Executive Service Candidate Development Programs (SESCDP)

One commenter proposed language be added to § 412.302 allowing agencies to use some leadership training taken within the year prior to commencing a CDP class as part of the required 80 hours of individual training. OPM declines to add this to the regulation. OPM has provided guidance about this issue, outlining acceptable training in a September 2009 memorandum to Human Resources Directors.

One commenter proposed the new regulations allow participants to use their position of record as a developmental assignment if it is new to

them and is outside the scope of their previous position. We disagree with this proposition. Allowing candidates to remain in their position of record for the developmental assignment does not go far enough in exposing potential executives to multiple points of view or in achieving the principal goal of the developmental assignment, which is to have the person gain a broader perspective of his/her agency and the Federal Government. To achieve a broader perspective requires experience in other areas of work and in various working relationships different from current and past assignments.

One commenter contended OPM's proposed language requiring participants to submit certification packages within 90 days of program completion is unrealistic given the number of participants many agencies have in the program and the numerous internal agency review processes before packages are submitted to OPM. The commenter suggested the regulation be revised to state certification packages must be submitted within 120 days of program completion. In addition, one commenter suggested OPM should require the Executive Resources Board (ERB) to submit Criterion "B" cases (candidates who successfully complete all SES Candidate Development Program activities) within 90 workdays, rather than 90 calendar days, to maintain consistency with submission requirements for Criterion "A" and "C" cases (those SES candidates, respectively, whose overall records demonstrate the knowledge, skills, and abilities needed to perform at the SES level, and whose professional/technical backgrounds make them particularly well-suited for the SES vacancy but who lack demonstrated experience in one or more of the Executive Core Qualifications). We agree with the commenters' recommendation for consistency and have revised § 412.302(a) accordingly. Revising the requirement to 90 workdays also meets the commenter's request to allow requests for certification to be within 120 days from graduation.

Two commenters contended § 412.302(b) should not require a one-for-one linkage to expected SES vacancies. One commenter suggested that, from a succession planning perspective, this linkage is often inadequate. It is not our intent to make a one-to-one linkage, and we have modified this section to read, "The number of expected SES vacancies must be considered as one factor in determining the number of selected candidates." Agencies should develop and select candidates based upon a

realistic assessment of anticipated vacancies and staffing plans. This assessment should take into account the number of positions the agency is likely to fill by other avenues (e.g., reassignment, transfer or merit staffing).

One commenter suggested the requirement in § 412.302(b) to obtain approval from OPM to conduct an SES CDP should be streamlined and simple, honoring the guidelines agencies have set for their programs as long as they adhere to the minimum requirements as stipulated in the regulations. Approvals and re-approvals will be based upon a determination that the SESCO meets requirements established in the regulations. OPM has provided, and will continue to provide, tools and guidance to help streamline the approval process and will continue to ensure the approval process is as efficient as possible.

Two commenters believed the proposed requirements in § 412.301 regarding re-approval of an SESCO places an unnecessary burden on agencies, and certain aspects of the proposed regulations overly limit agencies in their ability to design and implement an effective SESCO. One commenter requested OPM consider consulting with agencies about SESCOs and sharing best practices among agencies in lieu of adding re-approval requirements to the regulation. Another commenter believed agencies should not have to seek re-approval unless significant changes are made to their program so the regulations should remain unchanged in this regard. Also, one commenter recommended we clarify in regulation that candidates' QRB certifications obtained within approved SESCOs remain valid. We disagree with removing the re-approval requirement. Requiring OPM approval every 5 years ensures agency SESCO alignment with succession plans and program currency and relevance. Agency changes in leadership and staff as well as new regulatory requirements also warrant a periodic program re-approval. Approvals and re-approvals will be based upon a determination that the SESCO meets requirements established in the regulation. In addition, OPM currently and frequently consults with agencies on their SESCOs and shares all information and best practices Governmentwide. Lastly, 5 CFR 317.502 removes time limits from any previously approved QRB certifications so any certifications obtained within an OPM-approved SESCO remain valid.

