

EMPLOYMENT OF ATTORNEYS

1. PURPOSE

This Directive establishes Packers and Stockyards Program (P&SP) policy and procedures for the recruitment and initial employment of excepted service attorneys (GS-0905 occupational series).

2. BACKGROUND

On January 21, 2010, the U.S. Department of Agriculture, Office of General Counsel, authorized P&SP to fill excepted service attorney positions under Title 5, Code of Federal Regulations, 213.3102(d).

3. AUTHORITIES/REFERENCES

- a. Title 5, United States Code, Part 2103, Excepted Service.
- b. Title 5, Code of Federal Regulations, Part 213, Excepted Service.
- c. Title 5, Code of Federal Regulations, Part 302, Employment in the Excepted Service.
- d. Office of Personnel Management's (OPM) Qualification Standards for General Schedule Positions.

4. POLICY

It is P&SP policy to:

- a. Require that prospective attorneys possess the basic occupational qualifications contained within Attachment 1, plus any additional qualifications required for successful job performance.
- b. Ensure the evaluation, referral, and selection process for attorney candidates is:
 - (1) Conducted in accordance with the Merit System Principles;
 - (2) Based solely on job-related criteria; and

- (3) Managed without regard to race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or any other non-merit factor.
- c. Consider veterans' preference as a positive factor when hiring attorneys.

5. RECRUITMENT PROCEDURES

- a. Initiating the Recruitment Process.
- (1) To initiate the recruitment process, P&SP will submit a Request for Personnel Action, Standard Form (SF) 52, to Human Resources Operations (HRO)-Minneapolis. The action requested on the SF-52 should be "Recruit."
 - (2) If the position has already been classified, P&SP will annotate the master record number on the SF-52. If the position has not yet been classified, or P&SP wishes to revise a pre-existing position, P&SP will submit a proposed position description along with the SF-52.
- b. Position Classification.
- (1) If the position has already been classified, the HRO-Classification section will verify the correct position description and send it to HRO-Staffing, along with the SF-52.
 - (2) If the position has not yet been classified, HRO-Classification will work with the appropriate P&SP hiring manager and/or subject matter expert to classify the position. Once the position is classified, HRO-Classification will send the final position description and SF-52 to HRO-Staffing for recruitment.
- c. Recruitment. Once HRO-Staffing receives the PD and SF-52, the servicing Human Resources Specialist will contact the appropriate P&SP hiring manager to consult with him/her on the recruitment process and formulate a recruitment plan.
- d. Preparing Vacancy Announcements.
- (1) Vacancy announcements will be used as the primary method of soliciting qualified applicants.
 - (2) Vacancy announcements must include the following information:
 - (a) Opening and closing dates;

- (b) Position title, series, and grade (plus number of vacancies, if known, when filling more than one position);
- (c) Promotion potential, if any;
- (d) Location of position;
- (e) Grade level(s) being considered;
- (f) Summary of the duties and responsibilities of the position;
- (g) Basic Qualification Requirements (Attachment 1);
- (h) Any criteria on which candidates will be evaluated (e.g., competencies/Knowledge, Skills, and Abilities (KSAs), or applicant assessment questions);
- (i) Equal Employment Opportunity policy statement;
- (j) Reasonable accommodation policy statement;
- (k) Required documentation in order to be considered;
- (l) The following veterans' preference statement:

Attorney positions within the Packers and Stockyards Program are in the excepted service. There is no formal rating system for applying veterans' preference to attorney appointments in the excepted service. However, the Packers and Stockyards Program considers veterans' preference eligibility as a positive factor in attorney hiring. Applicants eligible for veterans' preference must include that information in their application and attach supporting documentation.

- (m) Any other information, as appropriate.

- e. Distributing Vacancy Announcements. All attorney vacancy announcements must be posted on OPM's Web site, www.usajobs.gov. P&SP may also distribute vacancy announcements to other organizations as it deems appropriate. Such organizations include, but are not limited to: other Federal agencies; local and State bar associations, including local minority and women's bar associations; the Federal Bar Association; the National Bar Association; law schools and law professors; law journals; and other sources as appropriate.

6. VETERANS' PREFERENCE

Excepted service attorney positions are exempted from the veterans' preference procedures of 5 CFR Part 302. However, P&SP follows the principle of veterans' preference in its attorney hiring procedures as far as administratively feasible. To this

end, P&SP will consider veterans' preference eligibility as a positive factor in the attorney hiring process.

