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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 293

RIN 3206-AM05

Personnel Records

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

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

DATES: Effective September 22, 2011.

FOR FURTHER INFORMATION CONTACT: Tanya Bennett, at (202) 606-4054, by facsimile at (202) 606-1719, or by e-mail at Tanya.Bennett@opm.gov.

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management is amending subpart C of part 293 of title 5, Code of Federal Regulations (Personnel Records) to clarify agency responsibilities concerning Official Personnel Folders (OPFs) of current and former Federal employees in the civil service.

Background

Generally, OPM and the other agencies share responsibility for personnel management in the Executive Branch. OPM functions as a government-wide regulator of personnel management. Agencies, on the other hand, are required to maintain and establish their own personnel office within their agency, and the head of each agency, in accordance with applicable statutes, Executive orders and rules, is responsible for personnel management in their agency. The OPF is a critical tool for personnel management. An OPF is a file

containing records reflecting an employee's appointment, employment history and benefits information. OPFs contain long-term records that serve to protect the legal and financial rights of the Government and the employee. Pursuant to Executive Order 12107 (December 28, 1978), OPFs are designated as records of OPM, and the President has delegated authority to the Director of OPM to regulate the establishment, maintenance, and transfer of OPFs.

Although OPFs are designated as records of OPM, agencies have significant responsibilities related to OPFs. OPM regulations require agencies to establish OPFs for most employees. OPM's regulations also specify the content of the OPF, which each agency must maintain. Moreover, agencies are generally required to retain the OPF of a separated employee for 30 working days after separation and to transfer that OPF thereafter to the National Personnel Records Center (NPRC). Further, if an employee's OPF is lost or destroyed, the current (or former) employing agency must reconstruct the OPF.

The transfer of an OPF from the NPRC can be the result of an agency initially submitting the OPF to the NPRC improperly, an activity such as amending or correcting the OPF of a current or former employee, the rehiring of a former Federal employee, or a need to produce the document for litigation. The return of the OPF to the NPRC produces a subsequent and additional transfer expense.

Purpose and Summary of Changes

The purpose of this rule is to clarify the roles and responsibilities of OPM and other agencies with respect to OPFs by articulating, delineating, and differentiating the responsibilities of OPM as regulator of OPFs and the responsibilities of other agencies, who have a variety of reasons to use OPFs in connection with the appointment and employment of Federal employees. To clarify these roles and responsibilities, this rule makes the following changes to subpart C of 5 CFR part 293:

- In § 293.301, inserting language excluding agencies from the application of subpart C when they are exempt from OPM recordkeeping requirements by statute, regulation, or formal agreement with OPM. Further, inserting a sentence stating that OPM's Guide to Personnel Recordkeeping will list the excluded

agencies. These changes clarify which agencies are or are not bound by subpart C.

- In § 293.303, amending the heading from "Ownership of the folder" to "The roles of the Office, agencies, and custodians" and revising and clarifying the text of the section. These changes clarify the intent of the section.

- In § 293.303, removing the phrase "under the jurisdiction and control of" to eliminate confusion about the meaning of this clause. Also, adding the phrase "each former employee" to recognize that this section also covers OPFs of former employees. The remaining language has been designated paragraph (a).

- In § 293.303, adding paragraph (b) to clarify the role and responsibilities of OPM; paragraph (c) to clarify the roles and responsibilities of agencies, generally; paragraph (d)(1) to establish the definition of the term "custodian" for purposes of this section; and paragraphs (d)(2) through (d)(5) to establish the roles and responsibilities of custodians.

- In § 293.303, adding paragraph (e) to clarify that agencies and custodians will carry out their roles and responsibilities for OPFs pursuant to this subpart and OPM's Guide to Personnel Recordkeeping.

- In § 293.307, adding paragraphs (c) and (d) to specify that agencies are responsible for costs associated with transferring OPFs to and from the NPRC.

Comments and Responses

OPM published its proposed rule with request for comments on January 19, 2010. 75 FR 2821 (Jan. 19, 2010). OPM received comments from two individuals, four different components of the Department of Defense, and two other Federal agencies, including the NPRC. Below is a summary of the comments received, which is followed by OPM's responses.

1. Storage Costs

Two commenters opposed the amendment to 5 CFR 293.307, which adds paragraphs (c) and (d) to clarify the OPF-related costs for which agencies are responsible, because the commenters believe these provisions will shift the cost of storing OPFs with NARA to other agencies.

