Rules and Regulations

Federal Register
Vol. 50, No. 16
Thursday, January 24, 1985

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 week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 293, 294, 300, 511, 532, 536 and 736

Personnel Records; Availability of Official Information; Employment (General); Classification Under the General Schedule; Prevailing Rate Systems; Grade and Pay Retention; and Investigations

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is updating and reorganizing its regulations implementing the Freedom of Information Act (FOIA) to facilitate the handling of requests under the Act. In addition to making revisions resulting from case law, the regulations raise the threshold amount for advance payment of fees and revise the requirement for advance deposits. The Office has moved the guidelines on access to specific types of records to the parts of the regulations dealing with those records. The revised regulations on access to Official Personnel Folders also contain certain technical changes.

EFFECTIVE DATE: February 25, 1985.

FOR FURTHER INFORMATION CONTACT: On Parts 293, 511, 532, 536, and 736: William H. Lynch, Work Force Records Management Division, (202) 632-5433. On Part 294: John P. Weld, Information Management Division, (202) 632-7720. On Part 300: John Schultz, Office of Staffing Policy, (202) 632-6817.

SUPPLEMENTARY INFORMATION: Proposed revised regulations were published in the October 19, 1982, **Federal Register** (47 FR 46513). These regulations proposed to move the guidelines on access to Official Personnel Folders from Part 294 of Title 5 of the Code of Federal Regulations (5 CFR) to Part 293, and proposed to revise and update the Part 294 regulations on Availability of Official Information. In addition, notice was given that OPM was considering moving Subparts D, E, F, G, H, and I of Part 294 to the parts of the regulations which deal with the subject matter involved. The public comment period on the proposals ended on December 20, 1982. Two organizations commented on the Part 293 proposal, and three on the Part 294 proposal. OPM has modified the proposed regulations to incorporate the comments as explained below.

One commenter suggested that § 293.306 of the regulations could be misunderstood, as it may be construed to mean that records of service prior to April 1, 1947, need not be obtained at the time an individual is hired. This is not the intent. There were no Official Personnel Folders prior to that date. Therefore, agencies should request any files or records found for the individual. The Office is rewording this section to clarify its meaning.

A second commenter, while supportive of OPM's position on the releasability of performance elements and standards, suggested that § 293.311 be expanded to specify what the test of unwarranted invasion of personal privacy means. The commenter also requested that paragraph § 293.311(c) state that a summons, warrant, or subpoena are not "court orders," as that term is used in the Privacy Act, and that such documents would not therefore fall within the scope of that specific allowable disclosure provision. OPM is not making any changes as a result of these suggestions. In the first instance, a determination of what constitutes an invasion of personal privacy can only be made on a case-by-case basis after it is known what information is sought, by whom, and for what purpose. In the second instance, since only the Office of Management and Budget is empowered by the Privacy Act to issue guidelines to agencies on implementing the Act, it would be inappropriate for OPM to issue a regulation interpreting a provision of the Act.

One commenter suggested that the definition of the records covered in paragraph § 294.102(a) be changed "as information should be defined as broadly as possible to insure coverage over the largest amount of material." In our view, the definition of "information" in the proposed regulations already was quite broad. Nevertheless, in order to avoid any further misunderstandings, we are changing the definition so that it now describes "information" as having the same meaning as the term "agency records" in the Freedom of Information Act. In addition, the term "information available to the public" is being dropped from the definitions section of the regulations, since it is nowhere used in the regulations.

The proposed regulations removed material contained in the current § 294.103(c) regarding releasing "reasonably segregable" records after deleting exempt portions. One commenter felt that this paragraph should have been retained. This paragraph repeats the law and is covered adequately elsewhere in the regulations. Therefore, we are not adopting this recommendation.

One commenter suggested, regarding § 294.107, that "the criteria should specifically provide that release of information requested by labor unions be considered as primarily benefiting the public because Congress has determined that collective bargaining in both the private and public sector promotes the public interest." OPM has provided guidance on this subject in Federal Personnel Manual Supplement 711-1, Appendix C, and has prescribed a "routine use" statement applicable to disclosure of information to recognized labor organizations. We consider this to be sufficient for this purpose.

One commenter suggested that the phrase "for the purpose of making it available to the public without charge" be dropped from paragraph § 294.107(a). Some OPM publications are available for sale to the public through the Superintendent of Documents. If this phrase were deleted, we would be obligated to provide information that has been made available for purchase by any person free of charge in response to an FOIA request. Therefore, we are retaining this phrase.

The same commenter suggested that the "may" in the phrase "The Office may furnish information made available to the public * * * subject to payment of a fee * * *." at the beginning of paragraph § 294.107(b) be changed to "will," as the requirements of 5 U.S.C. are mandatory upon all agencies. The "may" in this paragraph, however, refers

to charging a fee for the material provided, and not to its disclosure. Changing the "may" to "will" in this paragraph would require that fees be charged in all cases in which information is provided (other than that information printed "for the purpose of making it available to the public without charge"). Therefore, we are not making this suggested change.

