

Proposed Rules

Federal Register

Vol. 63, No. 35

Monday, February 23, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 930

RIN 3206-A108

Appointment, Pay, and Removal of Administrative Law Judges

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise the regulations governing the appointment, pay, and removal of administrative law judges appointed under 5 U.S.C. 3105. Among the major revisions, these regulations would permit an above-the-minimum pay rate for reinstatement eligibles with superior qualifications; permit promotion of a judge to an AL-1 position after 52 weeks in an AL-3 or AL-2 position; permit details from other agencies when an agency has insufficient work to employ a full-time administrative law judge; place a limit of 1 year on details from other agencies with a possible extension of up to 1 year; and give agencies the option of filling a vacancy by selecting a current administrative law judge employed within the agency or selecting one from OPM's priority referral list.

DATES: Written comments will be considered if received on or before April 24, 1998.

ADDRESSES: Send or deliver written comments to Mary Lou Lindholm, Associate Director for Employment, Office of Personnel Management, Room 6F08, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Juanita Love on 202-606-4890, FAX 202-606-0584, or TDD 202-606-0023.

SUPPLEMENTARY INFORMATION: The administrative law judge function was established by the Administrative Procedure Act (APA) of 1946. Administrative law judges preside at formal hearings, which agencies are

required by statute to hold, and make or recommend decisions on the basis of the record. The APA requires that this function be carried out in an impartial manner. To assure the objectivity of judges and insulate them from improper pressure, the APA made them independent of their employing agencies in matters of tenure and compensation. Further, the Office of Personnel Management (OPM) is charged with administering merit selection and pay systems for judges, and regulations covering these matters are in 5 CFR part 930, subpart B. OPM proposes to revise the regulations to make a number of substantive and editorial changes, as follows.

Section 930.203 Examination

The current regulation contains a detailed description of the components and scoring of the examination. We propose to delete this description as unnecessary because the examination announcement contains a more detailed description, and OPM makes the announcement readily available. The regulation also contains numerous references to "OPM Examination Announcement No. 318," the announcement for administrative law judge positions. We believe these references also are unnecessary in regulation and plan to delete them as other examination announcement numbers and descriptions of examination components and scoring are not routinely published in regulation.

Section 930.204 Appointment (Formerly § 930.203a)

We are renumbering section 203a and subsequent sections in subpart B to conform with publication numbering requirements.

Paragraph (c)(3) of this section addresses appointment of employees whose positions are classified as administrative law judge positions by legislation, Executive order, or court decision. An agency has six months after such classification to recommend to OPM that the incumbent be appointed as an administrative law judge. We propose to delete this requirement and instead rely on the terms of the legislation, Executive order, or court decision for any time frames for appointment.

Paragraph (c)(4) of this section provides that in an emergency situation

OPM may authorize a conditional appointment of an administrative law judge pending final decision on the individual's appointment eligibility. We propose to delete this provision as inconsistent with the intent of the APA that administrative law judges serve without condition.

Section 930.205 Promotion (Formerly § 930.204)

We propose to transfer the one-year service requirement for promotion from § 930.210 to this section and change the period to 52 weeks to be consistent with the waiting period for pay increases for judges at level AL-3 and before transfer to a different agency. We also propose to grant agencies the discretion to require 52 weeks of service at either the AL-2 or AL-3 level when filling a position at AL-1. This change will enable an agency to consider its own administrative law judges when filling a chief judge position at AL-1.

In addition, we clarify that an agency has the authority to promote a current administrative law judge when an existing managerial position at AL-1 or AL-2 is vacated or a new managerial position is established.

Section 930.211 Pay (Formerly § 930.210)

An agency may pay, with OPM approval, an above-the-minimum rate to a candidate with superior qualifications who is appointed from a certificate of eligibles to a position at level AL-3. We propose to expand this authority in paragraph (g)(2) to include reinstatement eligibles with superior qualifications.

We added a new paragraph to clarify that an agency may reduce the level or pay of an administrative law judge for good cause only after the Merit Systems Protection Board has specified such action.

In addition, we deleted paragraphs (j) through (m). These paragraphs provided instructions for implementing the current pay system authorized by the Federal Employees Pay Comparability Act of 1990. Since all administrative law judges have been converted to the current pay system, these paragraphs are no longer needed.