OPM believes these commenters misconstrued the rule. Nothing in this rule shifts the cost of storing OPFs with

NARA from OPM to other agencies. Under the rule, OPM remains responsible for the cost of storing OPFs. In addition, OPM remains responsible under the Privacy Act for all costs associated with responding to a former employee's request for a review or a copy of her or his OPF, and under the Freedom of Information Act for responses to third party (public) requests for information from OPFs (although, as noted below, OPM may seek reimbursement from such third-party requesters). The change made by the rule is that transfer of custody for storage of OPFs is now predicated on OPFs being accepted for storage by NARA.

Another commenter requested that the rule specify the NARA actual costs that OPM will be responsible for and those that will be the responsibility of the other agencies for storage, transfers, references, interfile, and disposition (destruction or accessioning into the Archives of the United States) of OPFs.

As clarified by the rule, agencies will be responsible for the costs associated with transferring OPFs to NPRC, requesting OPFs from NPRC, and for any other service initiated by an agency. OPM will be responsible for the storage charges of OPFs that have been accepted by the NPRC and placed into storage, and for all charges associated with responding to requests from former employees and the public under the Privacy Act and Freedom of Information Act (subject to possible reimbursement from such third-party requesters). OPM will be charged in the same manner as other agencies for the OPFs of its own current and former employees.

OPM has chosen not to specify in the rule the actual costs charged by the NPRC for services because such costs will be established pursuant to the NPRC's revolving fund authority. OPM has an interagency agreement with the NPRC that specifies the services provided to OPM and the corresponding costs. This interagency agreement is regularly updated.

2. Requests for Copies of OPFs From Former Employees or OPF Information From the Public

A commenter stated that this rule would allow OPM to charge another agency for costs associated with a request by a former employee for a copy of the employee's OPF or a request for OPF information by a member of the public.

OPM may well seek to recover the costs of some of these requests from third-party requesters (pursuant to FOIA, for example), but whether or not OPM undertakes that sort of cost-

recovery, this rule is not intended to enable OPM to shift the costs of such third-party requests to another agency and will not effectuate such a cost-shifting. Once an OPF has been accepted by the NPRC, OPM becomes the custodian until and unless another agency requests the OPF. OPM will not charge agencies for the costs associated with responding to requests from former Federal employees or members of the public for records currently stored at the NPRC.

3. Requests for OPF Information From Federal Agencies

A commenter stated that the rule would allow OPM to charge other agencies that are requesting OPF information.

OPM believes that the commenter has slightly confused requesting information from an OPF and requesting the actual OPF. Currently, the NPRC does not charge for OPF information. For requests from agencies to the NPRC for an actual OPF, however, the NPRC charges a handling fee associated with transferring the file to and receiving it from an agency. Fees charged by the NPRC associated with handling OPFs as part of transferring OPFs will now be the responsibility of the agencies under this rule.

4. Effect on Electronic OPFs

Several commenters expressed concern that the amended rule may be construed to include electronic OPFs (eOPFs). One commenter mentioned that the migration to eOPF was required by 2012 and recommended that OPM not implement the changes to this rule until that time to alleviate any financial impact on agencies. Another commenter stated that the OPM's Enterprise Human Resource Integration (EHRI) had already factored NPRC transactions into maintenance costs for eOPFs. Three commenters recommended that the rule specify it applies only to paper OPFs and/or include a statement excluding eOPFs.

OPM agrees that a distinction should be made between the roles and responsibilities for paper OPFs and eOPFs. OPM has added language to § 293.303 to distinguish between paper OPFs and eOPFs. OPM acknowledges that it has already factored NPRC transactions into maintenance costs for eOPFs with respect to EHRI.

5. Data Calls, Cost Studies and Statistical Analysis

A commenter wanted to know what data calls were issued to collect information in preparation for this regulation and which specific agencies

provided feedback to OPM in this process. The same commenter wanted OPM to provide the cost studies, statistical analysis, and raw data used to justify the rule and the human capital cost increase to implement and track agency transactions.

OPM did not call for data from other agencies or conduct cost studies and statistical analysis in preparing this rule. The purpose of the rule is to correct a misunderstanding of the roles and responsibilities of OPM and the other agencies with respect to the transfer of OPFs to NPRC. This misunderstanding has resulted in agencies avoiding part of the cost of administering their own responsibilities with respect to OPFs. The commenter appears to misconstrue the rule as simply seeking a more beneficial cost arrangement for OPM; instead, the purpose is to differentiate the activities that are properly considered functions of agency human resources offices and thus ensure that an agency that initiates the transfer of an OPF assumes the costs associated with that action (just as that agency bears the costs associated with establishing and maintaining OPFs for its appointees and employees).

