

Rules and Regulations

Federal Register

Vol. 62, No. 110

Monday, June 9, 1997

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.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 330

RIN 3206-AH26

Career Transition Assistance for Surplus and Displaced Federal Employees

AGENCY: Office of Personnel
Management.

ACTION: Final regulation.

SUMMARY: The Office of Personnel Management is issuing final regulations to implement the President's memorandum of September 12, 1995, that requires Federal agencies to develop career transition assistance programs to help their employees affected by downsizing obtain other employment. The regulations require agencies to provide transition assistance services and give hiring priority to surplus and displaced employees.

DATES: Effective July 9, 1997. Agencies will amend their Career Transition Assistance Plans (CTAP), reflecting regulatory changes on providing internal selection priority and services to their surplus and displaced employees, as soon as possible, but no later than 90 calendar days after publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Susan Shelton or Ed McHugh on (202) 606-0960, FAX (202) 606-2329, or TDD (202) 606-0023.

SUPPLEMENTARY INFORMATION: On September 12, 1995, the President issued a memorandum entitled "Career Transition Assistance for Federal Employees," that directs Federal Executive agencies to establish career transition assistance programs to help surplus and displaced workers find other jobs as the Federal Government undergoes downsizing and restructuring. As set forth in the

memorandum, such programs are to be developed in partnership with labor and management, in accordance with guidance and regulations provided by the Office of Personnel Management (OPM).

OPM issued interim regulations on December 29, 1995, 60 FR 67281, which were developed in cooperation with representatives from the Interagency Advisory Group of Personnel Directors and employee unions. These regulations provided the framework for implementing the President's directive, the purpose of which is to maximize employment opportunities for displaced workers, both within and outside the Federal Government.

The program set up under the Presidential directive incorporates a new concept in career transition assistance for displaced workers called "employee empowerment." Instead of placing surplus workers in new jobs from a centralized inventory (the traditional Federal model for assisting displaced civil servants), the new program gives individual workers the power to find, apply and exercise priority for specific vacancies in which they themselves are interested. It seeks to motivate and reinforce an employee's self interest in finding work opportunities by giving displaced workers the resources and hiring priority necessary to support their transition to other employment.

Transition assistance consists of four components:

- Programs to provide career transition services to the agency's surplus and displaced employees;
- Policies for retraining displaced employees for new career opportunities;
- Policies that require the selection of a well-qualified surplus or displaced internal agency employee who applies for a vacant position in the commuting area, before selecting any other candidate from either within or outside the agency; and
- Policies that require the selection of a well-qualified displaced employee from another agency who applies for a vacant position in the commuting area before selecting any other candidate from outside the agency.

Under these regulations, Federal agencies are required to implement Career Transition Assistance Plans to provide career transition services to their surplus and displaced employees,

and give special selection priority to these workers. These regulations set minimum standards for these plans, which can be supplemented at the agency's discretion. These plans will operate through September 30, 1999, unless further extended because of severe downsizing. Because the Department of Defense (DOD) manages an effective program which provides selection priority to surplus and displaced employees within the Department—the Priority Placement Program—it is exempt from the special selection requirement affecting its own employees under the Career Transition Assistance Plan. The Department of Defense is subject to the other elements of these regulations, and the Reemployment Priority List under Subpart B of 5 CFR part 330, and its employees are eligible for the benefits provided by these programs.

Program Results to Date

On February 29, 1996, the interim regulations took effect. During the next few months, each major Federal agency established a Career Transition Assistance Plan for its employees and began giving selection priority for vacancies—first to its own surplus and displaced employees and then to displaced employees from other Federal agencies. During the first seven months the program was in operation, over 1,000 non-Defense surplus and displaced employees were selected for other jobs within their agencies. Over 400 more displaced employees were selected for vacancies in other Federal agencies through the Interagency Career Transition Assistance Program. The latter figure, achieved in seven months using the "employee empowerment" concept embodied in the Presidential directive, is roughly twice as many selections as were made during the last 3 years that the old Interagency Placement Program, a centralized referral and placement program which ICTAP replaced, was in operation.

During the same period, two Internet websites were set up to assist surplus and displaced Federal employees in finding other employment. OPM's USAJOBS Internet site (<http://www.usajobs.opm.gov>) provides information on Federal employment and complete vacancy listings which are updated daily. A joint website operated by the U.S. Department of Labor in

partnership with the U.S. Office of Personnel Management (<http://safetynet.doleta.gov>) is titled "Planning Your Future—A Federal Employee's Survival Guide." It provides a wide range of critical information to Federal employees who are affected by downsizing and are attempting to make successful career transitions, especially to occupations in the private sector. (Additional information on these sites and other career transition resources is available from OPM's Workforce Restructuring Office at (202) 606-0960; (202) 606-2329, FAX).

A number of Federal agencies undergoing downsizing have set up career transition centers to assist their displaced workers. In May, 1996, OPM, the Interagency Advisory Group of Personnel Directors, several local governments, and the Department of Labor opened a network of transition centers for displaced Federal workers in the Washington, DC area. The centers, which are a pilot for replication in other areas of the country, provide job search assistance, skills analysis, counseling and resume preparation services.

Changes Incorporated in the Final Regulations

Like the interim regulations, the final regulations require an agency, when filling a vacancy, to select an employee eligible under its Career Transition Assistance Plan before selecting any other candidate from within or outside the agency. When an agency has met its obligations under its Career Transition Assistance Plan (CTAP) and elects to fill a position from outside its workforce, it must first select agency employees who have been separated through reduction in force (RIF) and are eligible under its Reemployment Priority List (RPL); then, Federal employees displaced from other agencies who apply for positions in the local commuting area and are eligible under the Interagency Career Transition Assistance Plan (ICTAP).

Several changes have been made in the final regulations to improve the program for employees, and to provide agencies more flexibility in managing their workforce during this time of downsizing. These changes were made based upon written and oral comments received from agencies, employees, unions, and other interested persons. In addition, OPM's Workforce Restructuring Office obtained feedback on the interim regulations through OPM's Oversight function, field activity conferences, and by visiting over a dozen agencies at the headquarters level, soliciting their input and ideas.

We received written comments on the interim regulations from 18 Federal

agencies, one union, two professional associations, and several individuals. As a result of those comments, we have listed the major changes to the interim regulations by category:

Internal Selection Actions

Under the interim regulations, agencies are required to announce any vacancy lasting 90 or more days, and give selection priority to employees eligible under their Career Transition Assistance Plan. Of the agencies commenting, nine expressed their concern that internal reassignments were subject to the CTAP, thus limiting the flexibility of their managers to make workload assignments based on shifting priorities. The problems appear especially acute in those situations where managers have neither the personnel ceiling authorization nor the funding to bring in employees from outside their immediate organization, and need the flexibility to move their employees around in order to meet fluctuating workload and shifting priorities. OPM, in response to the many concerns expressed by these agencies, is adding an exception under 5 CFR 330.606(d), actions not covered, to permit, at the agency's discretion, those actions taken by an agency component to fill a position from among its employees after well-qualified surplus and displaced employees of that component, in the same local commuting area, have been accorded selection priority. This exception will allow agency components to make internal selections, including reassigning their employees to other positions, where this is necessary, without being required to give selection priority to CTAP candidates from outside that component.

For example, if Agency Component A in the local commuting area of Philadelphia, Pennsylvania, wants to reassign an employee to another position in the component within the Philadelphia area, it may do so without having to give selection priority to a CTAP candidate from outside the component. Special selection priority must still be afforded any eligible candidates within the component in the local commuting area, however. In our example, if Agency Component A wants to reassign an employee to Agency Component B, i.e., across component lines, then selection priority must first be given to eligible CTAP candidates from all components of the agency in the Philadelphia area. A component is considered to be the first major subdivision of an agency, e.g., the Customs Service within the Department of Treasury, or the U.S. Geological

Survey within the Department of Interior. We have added a definition of "component" to § 330.604, Definitions.