One commenter objected to the omission of the third SES recruitment option for agencies to limit the

recruitment pool to agency-wide only. This commenter believes an agency should have at least the option to limit recruitment to qualified individuals from within their own agency. We disagree. We removed the exception because OPM determined it is better to align the requirements for a CDP program with the requirements of 5 U.S.C. 3393, because successful completion of a CDP program and subsequent certification makes the candidate eligible for appointment to an SES position without further competition. Thus, requiring broad competition for entry into a CDP helps ensure excellence in the SES ranks.

One commenter strongly objected to the omission of current § 412.104(b) language stating "[i]n recruiting, the agency, consistent with the merit system principles in 5 U.S.C. 2301(b)(1) and (2), takes into consideration the goal of achieving a diversified workforce." This commenter believes omission of this language sends a message to agencies that equal opportunities are no longer an OPM priority. We have reconsidered and have decided to reinstate the language in § 412.302(b).

While commenters supported the overall 4-month developmental assignment, several commenters raised concerns about it including at least one assignment of 90 continuous days. One commenter questioned the need for this assignment and suggested the 4-month assignment be comprised of one 60-day and 2 other assignments. The commenter indicated that such a structure would be more feasible and effective. Some saw the 90 continuous day minimum requirement as excessive and/or too restrictive. These commenters felt it could discourage smaller agencies from conducting SESCOs because candidates could not be spared for extended periods and/or the restriction hindered flexibility. Another commenter felt allowing a 30-day assignment is too short to ensure meaningful development, so the minimum requirement should be 60 days. We disagree. OPM believes the 90-day requirement is necessary to ensure that candidates are exposed to executive level accountability and responsibility. These developmental assignments are meant to provide candidates the opportunity to influence peers and should be of sufficient length to bring about that result. However, agencies may supplement these requirements according to candidates' developmental needs.

One commenter suggested that referring to the Executive Core Qualifications (ECQs) in § 412.302(c)(2) limits potential executive education

programs that address the ECQs without specifically labeling them ECQs. The commenter recommended we reword the regulation to read “executive leadership competencies” instead of ECQs. We disagree. Nothing in this regulation requires executive education programs to label the competencies that are the subjects of their programs ECQs. Rather, the ECQs are clearly stated, and OPM explicitly defines the competencies needed to build a Federal corporate culture that strives for results, serves customers, and builds successful teams and coalitions within and outside the organization. The leadership competencies developed within any executive education programs can be easily linked to those identified within the ECQs, so reference to the ECQs in this section will remain.

One commenter saw no benefit in requiring the SESCDP to last between 12 and 24 months. The commenter felt this requirement undermines desirable flexibility and suggested we delete 5 CFR 412.302(a) and (c) from the final regulations. Two commenters also suggested the regulations allow for flexibilities for participants with extenuating circumstances preventing them from completing the program within 24 months. The program length should enable candidates to meet the overall requirements of the program to close developmental gaps. We agree flexibility should be allowed but believe less than 12 months is insufficient time to develop new strengths and close competency gaps. We have revised § 412.302(a) to require an SES CDP to last a minimum of 12 months but removed the requirement to last no more than 24 months.

Two commenters questioned several references in 5 CFR 412.302(c)(1)(iv) and (v). One commenter disagreed with the requirement the candidates must interact with a “wide mix” of senior Federal employees outside the agency and with “senior non-Federal employees” during the developmental program. This commenter suggests such components should be dictated in part by the needs and prior experience of the individual candidates. The other commenter asked if the intent is simply to interact throughout the program, not necessarily in a formal training environment. This commenter also requested “wide mix” be clarified with a specific percentage or by some other means. This requirement is intended to allow interaction between the candidates and other executives outside their own agency, and to increase candidates’ experience in the broader context within which executives operate—not just within a formal

training environment. Furthermore, the minimum standards are sufficiently broad so individual development plans can be tailored to meet each candidate’s needs. OPM will not regulate a specific percentage or ratio to define “wide mix”, but further guidance will be provided to agencies so they can determine whether or not their programs meet the requirement for broad interaction. Due to agency comments regarding interaction outside the candidate’s department or agency, we have slightly revised § 412.302(c) by clarifying the reference to interaction with senior non-Federal employees to say, “Interaction with senior employees outside the candidate’s department or agency to foster a broader perspective.”