7. EVALUATION, REFERRAL AND SELECTION PROCEDURES

a. Qualification Requirements.

- (1) OPM does not publish qualification standards for attorney positions. However, OPM allows agencies to establish their own qualification requirements.
- (2) All attorney positions within P&SP are subject to the qualification requirements contained in Attachment 1 of this Directive.

b. Qualification Determinations. HRO-Staffing will conduct basic qualification determinations for all attorney positions.

c. Crediting Plans and Applicant Assessment Questions.

- (1) P&SP may elect to use a crediting plan and/or applicant assessment questions to further evaluate the applicants who meet the basic qualification requirements contained in Attachment 1. This decision, however, must be made prior to the issuance of the vacancy announcement. If P&SP elects to use a rating plan, the competencies/ KSAs associated with the rating plan must be included within the vacancy announcement. Likewise, if P&SP elects to use applicant assessment questions, those questions must be included in the vacancy announcement.
- (2) If P&SP elects to use a crediting plan and/or applicant assessment questions, it will consult with HRO-Staffing to establish a job analysis and determine the process by which the "best qualified" candidates will be identified. HRO-Staffing will review the applications and use the job analysis to identify the "best qualified" candidates.
- (3) If applicant-assessment questions are used as part of the recruitment process, HRO-Staffing will cross-reference the applicants' responses with the overall content of their applications to ensure the validity of the applicant responses.

d. Referral and Selection Process.

- (1) HRO-Staffing will prepare a selection certificate for the appropriate hiring manager. If P&SP elected to use a crediting plan and/or applicant assessment questions for the vacancy, HRO-Staffing will issue a certificate that lists the "best qualified" candidates in alphabetical order. If P&SP did not elect to use a crediting plan and/or applicant assessment questions for the vacancy, HRO-Staffing will issue a list of "basically qualified" candidates. The candidates will be listed in alphabetical order.

- (2) Selection certificates or lists of basically qualified applicants will identify each applicant who is eligible for veterans' preference.
- (3) HRO-Staffing will send the selection certificate, related applications, and any other relevant information to the hiring manager.
- (4) Although interviews are not required as part of the selection process, they are strongly encouraged. Hiring managers may elect to interview all, some, or none of the candidates referred for consideration. However, hiring managers must be able to support all interviewing decisions. When conducting interviews, the interviewer must take notes and retain them for future reference. This includes retaining all notes and documentation generated both electronically and in their original form, for a minimum period of 3 years, or indefinitely, if the matter is involved in litigation.
- (5) Hiring managers may tentatively select any of the candidates referred for consideration. However, upon request, P&SP must provide a qualified preference eligible with the reason(s) for his/her nonselection.
- (6) The hiring manager will notify HRO-Minneapolis of the tentative selection and the proposed effective date.
- (7) HRO-Minneapolis will collect the necessary employment paperwork for the appointment.
- (8) HRO-Minneapolis will prepare and issue a selection letter. The selection letter will confirm the official effective date. It will also identify the position title, occupational series, grade level, duty station, starting salary, trial period requirement (if any), and the new employee orientation process.
- (9) Selectees that voluntarily leave a competitive service position to accept an excepted service attorney position with P&SP must sign the form entitled Notification and Acknowledgment of Voluntary Acceptance of Excepted Service Position, see Attachment 2. This form must be signed before the effective date can be confirmed.
- (10) Selectees will be appointed under the legal hiring authority SCH A 213.3102(d).
- (11) Selectees must successfully complete a Special Agreement Check (SAC) prior to employment.
- (12) Selectees are subject to a full background investigation within the first year of employment.

8. TRIAL PERIODS

Employees selected for attorney positions are required to complete a 1 year trial period. The trial period provides managers with an opportunity to measure the abilities and fitness of employees for continued employment in P&SP. Prior Federal civilian service may count towards completion of the trial period when the following criteria are met:

- a. The prior service is in the same agency (i.e., U.S. Department of Agriculture);
- b. The prior service is the same line of work (determined by the employees' actual duties and responsibilities); and
- c. The prior service contains or is followed by no more than a single break in service that does not exceed 30 calendar days.

9. INQUIRIES

- a. General inquiries on procedural matters should be directed to HRO-Staffing. Requests for policy interpretations should be directed to the Human Resources Policy Branch.
- b. This Directive is available on the Internet at:
<http://www.aphis.usda.gov/library/gipsa/GIPSA.shtml>.