Expanded Geographical Eligibility for CTAP and ICTAP Eligible Employees

Under the interim regulations, a surplus or displaced Federal employee can exercise selection priority only for those positions that are in the same local commuting area as the position occupied at the time of his or her RIF separation. Two agencies and one association stated that selection priority should be extended to surplus and displaced employees beyond the local commuting area. Many agency officials voiced concern, however, that to open up every vacancy nationwide would place undue administrative and cost burdens on the agency. The agency could be forced to bear the costs of relocating the employee, when in most cases, well-qualified displaced candidates would be available within the local commuting area. This problem may be susceptible to change by statute or new regulation. Until such steps are taken, however, OPM is retaining the requirement under § 330.605(a)(4), Eligibility for CTAP, and § 330.704(a)(4), Eligibility for ICTAP, that in order to receive special selection priority, the applicant must apply for positions in the same local commuting area in which he or she works or worked at the time of his or her separation from the competitive service. Agencies have the discretion in their Career Transition Assistance Plans, however, to expand internal selection priority beyond the local commuting area for their own surplus and displaced employees. However, in no case could an eligible applicant outside of the local commuting area be given selection priority over a well-qualified surplus or displaced agency employee within the local commuting area.

Content of Vacancy Announcements

OPM received comments from both agencies and employees that job vacancy announcements sometimes do not contain clear and concise information for ICTAP candidates on eligibility requirements, how to apply, or documentation required. In response to those concerns, OPM is adding the requirement under § 330.707, Reporting Vacancies to OPM, that when the agency is posting a job announcement to the Federal Jobs Database, it must clearly state the definition of "well-qualified" on the vacancy announcement, including information on how a CTAP and/or ICTAP eligible may apply, and what proof of eligibility is required. A similar requirement is

contained in § 330.607(b) for an agency's internal announcements issued in connection with its Career Transition Assistance Plan.

Notification Requirements

OPM received numerous complaints from surplus and displaced employees who had filed applications under CTAP and ICTAP, but were not able to find out the results of their application. Because surplus and displaced employees are entitled to selection priority, OPM feels that it is critical that the agency provide them with information relative to their application for a specific vacancy. Thus, OPM is adding a requirement to 5 CFR 330.607(c) and 330.706(c) for agencies to advise, in writing, surplus and displaced employees who apply under specific vacancy announcements of the results of their applications, including whether or not they were found well-qualified. If well-qualified, the agency should notify the applicant of his/her selection as soon as possible, or if another well-qualified CTAP or ICTAP candidate is chosen. If the applicant is not found well-qualified, then he or she must be advised in writing of the results of a second independent review of his or her application.

Definition of "Well-qualified"

OPM received many requests from agencies to clarify the definition of "well-qualified" under 5 CFR 330.604(h) of the interim regulations. In response to those requests, OPM is clarifying the language and including a statement under § 330.604(k) that "well-qualified" generally includes those applicants whose knowledge, skills, and abilities clearly exceed the minimum qualification requirements, but who would not necessarily meet the agency's definition of "highly or best qualified." For purposes of the career transition assistance regulations, the terms "highly qualified" and "best qualified" are not applicable.

Review of Qualification Determinations

Under the interim regulations, surplus and displaced employees must be well-qualified for a position in order to receive selection priority. Currently § 330.609 and § 330.708 of the interim regulations require that agencies conduct a documented review whenever otherwise eligible employees are found not to be well-qualified. OPM received many comments regarding the requirement for this review. One association commented that employees should be able to ask for a review of their applications in those instances where they meet minimum qualification requirements, but are not found well-

qualified. The commenter went further to suggest that a reviewing panel, consisting of an equal employment opportunity specialist and a personnel specialist, review the selection. One individual commented that the regulations should provide an avenue of appeal to the applicant. Another association asked that in lieu of an appeals procedure, that the final regulations clarify the right of the individual to grieve determinations through either the negotiated or administrative grievance procedure. One agency agreed that a qualifications review should be conducted only in those instances where the employee has not been found well-qualified. The Workforce Restructuring Office at OPM also received numerous calls from surplus and displaced employees who expressed concern that they were not afforded an avenue of appeal. OPM has considered these comments, and has determined that the language in 5 CFR 330.609 and 330.708 of the interim regulations needs to be clarified, to specify that agencies will conduct a documented, independent second review in those instances where an otherwise eligible CTAP or ICTAP applicant is not found well-qualified. An example of a second independent reviewer might be a supervisor in the human resources office, an Equal Employment Opportunity official, or a subject matter specialist who was not involved in the original rating process. The applicant must be advised in writing of the results of the second review.

Length of Positions Subject to CTAP/ICTAP

Several agencies objected to the definition of the word "vacancy" under § 330.604(g) of the interim regulations, saying that the requirement to announce positions lasting 90 days or more was too restrictive, and carried an administrative burden that resulted in few, if any, CTAP or ICTAP applicants. Further, vacancies of short duration, e.g., 90 days, did not provide the CTAP or ICTAP eligible a significant placement opportunity to ease the employee's reduction in force separation. In response to those objections, OPM has changed the definition of "vacancy" to positions lasting 121 or more days. The final regulations thus allow agencies to temporarily fill positions for up to 120 days without requiring that selection priority be afforded their surplus or displaced employees. A conforming change was also made to § 330.102, which previously required that agencies

notify OPM of all competitive service vacancies lasting more than 90 days.

Extensions of Temporary and Term Employment Actions

In response to many concerns raised by agencies, OPM is including exceptions in the final regulations which allow agencies to make an extension to a temporary action, e.g., promotion, or an extension to a temporary or term appointment, without having to reannounce the position and reconsider surplus and/or displaced employees. The original vacancy announcement must have been open to CTAP and/or ICTAP candidates, whichever is appropriate, and it must have clearly stated that the original action, e.g., promotion, or appointment could be extended. Temporary actions which took place prior to the effective date of the interim regulations, i.e., February 29, 1996, including subsequent extensions, are not subject to the CTAP and ICTAP.

OPM is thus adding as an exception under CTAP, § 330.606(d)(26), actions not covered, the following:

- Extensions of temporary or term actions, up to the full period allowed, provided the original vacancy announcement was open to CTAP candidates, and selection priority conferred to them, as appropriate. The original announcement must have specified that the action could be extended without reannouncement.
- OPM is also adding as an exception to ICTAP, § 330.705(c)(11), the following: Extensions of temporary or term actions, up to the full period allowed, provided the original vacancy announcement specified that ICTAP candidates could apply, and if found well-qualified, would be conferred special selection priority. The original announcement must have specified that the action could be extended without reannouncement. This exception includes extensions granted by OPM to the 2 or 4 year limit allowed for temporary and term appointments, respectively.

Eligibility of Excepted Service Employees

Currently, the interim regulations do not provide selection priority to employees separated from excepted service positions. The reason for this is that such employees do not have the same kind of eligibility to be appointed on an "interchangeable" basis as employees in the competitive civil service. Excepted service employees are eligible to receive all the same career transition services, e.g., career counseling, attendance at workshops,

access to career transition centers and their resources, etc., as competitive service employees. One agency commented that selection priority should be afforded all Federal employees, because downsizing is taking place Federal-wide, and all employees are affected. One association commented that employees in Schedule A or B positions should be afforded not only the full range of career transition assistance available to competitive service employees, but also should be given selection priority to other Schedule A or B positions.

