

Proposed Rules

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 Parts 531 and 575

RIN 3206-AM13

Pay Under the General Schedule and Recruitment, Relocation, and Retention Incentives

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing proposed regulations to improve oversight of group recruitment incentive determinations and all retention incentives; add succession planning to the list of factors that an agency may consider before approving a retention incentive; provide that OPM may require data on recruitment, relocation, and retention incentives from agencies on an annual basis; and make additional minor clarifications and corrections.

DATES: Comments must be received on or before March 8, 2011.

ADDRESSES: You may submit comments, identified by RIN number “3206-AM13,” using either of the following methods:

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

Mail: Jerome D. Mikowicz, Deputy Associate Director, Pay and Leave, Employee Services, U.S. Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415-8200.

FOR FURTHER INFORMATION CONTACT: Carey Jones by telephone at (202) 606-2858; by fax at (202) 606-0824; or by e-mail at pay-leave-policy@opm.gov.

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is issuing proposed regulations to improve oversight of group recruitment incentive determinations and all retention incentives; add succession planning to the list of factors that an

agency may consider before approving a retention incentive; provide that OPM may require data on recruitment, relocation, and retention incentives from agencies on an annual basis; and make additional minor clarifications and corrections.

Administration and Oversight of Recruitment, Relocation, and Retention Incentives

In May 2009, OPM announced a project to review and improve the administration and oversight of recruitment, relocation, and retention incentives (3Rs). In a memorandum to heads of executive departments and agencies, OPM asked agencies to review their 3Rs programs to ensure that ongoing and new authorizations for payments to employees are used only when necessary to support the agency's mission and recommended agencies review all retention incentives at least annually. In July 2009, OPM asked each agency to review and, if needed, update its 3Rs plans, as well as approval and internal monitoring procedures to ensure they meet the requirements in 5 CFR part 575, subparts A, B, and C. In August 2009, OPM convened a work group of compensation experts from the 12 Federal agencies that used the greatest number of 3Rs in 2007 to develop recommendations for improving the administration and oversight of the 3Rs authorities. The work group recommended that OPM issue proposed regulations to require agencies to review group recruitment incentives and all retention incentives at least annually to determine whether they should be modified or discontinued based on new or changed conditions. This will help agencies ensure that recurring recruitment or retention incentive authorizations for the same group of employees (or individual employees, in the case of retention incentives) are appropriate. These proposed regulations support the recommendations made by OPM in the May 2009 memo and by the work group.

Recruitment Incentives

Under 5 CFR 575.105, an agency may target groups of similar positions that have been difficult to fill in the past or that are likely to be difficult to fill in the future and may make the determination to offer a recruitment incentive to newly-appointed employees on a group

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basis. OPM proposes revising 5 CFR 575.105(b) to require that each agency review each decision to target a group of similar positions at least annually to determine whether the positions are still likely to be difficult to fill. An authorized agency official must certify this determination in writing. An agency that determines a group of similar positions is no longer likely to be difficult to fill may no longer offer a group recruitment incentive to newly-appointed employees of that group.

Relocation Incentives

As provided in 5 U.S.C. 5753(b)(2)(B)(ii)(II), an agency may pay a relocation incentive only if the employee must relocate to accept a position in a different geographic area. In order to make this determination, the regulations in 5 CFR 575.205(b) require that an employee establish a residence in the new geographic area before the agency may pay a relocation incentive to the employee. OPM proposes revising 5 CFR 575.205(b) by adding a requirement that an employee maintain residency in the new geographic area for the duration of the service agreement in order to receive relocation incentive payments. OPM also proposes revising 5 CFR 575.211(b) to require that an authorized agency official terminate a relocation incentive service agreement if an employee fails to maintain residency in the new geographic area for the duration of the service agreement. These changes will make the regulations more consistent with the requirement in the law that an employee must relocate to receive a relocation incentive.

Retention Incentives

Annual Review

OPM's regulations in 5 CFR 575.311 are clear that each agency is responsible for terminating retention incentives when conditions change such that the original determination to pay the incentive no longer applies or when payment is no longer warranted. Agencies are currently required under § 575.311(f) to review each determination to pay a retention incentive without a service agreement at least annually to determine whether the payment is still warranted. OPM proposes revising § 575.311(a) to require that agencies also review each determination to pay a retention incentive that is subject to a service

agreement at least annually to determine whether the original determination to pay the retention incentive still applies or whether payment is still warranted and certify this determination in writing. This will ensure all retention incentive authorizations are reviewed at least annually, whether associated with a service agreement or not.

Succession Planning

An agency must consider the factors in 5 CFR 575.306(b), as applicable to the case at hand, in determining whether the unusually high or unique qualifications of an employee or a special need of the agency for an employee's services makes it essential to retain the employee and that the employee would be likely to leave the Federal service in the absence of a retention incentive. OPM proposes adding another factor for agencies to consider as follows: "The quality and availability of the potential sources of employees that are identified in the agency's succession plan, who possess the competencies required for the position, and who, with minimal training, cost, and disruption of service to the public, could perform the full range of duties and responsibilities of the employee's position at the level performed by the employee."

Succession planning is a critical success factor in strategic workforce analysis, planning, and decision making. OPM currently requires each agency to establish a succession plan to fill supervisory and managerial positions. (See 5 CFR 412.201 and 250.202(c)(2).) In addition, OPM's Human Capital Assessment and Accountability Framework advises that a succession plan should include specific goals and leadership positions needed, target positions and key leadership competencies, potential sources of talent that best support the agency's mission and culture, and recruitment or development strategies needed to ensure availability of well-qualified staff to fill leadership positions at all levels. Agencies currently have the flexibility to consider their succession planning efforts in the decision process for awarding retention incentives as "other supporting factors" under 5 CFR 575.306(b)(8). However, specifically listing the factor in this section of the regulations will strengthen the relationship between succession planning and retention incentives.

OPM is also taking this opportunity to correct some erroneous references in § 575.305(c).

Employee Eligibility

Currently, Senior Executive Service (SES) members paid under 5 U.S.C. 5383 are eligible for recruitment, relocation, and retention incentives under 5 CFR 575.103(a)(3), 575.203(a)(3), and 575.303(a)(3), unless the SES member is excluded under one of the conditions in 5 CFR 575.104, 575.204, and 575.304. Some of the exclusions are established under 5 U.S.C. 5753(a)(2) and 5754(a)(2), while the others are established under regulatory authority consistent with the intent of the law. All of the exclusions in the law and regulations are political appointees or individuals whose political appointments are pending. For example, an agency may not pay a recruitment, relocation, or retention incentive to an employee in a position to which the individual is appointed by the President with or without the advice and consent of the Senate.

An agency made OPM aware of an extremely rare situation in which an individual was appointed by the President, without the advice and consent of the Senate, to a position in the career SES. The agency had properly determined that the position is a career reserved position as that term is defined in 5 U.S.C. 3132. Such an employee should be eligible for a recruitment, relocation, or retention incentive because the employee serves as a career appointee while in the Presidential appointment. A career SES member who accepts a Presidential appointment and no longer serves as a career appointee under the Presidential appointment would not be eligible for recruitment, relocation, or retention incentives. Note also that coverage under the 3Rs authorities is not among the elections available to an individual under 5 CFR part 317, subpart H. Therefore, OPM proposes revising 5 CFR 575.104(d)(1), 575.204(d)(1), and 575.304(d)(1) to clarify that an agency may pay a recruitment, relocation, or retention incentive to an employee in an SES position in which the individual serves as a career appointee, even if the member is appointed by the President without the advice and consent of the Senate.

OPM also proposes revising 5 CFR 575.104(d), 575.204(d), and 575.304(d) to clarify that all individuals whose SES limited appointments are cleared through the White House Office of Presidential Personnel are ineligible for 3Rs payments. Limited term and limited emergency SES appointments may be political appointments if made to positions that are political in character (e.g., established for an individual

pending Presidential appointment, for political transition purposes, or for other political purposes of the agency or Administration) and should be excluded from coverage as other political positions are excluded from coverage.

Another agency recently asked OPM whether a limited term or limited emergency SES member could receive a recruitment incentive if selected for a career SES position. Recruitment incentives may be paid to an employee who is "newly appointed" to the Federal Government, as that term is defined in 5 CFR 575.102. The definition includes the first appointment (regardless of tenure) as an employee of the Federal Government, an appointment following a break in service of at least 90 days from a previous appointment as an employee of the Federal Government, or, in certain cases, an appointment following a break in service of less than 90 days from a previous appointment as an employee of the Federal Government. OPM proposes adding that a break in service of at least 90 days would not be required if the previous appointment was a position to which the individual was appointed as an SES limited term appointee or limited emergency appointee (except as described in the next paragraph). This would be consistent with how a time-limited appointment in the competitive or excepted service is not subject to the 90-day break in service requirement.

OPM also proposes clarifying that an employee would be required to have a break in service of at least 90 days from an appointment that is ineligible for recruitment incentives as provided in 5 CFR 575.104 even if the appointment is otherwise covered by an exception in the definition of "newly appointed" in 5 CFR 575.102. For example, as proposed, an SES limited term appointee or limited emergency appointee when the appointment must be cleared through the White House Office of Presidential Personnel would be required to have at least a 90-day break in service before becoming eligible for a recruitment incentive, but an SES limited term appointee or limited emergency appointee when the appointment does not need to be cleared through the White House Office of Presidential Personnel would not be required to have at least a 90-day break in service before becoming eligible for a recruitment incentive. OPM also proposes making similar revisions to the superior qualifications and special needs pay-setting authority regulations in 5 CFR 531.212(a)(3).

Reports

Section 101(c) of the Federal Workforce Flexibility Act of 2004 (Pub. L. 108–411, October 30, 2004) required OPM to submit an annual report to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform in the House of Representatives on the operation of the 3Rs authorities for each of the first 5 years in which the amended authorities were in effect (*i.e.*, 2005 to 2009). Sections 575.113(b), 575.213(b), 575.313(b), and 575.315(i) require agencies to submit specific information and data to OPM for this annual report. While OPM will no longer be required to submit a report to Congress on agencies' use of the 3Rs authorities in calendar year 2010 and subsequent calendar years, OPM has found the annual report to be very informative concerning Governmentwide use of the 3Rs. We also learned in the interagency work group that met in August 2009 (see Administration and Oversight of Recruitment, Relocation, and Retention Incentives section of this **SUPPLEMENTARY INFORMATION**) that the 3Rs report may help agencies understand the nature and trends of their own 3Rs use. OPM is also able to compare the data agencies report to OPM for the report to Congress to the data agencies report to OPM's central data systems under 5 CFR 9.2 and follow up with agencies concerning the accuracy of the data. Therefore, OPM proposes to amend sections 575.113(b), 575.213(b), 575.313(b), and 575.314(i) (as redesignated in these proposed regulations) to remove references to OPM's report to Congress and provide that OPM may require that each agency submit a report to OPM on its use of incentives in the previous calendar year. The proposed regulations would also allow OPM to exempt an agency (or part of an agency) from all or any part of any reporting requirement if OPM has determined that the incentive data submitted to OPM's central data systems under 5 CFR 9.2 is accurate and sufficient for our Governmentwide role of monitoring and administering the 3Rs.

Recruitment, Relocation, and Retention Payments Authorized Before May 1, 2005

Under section 101(d)(2) of Public Law 108–411 and 5 CFR 575.114 and 575.214, a recruitment or relocation bonus service agreement that was authorized under 5 U.S.C. 5753 and 5 CFR part 575, subparts A and B, before May 1, 2005, remained in effect until its expiration, subject to the law and

regulations applicable to recruitment and relocation bonuses before May 1, 2005. We propose removing §§ 575.114 and 575.214, as such recruitment and relocation bonus service agreements have likely expired.

Under section 101(d)(3) of Public Law 108–411 and 5 CFR 575.314, retention allowances that were authorized under 5 U.S.C. 5754 and 5 CFR part 575, subpart C, before May 1, 2005, had to continue to be paid until the retention allowance was reauthorized or terminated, but not later than April 30, 2006, and were subject to the law and regulations applicable to retention allowances before May 1, 2005. We propose removing § 575.314 and redesignating § 575.315 as § 575.314 because the April 30, 2006 deadline has been met.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 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 will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Parts 531 and 575

Government employees, Law enforcement officers, Wages.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM is proposing to amend 5 CFR parts 531 and 575 as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Public Law 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316; Subpart B also issued under 5 U.S.C. 5303(g), 5305, 5333, 5334(a) and (b), and 7701(b)(2); Subpart D also issued under 5 U.S.C. 5335 and 7701(b)(2); Subpart E also issued under 5 U.S.C. 5336; Subpart F also issued under 5 U.S.C. 5304 and 5305; E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682; and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224.

Subpart B—Determining Rate of Basic Pay

2. In § 531.212—

a. Amend paragraph (a)(1)(ii) by removing word "and" and adding "or" in its place;

b. Revise paragraph (a)(3); and
c. Add paragraph (a)(5).
The revision and addition read as follows:

§ 531.212 Superior qualifications and special needs pay-setting authority.

(a) * * *

(3) Except as provided in paragraph (a)(5) of this section, an agency may use the superior qualifications and special needs pay-setting authority for a reappointment without requiring a 90-day break in service if the candidate's civilian employment with the Federal Government during the 90-day period immediately preceding the appointment was limited to one or more of the following:

(i) A time-limited appointment in the competitive or excepted service;

(ii) A non-permanent appointment in the competitive or excepted service;

(iii) Employment with the government of the District of Columbia (DC) when the candidate was first appointed by the DC government on or after October 1, 1987;

(iv) An appointment as an expert or consultant under 5 U.S.C. 3109 and 5 CFR part 304;

(v) Employment under a provisional appointment designated under 5 CFR 316.403;

(vi) Employment under the Student Career Experience Program under 5 CFR 213.3202(b); or

(vii) Employment as a Senior Executive Service limited term appointee or limited emergency appointee (as defined in 5 U.S.C. 3132(a)(5) and (a)(6), respectively).

* * * * *

(5) An agency may not apply an exception in paragraph (a)(3) of this section if the candidate's civilian employment with the Federal Government during the 90-day period immediately preceding the appointment was in one or more of the following types of positions—

(i) A position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

(ii) A position in the Senior Executive Service as a noncareer appointee (as defined in 5 U.S.C. 3132(a)(7));

(iii) A position excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character;

(iv) A position to which an individual is appointed by the President without the advice and consent of the Senate;

(v) A position designated as the head of an agency, including an agency headed by a collegial body composed of two or more individual members;

(vi) A position in which the employee is expected to receive an appointment as the head of an agency; or

(vii) A position to which an individual is appointed as a Senior Executive Service limited term appointee or limited emergency appointee (as defined in 5 U.S.C. 3132(a)(5) and (a)(6), respectively) when the appointment must be cleared through the White House Office of Presidential Personnel.

* * * * *

PART 575—RECRUITMENT, RELOCATION, AND RETENTION INCENTIVES; SUPERVISORY DIFFERENTIALS; AND EXTENDED ASSIGNMENT INCENTIVES

3. Revise the authority citation for part 575 to read as follows:

Authority: 5 U.S.C. 1104(a)(2) and 5307; subparts A and B also issued under 5 U.S.C. 5753; subpart C also issued under 5 U.S.C. 5754; subpart D also issued under 5 U.S.C. 5755; subpart E also issued under 5 U.S.C. 5757 and sec. 207 of Public Law 107–273, 116 Stat. 1780.

Subpart A—Recruitment Incentives

4. In § 575.102, revise paragraph (3) in the definition of *newly appointed* to read as follows:

§ 575.102 Definitions.

* * * * *

Newly appointed refers to—* * *

(3) An appointment of an individual in the Federal Government when his or her service in the Federal Government during the 90-day period immediately preceding the appointment was not in a position excluded by section 575.104 and was limited to one or more of the following:

(i) A time-limited appointment in the competitive or excepted service;

(ii) A non-permanent appointment in the competitive or excepted service;

(iii) Employment with the government of the District of Columbia (DC) when the candidate was first appointed by the DC government on or after October 1, 1987;

(iv) An appointment as an expert or consultant under 5 U.S.C. 3109 and 5 CFR part 304;

(v) Employment under a provisional appointment designated under 5 CFR 316.403;

(vi) Employment under the Student Career Experience Program under 5 CFR 213.3202(b); or

(vii) Employment as a Senior Executive Service limited term appointee or limited emergency appointee (as defined in 5 U.S.C. 3132(a)(5) and (a)(6), respectively).

* * * * *

5. In § 575.104—

a. Revise paragraph (d)(1);
b. Remove “or” at the end of paragraph (d)(2);

c. Remove the period at the end of paragraph (d)(3) and add “; or” in its place; and
d. Add paragraph (d)(4).

The revision and addition read as follows:

§ 575.104 Ineligible categories of employees.

* * * * *

(d) * * *

(1) To which an individual is appointed by the President without the advice and consent of the Senate, except a Senior Executive Service position in which the individual serves as a career appointee (as defined in 5 U.S.C. 3132(a)(4));

* * * * *

(4) To which an individual is appointed as a Senior Executive Service limited term appointee or limited emergency appointee (as defined in 5 U.S.C. 3132(a)(5) and (a)(6), respectively) when the appointment must be cleared through the White House Office of Presidential Personnel.

6. In § 575.105, revise paragraph (b) to read as follows:

§ 575.105 Applicability to employees.

* * * * *

(b)(1) An agency may target groups of similar positions (excluding positions covered by § 575.103(a)(2), (a)(3), or (a)(5) or those in similar categories approved by OPM under § 575.103(a)(7)) that have been difficult to fill in the past or that may be difficult to fill in the future and make the required determination to offer a recruitment incentive to newly-appointed employees on a group basis.

(2) An agency must review each decision to target a group of similar positions for the purpose of granting a recruitment incentive at least annually to determine whether the positions are still likely to be difficult to fill. An authorized agency official must certify this determination in writing. If an agency determines the positions are no longer likely to be difficult to fill, the agency may not offer a recruitment incentive to newly-appointed employees in that group on a group basis.

* * * * *

7. In § 575.113, revise paragraph (b) introductory text to read as follows:

§ 575.113 Records and reports.

* * * * *

(b) OPM may require that each agency submit an annual written report to OPM

on the use of the recruitment incentive authority within the agency during the previous calendar year. OPM may exempt an agency (or part of an agency) from all or any part of any reporting requirement established under this section if OPM has determined that the recruitment incentive data submitted to OPM’s central data systems under 5 CFR 9.2 is accurate and sufficient. Each agency report that is required must include—

* * * * *

§ 575.114 [Removed]

8. Remove § 575.114.

Subpart B—Relocation Incentives

9. In § 575.204—

a. Revise paragraph (d)(1);
b. Remove “or” at the end of paragraph (d)(2);

c. Remove the period at the end of paragraph (d)(3) and add “; or” in its place; and

d. Add paragraph (d)(4).

The revision and addition read as follows:

§ 575.204 Ineligible categories of employees.

* * * * *

(d) * * *

(1) To which an individual is appointed by the President without the advice and consent of the Senate, except a Senior Executive Service position in which the individual serves as a career appointee (as defined in 5 U.S.C. 3132(a)(4));

* * * * *

(4) To which an individual is appointed as a Senior Executive Service limited term appointee or limited emergency appointee (as defined in 5 U.S.C. 3132(a)(5) and (a)(6), respectively) when the appointment must be cleared through the White House Office of Presidential Personnel.

10. In § 575.205, add a sentence at the end of paragraph (b) to read as follows:

§ 575.205 Applicability to employees.

* * * * *

(b) * * * A relocation incentive may be paid only if the employee maintains residency in the new geographic area for the duration of the service agreement.

* * * * *

11. In § 575.211, revise paragraph (b) to read as follows—

§ 575.211 Termination of a service agreement.

* * * * *

(b) An authorized agency official must terminate a relocation incentive service agreement if an employee is demoted or separated for cause (*i.e.*, for

unacceptable performance or conduct), if the employee receives a rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5 CFR part 430) of less than “Fully Successful” or equivalent, if the employee fails to maintain residency in the new geographic area for the duration of the service agreement, or if the employee otherwise fails to fulfill the terms of the service agreement.

* * * * *

12. In § 575.213, revise paragraph (b) introductory text to read as follows:

§ 575.213 Records and reports.

* * * * *

(b) OPM may require that each agency submit an annual written report to OPM on the use of the relocation incentive authority within the agency during the previous calendar year. OPM may exempt an agency (or part of an agency) from all or any part of any reporting requirement established under this section if OPM has determined that the relocation incentive data submitted to OPM’s central data systems under 5 CFR 9.2 is accurate and sufficient. Each agency report that is required must include—

* * * * *

§ 575.214 [Removed]

13. Remove § 575.214.

Subpart C—Retention Incentives

14. In § 575.304—

- a. Revise paragraph (d)(1);
- b. Remove “or” at the end of paragraph (d)(2);
- c. Remove the period at the end of paragraph (d)(3) and add “; or” in its place; and
- d. Add paragraph (d)(4).

The revision and addition read as follows:

§ 575.304 Ineligible categories of employees.

* * * * *

(d) * * *

(1) To which an individual is appointed by the President without the advice and consent of the Senate, except a Senior Executive Service position in which the individual serves as a career appointee (as defined in 5 U.S.C. 3132(a)(4));

* * * * *

(4) To which an individual is appointed as a Senior Executive Service limited term appointee or limited emergency appointee (as defined in 5 U.S.C. 3132(a)(5) and (a)(6), respectively) when the appointment must be cleared through the White House Office of Presidential Personnel.

15. In § 575.305, revise paragraph (c) to read as follows:

§ 575.305 Applicability to employees.

* * * * *

(c) An agency may not include in a group retention incentive authorization an employee covered by § 575.303(a)(2), (a)(3), or (a)(5) or those in similar categories of positions approved by OPM to receive retention incentives under § 575.303(a)(7).

* * * * *

16. In § 575.306, redesignate paragraphs (b)(2) through (8) as paragraphs (b)(3) through (9), respectively, and add a new paragraph (b)(2) to read as follows:

§ 575.306 Authorizing a retention incentive.

* * * * *

(b) * * *

(2) The quality and availability of the potential sources of employees that are identified in the agency’s succession plan, who possess the competencies required for the position, and who, with minimal training, cost, and disruption of service to the public, could perform the full range of duties and responsibilities of the employee’s position at the level performed by the employee;

* * * * *

17. In § 575.311, redesignate paragraphs (a)(1) and ((2) as paragraphs (a)(2) and (3), respectively, and add a new paragraph (a)(1) to read as follows:

§ 575.311 Continuation, reduction, and termination of retention incentives.

(a)(1) For each retention incentive that is subject to a service agreement, an authorized agency official must review the determination to pay a retention incentive at least annually to determine whether the original determination still applies or whether payment is still warranted as provided in paragraph (a)(2) of this section, and must certify this determination in writing.

* * * * *

18. In § 575.313, revise paragraph (b) introductory text to read as follows:

§ 575.313 Records and reports.

* * * * *

(b) OPM may require that each agency submit an annual written report to OPM on the use of the retention incentive authority within the agency during the previous calendar year. OPM may exempt an agency (or part of an agency) from all or any part of any reporting requirement established under this section if OPM has determined that the retention incentive data submitted to OPM’s central data systems under 5 CFR

9.2 is accurate and sufficient. Each agency report that is required must include—

* * * * *

§ 575.314 [Removed]

19. Remove § 575.314.

§ 575.315 [Redesignated as § 575.314]

20. Redesignate § 575.315 as § 575.314.

§ 575.314 [Amended]

21. In newly redesignated § 575.314:

- a. Redesignate paragraph (i)(1) as paragraph (i) introductory text;
- b. Remove paragraph (i)(2); and
- c. Redesignate paragraphs (i)(1)(i) through (i)(1)(v) as paragraphs (i)(1) through (i)(5),

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BILLING CODE 6325-39-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

[NRC-2011-0003]

RIN 3150-AH15

Implementation Guidance for Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions; Draft Guidance Document for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of draft guidance for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to require that the initial distribution of source material to exempt persons or general licensees be explicitly authorized by a specific license. The proposed rule would also modify the existing possession and use requirements of the general license for small quantities of source material and revise, clarify, or delete certain source material exemptions from licensing. The NRC has prepared draft guidance to address implementation of the proposed regulations. This notice is announcing the availability of the draft implementation guidance document for public comment.

DATES: Submit comments by March 8, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC-2011-0003 in the subject line of