/s/

Alan Christian
Acting Administrator

2 Attachments

Qualification Requirements for P&SP Attorney Positions

To qualify, you **MUST** meet all qualification requirements by the closing date of the announcement.

Basic Requirements:

- A. *Education:* Completed the first professional law degree (LL.B. or J.D.) at a school of law accredited by the American Bar Association (ABA); **and**
- B. *Bar Membership:* Must currently be a member in good standing of a bar association of a State, a territory of the United States, or the District of Columbia.
- C. Transcripts are required from an accredited college or university.

Applicants that meet the basic requirement will qualify at the GS-9 level.

GS-11 Qualification Requirements

Applicants may qualify based on specialized experience or education

Specialized Experience: One year of professional legal experience equivalent in level of difficulty and responsibility to the next lower level in the Federal service. This experience must be related to conducting legal investigations or preparing cases for litigation.

Examples of qualifying experience include, but are not limited to:

- Using investigative procedures and interviewing techniques;
- Preparing case reports, rules of evidence, and legal briefs;
- Preparing memorandums and legal documents for use by senior attorneys;
- Interviewing and preparing witnesses for testimony; or
- Assisting senior attorneys with court cases or administrative proceedings.

Education:

- A. Completed the second professional law degree (LL.M.) at a school of law accredited by the ABA, **or**
- B. Academic standing in the upper third of the law school graduating class.

Note: Transcripts are required from an accredited college or university if qualifying based on either provision.

GS-12 Qualification Requirements

Applicants may qualify based on specialized experience or education

Specialized Experience: One year of experience in the professional field of agricultural law equivalent in level of difficulty and responsibility to the next lower level in the Federal service. This experience must be related to conducting legal investigations or preparing cases for litigation.

Examples of qualifying experience include, but are not limited to:

- Using investigative procedures and interviewing techniques in order to identify illegal and unfair business practices;
- Preparing case reports, rules of evidence, and legal briefs;
- Interviewing and selecting witnesses, preparing witnesses for testimony, and suggesting questions for use in cross-examination;
- Providing expert legal advice, guidance, and interpretation of Federal antitrust regulations; or
- Experience practicing before an administrative agency.

Education:

Completed the second professional law degree in agricultural law (LL.M.) at a school of law accredited by the ABA.

GS-13 Qualification Requirements

Specialized Experience: One year of experience in the professional field of agricultural law equivalent in level of difficulty and responsibility to the next lower level in the Federal service. This experience must be related to conducting legal investigations and preparing cases for litigation.

Examples of qualifying experience include, but are not limited to:

- Using investigative procedures and interviewing techniques in order to identify anti-competitive, unfair, discriminatory, or deceptive practices or devices in the livestock meat and poultry industries and markets;
- Preparing case reports, rules of evidence, and legal opinions;
- Interviewing and selecting witnesses, preparing witnesses for testimony, and suggesting questions for use in cross-examination;
- Providing expert legal advice, guidance, and interpretation of Federal antitrust regulations related to the livestock meat and poultry industries and markets; or
- Experience practicing before an administrative agency.

There is no education substitution for the GS-13 level.

**Notification and Acknowledgment of Voluntary
Acceptance of Excepted Service Position**

I, _____, acknowledge that I am voluntarily leaving the competitive service to accept an appointment in the excepted service. I understand that attorney positions are filled under Schedule A of the United States Office of Personnel Management's regulations and can only be filled by excepted appointment. In accordance with 5 CFR § 302.102, I understand that:

- a. This position of attorney is in the excepted service;
- b. It cannot be filled by a competitive appointment; and
- c. My acceptance of the excepted appointment will result in my leaving the competitive service.

I have been advised in writing of the provision of 5 CFR § 302.102. In accordance with these provisions, I voluntarily relinquish the competitive position I now hold and accept an excepted appointment as an attorney in the Packers and Stockyards Program.

Reinstatement Eligibility:

Because you hold or have held a position in the competitive service, you may have reinstatement eligibility. Reinstatement allows you to reenter the Federal competitive service workforce without competing with the public. To be eligible for reinstatement, you must have held a career or career-conditional appointment at some time in the past. There is no time limit on reinstatement eligibility for those who: 1) acquired career tenure; or 2) are eligible for veterans' preference. If you do not have veterans' preference or did not acquire career tenure, you may be reinstated within 3 years after the date of your separation from your competitive service position. Your reinstatement eligibility may be extended by certain activities that occur during the 3-year period after separation from your last career or career-conditional appointment, including Federal employment in the excepted service.

Signature

Date