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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 332

RIN 3206–AJ52

Recruitment and Selection Through Competitive Examination

AGENCY: Office of Personnel Management.

ACTION: Interim regulation with request for comments.

SUMMARY: The Office of Personnel Management (''OPM'') is issuing an interim regulation to allow agencies to decide how candidates are referred for competitive appointment when agencies fill multiple vacancies simultaneously. We are codifying a long-standing practice (based on 5 U.S.C. 3301 and 3302) of providing agencies with the option of either certifying a candidate for only one vacancy at a time, or certifying a candidate simultaneously for all vacancies for which that candidate expresses an interest, is eligible, and is within reach.

EFFECTIVE DATE: This regulation is effective February 15, 2002. We will consider written comments received by April 16, 2002.

ADDRESSES: Send or deliver written comments to Ellen E. Tunstall, Assistant Director for Employment Policy, U.S. Office of Personnel Management, 1900 E Street NW., Room 6551, Washington, DC 20415–9500.

FOR FURTHER INFORMATION CONTACT: Suzy M. Barker, Director, Examination and Qualifications Policy Division, on (202) 606–0830, or FAX (202) 606–0390.

SUPPLEMENTARY INFORMATION: For decades—dating back to at least the establishment of the Federal Service Entrance Examination in 1955—OPM has had the option of using two alternative methods of certifying candidates for competitive appointments. When OPM began delegating the responsibility for certification to other examining units (delegated examining units—DEUs), we provided the DEUs with these two options as well. The first option permits agencies to refer a candidate's name out on only one certificate at a time by temporarily removing the candidate from the list of eligibles while the candidate's name is out on that certificate. The second option, known as ''dual certification,'' requires that agencies simultaneously list a candidate on all certificates for which the candidate expresses an interest, is eligible, and is within reach. Under the ''dual certification'' option, there is no limit to the numbers of certificates on which a candidate can be referred simultaneously.

OPM's long-standing policy on the certification options available to agencies is discussed in detail in OPM's Delegated Examining Operations Handbook (DEOH). It derives from OPM's authority, based on delegations for the President, to ''prescribe such regulations for the admission of individuals into the civil service in the executive branch as will best promote the efficiency of that service'' (5 U.S.C. 3301(1); see also 5 U.S.C. 3302(5), requiring OPM to prescribe regulations necessary for the administration of competitive service examinations).

As described in the DEOH, in most circumstances, when filling multiple jobs either from a standing inventory or under case examining where there are multiple grade levels and/or geographic locations, an agency may invoke either of the previously-discussed options.

To illustrate the practical effect of this practice, consider that an agency has established a standing inventory for the position of Border Patrol Agent at grade levels GS–5 and 7. The inventory services the agency nationwide. Three selecting officials request a list of eligibles for a GS–5 position on the same day. The positions are in San Diego, El Paso, and Miami. Using the dual certification method, the top three candidates—who were qualified for GS–5 at all three locations—are referred to all three locations and the selecting officials would consider the same candidates. The same candidate could be selected by more than one official, both limiting the choice of the selecting official and delaying hiring.

Limiting choices and delaying hiring are never good options, especially in times such as these. Agencies have urgent needs right now in the areas of law enforcement, security, and investigative personnel. There is also a direct impact on the lists of eligibles used to fill specific positions including, but not limited to, Border Patrol Agents, U.S. Marshals, and Criminal Investigators. Other positions filled from standing inventories include, for example, Veterinary Medical Officers who work in over 6,000 food processing plants nationwide, Defense Commissary Managers throughout the world, and Internal Revenue Service Tax Examiners employed throughout the United States. All play an important part during these extraordinary times.