Paragraph § 294.107(f) states that fees will be charged for services, such as formal certification of records as true copies, performed but not required under the FOIA. An employee union stated that "it is unclear whether this particular fee is routinely charged for all requests or only for requests which specifically ask for certification." As these services are performed only when requested, we have added the phrase "requested and" before the word "performed" in this paragraph.

Two organizations commented on the proposed change of the deposit requirement from 20% to 50%. One organization suggested "that the present 20% deposit be retained, but that a minimum $20 deposit be required in cases where the estimated cost is less than $100." The other organization commented that the 50% deposit requirement "creates an unnecessary delay and burden on those who pay the fees. Many requesters may find it time-consuming and/or difficult to process the paperwork necessary to release funds * * * and thus be penalized by delay in the release of time-sensitive information." The deposit requirement is designed to protect the public by ensuring that the Government will be able to collect at least a significant share of the costs when larger sums are involved. There is no change in the current requirement of a deposit if the anticipated fee is to exceed $50. As there is no change in the total fees required, nor when a deposit is required, we believe that the additional protection of the general public overrides any inconveniences to an individual member of the public caused by this increased deposit requirement. Therefore, we are not adopting these recommended changes.

A commenter suggested that § 294.108 be amended to "include certain vital information on the consequences of a rejection of an appeal of the denial of information." We agree with this suggestion, and have added a new paragraph (e) to this section.

The existing paragraph § 249.402(b) on the release of certain medical information had been deleted from the proposed regulations as this information is also included elsewhere in the regulations. A commenter urged us to reinstate this information to make it easier to locate. We agree, and reinstated this information as paragraph § 294.106(d) in the revised regulations.

A Federal agency suggested that § 294.601, Investigative reports, would be "better placed in 5 CFR Part 297 in accordance with the stated intent of § 294.103." We are moving this section, but to Part 736 rather than to Part 297 as suggested. Information on general Privacy Act matters is being placed in Part 297, and information on the disclosure of specific records is being placed with the appropriate regulations on that subject area.

An employee union commented that they disagreed with our "decision to omit the existing § 294.110 from the revised regulations." This section stated that the right to control disclosure of information on a deceased person passed to that person's next of kin or executor. The section was eliminated because it is now well-established that after death, a person no longer possesses privacy rights. Some FOIA case law holds that if the information on the deceased person contains information on a living person, the disclosure of which would seriously invade the privacy of the living person, that part of the information can be withheld. This, however, is based on the right to privacy of the living person, and not of the deceased person. We are therefore not adopting this suggestion.

As proposed, § 294.701 stated that information contained in classification appeal files can be released to the parties concerned "except when the disclosure would violate the proscription against the disclosure of medical information in § 294.401." A Federal agency commented that they are not aware of any circumstances in which medical information would be found in classification appeal files. We agree with this comment, and the reference to medical information has been eliminated from this section (§§ 511.616, 532.707, and 536.307 in the final regulations).

A commenter suggested that the meaning of § 294.1001 would be clearer if the title was changed to "Cross References." In addition, another commenter pointed out that the correct citation for information on access to Official Personnel Folders should be § 293.311 rather than § 293.301 as shown. We have made these changes in the section (which has been renumbered § 294.401 in the final regulations).

OPM Changes

In addition to the changes made in response to comments received from outside organizations, the Office has made the following changes:

In § 293.305, the title "Federal Supply Service" has been changed to "Office of Federal Supply and Services" to reflect the new title of this General Services Administration office.

In § 294.101, the term "information" has been substituted for the word "agency records" in order to clarify the meaning of the section.

In § 294.104, the information source is identified by its title and Document number: *Index to Information*, OPM Document No. 1.

In the chart showing the responsibilities of the various OPM offices given in paragraph § 294.105(b), the responsibilities of several OPM offices have been revised to conform with recent agency reorganizations.

In § 294.106(f), a reference to the specific portion of the FOIA defining the term "unusual circumstances" has been added.

In § 294.107, we concluded that paragraph (a) could be interpreted to apply only to publications printed by OPM, and not to those printed for OPM by outside sources. We have therefore revised this statement by adding the word "had" between "has" and "printed."

Relocations

At the time that we published the proposed regulations, we stated that we were "considering relocating Subparts D, E, F, G, H, and I to the parts of [the] regulations which deal with the subject matter involved." These subparts have been moved, or eliminated, as follows:

Subpart D, Medical Information [previously paragraph § 294.401(a)], has been eliminated upon a determination that this guidance is already adequately covered in 5 CFR Part 297, §§ 297.213 and 297.503.

