

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 451

RIN 3206-AJ65

#### Awards

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations to amend the rules governing Presidential Rank Awards to implement the Treasury and General Government Appropriations Act of 2002 which extends eligibility for Presidential Rank Awards to certain senior career employees. The regulations also incorporate existing requirements pertaining to rank awards for career members of the Senior Executive Service (SES) currently found in guidance that OPM provides annually to agencies and previously included in the former Federal Personnel Manual. The amendments will also enhance the clarity of the regulations and improve readability.

**DATES:** *Effective Date:* The interim regulations are effective on September 12, 2002.

*Comments Date:* Comments must be received on or before October 15, 2002.

**ADDRESSES:** Send or deliver written comments to Joyce Edwards, Director, Office of Executive Resources Management, U.S. Office of Personnel Management, 1900 E Street NW., Room 6484, Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Anne Kirby, (202) 606-1610, or e-mail to [SESgmt@opm.gov](mailto:SESgmt@opm.gov).

**SUPPLEMENTARY INFORMATION:** The regulations amend part 451 to add a new subpart, subpart C—Presidential Rank Awards. This new subpart incorporates current requirements for

awards for members of the Senior Executive Service (SES) found in subpart B—Presidential Awards, as well as new requirements for awards for senior career employees.

#### Background

Each year, the President may award the ranks of *Distinguished Executive* and *Meritorious Executive* to a small select group of career members of the Senior Executive Service (SES) to recognize sustained, extraordinary leadership accomplishments. The Office of Personnel Management administers the rank award program for the President. Agency heads submit nominations for rank awards to OPM, which reviews the nominations and recommends to the President which nominees should receive the awards, in accordance with 5 U.S.C. 4507 and regulations currently at 5 CFR part 451, subpart B. Section 4506 of title 5 authorizes OPM to prescribe regulations and instructions to implement the Presidential Rank Awards program.

#### Ranks for Senior Career Employees

Section 641 of the Treasury and General Government Appropriations Act of 2002 (Pub. L. 107-67, enacted 11-12-01) extended eligibility for Presidential Rank Awards to certain senior career employees. This new provision is codified in a new section of Chapter 45 of title 5 (5 U.S.C. 4507a). The public law defines a "senior career employee" as an individual appointed to a position classified above GS-15 and paid under 5 U.S.C. 5376, who is not serving under a time-limited appointment or in a position that is excepted from the competitive service because of its confidential or policy-making character. Senior career employees are individuals who occupy Senior-Level (SL) or Scientific-Professional (ST) positions.

Agency heads may nominate senior career employees to be awarded the ranks of *Distinguished Senior Professional* for sustained extraordinary accomplishment and *Meritorious Senior Professional* for sustained accomplishment in a manner similar to the nominations of career members of the SES.

In accordance with 5 U.S.C. 4507a, the regulations establish basic eligibility criteria that are consistent with criteria long-established for the SES. These eligibility requirements are: (1) Hold a

career appointment in a Senior-Level (SL) or Scientific-Professional (ST) position that is subject to OPM position allocations under part 319 and paid under 5 U.S.C. 5376 on the nomination deadline set by OPM; (2) be an employee of the nominating agency on the nomination deadline set by OPM; and (3) have at least 3 years of career or career-type Federal civilian service above GS-15. Individuals who have been awarded a Distinguished or Meritorious rank are not entitled to receive the same rank during the next 4 fiscal years. In addition, the Governmentwide number of career senior employees awarded the rank of *Distinguished Senior Professional* may not exceed 1 percent of the total number of career appointees to OPM-allocated Senior-Level (SL) and Scientific-Professional (ST) positions, and the number awarded the rank of *Meritorious Senior Professional* is limited to 5 percent of the total number of career appointees to OPM-allocated Senior-Level (SL) and Scientific-Professional (ST) positions.

As with SES nominations, agencies may nominate up to 9 percent of their career senior employees for rank awards. Generally, there should be no more than one Distinguished nominee from an agency for every five Meritorious nominees, in keeping with the proportion of awardees allowed Governmentwide.

Senior career employees receiving the Distinguished rank award will receive a lump-sum payment of 35 percent of basic pay; those receiving the Meritorious rank award will receive a lump-sum payment of 20 percent of basic pay.

Senior career employees will be eligible for rank awards beginning with awards granted by the President in 2003.

#### Ranks for Members of the Senior Executive Service

The regulations incorporate existing eligibility and other requirements for career members of the SES currently found in guidance and instructions that OPM provides annually to agencies on rank award nominations and that was previously included in the former Federal Personnel Manual, Supplement 920-1. Although agencies are required under 5 U.S.C. 4506 to comply with OPM regulations and instructions on award programs, we have decided to

place all requirements in regulation. This is a more compact and effective way to convey the requirements and may avoid misinterpretations.