6. Employee Medical Folders and Employee Performance Files

A commenter asked that OPM address how this rule will affect Employee Medical Folders (EMFs) and Employee Performance Files (EPFs).

EMFs contain information determined by an agency's medical staff to be occupational medical records, which can follow the employee from agency to agency or be sent to NPRC if the employee separates from Federal service. The rule for disposition of EMFs, 5 CFR 293.510, which is not amended by this rule, instructs agencies to follow the same procedures established for disposition of OPFs, 5 CFR 293.307. Because this rule amends 5 CFR 293.307 to clarify that agencies are responsible for the costs associated with the transfer of OPFs to NPRC, the same requirements will apply to transferring EMFs to NPRC. As for EPFs, there is no separate cost associated with transferring EPFs because any information transferred is contained in the OPF as part of the left (temporary) side of the OPF (See 5 CFR 293.402 and 5 CFR 293.404).

7. Other Agency's Records Management Policies

Three commentators suggested that this rule might cause other agencies to amend their records management policies in order to charge agencies for use of their records.

OPM is not in a position to predict what other agencies might do in terms of their own records management policies in response to this rule or to comment on the position other agencies adopt or may adopt regarding records for which they are the custodian but that are not maintained in the OPF.

8. Change to the Title of Section 293.303

One commenter stated that the existing title of § 293.303, "Ownership of the Folder," is not confusing and, therefore, need not be changed.

OPM disagrees with the commenter. In OPM's experience, the use of the word "ownership" in the title of § 293.303 has resulted in disagreements over the meaning and scope of the word. In particular, it has created ambiguity in delineating the responsibilities of OPM and the other agencies with regard to the cost of transferring OPFs to and from the NPRC. The new title for § 293.303, "The roles and responsibilities of the Office, agencies, and custodians," provides a clearer statement of the purpose of the section and its new content.

9. Definition of Custodian

Four commenters submitted comments about adding a definition of the term "custodian" to § 293.102. Two commenters sought general clarification about the definition. A commenter contended that the definition was beyond OPM's authority under Executive Order 12107 and inconsistent with prior use of the term in OPM's Guide to Personnel Recordkeeping. Another commenter wanted the definition to be revised in order to make clear that the NPRC, although in physical possession of OPFs, is not responsible for the cost associated with the maintenance and disposition of the OPF once it arrives at NPRC.

Rather than amending § 293.102, the definitions section for all of 5 CFR part 293, OPM has decided to include the definition solely in the regulations for OPFs by amending § 293.303. In this rule, § 293.303 replaces the "jurisdiction and control" language that was introduced in 1954 by Executive Order 10561 (September 13, 1954) and included in Civil Service Commission regulations implementing that order (19 FR 6899 (October 28, 1954)), with the concept of custodian in order to more clearly articulate the responsibilities of OPM and the other agencies. Although Executive Order 10561 was revoked by Executive Order 12107 (December 28, 1978), OPM continued to use the "jurisdiction and control" language that was borrowed from it. The notion of jurisdiction and control has led to

confusion about the delineation of responsibilities and costs associated with carrying out those responsibilities.

The purpose of this concept was to recognize that although other agencies are often in possession of the OPFs, the authority for the establishment, maintenance and transfer of them resides with OPM. The same purpose is reflected in this rule's revision in § 293.303 by creating paragraph (a), which keeps much of the original language from the section but eliminates the phrase "jurisdiction and control." Further, this rule revises § 293.303 by introducing several additional paragraphs that define the term custodian and specify the responsibilities of OPM, agencies, and custodians pertaining to establishing, maintaining, and transferring OPFs.

Executive Order 12107 grants OPM authority to promulgate regulations pertaining to the establishment, maintenance, and transfer of OPFs. Defining a term to be used by OPM within those regulations is consistent with this authority. Moreover, regulating the activities and responsibilities of agencies in physical possession of OPFs is inherently part of the maintenance and transfer of OPFs.

OPM does not agree that the definition of custodian contained in this rule is inconsistent with OPM's use of the term in the Guide to Personnel Recordkeeping. However, to the extent that an inconsistency arises, the definition of custodian in this rule is controlling for purpose of implementing these regulations. The Guide to Personnel Recordkeeping will be revised to resolve any inconsistency that comes to OPM's attention.

