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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 302, 330, 335, 337, and 410

RIN 3206-AL04

Recruitment, Selection, and Placement (General)

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is revising the regulations on Federal vacancy announcements, reemployment priority list requirements, positions restricted to preference eligibles, the restriction on moving an employee immediately after a competitive appointment, the Career Transition Assistance Plan (CTAP), and the Interagency Career Transition Assistance Plan (ICTAP). This final rule clarifies the regulations, incorporates longstanding OPM policies, revises placement assistance programs for consistency and effectiveness, removes references to two expired interagency placement assistance programs, and reorganizes information for ease of reading.

DATES: Final rule effective March 3, 2011.

FOR FURTHER INFORMATION CONTACT: For subparts A, D, and E, contact Linda Watson by telephone at (202) 606-0830; TTY at (202) 418-3134; fax at (202) 606-0390; or e-mail at linda.watson@opm.gov. For all other subparts, contact Pam Galemore by telephone at (202) 606-0960; TTY at (202) 418-3134; fax at (202) 606-2329; or e-mail at pamela.galemore@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is revising the regulations in 5 CFR part 330 governing Federal vacancy announcements, the Reemployment Priority List (RPL), positions restricted

to preference eligibles, the restriction on moving an employee immediately after a competitive appointment, the Career Transition Assistance Plan (CTAP), and the Interagency Career Transition Assistance Plan (ICTAP).

On September 8, 2008, OPM published proposed regulations in the **Federal Register** (73 FR 51944) revising part 330 to clarify the regulations, incorporate longstanding OPM policies, revise placement assistance programs for consistency and effectiveness, remove references to two expired interagency placement assistance programs, and reorganize information for ease of reading. The Supplementary Information section of the September 8, 2008, proposed rule contains a discussion of the substantive revisions and changes. The 60-day comment period for the proposed regulations ended on November 7, 2008. During the comment period, OPM received comments from seven executive branch agencies, one legislative branch agency, two labor organizations, and one employee organization. We address the relevant comments received under the subpart headings below. The vast majority of comments received related to provisions in part 330 that were not proposed for revision and so were outside the scope of the proposed regulations. OPM is not responding to those comments, *i.e.*, those comments concerning current regulatory requirements and provisions that we did not propose to change. Although we are not addressing those comments in this final rule, we appreciate that the commenters thought additional clarification would be helpful in applying both continuing and revised part 330 provisions. With this in mind, we will include additional clarifying information both in guidance material accompanying this final regulation and in the Delegated Examining Operations Handbook, as appropriate.

General Comments

Overall, the agencies supported OPM's proposed revisions to part 330 as benefiting employees affected by downsizing actions, clarifying the existing regulations and making them more readable, and adding helpful information.

The employee organization asked whether the revised regulations would affect the Administrative Law Judge

(ALJ) Program. The ALJ Program is subject to regulations at 5 CFR part 930, subpart B. Under section 930.201(b), ALJs follow competitive service regulations unless otherwise stated in part 930. Because ALJs are above the GS-15 level, or equivalent, they are not subject to subpart F (the Career Transition Assistance Plan (CTAP)) and subpart G (the Interagency CTAP or ICTAP), which limit selection priority to the GS-15 level, or equivalent, or below. ALJs are specifically covered by subpart B, the Reemployment Priority List, in accordance with section 930.210(c)(1).

The legislative agency questioned the proposed definition of *agency* for the purposes of part 330 in section 330.101, which included the Government Printing Office (GPO). The commenter stated that OPM did not have authority to include the GPO under the *agency* definition because it is an agency in the legislative branch of the Federal Government, and the Presidential Memorandum dated September 12, 1995, directing the establishment of the career transition assistance programs under subparts F and G, CTAP and ICTAP, respectively, was limited to the internal management of the executive branch. The commenter stated that the GPO should not have to assist in the placement of displaced executive branch employees. The commenter also stated that the GPO does not object to inclusion under subpart B, the Reemployment Priority List.

OPM agrees in part and disagrees in part with the commenter's assertion concerning the applicability of part 330 to the GPO. President Cleveland, by an Adopting and Promulgating Order dated June 13, 1895, placed all GPO employees other than unskilled laborers or workmen and those appointed by and with the advice and consent of the Senate into the classified service, subject to the regulations of the Civil Service Commission, which became OPM in 1979. Although the 1895 Order placed GPO employees in the competitive service, we agree with the commenter that the 1995 Presidential Memorandum directing the establishment of career transition assistance programs was limited to the executive branch. Accordingly, we have redefined *agency* from the proposed section 330.602 and section 330.702 to mean an Executive agency as defined in 5 U.S.C. 105, *i.e.*, an Executive

department, a Government corporation, and an independent establishment. The revised definition excludes GPO employees and positions from coverage under subparts F and G, respectively, meaning the GPO is not required to provide selection priority to displaced executive branch employees, and executive branch agencies are not required to provide selection priority to displaced GPO employees. We have also revised section 330.404 to exclude GPO employees from the provisions of section 330.404 through section 330.407 that require placement assistance to preference eligibles separated by reduction in force because of a contracting-out decision made in accordance with Office of Management and Budget Circular A-76. We have not redefined *agency* in subpart B because OPM regulations regarding the RPL, which implement 5 U.S.C. 3315 and 8151, apply to the GPO per the 1895 Adopting and Promulgating Order.

One agency asked if there would be an implementation period for agencies to update their policies, procedures, forms, *etc.* To allow time for agencies to update and revise their policies and procedures to conform to the new regulatory requirements and to consider the new flexibilities, OPM is providing that the final regulations will be effective 4 months from the date of publication in the **Federal Register**. Agencies are required to provide OPM with a copy of their final CTAP plans in accordance with section 330.603(a).

One agency suggested that the regulations define an “excepted service agency” to help employees understand this term. This comment was made in response to the statement on page 51946 of the September 8, 2008, **Federal Register** notice about including entities with positions in the competitive service under subparts F and G. We are not adopting this suggestion because it is unnecessary and would not add to the clarity of this regulation. It is positions, not agencies per se, that are excepted from the competitive service, and title 5 of the United States Code already defines both the term “competitive service” and the term “excepted service” at 5 U.S.C. 2102 and 2103, respectively.

Subpart A—Filling Vacancies in the Competitive Service

One agency commented that, although the Supplementary Information for the proposed regulations indicated that Subpart A was modified to include requirements mandated by the Veterans Employment Opportunities Act (VEOA), the agency did not see any changes that related to VEOA. In fact, section 330.103(b) of the revised regulations is

intended to implement section 2 of the VEOA, codified at 5 U.S.C. 3304(f), by requiring that an agency notify OPM when filling any vacancy under its merit promotion procedures if it is accepting applications from outside its permanent competitive service workforce. We have also clarified the purpose of section 330.103 by adding that the information an agency provides to OPM is the vacancy announcement information for the particular vacancy.

