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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213 and 315

RIN 3206-AK58

Excepted Service—Appointment of Persons With Disabilities and Career and Career-Conditional Employment

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final regulation regarding the excepted service appointments of persons with mental retardation, severe physical disabilities, and psychiatric disabilities. The regulation improves the Federal Government's ability to hire persons with these disabilities. It is designed to remove barriers and increase employment opportunities for persons with disabilities.

DATES: *Effective Dates:* August 25, 2006.

Conformity date: For all new appointments under 5 CFR 213.3102(u), agencies may begin using the authority on August 25, 2006. Agencies must convert all individuals who are serving under the two authorities that are abolished by this regulation, 5 CFR 213.3102(t) and 213.3102(gg), to the new appointing authority, 5 CFR 213.3102(u), by January 22, 2007.

FOR FURTHER INFORMATION CONTACT: Deidre Dessommes by telephone on 202-606-0960, by FAX on 202-606-2329, by TDD on 202-418-3134, or by e-mail at deidre.dessommes@opm.gov.

SUPPLEMENTARY INFORMATION: On January 11, 2005, OPM issued a proposed regulation at 70 FR 1833 to implement changes in the three existing Schedule A excepted service appointing authorities for persons with mental retardation, severe physical disabilities, and psychiatric disabilities, which

agencies use to hire people with disabilities. The proposed regulation allowed agencies to determine, on a case-by-case basis, whether individuals with these disabilities can receive an appointment based solely on medical documentation submitted by the applicant. The proposal also sought to consolidate the three separate Schedule A appointing authorities into one authority.

We received written comments from 17 agencies, 12 public service organizations, 7 Federal employees, and 35 individuals. In addition, we held a teleconference, at the request of the Office of Management and Budget, on February 15, 2005, with 16 agencies to discuss specific operational issues agencies had regarding the proposal. While many of these comments generally supported the proposed changes, 9 agencies, 1 public service organization, and 5 individuals expressed serious concerns over the broadened certification and determination of disability procedures and the potential liability agencies may incur as a result of these changes. After reviewing the comments, we are especially concerned that agency personnel lack the expertise to make medical disability determinations. This may result in inconsistent determinations across and within agencies and unanticipated inequities to disabled individuals; people who are not disabled could be appointed at the expense of those for whom these authorities were intended. After careful consideration of these comments, we determined that some of the proposed changes would result in unforeseen burdens and difficulties being imposed on hiring agencies as well as disabled individuals and have modified the final regulation accordingly.

The final regulation modernizes the appointment processes for people with disabilities in several significant ways:

- We are consolidating the three separate Schedule A appointing authorities, 5 CFR 213.3102(t) (mental retardation), 213.3102(u) (severe physical disabilities), and 213.3102(gg) (psychiatric disabilities) into one appointing authority, 5 CFR 213.3102(u).
- We are expanding agency acceptance of proof of disability and an applicant's job readiness certification to include broader types of certifying

entities. Agencies may accept proof and certification from a licensed medical professional (e.g., a physician or other medical professional duly certified by a State, the District of Columbia, or a U.S. territory, to practice medicine); a licensed vocational rehabilitation specialist (i.e., State or private); or any Federal agency, State agency, or agency of the District of Columbia or a U.S. territory that issues or provides disability benefits.

- We are clarifying the employment options for appointments under this authority. In cases where an applicant does not have certification of job readiness, an agency may appoint the individual to a temporary appointment to determine the applicant's readiness for continued employment.

- We are clarifying that agencies may also make temporary (for positions not expected to last more than 1 year), time-limited and permanent appointments under this authority.

- We are clarifying the distinction between proof of disability and certification of job readiness (i.e., the applicant is likely to succeed in performing the duties of the position for which he or she is applying). This will help agencies make proper appointments and lessen confusion expressed by commenters.

Comments

In addition to the concerns noted in the previous paragraphs, OPM received comments on other aspects of the proposed regulation. We categorized the comments by the following areas: Consolidation of appointing authorities, proof of disability, certification of job readiness, employment options, noncompetitive conversion, and miscellaneous comments.

