

Rules and Regulations

Federal Register

Vol. 48, No. 44

Friday, March 4, 1983

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 month.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 900

Intergovernmental Personnel Act Programs; Standards for a Merit System of Personnel Administration

AGENCY: Office of Personnel
Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is revising the Standards for a Merit System of Personnel Administration. With this revision, OPM adopts the merit principles of the Intergovernmental Personnel Act as the basic personnel management requirement for administering all Federal intergovernmental assistance programs that require, by statute or by regulation, that the State or local agency receiving the assistance maintain a merit system of personnel administration. In addition, OPM establishes new procedures for assuring compliance with the Standards. OPM's approach to administration of the Standards relies primarily on certification of agreement to comply by State and local chief executives. OPM affirms the responsibility of chief executives to assure compliance of their jurisdictions with the Standards. However, OPM will retain ultimate authority to interpret the Standards and make determinations of noncompliance with them.

The revision is in keeping with the spirit of Executive Order 12372, Intergovernmental Review of Federal Programs. It will: (1) Better implement the requirement of the Intergovernmental Personnel Act to minimize Federal intervention in State and local personnel administration; (2) remove unnecessarily burdensome and costly restrictions on State and local

merit personnel systems; (3) effect cost savings by eliminating the need for dual personnel systems that the existing Standards have led some State and local governments to maintain; (4) recognize the voluntary progress of State and local governments, over the years, in developing modern personnel systems and in voluntarily implementing the intent of the Standards, thus making detailed Federal requirements no longer necessary; (5) encourage innovation and allow for diversity in merit systems as required in the Intergovernmental Personnel Act; (6) recognize fully the rights, powers, and responsibilities of State and local governments; and (7) provide State and local governments more flexibility in administering their merit personnel systems, while maintaining protections where there is a Federal interest in promoting proper and efficient administration of Federal grants.

EFFECTIVE DATE: April 4, 1983.

FOR FURTHER INFORMATION CONTACT: Terry W. Culler, (202) 254-3134.

SUPPLEMENTARY INFORMATION: Under section 208(a) of the Intergovernmental Personnel Act, as amended, the U.S. Office of Personnel Management (OPM) is responsible for prescribing personnel standards which are to be followed by State and local governments as a condition of participation in Federal assistance programs which require of personnel administration on a merit basis for persons engaged in carrying out such programs.

Consistent with OPM's experience with State and local government implementation of the intent of the Standards, the requirement of the Intergovernmental Personnel Act itself that Federal intervention be minimized, and the President's goal to reduce unnecessary regulatory burdens on State and local governments, OPM reviewed its regulations carefully to identify unnecessary requirements.

As a result of this review, OPM published a proposed revision of its regulations in the May 11, 1982, Federal Register (47 FR 20142) for a 60-day public comment period.

Comments were received from 105 sources, including State and local governments, public interest groups, professional organizations, employee organizations, and individuals. The following summarizes the comments, suggestions and actions taken.

Appropriate Level of Regulatory Detail

The proposed revision removed detailed regulatory requirements and guidance and substituted the broad statements of principle found in the Act itself. A number of commentators agreed that the revision would ensure merit-based personnel administration while increasing State and local government efficiency and cost effectiveness. Other commentators suggested that broad statements of principle lack definition and invite inappropriate application. Some commentators were concerned that, without detailed guidance, Federal grantor agencies might impose inconsistent and possibly conflicting requirements on State and local jurisdictions. Other commentators were concerned that some State and local governments would misuse the flexibilities of the proposed revision to the detriment of proper and efficient administration of Federal grants.

Particular areas of concern were: (1) Criteria for exemption of personnel from standards coverage; (2) substitution of the IPA merit principles for more detailed guidance contained in the existing regulations; and (3) removal of the Uniform Guidelines on Employee Selection Procedures from the Standards.

