

# Rules and Regulations

Federal Register

Vol. 60, No. 36

Thursday, February 23, 1995

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.

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 213 and 302

RIN 3206-AF53

#### Temporary, Seasonal, and Intermittent Employment in the Excepted Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is amending its regulations to consolidate excepted service authorities for filling temporary, intermittent, and seasonal jobs, to remove coverage for appointments that no longer meet the criteria for exception, and to establish a new excepted service authority which could be used by agencies to meet urgent, short-term hiring needs.

**EFFECTIVE DATE:** March 27, 1995.

**FOR FURTHER INFORMATION CONTACT:** Tracy E. Spencer, (202) 606-0830, or fax (202) 606-2329.

**SUPPLEMENTARY INFORMATION:** These regulations implement the National Performance Review's recommendations to reduce the number of Federal hiring authorities and decentralize many personnel decisions. The regulations eliminate overlapping and obsolete appointing authorities and establish two authorities to meet common needs that may be used by any agency without obtaining specific OPM approval.

On September 26, 1994 (59 FR 49034), OPM published proposed regulations to revise and consolidate paragraphs (i) and (m) of section 213.3102, which both cover temporary, intermittent, and seasonal employment in the excepted service. We proposed to establish Governmentwide Schedule A authorities for temporary and less-than-full-time positions in remote or isolated locations involving no more than 1,040

working hours of employment in a service year and for short-term appointments to meet special hiring needs that would not exceed 30 days, plus one 30-day extension. We also proposed to allow OPM to authorize Schedule A appointments in other circumstances and requested comments on the need to include authority to make Schedule A temporary appointments (i.e., appointments limited to 1 year or less) in connection with post-doctoral fellowships, internships, and similar programs.

We received comments from six Federal agencies. All six supported the proposed Schedule A authority, although one suggested additional exceptions and two made technical and editorial suggestions.

#### Comments on Coverage

With regard to fellowship programs, the agencies indicated that such appointments are usually made for periods longer than 1 year and that an authority limited to temporary employment would have little use. We have, therefore, decided not to include a specific provision for fellowship appointments in the Schedule A authority for temporary, intermittent, and seasonal employment. Any agencies that wish to make temporary appointments in connection with post-doctoral fellowship programs may, however, request OPM's approval to use the Schedule A authority for that purpose.

One agency suggested that Schedule A appointments should be permitted for short-term work lasting up to 90 days (instead of 30 days as proposed), with an additional 30-day extension, and for all nonsupervisory temporary and seasonal laborer positions at WG-3 and below. We did not adopt those suggestions because we cannot find that use of competitive hiring procedures to fill the jobs would be impracticable.

Agencies may make temporary appointments in the competitive service using the applicant supply file procedures set out in 5 CFR part 333. Those procedures are very similar to the procedures for making temporary Schedule A appointments set out in 5 CFR part 302. The only differences are qualification requirements and public notice.

Agencies making temporary appointments under part 333 must apply competitive qualification

standards. However, those standards contain only basic generic requirements, to which agencies may add specific requirements related to their jobs. For most jobs, there is little practical difference between the competitive standards and the standards agencies would develop under part 302.

Agencies making competitive temporary appointments must also notify OPM and State Employment Service offices of the vacancies. However, there are no mandatory minimum publicity requirements.

The agencies decide how widely to distribute notices and how long the notices will remain open.

We believe that the competitive hiring procedures are flexible enough to meet all but the most urgent staffing needs. We also believe that exceptions to basic hiring procedures should be authorized only when clearly necessary.

Competitive hiring is not impracticable in all cases for temporary laborer jobs or for project jobs involving 3 or 4 months of work. Therefore, we are not establishing a general Schedule A authority for such positions. Any agency that needs to fill particular jobs more quickly than the competitive process would permit may, of course, request OPM's approval to make Schedule A appointments to those jobs.

#### Technical and Editorial Comments

With regard to procedural requirements, one agency asked whether the ranking and referral requirements of 5 CFR part 302 will apply to 30-day special need appointments under the new Schedule A authority. Formal ranking and referral procedures have not previously been required for 30-day special need appointments because the time needed for that process is not commensurate with the extremely short period of employment. That is still true. Accordingly, as provided in 5 CFR 302.101(c), we are granting an exception from the procedural requirements of part 302 for appointments made under the new Schedule A special need authority. Agencies must, however, apply veterans' preference to the extent administratively feasible.

The same agency also asked why the service limitation in the proposed Schedule A authority for positions in remote or isolated locations should apply to all employment in the same agency. The agency suggested that the limit should apply only to excepted

employment in the same or successor positions. We have adopted that suggestion in part. We agree that the limit should apply separately to positions having different job duties and qualification requirements. While a few individuals might be qualified and available to perform unrelated functions (e.g., surveyor and pilot), it would not be practical for the agency to create a job combining such distinct duties. We have rewritten the Schedule A authority to clarify that the limit applies to employment in jobs having related duties and comparable qualification requirements.

