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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 302, 317, 330, 333, and 335

RIN 3206-AJ11

Reasonable Accommodation Requirements in Vacancy Announcements

AGENCY: Office of Personnel Management.

ACTION: Interim rule and request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing this interim regulation to require a reasonable accommodation statement in agency vacancy announcements. The intent of this action is to provide language that agencies can use or modify to inform applicants with disabilities that agencies offer reasonable accommodation.

DATES: These regulations are effective January 10, 2002. Comments must be received on or before February 11, 2002.

ADDRESSES: Send written comments to Ellen E. Tunstall, Assistant Director for Employment Policy, Office of Personnel Management, Room 6500, 1900 E Street NW, Washington, DC 20415-9500.

FOR FURTHER INFORMATION CONTACT: Linda Watson (Parts 302, 330, 333, and 335), 202-606-1252, Jacqueline Yeatman (Part 330, subpart G), 202-606-2786; or Marcia Staten (Part 317), 202-606-1832.

SUPPLEMENTARY INFORMATION:

Background

Reasonable accommodation is an adjustment or alteration that enables people with disabilities to apply for jobs, to gain access to the work environment, to perform job duties, or to enjoy the benefits and privileges of employment. Routinely, agencies provide services, establish active

recruitment programs and use selective placement appointment authorities that focus on people with disabilities.

Section 501 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in Federal employment. The law requires Federal employers to develop and implement affirmative action programs that promote the hiring, placement, and advancement of people with disabilities. It encourages employers to hire people with disabilities in all grade levels and occupational series according to the qualifications for the job and to provide reasonable accommodation when appropriate.

Executive Order 13078, dated March 13, 1998, established the National Task Force on Employment of Adults with Disabilities. The Task Force received the assignment of creating and coordinating an aggressive national policy to bring adults with disabilities into gainful employment at a rate as close as possible to that of the general adult population. To accomplish this the Task Force established a Federal Personnel Review Workgroup comprised of representatives from 11 different Federal agencies.

The Workgroup found that vacancy announcements and other recruiting materials of most Federal agencies did not include a reasonable accommodation statement. The Workgroup recommended that OPM and the Equal Employment Opportunity Commission work together in developing reasonable accommodation language for vacancy announcements and revise regulations to require all Federal agencies to include a reasonable accommodation statement in vacancy announcements.

OPM issued a memorandum on March 2, 2000, instructing Federal agencies to include a reasonable accommodation statement on all future vacancy announcements. Executive Order 13164, dated July 26, 2000, requires Federal agencies to establish procedures for reasonable accommodation.

This interim rule includes minor changes to vacancy announcements in the excepted service, Senior Executive Service, and competitive service, including temporary and term positions, covered under 5 CFR Parts 302, 317, 330, and 333. This interim rule includes guidance for including reasonable

accommodation language in Federal vacancy announcements.

The revision of 5 CFR Part 330, subpart G adds "Reasonable accommodation statement" to the list of items that must be included in all vacancy announcements published on USAJOBS as required under 5 CFR 330.707. This change supports the requirement for specific information on the vacancy announcement and establishes consistency in the information USAJOBS provides to applicants about vacancies. OPM's authority to require specific items in vacancy announcements for competitive service positions is title 5 U.S.C. 3330.

The revision to 5 CFR 335 updates the reference to reflect changes caused by the revision of 5 CFR 330, subpart G.

Recommended Reasonable Accommodation Statement

OPM recommends use of the following language in all future job announcements.

"This agency provides reasonable accommodation to applicants with disabilities where appropriate. If you need a reasonable accommodation for any part of the application and hiring process, please notify the agency. Determinations on requests for reasonable accommodation will be made on a case-by-case basis."

Modification of the Reasonable Accommodation Statement

Agencies may use wording of their choice that conveys the availability of reasonable accommodation. The statement must not list any specific type of medical condition or physical impairment as appropriate for a reasonable accommodation request.