One commenter expressed confusion regarding § 412.301(a) and questioned whether or not this paragraph provides for delegation of SESCDP implementation, certification of ECQs, and selection to the SES by the OPM-certified agency. This paragraph does not delegate QRB certification to agencies. A QRB established by OPM pursuant to 5 U.S.C. 3393(c)(1) certifies attainment of ECQs and selection to the SES. A QRB must certify the ECQs of any SESCDP graduate to become eligible for noncompetitive initial career SES appointment.

One commenter suggested OPM strengthen § 412.301(a) to indicate successful completion of the SESCDP should be the sole basis for QRB certification of candidates and individual ECQ narratives should not be required. This commenter recommended OPM clarify, through regulation or guidance, the basic submission requirements for requesting QRB certification of a candidate who completes an SESCDP. We disagree with the recommendation that successful completion of the SESCDP be the sole basis for QRB certification. Successful completion of an SESCDP program and approval of graduates by the QRB is accomplished when the candidate demonstrates that he or she possesses all ECQs. Basic submission requirements for requesting QRB certification of a candidate who completes an SESCDP are currently prescribed through OPM guidance.

In reference to § 412.301(d), one commenter suggested agencies be allowed to establish programs covering only designated components and apply to OPM for approval on the components’ behalf, rather than having components apply directly to OPM. We intended to increase an agency’s options with this provision by allowing an agency to permit its component to innovate in this area without requiring

a commitment of the agency’s time and resources. We decline to narrow the options for components to come to OPM for approval.

One commenter suggested agencies define their policies in the SESCDP approved by OPM rather than charging ERBs with overseeing the writing and implementation of the removal policy. ERBs are required by law (5 U.S.C. 3393(b)) to oversee SES selections and OPM believes, therefore, that it is good policy to involve ERBs in the agency SESCDP policies as well.

One commenter supported the concept of the Senior Executive Service Development Plan (SESDP) but suggested OPM keep the standard terminology of Individual Development Plan (IDP). This commenter also expressed confusion surrounding the requirement that the SESDP address “Federal Government leadership challenges crucial to the senior executive.” Agencies may refer to the development plan any way they choose as long as the plan addresses the components put forth in regulation. Nevertheless, we understand SESDP could cause confusion with other development plans and have reworded the regulation accordingly. In addition, “Federal Government leadership challenges” refers to those challenges an executive encounters, thus requiring them to demonstrate the ECQs.

One commenter questioned whether or not the 80-hour formal training requires interagency participation. The purpose of the 80-hour formal training experience is to develop candidates’ competencies in the ECQs. OPM has revised the language in § 412.302(c)(2) to clarify the nature of the training must be interagency and/or multi-sector and outside the candidate’s department or agency. The terms “interagency” and “multi-sector” include State, local, and foreign governments as well as private-sector and non-profit organizations.

One commenter noted while executive-level responsibility in a developmental assignment would be appropriate in most instances, there may be candidates who have substantial executive-level experience but are limited to a single functional or program area. In these cases, instead of requiring an assignment to be at an executive-level, the commenter recommends OPM accept any assignment clearly outside of and different from the position of record as long as the assignment can be tied to the individual needs assessment and overall ECQs. While we agree there may be candidates who have some executive level experience in a single area, we disagree with the commenter’s recommendation. Some work

experiences would not normally provide the depth and breadth of experience needed to enhance a candidate's executive qualifications. Requiring the developmental assignment to be at an executive level (even for those who have some executive level experience) will help achieve the goal of the developmental assignment—to have the candidate gain a broader and deeper perspective from the executive level on his/her agency and the Federal Government.