The final regulations give agencies the discretion to offer selection priority under CTAP to excepted service employees who were hired into appointments without time limit under Schedule A or B appointing authorities. If a permanent Schedule A or B excepted service employee is being separated through RIF, or because he or she declined a transfer of function or directed reassignment outside of the local commuting area, he or she, at the agency's discretion, may be given selection priority for other similar permanent excepted service Schedule A or B vacancies within an agency's local commuting area.

The policy set by the agency must be consistently applied to all Schedule A and B appointees within the agency, and must be in accordance with the provisions of 5 CFR part 302, as applicable. Selection priority would be exercised based upon the nature of the appointing authority, e.g., a Schedule A employee who is in receipt of a RIF notice would have selection priority for other Schedule A positions in the agency, within the local commuting area. We are thus adding under § 330.604(i)(3), Definitions, the provision that a surplus employee may include an employee in the excepted service, who serves without time limit under a Schedule A or B appointing authority at grade levels GS-15 or equivalent and below, who is in receipt of a certificate of expected separation or a RIF notice of separation, or who is in receipt of a notice of proposed separation for declining a directed reassignment or transfer of function outside of the local commuting area. The employee, at the agency's discretion, may exercise special selection priority for positions having the same appointing authority as the position from which the employee is being separated, within the agency's local commuting area. This provision will apply to all Schedule A or B employees serving in positions without time limit. These employees are not

eligible for special selection priority under the ICTAP.

Filling Excepted Service Positions as Exceptions to CTAP and ICTAP

The interim regulations allow agencies to fill excepted service positions without having to give selection priority to surplus or displaced employees. This includes the movement of excepted service employees within an agency and conversions of agency employees from excepted appointments to competitive service positions, in certain defined situations. These same provisions apply to Subpart G, the ICTAP. That is, an agency can appoint, reassign, promote, or transfer an excepted service employee to an excepted service position without first being required to provide selection priority to surplus or displaced competitive service employees. Again, this is based on the fact that excepted service employees are usually hired for very special positions or purposes, and they are not generally interchangeable with other competitive service employees. During the comment process, one union suggested that excepted appointments be eliminated as an exception from the CTAP and ICTAP, stressing that the integrity of the career transition assistance program could not be preserved otherwise. We considered this suggestion, but feel that since excepted service positions are often used for specialized purposes, e.g., attorney positions, and typically have requirements that are not found in an agency's workforce, making them subject to career transition programs would not significantly increase selection opportunities for most surplus or displaced employees. The final regulations thus continue to permit agencies to fill excepted service positions without regard to the agency's Career Transition Assistance Program or the Interagency Career Transition Assistance Program.

Eligibility of Employees Who Decline a Directed Reassignment or Transfer of Function Outside of the Local Commuting Area

Under the interim regulations, employees who decline a directed reassignment or transfer of function outside of the local commuting area are eligible for selection priority under ICTAP on the date of their declination. Two agencies commented that the language in 5 CFR 330.704(b) (i) and (iv), eligibility for special selection priority, was not consistent. Specifically, the commenter suggested that it was not equitable to state that eligibility for special selection priority

for an employee being RIF separated begins on the date the agency issues a specific RIF separation notice; whereas, in § 330.704(b)(iv), eligibility for special selection priority for an employee who declines a directed reassignment or transfer of function to another commuting area begins on the date of declination. OPM has considered this comment and agrees that in order to ensure that employees are treated equitably, employees who decline a directed reassignment or transfer of function to another commuting area should be eligible for CTAP and ICTAP beginning on the date on which the separation notice is issued to the employee by the agency.

We are thus amending § 330.605(b), Eligibility for CTAP, and § 330.704(b)(4), Eligibility for ICTAP, to clarify that CTAP and ICTAP eligibility begins when the agency issues a notice of proposed separation for declining a directed reassignment or transfer of function outside of the local commuting area. Employees who decline a directed reassignment or transfer of function to another commuting area prior to the effective date of these final regulations will remain eligible for ICTAP based upon the date of their declination, under § 330.704(b)(iv) of the interim regulations.

Length of Eligibility

One union, one agency, and several individuals expressed their concern that eligibility for special selection priority is too short to provide adequate opportunity for placement. OPM believes, however, that current eligibility periods are adequate. Realistically, selection priority within an agency can only be afforded while the employee is still on the agency rolls. Eligibility for the ICTAP begins with the date of the RIF separation notice, for example, and ends one year from the date of the actual RIF separation. Thus, a displaced employee has a minimum of 60 calendar days (120 days for Department of Defense employees) of CTAP eligibility (beginning with the date the agency issues the RIF separation notice) and 1 year, 60 days (1 year, 120 days for Department of Defense employees) of ICTAP eligibility. We feel that this provides a reasonable time during which a displaced employee can apply for and be selected for employment.

CTAP/ICTAP Briefing for Each Displaced Employee

OPM has received information indicating that some individuals eligible for the CTAP and/or ICTAP are not being provided information by their

human resources office about the program. As a result, some employees may not fully understand their entitlement under this new program, or that they must apply within the local commuting area for vacancies in which they are interested. In order to better educate affected employees on the requirements and benefits of this new program, OPM is requiring agencies under 5 CFR 330.602(a)(1)(iv), Agency plans, to conduct a specific orientation session for their current surplus and displaced eligible employees.

Reporting Requirements

Consistent with other chapters in the regulations, OPM is adding a requirement under § 330.610(b) (2) and (3) that an agency report the number of eligible applicants found well-qualified, and not well-qualified under CTAP. In addition, a new requirement has been added, under § 330.610(b)(5), Reporting, asking agencies to report the number of second reviews and the results of such reviews. We are also requiring agencies under § 330.610(b)(6) to report the number of CTAP eligibles who declined job offers. We are adding similar requirements to § 330.710(b), Reporting, as they pertain to ICTAP, including the requirement of the agency to report the number of placements made from the Reemployment Priority List.

Labor-Management Requirements

Agreement provisions in conflict with the interim regulations, which were effective February 29, 1996, remain in effect for the term of the agreement by operation of 5 U.S.C. 7116(a)(7). However, in the spirit of partnership, agencies and unions are urged to mutually amend existing agreements to make them consistent with these regulations prior to the expiration of conflicting negotiated agreements.

Apart from the aforementioned agreements, these regulations were effective at the time they were issued as interim regulations. In implementing them, agency officials should check with their labor relations officials to determine to what extent, if any, there is a duty to give notice and, upon request, bargain on their impact and implementation.

Technical Exceptions

As a result of the comments received, we are adding several technical exceptions to agency Career Transition Assistance Plans (CTAP) under 5 CFR 330.606(d), actions not covered. These include:

1. The internal placement of an injured or disabled worker whose agency has identified a position for

which he or she can be reasonably accommodated;

2. An action taken to return an employee to his or her original or similar position during a supervisory probationary period;

3. Actions taken by the agency head or his designee pursuant to the settlement of a formal complaint, grievance, appeal, or litigation;

4. The retention of individuals whose positions are brought into the competitive service under § 316.701 or § 316.702 of this chapter and subsequent conversion, when applicable, under § 315.701 of this chapter;

5. The retention of an employee for whom OPM has approved a rule 5.1 variation;

6. The reemployment of a former agency employee who retired under a formal trial retirement and reemployment program, and who seeks reemployment with that agency under the program's provisions, including the program's applicable time limits;

7. The placement of a member of the Senior Executive Service under 5 U.S.C. 3594; and

8. The noncompetitive movement of displaced employees between agencies as a result of reorganization, transfer of function, or mass transfer.

