

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 330, 333, and 335

RIN 3206-AH25

#### Agency Funding for Federal Employment Information

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations requiring each agency to pay a fee for its share of the cost of providing employment information through OPM to Federal employees and the public. The regulations implement a permanent statutory provision of Public Law 104-52, which authorizes OPM to charge fees to agencies to pay the cost of providing Federal employment information and related services. The fee for FY 96 will be based on each agency's proportionate share of the Federal competitive service workforce as of March 31, 1995, including all permanent and nonpermanent employees.

**EFFECTIVE DATE:** March 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Richard Whitford on 202-606-2525, TDD 202-606-0591, or FAX 202-606-5049.

**SUPPLEMENTARY INFORMATION:** The Treasury, Postal Service, and General Government Appropriations Act, 1996 (Pub. L. 104-52, November 19, 1995) shifts the funding for the Federal employment information function from OPM appropriations to a combination of OPM appropriations and fees for services to be paid by agencies into OPM's revolving fund.

#### Employment Information

Under 5 U.S.C. 3327, agencies must notify OPM of (1) competitive

examinations and (2) vacancies in the competitive service and Senior Executive Service for which the agency will consider applicants from outside the Federal service. Under 5 U.S.C. 3330, agencies must notify OPM of competitive service job announcements open to applicants outside an agency's own workforce. Under both laws, OPM is responsible for disseminating the information to the public.

Agencies also are required by the Interagency Career Transition Assistance Plan for Displaced Employees in 5 CFR part 330 (60 FR 67281, December 29, 1995) to notify OPM of competitive service vacancies open to candidates outside an agency's workforce, including temporary vacancies lasting 90 days or more. OPM makes this information available to assist displaced employees in finding employment. The Plan implemented, in part, the President's memorandum of September 12, 1995, entitled "Career Transition Assistance for Federal Employees."

In addition to carrying out the obligations discussed above, OPM provides employment information to support outplacement services of agency career transition centers. OPM also responds to a large volume of inquiries from the public, Federal employees, Congressional offices, and others on a broad range of employment topics.

Public Law 104-52 amended 5 U.S.C. 3330, which addresses competitive service announcements, to authorize OPM to charge fees to agencies to pay the cost of providing services under section 3330 and for related Federal employment information.

#### Proposed Regulations and Comments

On January 8, 1996, OPM issued proposed regulations at 61 FR 546 to implement the new funding arrangement. We proposed that fees for FY 96 be based on each agency's proportionate share of the Federal competitive service workforce as of March 31, 1995, including all permanent and nonpermanent employees. We received written comments from five agencies.

One agency disagreed with the proposal to base fees on each agency's proportionate share of competitive service employees and suggested that fees be based on the number of inquiries handled annually. The commenter believes the OPM proposal would cause

smaller agencies to subsidize larger agencies that use the OPM services more frequently.

OPM believes that a fee based on employment levels is fair. Such a funding mechanism reflects the centralized recruitment benefits to an agency, employment services to its employees, and dissemination of information and responses to a high volume of inquiries to the general public that otherwise would go to individual agencies.

OPM can identify the number of inquiries handled through its employment information system but not the source of contacts nor the agencies of interest to individual job seekers. Furthermore, there is no evidence that larger agencies make relatively greater use of OPM's employment information system than smaller agencies do.

Three agencies disagreed with the use of employment levels as of March 31, 1995, and suggested, respectively, mid-September 1995, October 31, 1995, or March 31, 1996, as more appropriate for the period in which services are provided. OPM has retained March 31, 1995. If future agency fees are based on employment levels, OPM will need to notify agencies of their share by the third quarter of the fiscal year preceding the one in which the fee is due to allow for agency budget planning. Employment levels will be taken from OPM's Central Personnel Data File (CPDF). Because agencies transmit personnel actions to CPDF on a quarterly basis, the most recent available data will be as of March 31, of each year.

An official from a component of a department commented that fees based on employment levels as of March 31 would not be appropriate for his organization because in a recent reorganization a considerable number of employees were transferred to a different component. OPM will notify each agency/department headquarters of its total agency fee (unless an agency requests otherwise). How the total fee is assessed among the components will be an internal matter for each agency.

One agency recommended that assessment be waived for any agency that does not have an appropriation for the current year. While we understand the concerns of agencies under a continuing resolution, we do not believe an exemption would be equitable to

other agencies—which also may be operating under a reduced appropriation.

Another agency suggested that it be given the option of using either OPM employment information services or developing its own recruitment and outreach programs. The OPM employment information function complements individual agency recruitment programs. However, agencies do not have an option under 5 U.S.C. 3327 and 3330; they are required to report examinations and vacancies to OPM. Nor does OPM have an option. The law requires OPM to disseminate employment information to the public, and Congress has made clear through Public Law 104–52 that agencies are to share in the funding of that responsibility.

