

# Proposed Rules

Federal Register

Vol. 75, No. 11

Tuesday, January 19, 2010

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 293

RIN 3206-AM05

#### Personnel Records

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is proposing to amend the regulations governing disposition of Official Personnel Folders of Federal employees to clarify the roles and responsibilities of OPM and Federal agencies.

**DATES:** Comments must be received on or before March 22, 2010.

**ADDRESSES:** Send or deliver written comments to, Tanya Bennett, Records Manager, Office of Chief Information Officer, Office of Personnel Management, 1900 E Street, NW., Room 7439, Washington, DC 20415-8200; by e-mail to [tanya.bennett@opm.gov](mailto:tanya.bennett@opm.gov); by fax to (202) 606-1719.

**FOR FURTHER INFORMATION CONTACT:** Tanya Bennett by telephone at (202) 606-4054, by fax at (202) 606-1719, or by e-mail at [tanya.bennett@opm.gov](mailto:tanya.bennett@opm.gov).

**SUPPLEMENTARY INFORMATION:** The U.S. Office of Personnel Management (OPM) is proposing to amend part 293 of title 5, Code of Federal Regulations (Personnel Records) to clarify agency responsibilities concerning Official Personnel Folders (OPFs) of employees in the civil service.

Section 293.303, currently encaptioned "Ownership of folder," provides that OPFs are under the "jurisdiction and control" of and are "part of the records of" OPM. The language of the current version of § 293.303 has caused confusion with respect to the allocation of costs for the storage and physical transfer of OPFs. The National Archives and Records Administration (NARA), which stores OPFs when the subjects are not

employed by the Federal Government, has informed OPM that it adopted the position that it lacks authority to bill any agency other than OPM for costs associated with OPFs because it believed that the language of 5 CFR 293.303 precluded any other solution. This interpretation has caused the cost of OPF transfers initiated by other agencies to be shifted to OPM. For example, any time an agency requests that NARA send the agency the OPF of an applicant for an agency position, OPM is billed. Sometimes, the same file is returned and requested more than once by the same agency in connection with the same personnel action. As long as the cost is borne by OPM, however, an entity has no incentive to make requests judiciously, *i.e.*, obtain all necessary information at once.

The purpose of the proposed amendments is to clarify OPM's and agencies' roles with respect to OPFs and permit a more rational allocation of the costs associated with the movement of OPFs. The use of the term "ownership" and the reference to "jurisdiction and control of OPM" in 5 CFR 293.303 were intended to summarize OPM's Governmentwide authority to standardize practices and procedures for the establishment and maintenance of the OPF, not to minimize the responsibilities of other agencies with respect to the maintenance and use of OPFs.

*To clarify the intended meaning of its regulations, OPM proposes the following specific changes to the regulations:*

- In section 293.303, we propose to change the heading from "Ownership of the folder" to "The roles of the Office and custodians" to revise and clarify the text of the section. "Ownership of the folder" will be deleted as the title of this section because its use has had confusing implications as to what entity should be responsible for ancillary costs associated with the OPF.

- In section 293.303, we also propose to delete the phrase "under the jurisdiction and control of" to eliminate confusion about the meaning of this clause. This section now specifies that the role of the Office is to develop regulations, practices and procedures for the establishment, maintenance, and transfer of OPFs. Additionally, several subsections have been proposed to specify the role of custodians.

- In section 293.102, we propose to add a definition of the term "custodian," to be consistent with the revisions to section 293.303 summarized above.

- In section 293.307, which addresses the disposition of folders of former Federal employees, we propose to add paragraphs (c) and (d) to clarify responsibility for costs associated with the disposition of OPFs of former employees.

#### Executive Order 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 these regulations will not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

#### List of Subjects in 5 CFR Part 293

Government employees, Privacy, Records.

U.S. Office of Personnel Management.

**John Berry,**  
*Director.*

Accordingly, OPM proposes to amend part 293 of title 5, Code of Federal Regulations, as follows:

#### PART 293—PERSONNEL RECORDS

1. The authority citation for part 293 is revised to read as follows:

**Authority:** 5 U.S.C. 552, 552a, 1103, 1104, 1302, 2951(2), 3301, and 4315; E.O. 12107 (December 28, 1978), 3 CFR 1954-1958 Comp.; 5 CFR 7.2; E.O. 9830; 3 CFR 1943-1948 Comp.

#### Subpart A—Basic Policies on Maintenance of Personnel Records

2. In § 293.102, add a definition of *Custodian* in alphabetical order to read as follows:

#### § 293.102 Definitions.

\* \* \* \* \*

*Custodian* means an agency in physical possession of an Official Personnel Folder. The custodian is responsible for the maintenance and disposition of the Folder and the costs associated with maintenance and disposition until after the Folder has been transferred to and accepted at the National Personnel Records Center. The custodian carries out its responsibilities

with respect to the Folder in accordance with regulations, practices, and procedures promulgated or published by the Office of Personnel Management.