Likewise, OPM is adding several technical exceptions to the Interagency Career Transition Assistance Plan (ICTAP) under 5 CFR 330.705(c), actions not covered, including those listed as items 3–7 above, and:

- The reappointment of former employees with their former agency into hard-to-fill positions, and whose unique skills and experience are needed in order to conduct a formal skills-based training program for the agency; and

- Assignments made under the Intergovernmental Personnel Act (IPA).

Expanding Definition of "Surplus" Employees to Include Individuals Whose Positions Are Abolished

OPM is also expanding the definition of "surplus employee" under 5 CFR 330.604(i) to include an employee who is officially notified in writing by the agency that his or her position is being abolished, and that he or she is eligible for discontinued service retirement. This is in response to numerous concerns raised by employees who had been advised that they were eligible for discontinued service retirement because of position abolishment, but they were not eligible for selection priority under CTAP.

CTAP/ICTAP Eligibility of Excepted Service Employees Who Are Given Placement Assistance for Competitive Service Positions by Special Statute

OPM is extending the definition of "surplus" under § 330.604(i) and "displaced" under § 330.604(c), Definitions, to include a current Executive Branch excepted service employee serving on an appointment without time limit, at grade levels GS–15 or equivalent and below, who has been issued an official certificate of expected separation (or similar official agency notice that his or her job is surplus), RIF notice of separation, or notice of proposed removal for declining a transfer of function or directed reassignment outside of the local commuting area, and who has noncompetitive appointment eligibility and special selection priority, granted under special statute. OPM is also including under § 330.703(b)(8), Definitions for displaced employees, a former Executive Branch employee, at grade levels GS–15 or equivalent and below, who has been separated from a permanent appointment in the excepted service and who has been given noncompetitive eligibility and selection priority for career or career conditional appointment by statute in order to facilitate placement into the competitive service. Similar language is added under § 330.703(b)(7) for current excepted service employees in receipt of a RIF separation notice. These definitions are intended to clarify that employees in the excepted service who have noncompetitive appointment eligibility into the competitive service based on statute do not have selection priority for competitive service positions, unless the pertinent statute so states.

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 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 Part 330

Armed forces reserves, Government employees.

U.S. Office of Personnel Management.

James B. King,
Director.

Accordingly, OPM is amending part 330 of title 5, Code of Federal Regulations, as follows:

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

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

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp., p. 218; § 330.102 also issued under 5 U.S.C. 3327 and 3330; subpart B also issued under 5 U.S.C. 3315 and 8151; § 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.

§ 330.102 [Amended]

2. In § 330.102, paragraph (b) is revised to read as follows:

* * * * *

(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 § 330.707 of this chapter, agencies must notify OPM promptly of competitive service vacancies to be filled for more than 120 days when the agency will accept applications from individuals outside the agency's own work force.

(2) [Reserved]

3. Section 330.301 is revised to read as follows:

§ 330.301 Coverage.

(a) This subpart covers the Interagency Placement Program for employees who will be displaced or who have been separated from their Federal jobs as a result of agency workforce reductions, compensable on-the-job injury, discontinued service retirement, or disability retirement. Agencies have the primary responsibility for providing placement assistance to their surplus and displaced employees, and for administering career transition assistance programs. OPM supplements these agency efforts by administering the Interagency Placement Program which gives surplus or displaced employees priority referral to positions in other agencies.

(b) The operation of this subpart will be suspended from February 29, 1996 through September 30, 1999. In the interim, placement assistance will be provided in accordance with subparts B, F, and G of this part. OPM may extend this date if it determines that the Federal Government is still experiencing an emergency downsizing situation.

4. Subpart F is revised to read as follows:

Subpart F—Agency Career Transition Assistance Plans (CTAP) for Local Surplus and Displaced Employees

- 330.601 Purpose.
- 330.602 Agency plans.
- 330.603 Duration.
- 330.604 Definitions.
- 330.605 Eligibility.
- 330.606 Order of selection for filling vacancies from within the agency.
- 330.607 Notification of surplus and displaced employees.
- 330.608 Application and selection.
- 330.609 Qualification reviews.
- 330.610 Reporting.
- 330.611 Oversight.

Authority: Presidential memorandum dated September 12, 1995, entitled "Career Transition Assistance for Federal Employees."

Subpart F—Agency Career Transition Assistance Plans (CTAP) for Local Surplus and Displaced Employees

§ 330.601 Purpose.

(a) This subpart implements the President's memorandum of September 12, 1995, to establish agency Career Transition Assistance Plans for Federal employees during a period of severe Federal downsizing. It is the policy of the United States Government to provide services to help surplus and displaced Federal employees take charge of their own careers and find other job offers, either within the Federal Government or in the private sector.

(b) These regulations set forth minimum criteria for agency Career Transition Assistance Plans. Consistent with the regulations, agencies may supplement these provisions to expand career transition opportunities to their surplus and displaced workers at their discretion.

(c) Sections 330.602(a)(2) and 330.604 through 330.609 do not apply to the Department of Defense Priority Placement Program.

(d) New negotiated agreements and agreements which have expired since February 29, 1996, the effective date of the interim regulations, will be subject to the provisions set forth in this part.

§ 330.602 Agency plans.

(a) Each agency will establish a Career Transition Assistance Plan (CTAP) to actively assist its surplus and displaced employees. A copy of the final plan and any additional modified plans will be sent to OPM as approved by the agency/department head or deputy or under secretary. An agency plan will include:

(1) Policies to provide career transition services to all surplus and displaced agency employees affected by downsizing or restructuring, including employees in the excepted service and

the Senior Executive Service, which include the following:

(i) Types of career transition services to be provided by the agency;

(ii) Use of excused absence for employees to use the services and facilities;

(iii) Access to services or facilities after separation;

(iv) The requirement for a specific orientation session for surplus and displaced employees on the use of career transition services and the eligibility requirements for selection priority under CTAP and ICTAP. The orientation session must include information on how to apply for vacancies under the CTAP and ICTAP (if applicable);

(v) Retraining to be provided to employees;

(vi) Access by employees, including those with disabilities, to services in headquarters, field offices, and remote site locations;

(vii) Access to resource information on other forms of Federal, state, and local assistance which are available to support career transition for employees with disabilities;

(viii) Role of employee assistance programs in providing services; and

(ix) Designation of agency components, if the agency exercises its discretion under § 330.606(d)(24).

(2) Policies to provide special selection priority to well-qualified surplus and/or displaced agency employees, as defined by § 330.604 (c) and (i), who apply for agency vacancies in the local commuting area, before selecting any other candidate from either within or outside the agency, and agency procedures for reviewing qualification issues; and

(3) Operation of the agency's Reemployment Priority List under subpart B of 5 CFR part 330.

(b) Each agency is responsible for assuring that its Career Transition Assistance Plan and the provisions of these subparts are uniformly and consistently applied to all employees.

§ 330.603 Duration.

This subpart will expire on September 30, 1999, unless the Office of Personnel Management extends the program based on its determination that the Federal Government is still experiencing an emergency downsizing situation.

§ 330.604 Definitions.

For purposes of this subpart:

(a) *Agency* means an Executive Department, a Government corporation, and an independent establishment as cited in 5 U.S.C. 105. For the purposes of this program, the term "agency"

includes all components of an organization, including its Office of Inspector General.

(b) *Component* means the first major subdivision of an agency, that is separately organized and clearly distinguished from other components in work function and operation.

(c) *Displaced employee* means:

(1) A current career or career conditional competitive service employee in tenure group 1 or 2, at grade levels GS-15 or equivalent and below, who has received a specific reduction in force (RIF) separation notice or notice of proposed removal for declining a directed reassignment or transfer of function outside of the local commuting area; or,

(2) A current Executive Branch agency employee in the excepted service, serving on an appointment without time limit, at grade levels GS-15 or equivalent and below, who has been given noncompetitive appointment eligibility and selection priority by statute for positions in the competitive service, and who is in receipt of a reduction in force separation notice or notice of proposed removal for declining a transfer of function or directed reassignment outside of the local commuting area.