Subpart E, Examinations and Related Subjects, has been relocated to Subpart B of 5 CFR Part 300, Employment (General).

Subpart F, Investigations, has been relocated to 5 CFR Part 736, Investigations. Nonsubstantive, clarifying language changes were also made to this material.

Subpart G, Appeals, has been relocated to 5 CFR Part 511, Classification Under the General Schedule, 5 CFR Part 532, Prevailing Rate Systems; and 5 CFR Part 536, Grade and Pay Retention. As published in the proposed regulations, the current paragraph § 294.801(a), which deals with releasing information from appeal files to members of the general public, was eliminated. Upon further review, it was

determined that this paragraph is still relevant, and it has been reinstated, with the wording being the same as that in the current paragraph. Additionally, some administrative, non-substantive clarifying language has been added to Parts 511, 532, and 536. This language more clearly identifies information that is available. The material moved to Part 736 has also been modified to reflect an administrative change in the address where the requests for information are to be sent and to eliminate unnecessary and/or redundant sections.

Subpart H, Classified Information, has been eliminated based on a determination that this information is adequately covered in 5 CFR Part 175.

Subpart I, Leave Records, was eliminated based on a determination that this information is adequately covered by 5 CFR 297.502.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it relates only to Office policies for releasing information to the general public.

List of Subjects

5 CFR Part 293

Archives and records, Government employees, Privacy.

5 CFR Part 294

Administrative practice and procedure, Classified information, Freedom of information, Health records, Investigations, Retirement.

5 CFR Part 300

Administrative practice and procedure, Government employees.

5 CFR Part 511

Administrative practice and procedure, Government employees, Wages.

5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

5 CFR Part 536

Administrative practice and procedure, Government employees, Wages.

5 CFR Part 736

Government employees, Investigations, Privacy.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, OPM is amending Title 5 of the Code of Federal Regulations as follows:

1. Subpart C of Part 293 is revised to read as follows:

PART 293—PERSONNEL RECORDS

* * * * *

Subpart C—Official Personnel Folder

Sec.

293.301 Applicability of regulations.
293.302 Establishment of Official Personnel Folder.
293.303 Ownership of folder.
293.304 Maintenance and content of folder.
293.305 Type of folder to be used.
293.306 Use of existing folders upon transfer or reemployment.
293.307 Disposition of folders of former Federal employees.
293.308 Removal of temporary records from OPFs.
293.309 Reconstruction of lost OPFs.
293.310 Response to requests for information.
293.311 Availability of information.

Authority: 5 U.S.C. 552, 5 U.S.C. 552a E. O. 12107 (December 28, 1978); 5 U.S.C. 1302, 3 CFR 1954–1958 Compilation; 5 CFR 7.2; E. O. 9830; 2 CFR 1943–1948 Compilation.

* * * * *

Subpart C—Official Personnel Folder

§ 293.301 Applicability of regulations.

This subpart applies to, and within this subpart "agency" means, each executive department and independent establishment of the Federal Government, each corporation wholly owned or controlled by the United States, and with respect to positions subject to civil service rules and regulations, the legislative and judicial branches of the Federal Government.

§ 293.302 Establishment of Official Personnel Folder.

Each agency shall establish an Official Personnel Folder (OPF) for each employee occupying a position subject to this part, except as provided in § 293.306. Except as provided in the Federal Personnel Manual, there will be only one OPF maintained for each employee regardless of service in various agencies.

§ 293.303 Ownership of folder.

The OPF of each employee in a position subject to civil service rules and regulations is under the jurisdiction and control of, and is part of the records of, the Office of Personnel Management (the Office).

§ 293.304 Maintenance and content of folder.

The head of each agency shall cause to be maintained in the OPF the reports of selection and other personnel actions covered by section 2951 of title 5, United States Code. The OPF shall also contain long-term records affecting the employee's status and service, as required by the Office's instructions in the Federal Personnel Manual.

§ 293.305 Type of folder to be used.

Each agency shall use only OPFs from Office of Federal Supply and Services stock (Standard Form 66) for the folders required by this part.

§ 293.306 Use of existing folders upon transfer or reemployment.

When an agency hires a person who has served on or after April 1, 1947, in a position subject to this part, it shall request the transfer of the OPF pertaining to the person's employment. The folder so obtained shall be used in lieu of establishing a new OPF. In the event that the prior service occurred wholly before April 1, 1947, the agency shall request any files or records that may be located in the Federal records storage center. The request shall note that because of the dates of service there will likely be no OPF. Any such file or record found for this individual shall be incorporated into the OPF being established for the employee.

(a) When a person for whom an OPF has been established transfers from one agency to another, the last employing (losing) agency shall, on request, transfer the OPF to the new employing agency.