OPM appreciates the concerns outlined above, but believes that standardized, detailed requirements restrict flexibility, discourage innovation, and constitute an unwarranted regulatory burden on State and local governments. The problems which remain can best be dealt with through the joint State and local-Federal compliance process outlined in these regulations. In accordance with concerns about conflicting Federal policies, however, OPM has revised § 900.604(b)(3) and § 900.605 to make it clear that OPM has sole responsibility, aside from State and local chief executives, for interpretation of the Standards, and that OPM will review issues regarding compliance with the Standards. OPM believes that prudent exercise of its oversight role will strike the best balance between State and local needs for flexibility and the Federal need to ensure proper and efficient grants administration.

With regard to EEO, these Standards recognize equal employment opportunity requirements insofar as they apply by

statute to State and local jurisdictions under Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, the State and Local Fiscal Assistance Act and other relevant laws. The Uniform Guidelines continue to apply to State and local governments through other appropriate regulations, and are duplicative and unnecessary in these regulations. Equal employment opportunity is specifically retained as a Standard under § 900.603(e).

Compliance Provisions

Some commentators suggested that the compliance provisions of the proposed revisions did not provide for a sufficient oversight role for OPM. Particular areas of concern were self-certification of compliance by State and local chief executives and the lack of a detailed review process. OPM has not changed the proposal for self-certification. OPM believes that self-certification, combined with effective resolution of compliance issues, will allow it to focus its efforts on improving those personnel systems with severe problems. The 1979 revision of Merit Standards regulations also provided for self-certification.

With regard to OPM's complaints review process, OPM agrees that there should be a mechanism for surfacing compliance issues and that all parties concerned should be informed of the specific procedures to be used in reviewing complaints. OPM is therefore adding a new section, § 900.606, which indicates that specific guidance will be published in the Federal Personnel Manual System and in other relevant publications.

State/Local Compliance Relationship

Several comments received made it clear that the provisions allowing for State supervision of local government certifications were confusing. In some States, State agencies have supervised compliance of local jurisdictions with the Merit Standards. OPM has no objection to a continued State/local supervisory relationship, should it be acceptable to the parties involved. The May 11 proposed revision therefore allowed for States to continue to collect local certifications of compliance. Comments made it clear that this provision was subject to misinterpretation. For example, some commentators apparently thought that OPM was promoting State supervision of local government merit personnel administration. Others apparently believed OPM intended to conduct reviews of State supervisory activities. From OPM's point of view, each chief

executive is responsible for ensuring compliance of his/her jurisdiction with the Standards. However, OPM wishes to minimize Federal interference in State and local relationships. It has no objection to continued State supervision of local governments; neither does it intend to promote such supervision. OPM has, therefore revised § 900.604(a) to delete all regulatory reference to the relationship between State and local governments.

Employee Protections

A number of employee organizations have suggested that the proposed revision will result in a weakening of employee protections. OPM does not believe that this will happen since State and local governments have, over the years, made considerable progress in implementing the intent of the Standards. However, should any abuses of merit principles occur, OPM will resolve them through its complaints review process. With this revision, OPM is reducing Federal regulation. These Standards in no way require or encourage State or local governments to reduce employee protections.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulations.

Regulatory Flexibility Act

The purpose of this revision is to eliminate unnecessary and burdensome requirements on State and local governments. It places no new requirements on State and local governments. However, it will allow State and local governments to make certain changes in their personnel operations, should they find such changes to be desirable.

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, including small business, small organizational units and small governmental jurisdictions.

List of Subjects in 5 CFR Part 900

Administrative practice and procedure, Civil rights, Equal employment opportunity, Government employees, Grant programs—education, Handicapped, Intergovernmental relations.

Office of Personnel Management.
Donald J. Devine,
Director.

Accordingly, the Office of Personnel Management amends 5 CFR Part 900 by revising Subpart F to read as follows:

PART 900—INTERGOVERNMENTAL PERSONNEL ACT PROGRAMS

Subpart F—Standards for a Merit System of Personnel Administration

- Sec.
900.601 Purpose.
900.602 Applicability.
900.603 Standards for a merit system of personnel administration.
900.604 Compliance.
900.605 Establishing a merit requirement.
900.606 Publication of procedures to implement merit requirements.
Appendix A to the Standards for a Merit System of Personnel Administration.
Authority: 42 U.S.C. 4728, 4763; E.O. 11589, 3 CFR Part 557 (1971–1975 Compilation).

