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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 337

RIN 3206-AK85

### Examining System

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is adopting as a final rule, without changes, an interim rule that amended its direct-hire authority regulations to allow non-Department of Defense agencies to recruit and appoint highly-qualified individuals for certain Federal acquisition positions deemed a shortage category under the Services Acquisition Reform Act of 2003.

**DATES:** This rule is effective October 12, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Linda Watson by telephone at (202) 606-0830; by fax at (202) 606-2329; by TTY at (202) 418-3134; or by e-mail at [linda.watson@opm.gov](mailto:linda.watson@opm.gov).

**SUPPLEMENTARY INFORMATION:** On August 4, 2005, OPM published an interim rule at 70 FR 44847, to amend its regulation to allow non-Department of Defense (DoD) agencies to determine whether a shortage of highly-qualified individuals exists for Federal acquisition positions covered under section 433(g)(1)(A) of title 41, United States Code (U.S.C.).

As background, this action implements section 1413 of Public Law 108-136 which allows department and agency heads (other than the Secretary of Defense) to determine, under regulations prescribed by OPM, when certain Federal acquisition positions are shortage category positions for purposes of direct-hire authority. The Federal acquisition positions covered by section 1413 are listed in 41 U.S.C. 433(g)(1)(A).

When determining the existence of a shortage of highly-qualified individuals, non-DoD agencies are required to use the supporting evidence prescribed in section 337.204(b) of title 5, Code of Federal Regulations (CFR). The supporting evidence must be kept on file for documentation and reporting purposes.

When filling Federal acquisition positions, agencies must comply with public notice requirements as prescribed in 5 U.S.C. 3327 and 3330, and 5 CFR part 330, subpart G. Agencies must post a job announcement on OPM's USAJOBS Web site when filling jobs under direct-hire authority procedures to be in compliance with public notice requirements.

The direct-hire authority for Federal acquisition positions under the provisions of section 1413 of Public Law 108-136 will terminate on September 30, 2007. Agencies may not appoint any individual to a position of employment using this authority after September 30, 2007.

Section 1413(c) requires OPM to submit to Congress a report on the implementation and effectiveness of the direct-hire authority in attracting employees with unusually high qualifications to the acquisition workforce and to make any appropriate recommendations regarding whether to extend the authority. Non-DoD agencies are required to submit a report to OPM on their implementation and use of section 1413 of Public Law 108-136 by December 31, 2006.

During the comment period, OPM received ten comments from the general public. Of the comments received, five comments claim that agencies are using outdated acquisition qualification standards and are applying the OPM qualification standards for acquisition positions incorrectly. These comments also included requests for assistance in obtaining an acquisition position in the Federal Government. Under direct-hire authority, agencies are required to use the approved qualification standards in OPM's Operating Manual: Qualification Standards for General Schedule Positions which is located at <http://www.opm.gov/qualifications/index.asp>. It is the responsibility of each agency to ensure that the proper qualification standard is applied and individuals who are appointed under direct-hire authority meet these qualifications. We

did not make any changes to the interim regulation based on these comments.

OPM was commended by an individual for granting direct-hire authority for Federal acquisition positions to agencies. The same individual stated a concern that agencies will use this authority to bypass and ignore veterans' preference eligibles. The Chief Human Capital Officers Act of 2002 (Pub. L. 107-296; 116 Stat. 2290), gives direct-hire authority to agencies to appoint individuals, without regard to the veterans' preference provisions of 5 U.S.C. 3309-3318, when OPM determines there is a severe shortage of candidates or critical hiring need. The Services Acquisition Reform Act gives direct-hire authority to non-DoD agencies for acquisition positions provided they meet the criteria in 5 CFR 337.204. We did not make any changes to the interim regulation based on this comment.

A comment was received asking where an individual can find an acquisition position covered under direct-hire authority. The interim regulation follows the same rules as other direct-hire authorities prescribed in 5 CFR part 337, subpart B. Agencies are required to announce their positions on OPM's Governmentwide list of vacant positions at <http://www.usajobs.opm.gov>. This requirement is clearly stated in 5 CFR 337.203, Public notice requirements. We did not make any changes to the interim regulation based on this comment.