Section 930.214 Use of Administrative Law Judges on Detail From Other Agencies (Formerly § 930.213)

This section provides for the detail of judges from one agency to another one that is occasionally or temporarily insufficiently staffed with judges. We propose to clarify this authority to include agencies with insufficient work to detail an administrative law judge to conduct and complete the hearing of one or more specified cases and issue decisions. We also propose a one-year limit on all interagency details, with the possibility of an extension of up to one additional year. This maximum limit should be sufficient to satisfy agency needs.

Section 930.216 Reduction in Force (Formerly § 930.215)

We propose permitting an additional flexibility to agencies when administrative law judges affected by reductions in force are on OPM's priority referral list for geographic locations where agencies wish to fill vacant positions. This change would give agencies the option of filling the vacant positions either from OPM's priority referral list or by selection of administrative law judges currently employed by the hiring agency. At the present time, agencies are allowed to fill the vacant positions only through the priority referral list. OPM would still retain the authority to grant exceptions to this order of selection. This change will allow agencies to better manage their administrative law judge workforce by giving them the flexibility to make intra-agency reassignments when vacancies arise.

Miscellaneous

We made the following additional changes:

- Moved the provision specifying the proper title for administrative law judges to § 930.201 from § 930.203b, which is abolished. A statement that administrative law judge positions are in the competitive service is added to § 930.201.
- Moved the prohibition against awards from § 930.210(b) to § 930.212.
- Made revisions throughout the subpart to clarify in certain situations that an applicant must meet the minimum qualification requirements for administrative law judge positions rather than take the examination.
- Clarified throughout the subpart that administrative law judges are given "career absolute" appointments.
- Deleted reference in § 930.215(c)(4) to Standard Form 171, Application for Federal Employment, which was

abolished in 1994. Application may be by resume, the Optional Form 612-Optional Application for Federal Employment, or other written format.

- Made various editorial changes.

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 agencies.

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 930

Administrative practice and procedure, Computer technology, Government employees, Motor vehicles.

U.S. Office of Personnel Management.

Janice R. Lachance,
Director.

Accordingly, OPM proposes to amend 5 CFR part 930 as follows:

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

Subpart B—Appointment, Pay, and Removal of Administrative Law Judges

1. Subpart B is revised to read as follows:

Subpart B—Appointment, Pay, and Removal of Administrative Law Judges

Sec.

- 930.201 Coverage.
- 930.202 Definitions.
- 930.203 Examination.
- 930.204 Appointment.
- 930.205 Promotion.
- 930.206 Reassignment.
- 930.207 Transfer.
- 930.208 Reinstatement.
- 930.209 Restoration.
- 930.210 Detail and assignment to other duties within the same agency.
- 930.211 Pay.
- 930.212 Performance rating and awards.
- 930.213 Rotation of administrative law judges.
- 930.214 Use of administrative law judges on detail from other agencies.
- 930.215 Actions against administrative law judges.
- 930.216 Reduction in force.
- 930.217 Temporary employment: senior administrative law judges.

Authority: 5 U.S.C. 1104(a)(2), 1305, 3105, 3323(b), 3344, 4301(2)(D), 5372, 7521.

Subpart B—Appointment, Pay, and Removal of Administrative Law Judges

§ 930.201 Coverage.

(a) This subpart applies to employment of administrative law judges appointed under 5 U.S.C. 3105 for proceedings required to be conducted in accordance with 5 U.S.C. 556 and 557.

(b) Administrative law judge positions are in the competitive service. Except as otherwise provided in this subpart, the rules and regulations applicable to positions in the competitive service apply to administrative law judge positions.

(c) In accordance with 5 U.S.C. 1104(a)(2), OPM shall conduct competitive examinations for administrative law judge positions, and agencies employing administrative law judges shall reimburse OPM for the cost of developing and administering such examinations. Each employing agency's share of reimbursement shall be based on its relative number of administrative law judges as of March 31 of the preceding fiscal year. OPM will work with employing agencies to review the examination program for effectiveness and efficiency and identify needed improvements, consistent with statutory requirements. Subsequently, OPM will annually compute the cost of the examination program and notify each agency of its share, along with a full accounting of the costs, and payment procedures.