Consolidation of Appointing Authorities

OPM received comments from 14 agencies, 2 organizations, and 3 individuals regarding the consolidation of the three appointing authorities into one. Most of these comments favored streamlining these appointing authorities. One agency commented that the consolidation will cause an additional workload to agencies; another agency asked OPM to provide guidance on converting individuals currently serving on the § 213.3102(t) and (gg) appointments to the § 213.3102(u) authority. We are unclear

how combining the authorities will increase agency workload. We are providing additional guidance on executing the final regulation in the "Implementation" section of this final regulation's Supplemental Information and will update the Guide to Processing Personnel Actions accordingly.

Another agency asked whether OPM considered separating the § 213.3102(gg) authority for appointing persons with psychiatric disabilities from the other two because such disabilities are hidden and difficult to detect. We are not sure how discerning a disability relates to the type of appointing authority under which an agency will appoint an individual. However, we believe streamlining the three separate authorities under one appointing authority will prove to be less confusing procedurally for the hiring agencies as well as help in reducing the number of appointing authorities that currently exist.

One agency stated the consolidation of authorities could negatively impact individuals currently appointed under three separate authorities during a reduction in force (RIF). We understand the agency's concern; however, depending on the actual circumstances of the restructuring, consolidation could have either a positive or negative impact compared with the current appointing authorities' impact. Agencies have discretion in determining which positions to abolish, as well as discretion to provide competing excepted service employees with certain assignment rights. (See 5 CFR part 351 for details.)

One individual opposed the consolidation on the grounds that it will impact prior discrimination claims brought against agencies and therefore may have a negative economic impact on these agencies. We believe that consolidation will have no impact on previous discrimination claims. The basis for these claims will not be affected by the combining of three authorities into one.

Proof of Disability

Proof of disability is required for appointments of persons with mental retardation, severe physical disabilities, or psychiatric disabilities. Previously, past guidance limited proof of disability to State Vocational Rehabilitation Agencies or the Department of Veterans Affairs (VA); agencies did not have the discretion to make determinations without the certification. It was also unclear what "certification" referred to in the language of the appointing authority. The final regulation allows agencies to accept as proof of disability

documentation from a licensed medical professional (e.g., a physician or other medical professional duly certified by a State, the District of Columbia, or a U.S. territory, to practice medicine); a licensed vocational rehabilitation specialist (i.e., State or private); or any Federal agency, State agency, or agency of the District of Columbia or a U.S. territory that issues or provides disability benefits.

One agency and one individual asked what level of agency authority is responsible for making determinations of the disability and of the likelihood that applicants are likely to succeed in performing the duties of the position. In the final regulation, we decided against providing agencies the option of making these determinations based upon comments we received—in sum, that agency personnel lack the expertise necessary to make medical disability determinations.

One individual asked whether a disabled person could submit the same documentation or certification more than once when applying for a position under this authority. We are not imposing any requirements concerning the recency of the documentation (provided the information is accurate) or any limitations on the number of times an applicant may submit such documentation.

Another individual stated that requiring certification by applicants already employed on a permanent Schedule A excepted service appointment is repetitive, burdensome and discriminatory. The final regulation does not require certification of current Schedule A employees. To clarify this, we will address it further in the "Implementation" section of this preamble.

An agency and a public service organization commented that the requirement that applicants with life-long or well-established disabilities submit documentation places a burden on these individuals because their documentation may not be available. We agree in part that this requirement may result in a burden on some individuals. However, agencies must ensure that individuals seeking appointment under this authority meet the intent of Executive Orders 12125 and 13124. In addition, by expanding the certification resources, we believe agencies will hire more individuals which will lead to expanded job opportunities for persons with disabilities.