One agency commented that recent legislation may have been enacted regarding protected genetic information. The commenter recommended adding genetic information to the Equal Employment Opportunity (EEO) statement suggested in section 330.104(a)(17). OPM is not adopting this suggestion; however, based on the agency’s comment, we have removed the proposed recommended EEO statement in section 330.104(a)(17) and replaced it with information as to where an agency can locate OPM’s recommended language for an EEO statement. Placing the recommended EEO statement in a central location allows OPM to readily update the statement with any changes or amendments to Federal employment discrimination law. Agencies may either use the recommended EEO statement located on OPM’s USAJOBS Web site (<http://www.usajobs.gov/eeo>) or develop its own EEO policy statement.

For the same reason stated above, OPM is removing the current recommended statement for Reasonable Accommodation in section 330.707(b)(14)(ii) (which was moved to section 330.104(b)(2) in the proposed and this final regulation) and replacing it with information as to where an agency can locate OPM’s recommended language for a Reasonable Accommodation statement. When interpretive changes to the Americans with Disabilities Act of 1990 occur, OPM will update the recommended language for a Reasonable Accommodation statement at a central location on OPM’s USAJOBS Web site (<http://www.usajobs.gov/raps>.) Agencies may either use the recommended language located on OPM’s Web site or develop its own Reasonable Accommodation policy statement.

One agency noted the incorrect Web address for USAJOBS in section 330.105. We have corrected the Web address to <http://www.usajobs.gov>.

Subpart B—Reemployment Priority List (RPL)

One agency objected to the proposed renaming of “priority consideration” to “placement priority” throughout subpart

B because the renamed term could give the impression that the agency is responsible for placing the employee, rather than the employee being responsible for seeking employment. OPM is retaining the revised term as proposed because the RPL, in fact, provides placement priority for RPL registrants over individuals from outside the agency’s permanent competitive service workforce.

Two labor organizations objected to the addition of the “undue interruption” standard to the definition of *qualified* in section 330.202. One organization was concerned about both the deletion of the reference to the *undue interruption* definition in 5 CFR 351.203 and the concept underlying the undue interruption provision. The other organization erroneously referred to the undue interruption provision as a new requirement in subpart B and stated that the 90-day standard for an undue interruption determination is not currently in part 351. (“*Undue interruption*” is defined in section 351.203 as a standard an agency may consider when placing an employee during a reduction in force. The standard may be used when the placement of an otherwise eligible employee could prevent completion of required work 90 days after the placement.) As stated in the Supplementary Information of the proposed rule, the undue interruption provision is an exception to RPL placement in the current regulation at section 330.207(d). The proposed change merely moved the substance of the exception to the *qualified* definition at the beginning of the subpart. Moving the undue interruption provision as an exception to the definition of *qualified* for RPL placement priority makes RPL placement priority consistent with qualifications for placement in a position under part 351. We agree, however, that retaining a specific cross-reference to the undue interruption definition in section 351.203 would provide a more thorough grounding for the provision and be helpful to agencies in making determinations. We have revised section 330.202 accordingly, returning the section 351.203 reference and deleting the parenthetical information that was taken from the section 351.203 definition.

One agency and two labor organizations were concerned about the proposed new provision in section 330.207(b) that allows agencies, at their discretion, to designate a different local commuting area for RPL eligibles when the agency will not have any competitive service positions remaining in the local commuting area. The agency

is concerned that, because no guidelines are provided in the regulation about when or why an agency would exercise this option, major discrepancies could arise in how RPL eligibles are treated among the various agencies. One labor organization recommended that agencies, instead of having discretion, be required to designate a different local commuting area because to leave to their discretion the designation of a different local commuting area would make this provision mere guidance, which agencies could disregard. OPM believes that each agency is in the best position to determine if and when it would be appropriate to use this flexibility. OPM believes that appropriate considerations would include the size and locations of the agency's workforce, available vacancies, and available funds. We have added these general criteria to the regulation in section 330.207(b) for agency consideration when establishing their policies, if they choose to implement this provision.

The other labor organization believes that an RPL eligible should be given the option of registering for expanded consideration in multiple local commuting areas if he or she is willing to cover the costs of relocation upon acceptance of a vacancy offer. OPM cannot adopt this suggestion. The Federal Travel Regulations (41 CFR part 302-2) require that an employee is entitled to relocation allowances if the agency determines the relocation is in the interest of the Government. Because 41 CFR 302-3.205 states that any relocation due to reduction in force is considered to be in the interest of the Government, and 41 CFR 302-3.206 provides that an agency may pay a relocation allowance to a re-employed employee separated by reduction in force or transfer of function, the agency would be required to reimburse the employee should the employee claim relocation expenses at a later date. Based on these considerations, OPM is retaining section 330.207(b) as proposed.

Proposed section 330.207(d) requires an agency to establish a fair and consistent policy for expanding the registration area for an employee whose RPL eligibility is based on recovery from a compensable work injury. One agency commented that section 330.207(d) does not include information regarding the circumstances that would be appropriate for expansion. Proposed section 330.207(d) merely added a requirement to the requirement in current section 330.206(b)(1) to expand consideration "at the time and in a manner as the agency determines will

provide the individual with maximum opportunities for consideration." The new requirement is for the agency to establish a fair and consistent policy for expanding consideration. Because Federal agencies range from under a hundred positions in one location to thousands of positions worldwide, OPM believes each agency is in the best position to determine if, when, and how it will expand consideration for its employees who have recovered from a compensable injury based on the location and availability of positions for the RPL registrant to exercise placement priority. However, we agree that including examples, such as agency size, geographic scope, and funding availability, would be helpful to agencies with establishing their policies and we have revised section 330.207(d) accordingly.

One agency commented that proposed section 330.208(a) is somewhat confusing, perhaps due to the length of the sentence, and offered revised language to separate the provisions into three sentences. We agree that the section could be clearer; however, to avoid redundancy, we revised section 330.208(a) to retain the events resulting in RPL eligibility within one sentence and separated into a second sentence the provision that an RPL eligible remains registered unless removed from the RPL for a reason specified in section 330.209. Section 330.208(a) as revised reads: "(a) RPL registration expires 2 years from the date of reduction in force separation under part 351 of this chapter, or 2 years from the date the agency registers the RPL eligible because of recovery from a compensable work injury under § 330.206(a)(3)(i) or (ii). An RPL eligible remains registered for the full 2-year period unless the registrant is removed from the RPL for a reason specified in § 330.209."