Instead of revising the definition of custodian to ensure that the NPRC is not responsible for costs associated with the maintenance and disposition of OPFs once they arrive at NPRC, OPM has added paragraph (d)(5) to § 293.303 to clarify that OPM is the custodian once the NPRC approves the transfer of an OPF from an agency.

10. When an Agency Is No Longer a Custodian

Three commenters noted that the proposed definition of custodian seemed to indicate that agencies no longer have responsibility for the cost of transferring OPFs to NPRC after an individual separates from Federal service because an agency is the legal custodian of an employee's OPF during the period of the employee's employment at that agency. The argument was that because agencies are required to hold the folders for a minimum of 30 days after an employee

separates, and because the agency is responsible only during the period of employment, the agency is not responsible for transfer costs.

OPM agrees that an agency is the custodian during the period of an employee's employment. An agency remains the custodian, however, even after an employee separates, while it performs its personnel management responsibilities, which typically take 30 days. Agencies complete actions such as resignation, termination, or retirement after an employee separates from the losing agency. In addition, in the case of some actions outlined in Chapter 7 of the Guide to Personnel Recordkeeping, the OPF may remain in the possession of an agency for longer than 30 days. In order to accomplish these vital actions; ensure the accuracy, completeness, necessity, timeliness, and relevance of the actions; and ensure the fairness of decisions involving the subject of the OPF, as required by 5 U.S.C. 552a(e)(1), the folder remains in the physical possession of the agency for some time after separation. To clarify when an agency is no longer the custodian of an OPF, the rule amends § 293.303 by adding paragraphs (d)(4) and (d)(5).

11. Potential Augmentation of OPM's Appropriation

Three commenters suggested that the rule would result in an augmentation of OPM's appropriation because OPM receives appropriated funds for reimbursing the NPRC for costs associated with OPFs.

Although OPFs are designated as records of OPM, some of the administrative expenses associated with OPFs flow logically from each agency's requirements of maintaining its own workforce, including compliance with OPM's regulations. Indeed, having OPFs is part and parcel of having employees. Each agency is responsible for its own personnel management, and establishing, maintaining, and transferring OPFs are necessary functions of each agency's personnel office. This includes remedying OPFs submitted improperly, as well as amending or correcting OPFs of current and former employees, rehiring former Federal employees, and utilizing OPFs in litigation. Therefore, each agency's general operating appropriation is available to reimburse the NPRC for expenses related to these functions. At the same time, OPM's appropriation is available for expenses necessary to carry out OPM's Governmentwide functions regarding OPFs, such as storage of OPFs and servicing OPFs that have been transferred and accepted by the NPRC.

OPM is also responsible for expenses related to its own employees' OPFs.

Prior to Fiscal Year (FY) 2000, NARA financed the activities of the NPRC related to OPFs out of its own general operating appropriation. During this period, the NPRC paid the costs of transferring, storing, and providing other services associated with OPFs out of an appropriation to NPRC for this purpose. OPM did not reimburse the NPRC for costs associated with OPFs. (And agencies were—and still are—responsible for costs associated with establishing and maintaining OPFs for their employees).

Beginning with FY 2000, however, Congress changed the financing of the NPRC activities by establishing the Records Center Revolving Fund (Fund) and authorizing the NPRC to credit the Fund with fees charged to other agencies (Pub. L. 106–58, 113 Stat. 430, 460–61 (Sept. 29, 1999), codified at 44 U.S.C. 2901 note).

Currently, each agency incurs the cost of establishing OPFs for its own employees as a necessary expense of maintaining its workforce. Similarly, each agency has incurred costs associated with maintaining OPFs for its own employees. Agencies do not seek, or receive, reimbursement from OPM for these costs. Rather, agencies understand that they are required by regulation to perform these tasks and incur costs associated with fulfilling their responsibilities as employing agencies. However, because of the confusion created by the title of § 293.303, "Ownership of the Folder," and its mention of "jurisdiction and control" of OPFs, the costs of transferring OPFs to and from the NPRC have been avoided by the other agencies. By specifically providing that the costs associated with transferring OPFs are the responsibility of the transferring agencies, OPM has now eliminated this confusion.