Certification of Job Readiness

A public service organization asked that we clarify the processes for

documenting an applicant's disability and his/her ability to perform the duties of the position. As stated in a previous paragraph, the previous guidance was confusing in regards to both certifications. The final regulation makes a distinction between (1) proof of an applicant's disability, and (2) certification of the applicant's job readiness. As noted in a previous paragraph, proof of disability is required for all appointments of persons with mental retardation, severe physical disabilities, or psychiatric disabilities. The final regulation allows agencies to accept as proof of disability documentation from a licensed medical professional (e.g., a physician or other medical professional duly certified by a State, the District of Columbia, or U.S. territory, to practice medicine), a licensed vocational rehabilitation specialist (i.e., State or private); or any Federal agency, State agency, or agency of the District of Columbia or a U.S. territory that issues or provides disability benefits.

Certification of job readiness is a determination that a disabled applicant is likely to succeed in the performance of the duties of the position he or she is seeking. Certification of job readiness is required for appointments of persons with mental retardation, severe physical disabilities, or psychiatric disabilities. The same entities listed in a previous paragraph that may provide proof of disability may also certify an individual's job readiness. In addition, agencies may give individuals a temporary appointment in order to determine the applicant's job readiness, in lieu of job readiness certification. Agencies may convert individuals serving on a temporary appointment under § 213.3102(u) to a time-limited or permanent appointment under § 213.3102(u) at any time during the temporary appointment.

Operational aspects of documentation will remain with the agencies. We believe it is the agencies' responsibility to ensure procedures are followed and that proper appointing authorities are used.

One organization suggested modifying § 213.3102(u)(ii), consistent with sections 501 and 504 of the Rehabilitation Act, to state that certification of whether an individual is likely to succeed in the performance of a job is made "with or without reasonable accommodation." We are not adopting this suggestion because agencies already are required to make reasonable accommodation determinations for the work environment.

Two agencies recommended that OPM allow instructors, teachers, professors and other education professionals to certify an individual's ability to perform the duties of the job. We are not adopting this suggestion on the basis that individuals in these professions may not be specifically trained or licensed to make employability determinations.

One individual suggested that Federal agencies should require certification from a State Vocational Rehabilitation Agency (SVRA). We disagree; entities other than SVRAs (e.g., VA, private Vocational Rehabilitation Agencies, etc.) provide certifications of job readiness. In addition, in many cases SVRA certification is time-consuming and places an unnecessary burden on individuals seeking Federal employment.

Three agencies and a public service organization commented that agencies may lack the expertise to determine whether applicants are likely to successfully perform the duties of a particular position. An agency asked what the impact would be if an agency did not agree with another agency's certification of job readiness. As stated in a previous paragraph, we decided against giving agencies the discretion to interpret an individual's certification of job readiness, which may result in inconsistent determinations across and within agencies and unanticipated inequities to disabled individuals. As noted in a previous paragraph, agencies have the discretion to decide from which entities they will accept certification of job readiness.

Another agency recommends the final regulation expands on the criteria that agencies should use to predict probable job success. We believe that the hiring agency, rather than OPM, is in the best position to determine job success for the position it wants to fill.

Employment Options

One agency asked that OPM clarify the temporary and other employment options. We agree clarification is needed. Under the new § 213.3102(u) authority, an agency may make:

- A temporary appointment for an individual who has proof of disability but lacks certification for job readiness. Using some type of temporary appointment in lieu of certification of job readiness has long been available to agencies. We are continuing this practice but clarifying it in the context of the revised appointing authority. The individual may work under the § 213.3102(u) appointment until the agency determines that the individual is able

to perform the duties of the position, or the individual gains the certification from one of the entities listed in the appointing authority. Once certification is obtained, the agency may then appoint the individual to a time-limited or permanent appointment under the § 213.3102(u) authority. If the individual does not gain certification during the appointing authority timeframe, or does not demonstrate satisfactorily his or her ability to perform the duties of the job, the agency must separate the employee. (See 5 CFR 213.104 for the definition and restrictions on temporary appointments in the excepted service.)