The Administration and Congress clearly favor a single job information system over multiple agency-based systems. Beginning with National Performance Review recommendations to the President's initiative on career transition assistance and recent amendments to title 5, U.S.C., the support for an interagency information system has been clear and consistent. Thus, as agencies undergo downsizing and restructuring, a major consideration should be the appropriateness and cost-effectiveness of developing or operating duplicative employment information systems. Agencies also should note that adjustments to personnel reductions may be eased through more effective use of the Federal Employment Information System. Agencies may take the following steps:

- Refer inquiries about vacancies and employment that can be handled by OPM's automated Governmentwide employment information system directly to it, such as requests for job announcements and application materials.
- Make a single entry of vacancies to the Federal Employment Information System instead of mailing hard copy announcements to multiple recruiting points or third-party providers, or using paid advertising.
- When entering jobs into the database, make maximum use of the "remarks" section of the job record to provide information and minimize job seekers' follow-up calls to the personnel office. Also, to further minimize the number of inquiries to agencies and reduce personnel office workload, OPM will provide job announcements directly to job seekers (from electronic files of job announcements agencies transmit to OPM).

OPM recognizes that not every agency is prepared at present to provide

electronic files of job announcements. We plan to work with those agencies during a transition period in which we will continue to provide entry assistance. In light of the benefits that will accrue to agencies through electronic transmission, our goal is that they acquire the necessary capability and assume the data entry and vacancy announcement uploading functions by May 1, 1996.

One agency commented that the proposal removes agency flexibility to determine how best to notify State employment offices of examinations/vacancies, and that agency discretion be restored because agency funds are affected. Section 3327 of title 5, U.S.C., requires OPM to make this information available to State Employment Service offices. Since 1989, OPM has met this statutory requirement through regular electronic reports of job listings in the Federal Employment Information System to America's Job Bank, a Department of Labor funded organization that disseminates vacancy information to State Employment Service offices. Agencies need take no further action. Any attempt to delete selected agency data, as proposed, would have an adverse impact on this cost-effective approach as it now operates.

A competitive service agency suggested that excepted service agencies also be assessed for their fair share because they too benefit from the system. OPM lacks legal authority to assess excepted agencies because 5 U.S.C. 3327 and 3330 do not cover excepted positions.

#### Final Regulations

OPM is adopting the regulations as proposed with only minor editorial changes. The fee for FY 96 will be based on each agency's proportionate share of the Federal competitive service workforce as of March 31, 1995, including all permanent and nonpermanent employees. OPM has been appropriated \$2.5 million for the employment information function in FY 96. The balance to be collected through agency fees is \$2.8 million. OPM will bill at the agency headquarters level to minimize billing and accounting unless we hear otherwise from an agency.

Concerning future years, OPM will soon establish a working group of the Interagency Advisory Group, consisting of officials from representative agencies and OPM, to review the level, quality and costs of information services provided and make recommendations for improving efficiency and effectiveness. All agencies will have the opportunity, through the Interagency

Advisory Group, to discuss and comment on recommendations of the working group prior to implementation.

OPM will regularly report to agencies the information it collects regarding customer satisfaction and complaints. OPM also will notify each agency annually of the costs of the services, its obligation and of payment procedures.

The final regulations also consolidate the public notice requirements for competitive service positions in parts 330, 333, and 335.

#### Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to waive the delay in effective date and make these regulations effective in less than 30 days. The statutory basis for these regulations (Pub. L. 104–52) was effective on November 19, 1995, and OPM's reduced FY 96 appropriations will not allow it to continue the employment information function without reimbursement from agencies. It would be contrary to the public interest and impracticable to delay implementation.

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains only to Federal agencies.

#### Executive Order 12866, Regulatory Review

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

#### List of Subjects in 5 CFR Part 330

Armed forces reserves, Government employees.

#### List of Subjects in 5 CFR Parts 333 and 335

Government employees.

U.S. Office of Personnel Management.  
James B. King,  
*Director.*

Accordingly, OPM is amending 5 CFR parts 330, 333, and 335, as follows:

#### **PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)**

1. The authority citation for part 330 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–58 Comp., p. 218.

Section 330.102 also issued under 5 U.S.C. 3327 and 3330.

Subpart B also issued under 5 U.S.C. 3315 and 8151.

Section 330.401 also issued under 5 U.S.C. 3310.

Subpart H also issued under 5 U.S.C. 8337(h) and 8457(b).

Subpart I also issued under 106 Stat. 2720, 5 U.S.C. 3301 note.

2. Section 330.102 is revised, to read as follows:

**§ 330.102 Federal employment information.**

(a) *Vacancies open to the public.* (1) *Notice required*—(i) Under 5 U.S.C. 3327, Federal agencies must notify OPM promptly of:

(A) Open competitive examinations;  
(B) Vacancies in the competitive service to be filled under direct hire procedures or part 333 of this chapter; and

(C) Vacancies in the Senior Executive Service for which the agency seeks applications from persons outside the Federal service. Also, in accordance with § 317.501(b)(2) of this chapter, agencies must notify OPM of all Senior Executive Service vacancies to be filled by initial career appointment.