One commenter contended the requirement for a mentor is too broad to apply effectively. The commenter suggested the regulations focus on the basic requirement for candidates to have a mentor who is a member of the SES or is otherwise determined acceptable. The commenter noted in the past OPM has accepted mentors from outside of the Federal Government, and if that is still the practice, it should be specified in the regulations. The requirement for a mentor is worded broadly to allow greater flexibility in choosing the appropriate mentor to fit the candidate's needs. The mentor must be a member of the SES or someone the ERB believes has the knowledge and capacity to advise the candidate. This means the mentor can be from outside the Federal government. For the purposes of the program, the mentor would be able to help the candidate make connections, observe behaviors and outcomes, or who may get indirect feedback about the candidate's performance from others.

One commenter noted the regulations should indicate when the Memorandum of Understanding (MOU) must be submitted to OPM (*e.g.*, at the time of the candidate's entry into SESCDP or when certification is requested). The commenter also asked for clarification of whether the MOU needs to comply with provisions for details in chapter 33 of title 5, U.S. Code, and, if so, suggested this be specified. The MOU must be submitted after the candidate is selected and before the program begins. We have cited chapter 41 of title 5 because an SESCDP primarily and necessarily focuses on training and development, which must conform to the requirements of that chapter. Also, OPM will not add anything with respect to provisions for details in chapter 33 as agency counsels and budget officials are responsible for determining agency compliance with chapter 33 and other laws (*e.g.*, the Economy Act).

One commenter noted there is another definition of "career-type" dealing with conversions to SES appointment in § 317.304, and OPM should consider conforming amendments to make the definitions consistent. We are aware of

the career-type definition in § 317.304. It applies to SES conversion, a very different situation from the SESCDP recruitment context addressed in these regulations. We opted not to reference § 317.304 in proposed part 412, subpart C, because that section does not specify how temporary, term and similar excepted service appointments relate to the definition of "career-type". Moreover, due to the SES conversion context § 317.306 treats only a specific kind of temporary or term appointment (*i.e.*, Limited Executive Assignments at GS-16, 17 and 18 in the former Executive Assignment System and excepted service appointments at comparable levels, rather than appointments at GS-15 and below). Agencies will need to address on a regular basis how to treat applicants with temporary, term and equivalent excepted service appointments at GS-15 and below. We therefore conclude the reference to 5 CFR 351.502(b) will be more helpful to agencies and have retained it in the final regulations without adding the additional reference.

#### Executive Development

Several commenters questioned the need to mandate Executive Development Plans (EDPs). One commenter objects to the requirement in the belief that it imposes an undue administrative and financial burden on agencies. One commenter suggested if EDPs must be required, they should be mandated for probationers only; another commenter is not clear on whether the new EDP is required only for career SES members or whether non-career SES members are included. Another commenter did not support the provisions that specifically structure the nature of the EDP and program and indicated the focus for the development plan should be on developmental/enhancing experiences of a strategic nature and not be focused primarily on the current work of the SES. The requirement for the EDP is based on extensive Governmentwide research and feedback from various agencies on the increased need for continuing executive development of all executives (career and non-career) within the Federal Government. Continued learning can occur without a major strain on resources but through on-the-job experiences, details, relationship-building, networking, peer learning, and formal and informal training opportunities. We agree with the suggestion the EDP not be based primarily on the current work of the SES member and have revised § 412.401(a)(3) accordingly.

One commenter asked whether OPM would dictate the format and content of the EDP and what procedures would be put in place to ascertain these are being established. OPM has provided an EDP template for agencies to use as a tool. However, the format and content of the EDP is at the agency's discretion. Agencies must develop specific procedures and accountability measures to ensure that executives are continually being developed and EDPs are regularly updated and utilized.

#### Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

#### Regulatory Flexibility Act

I certify these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

#### List of Subjects in 5 CFR Parts 410 and 412

Education, Government employees.