Subpart F—Standards for a Merit System of Personnel Administration

§ 900.601 Purpose.

(a) The purpose of these regulations is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to Federally required merit personnel systems in State and local agencies, in a manner that recognizes fully the rights, powers, and responsibilities of State and local governments and encourages innovation and allows for diversity among State and local governments in the design, execution, and management of their systems of personnel administration, as provided by that Act.

(b) Certain Federal grant programs require, as a condition of eligibility, that State and local agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific Federal grant statutes and in other cases are required by regulations of the Federal grantor agencies. Title II of the Act gives the U.S. Office of Personnel Management authority to prescribe standards for these Federally required merit personnel systems.

§ 900.602 Applicability.

(a) Sections 900.603–604 apply to those State and local governments that are required to operate merit personnel systems as a condition of eligibility for Federal assistance or participation in an intergovernmental program. Merit personnel systems are required for State and local personnel engaged in the administration of assistance and other intergovernmental programs, irrespective of the source of funds for their salaries, where Federal laws or regulations require the establishment and maintenance of such systems. A

reasonable number of positions, however, may be exempted from merit personnel system coverage.

(b) Section 900.605 applies to Federal agencies that operate Federal assistance or intergovernmental programs.

§ 900.603 Standards for a merit system of personnel administration.

The quality of public service can be improved by the development of systems of personnel administration consistent with such merit principles as—

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the Federal equal employment opportunity and nondiscrimination laws. (f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

§ 900.604 Compliance.

(a) *Certification by Chief Executives.*

(1) Certification of agreement by a chief executive of a State or local jurisdiction to maintain a system of personnel administration in conformance with these Standards satisfies an applicable Federal merit personnel requirements of the Federal assistance or other programs to which personnel standards on a merit basis are applicable.

(2) Chief executives will maintain these certifications and make them available to the Office of Personnel Management.

(3) In the absence of certification by the chief executive, compliance with the Standards may be certified by the heads of those State and local agencies that are required to have merit personnel systems as a condition of Federal

assistance or other intergovernmental programs.

(b) *Resolution of Compliance Issues.*

(1) Chief executives of State and local jurisdictions operating covered programs are responsible for supervising compliance by personnel systems in their jurisdictions with the Standards. They shall resolve all questions regarding compliance by personnel systems in their jurisdictions with the Standards. Findings and supporting documentation with regard to specific compliance issues shall be maintained by the chief executive, or a personal designee, and shall be forwarded, on request, to the Office of Personnel Management.

(2) The merit principles apply to systems of personnel administration. The Intergovernmental Personnel Act does not authorize OPM to exercise any authority, direction or control over the selection, assignment, advancement, retention, compensation, or other personnel action with respect to any individual State or local employee.

(3) If a chief executive is unable to resolve a compliance issue to the satisfaction of the Office of Personnel Management, the Office will assist the chief executive in resolving the issue. The Office of Personnel Management, as authorized by section 208 of the Intergovernmental Personnel Act, will determine whether personnel systems are in compliance with the Standards and will advise Federal agencies regarding application of the Standards and recommend actions to carry out the purpose of the Act. Questions regarding interpretation of the Standards will be referred to the Office of Personnel Management.

§ 900.605 Establishing a merit requirement.

Federal agencies may adopt regulations that require the establishment of a merit personnel system as a condition for receiving Federal assistance or otherwise participating in an intergovernmental program only with the prior approval of the Office of Personnel Management. All existing regulations will be submitted to the Office of Personnel Management for review.

§ 900.606 Publication of procedures to implement merit requirements.

Procedures to implement these merit requirements will be specified in the Federal Personnel Manual System and other relevant publications of the Office of Personnel Management.

Appendix A to the Standards for a Merit System of Personnel Administration

Part I: The following programs have a statutory requirement for the establishment and maintenance of personnel standards on a merit basis.