The basic eligibility requirements are:

(1) The SES appointee must hold a career appointment in the SES on the nomination deadline set by OPM; (2) the nominee must be an employee of the nominating agency on the nomination deadline set by OPM; and (3) the nominee must have at least 3 years of career or career-type Federal civilian service at the SES level. Qualifying service includes appointments in the

SES, Senior Foreign Service, the Defense Intelligence Senior Executive Service, and similar senior executive systems. Qualifying service does not include noncareer, limited term, or limited emergency appointments in the SES or their equivalent, Scientific and Professional (ST) appointments, or Senior-Level (SL) appointments.

The number of Distinguished and Meritorious rank recipients is limited Governmentwide to a total of 6 percent of the career SES, but there is no statutory limit on the number of recipients by agency. In order to provide

adequate competition, agencies may nominate up to 9 percent of their career SES appointees for rank awards.

#### Table of Changes

The following table lists the changes to the current regulations. The "current rule" column lists the regulations in the current subpart B affected by the interim regulations. The "interim rule" column shows the disposition of the current rules and new rules in the new subpart C. The third column explains the changes.

Current rule	Interim rule	Explanation of change
451.201(c) .....	451.301(a) .....	Moves current SES provisions from subpart B to the new subpart C; redesignates remaining paragraphs in 451.201.
451.203(a) .....	451.305(a) and (b) .....	Moves current OPM responsibilities for reviewing rank award nominations and making recommendations to the President from subpart B to the new subpart C; separates the responsibilities into two paragraphs; and redesignates remaining paragraphs in 451.203.
	451.301(b) and (c) .....	Incorporates in regulation existing SES rank award eligibility requirements. These requirements have been included in annual rank award guidance and instructions to agencies and were included in the former FPM Supplement 92-1.
	451.302(a) .....	Implements new statutory provisions for rank awards for senior career employees.
	451.302(b) and (c) .....	Provides rank award eligibility requirements for senior career employees. Requirements are consistent with those for SES members.
	451.303 .....	Implements statutory restrictions on awards for SES appointees and senior career employees, including Governmentwide limits on the number of awards that the President may grant each year and limits on how often individual employees can receive awards.
	451.304 .....	Implements statutory provisions for paying rank awards, including individual award amounts and compliance with annual aggregate compensation limits.

#### Waiver of Notice of Proposed Rulemaking

I find that good cause exists to waive the general notice of proposed rulemaking. These regulations implement section 641 of Public Law 107-67, which mandates that the amendments shall take effect for awards granted in 2003. Implementing regulations must be published and supplemental guidance issued to agencies before OPM invites agency heads to submit nominations for the 2003 rank awards. The invitations are issued annually, in July or August, in order to give agencies maximum time to carefully evaluate and select nominees and prepare supporting documentation. Agency head nominations for the 2003 awards will be due to OPM in January 2003. The waiver of proposed rulemaking is necessary to ensure timely implementation of the law as intended by Congress.

#### E.O. 12866, Regulatory Review

This interim rule has been reviewed by the Office of Management and

Budget in accordance with Executive Order 12866.

#### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

#### List of Subjects in 5 CFR Part 451

Decorations, medals, awards, Government employees.

Office of Personnel Management.

**Kay Coles James,**  
*Director.*

Accordingly, OPM is amending 5 CFR part 451 as follows:

#### PART 451—AWARDS

1. The authority citation for part 451 continues to read as follows:

**Authority:** 5 U.S.C. 4302, 4501-4509, E.O. 11438, 12828.

#### Subpart B—Presidential Awards

##### § 451.201 [Amended]

2. Section 451.201 is amended by removing paragraph (c) and redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

##### § 451.203 [Amended]

3. Section 451.203 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

4. Subpart C—Presidential Rank Awards is added to read as follows:

#### Subpart C—Presidential Rank Awards

Sec.

451.301 Ranks for the Senior Executive Service.

451.302 Ranks for senior career employees.

451.303 Restrictions.

451.304 Payment of Rank Awards.

451.305 Responsibilities of the Office of Personnel Management.

##### § 451.301 Ranks for the Senior Executive Service.

(a) The circumstances under which the President may award the rank of

Distinguished Executive and Meritorious Executive to a Senior Executive Service (SES) career appointee are set forth in 5 U.S.C. 4507.

(b) To be eligible for a rank award, a senior executive must:

(1) Hold a career appointment in the SES, as defined at 5 U.S.C. 3132(a)(4), on the nomination deadline set by OPM;

(2) Be an employee of the agency, as defined at 5 U.S.C. 3132(a)(1), on the nomination deadline set by OPM; and

(3) Have at least 3 years of career or career-type Federal civilian service at the SES level. Service need not be continuous.

(i) Qualifying service includes appointments in the SES, the Senior Foreign Service, the Defense Intelligence Senior Executive Service, and similar senior executive systems.

(ii) Qualifying service does not include noncareer, limited term, or limited emergency appointments in the SES or their equivalent, Scientific and Professional (ST) appointments, and Senior-Level (SL) appointments.

(c) Each agency may nominate up to 9 percent of its SES career appointees for rank awards.