One commenter requested a list of agencies that are hiring for Federal acquisition positions which OPM has deemed a shortage category under the Services Acquisition Reform Act. The purpose of the interim regulation was to amend OPM's regulation to allow non-DoD agencies to determine on their own whether a shortage of highly-qualified individuals exists for Federal acquisition positions covered under 41 U.S.C. 433(g)(1)(A). We did not adopt the suggestion to develop a list of agencies with Federal acquisition direct-hire authority. It is outside the scope of this regulation. However, information on OPM-approved Governmentwide direct-hire authorities can be obtained by visiting OPM's Web site at [http://www.opm.gov/employ/direct\\_hire/index.asp](http://www.opm.gov/employ/direct_hire/index.asp).

One commenter commended OPM for allowing non-DoD agencies to determine their own direct-hire authority for Federal acquisition positions because it reduces the red tape in the hiring process. However, the commenter suggested different assessment methods and tools for hiring good individuals for acquisition positions. We did not adopt this suggestion. It is outside the scope of this regulation.

The last comment did not involve acquisition positions; therefore, it is outside the scope of this amendment.

We are therefore adopting the interim regulation as a final regulation without changes.

#### **E.O. 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

#### **Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they will only apply to Federal agencies and employees.

#### **List of Subjects in 5 CFR Part 337**

Government employees.

Office of Personnel Management.

**Linda M. Springer,**  
*Director.*

■ Accordingly, the interim rule amending 5 CFR part 337, which was published at 70 FR 44847 on August 4, 2005, is adopted as a final rule without changes.

[FR Doc. E6-15016 Filed 9-11-06; 8:45 am]

BILLING CODE 6325-39-P

## **DEPARTMENT OF AGRICULTURE**

### **Animal and Plant Health Inspection Service**

#### **7 CFR Part 301**

[Docket No. APHIS-2006-0116]

#### **Gypsy Moth Generally Infested Areas; Addition of Counties in Ohio and West Virginia**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the gypsy moth regulations by adding Delaware and Franklin Counties in Ohio and Monroe County in West Virginia to the

list of generally infested areas based on the detection of infestations of gypsy moth in those counties. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the gypsy moth to noninfested States.

**DATES:** This interim rule is effective September 12, 2006. We will consider all comments that we receive on or before November 13, 2006.

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click "Submit." In the Docket ID column, select APHIS-2006-0116 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to APHIS-2006-0116, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to APHIS-2006-0116.

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

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

**FOR FURTHER INFORMATION CONTACT:** Dr. Weyman Fussell, Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-5705.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest and shade trees. The gypsy moth regulations (contained in 7 CFR 301.45

through 301.45-12 and referred to below as the regulations) restrict the interstate movement of regulated articles from generally infested areas to prevent the artificial spread of the gypsy moth.

In accordance with § 301.45-2 of the regulations, generally infested areas are, with certain exceptions, those States or portions of States in which a gypsy moth general infestation has been found by an inspector, or each portion of a State that the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Less than an entire State will be designated as a generally infested area only if: (1) The State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of such articles; and (2) the designation of less than the entire State as a generally infested area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth.

#### **Designation of Areas as Generally Infested Areas**

Section 301.45-3 of the regulations lists generally infested areas. In this rule, we are amending § 301.45-3(a) by adding two counties in Ohio and one county in West Virginia to the list of generally infested areas. As a result of this rule, the interstate movement of regulated articles from these areas will be restricted.

We are taking this action because, in cooperation with the States of Ohio and West Virginia, the United States Department of Agriculture conducted surveys that detected multiple life stages of the gypsy moth in Delaware and Franklin Counties, OH, and in Monroe County, WV. Based on these surveys, we determined that reproducing populations exist at significant levels in these areas. Eradication of these populations is not considered feasible because these areas are immediately adjacent to areas currently recognized as generally infested and are, therefore, subject to reinfestation.

#### **Emergency Action**

This rulemaking is necessary on an emergency basis because of the possibility that the gypsy moth could be artificially spread to noninfested areas of the United States, where it could cause economic losses due to the defoliation of susceptible forest and