Program, Legislation, and Statutory Reference

Food Stamp, Food Stamp Act of 1977, as amended; 7 U.S.C. 2020(e)(6)(B).

National Health Planning and Resources Development, Public Health Service Act (Title XV), as amended by the National Health Planning and Resources Development Act of 1974, section 1522, on January 2, 1975; 42 U.S.C. 300m-1(b)(4)(B).

Old-Age Assistance, Social Security Act (Title I), as amended by the Social Security Act Amendments of 1939, section 101, on August 10, 1939; 42 U.S.C. 302(a)(5)(A).¹

Employment Security (Unemployment Insurance and Employment Services), Social Security Act (Title III), as amended by the Social Security Act Amendments of 1939, section 301, on August 10, 1939, and the Wagner-Peyser Act, as amended by Pub. L. 81-775, section 2, on September 8, 1950; 42 U.S.C. 503(a)(1) and 29 U.S.C. 49d(b).

Aid to Families with Dependent Children, Social Security Act (Title IV-A), as amended by the Social Security Act Amendments of 1939, section 401, on August 10, 1939; 42 U.S.C. 602(a)(5).

Aid to the Blind, Social Security Act (Title X), as amended by the Social Security Act Amendments of 1939, section 701, on August 10, 1939; 42 U.S.C. 1202(a)(5)(A).¹

Aid to the Permanently and Totally Disabled, Social Security Act (Title XIV), as amended by the Social Security Act Amendments of 1950, section 1402, on August 28, 1950; 42 U.S.C. 1352(a)(5)(A).¹

Aid to the Aged, Blind or Disabled, Social Security Act (Title XVI), as amended by the Public Welfare Amendments of 1962, section 1602, on July 25, 1962; 42 U.S.C. 1382(a)(5)(A).¹

Medical Assistance (Medicaid), Social Security Act (Title XIX), as amended by the Social Security Amendments of 1965, section 1902, on July 30, 1965; 42 U.S.C. 1396(a)(4)(A).

State and Community Programs on Aging (Older Americans), Older Americans Act of 1965 (Title III), as amended by the Comprehensive Older Americans Act Amendments of 1978, section 307 on October 18, 1978; 42 U.S.C. 3027(a)(4).

Adoption Assistance and Foster Care, Adoption Assistance and Child Welfare Act of 1980; 42 U.S.C. 671(a)(5).

Part II: The following programs have a regulatory requirement for the establishment and maintenance of personnel standards on a merit basis.

Program, Legislation, and Regulatory Reference

Occupational Safety and Health Standards, Williams-Steiger Occupational Safety and Health Act of 1970; Occupational Safety and

¹ Pub. L. 92-603 repealed Titles I, X, XIV, and XVI of the Social Security Act, effective January 1, 1974, except that "such repeal does not apply to Puerto Rico, Guam, and the Virgin Islands."

Health State Plans for the Development and Enforcement of State Standards; Department of Labor, 29 CFR 1902.3(h).

Occupational Safety and Health Statistics, Williams-Steiger Occupational Safety and Health Act of 1970; BLS Grant Application Kit, May 1, 1973, Supplemental Assurance No. 15A.

Child Welfare Services, Social Security Act (Title IV-B); 45 CFR 1392.49(c).

Development Disabilities Services and Facilities Construction, Developmental Disabilities Services and Facilities Construction Act, as amended by Pub. L. 95-602, on November 6, 1978; 45 CFR 1386.21.

Emergency Management Assistance, Civil Defense Act of 1950 (Title II), as amended; 44 CFR 302.5.

Comprehensive Employment and Training Act, Comprehensive Employment and Training Act of 1973; 29 CFR 98.14(a).

Part III: The following programs have personnel requirements which may be met by a merit system which conforms to the Standards for Merit Systems of Personnel Administration.

Program, Legislation, and Reference

Disability Determination Services, Social Security Act (Titles II and XVI), as amended; SSA Disability Insurance State Manual, Part IV, § 425.1.