One agency commented that extending the duration of RPL eligibility in section 330.208(a) to 2 years for both tenure groups I and II will benefit the registrant, but will also prolong the need to check the RPL, ultimately creating more work. OPM disagrees with the agency's comment. Under section 330.210(b), the agency is required to check its RPL for registrants each time it fills a competitive service vacancy from outside its permanent competitive service workforce. Extending the eligibility period for tenure group II RPL registrants will not affect how often the agency checks its RPL.

One agency commented that section 330.208(b) provides OPM the authority to extend an RPL eligible's registration period when the eligible does not receive the 2 full years of placement

priority, but it does not indicate how or who notifies OPM of the situation. We agree that additional clarification is needed. We have added a new paragraph to section 330.208(b) allowing either the agency or the RPL eligible to request OPM approval to extend the registration period if the registrant was denied the full 2-year registration period because of administrative or clerical error.

One agency noted the typographical error in section 330.212(c)(2) in referencing section 330.210 instead of section 330.213. We have corrected the reference in this final rule.

One labor organization objected to the provisions of section 330.213(c) and (d) concerning the selection order of RPL placement priority candidates. The labor organization stated the methods create complicated and convoluted components that do not adequately serve RPL candidates in a timely fashion.

In relation to section 330.213(c), the proposed rule only changed the title of the section from "Rating and ranking" to "Numerical scoring." The regulatory provisions in the proposed rule are the same as those in the current regulation in section 330.207(c). Because only the title of the section changed and the rest of the provisions were not proposed for change, the comment concerning section 330.213(c) is outside the scope of the proposed rule.

The labor organization also objected to the addition of section 330.213(d), allowing an agency to use alternative rating and selection procedures (also called category rating) as prescribed in 5 U.S.C. 3319 and part 337 of 5 CFR for the same reason stated above. We are not deleting section 330.213(d) based on the labor organization's objection. We proposed to add the alternative rating provision at section 330.213(d) precisely because we believe it would provide for a less complicated method for agencies to determine the selection order for RPL placement priority candidates. Alternative rating has been established by statute, codified at 5 U.S.C. 3319, and implemented in part 337, as an acceptable method, in addition to assigning numeric scores, for assessing qualified candidates for jobs filled through competitive examination while preserving veterans' preference. Because agencies may have adopted alternative rating in their competitive examination process, we are providing the ability to use this method when determining selection order under the RPL.

One agency commented that it is unclear whether there is an advantage or benefit to amending section 330.213(e) to allow RPL registrants to apply

directly for RPL placement priority, stating that it will create additional work to track the RPL candidate's application. OPM is not revising section 330.213(e) based on the comment. We believe adding this flexibility, which is based on the employee-empowerment model used in CTAP and ICTAP, will be beneficial to both the agency and the RPL registrant by helping to ensure a successful placement. For example, the agency will consider only those RPL registrants who express their interest and availability by applying for the particular vacancy. The RPL registrant can exercise placement priority only for those vacancies in which he or she is interested, instead of being faced with either accepting a less desirable position or being removed from the RPL.

Subpart F—Agency Career Transition Assistance Plan (CTAP) for Local Surplus and Displaced Employees

In the **SUPPLEMENTARY INFORMATION** section of the proposed rule, OPM asked stakeholders to comment on the exceptions to CTAP and ICTAP selection priority. We received comments from three agencies. Two agencies believed the exceptions were appropriate, reasonable and comprehensive. One agency proposed to add in section 330.609 that an employee with reinstatement eligibility who was selected for a term appointment from a competitive examination certificate may be reinstated to a permanent appointment as an exception to CTAP selection priority. OPM is not adopting the proposal. An individual who accepted a term appointment is fully aware of the time-limited nature of the appointment. A CTAP eligible has, by definition, been determined to be in a surplus position and subject to displacement or has received notice of separation from the Federal service through no fault of his or her own. We believe a well-qualified CTAP eligible should retain selection priority for permanent positions over an individual who accepted a designated time-limited offer. However, we understand that a time-limited appointment may be the only option available to a CTAP eligible for continued employment within an agency during a reduction in force. For this reason, we have added paragraph (ee) to section 330.609 to provide an additional exception to applying CTAP selection priority. The new exception allows an agency to convert an employee's time-limited appointment in the competitive or excepted service to a permanent appointment in the competitive service if the employee accepted the time-limited appointment while a CTAP eligible.

One labor organization recommended restoring language in section 330.606(b)(1) that was deleted in the proposed rule. OPM is not adopting the recommendation. OPM proposed to delete the statement, "Selective and quality ranking factors cannot be so restrictive that they run counter to the goal of placing displaced employees" because it was unnecessary. We continue to believe the statement is unnecessary and, in fact, could be misconstrued. The goal of placing, or not placing, displaced employees is irrelevant to the establishment of selective and quality ranking factors. (Selective factors are knowledge, skills, abilities (KSAs), or special qualifications that are in addition to the minimum requirements in a qualification standard and are determined to be essential to perform the duties and responsibilities of a particular position. Quality ranking factors are KSAs that are expected to enhance performance in a position, but, unlike selective factors, are not essential for satisfactory performance. Quality ranking factors are used to evaluate and determine the best qualified of qualified applicants.) These factors are considered an employment practice and, therefore, must be developed in accordance with 5 CFR 300. Part 300 requires a job analysis to determine the job-related quality ranking factors, or selective factors, as applicable. The fact that placement assistance candidates may apply for the position has no relevance to their establishment or use. These factors are established for the position to be filled before the job is announced and apply to all individuals who apply to the job announcement. (For additional information on selective and quality ranking factors, see part E.6 of the *Operating Manual: Qualification Standards for General Schedule Positions* on OPM's Web site at <http://www.opm.gov>.)

One agency and one labor organization commented on the new provision in sections 330.606(c) and 330.704(c) allowing an agency to include the results of a structured scored interview when determining if a CTAP or an ICTAP eligible is well-qualified. Both the agency and the labor organization stated that structured interviews were too subjective for use in making well-qualified determinations. OPM disagrees with the commenters; however, we are deleting this provision as unnecessary from both sections in the final regulations. A scored structured interview is a valid assessment tool that involves eliciting, observing, evaluating, and scoring responses to pre-established

job-related questions. A structured interview, when used, is part of an agency's overall assessment process to differentiate the qualified from the highly- or well-qualified applicants for a particular position or group of positions. Because the structured interview is a component of the assessment process, we have determined it is not necessary to separately address this component from other components used in the process.