- A temporary appointment of an individual who provides proof of a disability and certification for job readiness, when the duties of the position do not require it to be filled on a permanent basis.
- A time-limited appointment of an individual who provides proof of disability and certification for job readiness, when the duties of the position do not require it to be filled on a permanent basis. (See 5 CFR 213.104 for the definition of time-limited.)
- A permanent appointment of an individual who provides proof of disability and certification for job readiness. However, agencies are cautioned that the intent of Executive Orders 12125 and 13124 concerning employment of persons with mental retardation, severe physical disabilities, and psychiatric disabilities is to permit these individuals to obtain "civil service competitive status." Civil service competitive status is obtained through conversion to the competitive service rather than remaining in the excepted service.

The noncompetitive conversion of individuals occurs after the individual serves at least 2 years under a time-limited or permanent appointment under the revised § 213.3102(u) authority. Time served in a temporary appointment under § 213.3102(u) described in a previous paragraph is creditable toward the 2 years required for conversion. Time served in a temporary appointment in the competitive or excepted service prior to an appointment under § 213.3102(u) is also creditable, as long as the position is in the same line of work as the position filled by the time-limited or permanent § 213.3102(u) appointment.

One agency commented that the process requiring certification of a

disability for a temporary appointment is overly bureaucratic and presents a barrier to employment of disabled individuals. We disagree with this comment; agencies need proof that an applicant indeed has a disability in order to ensure the individual is eligible for appointment.

An agency asked whether these regulations impose a limitation on the number of times a person can be employed under a temporary appointment. The reference to time limitations on temporary appointments is found in § 213.104; this final regulation makes no change to that section.

An agency commented that the proposed regulation created an extra step to hire individuals with disabilities on a temporary appointment if they have already demonstrated the ability to perform the job duties in a satisfactory manner. The agency suggested individuals with disabilities should be hired on a permanent basis through which the 1st year of service could serve as the trial period. OPM does not agree and is retaining the temporary employment option for those instances when an agency needs to determine an individual's job readiness.

An agency suggested that the regulation include a statement that applicants may be appointed to temporary appointments under this authority with noncompetitive conversion to a permanent excepted service appointment without further certification of job readiness. OPM agrees and revised the new, consolidated authority to clarify this point.

An individual asked whether a temporary appointment is required for employees already in the Federal workforce who are seeking permanent employment under this authority. The temporary employment option is not intended for individuals already in the Federal workforce who have already demonstrated their ability to perform the duties of a particular job.

Noncompetitive Conversion

Two individuals commented that the 2-year requirement for noncompetitive conversion to the competitive service is excessive. One individual suggested we shorten this time period to 1 year. Executive Orders 12125 and 13124 make it very clear that the 2 years is required for conversion to the competitive service.

An agency suggested that conversion to a career-conditional appointment should be a mandatory condition of this hiring authority. OPM disagrees on the grounds that conversion to a career or

career-conditional appointment is not an employee right. Agencies maintain the discretion to determine whether an employee is ready for placement in the permanent career workforce. However, as noted in a previous paragraph, we caution agencies about the intent of Executive Orders 12125 and 13124 with regard to conversion of these individuals to the competitive service.

One agency suggested that OPM specify in the final regulation that conversions to the competitive service can be made after the individual completes 2 or more years of satisfactory service under either a permanent or temporary appointment under this authority. We disagree. It is longstanding practice for appointing authorities that contain conversion provisions, both in the excepted and competitive services, to require individuals to serve on nontemporary appointments before conversion. We see no reason to change this policy. However, we are adding clarification in section 213.3102(u) concerning the applicable appointments (time-limited or permanent) required for conversion.

Miscellaneous Comments

An agency and a public service organization commented that the term "mental retardation" is outdated and recommended we replace it with "persons with a cognitive disability" or "developmental disability." OPM recognizes the term "mental retardation" is considered outdated, but the term is used in the authorizing Executive Order 12125, dated March 15, 1979. We are reluctant to change a term used in the Executive order.

An individual suggested that OPM change the term "disabilities" to "medical conditions." OPM is not adopting this suggestion because "medical conditions" is a broader term that is undefined and general.