**John Berry,**

*Director, Office of Personnel Management.*

■ Accordingly, OPM is amending 5 CFR parts 410 and 412 as follows:

#### PART 410—TRAINING

■ 1. The authority citation for part 410 is revised to read as follows:

**Authority:** 5 U.S.C. 1103(c), 4101, *et seq.*; E.O. 11348, 3 CFR, 1967 Comp., p. 275.

■ 2. Revise the heading of subpart B to read as follows:

#### Subpart B—Planning and Evaluating Training

■ 3. Revise §§ 410.201 and 410.202 to read as follows:

#### § 410.201 Responsibilities of the head of an agency.

Agency employee development plans and programs should be designed to build or support an agency workforce capable of achieving agency mission and performance goals and facilitating continuous improvement of employee and organizational performance. In developing strategies to train employees, heads of agencies or their designee(s), under section 4103 of title 5, United States Code, and Executive Order 11348, are required to:

(a) Establish, budget for, operate, maintain, and evaluate plans and programs for training agency employees by, in, and through Government or non-Government facilities, as appropriate;

(b) Establish policies governing employee training, including a statement of the alignment of employee training and development with agency strategic plans, the assignment of responsibility to ensure the training goals are achieved, and the delegation of training approval authority to the lowest appropriate level;

(c) Establish priorities for training employees and allocate resources according to those priorities; and

(d) Develop and maintain plans and programs that:

(1) Identify mission-critical occupations and competencies;

(2) Identify workforce competency gaps;

(3) Include strategies for closing competency gaps; and

(4) Assess periodically, but not less often than annually, the overall agency talent management program to identify training needs within the agency as required by section 303 of Executive Order 11348.

#### **§ 410.202 Responsibilities for evaluating training.**

Agencies must evaluate their training programs annually to determine how well such plans and programs contribute to mission accomplishment and meet organizational performance goals.

■ 4. Remove § 410.203 and redesignate § 410.204 as § 410.203.

■ 5. In § 410.701, remove paragraph (c) and redesignate paragraph (d) as paragraph (c).

■ 6. Remove subpart F and redesignate subpart G, consisting of § 410.701, as subpart F, consisting of § 410.601.

■ 7. Revise part 412 to read as follows:

### **PART 412—SUPERVISORY, MANAGEMENT, AND EXECUTIVE DEVELOPMENT**

#### **Subpart A—General Provisions**

Sec.

412.101 Coverage.

412.102 Purpose.

#### **Subpart B—Succession Planning**

412.201 Management succession.

412.202 Systematic training and development of supervisors, managers, and executives.

#### **Subpart C—Senior Executive Service Candidate Development Programs**

412.301 Obtaining approval to conduct a Senior Executive Service candidate development program (SESCDP).

412.302 Criteria for a Senior Executive Service candidate development program (SESCDP).

#### **Subpart D—Executive Development**

412.401 Continuing executive development.

**Authority:** 5 U.S.C. 1103 (c)(2)(C), 3396, 3397, 4101 *et seq.*

### **Subpart A—General Provisions**

#### **§ 412.101 Coverage.**

This part applies to all incumbents of, and candidates for, supervisory, managerial, and executive positions in the General Schedule, the Senior Executive Service (SES), or equivalent pay systems also covered by part 410 of this chapter.

#### **§ 412.102 Purpose.**

(a) This part implements for supervisors, managers, and executives the provisions of 5 U.S.C. chapter 41, related to training, and 5 U.S.C. 3396, related to the criteria for programs of systematic development of candidates for the SES and the continuing development of SES members.

(b) This part identifies a continuum of leadership development, starting with supervisory positions and proceeding through management and executive positions Governmentwide. For this reason, this part provides requirements by which agencies:

(1) Develop the competencies needed by supervisors, managers, and executives;

(2) Provide learning through continuing development and training in the context of succession planning; and

(3) Foster a broad agency and Governmentwide perspective to prepare individuals for advancement, thus supplying the agency and the Government with an adequate number of well-prepared and qualified candidates to fill leadership positions.