(d) The title "administrative law judge" is the official class title for an administrative law judge position. Each agency will use only this official class title for personnel, budget, and fiscal purposes.

§ 930.202 Definitions.

In this subpart—

(a) *Agency* has the same meaning as given in 5 U.S.C. 551.

(b) *Detail* means the temporary assignment of an employee from one position to another position without change in civil service or pay status.

(c) *Administrative law judge position* means a position in which any portion of the duties requires the appointment of an administrative law judge under 5 U.S.C. 3105.

(d) *Promotion* means a change from a lower to a higher level position.

(e) *Reinstatement* means reemployment authorized on the basis of the appointee's absolute status as administrative law judge after an earlier separation from an administrative law judge position.

(f) *Removal* means discharge of an administrative law judge from the

position of administrative law judge or involuntary reassignment, demotion, or promotion to a position other than that of administrative law judge.

§ 930.203 Examination.

(a) *Periodic open competition.* Applicants for administrative law judge positions will be examined periodically in open competition as announced by OPM. Applicants who demonstrate in their written applications and supporting materials that they meet the minimum qualifying experience requirements specified in the OPM examination announcement will be eligible to compete in further examination procedures.

(b) *Preparation of certificates.* When agencies request certificates of eligibles to consider in filling vacant administrative law judge positions, OPM will certify candidates from the top of the register. Candidates are ranked on the basis of assigned final ratings, augmented by veterans' preference points, if applicable. At least three eligible applicants, if available, will be certified to the employing agency for consideration for each vacancy.

(c) *Appeal of rating.* Applicants who obtain an ineligible rating or applicants who are dissatisfied with their final rating may appeal the rating to the Administrative Law Judge Rating Appeals Panel, Office of Personnel Management, Washington, DC 20415, within 30 days after the date of final action by the Office of Administrative Law Judges or such later time as may be allowed by the Panel.

§ 930.204 Appointment.

(a) *Prior approval.* An agency may make an appointment to an administrative law judge position only with the prior approval of OPM, except when it makes its selection from a certificate of eligibles furnished by OPM. When requesting OPM approval of an appointment to an administrative law judge position or the issuance of a certificate of eligibles, the requesting agency must demonstrate that its hearing workload requires the appointment of an additional administrative law judge(s) to get necessary work done. An appointment is subject to suitability investigation in accordance with subparts B and C of part 731 of this chapter and subject to conflict of interest and security clearance requirements by the appointing agency.

(b) *Probationary and career-conditional periods.* Administrative law judges are given career appointments (commonly called career absolute

appointments) and placed in tenure group I. The requirements for probationary and career-conditional periods do not apply to an appointment to an administrative law judge position.

(c) *Appointment of incumbents of newly classified administrative law judge positions.* An agency may give a career absolute appointment to an administrative law judge to an employee who is serving in a position at the time it is classified as an administrative law judge position on the basis of legislation, Executive order, or decision of a court, if—

(1) The employee is serving under a career or career-conditional appointment or an excepted appointment without time limit;

(2) The employee is serving in the position on the date of the legislation, Executive order, or decision of the court, on which the classification of the position is based;

(3) OPM receives a recommendation for the employee's appointment from the agency concerned; and

(4) OPM finds that the employee meets the minimum qualification requirements for the position.

(d) *Appointment of incumbents of nonadministrative law judge positions.* Except as provided in paragraph (c) of this section, an agency may not appoint an employee who is serving in a position other than an administrative law judge position to an administrative law judge position other than by selection from a certificate of eligibles furnished by OPM from the open competitive register.

§ 930.205 Promotion.

(a) When OPM places an occupied administrative law judge position at a higher level, OPM will direct the promotion of the incumbent administrative law judge. The promotion will be effective on the date named by OPM.

(b) When OPM places an administrative law judge position at level AL-1 or AL-2 on the basis of the position's managerial and administrative responsibilities, or an agency has a vacant position at AL-1 or AL-2, the employing agency may promote one of its administrative law judges to the position, provided the selection and/or promotion is in accordance with regular civil service procedures.

(c) Judges must serve at least 52 weeks in an AL level before advancing to a higher level. In filling a position in level AL-1, an agency has the discretion to determine whether to consider administrative law judges who have served at least 52 weeks in level AL-3

but not 52 weeks in AL-2. Service in an equivalent or higher grade level in other Federal civilian positions is creditable toward the 52-week requirement.