(d) *Eligible employee* means a surplus or displaced employee who meets the conditions set forth in § 330.605(a).

(e) *Local commuting area* means the geographic area that usually constitutes one area for employment purposes as determined by the agency. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their usual employment.

(f) *Reorganization* means the planned elimination or redistribution of work functions within an agency, normally announced in writing.

(g) *Special selection priority* means that, except as provided by § 330.606(d), surplus and/or displaced employees eligible under this subpart must be selected over any other candidate for vacancies in the local commuting area for which they apply and are found well-qualified.

(h) *Suitability* means determinations based on an individual's character or conduct that may impact the efficiency of the service by jeopardizing an agency's accomplishment of its duties or responsibilities, or by interfering with or preventing effective service in the competitive, excepted or SES position applied for or employed in, and determinations that there is a statutory or regulatory bar to employment.

(i) *Surplus employee* means:

(1) A current agency employee serving under an appointment in the competitive service, in tenure group 1 or 2, at grade levels GS-15 or equivalent and below, who has received a certificate of expected separation or other official certification issued by the agency indicating that the position is surplus, for example, a notice of position abolishment, or a notice stating that the employee is eligible for discontinued service retirement; or,

(2) A current Executive Branch agency employee serving on an excepted service appointment without time limit, at grade levels GS-15 or equivalent and below, who has been issued a certificate of expected separation or other official agency certification indicating that his or her position is surplus, for example, a notice of position abolishment or a notice stating that the employee is eligible for discontinued service retirement, and who has been conferred noncompetitive appointment eligibility and special selection priority by statute for positions in the competitive service; and

(3) At an agency's discretion, a current Executive Branch employee serving on a Schedule A or B excepted appointment without time limit, at grade levels GS-15 or equivalent and below, and who is in receipt of a certificate of expected separation or other official agency certification indicating that his or her job is surplus, for example, a notice of position abolishment, or an official notice stating that the employee is eligible for discontinued service retirement; or an employee who has received a RIF notice of separation, or a notice of proposed removal for declining a transfer of function or directed reassignment outside of the local commuting area. Such employee may exercise selection priority for permanent excepted service positions within the agency's local commuting area, provided the position to which appointed has the same appointing authority, i.e., Schedule A or B, as the position from which being separated.

(j) *Vacancy* means a competitive service position filled for a total of 121 days or more, including all extensions, which the agency is filling, regardless of whether the agency issues a specific vacancy announcement.

(k) *Well-qualified employee* means an eligible employee who possesses the knowledge, skills, and abilities which clearly exceed the minimum qualification requirements for the position. A well-qualified employee will not necessarily meet the agency's definition of "highly or best qualified,"

when evaluated against other candidates who apply for a particular vacancy, but must satisfy the following criteria, as determined and consistently applied by the agency:

(1) Meets the basic qualification standards and eligibility requirements for the position, including any medical qualifications, suitability, and minimum educational and experience requirements; and

(2) Satisfies one of the following qualifications requirements:

(i) Meets all selective factors where applicable. Meets appropriate quality rating factor levels as determined by the agency. Selective and quality ranking factors cannot be so restrictive that they run counter to the goal of placing displaced employees. In the absence of selective and quality ranking factors, selecting officials will document the job-related reason(s) the eligible employee is or is not considered to be well qualified; or

(ii) Is rated by the agency to be above minimally qualified in accordance with the agency's specific rating and ranking process. Generally, this means that the individual may or may not meet the agency's test for "highly qualified," but would in fact, exceed the minimum qualifications for the position;

(3) Is physically qualified, with reasonable accommodation where appropriate, to perform the essential duties of the position;

(4) Meets any special qualifying condition(s) that OPM has approved for the position; and

(5) Is able to satisfactorily perform the duties of the position upon entry.

§ 330.605 Eligibility.

(a) To be eligible for the special selection priority, an individual must meet all of the following conditions:

(1) Is a surplus or displaced employee (still on the agency rolls) as defined in § 330.604 (c) and (i);

(2) Has a current performance rating of record of at least fully successful or equivalent;

(3) Applies for a vacancy that is at or below the grade level from which the employee may be or is being separated, that does not have a greater promotion potential than the position from which the employee may be or is being separated;

(4) Occupies a position in the same local commuting area of the vacancy; or, at the agency's discretion, occupies a position beyond the local commuting area. An eligible agency applicant outside of the local commuting area, however, can only exercise selection priority when there are no eligible surplus and displaced agency

employees within the local commuting area who apply and are found well-qualified;

(5) Files an application for a specific vacancy within the time frames established by the agency, and provides proof of eligibility as required under § 330.608(a)(2); and

(6) Is determined by the agency to be well-qualified for the specific vacancy.

(b) *Eligibility for special selection priority begins* on the date the agency issues the employee a RIF separation notice, certificate of expected separation, notice of proposed separation for declining a directed reassignment or transfer of function outside of the local commuting area, or other official agency certification identifying the employee as being in a surplus organization or occupation, whichever is earliest.

(c) *Eligibility expires on the earliest of:*

(1) The RIF separation date, the date of the employee's resignation from the agency, or the date of separation under adverse action procedures for declining a directed reassignment or transfer of function to another local commuting area; or

(2) Cancellation of the RIF separation notice, certificate of expected separation, notice of proposed removal for declining a directed reassignment or transfer of function outside of the commuting area, or other official agency certification identifying the employee as surplus; or

(3) When an eligible employee receives a career, career-conditional, or excepted appointment without time limit in any agency at any grade level; and

(4) Within an agency, and at the agency's discretion, when an eligible employee declines a career, career conditional, or excepted appointment (without time limit), for which the employee has applied and been rated well-qualified.

§ 330.606 Order of selection for filling vacancies from within the agency.

(a) Except as provided in paragraph (d) of this section, when filling a vacancy as defined in § 330.604(j), an agency must select an employee eligible under § 330.605 of this subpart before selecting any other candidate from within or outside the agency, unless the agency can show that another employee would otherwise be separated by reduction in force. In addition, agencies may not procure temporary help services under 5 CFR part 300, subpart E, in lieu of appointing a surplus or displaced Federal employee as required by subparts F and G of this chapter.

(b) Once the agency has met its obligation to select employees eligible under its CTAP, it is free to select any other competitive service tenure group 1 or 2 candidate from within its workforce, under appropriate procedures. An agency may provide selection priority to surplus and displaced agency employees from another commuting area after it has discharged its obligation to eligible surplus and displaced agency employees from within the local commuting area.

(c) When an agency selects a candidate from outside of its workforce, the agency is subject to the order of selection prescribed in § 330.705.