(ii) OPM will provide this information to the employment offices of the United States Employment Service.

(2) *Agencies covered.* Paragraph (a)(1) of this section applies to:

(i) The executive departments listed at 5 U.S.C. 101;

(ii) The military departments listed at 5 U.S.C. 102;

(iii) Government owned corporations in the executive branch as described at 5 U.S.C. 103;

(iv) Independent establishments in the executive branch as described at 5 U.S.C. 104, including the Nuclear Regulatory Commission; and

(v) Government Printing Office.

(b) *All other vacancies*—(1) *Notice required.* Under 5 U.S.C. 3330, OPM must maintain, and make available to the public, a list of agency vacancy announcements for positions in the competitive service. Under § 330.706 of this chapter, agencies must notify OPM promptly of competitive service vacancies to be filled for more than 90 days when the agency will accept applications from individuals outside the agency's own work force.

(2) *Agencies covered.* Except for any executive agency or unit thereof whose principal function is the conduct of foreign intelligence or counterintelligence activities, as determined by the President, paragraph (b)(1) of this section applies to:

(i) The executive departments listed at 5 U.S.C. 101;

(ii) The military departments listed at 5 U.S.C. 102;

(iii) Government corporations in the executive branch as described at 5 U.S.C. 103; and

(iv) Independent establishments in the executive branch as described at 5 U.S.C. 104.

(c) *Funding.* Under 5 U.S.C. 3330(f), OPM is authorized to charge fees to agencies for their share of the cost of providing employment information to the public and to Federal employees. OPM will work with agencies to review the effectiveness and efficiency of the Federal Employment Information System in meeting Federal agency and public needs and identify improvements to the system, consistent with the minimum level of service and statutory requirements. Subsequently, OPM will annually compute the cost of providing employment information and notify each agency of its share, along with a full accounting of the costs, and payment procedures.

**PART 333—RECRUITMENT AND SELECTION FOR TEMPORARY AND TERM APPOINTMENTS OUTSIDE THE REGISTER**

3. The authority citation for part 333 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 3327, 3330; E.O. 10577, 3 CFR 1954–58 Comp., p. 218; section 333.203 also issued under 5 U.S.C. 1104.

4. Section 333.102 is revised to read as follows:

**§ 333.102 Notice of job announcements to OPM.**

Under 5 U.S.C. 3327 and 3330, agencies are required to report job announcements to OPM when recruiting outside the register. This requirement is implemented through § 330.102 of this chapter.

**PART 335—PROMOTION AND INTERNAL PLACEMENT**

5. The authority citation for part 335 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3330; E.O. 10577, 3 CFR 1957–58 Comp., p. 218.

6. Section 335.105 is revised to read as follows:

**§ 335.105 Notice of job announcements to OPM.**

Under 5 U.S.C. 3330, agencies are required to report job announcements to OPM for vacancies for which an agency will accept applications from outside the agency's work force. This requirement is implemented through § 330.102 of this chapter.

[FR Doc. 96–6916 Filed 3–21–96; 8:45 am]

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**DEPARTMENT OF AGRICULTURE**

**Office of the Secretary**

**7 CFR Parts 1 and 47**

**Rules of Practice**

**AGENCY:** Office of the Secretary of Agriculture, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes and the Rules of Practice Under the Perishable Agricultural Commodities Act. This final rule provides that the adjudication, under the Perishable Agricultural Commodities Act, of whether an individual is “responsibly connected” with a particular commission merchant, dealer, or broker will be joined with any related disciplinary proceedings against the same commission merchant, dealer, or broker; and that any adjudications of such status will be made by Administrative Law Judges of the Department of Agriculture. USDA believes that the procedures, by reducing the incidence of multiple hearings, will facilitate speedy enforcement of the PACA and will result in savings in employee time and travel expense. They will also abolish the need for AMS to employ individuals to act as presiding officers at responsibly connected proceedings. In 1994, presiding officers were paid \$26,866, a large portion of which would be saved under the new regulation.

**EFFECTIVE DATE:** This final rule is effective April 22, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mary Hobbie, Assistant General Counsel, Trade Practices Division, Office of the General Counsel, USDA, Room 2446 South Building, 14th Street and Independence Avenue SW., Washington, DC 20250–1400 (202) 720–5293.

**SUPPLEMENTARY INFORMATION:**

**Disciplinary Proceedings**

Section 2 of the Perishable Agricultural Commodities Act (PACA), 7 U.S.C. 499b, proscribes as unfair various conduct on the part of commission merchants, dealers, or brokers. The PACA provides redress for such unlawful conduct in the form of suspension or revocation of required licenses, and to a limited extent, civil penalties. The Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA) enforces section 2 of the PACA, in part, through