(b) Before transferring the OPF, the losing agency shall:

(1) Remove those records of a temporary nature filed on the left side of the OPF; and

(2) Ensure that all permanent documents in the folder are complete, correct, and present in the OPF in accordance with Federal Personnel Manual instructions.

§ 293.307 Disposition of folders of former Federal employees.

(a) Folders of persons separated from Federal employment must be retained by the losing agency for 30 working days after separation, and may be retained for additional 60 days where administratively necessary, e.g., where an appeal or an allegation of discrimination is made or where an employee retires or dies in service). Thereafter, the OPF must be transferred to the General Services Administration, National Personnel Records Center (Civilian Personnel Records), 111

Winnebago Street, St. Louis, Missouri 63118.

(b) When a former Federal employee is reappointed in the Federal service, the National Personnel Records Center (Civilian Personnel Records) shall, upon request, transfer the OPF to the new employing agency.

§ 293.308 Removal of temporary records from OPFs.

The employing agency having possession of an OPF shall remove temporary records from the OPF before it is transferred to another agency. For these and also for temporary records of their current employees, maintenance of the records shall be in accordance with General Records Schedule 1, promulgated by the General Services Administration.

§ 293.309 Reconstruction of lost OPFs.

Agencies will take necessary precautions to safeguard all OPFs. In the event of a lost or destroyed OPF, the current (or last, in the case of a former Federal employee) employing agency shall take the necessary action to reconstruct the essential portions of the OPF as specified in the Federal Personnel Manual or other Office instructions.

§ 293.310 Response to requests for information.

The Office, or an agency in physical possession of an OPF in response to a third party Freedom of Information Act (FOIA) request may disclose information as provided in this subpart. A current employee's request for access to his/her own OPF (also included are employee performance file system folders and files) that cites the FOIA, as with all stated Privacy Act requests made by current employees, shall be processed in accordance with agency Privacy Act procedures consistent with Office regulations in Part 297 of this chapter. All requests for their OPFs from former employees, and FOIA requests for former employee OPFs, shall be referred to the Office's regional or area office nearest to the location of the requester.

§ 293.311 Availability of information.

(a) The following information from both the OPF and employee performance file system folders, their automated equivalent records, and from other personnel record files that constitute an agency record within the meaning of the FOIA and which are under the control of the Office, about most present and former Federal employees, is available to the public:

(1) Name.

(2) Present and past position titles and occupational series;

(3) Present and past grades;

(4) Present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious or Distinguished Executive Ranks, and allowances and differentials);

(5) Present and past duty stations (includes room numbers, shop designations, or other identifying information regarding buildings or places of employment); and

(6) Position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) that the release of which would not interfere with law enforcement programs or severely inhibit agency effectiveness. Performance elements and standards (or work expectations) may be withheld when they are so interwined with performance appraisals that their disclosure would reveal an individual's performance appraisal.

(b) The Office or agency will generally not disclose information where the data sought is a list of names, present or past position titles, grades, salaries, performance standards, and/or duty stations of Federal employees which, as determined by the official responsible for custody of the information:

(1) Is selected in such a way that would reveal more about the employee on whom information is sought than the six enumerated items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or

(2) Would otherwise be protected from mandatory disclosure under an exemption of the FOIA.

(c) In addition to the information described in paragraph (a) of this section, a Government official may provide other information from these records (or automated equivalents) of an employee, to others outside of the agency, under a summons, warrant, subpoena, or other legal process; as provided by the Privacy Act (5 U.S.C. 552a(b)(4) through (b)(11)), under those Privacy Act routine uses promulgated by the Office, and as required by the FOIA.

2. Part 294 is revised to read as follows:

PART 294—AVAILABILITY OF OFFICIAL INFORMATION

Subpart A—General Provisions

Sec.
294.101 Purpose.
294.102 Definitions.
294.103 Access to the requester's own records.
294.104 Information available—Indexes of certain records.
294.105 Places to obtain information.
294.106 Procedures for obtaining information.
294.107 Service charges for information.
294.108 Appeal of a denial of information.
294.109 Custody of information; subpoenas.

Subpart B—The Public Information Function

294.201 Public information policy.

Subpart C—Office Operations

294.301 Policy and interpretations.

Subpart D—Cross References.

294.401 Cross References.

Authority: 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

Subpart A—General Provisions

§ 294.101 Purpose.

This part states the time, place, fees, and procedures to follow in requesting information from the Office of Personnel Management.

§ 294.102 Definitions.

In this part:

(a) "Information" has the same meaning as does the term "agency records" in section 552 of title 5, United States Code.

(b) "Disclose or disclosure" means making information available, on request, for examination and copying, or furnishing a copy of the information.

§ 294.103 Access to the requester's own records.

When a request for a record from a Privacy Act system of records, as defined by 5 U.S.C. 552a(a)(5), comes from the subject of the record, or the subject's duly authorized representative, and the record is retrieved by the subject's name or other personal identifier, then the Office will handle the request under the procedures in 5 CFR Part 297.