Two agencies suggested that OPM establish disability program points of contact (POCs) to provide technical guidance to agencies and to update contact information on the OPM Web site. OPM agrees and intends to establish one or more POCs within our Human Capital Leadership and Merit System Accountability Division.

Five agencies and one individual requested clarification and definition with respect to the following terms: "certain conditions;" "severe physical disabilities;" and "certification." OPM does not use the phrase "certain conditions" in the final regulation. We used it in the supplementary portion of the proposed regulation to generally mean instances in which a hiring agency could make determinations of

medical disabilities or employability. We are not defining "severe physical disabilities" on the basis that doing so may limit flexibility and because such a definition or finite list may exclude future conditions from consideration under this authority. We agree the term "certification" needs clarification. For the purposes of this regulation, we made a distinction between a determination of disability and a certification that a disabled applicant can perform the duties of the position.

Three public service organizations and five individuals asked whether individuals with specific conditions such as hearing impairments, kidney disease, epilepsy, learning disabilities, or cognitive deficits, or survivors of traumatic and/or acquired brain injuries would be included under this regulation. In addition, a public service organization commented that the regulation will allow OPM the opportunity to clarify the full coverage of individuals with disabilities. As stated in a previous paragraph, we are not providing a list of qualifying conditions for inclusion under this subpart. Further, there is no intent to specifically include or exclude any one particular type of disability.

Four agencies and two individuals commented that the regulation should address disabled employees currently in the Federal workforce who are looking for upward mobility and career progression. Because the appointing authority is aimed at initial entry to Federal employment, we are not adopting this suggestion.

Two individuals commented that this regulation should offer a hiring priority and/or other incentives to attract individuals with disabilities to the Federal Government. We are not adopting this suggestion because hiring priorities are established by statute or Executive order.

One agency asked whether OPM will require agencies to submit annual reports describing their use of this authority. There is no such requirement in the final regulation, however, OPM captures the statistical data on the use of the Schedule A appointing authorities in the Central Personnel Data File. This will continue with the implementation of the new regulation. OPM monitors, on an ad hoc basis, the use of all Federal Government-wide appointing authorities, including the Schedule A authorities for the employment of individuals with disabilities.

One individual commented that the regulation does not hold Federal agencies accountable for using this authority nor does it encourage them to

employ persons with disabilities. By law, agencies have broad discretion in terms of how they fill their positions. The decision to hire, and under what authority they do so, rests with the agency. In addition, the Code of Federal Regulations is not the proper document to include anything that is not regulatory in nature. We do believe the modernized certification flexibilities provide encouragement for agencies to increase their use of this authority.

An agency suggested that OPM should ensure that the number of persons with disabilities in the Federal workforce increases. Agencies are responsible for making their hiring decisions, based upon their resources and human capital needs. OPM's role is to provide agencies with the flexibilities for doing so and encourage their use.

Implementation

Agencies must move those who are currently serving under 5 CFR 213.3102(t) and 213.3102(gg) authorities to the new authority, 5 CFR 213.3102(u), as soon as possible. Those individuals must serve under the same time limits as the appointment from which they are being moved. They are eligible for noncompetitive conversion as long as the original appointment (from which they are converting) is not a temporary one. A current employee's service under 5 CFR 213.3102(u) and 213.3102(gg), regardless of whether the appointment is temporary or not, will count toward the 2-year period needed for noncompetitive conversion.

For those individuals who are currently serving under 5 CFR 213.3102(u), their appointments are unchanged.

Proof of disability and certification of job readiness are not required for individuals already serving in appointments under § 213.3102(u). They are also not required of those who will move from §§ 213.3102(t) and 213.3102(gg) to the revised § 213.3102(u) authority.

We will update OPM's Guide to Personnel Data Standards and the Guide to Processing Personnel Actions to reflect the new changes. These Guides are available on OPM's Web site, <http://www.opm.gov>.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain potential applicants and Federal employees.

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 Parts 213 and 315

Government employees, Reporting and recordkeeping requirements.