Providing agencies with the option of choosing either certification method has a number of advantages. Specifically, it gives agencies the means with which to:

- Use the examining system most efficiently and effectively in any given situation. Fore example, where multiple vacancies are being filled in multiple geographic locations, dual certification is often grossly inefficient. In these instances, the same candidates are referred for each vacancy and, consequently, several selecting officials often select the same candidates. Until a candidate actually accepts an offer of employment, he or she blocks the ability of the other two selecting officials to fill their vacancies, and the opportunity for other candidates to be considered. Moreover, the same scenario often occurs repeatedly as selecting officials go through their lists. The result is substantial delay, especially when filling positions in less desirable locations;
- Increase the credibility of the Federal hiring system. Agencies can ensure that their selecting officials are given bona fide candidates from which to select. On many occasions, the dual certification method does not allow agencies to provide their selecting officials with meaningful choices. Likewise, job candidates are more likely to receive timely consideration and notification regarding selection;
- Protect the Merit System Principles. These principles require, among other things, that the Federal work force be sued efficiently and effectively and that all applicants for employment receive fair and equitable treatment. Providing

agencies with a choice of certification options is in keeping with these principles;

• Improve the efficiency of the referral process for both the agency and the candidate. In certain situations, especially where several vacancies are being filled at different grade levels in different geographic locations, the dual certification process creates uncertainty as to which candidates are being considered by which selecting official for which location. Providing agencies with an option of certification procedures assists immeasurably in promoting the efficiency of the hiring process.

• Establish a mechanism through which agencies can reduce the high rate of declinations that occur because not all candidates are really interested in all the vacancies for which they may be referred. For example, when applicants for Immigration Inspector positions with the Immigration and Naturalization Service were given the opportunity to be considered for all geographic locations, nearly 80% of those individuals who were offered positions declined. On the other hand, when applicants for these positions were limited in the number of geographic locations for which they could ask to be considered, the declination rate dropped to approximately 40%;

• Meet the Federal government's primary objectives, as set forth by the President. This practice is citizen-centered, results-oriented and market-based. It gives agencies a choice of referral methods and thus an opportunity to select the method that puts the best people into vacant positions as quickly and efficiently as possible while providing job applicants with fast, fair and equitable consideration. This, in turn, allows agencies to better serve the needs of citizens; and

• Lower costs to the taxpayer significantly and lessen the burden on human resources personnel.

Recently, it was brought to our attention that OPM's regulations make so specific provision for any certification method other than referral from the top of the list of eligibles based on score. This amendment rectifies that technical deficiency, but will not otherwise change the way in which candidates have historically been rated, ranked, and considered for competitive service jobs. OPM has broad authority under the law and the Civil Service Rules to conduct open, competitive examinations. We will continue to administer an efficient, effective examining program that attempts to balance the rights of individuals and the needs of agencies so we can better serve the public.

Waiver of Notice of Proposed Rulemaking

In accordance with section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. An opportunity for public comment prior to issuing this rule is unnecessary and contrary to the public interest. Waiving proposed regulations will help agencies continue to fill critical positions.

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 the regulations apply only to appointment procedures for employees in Federal agencies.

E.O. 12866, Regulatory Review

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

List of Subjects 5 CFR Part 332

Government employees.

Office of Personnel Management,

Kay Coles James,

Director.

Accordingly, OPM is amending part 332 of title 5, Code of Federal Regulations, as follows:

PART 332—RECRUITMENT AND SELECTION THROUGH COMPETITIVE EXAMINATION

1. The authority citation for part 332 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Subpart D—Consideration for Appointment

2. Section 332.402 is revised to read as follows:

§ 332.402 Referring candidates for appointment.

OPM or a Delegated Examining Unit (DEU) will refer candidates for consideration by simultaneously listing a candidate on all certificates for which the candidate is interested, eligible, and within reach, except that, when it is deemed in the interest of good administration and candidates have been so notified, OPM or a DEU may choose to refer candidates for only one vacancy at a time. Selecting officials will receive sufficient names, when available, to allow them to consider at least 3 candidates for each vacancy.

[FR Doc. 02–3621 Filed 2–14–02; 8:45 am]

BILLING CODE 6325–38–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

RIN 0560–AF41

Dairy Recourse Loan Program for Commercial Dairy Processors

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule removes the regulations governing the Dairy Recourse Loan Program from the Code of Federal Regulations because the program's authorizing legislation was repealed.

EFFECTIVE DATE: February 15, 2002.

FOR FURTHER INFORMATION CONTACT: Steve P. Gill, Warehouse and Inventory Division, United States Department of Agriculture (USDA), STOP 0553, 1400 Independence Avenue, SW, Washington, DC 20250–0553. E-mail: *sgill@wdc.fsa.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among various levels of government.

Executive Order 12866

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

Executive Order 12988

The rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule do not preempt State laws and are not retroactive.