### **Subpart B—Succession Planning**

#### **§ 412.201 Management succession.**

The head of each agency, in consultation with OPM, must develop a comprehensive management succession program, based on the agency's workforce succession plans, to fill agency supervisory and managerial positions. These programs must be supported by employee training and development programs. The focus of the program should be to develop managers as well as strengthen organizational capability, and to ensure an adequate number of well-prepared and qualified candidates for leadership positions. These programs must:

(a) Implement developmental training consistent with agency succession management plans;

(b) Provide continuing learning experiences throughout an employee's career, such as details, mentoring, coaching, learning groups, and projects. These experiences should provide broad

knowledge and practical experience linked to OPM's Federal leadership competencies, as well as agency-identified, mission-related competencies, and should be consistent with the agency's succession management plan; and

(c) Include program evaluations pursuant to 5 CFR 410.202.

#### **§ 412.202 Systematic training and development of supervisors, managers, and executives.**

All agencies must provide for the development of individuals in supervisory, managerial and executive positions, as well as individuals whom the agency identifies as potential candidates for those positions, based on the agencies' succession plans. Agencies also must issue written policies to ensure they:

(a) Design and implement leadership development programs integrated with the employee development plans, programs, and strategies required by 5 CFR 410.201, and that foster a broad agency and Governmentwide perspective;

(b) Provide training within one year of an employee's initial appointment to a supervisory position and follow up periodically, but at least once every three years, by providing each supervisor and manager additional training on the use of appropriate actions, options, and strategies to:

(1) Mentor employees;

(2) Improve employee performance and productivity;

(3) Conduct employee performance appraisals in accordance with agency appraisal systems; and

(4) Identify and assist employees with unacceptable performance.

(c) Provide training when individuals make critical career transitions, for instance from non-supervisory to manager or from manager to executive. This training should be consistent with assessments of the agency's and the individual's needs.

### **Subpart C—Senior Executive Service Candidate Development Programs**

#### **§ 412.301 Obtaining approval to conduct a Senior Executive Service candidate development program (SESCDP).**

(a) An SESCDP is an OPM-approved training program designed to develop the executive qualifications of employees with strong executive potential to qualify them for and authorize their initial career appointment in the SES. An agency conducting an SESCDP may submit program graduates for Qualifications Review Board (QRB) review of their executive qualifications under 5 CFR

317.502. A program graduate certified by a QRB may receive an initial career appointment without further competition to any SES position for which he or she meets the professional and technical qualifications requirements.

(b) An agency covered by subchapter II of chapter 31 of title 5, United States Code, may apply to OPM to conduct an SESCDP alone or on behalf of a group of agencies. (In this subpart, the term "agency" refers to either a single agency or a group of agencies acting in partnership under this subpart.) Any agency developing an SESCDP must submit a policy document describing its program methodologies to OPM for formal approval before implementing the SESCDP. An agency must seek OPM approval every five years thereafter, and must also consult OPM before implementing a change substantially altering how the SESCDP complies with the requirements of this regulation. An agency implementing an SESCDP without first obtaining formal approval may not submit graduates of the program for QRB review.

(c) An agency that obtained OPM approval under previous regulations must apply for re-approval in accordance with requirements in paragraph (b) and this subpart before initiating a new SESCDP. All existing SESCDP approvals expire within 2 years after publication of this regulation.

(d) An agency covered by subchapter II of chapter 31 of title 5, United States Code, may authorize a major agency component employing senior executives to apply directly to OPM for approval to conduct an SESCDP. Such an application from a component must be accompanied by the agency's written endorsement. To obtain approval, the component must meet the SESCDP requirements of this subpart independent of agency involvement.

(e) As always, agencies should be mindful of merit principles in carrying out their functions under this subpart.