Subpart G—Interagency Career Transition Assistance Plan (ICTAP) for Displaced Employees

One agency and one labor organization commented on section 330.705(d)(2). This section allows an agency to make additional selections from an applicant pool previously established by a vacancy announcement that was open to ICTAP eligibles. The agency states the provision is confusing as written in that it implies the agency could readvertise the vacancy without accepting additional ICTAP eligibles' applications. The labor organization believes reissuing selection certificates without readvertising for ICTAP eligibles may invite the specter of inappropriate or suspect activity on the part of an agency in its execution of ICTAP. OPM is retaining the provision; however, we revised section 330.705(d)(2) for clarity. As stated in the **SUPPLEMENTARY INFORMATION** of the proposed rule, under current ICTAP regulations, an agency must determine if ICTAP eligibles are available whenever it makes a selection that is not an authorized exception to ICTAP. For example, an agency issues a vacancy announcement for one position for which no ICTAP eligibles apply. The agency makes a selection and appoints the selectee. The selectee resigns 2 weeks later. The agency's merit promotion plan allows it to re-issue the selection certificate containing other highly qualified candidates to make a second selection in this circumstance, but, under the current regulation, the agency would have to issue a new vacancy announcement to ensure no ICTAP eligibles are available before it could fill its position. This provision would allow the agency to fill the position from the applicant pool established by the original announcement under which ICTAP eligibles could apply. We see no reason to prohibit the agency from making the second selection in this limited circumstance.

One agency recommended that section 330.708 be revised to allow ICTAP selection priority candidates referred for selection on an agency

certificate to retain their priority until the certificate expires under agency policies. OPM is not adopting this recommendation because to do so would provide some ICTAP eligibles with 1 year of eligibility while providing others with more than 1 year, possibly on the same agency certificate. As noted in the **SUPPLEMENTARY INFORMATION** of the proposed rule, the proposed revision to section 330.708 was a clarification of, not a change to, existing policy. Also as noted in the **SUPPLEMENTARY INFORMATION**, an agency retains the option to select a displaced employee whose ICTAP eligibility has expired, provided no other ICTAP eligibles have selection priority for the vacancy.

One agency suggested section 330.710 retain the example from the current regulation in section 330.708(a)(2)(ii) that lists a Standard Form 50 as an example of documentation to establish ICTAP eligibility. We agree and have retained the Standard Form 50 as an example of proof of eligibility. Also, in reviewing section 330.710, we noted an oversight. The proposed provision requires an ICTAP eligible to submit one of the documents listed under the definition of *displaced* in section 330.702 to establish ICTAP selection priority. However, definition (2) of *displaced* lists former career or career-conditional employees separated by reduction in force under part 351 or removed under part 752 adverse action procedures; no “document” is included in definition (2). We have revised section 330.710 to correct this oversight.

The final regulation also includes minor edits for readability and finalizes the conforming changes in parts 302—Employment in the Excepted Service, 335—Promotion and Internal Placement, 337—Examining System, and 410—Training of OPM’s regulations to revise citations because of the movement of rules governing vacancy announcements from subpart G to subpart A. We also clarified in section 330.708 when ICTAP eligibility terminates for a Military Reserve Technician or National Guard Technician. By law in 5 U.S.C. 8337(h) and 8456, a Technician’s special annuity terminates upon appointment to a Government position, declination of an appointment, restoration to earning capacity, or recovery from the disability. We have added in section 330.708(f) that ICTAP eligibility for displaced Technicians, as described in section 330.702, terminates when the Technician no longer receives the special disability retirement annuity under 5 U.S.C. 3887(h) or 8456.

For the convenience of the reader, the final part 330 is published in its entirety.

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 would 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

5 CFR Parts 302, 335, and 337

Government employees.

5 CFR Part 330

Armed forces reserves, District of Columbia, Government employees.

5 CFR Part 410

Education, Government employees.

U.S. Office of Personnel Management.

John Berry,

Director.

■ Accordingly, OPM is amending 5 CFR parts 302, 330, 335, 337, and 410 as follows:

PART 302—EMPLOYMENT IN THE EXCEPTED SERVICE

■ 1. The authority citation for part 302 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 8151, E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); § 302.105 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 302.501 also issued under 5 U.S.C. 7701 *et seq.*

§ 302.106 [Amended]

■ 2. In § 302.106, remove “§ 330.707 of subpart G” and add, in its place, “part 330, subpart A”.

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

■ 3. Revise part 330 to read as follows:

Subpart A—Filling Vacancies in the Competitive Service

Sec.

330.101 Definitions.

330.102 Methods of filling vacancies.

330.103 Requirement to notify OPM.

330.104 Requirements for vacancy announcements.

330.105 Instructions on how to add a vacancy announcement to USAJOBS.

330.106 Funding.

Subpart B—Reemployment Priority List (RPL)

330.201 Purpose.

330.202 Definitions.

330.203 RPL eligibility.

330.204 Agency requirements and responsibilities.

330.205 Agency RPL applications.

330.206 RPL registration timeframe and positions.

330.207 Registration area.

330.208 Duration of RPL registration.

330.209 Removal from an RPL.

330.210 Applying RPL placement priority.

330.211 Exceptions to RPL placement priority.

330.212 Agency flexibilities.

330.213 Selection from an RPL.

330.214 Appeal rights.

Subpart C—[Reserved]

Subpart D—Positions Restricted to Preference Eligibles

330.401 Restricted positions.

330.402 Exceptions to restriction.

330.403 Positions brought into the competitive service.

330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.

330.405 Agency placement assistance.

330.406 OPM placement assistance.

330.407 Eligibility for the Interagency Career Transition Assistance Plan.

Subpart E—Restrictions To Protect Competitive Principles

330.501 Purpose.

330.502 General restriction on movement after competitive appointment.

330.503 Ensuring agency compliance with the principles of open competition.

330.504 Exception to the general restriction.

Subpart F—Agency Career Transition Assistance Plan (CTAP) for Local Surplus and Displaced Employees

330.601 Purpose.

330.602 Definitions.

330.603 Requirements for agency CTAPs.

330.604 Requirements for agency CTAP selection priority.

330.605 Agency responsibilities for deciding who is well-qualified.

330.606 Minimum criteria for agency definition of “well-qualified”.

330.607 Applying CTAP selection priority.

330.608 Other agency CTAP responsibilities.

330.609 Exceptions to CTAP selection priority.

330.610 CTAP eligibility period.

330.611 Establishing CTAP selection priority.

330.612 Proof of eligibility.

330.613 OPM’s role in CTAP.

Subpart G—Interagency Career Transition Assistance Plan (ICTAP) for Displaced Employees

330.701 Purpose.

330.702 Definitions.

330.703 Agency responsibilities for deciding who is well-qualified.

330.704 Minimum criteria for agency definition of “well-qualified”.

330.705 Applying ICTAP selection priority.

330.706 Other agency ICTAP responsibilities.

330.707 Exceptions to ICTAP selection priority.

- 330.708 ICTAP eligibility period.
 330.709 Establishing ICTAP selection priority.
 330.710 Proof of eligibility.
 330.711 OPM's role in ICTAP.