§ 294.104 Information available—Indexes of certain records.

The Office maintains, and completely revises at mid-year and updates quarterly, *Index to Information*, OPM Document No. 1, an index of materials published and offered for sale or available for public inspection and copying.

A copy of this index is available at no cost from:

Internal Distribution Subunit, Room B443, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415

The Office indexes these materials for the convenience of the public. Indexing does not constitute a determination that all of the materials listed are within the category of those required to be indexed

by 5 U.S.C. 552(a)(2). Most publications may be consulted in the OPM Library, Room 5H27, at the above address.

§ 294.105 Places to obtain information.

(a) A requester who believes that the Office headquarters in Washington, D.C., has the desired information should address the request to the associate director or head of other office indicated in the list in paragraph (b) of this section. The address for all such requests is:

Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415

(b) The following lists the groups and offices of the Office in Washington, D.C., and their principal areas of responsibility:

Submit to—	For subject-matter about—
Associate Director for Administration.	Grants to State and local governments.
Associate Director for Compensation.	Employee compensation: pay, leave, retirement, insurance, and benefits, and incentive and performance pay guidelines.
Assistant Director for Agency Compliance and Evaluation.	Personnel management evaluations of agencies; appellate decisions on position classification, job grading, retained grade, and retained pay, Fair Labor Standards Act complaints decisions; and information about agency compliance with personnel laws, rules, and regulations.
Assistant Director for Workforce Information.	Government-wide statistical personnel information; and information principally in the official personnel folder and the central personnel data file.
Assistant Director for Personnel Investigations.	Background investigations of Federal employees and applicants for Federal employment.
Associate Director for Staffing.	Nationwide recruiting and job information; examining services for entry and promotion; selection methods; position classification standards; qualification standards; examination rating reviews; test scoring services; reduction-in-force policy; student employment programs; non-competitive case file records; and the Administrative Law Judge Program.
Associate Director for Workforce Effectiveness and Development.	Productivity and quality of work life; development of Government-wide occupational health programs; employee relations, discipline, and performance evaluation; incentive awards; job-related training, training information, and training available to Government employees, including developing and training executives; equal employment opportunity and affirmative action; veteran preference, the Presidential Management Intern Program and intergovernmental mobility; delegation agreements.
Assistant Director for Employee, Labor and Agency Relations.	Technical information and policy guidance about management and employee unions in the Federal service.
Assistant Director for Planning and Evaluation.	Merit system standards.
Director, Office of Government Ethics.	Executive branch policy relating to ethics and conflict of interest.
Assistant Director for Executive Personnel.	Senior Executive Service, selection of Federal executives.

(c) Direct a request for information on a subject not specifically referred to in this section or in the index, to:

Information Systems Plans and Policies Branch, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415

(d) A person who believes that a regional office, area office, or post of duty of the Office has the desired information should send the request to the Regional Director, Office of Personnel Management Regional Office, at the appropriate address indicated in the following list:

John W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109
Jacob K. Javits Building, 26 Federal Plaza, New York, New York 10278
William J. Green, Jr., Federal Building, 600 Arch Street, Philadelphia, Pennsylvania 19106
Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, Georgia 30303
John C. Kluczynski Federal Building, 30th Floor, 230 South Dearborn Street, Chicago, Illinois 60604
1100 Commerce Street, Dallas, Texas 75242
300 Old Post Office Building, 815 Olive Street, St. Louis, Missouri 63101
Denver Federal Center, Building 20, Denver, Colorado 80225
211 Main Steet, 7th Floor, San Francisco, California 94105
Henry M. Jackson Federal Building, 26th Floor, 915 Second Avenue, Seattle, Washington 98174

(e) If an OPM group or office receives a request for information it does not have the recipient office will promptly forward the request to the appropriate group or office and will notify the requester that it has done so. However, for purposes of applying the time limits in section 552 of title 5, United States Code, the request will not be considered received until it arrives in the group or office having possession of the requested information.

§ 294.106 Procedures for obtaining information.

(a) A person may request information under section 552 of title 5, United States Code, by letter directed to one of the groups and other offices listed in § 294.105, or deliver a request in person at the addresses listed in that section during business hours on a regular business day.

(b) Each request for information under section 552 of title 5, United States Code should clearly and prominently have a notation on the first page, such as "Freedom of Information Act Request." In addition, if sent by mail or otherwise submitted in an envelope or other cover, mark the outside clearly and prominently with "FOIA Request" or "Freedom of Information Act Request."

(c) A request under this part should reasonably describe the information being requested by including relevant data such as name, number, date, subject, title of publication, or other identifying particulars sufficient to enable the Office to identify and locate the information.