§ 930.206 Reassignment.

With the prior approval of OPM, an agency may, without competition, reassign an administrative law judge serving under career absolute appointment to another administrative law judge position at the same level in the same agency, provided the assignment is for bona fide management reasons and in accordance with regular civil service procedures and merit system principles.

§ 930.207 Transfer.

(a) With the prior approval of OPM, an agency may, without competition, appoint an administrative law judge by transfer from an administrative law judge position in another agency in accordance with regular civil service procedures, provided the administrative law judge maintains a current license to practice law under the laws of a state, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the Constitution.

(b) An agency may not transfer a person from one administrative law judge position to another administrative law judge position under paragraph (a) of this section sooner than 52 weeks after the person's last appointment, unless the gaining and losing agencies agree to the transfer.

§ 930.208 Reinstatement.

With the prior approval of OPM, an agency may reinstate a former administrative law judge who has served with career absolute status under 5 U.S.C. 3105 in accordance with regular civil service procedures, provided the former judge maintains a current license to practice law under the laws of a state, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the Constitution. Reinstatement is subject to investigation by OPM in accordance with part 731 of this chapter.

§ 930.209 Restoration.

Parts 352 and 353 of this chapter governing reemployment rights and restoration to duty after uniformed service or recovery from compensable injury apply to reemployment and restoration to administrative law judge positions.

§ 930.210 Detail and assignment to other duties within the same agency.

(a) An agency may not detail an employee who is not an administrative law judge to an administrative law judge position.

(b) An agency may assign an administrative law judge (by detail or otherwise) to perform duties that are not the duties of an administrative law judge without prior approval of OPM only when—

(1) The other duties are consistent with the duties and responsibilities of an administrative law judge;

(2) The assignment is to last no longer than 120 days; and

(3) The administrative law judge has not had an aggregate of more than 120 days of those assignments or details within the preceding 12 months.

(c) On a showing by an agency that it is in the public interest to do so, OPM may authorize a waiver of paragraphs (b) (2) and (3) of this section.

(d) An agency may detail an administrative law judge from one administrative law judge position to another in the same agency, without the prior approval of OPM, provided the detail is in accordance with regular civil service procedures.

§ 930.211 Pay.

(a) OPM will place each administrative law judge position in one of the three grades or levels of basic pay, AL-3, AL-2 or AL-1, of the Administrative Law Pay System established for such positions under 5 U.S.C. 5372 in accordance with this section. AL-3 will have six rates of basic pay, A, B, C, D, E, and F, ranging respectively in 5 percent intervals from 65 percent of level IV of the Executive Schedule (EX-IV) to 90 percent of EX-IV. AL-2 will have one rate of basic pay equal to 95 percent of EX-IV. AL-1 will have one rate of basic pay equal to 100 percent of EX-IV.

(b) AL-3 is the basic pay level for administrative law judge positions filled through competitive examination, as provided in § 930.204 of this part.

(c) Subject to the approval of OPM, agencies may establish administrative law judge positions at pay levels AL-2 and AL-1. Administrative law judge positions may be placed at such levels when they involve significant administrative and managerial responsibilities.

(d) For promotion to a higher level, see § 930.205 of this part.

(e) Except as provided in paragraph (g) of this section, upon appointment to an administrative law judge position placed in AL-3, an administrative law judge shall be paid at the minimum rate

A of AL-3, and shall be automatically advanced successively to rates B, C, and D of that level upon completion of 52 weeks of service in the next lower rate, and to rates E and F of that level upon completion of 104 weeks of service in the next lower rate. Time in a nonpay status is generally creditable service in the computation of a waiting period only in so far as it does not exceed 2 weeks per year for each 52 weeks of service. However, absence due to uniformed service or compensable injury is fully creditable upon reemployment as provided in part 353 of this chapter.

(f) Upon appointment to a position at AL-3, an administrative law judge will be paid at the minimum rate A, unless the administrative law judge is eligible for a higher rate B, C, D, E, or F because of prior service or superior qualifications, as follows—

(1) An agency may offer an administrative law judge applicant with prior Federal service a higher than minimum rate, without obtaining the prior approval of OPM in order to pay the rate that is next above the applicant's highest previous Federal rate of pay, up to the maximum rate F.