Subpart H—[Reserved]**Subpart I—[Reserved]****Subpart J—Prohibited Practices**

- 330.1001 Withdrawal from competition.

Subpart K—[Reserved]**Subpart L—[Reserved]**

Authority: 5 U.S.C. 1104, 1302, 3301, 3302, 3304, and 3330; E.O. 10577, 3 CFR, 1954–58 Comp., p. 218; Section 330.103 also issued under 5 U.S.C. 3327; Subpart B also issued under 5 U.S.C. 3315 and 8151; Section 330.401 also issued under 5 U.S.C. 3310; Subparts F and G also issued under Presidential Memorandum on Career Transition Assistance for Federal Employees, September 12, 1995; Subpart G also issued under 5 U.S.C. 8337(h) and 8456(b).

Subpart A—Filling Vacancies in the Competitive Service**§ 330.101 Definitions.**

(a) In this part:

Agency means:

- (1) An Executive department listed at 5 U.S.C. 101;
- (2) A military department listed at 5 U.S.C. 102;
- (3) A Government owned corporation in the executive branch;
- (4) An independent establishment in the executive branch as described at 5 U.S.C. 104; and
- (5) The Government Printing Office.

Component means the first major subdivision of an agency, separately organized, and clearly distinguished in work function and operation from other agency subdivisions (e.g., the Internal Revenue Service under the Department of the Treasury or the National Park Service under the Department of the Interior).

Local commuting area has the meaning given that term in § 351.203 of this chapter.

Permanent competitive service workforce and permanent competitive service employees mean agency employees serving under career or career-conditional appointments, in tenure group I or II, respectively.

Position change has the meaning given that term in § 210.102 of this chapter.

Rating of record has the meaning given that term in § 351.203 of this chapter.

Representative rate has the meaning given that term in § 351.203 of this chapter.

Tenure groups are described in § 351.501 of this chapter.

(b) In this subpart:

Vacancy means a vacant position in the competitive service, regardless of whether the position will be filled by permanent or time-limited appointment, for which an agency is seeking applications from outside its current permanent competitive service workforce.

§ 330.102 Methods of filling vacancies.

An agency may fill a vacancy in the competitive service by any method authorized in this chapter, including competitive appointment from a list of eligibles, noncompetitive appointment under special authority, reinstatement, transfer, reassignment, change to lower grade, or promotion. The agency must exercise its discretion in each personnel action solely on the basis of merit and fitness, without regard to political or religious affiliation, marital status, or race, and veterans' preference entitlements.

§ 330.103 Requirement to notify OPM.

An agency must provide the vacancy announcement information to OPM promptly when:

(a) Filling a vacancy for more than 120 days from outside the agency's current permanent competitive service workforce, as required by the Interagency Career Transition Assistance Plan, subpart G of this part, unless the action to be taken is listed in subpart G as an exception to that subpart;

(b) Filling any vacancy under the agency's merit promotion procedures when the agency will accept applications from outside its permanent competitive service workforce; and

(c) Filling a vacancy by open competitive examination, including direct hire procedures under part 337 of this chapter, or in the Senior Executive Service, as required by 5 U.S.C. 3327.

§ 330.104 Requirements for vacancy announcements.

(a) Each vacancy announcement must contain the following information:

- (1) Name of issuing agency;
- (2) Announcement number;
- (3) Position title, series, pay plan, and grade (or pay rate);
- (4) Duty location;
- (5) Number of vacancies;
- (6) Opening date and application deadline (closing date) and any other information concerning how receipt of applications will be documented, such as by date of receipt or postmark, and considered, such as by cut-off dates in open continuous announcements;
- (7) Qualification requirements, including knowledge, skills, and abilities or competencies;

- (8) Starting pay;
- (9) Brief description of duties;
- (10) Basis of rating;
- (11) What to file;
- (12) Instructions on how to apply;
- (13) Information on how to claim veterans' preference, if applicable;
- (14) Definition of "well-qualified," as required by subparts F and G of this part;

(15) Information on how candidates eligible under subparts F and G of this part may apply, including required proof of eligibility;

(16) Contact person or contact point;

(17) Equal employment opportunity statement (Agencies may use the recommended equal employment opportunity statement located on OPM's USAJOBS website.); and

(18) Reasonable accommodation statement.

(b)(1) An agency may use wording of its choice in its statement that conveys the availability of reasonable accommodation required by § 330.104(a)(18). In its reasonable accommodation statement, an agency may not list types of medical conditions or impairments appropriate for accommodation.

(2) Agencies may use the recommended reasonable accommodation statement located on OPM's USAJOBS website.

§ 330.105 Instructions on how to add a vacancy announcement to USAJOBS.

An agency can find the instructions to add a vacancy announcement to USAJOBS on OPM's Web site at <http://www.usajobs.gov>. An electronic file of the complete vacancy announcement must be included within USAJOBS.

§ 330.106 Funding.

Each year, OPM will charge a fee for the agency's share of the cost of providing employment information to the public and to Federal employees as authorized by 5 U.S.C. 3330(f).

Subpart B—Reemployment Priority List (RPL)**§ 330.201 Purpose.**

(a) The Reemployment Priority List (RPL) is a required component of an agency's placement programs to assist its current and former competitive service employees who will be or were separated by reduction in force (RIF) under part 351 of this chapter, or who have recovered from a compensable work-related injury after more than 1 year, as required by part 353 of this chapter. In filling vacancies, an agency must give its RPL registrants placement priority for most competitive service

vacancies before hiring someone from outside its own permanent competitive service workforce. An agency may choose to consider RPL placement priority candidates before other agency permanent competitive service employees under its Career Transition Assistance Plan (CTAP) established under subpart F of this part, after fulfilling agency obligations to its CTAP selection priority candidates.

(b) Agencies must use an RPL to give placement priority to their:

(1) Current competitive service employees with a specific notice of RIF separation or a Certification of Expected Separation issued under part 351 of this chapter;

(2) Former competitive service employees separated by RIF under part 351 of this chapter; and

(3) Former competitive service employees fully recovered from a compensable injury (as defined in part 353 of this chapter) after more than 1 year.

(c) All agency components within the local commuting area use a single RPL and are responsible for giving placement priority to the agency's RPL registrants.

(d) With prior OPM approval, an agency may operate an alternate placement program which satisfies the basic requirements of this subpart, including veterans' preference, as an exception to the RPL regulations under this subpart. This provision is limited to reemployment priority because of RIF separation and allows agencies to adopt different placement strategies that are effective for their programs and satisfy employee entitlements to reemployment priority.

§ 330.202 Definitions.

In this subpart:

Competitive area means a competitive area as described in § 351.402 of this chapter.