This rule reflects OPM's position that services the NPRC provides to agencies transferring OPFs to the NPRC are not services that benefit OPM, but rather are services that allow agencies to fulfill their responsibilities as employers (and under OPM's regulations). Similarly, the services the NPRC provides to agencies initiating requests for OPFs from the NPRC are also services that benefit agencies, not OPM. Although OPM has incurred these costs since FY 2000, it would not be appropriate to continue such an arrangement now that the roles and responsibilities of OPM and the other agencies have been clarified.

12. NPRC Billing and Business Practices

A commenter stated that the implementation of this rule would have

a negative impact on the NPRC's billing and business practices because it will have to initiate agreements with each agency for billing and services and it may be necessary to charge OPM by folder rather than by cubic foot.

OPM appreciates the concern for the potential impact this rule may have for the NPRC. However, OPM does not control the NPRC's billing and business practices, or how it will adjust to this rule. As noted previously, this rule is being adopted in order to rectify the ambiguity of which responsibilities are OPM's and which are responsibilities of the other agencies. Resolving this ambiguity ultimately should help the NPRC determine the appropriate billing and business practices to adopt and implement.

13. Excluded Agencies

While OPM was preparing the rule for publication and in discussions with the NPRC about the interagency agreement that governs the operating relationship between the NPRC and OPM, the NPRC brought to OPM's attention the potential for § 293.301, the applicability provision for subpart C (OPF regulations), to be read more broadly than OPM intended.

Section 293.301 states that the OPF regulations apply to "each executive department and independent establishment of the Federal Government, each corporation wholly owned or controlled by the United States, and with respect to positions subject to civil service rules and regulations, the legislative and judicial branches of the Federal Government." Prior to 1985, § 293.301 included a clause that exempted agencies from the OPF regulations if they were "specifically excluded from [OPM] recordkeeping requirements by statute, Office regulation or formal agreement between the Office and the agency" (5 CFR 293.301 (1985)).

However, the exclusionary language was subsequently removed from § 293.301. On October 19, 1982, OPM issued a notice in the Federal Register proposing to amend part 293 in order to move the guidelines on accessing OPFs from 5 CFR part 294 to 5 CFR part 293 (See 47 FR 46513 (Oct. 19, 1982)). As part of this proposed amendment, for reasons not stated, OPM amended § 293.301 by removing the clause exempting agencies specifically excluded from OPM's recordkeeping requirements. The rule became final on January 24, 1985, with no mention in the final notice of why the exclusionary language was removed (See 50 FR 3307 (Jan. 24, 1985)).

Removal of the exclusionary language was probably due to the fact that

§ 293.101(b) of 5 CFR 293, subpart A (Basic Policies on Maintenance of Personnel Records) contains similar language that may have been considered applicable to subpart C. Section 293.101(b) makes the basic policies on maintenance of personnel records applicable "to any department or independent establishment in the Executive Branch of the Federal Government * * * except those specifically excluded from Office recordkeeping requirements by statute, Office regulation, or formal agreement between the Office and that agency." However, as stated in § 293.101(b), it applies only to subpart A, not subpart C. Therefore, the exclusionary language of § 293.101(b), as written, does not affect § 293.301. The current language of § 293.301 appears to apply to agencies regardless of whether they are subject to OPM's basic policies on maintenance of personnel records.

At any rate, in practice, OPM has continued to consider agencies that are specifically excluded from OPM recordkeeping requirements by statute, regulation or formal agreements between OPM and other agencies (*i.e.*, exempt from subpart A) as exempt from OPM's OPF regulations (*i.e.*, exempt from subpart C). This practice is reflected in Chapter 2, Section 2–A of OPM's Guide to Personnel Recordkeeping, which is entitled "Employment Systems Outside the Office of Personnel Management's Recordkeeping Authority."

After consulting with the NPRC, OPM has addressed the potential to read § 293.301 more broadly than intended by reinserting the original, pre-1985 exclusionary language at the end of the current § 293.301. Moreover, OPM has added an additional sentence following this language that identifies OPM's Guide to Personnel Recordkeeping as the document where excluded agencies will be listed, which will allow for more efficient updates and revisions, rather than listing the agencies in the rule.

14. Need for an Effective Date

A commenter requested the rule have an established effective date that is far enough in the future to allow agencies' human resource offices and the NPRC to prepare for the changes made by this rule.

The proposed rule was published on January 19, 2010. Since that time, personnel offices have been on notice of the impending changes made by this rule and the NPRC has implemented a system that will permit it to bill individual agencies for the costs they incur. OPM is confident that agencies and the NPRC are capable of meeting

the requirements of this rule. Therefore, the effective date of these changes will be 30 days from the date of publication of this rule in the **Federal Register**.

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.

Executive Order 13563 and Executive Order 12866

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and 12866.

List of Subjects in 5 CFR Part 293

Government employees, Privacy, Records.

U.S. Office of Personnel Management.

John Berry,
Director.

Accordingly, OPM amends 5 CFR part 293, subpart C as follows:

PART 293—PERSONNEL RECORDS

Subpart C—Official Personnel Folder

■ 1. The authority citation for part 293, subpart C, is revised to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 1103; 5 U.S.C. 1104; 5 U.S.C. 1302, 5 U.S.C. 2951(2), 5 U.S.C. 3301; 5 U.S.C. 4315; E.O. 12107 (December 28, 1978), 3 CFR 1954–1958 Compilation; E.O. 9830 (February 24, 1947); 3 CFR 1943–1948 Compilation.

■ 2. Revise § 293.301 to read as follows:

§ 293.301 Applicability of regulations.

Except for those agencies specifically excluded from Office of Personnel Management (OPM) recordkeeping requirements by statute, OPM regulation, or formal agreement between OPM and the agency, this subpart applies to—and within this subpart agency means—each executive department and independent establishment of the Federal Government; each corporation wholly owned or controlled by the United States; and, with respect to positions subject to civil service rules and regulations, the legislative and judicial branches of the Federal Government. OPM will list agencies to which this subpart does not apply in the Guide to Personnel Recordkeeping, and will amend the Guide from time to time to update that list.

■ 3. Revise § 293.303 to read as follows:

§ 293.303 The roles and responsibilities of the Office, agencies, and custodians.

(a) The Official Personnel Folder (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 (Office).

(b) The Office has Government-wide responsibility for developing regulations, practices and procedures for the establishment, maintenance, and transfer of OPFs.

(c) Agencies shall be responsible for the following:

(1) The establishment of the OPF for a new appointee or a new employee for whom no OPF has previously been established; and

(2) The maintenance of a previously existing OPF during the period any new appointee or employee remains an agency's employee.

(d)(1) Custodian means the agency in physical possession of an OPF. In the case of an electronic OPF (eOPF), the custodian is the agency that has primary access to an eOPF contained within a document management system approved by the Office.

(2) A custodian shall be responsible for the maintenance and transfer of the OPF or eOPF, and the costs associated with these activities.

(3) An agency is the custodian of an OPF it requests from the National Personnel Records Center (NPRC), for any temporary use, from the date that the OPF is transmitted by the NPRC to the agency until the date that the NPRC receives the OPF back from the agency.

(4) An agency is no longer the custodian of an OPF once the OPF has been transferred to and accepted by the NPRC.

(5) Once NPRC has approved the transfer, the Office is the custodian 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.

(e) Agencies and custodians shall carry out their responsibilities with respect to the OPF or eOPF in accordance with this subpart and the Office's Guide to Personnel Recordkeeping.

■ 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 the 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. 2011–21395 Filed 8–22–11; 8:45 am]

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 532 and 550

RIN 3206–AM08

Pay for Sunday Work

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is issuing final regulations to implement the ruling in the case of *Fathauer v. United States*, 566 F.3d 1352 (Fed. Cir. 2009). In this decision, the United States Court of Appeals for the Federal Circuit ruled that part-time employees are covered under the provisions of 5 U.S.C. 5546(a), the statute governing the payment of Sunday premium pay for work performed on Sundays. The revised Sunday premium pay regulations eliminate references to “full-time” employees, which will permit Sunday premium payments to part-time employees, in accordance with 5 U.S.C. 5546(a). Consistent with the reasoning in the *Fathauer* decision, OPM has determined that part-time prevailing rate employees are also entitled to payment of Sunday premium pay, pursuant to 5 U.S.C. 5544(a). Intermittent employees continue to be excluded from earning Sunday premium pay because of the nature of their appointment.

DATES: This rule is effective September 22, 2011.

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

SUPPLEMENTARY INFORMATION: On April 9, 2010, the U.S. Office of Personnel Management (OPM) issued proposed regulations at 75 FR 18133 to implement the decision in *Fathauer v. United States*, 566 F.3d 1352 (Fed. Cir. 2009), in which the court determined that part-time employees are covered under the Sunday premium pay statute at 5 U.S.C. 5546(a).

Background

Under the *Fathauer* decision, the United States Court of Appeals for the Federal Circuit held that the definition