Health Insurance for the Aged (Medicare), Social Security Act (Title XVIII), especially as amended by the Health Insurance for the Aged Act, on July 30, 1965; SSA State Operations Manual, Part IV section 4510(a).

[FR Doc. 83-5584 Filed 3-3-83; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 273, and 274

[Amendment No. 243]

Food Stamp Program; Duplicate Participation

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This rulemaking implements two food stamp provisions of the Omnibus Budget Reconciliation Act of 1982. State agencies will be required to establish systems which assure that no individual receives food stamps in more than one jurisdiction within the State. In addition, State agencies will have to ensure that recipients of Supplemental Security Income (SSI) in SSI cash-out States and participants in cash-out demonstration projects do not also receive food stamps. The objective of cross checking for duplicate participation is to reduce program cost, abuse, and waste. This rulemaking also corrects an error relative to the household definition made in the interim

rule published on December 14, 1982 (47 FR 55903) entitled Eligibility Criteria and Reduction or Termination of Benefits.

DATES: Sections 272.1(g)(59) and 274.1(d) (except the recordkeeping requirements in § 274.1(d)(1) which are under review at OMB) are effective April 4, 1983, to be fully implemented no later than October 1, 1983. The correction appearing in § 273.1(a)(iv) is effective retroactive to September 8, 1982. Comments on this interim rulemaking must be received on or before June 2, 1983 to be assured of consideration in the final rulemaking process.

ADDRESS: Comments should be submitted to Thomas O'Connor, Acting Chief, Program Design and Rulemaking Branch, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 708.

FOR FURTHER INFORMATION CONTACT: If you have any questions, contact John Knaus, Acting Supervisor, State Agency Management and Control Section, at the above address or telephone at (703) 756-3431.

SUPPLEMENTARY INFORMATION:

Classification

Justification for Publishing as Interim Rule. This rulemaking is being published as an interim rule consistent with the mandate of Section 193 of the Omnibus Budget Reconciliation Act of 1982 (Pub. L. 97-253, enacted on September 8, 1982). Section 193 mandates that the provisions of Pub. L. 97-253 including those addressed in this rule are effective as of the date of enactment. For this reason Robert E. Leard, Acting Administrator of the Food and Nutrition Service, pursuant to 5 U.S.C 553, has determined that prior public comment on this rule is impracticable and contrary to the public interest and that good cause exists for making this rule effective less than 60 days after publication. Public comment is solicited on this rule for 90 days. All comments received will be analyzed and any appropriate changes in the rule will be incorporated in a subsequent publication.

Executive Order 12291. The Department has reviewed this rule under Executive Order 12291 and Secretary's Memorandum No. 1512-1. The rule will affect the economy by less than \$100 million a year. The rule will not significantly raise costs or prices for

consumers, industries, government agencies or geographic regions. There will not be significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified the rule as "not major."

Regulatory Flexibility Act. This interim rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). Robert E. Leard, Acting Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The proposed changes will affect State agencies and a relatively small number of food stamp recipients.

Recordkeeping Requirements. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the recordkeeping provisions that are included in this regulation have been or will be submitted for approval to the Office of Management and Budget (OMB). The public will be notified of approval from OMB of the recordkeeping requirements contained within this interim rule through publication of a final rulemaking.

Prevention and Detection of Duplicate Participation

Background

The Omnibus Budget Reconciliation Act of 1982 (Pub. L. 97-253, enacted on September 8, 1982), requires State agencies to establish a system that will prevent any person from receiving multiple benefits in the Food Stamp Program. Section 172 of that Act establishes requirements for checking that no individual receives food stamps in more than one jurisdiction within the State. Comparing records to determine that a person was not receiving benefits in more than one project area would also detect whether a person was receiving excessive program benefits through multiple applications or being counted as members of more than one participating household within one jurisdiction. Section 174 requires State agencies to establish a system that will verify that an individual does not receive both food stamps and benefits in lieu of coupons as part of SSI cash-out or a cash-out demonstration project.

There are several requirements in the food stamp regulations to prevent a person from receiving multiple benefits. Section 273.3 states that no individual