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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 330

RIN 3206-AI69

### Positions Restricted to Preference Eligibles

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is issuing final regulations covering competitive service positions that are restricted to preference eligibles. These regulations update the responsibilities of both individual agencies and OPM to provide career transition assistance to preference eligibles who are separated by reduction in force because their positions are contracted out to the private sector under authority of Office of Management and Budget Circular A-76.

**DATES:** These final regulations are effective September 29, 2000.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Glennon or Jacqueline R. Yeatman, 202-606-0960, FAX 202-606-2329.

#### SUPPLEMENTARY INFORMATION:

#### Background

On July 27, 1999, OPM published interim regulations at 64 FR 40505 covering special career transition assistance benefits that are available to preference eligibles in restricted positions whose work is contracted out to the private sector under authority of Office of Management and Budget Circular A-76.

The interim regulations were effective upon publication in the **Federal Register**. Interested parties could submit written comments to OPM concerning the regulations in the 60 day period following publication of the regulations.

For reference, section 5 U.S.C. 3310 limits entrance examinations for the positions of custodian, elevator operator, guard, and messenger only to preference eligibles, provided that preference eligibles are available for these positions. OPM implements this statutory requirement through regulations published in 5 CFR part 330, subpart D.

Beginning with final regulations OPM published on September 30, 1985, at 50 FR 39876, OPM has provided special career transition benefits for preference eligible employees who hold restricted positions, and who are separated by reduction in force because their positions were contracted out to the private sector under authority of OMB Circular A-76. OPM later revised the 5 CFR part 330, subpart D regulations on June 27, 1994, at 59 FR 32873, to include changes in OPM's programs for displaced employees.

OPM is now again revising this subpart to reflect subsequent changes in available placement programs, including the Career Transition Assistance Plan authorized by 5 CFR 330, subpart F, and the Interagency Career Transition Assistance Plan authorized by 5 CFR 330, subpart G.

#### Comments

OPM received one comment, from a Federal agency, on the interim regulations. The agency concurred with the regulations as written.

#### Final Regulations

The interim regulations published at 64 FR 40505 are published as final regulations without further revision to 5 CFR 330, subpart D. A cross-reference is added to these regulations concerning eligibility for the Interagency Career Transition Assistance Plan is added to 5 CFR 330, subpart G.

#### Summary of Benefits Provided by These Final Regulations

Final 5 CFR 330.404 affirms that both individual agencies and OPM have additional responsibilities when the agency, under authority of Office of Management and Budget Circular A-76, contracts out the work of a preference eligible who holds a restricted position.

Final 5 CFR 330.405 affirms that, if a preference eligible is separated from a restricted position by reduction in force because the agency contracts out the veteran's work under OMB Circular A-

76, the agency must provide the employee with transition services and selection priority authorized under the Career Transition Assistance Plan and the Interagency Career Transition Assistance Plan. The agency is also responsible for applying OMB's policy directives on the preference eligible's right of first refusal for positions that are contracted out to the private sector. Finally, the agency is required to cooperate with State dislocated worker units in retraining the displaced preference eligible for other continuing positions.

Final 5 CFR 330.406 updates OPM's responsibilities under 5 CFR 330, subpart D. OPM's responsibilities for preference eligibles displaced from restricted positions as the result of contracting out include requiring agencies to provide the veterans with both internal selection priority (e.g., the Career Transition Assistance Plan), and with interagency selection priority (e.g., the Interagency Career Transition Assistance Plan). Other OPM responsibilities include encouraging cooperation between local Federal activities to assist these displaced preference eligibles in obtaining other Federal positions, including positions with the U.S. Postal Service, and monitoring these placement efforts.

Final 5 CFR 330.407 provides that preference eligibles who are separated from restricted positions by reduction in force because their work is contracted out have interagency selection priority under the Interagency Career Transition Assistance Plan for 2 years following separation by reduction in force. Other Federal employees have this interagency selection priority for 1 year following reduction in force separation. A cross reference to this provision is added to the final regulations in a new § 330.704(c)(7).

#### Regulatory Flexibility Act

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

#### Executive Order 12866, Regulatory Review

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

**List of Subjects in 5 CFR Part 330**

Armed Forces reserves, Government employees.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the interim rule which was published at 64 FR 40505 on July 27, 1999, is adopted as final with the following changes:

**PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)**

1. The authority citation for part 330 continues to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp., p. 218; § 330.102 also issued under 5 U.S.C. 3327; subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310, subpart I also issued under sec. 4432 of Pub. L. 102–484, 106 Stat. 2315; subpart K also issued under sec. 11203 of Pub. L. 105–33, 111 Stat. 738; subpart L also issued under sec. 1232 of Pub. L. 96–70, 93 Stat. 452.