(d) The following are not covered under this subpart:

(1) Actions taken under 5 CFR part 335, including reassignments, changes to lower grade, or promotions, when no employees eligible under this subpart apply;

(2) Reemployment of a former agency employee exercising regulatory or statutory reemployment rights, including the reemployment of injured workers who have either been restored to earning capacity by the Office of Workers' Compensation Programs (OWCP), or who have received a notice that their compensation benefits will cease because of recovery from the disabling injury or illness;

(3) Position changes resulting from disciplinary actions;

(4) Temporary appointments of under 121 days (including all extensions);

(5) Exchange of positions between or among agency employees, when the actions involve no increase in grade or promotion potential, i.e., job swaps;

(6) Conversion of an employee of the same agency who is serving on an excepted appointment which confers eligibility for noncompetitive conversion into the competitive service, e.g., conversion of a veterans' readjustment appointee to a career conditional appointment under § 315.705;

(7) An action taken under part 351 of this chapter;

(8) Non-competitive placement of an employee into a different position as a result of a formal reorganization, when the former position ceases to exist, and no actual vacancy results;

(9) Assignments made under the Intergovernmental Personnel Act (IPA) as provided in part 334 of this chapter;

(10) The filling of a position through an excepted appointment;

(11) Details;

(12) Time-limited promotions of under 121 days, including all extensions;

(13) Noncompetitive movement of surplus or displaced employees within the agency, and within the same local commuting area;

(14) Movement of excepted service employees within an agency;

(15) A placement under 5 U.S.C. 8337 or 8451 to allow continued employment of an employee who has become unable to provide useful and efficient service in his or her current position because of a medical condition;

(16) A placement that is a "reasonable offer" as defined in 5 U.S.C. 8336(d) and 8414(b);

(17) Career ladder promotions or position changes resulting from reclassification actions, e.g., accretion of duties, or application of new position classification standards;

(18) Recall of seasonal or intermittent employees from nonpay status;

(19) The internal placement of an injured or disabled worker whose agency has identified a position for which he or she can be reasonably accommodated;

(20) An action taken by the agency head or his designee pursuant to the settlement of a formal complaint, grievance, appeal, or other litigation;

(21) An action taken to return an employee to his or her original or similar position during a supervisory probationary period;

(22) The retention of individuals whose positions are brought into the competitive service under § 316.701 or § 316.702 of this chapter and subsequent conversion, when applicable, under § 315.701 of this chapter;

(23) The retention of an employee for whom OPM has approved a rule 5.1 variation;

(24) At the agency's discretion, the selection of an employee from within a component of an agency within the local commuting area, after all eligible surplus and displaced applicants of that component who are eligible under CTAP within the local commuting area have been accorded selection priority;

(25) The reemployment of a former agency employee who retired under a formal trial retirement and reemployment program, and who seeks reemployment with that agency under the program's provisions, and within the program's applicable time limits;

(26) Extensions of temporary or term actions, up to the full period allowed, provided that the original action, upon which the extension is based, was made on or before February 29, 1996; or for actions initially made after February 29, 1996, the original vacancy announcement must have specified that the position was open to CTAP candidates and that if they were found

well-qualified, would be afforded selection priority. The original announcement must have stated that an extension was possible without further announcement;

(27) Noncompetitive movement of displaced employees between agencies as a result of reorganization, transfer of function, or mass transfer; and

(28) The placement of a member of the Senior Executive Service under 5 U.S.C. 3594.

§ 330.607 Notification of surplus and displaced employees.

(a) In addition to meeting the requirements of § 330.602(a)(1)(iv), at the time it issues a specific RIF separation notice, certificate of expected separation, or other official agency certification that identifies an employee as being likely to be separated by RIF, or by adverse action procedures for declining a directed reassignment or transfer of function outside of the local commuting area, an agency must give each of its eligible employees information in writing about the special selection priority available to them under the agency's Career Transition Assistance Plan. Such information must contain guidance to the employee on how to apply for vacancies under the CTAP, and what documentation is generally required as proof of eligibility.

(b) Agencies must take reasonable steps to ensure eligible employees are notified of all vacancies the agency is filling and what is required for them to be determined well-qualified for the vacancies. Vacancy announcements within an agency must contain information on how eligible employees within the agency can apply, what proof of eligibility is required, and the agency's definition of "well-qualified."

(c) Each agency is required to advise, in writing, their surplus and displaced employees who apply for specific vacancies within its local commuting area of the results of their application, and whether or not they were found well-qualified. If they are not found well-qualified, such notice must include information on the results of an independent, second review conducted by the agency. If an applicant is found well-qualified, and another well-qualified surplus or displaced candidate is selected, the applicant must be so advised.

§ 330.608 Application and selection.

(a) *Application.*

(1) To receive this special selection priority, an eligible employee must apply for a specific agency vacancy in the same local commuting area as the position the employee occupies within

the prescribed time frames, attach the appropriate proof of eligibility as described in paragraph (a)(2) of this section, and be determined well-qualified by the agency for the specific vacancy.

(2) Employees may submit the following as proof of eligibility for the special selection priority:

(i) RIF separation notice or notice of proposed removal for declining a directed reassignment or transfer of function outside the local commuting area;

(ii) Certificate of expected separation or other official notice from the agency indicating that the employee is surplus or eligible for discontinued service retirement; or

(iii) Other official agency certification identifying the employee as being in a surplus organization or occupation.

(b) *Selection.* An agency may decide the specific order of selection of its eligible employees within the provisions set forth in § 330.606(a) (e.g., the agency may decide to select displaced employees before surplus employees or may select surplus and/or displaced employees from within a particular component of the agency before selecting surplus and/or displaced employees from another component of the agency).

(c) An agency cannot select any other candidate from within or outside the agency if eligible employees are available for the vacancy or vacancies.

(d) If two or more eligible employees apply for a vacancy and are determined to be well-qualified, any of these eligible employees may be selected.

(e) If no eligible employees apply or none is deemed well-qualified, the agency may select another agency employee without regard to this subpart.

§ 330.609 Qualification reviews.

Agencies will ensure that a documented, independent second review is conducted whenever an otherwise eligible employee is determined to be not well-qualified. The applicant must be advised in writing of the results of the second review.

§ 330.610 Reporting.

(a) Each agency shall submit an annual report covering each fiscal year activity under this subpart to OPM no later than December 31 of each year.

(b) Each report will include the following:

(1) Number of employees identified by the agency as surplus and displaced during that fiscal year;

(2) The number of CTAP applicants who were found to be well-qualified;

(3) The number of CTAP applicants who were found to be not well-qualified;

(4) Number of selections of eligible employees under the agency's CTAP, or in the case of the Department of Defense, under its Priority Placement Program;

(5) The number of second reviews and the results of those reviews;

(6) The number of CTAP eligibles who declined job offers; and

(7) The name, title, and telephone number of the agency official responsible for the report.

(c) Reports should be addressed to: U.S. Office of Personnel Management, Workforce Restructuring Office, Employment Service, 1900 E Street, NW., Washington, DC 20415, FAX: 202-606-2329.

§ 330.611 Oversight.

OPM provides advice and assistance to agencies in implementing their Career Transition Assistance Programs. OPM is also responsible for oversight of agency CTAPs and may conduct reviews of the plans at any time.

5. Subpart G is revised to read as follows:

Subpart G—Interagency Career Transition Assistance Plan for Displaced Employees

- 330.701 Purpose.
- 330.702 Duration.
- 330.703 Definitions.
- 330.704 Eligibility.
- 330.705 Order of selection in filling vacancies from outside the agency's workforce.
- 330.706 Notification of displaced employees.
- 330.707 Reporting vacancies to OPM.
- 330.708 Application and selection.
- 330.709 Qualification reviews.
- 330.710 Reporting.
- 330.711 Oversight.

Authority: Presidential memorandum dated September 12, 1995, entitled "Career Transition Assistance for Federal Employees."

Subpart G—Interagency Career Transition Assistance Plan for Displaced Employees

§ 330.701 Purpose.

(a) This subpart implements the President's memorandum of September 12, 1995, to establish a special interagency career transition assistance program for Federal employees during a period of severe Federal downsizing.

(b) This subpart is effective July 9, 1997.

(c) The provisions of the Reemployment Priority List (RPL) set forth in subpart B of this part will remain in effect during the period of severe Federal downsizing. When an

agency considers candidates from outside the agency for vacancies, registrants in an agency's RPL have priority for selection over employees eligible under this subpart in accordance with § 330.705.

(d) This subpart applies only when agencies are making selections from outside their workforce, and does not prohibit movement within an agency, as permitted by subpart F of this part.