#### **§ 451.302 Ranks for senior career employees.**

(a) The circumstances under which the President may award the rank of Distinguished Senior Professional and Meritorious Senior Professional to a senior career employee are set forth in 5 U.S.C. 4507a.

(b) To be eligible for a rank award, a senior career employee must:

(1) Hold a career appointment in a Senior-Level (SL) or Scientific-Professional (ST) position that is subject to OPM position allocations under part 319 of this chapter and paid under 5 U.S.C. 5376 on the nomination deadline set by OPM;

(2) Be an employee of the agency on the nomination deadline set by OPM; and

(3) Have at least 3 years of career or career-type Federal civilian service above GS-15. Service need not be continuous. Qualifying service includes appointments that are not—

(i) Time-limited; or

(ii) To positions that are excepted from the competitive service because of their confidential or policy-making character.

(c) Each agency may nominate up to 9 percent of its career senior employees for rank awards.

#### **§ 451.303 Restrictions.**

(a) *Governmentwide limitations*—SES. During any fiscal year—

(i) The number of career SES appointees awarded the rank of

Meritorious Executive may not exceed 5 percent of the career SES; and

(ii) The number of career SES appointees awarded the rank of Distinguished Executive may not exceed 1 percent of the career SES.

(b) *Governmentwide limitations*—Senior career employees. During any fiscal year—

(i) The number of career senior employees awarded the rank of Meritorious Senior Professional may not exceed 5 percent of the total number of career appointees to OPM-allocated Senior-Level (SL) and Scientific-Professional (ST) positions; and

(ii) The number of career senior employees awarded the rank of Distinguished Senior Professional may not exceed 1 percent of the total number of career appointees to OPM-allocated Senior-Level (SL) and Scientific-Professional (ST) positions.

(c) *Frequency of awards.* Individuals awarded a Distinguished or Meritorious rank under this subpart shall not be entitled to be awarded that rank during the following 4 fiscal years.

#### **§ 451.304 Payment of Rank Awards.**

(a) Receipt of the Distinguished rank by an SES career appointee or a career senior employee entitles the individual to a lump-sum payment of an amount equal to 35 percent of annual basic pay, which shall be in addition to the basic pay paid under 5 U.S.C. 5376 or 5382, or any award paid under 5 U.S.C. 5384.

(b) Receipt of the Meritorious rank by an SES career appointee or a career senior employee entitles such individual to a lump-sum payment of an amount equal to 20 percent of annual basic pay, which shall be in addition to the basic pay paid under 5 U.S.C. 5376 or 5382, or any award paid under 5 U.S.C. 5384.

(c) Payment of rank awards must comply with the restrictions on annual aggregate compensation at 5 U.S.C. 5307.

#### **§ 451.305 Responsibilities of the Office of Personnel Management.**

(a) Annually, OPM shall establish criteria, including terms, conditions, and evaluation factors, for rank award nominations, in consultation with agencies and other stakeholders. Agencies shall nominate individuals for rank awards in accordance with OPM criteria and any other instructions.

(b) Annually, OPM shall review agency recommendations for Presidential Rank Awards for SES career appointees and senior career employees under 5 U.S.C. 4507 and 4507a, and recommend to the President which of

those individuals should receive rank awards.

[FR Doc. 02–20435 Filed 8–12–02; 8:45 am]

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## **SMALL BUSINESS ADMINISTRATION**

### **13 CFR Part 121**

**RIN 3245–AF00**

#### **Small Business Size Standards; Adoption of Size Standards by 2002 North American Industry Classification System for Size Standards**

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Direct final rule.

**SUMMARY:** The U.S. Small Business Administration (SBA) is amending its Small Business Size Regulations by incorporating the Office of Management and Budget's (OMB) 2002 modifications of the North American Industry Classification System (NAICS) into its table of small business size standards. These modifications are limited to industries in six (6) NAICS Sectors. The modifications result in a small number of size standard changes to certain NAICS activities.

SBA believes that this rule is noncontroversial and routine, and SBA anticipates no adverse comments to this action. If SBA receives adverse comments, it will withdraw this rule. SBA is publishing concurrently in this issue of the **Federal Register** a proposed rule to achieve the same result, that is, to modify its Small Business Size Regulations as contemplated in this direct final rule.

**DATES:** This rule is effective October 1, 2002, without further action, unless adverse comment is received by September 12, 2002. If adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

**ADDRESSES:** Address all comments concerning this rule to Gary M. Jackson, Assistant Administrator for Size Standards, Office of Size Standards, 409 Third Street, SW., Washington, DC 20416, via e-mail to [sizestandards@sba.gov](mailto:sizestandards@sba.gov), or via facsimile, (202) 205–6390. SBA will make all public comments available to any person or concern upon request.

**FOR FURTHER INFORMATION CONTACT:** Carl Jordan, Office of Size Standards, at (202) 205–6618 or [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

**SUPPLEMENTARY INFORMATION:** SBA adopted North American Industry Classification System (NAICS) industry definitions as a basis for its table of