**§ 412.302 Criteria for a Senior Executive Service candidate development program (SESCDP).**

(a) *Executive Resources Board requirements.* An agency's Executive Resources Board (ERB) must oversee the SESCDP. The ERB ensures the development program lasts a minimum of 12 months and includes substantive developmental experiences that should equip a successful candidate to accomplish Federal Government missions as a senior executive. The agency ERB must oversee and be accountable for SESCDP recruitment, merit staffing, and assessment. The

agency ERB must ensure the program follows SES merit staffing provisions in 5 CFR 317.501, subject to the condition explained in § 412.302(d)(1) of this part. The ERB also must oversee development, evaluation, progress in the program, and graduation of candidates, and submit for QRB review within 90 workdays of graduation those candidates determined by the ERB to possess the executive core qualifications. The ERB must also oversee the writing and implementation of a removal policy for program candidates who do not make adequate progress.

(b) *Recruitment.* In recruiting, the agency, consistent with the merit system principles in 5 U.S.C. 2301 (b)(1) and (2), takes into consideration the goal of achieving a diversified workforce. Recruitment for the program is from all groups of qualified individuals within the civil service, or all groups of qualified individuals whether or not within the civil service. The number of expected SES vacancies must be considered as one factor in determining the number of selected candidates.

(c) *Senior Executive Service candidate development program requirements.* An SESCDP lasts a minimum of 12 months. To graduate, a candidate must accomplish the requirements of the program established by his or her agency. Each individual participating in an SESCDP must have:

(1) A documented development plan based upon a competency-based needs determination and approved by the agency ERB. The components of the development plan must:

(i) Address the executive core qualifications (ECQs);

(ii) Address Federal Government leadership challenges crucial to the senior executive;

(iii) Provide increased knowledge and understanding of the overall functioning of the agency, so the participant is prepared for a range of positions and responsibilities;

(iv) Include interaction with senior employees outside the candidate's department or agency to foster a broader perspective; and

(v) Have Governmentwide or multi-agency applicability in the nature and scope of the training;

(2) A formal interagency and/or multi-sector training experience lasting at least 80 hours that addresses the ECQs and their application to SES positions Governmentwide. The training experience must include interaction with senior employees outside the candidate's department or agency;

(3) A developmental assignment of at least 4 months of full-time service to

include at least one assignment of 90 continuous days in a position other than, and substantially different from, the candidate's position of record. The assignment must include executive-level responsibility and differ from the candidate's current and past assignments in ways that broaden the candidate's experience, as well as challenge the candidate with respect to leadership competencies and the ECQs. Assignments need not be restricted to the agency, the Executive Branch, or the Federal Government, so long as they can be accomplished in compliance with applicable law and Federal and agency specific ethics regulations. The candidate is held accountable for organizational or agency results achieved during the assignment. If the assignment is in a non-Federal organization, the ERB must provide for adequate documentation of the individual's actions and accomplishments and must determine the assignment will contribute to development of the candidate's executive qualifications; and

(4) A mentor who is a member of the SES or is otherwise determined by the ERB to have the knowledge and capacity to advise the candidate, consistent with goals of the SESCDP. The mentor and the candidate are jointly responsible for a productive mentoring relationship; however, the agency must establish methods to assess these relationships and, if necessary, facilitate them or make appropriate changes in the interest of the candidate.

(d) An SESCDP is a training opportunity for which agencies must recruit consistent with merit system principles and paragraph (d)(1) of this section. An agency must provide procedures under which selections are made from among either all qualified persons or all qualified persons in the civil service. If selected, the individual participates in the agency's SESCDP.

(1) An individual who does not currently hold a career or career-type civil service appointment may only participate in an SESCDP by means of a Schedule B appointment authorized by 5 CFR 213.3202(j) to a full-time position created for developmental purposes connected with the SESCDP. Exercising its authority under § 302.101(c)(6) of this chapter, OPM hereby exempts these full-time positions created for developmental purposes connected with the SESCDP from the appointment procedures of part 302 of this chapter. Competition for these appointments must be conducted pursuant to SES merit staffing procedures at § 317.501 of this chapter, except agencies must follow the

principle of veterans' preference as far as administratively feasible, in accordance with § 302.101(c) of this chapter. Candidates serving under this Schedule B appointment may not be used to fill an agency's regular positions on a continuing basis.