We have not adopted the suggestion that only excepted employment in an identical or successor position should count against the limit. Such a broad exclusion from the service limit would undermine the justification for the excepted authority. Examining for jobs in remote or isolated locations is impracticable when: only residents of the immediate area can be expected to reach the work site whenever they are needed; the amount of employment involved would not encourage outside applicants to move to the isolated area; and staff from an OPM or agency examining office could not readily reach the location to administer the competitive hiring process. If an agency can make competitive appointments to some jobs in a location, can combine related work to afford a substantial amount of employment, and/or can readily attract candidates from outside the immediate locality, the conditions for exception would not be met.

Another agency suggested that the authority should provide for OPM approval of Schedule A appointments for additional "circumstances" rather than additional "positions." The agency notes that it is not always possible to identify in advance all specific positions that may be needed in connection with a particular program or situation.

The wording of the Schedule A authority reflects Civil Service Rule VI (5 CFR 6.1), which authorizes OPM to except positions from the competitive service. This language does not preclude exception of positions based on the circumstances under which they are filled. OPM has previously approved Schedule A authorities that cover all positions meeting certain conditions or all positions filled in connection with a particular program, without listing those positions specifically. We will entertain similar requests submitted under this new Schedule A authority.

**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 apply only to Federal employees.

**List of Subjects in 5 CFR Parts 213 and 302**

Government employees, Reporting and recordkeeping requirements.  
U.S. Office of Personnel Management  
**James B. King,**  
*Director.*

Accordingly, OPM is amending 5 CFR parts 213 and 302 as follows:

**PART 213—EXCEPTED SERVICE**

1. The authority citation for part 213 continues to read as follows:

**Authority:** 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h), and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185.

2. In § 213.3102, paragraph (i) is revised and paragraph (m) is removed and reserved, to read as follows:

**§ 213.3102 Entire executive civil service.**  
\* \* \* \* \*

(i) Temporary and less-than-full time positions for which examining is impracticable. These are:

(1) Positions in remote/isolated locations where examination is impracticable. A remote/isolated location is outside the local commuting area of a population center from which an employee can reasonably be expected to travel on short notice under adverse weather and/or road conditions which are normal for the area. For this purpose, a population center is a town with housing, schools, health care, stores and other businesses in which the servicing examining office can schedule tests and/or reasonably expect to attract applicants. An individual appointed under this authority may not be employed in the same agency under a combination of this and any other appointment to positions involving related duties and requiring the same qualifications for more than 1,040 workings hour in a service year. Temporary appointments under this authority may be extended in 1-year increments, with no limit on the number of such extensions, as an exception to the service limits in § 213.104.

(2) Positions for which a critical hiring need exists. This includes both short-term positions and continuing positions that an agency must fill on an interim basis pending completion of competitive examining, clearances, or

other procedures required for a longer appointment. Appointments under this authority may not exceed 30 days and may be extended for up to an additional 30 days if continued employment is essential to the agency's operations. The appointments may not be used to extend the service limit of any other appointing authority. An agency may not employ the same individual under this authority for more than 60 days in any 12-month period.

(3) Other positions for which OPM determines that examining is impracticable.

\* \* \* \* \*

**PART 302—EMPLOYMENT IN THE EXCEPTED SERVICE**

3. The authority citation for part 302 continues to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, 3302, and 8151, E.O. 10577 (3 CFR 1954-1958 Comp., p. 218); § 302.105 also issued under 5 U.S.C. 1104, Pub. L. 95-454, sec. 3(5); § 302.501 also issued under 5 U.S.C. 7701 et. seq.

4. In § 302.101, paragraph (c)(11) is added, to read as follows:

**§ 302.101 Positions covered by the regulations.**

\* \* \* \* \*

(c) \* \* \*

(11) Positions for which a critical hiring need exists when filled under § 213.3102(i)(2) of this chapter.

[FR Doc. 95-4394 Filed 2-22-95; 8:45 am]  
BILLING CODE 6325-01-M

**OFFICE OF GOVERNMENT ETHICS**

**5 CFR Part 2604**

RIN 3209-AA17

**Freedom of Information Act Rules and Schedule of Fees for the Production of Public Financial Disclosure Reports**

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Final rule.

**SUMMARY:** The Office of Government Ethics is issuing a final rule which establishes procedures for the implementation of the Freedom of Information Act (FOIA). The rule also establishes a schedule of fees which will be charged for the reproduction and mailing of public financial disclosure reports (SF 278s).

**EFFECTIVE DATE:** March 27, 1995.

**FOR FURTHER INFORMATION CONTACT:** Janet K. Roell, Office of Government Ethics, telephone (202) 523-5757, FAX (202) 523-6325.