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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 Part 335

Merit Promotion Program

AGENCY: Office of Personnel Management.

ACTION: Interim rulemaking with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to continue existing requirements under which agencies conduct merit promotion and internal placement programs in the competitive service. At present, these requirements are in provisionally retained chapter 335 of the former Federal Personnel Manual and related issuances. Adoption of this interim rule will prevent a lapse in Governmentwide requirements when chapter 335 expires on December 31, 1994.

DATES: Interim rules effective on January 1, 1995. Comments must be submitted on or before February 27, 1995.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director for Career Entry, Office of Personnel Management, Room 6F08, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Lee Edwards on 202-606-0830, TDD 202-606-0023, or FAX 202-606-2329.

SUPPLEMENTARY INFORMATION: Agencies are authorized by 5 CFR § 335.103 to promote competitive service employees to positions for which the agency has adopted and is administering a program designed to insure a systematic means of selection for promotion according to merit. The promotion program must conform with the standards and requirements of the Office of Personnel Management (OPM), which currently are in provisionally retained chapter

335 of the former Federal Personnel Manual (FPM).

OPM abolished the FPM in December 1993 as recommended by the National Performance Review. FPM chapter 335 was kept temporarily through December 31, 1994, to enable OPM to incorporate promotion and internal placement requirements in the CFR.

OPM is adopting in 5 CFR § 335.103 the existing promotion program requirements in FPM chapter 335, sections 1-4, 1-5, and 1-6, amended by FPM Letter 335-16 dated November 18, 1991, and FPM Provisional Notice 335-1 dated July 20, 1994. We made conforming changes to reflect final rules on time-limited promotions that replaced authority for temporary and term promotions (58 FR 59345, November 9, 1993). We also made editorial clarifications, such as recognizing the longstanding practice of allowing career ladder promotions of individuals appointed under direct hire and noncompetitive appointments or conversions.

Incorporating these existing requirements in part 335 will provide continued authority for agency merit promotion and internal placement programs and insure that agency programs continue to operate under the same set of Governmentwide requirements. However, OPM is continuing to review these requirements for possible revisions that would enable agencies to conduct programs more efficiently and fairly.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. This regulation is effective immediately to continue existing longstanding rules from the Federal Personnel Manual under which agencies are authorized to administer internal selection programs based on merit. It would be contrary to the public interest to allow these Governmentwide rules to expire when the Manual expires on December 31, 1994. The delay in the effective date is being waived to prevent any lapse in coverage of these rules.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains only to Federal employees and agencies.

List of Subjects in 5 CFR Part 335

Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending part 335 of title 5, Code of Federal Regulations, as follows:

PART 335—PROMOTION AND INTERNAL PLACEMENT

1. The authority citation for part 335 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3329, and E.O. 10577 (3 CFR 1954-58 Comp., p. 218).

2. Section 335.103 is revised to read as follows:

§ 335.103 Agency promotion programs.

(a) *Merit promotion plans.* Except as otherwise specifically authorized by OPM, an agency may make promotions under § 335.102 of this part only to positions for which the agency has adopted and is administering a program designed to insure a systematic means of selection for promotion according to merit. These programs shall conform to the requirements of this section.

(b) *Merit promotion requirements.* (1) *Requirement 1.* Each agency must establish procedures for promoting employees which are based on merit and are available in writing to candidates. Agencies must list appropriate exceptions, including those required by law or regulation, as specified in paragraph (c) of this section. Actions under a promotion plan—whether identification, qualification, evaluation, or selection of candidates—shall be made without regard to political, religious, or labor organization affiliation or nonaffiliation, marital status, race, color, sex, national origin, nondisqualifying physical handicap, or age, and shall be based solely on job-related criteria.

(2) *Requirement 2.* Areas of consideration must be sufficiently broad to ensure the availability of high quality candidates, taking into account the nature and level of the positions covered. Agencies must also ensure that

employees within the area of consideration who are absent for legitimate reason, e.g., on detail, on leave, at training courses, in the military service, or serving in public international organizations or on Intergovernmental Personnel Act assignments, receive appropriate consideration for promotion.

(3) *Requirement 3.* To be eligible for promotion or placement, candidates must meet the minimum qualification standards prescribed by the Office of Personnel Management (OPM). Methods of evaluation for promotion and placement, and selection for training which leads to promotion, must be consistent with instructions in part 300, subpart A, of this chapter. Due weight shall be given to performance appraisals and incentive awards.

