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OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 300

RIN 3206-AH71

Employment (General)

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to remove the requirements for agency heads to ensure that employees and applicants for employment at their agencies are notified of provisions enacted in the Hatch Act Reform Amendments of 1993 (Reform Amendments). This act prohibited individuals from requesting, making, transmitting, accepting, or considering political recommendations in effecting personnel actions and has been superseded by an amendment to the Reform Amendments.

EFFECTIVE DATE: May 29, 1997.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Chabot, (202) 606-1700.

SUPPLEMENTARY INFORMATION: Pursuant to section 553(b)(3)(B) of title 5, United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because the OPM regulation at subpart H of 5 CFR part 300 has been superseded by statute, i.e., section 315 of Public Law 104-197.

The Reform Amendments covered both the excepted service and career Senior Executive Service as well as the competitive service. Under the Reform Amendments, employees and applicants were prohibited from soliciting or requesting political recommendations, and agency officials were prohibited

from soliciting, requesting, considering or accepting such recommendations. Senators, congressmen, congressional employees, elected State and local officials, political party officials, and other individuals or organizations also were prohibited from making or transmitting political recommendations. The Reform Amendments required agency officials who received political recommendations to return the recommendations to the persons who sent them, with a notation stating that the recommendations violated the Reform Amendments' prohibition against political recommendations.

Under the Reform Amendments, the prohibition against political recommendations extended to all of the personnel actions described in 5 U.S.C. 2302(a)(2)(A)(I)-(ix), including appointments, promotions, disciplinary or corrective actions, details, transfers, reassignments, reinstatements, restorations, reemployment, performance evaluations, and decisions concerning pay, benefits, or awards. Finally, the Reform Amendments directed OPM to promulgate regulations requiring agency heads to ensure that employees and applicants received notice of the prohibitions against political recommendations.

Congress enacted section 315 of Public Law 104-197 on September 16, 1996, and it became effective on October 16, 1996. Section 315 amended 5 U.S.C. 3303 by limiting its application to examinations for, or appointments to, positions in the competitive service. It further amended section 3303 by prohibiting examining and appointing officials from accepting or considering congressional recommendations of applicants except for recommendations about an applicant's character or residence.

Section 315 also amended 5 U.S.C. 2302(b)(2) by making it a prohibited personnel practice to solicit or consider recommendations or statements regarding individuals who request, or are under consideration for, any personnel action. The amended section 2302(b)(2), however, permits recommendations or statements based on the personal knowledge or records of the person furnishing them, and consisting of an evaluation of the work

performance, ability, aptitude, general qualifications, character, loyalty, or suitability of an individual. Finally, section 315 does not direct OPM to issue regulations requiring agency heads to ensure that employees and applicants receive notice of its provisions. Because section 315 of Public Law 104-197 clearly supersedes the OPM regulation at subpart H of 5 CFR part 300, OPM is removing subpart H from the regulation.

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 this regulation would not have a significant economic impact on a substantial number of small entities because it would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 300

Freedom of Information, Government employees, Reporting and record keeping requirements, Selective Service System.

U.S. Office of Personnel Management.

James B. King,
Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 300 as follows:

PART 300—[AMENDED]

1. The authority citation is revised to read as follows:

Authority: 5 U.S.C. 552, 3301, and 3302; E.O. 10577, 3 CFR 1954-1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 11478, 3 CFR 1966-1970 Comp., page 803.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

Subpart H—[Removed]

2. Subpart H is removed.

[FR Doc. 97-11058 Filed 4-28-97; 8:45 am]

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