Competitive service appointment includes new appointments, reinstatements, reemployment, and transfers as defined in § 210.102 of this chapter, and conversions as defined in OPM's "Guide to Processing Personnel Actions."

Injury, in relation to the RPL, has the meaning given that term in § 353.102 of this chapter.

Overseas has the meaning given that term in § 210.102 of this chapter.

Qualified refers to an RPL registrant who:

(1) Meets OPM-established or -approved qualification standards and requirements for the position, including minimum educational requirements, and agency-established selective factors (as this term is used in OPM's

"Operating Manual: Qualification Standards for General Schedule Positions");

(2) Will not cause an undue interruption, as defined in § 351.203 of this chapter, that would prevent the completion of required work by the registrant 90 days after the registrant is placed in the position;

(3) Is physically qualified, with or without reasonable accommodation, to perform the duties of the position;

(4) Meets any special OPM-approved qualifying conditions for the position; and

(5) Meets any other applicable requirements for competitive service appointment.

RPL eligible means a current or former employee of the agency who meets the conditions in either paragraph (a) or (b) of § 330.203. As used in this subpart, "RPL eligible" and "eligible" are synonymous.

RPL placement priority candidate means an RPL registrant who is qualified and available for a specific agency vacancy.

RPL registrant means an RPL eligible who submitted a timely RPL application and who is registered on the agency's RPL. As used in this subpart, "RPL registrant" and "registrant" are synonymous.

Vacancy means any vacant position to be filled by a competitive service permanent or time-limited appointment.

§ 330.203 RPL Eligibility.

An employee must meet the conditions in either paragraph (a) or (b) of this section to be an RPL eligible.

(a) For eligibility based on part 351 of this chapter, the employee:

(1) Must be serving in an appointment in the competitive service in tenure group I or II;

(2) Must have received either a specific notice of separation or a Certification of Expected Separation under part 351 of this chapter that has not been cancelled, rescinded, or modified so that the employee is no longer under notice of separation;

(3) Must have received a rating of record of at least fully successful (Level 3) or equivalent as the most recent performance rating of record; and

(4) Must not have declined an offer under part 351, subpart G, of this chapter of a position with the same type of work schedule and with a representative rate at least as high as that of the position from which the employee will be separated.

(b) For eligibility based on part 353 of this chapter, the employee or former employee:

(1) Must be serving in, or separated from, an appointment in the competitive service in tenure group I or II;

(2) Must either have accepted a position at a lower grade or pay level in lieu of separation or have been separated because of a compensable injury or disability. (For the purposes of this subpart, any reference to the position from which an individual was or will be separated includes the position from which the RPL eligible accepted the lower graded or pay level position under this paragraph.);

(3) Must have fully recovered more than 1 year after compensation began; and

(4) Must have received notification from the Office of Workers' Compensation Programs, Department of Labor, that injury compensation benefits have ceased or will cease.

§ 330.204 Agency requirements and responsibilities.

(a) An agency must establish policies and maintain an RPL for each local commuting area in which the agency has RPL eligibles.

(b) An agency must give each RPL eligible information about its RPL program, including Merit Systems Protection Board appeal rights under § 330.214, when:

(1) The agency issues a RIF separation notice or a Certification of Expected Separation under part 351 of this chapter; or

(2) The employee accepts a position at a lower grade or pay level or is separated from the agency because of a compensable work-related injury.

(c) An agency must register an RPL eligible on the appropriate RPL no later than 10 calendar days after receiving the eligible's written application.

(d) Agencies must include in their RPL policies established under this subpart how they will assist RPL eligibles who:

(1) Request an RPL application;

(2) Request help in completing the RPL application; and

(3) Request help in identifying and listing on the RPL application those positions within the agency for which they are qualified and interested.

(e) An agency must give RPL registrants placement priority for personnel actions as described in § 330.210.

(f) An agency must not remove an individual from the RPL under § 330.209(a)(1), (b)(1), or (b)(2) without evidence (such as a Postal Service return receipt signed by addressee only) showing that the offer, inquiry, or scheduled interview was made in writing. The written offer, inquiry, or

scheduled interview must clearly state that failure to respond will result in removal from the RPL for positions at that grade or pay level and for positions at lower grades and pay levels for which registered.

§ 330.205 Agency RPL applications.

Agencies may develop their own application format which must, at a minimum:

(a) Allow an RPL eligible to register for positions at the same representative rate and work schedule (full-time, part-time, seasonal, or intermittent) as the position from which the RPL eligible was, or will be, separated; and

(b) Allow an RPL eligible to specify the conditions under which he or she will accept a position, including grades or pay levels, appointment type (permanent or time-limited), occupations (e.g., position classification series or career groups), and minimum number of hours of work per week, as applicable.

§ 330.206 RPL registration timeframe and positions.

(a) To register, an RPL eligible must:

(1) Meet the eligibility conditions under § 330.203(a) or (b);

(2) Complete an RPL application prescribed by the current or former agency and keep the agency informed of any significant changes in the information provided; and

(3) Submit the RPL application on or before the RIF separation date or, if an RPL eligible under § 330.203(b), within 30 calendar days after the:

(i) Date injury compensation benefits cease; or

(ii) Date the Department of Labor denies an appeal for continuation of injury compensation benefits.

(b) RPL eligibles may register and receive placement priority for positions for which they are qualified and that:

(1) Have a representative rate no higher than the position from which they were, or will be, separated unless the eligible was demoted as a tenure group I or II employee in a previous RIF. If the eligible was so demoted, the eligible can register for positions with a representative rate up to the representative rate of the position held on a permanent appointment immediately before the RIF demotion was effective;

(2) Have no greater promotion potential than the position from which they were, or will be, separated; and

(3) Have the same type of work schedule as the position from which they were, or will be, separated.

§ 330.207 Registration area.

(a) Except as provided in paragraphs (b) through (e) of this section, RPL registration is limited to the local commuting area in which the eligible was, or will be, separated.

(b) If the agency has, or will have, no competitive service positions remaining in the local commuting area from which the RPL eligible will be separated under part 351 of this chapter, the agency may designate a different local commuting area where there are continuing positions for the RPL eligible to exercise placement priority. The agency has sole discretion over whether to offer this option and which local commuting area to designate, taking into consideration the size and locations of its workforce, available vacancies, and available funds.

(c) If the RPL eligible agreed to transfer with his or her function under part 351 of this chapter but will be separated by RIF from the gaining competitive area, registration is limited to the RPL covering the gaining competitive area's local commuting area.

(d) For an individual who is eligible under § 330.203(b), registration is initially limited to the RPL covering the local commuting area of the position from which the employee was separated. The agency must establish a fair and consistent policy that permits RPL eligibles to expand their registration to available local commuting areas mutually acceptable to the RPL eligible and the agency, up to agency-wide as required by 5 U.S.C. 8151. (For example, an agency could consider the number and location(s) of its positions and funding availability when establishing its policies on expanding consideration.) In lieu of expanded registration, the agency policy may provide for the RPL eligible to elect to receive placement priority for the next best available position in the former local commuting area.