\* \* \* \* \*

### Subpart C—Official Personnel Folder

3. Revise § 293.303 to read as follows:

#### § 293.303 The roles of the Office and custodians.

(a) The OPF of each employee in a position subject to civil service rules and regulations and of each former employee who held such a position is part of the records of the Office of Personnel Management (the Office). The Office has Governmentwide responsibility for developing regulations, practices and procedures for the establishment, maintenance, and transfer of OPFs.

(b) An agency is the legal custodian of an employee's OPF during the period of the employee's employment at that agency. An agency is responsible for the establishment of the OPF for a new appointee or a new employee for whom no OPF has previously been established and is similarly responsible for the maintenance of a previously existing OPF during the period any new appointee or employee remains in the agency's employ. An agency is also the custodian of an OPF it requests from the National Personnel Records Center (NPRC) for any other temporary use, during the period the agency holds the OPF and until the OPF is returned to the NPRC.

(c) Once an employee separates from federal service, the agency must transfer the OPF to the NPRC in accordance with established procedures for maintaining OPFs as indicated in OPM's Guide to Personnel Recordkeeping.

(d) Once NPRC has approved the transfer, the Office is the legal custodian of the OPF and is responsible for the maintenance of the OPF until the destruction date established for the file pursuant to the National Archive and Records Administration's General Records Schedule unless another agency requests the OPF from the NPRC in the interim. In the event another agency requests the OPF from the NPRC, that agency becomes the custodian from the date that the OPF is transmitted by the NPRC until the date that the NPRC receives the OPF back from the agency.

4. Amend § 293.307 by adding new paragraphs (c) and (d) as follows:

#### § 293.307 Disposition of folders of former Federal employees.

\* \* \* \* \*

(c) Agencies are responsible for all costs associated with the establishment

and maintenance of OPFs, and transfer of OPFs to the National Personnel Records Center.

(d) Agencies are responsible for all costs associated with agency-initiated requests for OPFs or services from the National Personnel Records Center.

[FR Doc. 2010-809 Filed 1-15-10; 8:45 am]

BILLING CODE 6325-39-P

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### 5 CFR Part 1631

#### Availability of Records

**AGENCY:** Federal Retirement Thrift Investment Board.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Federal Retirement Thrift Investment Board (Agency) proposes to amend its regulations on availability of records to establish the manner of service for administrative subpoenas issued by the Agency and to delegate authority to the Agency's General Counsel to issue administrative subpoenas. These changes implement section 107 of the Thrift Savings Plan Enhancement Act of 2009, which gave the Agency authority to issue subpoenas *duces tecum* in order to carry out the Agency's functions.

**DATES:** Comments must be received on or before February 18, 2010.

**ADDRESSES:** You may submit comments using one of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Office of General Counsel, Attn: Thomas Emswiler, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.

- *Hand Delivery/Courier:* The address for sending comments by hand delivery or courier is the same as that for submitting comments by mail.

- *Facsimile:* Comments may be submitted by facsimile at (202) 942-1676.

The most helpful comments explain the reason for any recommended change and include data, information, and the authority that supports the recommended change. We will post all substantive comments (including any personal information provided) without change (with the exception of redaction of SSNs, profanities, *et cetera*) on [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Laurissa Stokes at 202-942-1645.

**SUPPLEMENTARY INFORMATION:** The Agency administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401-79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

#### Issuance of Subpoenas

Section 107 of the Thrift Savings Plan Enhancement Act of 2009 ("the Act"), Public Law 111-31 (123 Stat. 1776, 1853) (codified at 5 U.S.C. 8480) authorizes the Agency to issue administrative subpoenas to compel production of designated books, documents, records, electronically stored information, or tangible things. This proposed regulation would establish three means by which the Agency may serve an administrative subpoena: (1) Certified or registered mail, return receipt requested, (2) fax or electronic transmission, provided the subpoenaed party gives prior approval, or (3) personal delivery at the principal place of business or the last known residential address of the subpoenaed party. This proposed regulation would also delegate authority to the General Counsel to issue administrative subpoenas.

The Agency, like other financial institutions, has been the subject of fraudulent withdrawals from its participants' accounts. The Agency anticipates using its subpoena authority to obtain information necessary to prevent or investigate fraudulent or otherwise improper routing of participants' money to financial institutions. The Agency, therefore, needs an expeditious means to obtain information from financial institutions to which participants' money is transferred. Prompt action and cooperation from financial institutions is the best way to recover or deter fraudulent or improper routing of participants' money.

Allowing the use of several alternative means to accomplish service is intended to facilitate expeditious cooperation between the Agency and financial institutions in an effort to prevent or investigate fraudulent withdrawals and transfers. Delegation to the General Counsel of the authority to issue administrative subpoenas is intended to expedite the issuances of subpoenas,