Office of Personnel Management.

Linda M. Springer,
Director.

■ Accordingly, OPM is amending 5 CFR part 213 as follows:

PART 213—EXCEPTED SERVICE

■ 1. The authority citation for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3161, 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218. Sec. 213.101 also issued under 5 U.S.C. 2103.

Sec. 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h), and 8456; E.O. 13318, 47 FR 22931, 3 CFR 1982 Comp., p. 185; 38 U.S.C. 4301 *et seq.*; Pub. L. 105–339, 112 Stat 3182–83; and E.O. 13162.

■ 2. Amend § 213.3102 by removing and reserving paragraphs (t) and (gg), and by revising paragraph (u) to read as follows:

§ 213.3102 Entire executive civil service.

* * * * *

(u) *Appointment of Persons with Mental Retardation, Severe Physical Disabilities, or Psychiatric Disabilities.*

(1) *Purpose.* An agency may appoint, on a permanent, time-limited, or temporary basis, a person with mental retardation, a severe physical disability, or a psychiatric disability according to the provisions described below.

(2) *Proof of disability.* (i) An agency must require proof of an applicant's mental retardation, severe physical disability, or psychiatric disability prior to making an appointment under this section.

(ii) An agency may accept, as proof of an individual's mental retardation, severe physical disability, or psychiatric disability, appropriate documentation (e.g., records, statements, or other appropriate information) issued from a licensed medical professional (e.g., a physician or other medical professional duly certified by a State, the District of Columbia, or a U.S. territory, to practice medicine); a licensed vocational rehabilitation specialist (i.e., State or private); or any Federal agency, State agency, or an agency of the District of Columbia or a U.S. territory that issues or provides disability benefits.

(3) *Certification of job readiness.* (i) An agency may accept certification that

the individual is likely to succeed in the performance of the duties of the position for which he or she is applying. Certification of job readiness may be provided by any entity specified in paragraph (u)(2)(ii) of this section.

(ii) In cases where certification has not been provided, the hiring agency may give the individual a temporary appointment under this authority to determine the individual's job readiness. The agency may also accept, at the agency's discretion, service under another type of temporary appointment in the competitive or excepted services as proof of job readiness.

(4) *Permanent or time-limited employment options.* (i) An agency may make a permanent or time-limited appointment based upon:

(A) Proof of disability; and
(B) A certification of job readiness, or demonstration of job readiness through a temporary appointment.

(5) *Temporary employment options.* An agency may make a temporary appointment based upon proof of disability specified in paragraph (u)(2) of this section when:

(i) It is necessary to observe the applicant on the job to determine whether the applicant is able or ready to perform the duties of the position. When an agency uses this option to determine an individual's job readiness, the hiring agency may convert the individual to a permanent appointment whenever the agency determines the individual is able to perform the duties of the position; or

(ii) The individual has a certification of job readiness and the work is of a temporary nature.

(6) *Noncompetitive conversion to the competitive service.* (i) An agency may noncompetitively convert to the competitive service an employee who has completed 2 years of satisfactory service in a nontemporary appointment under this authority in accordance with the provisions of Executive Order 12125 as amended by Executive Order 13124 and § 315.709 of this chapter.

(ii) An agency may credit time spent on a temporary appointment specified in paragraph (u)(5) of this section towards the 2-year requirement.

* * * * *

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

■ 3. The authority citation for part 315 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp. p. 218, unless otherwise noted; and E.O. 13162. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and

315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp. p. 111. Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp. p. 303. Sec. 315.607 also issued under 22 U.S.C. 2506. Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp. p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(d). Sec. 315.611 also issued under Section 511, Pub. L. 106–117, 113 Stat. 1575–76. Sec. 315.708 also issued under E.O. 13318. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987, Comp. p. 229. Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp. p. 264.

Subpart B—The Career-Conditional Employment System

■ 4. In § 315.201 revise paragraph (b)(1)(xii) to read as follows:

§ 315.201 Service requirement for career tenure.