§ 330.702 Duration.

This subpart will expire on September 30, 1999, unless the U. S. Office of Personnel Management extends the program based on its determination that the Federal Government is still experiencing an emergency downsizing situation.

§ 330.703 Definitions.

For the purposes of this subpart:

(a) *Agency* has the meaning given in § 330.604(a).

(b) *Displaced employee* means:

(1) A current career or career-conditional competitive service employee, in tenure group 1 or 2, at grade levels GS-15 or equivalent and below, who has received a specific RIF separation notice, or a notice of proposed removal for declining a directed reassignment or transfer of function outside of the local commuting area;

(2) A former career or career-conditional competitive service employee, in tenure group 1 or 2, at grade levels GS-15 or equivalent and below, who was separated through reduction in force, or removed for declining a directed reassignment or transfer of function outside of the local commuting area;

(3) A former career or career-conditional employee who was separated because of a compensable injury or illness as provided under the provisions of subchapter I of chapter 81 of title 5, United States Code, whose compensation has been terminated and whose former agency is unable to place the individual as required by part 353 of this chapter;

(4) A former career or career-conditional competitive service employee, in tenure group 1 or 2, who retired with a disability under sections 8337 or 8451 of title 5, United States Code, whose disability annuity has been or is being terminated;

(5) A former career or career-conditional competitive service employee, in tenure group 1 or 2, at grades GS-15 level or equivalent or below, who received a RIF separation notice, and who retired on the effective date of the reduction in force or under

the discontinued service retirement option;

(6) A former Military Reserve Technician or National Guard Technician who is receiving a special disability retirement annuity from OPM under section 8337(h) or 8456 of title 5 United States Code, as described in subpart H of this part;

(7) A current Executive Branch agency employee in the excepted service, serving on an appointment without time limit, at grade levels GS-15 or equivalent and below, who has been given noncompetitive appointment eligibility and selection priority by statute for positions in the competitive service, and who is in receipt of a reduction in force separation notice or notice of proposed removal for declining a transfer of function or directed reassignment outside of the local commuting area; or

(8) A former Executive Branch agency employee in the excepted service, who served on an appointment without time limit, at grade levels GS-15 or equivalent and below, who has been given noncompetitive appointment eligibility and selection priority by statute for positions in the competitive service, and who has been separated through reduction in force or removed for declining a transfer of function or directed reassignment outside of the local commuting area.

(c) *Eligible employee* means a displaced employee who meets the conditions set forth in § 330.704(a).

(d) *Local commuting area* has the meaning given in § 330.604(e).

(e) *Special selection priority* has the meaning given in § 330.604(g).

(f) *Vacancy* has the meaning given in § 330.604(j).

(g) *Well-qualified employee* has the meaning given in § 330.604(k).

§ 330.704 Eligibility.

(a) To be eligible for the special selection priority, an individual must meet all of the following conditions:

(1) Is a displaced employee as defined in § 330.703(b);

(2) Has a current (or a last) performance rating of record of at least fully successful or equivalent (except for those eligible under § 330.703(b)(3), (b)(4), and (b)(6));

(3) Applies for a vacancy at or below the grade level from which the employee has been or is being separated, that does not have a greater promotion potential than the position from which the employee has been or is being separated;

(4) Occupies, or was displaced from a position in the same local commuting area of the vacancy;

(5) Files an application for a specific vacancy within the time frames established by the agency, and provides proof of eligibility required under § 330.708(a)(2); and

(6) Is determined by the agency to be well-qualified for the specific position.

(b) *Eligibility for special selection priority begins:*

(1) On the date the agency issues the RIF separation notice;

(2) On the date an agency certifies that it cannot place an employee eligible under § 330.703(b)(3);

(3) On the date an employee eligible under § 330.703(b)(4) is notified that his or her disability annuity has been or is being terminated;

(4) On the date the agency issues a formal notice of proposed separation to an employee for declining a transfer of function or directed reassignment outside the local commuting area; or

(5) On the date the National Guard Bureau or Military Department certifies that an employee under § 330.703(b)(6) has retired under 5 U.S.C. 8337(h) or 8456.

(c) *Eligibility expires:*

(1) 1 year after separation, except for those employees separated on or after September 12, 1995, and prior to February 29, 1996. For these employees, eligibility expired February 28, 1997;

(2) 1 year after an agency certifies that an individual under § 330.703(b)(3) cannot be placed;

(3) 1 year after an individual under § 330.703(b)(4) receives notification that his/her disability annuity has been or will be terminated;

(4) When the employee receives a career, career-conditional, or excepted appointment without time limit in any agency at any grade level;

(5) When the employee no longer meets the eligibility requirements set forth in paragraph (a) of this section (e.g., the employee is no longer being separated by RIF, or under adverse action procedures for declining a transfer of function or directed reassignment outside the local commuting area, or separates by resignation or non-discontinued service retirement prior to the RIF effective date); or

(6) At an agency's discretion, when an eligible employee declines a career, career conditional, or excepted appointment (without time limit), for which the employee has applied and been rated well-qualified; or upon the failure of the applicant to respond within a reasonable period of time to an offer or official inquiry of availability.

§ 330.705 Order of selection in filling vacancies from outside the agency's workforce.

(a) Except as provided in paragraph (c) of this section, when filling a vacancy from outside the agency's workforce an agency must select:

(1) Current or former agency employees eligible under the agency's Reemployment Priority List described in subpart B of this part, then;

(2) At the agency's option, any other former employee displaced from the agency (under appropriate selection procedures), then;

(3) Current or former Federal employees displaced from other agencies eligible under this subpart; and then;

(4) Any other candidate (under appropriate selection procedures) (optional).

(b) The following actions are subject to the above order of selection and are covered under this subpart:

(1) Competitive appointments (e.g., from registers or delegated examining);

(2) Noncompetitive appointments to the competitive service (e.g., the types listed in part 315, subpart F of this chapter, as well as Outstanding Scholar and Bilingual/Bicultural appointments made under the authority of the Luevano consent decree);

(3) Movement between agencies (e.g., transfer), except as provided for in paragraph (c)(8) of this section or part 351 of this chapter;

(4) Reinstatements (except as provided for in paragraph (a)(2) of this section); and

(5) Time-limited competitive appointments of 121 days or more, including all extensions, except as provided in (c)(11) of this section.

(c) The following actions are not covered under this subpart:

(1) Selections from an agency's internal Career Transition Assistance Plan or Reemployment Priority List as described in subparts F and B of this part respectively or any other internal agency movement of current agency employees;

(2) Appointments of 10 point veteran preference eligibles (CP, CPS, and XP), if reached through an appropriate appointing authority;

(3) Reemployment of former agency employees who have regulatory or statutory reemployment rights, including the reemployment of injured workers who have either been restored to earning capacity by the Office of Workers' Compensation Programs (OWCP), or who have received a notice that their compensation benefits will cease because of recovery from the disabling injury or illness;

(4) Temporary appointments of under 121 days (including all extensions);

(5) An action taken under part 351 of this chapter;

(6) The filling of a position by an excepted appointment;

(7) Conversion of an employee of the same agency who is serving on an excepted appointment that confers eligibility for noncompetitive appointment into the competitive service, e.g., conversion of a veterans' readjustment appointee to a career conditional appointment under § 315.705 of this chapter;

(8) Noncompetitive movement of displaced employees between agencies as a result of reorganization, transfer of function, or mass transfer;

(9) The reemployment of a former agency employee who retired under a formal trial retirement and reemployment program, and who seeks reemployment with that agency under the program's provisions, and within the program's applicable time limits;

(10) An action taken by the agency head or his or her designee pursuant to the settlement of a formal complaint, grievance, appeal, or other litigation;

(11) Extensions of temporary or term actions, up to the full period allowed, provided that the original action, upon which the extension is based, was made on or before February 29, 1996 (the effective date of the interim regulations); or for actions initially made after February 29, 1996, the original vacancy announcement must have specified that the position was open to ICTAP candidates, and that if they were found well-qualified, would be afforded selection priority. The original announcement must have stated that an extension was possible without further announcement. This exception includes extensions granted by OPM to the 2 or 4 year limit allowed for temporary and term appointments, respectively;

(12) The reappointment of former employees with their agency into hard-to-fill positions, the duties of which require unique skills and experience necessary to conduct a formal skills-based training program for the agency;

(13) The retention of individuals whose positions are brought into the competitive service under § 316.701 or § 316.702 of this chapter and subsequent conversion, when applicable, under § 315.701 of this chapter;

(14) The retention of an employee for whom OPM has approved a rule 5.1 variation;

(15) The placement of a member of the Senior Executive Service under 5 U.S.C. 3594; and

(16) Assignments made under the Intergovernmental Personnel Act (IPA) as provided in part 334 of this chapter.