(d) Medical information about an applicant, employee, or annuitant may be disclosed by the Office or another Government agency to the applicant, employee, or annuitant, or a representative designated in writing, except that medical information concerning a mental or other condition of such a nature that a prudent physical would hesitate to inform a person suffering from it of its exact nature and probable outcome may be disclosed only to a licensed physican designated in writing for that purpose by the individual or his designated representative.

(e) If a request includes materials published and offered for sale, e.g., by the Superintendent of Documents, the Office will advise the requester of the appropriate group or other office where the requester may review, and location where the requester may purchase, the materials.

(f) Except in unusual circumstances [as defined in 5 U.S.C. 552(a)(6)(b) (i), (ii), and (iii)], the Office will determine whether to disclose or deny the requested information within 10 working days after receipt of the request (excluding Saturdays, Sundays, and holidays) and will notify the requester immediately of its determination and the fees required, if any, as prescribed by § 294.107.

§ 294.107 Service charges for information.

(a) The Office will furnish reasonable quantities of information that it has had printed or otherwise reproduced for the purpose of making it available to the public without charge.

(b) The Office may furnish information made available to the public, other than that described in paragraph (a) of this section, subject to payment of a fee. Pay the fee by check or money order, payable to the Office of Personnel Management.

(c) Schedule of Fees—When responding to a request for information under section 552 of title 5, United States Code, the Office will charge fees for searching and duplicating the information at the following rates:

Photocopies per page	$0.10
Printed material per 25 pages or fraction thereof	.25
Manual records search, per hour:	
Professional employees	9.00

Clerical employees	5.00
Automated Records search:	
Programming, per hour	17.00
Keypunching, per 1,000 card-image records	183.00
Duplication, per hour	45.00
Computer time, per quarter-hour	219.00

(Charges will be assessed only for actual resources used.)

(d) Unless the request specifically states that the requester will accept any cost involved, or specifies an amount acceptable to the requester and sufficient to cover anticipated costs, the Office will not count as received a request which reasonably may exceed $25 in assessed fees until the requester, after prompt notification of the anticipated cost of the request, agrees to bear it.

(e) When the anticipated fees exceed $50, the requester must deposit at least 50 percent of the amount anticipated within 30 days after notification of that fact. The Office will not release the requested information until it has received the deposit.

(f) The Office will assess charges in cases of unproductive or unsuccessful searches unless an appropriate Office official waives charges. Services requested and performed but not required under the Freedom of Information Act, such as formal certification of records as true copies, will be subject to charges under the Federal User Charge Statute (31 U.S.C. 483a) or other applicable statutes, depending upon the services performed.

(g) The Office will furnish information under the Freedom of Information Act without charge or at a reduced charge when the official considering the request for information finds waiver or reduction of fee in the public interest because furnishing the information primarily benefits the general public.

§ 294.108 Appeal of a denial of information.

(a) A person may appeal a denial by an OPM official of a Freedom of Information Act request to:

General Counsel, U.S. Office of Personnel Management, Washington, D.C. 20415

(b) A person may appeal denial of a Freedom of Information Act request for information maintained by the General Counsel of the OPM to:

Deputy Director, U.S. Office of Personnel Management, Washington, D.C. 20415

(c) If an official of another agency denies a Freedom of Information Act request for information in one of OPM's Government-wide systems of records (see FPM Chapter 297, Appendix, for a list of these systems), the requestor should consult the agency's regulations for any appeal rights that may apply. An agency may, at its discretion, direct these appeals to OPM's General Counsel.

(d) An appeal should include a copy of the initial request, a copy of the letter denying the request, and a statement why the appellant believes the denying official erred.

(e) The appeals provided for in this section constitute the final levels of administrative review that are available. If a denial of information is affirmed, the requester may seek judicial review in the district court of the United States in the district in which he or she resides, or has his or her principal place business, or in which the agency records are situated, or in the District of Columbia.

§ 294.109 Custody of information; subpoenas.

(a) The Chief, Information Systems Plans and Policies Branch, Office of Management, has official custody of the official records of the Office. A subpoena or other judicial order for an official record from the Office should be served on the:

Chief, Information Systems Plans and Policies Branch, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415

(b) See § 297.505 of this chapter for the steps other officials should take on receipt of a subpoena or other judicial order for an official personnel record.

Subpart B—The Public Information Function

§ 294.201 Public information policy.

(a) In addition to the basic policies of the Office relative to the disclosure of information when requested by a member of the public, the Office has an independent public information policy for bringing to the attention of the public through news releases, publications of the Office, or other methods, information concerning the functions of the Office as a Federal agency, and the programs administered by the Office.

(b) The Assistant Director for Public Affairs carries out the public information policy of the Office. In addition, each employee of the Office shall cooperate in carrying out this policy.

Subpart C—Office Operations

§ 294.301 Policy and interpretations.