(4) *Requirement 4.* Selection procedures will provide for management's right to select or not select from among a group of best qualified candidates. They will also provide for management's right to select from other appropriate sources, such as reemployment priority lists, reinstatement, transfer, handicapped, or Veteran Readjustment Act eligibles or those within reach on an appropriate OPM certificate. In deciding which source or sources to use, agencies have an obligation to determine which is most likely to best meet the agency mission objectives, contribute fresh ideas and new viewpoints, and meet the agency's affirmative action goals.

(5) *Requirement 5.* Administration of the promotion system will include recordkeeping and the provision of necessary information to employees and the public, ensuring that individuals' rights to privacy are protected. Each agency must maintain a temporary record of each promotion sufficient to allow reconstruction of the promotion action, including documentation on how candidates were rated and ranked. These records may be destroyed after 2 years or after the program has been formally evaluated by OPM (whichever comes first) if the time limit for grievance has lapsed before the anniversary date.

(c) *Covered personnel actions.*

(1) *Competitive actions.* Except as provided in paragraphs (c)(2) and (3) of this section, competitive procedures in agency promotion plans apply to all promotions under § 335.102 of this part and to the following actions:

(i) Time-limited promotions under § 335.102(f)—of this part for more than 120 days to higher graded positions (prior service during the preceding 12 months under noncompetitive time-limited promotions and noncompetitive

details to higher graded positions counts toward the 120-day total). A temporary promotion may be made permanent without further competition provided the temporary promotion was originally made under competitive procedures and the fact that might lead to a permanent promotion was made known to all potential candidates;

(ii) Details for more than 120 days to a higher grade position or to a position with higher promotion potential (prior service during the preceding 12 months under noncompetitive details to higher graded positions and noncompetitive time-limited promotions counts toward the 120-day total);

(iii) Selection for training which is part of an authorized training agreement, part of a promotion program, or required before an employee may be considered for a promotion as specified in § 410.302 of this chapter;

(iv) Reassignment or demotion to a position with more promotion potential than a position previously held on a permanent basis in the competitive service (except as permitted by reduction-in-force regulations);

(v) Transfer to a position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service; and

(vi) Reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service.

(2) *Noncompetitive actions.*

Competitive procedures do not apply to:

(i) A promotion resulting from the upgrading of a position without significant change in the duties and responsibilities due to issuance of a new classification standard or the correction of an initial classification error; and

(ii) A position change permitted by reduction-in-force procedures in part 351 of this chapter.

(3) *Discretionary actions.* Agencies may at their discretion except the following actions from competitive procedures of this section:

(i) A promotion without current competition of an employee who was appointed in the competitive from a civil service register, by direct hire, by noncompetitive appointment or noncompetitive conversion, or under competitive promotion procedures for an assignment intended to prepare the employee for the position being filled (the intent must be made a matter of record and career ladders must be documented in the promotion plan);

(ii) A promotion resulting from an employee's position being classified at a

higher grade because of additional duties and responsibilities;

(iii) A temporary promotion, or detail to a higher grade position or a position with known promotion potential, of 120 days or less;

(iv) Promotion to a grade previously held on a permanent basis in the competitive service (or in another merit system with which OPM has an interchange agreement approved under § 6.7 of this chapter) from which an employee was separated or demoted for other than performance or conduct reasons;

(v) Promotion, reassignment, demotion, transfer, reinstatement, or detail to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service (or in another merit system with which OPM has an interchange agreement approved under § 6.7 of this chapter) and did not lose because of performance or conduct reasons; and

(vi) Consideration of a candidate not given proper consideration in a competitive promotion action.

(d) *Grievances.* Employees have the right to file a complaint relating to a promotion action. Such complaints shall be resolved under appropriate grievance procedures. The standards for adjudicating complaints are set forth in part 300, subpart A, of this chapter. While the procedures used by an agency to identify and rank qualified candidates may be proper subjects for formal complaints or grievances, nonselection from among a group of properly ranked and certified candidates is not an appropriate basis for a formal complaint or grievance. There is no right of appeal of OPM, but OPM may conduct investigations of substantial violations of OPM requirements.

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5 CFR Parts 591 and 630

RIN 3206-AF 75

Absence and Leave; Voluntary Leave Transfer and Voluntary Leave Bank Programs

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final rules to enable agencies to administer permanent voluntary leave transfer and