* * * * *

(b) * * *

(1) * * *

(xii) The date of nontemporary appointment under Schedule A, § 213.3102(u) of this chapter, of a person with mental retardation, a severe physical disability, or a psychiatric disability, provided the employee's appointment is converted to a career or career-conditional appointment under § 315.709;

* * * * *

Subpart G—Conversion to Career or Career-Conditional Employment From Other Types of Employment

■ 5. Revise § 315.709 to read as follows:

§ 315.709 Appointment for Persons With Disabilities.

(a) *Coverage.* An employee appointed under § 213.3102(u) of this chapter may have his or her appointment converted to a career or career-conditional appointment when he or she:

(1) Completes 2 or more years of satisfactory service, without a break of more than 30 days, under a nontemporary appointment under § 213.3102(u);

(2) Is recommended for such conversion by his or her supervisor;

(3) Meets all requirements and conditions governing career and career-conditional appointment except those requirements concerning competitive selection from a register and medical qualifications; and

(4) Is converted without a break in service of one workday.

(b) *Tenure on conversion.* An employee converted under paragraph (a) of this section becomes:

(1) A career-conditional employee, except as provided in paragraph (b)(2) of this section; or

(2) A career employee if he or she has completed 3 years of substantially continuous service in a temporary appointment under § 213.3102(u) of this chapter, or has otherwise completed the service requirement for career tenure, or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* A person whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on conversion.

[FR Doc. 06-6464 Filed 7-25-06; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2006-0080]

Imported Fire Ant; Addition of Counties in Arkansas and Tennessee to the List of Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the imported fire ant regulations by designating as quarantined areas all of 2 counties in Arkansas and all or portions of 21 counties in Tennessee. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of imported fire ant to noninfested areas of the United States.

DATES: This interim rule is effective July 26, 2006. We will consider all comments that we receive on or before September 25, 2006.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the lower "Search Regulations and Federal Actions" box, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select APHIS-2006-0080 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the

docket after the close of the comment period, is available through the site's "User Tips" link.

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS-2006-0080, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2006-0080.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Brown, Imported Fire Ant Quarantine Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-4838.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant regulations (contained in 7 CFR 301.81 through 301.81-10 and referred to below as the regulations) quarantine infested States or infested areas within States and restrict the interstate movement of regulated articles to prevent the artificial spread of the imported fire ant.

The imported fire ant (*Solenopsis invicta* Buren, *Solenopsis richteri* Forel, and hybrids of these species) is an aggressive, stinging insect that, in large numbers, can seriously injure and even kill livestock, pets, and humans. The imported fire ant, which is not native to the United States, feeds on crops and builds large, hard mounds that damage farm and field machinery. The regulations are intended to prevent the imported fire ant from spreading throughout its ecological range within the country.

The regulations in § 301.81-3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, that is infested with the imported fire ant. The Administrator will designate

less than an entire State as a quarantined area only under the following conditions: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.81-2 that are equivalent to the interstate movement restrictions imposed by the regulations; and (2) designating less than the entire State will prevent the spread of the imported fire ant. The Administrator may include uninfested acreage within a quarantined area due to its proximity to an infestation or its inseparability from an infested locality for quarantine purposes.

In § 301.81-3, paragraph (e) lists quarantined areas. We are amending § 301.81-3(e) by:

- Adding all of Perry County, AR, to the quarantined area and expanding the quarantined area in Polk County, AR; and

- Adding portions of Anderson, Davidson, Gibson, Knox, Rutherford, Tipton, Van Buren, and Williamson Counties, TN, to the quarantined area and expanding the quarantined area in Bedford, Benton, Blount, Carroll, Cumberland, Grundy, Haywood, Hickman, Humphreys, Loudon, Maury, Roane, and Sequatchie Counties, TN.

We are taking these actions because recent surveys conducted by APHIS and State and county agencies revealed that the imported fire ant has spread to these areas. See the rule portion of this document for specific descriptions of the new and revised quarantined areas.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of imported fire ant into noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget