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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 930

RIN 3206-AH31

Funding of Administrative Law Judge Examination

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to require agencies employing administrative law judges to reimburse OPM for the cost of developing and administering examinations for judge positions. The regulations implement Public Law 104-52 (November 19, 1995), which amended 5 U.S.C. 1104 to authorize OPM to delegate examining authority for all competitive service positions except for administrative law judges, and to require employing agencies to reimburse OPM for the cost of administrative law judge examinations.

DATES: Interim rules effective on July 29, 1996. Written comments will be considered if received on or before August 28, 1996.

ADDRESSES: Send or deliver written comments to Donna Beecher, Deputy Associate Director for Employment, Office of Personnel Management, Room 6F08, 1900 E Street, NW., Washington, DC 20415 (FAX 202-606-1768).

FOR FURTHER INFORMATION CONTACT: Richard A. Whitford on 202-606-2525, TDD 202-606-0591, or FAX 202-606-1768.

SUPPLEMENTARY INFORMATION: The President's National Performance Review, in its 1993 report From Red Tape to Results: Creating a Government That Works Better 7 Costs Less, recommended that Federal agencies

conduct their own competitive examining, with the option of obtaining examining services from OPM on a reimbursable basis. OPM's appropriations act for FY 96 implements this recommendation.

The Treasury, Postal Service, and General Government Appropriations Act, 1996 (Public Law 104-52, November 19, 1995) amended OPM's authority in section 1104(a) of title 5, United States Code, to permit it to delegate examining authority for all competitive service positions except for administrative law judges. As a result, OPM will continue to be responsible for the conduct of the administrative law judge examination. Pub. L. 104-52 also requires agencies employing administrative law judges to pay the cost of OPM-conducted examinations for these positions.

OPM is reviewing 5 CFR § 930.201, dealing with appointment of administrative law judges, to reflect the new funding arrangement. The revised regulation requires the affected agencies to reimburse OPM annually for the cost of developing and administering administrative law judge examinations. For FY 96, the fee will be prorated to cover only the fourth quarter to reflect the level of examining conducted on behalf of the employing agencies.

The amount of the reimbursement fee will be based on each employing agency's proportionate share of the administrative law judge workforce. Employment levels will be taken from OPM's Central Personnel Data File (CPDF) as of March 31 of each year. In future years, OPM will need to notify agencies of their share of the third quarter of the fiscal year preceding the one in which reimbursement is due to allow for agency budget planning. 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.

For the future, OPM will establish a working group consisting of officials from representative agencies and OPM to review the effectiveness and efficiency of the program and make recommendations for needed improvements. OPM will notify each affected agency annually of the costs of the program, its obligation, and of payment procedures.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking because the statutory basis for these regulations (Pub. L. 104-52) was effective on November 19, 1995, and OPM's reduced FY 96 appropriation necessitates collection of the reimbursement fee beginning in fourth quarter of FY 96. It would be contrary to the public interest and impracticable to delay implementation.

For the same reasons, and 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.

Regulatory Flexibility Act

I certify that this regulation will not have a significant 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 930

Administrative practice and procedure, Government employees, Motor vehicles.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR part 930 as follows:

PART 930—APPOINTMENT, PAY, AND REMOVAL OF ADMINISTRATIVE LAW JUDGES

1. The authority citation for part 930 continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 1305, 3323(b), 3344, 4301(2)(D), 5372, 7521.

2. In § 930.201, paragraph (c) is added to read as follows:

§ 930.201 Coverage.

* * * * *

(c) In accordance with 5 U.S.C. 1104(a)(2), OPM shall conduct competitive examinations for administrative law judge positions, and agencies employing judges shall reimburse OPM for the cost of

developing and administering such examinations. Each employing agency's share of reimbursement shall be based on its relative number of administrative law judges as of March 31 of the preceding fiscal year. OPM will work with employing agencies to review the examination program for effectiveness and efficiency and identify needed improvements, consistent with statutory requirements. Subsequently, OPM will annually compute the cost of the examination program and notify each agency of its share, along with a full accounting of the costs, and payment procedures.

[FR Doc. 96-19100 Filed 7-26-96; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

General Administrative Regulations; Reinsurance Agreement—Standards for Approval

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends its General Administrative Regulations by revising the Disputes clause. The intended effect of this rule is to provide reinsured companies with an informal reconsideration process through an administrative officer of FCIC and the right to appeal the administrative officer's determination to the Board of Contract Appeals.

EFFECTIVE DATE: July 29, 1996.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, (202) 720-2832.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Departmental Regulation 1512-1

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order 12866 and Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is March 31, 1999.

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments of the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act Analysis

This regulation will not have a significant impact on a substantial number of small entities. The amount of work required of the insurance companies should not increase because this action only changes the forum which determines the validity of decisions rendered by the agency. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. § 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions contained in these regulations and the appeal provisions promulgated by the Board of Contract Appeals, 7 CFR part 24, subtitle A, must be exhausted before action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

As a result of the Departmental reorganization mandated by the Department of Agriculture Reorganization Act of 1994, FCIC must amend its dispute provisions located at 7 CFR 400.169 to provide reinsured companies with a mechanism to request reconsideration of appeal of adverse decisions determined by FCIC.

On May 1, 1995, FCIC published an interim rule in the Federal Register at 60 FR 21035 to amend the General Crop Insurance Regulations, Subpart L, Reinsurance Agreement; Standards for Approval, by revising the disputes clause to provide reinsured companies with an informal appeal process through the FCIC, and a formal appeal process through the United States Department of Agriculture Board of Contract Appeals (BCA), for the purpose of resolving