(e) If the RPL eligible was, or will be, separated from an overseas position (see part 301 of this chapter), RPL registration is limited to the local commuting area in which the eligible was, or will be, separated, unless:

(1) The agency approves a written request by the RPL eligible for registration in the local commuting area from which employed for overseas service, or in another area within the United States that is mutually acceptable to the eligible and the agency; or

(2) The agency has a formal program for rotating employees between overseas areas and the United States, and the RPL eligible's preceding and prospective overseas service would exceed the

maximum duration of an overseas duty tour in the rotation program. In this case, the eligible may register for a local commuting area within the United States that is mutually acceptable to the eligible and the agency.

§ 330.208 Duration of RPL registration.

(a) RPL registration expires 2 years from the date of reduction in force separation under part 351 of this chapter, or 2 years from the date the agency registers the RPL eligible because of recovery from a compensable work injury under § 330.206(a)(3)(i) or (ii). An RPL eligible remains registered for the full 2-year period unless the registrant is removed from the RPL for a reason specified in § 330.209.

(b)(1) OPM may extend the registration period when an RPL eligible does not receive a full 2 years of placement priority, for example, because of an agency's administrative or procedural error.

(2) Either the agency or the RPL eligible may request OPM to extend the registration period under paragraph (b)(1) of this section. The request must describe the administrative or procedural error that caused the RPL eligible to be registered for less than the full 2-year period. OPM may request additional information either from the agency or the RPL eligible in connection with any such request. OPM will notify both the agency and the RPL eligible of the decision to approve or deny an extension request. OPM's decision regarding an extension request is not subject to appeal under § 330.214.

§ 330.209 Removal from an RPL.

(a) An RPL registrant is removed from the RPL at all registered grades or pay levels if the registrant:

(1) Declines or fails to reply to the agency's inquiry about an RPL offer of a career, career-conditional, or excepted appointment without time limit for a position having the same type of work schedule and a representative rate at least as high as the position from which the registrant was, or will be, separated;

(2) Receives a written cancellation, rescission, or modification to:

(i) The RIF separation notice or Certification of Expected Separation so that the employee no longer meets the conditions for RPL eligibility in § 330.203(a); or

(ii) The notification of cessation of injury compensation benefits so that injury compensation benefits continue;

(3) Separates from the agency for any other reason (such as retirement, resignation, or transfer) before the RIF separation effective date. Registration continues if the RPL registrant retires on

or after the RIF separation effective date. This paragraph does not apply to an RPL registrant under § 330.203(b);

(4) Requests the agency to remove his or her name from the RPL;

(5) Is placed in a position without time limit at any grade or pay level within the agency;

(6) Is placed in a position under a career, career-conditional, or excepted appointment without time limit at any grade or pay level in any agency; or

(7) Leaves the area covered by an overseas RPL (see 5 CFR part 301) or is ineligible for continued overseas employment because of previous service or residence.

(b) An RPL registrant is removed from the RPL at registered grades or pay levels with a representative rate at and below the representative rate of a position offered by the agency if the offered position is below the last grade or pay level held and the registrant:

(1) Declines or fails to reply to the agency's inquiry about an RPL offer of a career, career-conditional, or excepted appointment without time limit for a position meeting the acceptable conditions shown on the RPL registrant's application; or

(2) Declines or fails to appear for a scheduled interview.

(c) An RPL registrant removed from the RPL under paragraph (b) of this section at lower grades or pay levels than the last grade or pay level held remains on the RPL for positions with a representative rate higher than the offered position up to the grade or pay level last held, unless registration expires or otherwise terminates.

(d) Declination of time-limited employment does not affect RPL eligibility.

§ 330.210 Applying RPL placement priority.

(a) RPL placement priority applies to:

(1) Permanent and time-limited positions to be filled by competitive service appointment; and

(2) The grade or pay level at which the agency fills the position. If a position is available at multiple grades or pay levels, placement priority applies at the grade or pay level at which the position is ultimately filled.

(b) An agency must not effect a permanent or time-limited competitive service appointment of another individual if there is an RPL placement priority candidate registered for the vacancy, unless the action is listed as an exception in § 330.211.

(c) An agency must document that there are no RPL placement priority candidates for the vacancy when requesting a competitive certificate of

eligibles under part 332 of this chapter. Similarly, an agency must offer the vacancy to any RPL placement priority candidate(s) before effecting an appointment under a noncompetitive appointing authority, such as under part 315 of this chapter.

(d) Once an agency has ensured there are no RPL placement priority candidates for a particular vacancy and documents in writing an employment offer that is accepted by another individual, the agency may fulfill that employment offer to that individual.

§ 330.211 Exceptions to RPL placement priority.

An agency may effect the following personnel actions as exceptions to § 330.210:

(a) Fill a vacancy with an employee of the agency's current permanent competitive service workforce through detail or position change, subject to the requirements of subpart F of this part;

(b) Appoint a 10-point preference eligible through an appropriate appointing authority;

(c) Appoint a current or former employee exercising restoration rights under part 353 of this chapter based on return from military service or recovery from a compensable injury or disability within 1 year;

(d) Appoint a current or former employee exercising other statutory or regulatory reemployment rights;

(e) Fill a specific position when all RPL placement priority candidates decline an offer of the position or fail to respond to a written agency inquiry about their availability;

(f) Convert an employee serving under an appointment that provides noncompetitive conversion eligibility to a competitive service appointment, including from:

(1) A Veterans Recruitment Appointment under part 307 of this chapter;

(2) An appointment under 5 U.S.C. 3112 and part 316 of this chapter of a veteran with a compensable service-connected disability of 30 percent or more; and

(3) An excepted service appointment under part 213 of this chapter, such as for persons with disabilities or in the Presidential Management Fellow Program, the Student Career Experience Program, or the Federal Career Intern Program;

(g) Reappoint without a break in service to the same position currently held by an employee serving under a temporary appointment of 1 year or less (only to another temporary appointment not to exceed 1 year or less);

(h) Extend an employee's temporary or term appointment up to the

maximum permitted by the appointment authority or as authorized by OPM; or

(i) Appoint an individual under an excepted service appointing authority.

§ 330.212 Agency flexibilities.

An agency may provide the following flexibilities within its written RPL policies established under this subpart:

(a) Allow RPL eligibles to register only for certain sub-areas of a local commuting area when the agency has components dispersed throughout a large commuting area. However, an agency cannot deny registration throughout the local commuting area if the RPL eligible requests it.