(2) With the prior approval of OPM, an agency may offer a higher than minimum rate to an applicant with superior qualifications who is within reach for appointment from an administrative law judge certificate of eligibles or is eligible for reinstatement under § 930.208. The agency may pay that rate of pay that is next above the applicant's existing pay or earnings up to the maximum rate F. "Superior qualifications" for applicants includes having legal practice before the hiring agency, having practice in another forum with legal issues of concern to the hiring agency, or having an outstanding reputation among others in the field. OPM will approve such payment of higher than minimum rates for applicants with superior qualifications only when it is clearly necessary to meet the needs of the Government.

(g) With the prior approval of OPM, an agency may on a one-time basis, advance an administrative law judge in a position at AL-3 with added administrative and managerial duties and responsibilities one rate beyond that allowed under current pay rates for AL-3, up to the maximum rate F.

(h) Upon appointment to an administrative law judge position placed at AL-2 or AL-1, administrative law judges will be paid at the established rates for those levels.

(i) An employing agency may reduce the grade, level, or pay of the administrative law judge only upon a

finding of good cause for such action as determined by the Merit Systems Protection Board pursuant to 5 U.S.C. 7521.

§ 930.212 Performance rating and awards.

(a) An agency shall not rate the performance of an administrative law judge.

(b) An agency may not grant a monetary or honorary award under 5 U.S.C. 4503 for superior accomplishment by an administrative law judge.

§ 930.213 Rotation of administrative law judges.

Insofar as practicable, an agency shall assign its administrative law judges in rotation to cases.

§ 930.214 Use of administrative law judges on detail from other agencies.

(a) An agency that is occasionally or temporarily insufficiently staffed with, or has insufficient work for, administrative law judges may ask OPM to provide for the temporary use by the agency of the services of an administrative law judge of another agency to conduct and complete the hearing of one or more specified cases and issue decisions therein. The agency request must:

(1) Identify and describe briefly the nature of the case(s) to be heard (including parties and representatives when available);

(2) Specify the legal authority under which the use of an administrative law judge is required; and

(3) Demonstrate, as appropriate, that the agency has no administrative law judge available to hear the case(s).

(b) OPM, with the consent of the agency in which an administrative law judge is employed, will select the administrative law judge to be used, and will name the date or period for which the administrative law judge is to be made available for detail to the agency in need of his or her services. OPM will approve a detail for a period not to exceed 1 year with a possible extension not to exceed 1 additional year.

(c) Such details generally will be reimbursable by the agency requesting the detail.

§ 930.215 Actions against administrative law judges.

(a) *Procedures.* An agency may remove, suspend, reduce in grade or level, reduce in pay, or furlough for 30 days or less, an administrative law judge only for good cause established and determined by the Merit Systems Protection Board on the record and after opportunity for a hearing before the Board as provided in 5 U.S.C. 7521 and

§§ 1201.131 through 1201.136 of this title. Procedures for adverse actions by agencies under part 752 of this chapter are not applicable to actions against administrative law judges.

(b) *Status during removal proceedings.* In exceptional cases when there are circumstances in which the retention of an administrative law judge in his or her position, pending adjudication of the existence of good cause for his or her removal, would be detrimental to the interests of the Government, the agency may either:

(1) Assign the administrative law judge to duties consistent with his or her normal duties in which these conditions would not exist;

(2) Place the administrative law judge on leave with his or her consent;

(3) Carry the administrative law judge on appropriate leave (annual or sick leave, leave without pay, or absence without leave) if he or she is voluntarily absent for reasons not originating with the agency; or

(4) If none of the alternatives in paragraphs (b) (1), (2) and (3) of this section is available, agencies may consider placing the administrative law judge in a paid, non-duty or administrative leave status.

(c) *Exceptions from procedures.* The procedures in this subpart governing the removal, suspension, reduction in grade or level, reduction in pay, or furlough of 30 days or less of administrative law judges do not apply in making dismissals or taking other actions requested by OPM under §§ 5.2 and 5.3 of this chapter; nor to dismissals or other actions made by agencies in the interest of national security under 5 U.S.C. 7532; nor to reduction-in-force action taken by agencies under 5 U.S.C. 3502; nor any action initiated by the Special Counsel of the Merit Systems Protection Board under 5 U.S.C. 1215.