(a) Statements of Office policy and interpretations of the laws and regulations administered by the Office which the Office has adopted, whether or not published in the Federal Personnel Manual or the **Federal Register**, are available to the public.

(b) Generally, memoranda, correspondence, opinions, data, staff studies, information received in confidence, and similar documentary material, when prepared for the purpose of internal communication within the Office or between the Office and other agencies, organizations, or persons, are not available to the public.

Subpart D—Cross References

§ 294.401 Cross References.

The table below provides assistance in locating OPM regulations in 5 CFR on disclosure of information not covered by Part 294:

Type of information	Location
Classification appeal records	511.616
Classified information	175.101
Examination and related subjects records	300.201
Grade and pay retention records	536.307
Investigative records	736.105
Job grading reviews and appeals records	532.706
Leave records	297.502
Medical information	297.213
	297.503
Official personnel folders	293.311
Protection of privacy and personnel records	297
Retirement	831.106

3. Subpart B of Part 300 is added to read as follows:

PART 300—EMPLOYMENT (GENERAL)

* * * * *

Subpart B—Examinations and Related Subjects

Sec.

300.201 Examinations.

Authority: 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

Subpart B—Examinations and Related Subjects

§ 300.201 Examinations.

(a) The Office makes available information that will assist members of the public in understanding the purpose of, and preparing for, civil service examinations. This includes the types of questions and the categories of knowledge or skill pertinent to a particular examination. The Office does not release the following: (1) Testing and examination materials used solely to determine individual qualifications, and (2) test material, including test plans, item analysis data, criterion instruments, and other material the disclosure of which would compromise the objectivity of the testing process.

(b) Each employee entrusted with test material has a positive duty to protect the confidentiality of that material and to assure release only as required to

conduct an examination authorized by the Office.

(c) An applicant may review his or her own answers in a written test, but only in the presence of an employee of the Office or, for the convenience of the Office and requester, in the presence of an employee of another agency designated by OPM. The applicant may not review a test booklet in connection with this review.

(d) The Office will release information concerning the results of examinations only to the individual concerned, or to parties explicitly designated by the individual.

(e) The Office will not reveal the names of applicants for civil service positions or eligibles on civil service registers, certificates, employment lists, or other lists of eligibles, or their ratings or relative standings.

PART 511—CLASSIFICATION UNDER THE GENERAL SCHEDULE

4. Part 511 is amended as follows:

a. The authority for Part 511 reads as follows:

Authority: 5 U.S.C. 5115, 5338, 5351, unless otherwise noted.

b. Section 511.616 is added to read as follows:

§ 511.616 Availability of information.

(a) The Office, upon a request which identifies the individual from whose file the information is sought, shall disclose the following information from an appeal file to a member of the public, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The status of the appeal;

(3) The results of the appeal (i.e., proper title, pay plan, series, and grade);

(4) the classification requested (i.e., title, pay plan, series, and grade); and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

(b) The Office will disclose to the parties concerned the information contained in an appeal file in proceedings under this part. For the purposes of this section, "the parties concerned" means the Government employee or former Government employee involved in the proceedings, his or her representative designated in writing, and the representative of the agency or the Office involved in the proceeding.

(5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502)

PART 532—PREVAILING RATE SYSTEMS

5. Part 532 is amended as follows:

a. The authority for Part 532 reads as follows:

Authority: 5 U.S.C. 5343, 5346.

b. Section 532.707 is added to read as follows:

§ 532.707 Availability of information.

(a) The Office, upon a request which identifies the individual from whose file the information is sought, shall disclose the following information from an appeal file to a member of the public, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The status of the appeal;

(3) The results of the appeal (i.e., proper title, pay plan, series, and grade);

(4) The classification requested (i.e., title, pay plan, series, and grade); and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

(b) The Office will disclose to the parties concerned the information contained in an appeal file in proceedings under this part. For the purposes of this section, "the parties concerned" means the Government employee or former Government employee involved in the proceedings, his or her representative designated in writing, and the representative of the agency or the Office involved in the proceeding.

(5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502)

PART 536—GRADE AND PAY RETENTION

6. Part 536 is amended as follows:

a. The authority for Part 536 reads as follows:

Authority: 5 U.S.C. 5361–5366, Pub. L. 95–454, 92 Stat. 1111.

b. Section 536.307 is added to read as follows:

§ 536.307 Availability of information.

(a) The Office, upon a request which identifies the individual from whose file the information is sought, shall disclose the following information from an appeal file to a member of the public, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The status of the appeal;

(3) The results of the appeal (i.e., proper title, pay plan, series, and grade);

(4) The classification requested (i.e., title, pay plan, series, and grade); and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

(b) The Office will disclose to the parties concerned, the information contained in an appeal file in proceedings under this part, except when the disclosure would violate the proscription against the disclosure of medical information in §297.204(c) of this chapter. For the purposes of this section, "the parties concerned" means the Government employee or former Government employee involved in the proceedings, his or her representative designated in writing, and the representative of the agency or the Office involved in the proceeding.

