

# Proposed Rules

Federal Register

Vol. 73, No. 227

Monday, November 24, 2008

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 337

RIN 3206-AL51

#### Examining System

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is issuing a proposed regulation to amend its direct-hire authority regulations. The amendment is necessary to incorporate a statutory extension of direct-hire authority for certain acquisition positions.

**DATES:** Comments must be received on or before January 23, 2009.

**ADDRESSES:** Send, deliver or fax comments to Angela Bailey, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415-9700; e-mail at [employ@opm.gov](mailto:employ@opm.gov); or fax at (202) 606-2329. Comments may be sent through the Federal eRulemaking Portal at: <http://www.regulations.gov>. All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Darlene Phelps at (202) 606-0960, by fax at (202) 606-2329, TDD at (202) 418-3134, or by e-mail at [Darlene.Phelps@opm.gov](mailto:Darlene.Phelps@opm.gov).

**SUPPLEMENTARY INFORMATION:** On September 12, 2006, OPM published a final rule at 71 FR 53545 to implement the Service Acquisition Reform Act, section 1413 of Public Law 108-136. This Act allowed department and agency heads (other than the Secretary of Defense) to determine, under regulations prescribed by OPM, when certain Federal acquisition positions are shortage category positions for purposes

of direct-hire authority. The Federal acquisition positions covered by section 1413 are listed in section 433(g)(1)(A) of title 41, United States Code. The authority under section 1413 expired on September 30, 2007.

In the National Defense Authorization Act for Fiscal Year 2008 (NDAA 2008), Public Law 110-181, Congress extended the direct-hire authority for acquisition positions under section 1413 of Public Law 108-136 through September 30, 2012. NDAA 2008, however, did not extend section 1413's reporting requirements.

OPM is amending its regulations to:

a. Update the legal authority citation for section 337.204(c) with section 1413(a) of Public Law 108-136, as amended by section 853 of Public Law 110-181;

b. Update section 337.206(d) to provide that agencies may not make new appointments under this authority after September 30, 2012; and

c. Remove the reporting requirements for this authority currently contained in 5 CFR 337.206(e).

Agencies must comply with public notice requirements prescribed in 5 U.S.C. 3327 and 3330, and 5 CFR part 330, subpart G, with respect to these positions. To comply with public notice requirements, agencies must post a job announcement on OPM's USAJOBS Web site when filling jobs under direct-hire authority.

#### E.O. 12866, Regulatory Review

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

#### Regulatory Flexibility Act

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

#### List of Subjects in 5 CFR Part 337

Government employees.

U.S. Office of Personnel Management.

**Michael W. Hager,**  
*Acting Director.*

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 337 as follows:

#### PART 337—EXAMINING SYSTEM

1. Revise the authority citation for part 337 to read as follows:

**Authority:** 5 U.S.C. 1104(a)(2), 1302, 2302, 3301, 3302, 3304, 3319, 5364; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; 33 FR 12423, Sept. 4, 1968; 45 FR 18365, Mar. 21, 1980; 116 Stat. 2290, sec. 1413 of Pub. L. 108-136 (117 Stat. 1665), as amended by sec. 853 of Pub. L. 110-181 (122 Stat. 250).

#### Subpart B—Direct Hire Authority

2. Revise paragraph (c) of § 337.204 to read as follows:

##### § 337.204 Severe shortage of candidates.

\* \* \* \* \*

(c) A department or agency head (other than the Secretary of Defense) may determine, pursuant to section 1413(a) of Public Law 108-136, as amended by section 853 of Public Law 110-181, that a shortage of highly qualified candidates exists for certain Federal acquisition positions (covered under section 433(g)(1)(A) of title 41, United States Code). To make such a determination, the deciding agency official must use the supporting evidence prescribed in 5 CFR 337.204(b)(1)-(8) and must maintain a file of the supporting evidence for documentation and reporting purposes.

3. Revise paragraph (d) of § 337.206 to read as follows:

##### § 337.206 Terminations, modification, extensions, and reporting.

\* \* \* \* \*

(d) No new appointments may be made under the provisions of section 1413 of Public Law 108-136 after September 30, 2012.

4. Remove paragraph (e) of § 337.206.

[FR Doc. E8-27834 Filed 11-21-08; 8:45 am]

BILLING CODE 6325-39-P

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 3022

RIN 0524-AA34

#### United States Department of Agriculture Research Misconduct Regulations for Extramural Research

**AGENCY:** Office of the Secretary, United States Department of Agriculture.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Department of Agriculture (USDA) proposes to establish regulations to implement the