§ 930.216 Reduction in force.

(a) *Retention preference regulations.* Except as modified by this section, the reduction-in-force regulations in part 351 of this chapter apply to reductions in force of administrative law judges.

(b) *Determination of retention standing.* In determining retention standing in a reduction in force, each agency will classify its administrative law judges in groups and subgroups according to tenure of employment, veteran preference, and service date in the manner prescribed in part 351 of this chapter. However, as administrative law judges are not given performance ratings, the provisions in part 351 of this chapter referring to the effect of performance ratings on retention

standing are not applicable to administrative law judges.

(c) *Placement assistance.* (1) Administrative law judges who are reached by an agency reduction in force and who are notified they are to be separated are eligible for placement assistance under—

(i) Agency reemployment priority lists established and maintained by agencies under subpart B of part 330 of this chapter for all agency tenure group I career employees displaced in a reduction in force;

(ii) Agency and OPM priority placement programs under subparts C, F, and G of part 330 of this chapter for all agency tenure group I career employees displaced in a reduction in force.

(2) On request of administrative law judges who are reached by an agency in a reduction in force and who are notified they are to be separated, furloughed for more than 30 days, or demoted, OPM will place their names on OPM's priority referral list for administrative law judges displaced in a reduction in force for the level in which they last served and for all lower levels.

(3) An administrative law judge may file a request under paragraph (c)(2) of this section, for placement on the OPM priority referral list, at any time after the receipt of the specific reduction-in-force notice but not later than 90 days after the date of separation, furlough for more than 30 days, or demotion. Placement assistance through the OPM priority referral list continues for 2 years from either the effective date of the reduction-in-force action, or the date assistance is requested if a timely request is made. Eligibility of the displaced administrative law judge for the OPM priority referral list is terminated earlier upon the administrative law judge's written request, acceptance of a non-temporary, full-time administrative law judge position, or declination of more than one offer of full-time employment as an administrative law judge at or above the grade level held when reached for reduction in force at geographic locations previously indicated as acceptable.

(4) The displaced administrative law judge will file with the request for priority referral by OPM an employment application or resume and a copy of the reduction-in-force notice. Also, the displaced administrative law judge may ask OPM to limit consideration for vacant positions to any pay level for which qualified and to specific geographic areas.

(5) When there is no administrative law judge on the agency's

reemployment priority list, but there is an administrative law judge who has been placed on the OPM priority referral list for the location where a vacant administrative law judge position exists, the agency may fill the position with a candidate from outside the agency only by selection from the OPM priority referral list, unless it obtains the prior approval of OPM for filling the vacant position under § 930.204(a), (c), and (d); § 930.205; § 930.207; or § 930.208 of this subpart. OPM will grant such approval only under the extraordinary circumstance that the proposed candidate from outside the agency who is not on the OPM priority referral list possesses experience and qualifications superior to the displaced administrative law judge(s) on the list. In addition, the agency retains the option to select from within the agency to fill the vacant position by reassignment, as defined in § 930.206.

(6) Referral, certification, and selection of administrative law judges from OPM's priority referral list are made without regard to selective certification or special qualification procedures which may have been applied in the original appointment.

§ 930.217 Temporary reemployment: senior administrative law judges.

(a)(1) Subject to the requirements and limitations of this section, OPM may authorize an agency that has temporary, irregular workload requirements for conducting proceedings in accordance with 5 U.S.C. 556 and 557 to temporarily reemploy as administrative law judges those annuitants, as defined by 5 U.S.C. 8331 and 8401, who are receiving an annuity from the Civil Service Retirement and Disability Fund, and:

(i) Have served with career absolute status as administrative law judges under 5 U.S.C. 3105; and

(ii) Maintain a current license to practice law under the laws of a state, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the Constitution.

(2) These retired administrative law judges who are so reemployed will be known as senior administrative law judges.

(b) Retired administrative law judges who meet the requirements of paragraph (a) of this section and who are available for temporary reemployment must notify OPM in writing of their availability, providing pertinent information as requested by OPM. OPM will maintain a master list of such retired administrative law judges for use

in responding to agency requests for such administrative law judges.