(5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502) 7. Part 736 is amended as follows:

PART 736—INVESTIGATIONS

7. Part 736 is amended as follows:

a. The authority for Part 736 reads as follows:

Authority: Pub. L. 93–579; (5 U.S.C. 552a.)

b. Section 736.105 is added to read as follows:

§ 736.105 Public availability of investigative files.

(a) The Office or other Government agency does not disclose the personnel investigations records of individuals when the production of such records would (1) Interfere with enforcement proceedings; (2) deprive a person of a right to a fair trial or impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source; (5) disclose investigative techniques and procedures; or (6) endanger the life and physical safety of law enforcement personnel.

(b) Requests for investigative records are to be submitted to the Chief, OPM-NACI Center, FOI/PA, Boyers, Pennsylvania 16018. If the investigative file contains information that originated in another agency, the Chief, OPM-NACI Center will refer a copy of the request to that agency for decision concerning

release of the information that originated in that agency.

(5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502)

[FR Doc. 85–1740 Filed 1–23–85; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Part 630

Absence and Leave

AGENCY: Office of Personnel Management.

ACTION: Interim rulemaking, with comments invited for consideration in final rulemaking.

SUMMARY: The Office of Personnel Management is amending its annual leave regulations in Subpart C, Part 630, 5 CFR, to increase the time period in which restored annual leave may be used in certain situations. Specifically, the change would apply only to situations that exist after termination of an extended exigency of the public business when the amount of restored annual leave and accrued leave cannot be used within the two years now specified in 5 CFR 630.306.

DATES: Interim regulations effective on January 24, 1985. Comments must be received on or before March 25, 1985.

ADDRESS: Send comments to Jean M. Barber, Assistant Director for Pay and Benefits Policy, Compensation Group, P.O. Box 57, Office of Personnel Management, Washington, D.C. 20044, or deliver to Room 4351, 1900 E Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Betty Roth, (202) 632–9677.

SUPPLEMENTARY INFORMATION: Section 630.306(b), 5 CFR, provides that annual leave forfeited because of a public business exigency and restored under 5 U.S.C. 6304(d) must be scheduled and used not later than the end of the leave year ending two years after the termination date of the exigency. However, while this regulatory provision carries out Congressional intent that there be ample time in which to use restored leave, it contemplates an exigency that does not last more than one leave year.

At present, there is no regulatory provision for the use of restored annual leave that was restored because of an extended exigency (of more than one year) and is more leave than can be used together with accrued leave within the two-year limitation. A regulation that would either cause an employee to lose restored leave or prevent the use of accrued leave is inequitable.

At the same time, restored leave must be used when possible and feasible. As an equitable solution, we are issuing an interim regulation that will permit agencies to increase the time for affected employees to use restored annual leave within a reasonable period after the termination of an extended exigency situation, provided the exigency was of such significance as to satisfy the proposed regulatory criteria.

Pursuant to sections 553(b)(3)(B) and 553(d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective in less than 30 days. The regulations are effective immediately in order to give immediate and timely effect to a provision that corrects an inequity in the current leave regulations.

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 Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Government employees.

List of Subjects in 5 CFR Part 630

Government employees, Personnel management office, and Employee benefit plans.

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

Accordingly, the Office of Personnel Management is amending Title 5, Code of Federal Regulations, as follows:

PART 630—ABSENCE AND LEAVE

In Part 630, in § 630.306 the introductory text is revised, and a § 630.309 is added to read as follows:

§ 630.306 Time limit for use of restored annual leave.

Except as otherwise authorized by regulation, annual leave restored under 5 U.S.C. 6304(d) must be scheduled and used not later than the end of the leave year ending two years after:

* * * * *

§ 630.309 Time limit for use of restored annual leave—extended exigency of the public business.

Annual leave restored under 5 U.S.C. 6304(d)(1)(B) because of an extended exigency must be scheduled and used within a time period not to exceed two years for each consecutive year or part year during which the exigency existed. The exigency must be of such significance as to:

(a) Threaten the national security, safety, or welfare;

(b) Last for more than one leave year;

(c) Affect a segment of an agency or occupational class; and

(d) Preclude subsequent use of both restored and accrued annual leave within the time limits specified in § 630.306(b).

[FR Doc. 85–1739 Filed 1–23–85; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 611, Amdt. 2]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 611, Amendment 2, increases the quantity of fresh oranges that may be shipped during the period January 11–17, 1985. Such action is needed to provide for orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATES: Amended Regulation 611 (§ 907.911) is effective for the period January 11–17, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This amendment is issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the