2. Subpart D of part 330 is revised to read as follows:

**Subpart D—Positions Restricted to Preference Eligibles**

Sec.

- 330.401 Competitive examination.
- 330.402 Direct recruitment.
- 330.403 Noncompetitive actions.
- 330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.
- 330.405 Agency placement assistance.
- 330.406 OPM placement assistance.
- 330.407 Eligibility for the Interagency Career Transition Assistance Plan.

**Subpart D—Positions Restricted to Preference Eligibles****§ 330.401 Competitive examination.**

In each entrance examination for the positions of custodian, elevator operator, guard, and messenger (referred to in this subpart as *restricted positions*), OPM shall restrict competition to preference eligibles as long as preference eligibles are available.

**§ 330.402 Direct recruitment.**

In direct recruitment by an agency under delegated authority, the agency shall fill each restricted position by the appointment of a preference eligible as long as preference eligibles are available.

**§ 330.403 Noncompetitive actions.**

An agency may fill a restricted position by the appointment by noncompetitive action of a

nonpreference eligible only when authorized by OPM.

**§ 330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.**

An individual agency and OPM both have additional responsibilities when the agency decides, in accordance with the Office of Management and Budget (OMB) Circular A–76, to contract out the work of a preference eligible who holds a restricted position. These additional responsibilities are applicable if a preference eligible holds a competitive service position that is:

- (a) A restricted position as designated in 5 U.S.C. 3310 and § 330.401; and
- (b) In retention tenure group tenure I or II, as defined in § 351.501(b) (1) and (2) of this chapter.

**§ 330.405 Agency placement assistance.**

An agency that separates a preference eligible from a restricted position by reduction in force under part 351 of this chapter because of a contracting out situation covered in § 330.404 must, consistent with § 330.602, advise the employee of the opportunity to participate in available career transition programs. The agency is also responsible for:

- (a) Applying OMB's policy directives on the preference eligibles' right of first refusal for positions that are contracted out to the private sector; and
- (b) Cooperating with State dislocated worker units, as designated or created under title III of the Job Training Partnership Act, to retrain displaced preference eligibles for other continuing positions.

**§ 330.406 OPM placement assistance.**

OPM's responsibilities include:

- (a) Assisting agencies in operating positive placement programs, such as the Career Transition Assistance Plan, which is authorized by subpart F of this part;
- (b) Providing interagency selection priority through the Interagency Career Transition Assistance Plan, which is authorized by subpart G of this part; and
- (c) Encouraging cooperation between local Federal activities to assist these displaced preference eligibles in applying for other Federal positions, including positions with the U.S. Postal Service.

**§ 330.407 Eligibility for the Interagency Career Transition Assistance Plan.**

(a) A preference eligible who is separated from a restricted position by reduction in force under part 351 of this chapter because of a contracting out situation covered in § 330.404 has interagency selection priority under the

Interagency Career Transition Assistance Plan, which is authorized by subpart G of this part. Section 330.704 covers the general eligibility requirements for the Interagency Career Transition Assistance Plan.

(b) A preference eligible covered by this subpart is eligible for the Interagency Career Transition Assistance Plan for 2 years following separation by reduction in force from a restricted position.

3. In subpart G, § 330.704, paragraph (c)(7) is added to read as follows:

**§ 330.704 Eligibility.**

\* \* \* \* \*

(c) \* \* \*

(7) Two years after separation, for those employees eligible under § 330.407(b).

[FR Doc. 00–21948 Filed 8–29–00; 8:45 am]

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**DEPARTMENT OF AGRICULTURE****Food and Nutrition Service****7 CFR Part 278**

[Amendment No. 383]

RIN 0584–AC05

**Food Stamp Program: Retailer Application Processing**

**AGENCY:** Food and Nutrition Service, USDA

**ACTION:** Final Rule.

**SUMMARY:** This final rule implements a revised processing timeframe for retail food stores and wholesale food concerns that apply for authorization to accept and redeem food stamp benefits and clarifies verification requirements. This rule lengthens the application processing timeframe from the current period of 30 days to 45 days. In addition to lengthening the time allowed for processing applications, this rule requires specific documentation from an applicant to verify a firm's eligibility.

This final rule also incorporates two provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of (PRWORA) 1996, related to the collection of tax information from firms applying for authorization or from firms being reauthorized in the program and the written permission for the Food and Nutrition Service (FNS) to verify such information with appropriate agencies.

**EFFECTIVE DATE:** The amendments in this rule are effective September 29, 2000.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this final rule