(2) An individual who currently holds a career or career-type appointment in the civil service must be selected through SES merit staffing procedures at § 317.501 of this chapter. Subject to the approval of the agency in which the selectee is employed, such an individual may be selected for and participate in an SESCDP in any agency while serving in his or her position of record. The individual may continue to participate in the SESCDP upon moving to other civil service positions under career or career-type appointment, assuming the employing agency approves. An SESCDP competition does not satisfy the requirements of part 335 of this chapter and therefore does not provide an independent basis to appoint or promote a career or career-type appointee.

(3) A career or career-type appointee may participate in an SESCDP conducted by an agency other than his or her employing agency under such terms as are mutually agreeable and outlined in a Memorandum of Understanding (MOU) signed by both agencies involved. The MOU should be submitted to OPM after the candidate is selected and before the program begins. Terms of the MOU must be consistent with applicable provisions of 5 U.S.C. chapter 41, and a copy must be provided to OPM. Either agency may decline or discontinue a candidate's participation if such terms cannot be negotiated or are not fulfilled.

(4) Any candidate's participation in an SESCDP is at the discretion of the employing agency and subject to provisions established under 5 CFR 412.302(a) for removing a participant who does not make adequate progress in the program.

(5) For purposes of this paragraph (d), a "career-type" appointment means a career or career-conditional appointment or an appointment of equivalent tenure. An appointment of equivalent tenure is considered to be an appointment in the excepted service that is placed in Group I or Group II under section 351.502(b).

#### Subpart D—Executive Development

##### § 412.401 Continuing executive development.

(a) Each agency must establish a program or programs for the continuing development of its senior executives in

accordance with 5 U.S.C 3396(a). Such agency programs must include preparation, implementation, and regular updating of an Executive Development Plan (EDP) for each senior executive. The EDPs will:

(1) Function as a detailed guide of developmental experiences to help SES members, through participation in short-term and longer-term experiences, meet organizational needs for leadership, managerial improvement, and organizational results;

(2) Address enhancement of existing executive competencies and such other competencies as will strengthen the executive's performance;

(3) Outline developmental opportunities and assignments to allow the individual to develop a broader perspective in the agency as well as Governmentwide; and

(4) Be reviewed annually and revised as appropriate by an ERB or similar body designated by the agency to oversee executive development, using input from the performance evaluation cycle.

(b) Consistent with 5 U.S.C. 3396(d) and other applicable statutes, EDPs may provide for executive sabbaticals and other long-term assignments outside the Federal sector.

[FR Doc. E9-29480 Filed 12-9-09; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 948, 953, and 980

[Doc. No. AMS-FV-08-0018; FV08-980-1 FR]

#### **Vegetable Import Regulations; Modification of Potato Import Regulations**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule modifies the import regulations for Irish potatoes by reducing the number of marketing order areas determined as being in the most direct competition with imported potatoes from five to three; exempting U.S. No. 1 grade potatoes imported in certain small containers from size requirements; and removing certain language from Marketing Orders No. 948 and 953 that reference the regulation of imported Irish potatoes. In addition, this rule makes minor administrative changes to the potato, onion, and tomato import regulations to update

informational references. The modifications to the import regulations are expected to benefit potato importers and consumers.

**DATES:** *Effective Date:* January 11, 2010.

#### **FOR FURTHER INFORMATION CONTACT:**

Barry Broadbent or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: [Barry.Broadbent@usda.gov](mailto:Barry.Broadbent@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This final rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act", which provides that whenever certain specified commodities, including potatoes produced in certain areas, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity. The import regulations for vegetables issued under section 8e, which cover imports of Irish potatoes, onions, and tomatoes, are contained in 7 CFR part 980.

This final rule is also issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, and Marketing Agreement No. 104 and Marketing Order No. 953, both as amended (7 CFR part 953), regulating the handling of Irish potatoes grown in two southeastern States (Virginia and North Carolina). Both orders are effective under the Act.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any