Processing Reasonable Accommodation Requests

Agencies should designate an individual as a contact for reasonable accommodation requests. The contact must have sufficient knowledge about the agency's internal procedures for reasonable accommodation requests to prevent misinforming or frustrating the applicant with disabilities. OPM suggests that agencies include a general phone number, a TDD number, or email address for the contact.

Pursuant to Executive Order 13164, dated July 26, 2000, agencies are required to develop their own procedures for processing reasonable

accommodation requests. These instructions should be in writing to provide for consistency.

Waiver of Notice of Proposed Rulemaking

In accordance with section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. An opportunity for public comment prior to issuing this rule is unnecessary and contrary to the public interest. In developing this regulation, OPM worked extensively with affected stakeholders.

Regulatory Flexibility Act

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

Executive Order 12866, Regulatory Review

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

List of Subjects in 5 CFR Parts 302, 317, 330, 333, and 335

Armed forces reserves, Government employees, Individuals with disabilities.

U.S. Office of Personnel Management.

Kay Coles James,
Director.

Accordingly, OPM is amending parts 302, 317, 330, 333, and 335 of title 5 of the Code of Federal Regulations as follows:

PART 302—EMPLOYMENT IN THE EXCEPTED SERVICE

1. The authority citation in part 302 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 8151, E.O. 10577 (3 CFR 1954-1958 Comp., p. 218); § 302.105 also issued under 5 U.S.C. 1104, Pub. L. 95-454, sec. 3(5); § 302.501 also issued under 5 U.S.C. 7701 *et seq.*

2. In subpart A § 302.106 is added to read as follows:

Subpart A—General Provisions

§ 302.106 Vacancy Announcements.

When an agency announces a vacancy in the excepted service, the announcement must contain a reasonable accommodation statement that complies with requirements in § 330.707 of subpart G of this chapter.

PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

3. The authority citation in part 317 is revised to read as follows:

Authority: 5 U.S.C. 3392, 3393, 3393a, 3395, 3397, 3593, 3595 and 3596.

4. In § 317.501, paragraph (b)(2) is revised to read as follows:

Subpart E—Career Appointments

§ 317.501 Recruitment and selection for initial SES career appointment be achieved from the brightest and most diverse pool possible.

* * * * *

(b) ***

(2) Before an agency can fill an SES vacancy by career appointment, it must post a vacancy announcement in USAJOBS for at least 14 calendar days, including the date of publication. Each agency's SES vacancy announcement must comply with criteria in § 330.707 of subpart G of this chapter.

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

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

Authority: 5 U.S.C. 1302, 3301, 3302, 3327 and 3330; E.O. 10577, 3 CFR 1954-58 Comp., p.218.

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

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

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

Subpart G also issued under 5 U.S.C. 8337(h) and 8456(b).

Subpart K also issued under sec. 11203 of Pub. L. 105-33, 111 Stat. 738 and Pub. L. 105-274, 112 Stat. 2424.

Subpart L also issued under sec.1232 of Pub. L. 96-70, 93 Stat. 452.

Subpart G—Interagency Career Transition Assistance Plan for Displaced Employees

6. In § 330.707, paragraph (b)(14) is added to read as follows:

§ 330.707 Reporting vacancies to OPM.

* * * * *

(b)***

(14) Reasonable accommodation statement.

(i) An agency may use wording of its choice that conveys the availability of reasonable accommodation. An agency must not list types of medical conditions or impairments as appropriate for accommodation, and must keep the wording simple.

(ii) We recommend using the following statement:

“This agency provides reasonable accommodation to applicants with disabilities where appropriate. If you need a reasonable accommodation for any part of the application and hiring process, please notify the agency. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.”

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

7. The authority citation for part 333 continues 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.

8. 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 § 330.707 of subpart G of this chapter.

PART 335—PROMOTION AND INTERNAL PLACEMENT

9. The authority citation in part 335 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3304(f), 3330; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; and Pub. L. 106-117.

10. 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 § 330.707 of subpart G of this chapter.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 534, 591, and 930

RIN 3206-AJ44

Pay for Administrative Appeals Judge Positions

AGENCY: Office of Personnel Management.