§ 330.706 Notification of displaced employees.

(a) In addition to meeting the requirements of § 330.602(a)(1)(iv) and § 330.607(a), at the time it issues a specific RIF separation notice or notice of proposed removal for declining a directed reassignment or transfer of function outside of the local commuting area, an agency must give each of its eligible employees information in writing about the special selection priority available to them under the Interagency Career Transition Assistance Plan. Such information must contain guidance to the employee on how to apply for vacancies under the ICTAP, and what documentation is generally required as proof of eligibility.

(b) Agencies must take reasonable steps to ensure eligible employees are notified of all vacancies the agency is filling and what is required for them to be determined well-qualified for the vacancies.

(c) Each agency is required to advise, in writing, ICTAP candidates who apply for specific vacancies within its local commuting area of the results of their application, and whether or not they were found well-qualified. If they are not found well-qualified, such notice must include information on the results of an independent, second review conducted by the agency. If an applicant is found well-qualified, and another well-qualified surplus or displaced candidate is selected, the applicant must be so advised.

§ 330.707 Reporting Vacancies to OPM.

(a) Agencies are required to report all competitive service vacancies to OPM when accepting applications from outside the agency (including applications for temporary positions lasting 121 or more days), except when they elect to fill a position by the transfer or reassignment of an ICTAP eligible from another agency.

(b) *Content.* Notice to OPM of job announcements must include the position title, location, pay plan and grade (or pay rate) of the vacant position; application deadline; and other information specified by OPM. In addition, for all positions reported, agencies are required to provide OPM with an electronic file of the complete vacancy announcement or recruiting bulletin, which must contain:

(1) Title, series, pay plan, and grade (or pay rate);

(2) Duty location;

(3) Open and closing dates, plus any other information dealing with how application receipt will be controlled, such as the use of early cut-off dates;

(4) Name of issuing agency and announcement number;

(5) Qualification requirements, including knowledges, skills, and abilities;

(6) Entrance pay;

(7) Brief description of duties;

(8) Basis of rating;

(9) What to file;

(10) Instructions on how to apply;

(11) Information on how to claim veterans' preference, if applicable;

(12) The agency's definition of well-qualified and information on how CTAP and/or ICTAP candidates may apply, including proof of eligibility required; and

(13) Equal employment opportunity statement.

§ 330.708 Application and selection.

(a) Application.

(1) To receive this special selection priority, eligible employees must apply directly to agencies for specific vacancies in the local commuting area within the prescribed time frames, attach the appropriate proof of eligibility as described in paragraph (a)(2) of this section, and be determined well-qualified by the agency for the specific position.

(2) Employees may submit the following as proof of eligibility for the special selection priority:

(i) RIF separation notice, or notice of proposed removal for declining a directed reassignment or transfer of function to another commuting area;

(ii) Documentation, e.g., SF-50, Notification of Personnel Action, showing that they were separated as a result of reduction in force, or for declining a transfer of function or directed reassignment to another commuting area;

(iii) Official certification from an agency stating that it cannot place an individual whose injury compensation has been or is being terminated;

(iv) Official notification from OPM that an individual's disability annuity has been or is being terminated; or

(v) Official notification from the Military Department or National Guard Bureau that the employee has retired under 5 U.S.C. 8337(h) or 8456.

(b) Selection. In making selections, an agency will adhere to the overall order of selection set forth in § 330.705. In addition, the following apply:

(1) An agency cannot select another candidate from outside the agency if eligible employees are available for the vacancy or vacancies.

(2) If two or more eligible employees apply for a vacancy and are determined to be well-qualified, any of these eligible employees may be selected.

(3) If no eligible employees apply or none is deemed well-qualified, the agency may select another candidate without regard to this subpart. (This flexibility does not apply to selections made from the agency's Reemployment Priority List as described in subpart B of this part.)

(c) An agency may select a candidate from its Career Transition Assistance Plan or Reemployment Priority List, as described in subparts F and B of this part respectively, or another current agency employee (if no eligible employees are available through its CTAP) at any time.

§ 330.709 Qualification reviews.

Agencies will ensure that a documented, independent second review is conducted whenever an otherwise eligible employee is found to be not well-qualified. The applicant must be advised in writing of the results of the second review.

§ 330.710 Reporting.

(a) Each agency shall submit an annual report covering each fiscal year activity under this subpart to OPM no later than December 31 of each year.

(b) Each report will include data specified in § 330.610 of subpart F of this part, and will also include information on:

(1) The number of selections of ICTAP eligible employees from other Federal agencies;

(2) The number of ICTAP candidates found not well-qualified;

(3) The number of ICTAP candidates found well-qualified;

(4) The number of selections of competitive service tenure group 1 or 2 employees from other Federal agencies who are not displaced;

(5) The number of declinations from ICTAP eligible candidates;

(6) The number of competitive service tenure group 1 or 2 appointments from outside the Federal Government; and

(7) The number of placements made from the agency's Reemployment Priority List.

§ 330.711 Oversight.

OPM is responsible for oversight of the Interagency Career Transition Assistance Plan for Displaced Employees and may conduct reviews of agency activity at any time.

[FR Doc. 97-14905 Filed 6-6-97; 8:45 am]

BILLING CODE 6325-01-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 101

[Docket No. 93-152-2]

RIN 0579-AA65

Viruses, Serums, Toxins, and Analogous Products; Definition of Biological Products and Guidelines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations by revising the definition of "biological products." The amendment is necessary in order to reflect current usage and advances in scientific knowledge, and to clarify certain parts of the definition. We are also adding a definition of "guidelines" to the regulations. Guidelines are issued to assist manufacturers of veterinary biological products and others in understanding test procedures, standards, and regulatory requirements pertaining to such products. This addition clarifies the purpose and intent of guidelines.

EFFECTIVE DATE: July 9, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Director, Licensing and Policy Development, Center for Veterinary Biologics, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737-1231, (301) 734-8245.

SUPPLEMENTARY INFORMATION:

Background

Veterinary biological products are licensed under the Virus-Serum-Toxin Act (hereinafter referred to as the VSTA) on the basis of purity, safety, potency, and efficacy. A product which is a "virus, serum, toxin, or analogous product" and which is intended for use in the treatment of animals is subject to regulation under the VSTA. Such products are commonly referred to as biologics or biological products. The definitions of terms related to veterinary biological products appear in 9 CFR part 101.

The Food and Drug Administration (FDA) regulates drugs for use in animals. The Federal Food, Drug, and Cosmetic Act (FFDCA) defines "drugs" to include, among other things, articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in man or other animals; and articles (other than food) intended to affect the structure or any function of the body of man or other animals.