(c) An agency that wishes to temporarily reemploy administrative law judges must submit a written request to OPM. The request must—

(1) Identify the statutory authority under which the administrative law judge is expected to conduct proceedings;

(2) Demonstrate that the agency is occasionally or temporarily understaffed;

(3) Specify the tour of duty, location, period of time, or particular case(s), for the requested reemployment; and

(4) Describe any special qualifications desired in the retired administrative law judge that it wishes to reemploy, such as experience in a particular field, agency, or substantive area of law.

(d) OPM will approve agency requests for temporary reemployment of retired administrative law judges for a specified period or periods provided—

(1) The requesting agency fully justifies the need for an administrative law judge for formal proceedings and demonstrates that it is occasionally or temporarily understaffed; and

(2) No other administrative law judge with the appropriate qualifications is available through OPM under § 930.216(c)(5) of this subpart to perform the occasional or temporary work for which reemployment is requested.

(e) Upon approval of an agency request to reemploy a retired administrative law judge, OPM will select from its master list of retired administrative law judges, in rotation to the extent practicable, those retired judges who it determines meet agency requirements. OPM will then provide a list of such individuals to the requesting agency and the agency must then select from that list a retired administrative law judge for reemployment.

(f) Reemployment of retired administrative law judges is subject to suitability investigation in accordance with subparts B and C of part 731 of this chapter. It is also subject to conflict of interest and security clearance requirements by the appointing agency.

(g) Reemployment as senior administrative law judges will be for either a specified period not to exceed 1 year or such periods as may be necessary for the reemployed administrative law judge to conduct and complete the hearing of one or more specified cases and issue decisions therein. Upon agency request, OPM may either reduce or extend such period of reemployment, as necessary, to coincide with changing staffing requirements. All

reemployment is authorized for periods of 1 year or less.

(h) An agency may assign its senior administrative law judges to either:

(1) Hear one or more specific cases; or

(2) Hear, in normal rotation to the extent practicable, a number of cases on its docket and issue decisions therein.

(i) Hours of duty, administrative support services, and travel reimbursement for senior administrative law judges will be determined by the employing agency in accordance with the same rules and procedures that are generally applicable to employees.

(j) The reemployment of a senior administrative law judge is terminated on the date specified by OPM. Otherwise, a senior administrative law judge serves subject to the same limitations as any other administrative law judge employed under this subpart and 5 U.S.C. 3105. An agency will not rate the performance of a senior administrative law judge. Reduction-in-pay or removal actions may not be taken against senior administrative law judges during the period of reemployment, except for good cause established and determined by the Merit Systems Protection Board after opportunity for a hearing on the record before the Board as provided in 5 U.S.C. 7521 and §§ 1201.131 through 1201.136 of this title.

(k) A senior administrative law judge will be paid by the employing agency the current rate of pay for the level at which the duties to be performed have been placed and at the lowest rate of the level that is nearest (when rounded up) to the highest previous pay rate attained by the appointee as an administrative law judge before retirement. An amount equal to the annuity allocable to the period of actual employment will be deducted from his or her pay and deposited in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund.

[FR Doc. 98-4498 Filed 2-20-98; 8:45 am]

BILLING CODE 6325-01-P

COMMODITY CREDIT CORPORATION

7 CFR Part 1499

RIN 0551-0035

Foreign Donation of Agricultural Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation proposes to amend the

rules governing foreign donations of agricultural commodities. This proposed rule contains changes, corrections and clarifications to the final regulations to achieve more effective management of foreign donations of agricultural commodities.

DATES: Submit comments on or before April 24, 1998.

ADDRESSES: Address all comments concerning this proposed rule to Ira D. Branson, Director/Commodity Credit Corporation, Program Support Division, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Ave., S.W., Stop 1031, Washington, D.C. 20250-1031; telephone (202) 720-3573.

You may submit comments and data by sending electronic mail (E-mail) to: pebreports@fas.usda.gov.

FOR FURTHER INFORMATION CONTACT: Juanita Lambert, Chief/Program Evaluation Branch, Commodity Credit Corporation Program Support Division, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Ave., S.W., Stop 1031, Washington, D.C. 20250-1031; telephone (202) 720-2465.

SUPPLEMENTARY INFORMATION: This rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this rule:

(1) Would have an annual effect on the economy of less than \$100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

Paperwork Reduction Act

The information collection requirements imposed by this proposed