(b) Suspend an RPL registration for all positions, permanent and time-limited, if the agency is unable, through documented written means, to contact the RPL registrant; however, the agency must reactivate an RPL registration when the registrant submits an updated application or otherwise requests reactivation in writing. Registration suspension and reactivation do not change the expiration date of the original registration period set in § 330.208.

(c)(1) Modify the OPM or OPM-approved qualification standard used to determine if an RPL eligible is qualified for a position, provided that:

(i) Exception is applied consistently and equitably in filling a position;

(ii) RPL registrant meets any minimum educational requirements for the position; and

(iii) RPL registrant has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position, as determined by the agency.

(2) Any modification to the qualification standard under paragraph (c)(1) of this section does not authorize a waiver of the selection order required under § 330.213.

(d) Permit RPL eligibles to register for positions with work schedules different from the work schedule of the position from which they were, or will be, separated.

(e) Permit RPL registrants to update their qualifications or conditions for accepting positions during the RPL registration period. If an agency provides this flexibility in its RPL policies, the agency must update the RPL registrant's registration information within 10 calendar days of receipt of the registrant's written request. The updated registration information would apply only to those vacancies becoming available after the agency updates the RPL registrant's registration.

§ 330.213 Selection from an RPL.

(a) *Methods.* An agency must adopt one of the selection methods in paragraphs (b), (c), or (d) of this section for a single RPL. The agency may adopt the same method for each RPL it establishes or may vary the method by location, but it must adopt a written policy for each RPL it establishes and maintains. While an agency may not vary the method used for an individual vacancy, it may at any time change the selection method for all positions covered by a single RPL.

(b) *Retention standing order.* For each vacancy to be filled, the agency places qualified RPL placement priority candidates in tenure group and subgroup order in accordance with part 351 of this chapter. In making a selection, an agency may not pass over a candidate in tenure group I to select from tenure group II and, within a tenure group, may not pass over a candidate in a higher subgroup to select from a lower subgroup. Within a subgroup, an agency may select any candidate without regard to order of retention standing.

(c) *Numerical scoring.* (1) For each vacancy to be filled, the agency rates RPL placement priority candidates according to their job experience and education. The agency must use job-related evaluation criteria for the position to be filled that can distinguish differences in qualifications measured and must apply the criteria in a fair and consistent manner. The agency assigns the candidates a numerical score of at least 70 on a scale of 100, based on the evaluation criteria developed under this paragraph. The agency must grant 5 additional points to veterans' preference eligibles under 5 U.S.C. 2108(3)(A) and (B), and 10 additional points to veterans' preference eligibles under 5 U.S.C. 2108(3) (C) through (G).

(2) RPL placement priority candidates with an eligible numerical score are ranked in the following order:

(i) Veterans' preference eligibles having a compensable service-connected disability of 10 percent or more in the order of their augmented ratings, unless the position to be filled is a professional or scientific position at or above the GS-9 level, or equivalent; and

(ii) All other candidates in the order of their augmented ratings. At each score, candidates entitled to 10-point veterans' preference will be entered ahead of all other candidates, and those entitled to 5-point veterans' preference will be entered ahead of those candidates not entitled to veterans' preference.

(3) The agency must make its selection from among the highest three candidates available and may not pass over a veterans' preference eligible to select a nonpreference eligible.

(d) *Alternative rating and selection.* (1) For each vacancy to be filled, the agency may use alternative rating and selection procedures (also called category rating) as described in 5 U.S.C. 3319 and part 337 of this chapter. The agency assesses RPL placement priority candidates against job-related evaluation criteria and then places them into two or more pre-defined quality categories.

(2) To use this method, the agency must:

(i) Establish a system for evaluating RPL placement priority candidates that provides for two or more quality categories;

(ii) Define each quality category through job analysis conducted in accordance with the "Uniform Guidelines on Employee Selection Procedures" at 29 CFR part 1607 and part 300 of this chapter. Each quality category must have a clear definition that distinguishes it from other quality categories; and

(iii) Place candidates into the appropriate quality categories based upon their job-related competencies, knowledge, skills, and abilities.

(3) Veterans' preference must be applied as prescribed in 5 U.S.C. 3319(b) and (c)(2). Veterans' preference points as prescribed in paragraph (c)(1) of this section are not applied under this method.

(4) The agency must make its selection from the highest quality category in accordance with its category rating policy established under part 337 of this chapter.

(e) *Application-based procedure.* (1) An agency may adopt an application-based procedure which allows RPL registrants to apply directly for RPL placement priority under an advertised vacancy announcement. Before using this procedure, the agency must establish policies and procedures for:

(i) Informing RPL registrants of available vacancies;

(ii) Informing RPL registrants of acceptable application formats, including how to permanently change initial registration information and how to apply changes only to the specific vacancy announcement for which the application is made;

(iii) Determining the method under which the RPL registrant will be rated and ranked (paragraph (b), (c), or (d) of this section); and

(iv) Informing each RPL registrant who applies under this method whether

he or she was determined to be an RPL placement priority candidate and the outcome of the selection process, if the candidate was referred for selection.

(2) RPL registrants may not be removed from the RPL for failure to apply for a vacancy under this paragraph. Registration continues until it expires or the registrant is removed from the RPL under § 330.209.

§ 330.214 Appeal rights.

An RPL registrant who believes the agency violated his or her reemployment rights under this subpart by employing another person who otherwise could not have been appointed properly may appeal to the Merit Systems Protection Board under the Board's regulations in part 1200 of this chapter.

Subpart C—[Reserved]**Subpart D—Positions Restricted to Preference Eligibles****§ 330.401 Restricted positions.**

Under 5 U.S.C. 3310, competitive examinations for the positions of custodian, elevator operator, guard, and messenger (referred to in this subpart as *restricted positions*) are restricted to preference eligibles as long as a preference eligible is available. For more information on these restricted positions, refer to the OPM Delegated Examining Operations Handbook.

§ 330.402 Exceptions to restriction.

(a) An agency may fill a restricted position with a nonpreference eligible under the following circumstances:

(1) By competitive examination when no preference eligible applies;

(2) By position change (promotion, demotion, or reassignment) to a position in the organizational entity (*i.e.*, the part of an agency from which selections are normally made for promotion or reassignment to the position in question) in which the nonpreference eligible is employed;

(3) By reemployment in the agency where the nonpreference eligible was formerly employed when he or she is being appointed from the Reemployment Priority List under subpart B of this part;

(4) By reinstatement in the agency where the nonpreference eligible was formerly employed when he or she was last separated because of disability retirement; or

(5) By reappointment of certain temporary employees as provided for in part 316 of this chapter.

(b) Except as indicated in paragraph (a) of this section, OPM must authorize

any other agency noncompetitive action (e.g., under an authority specified in part 315 of this chapter) to fill a restricted position with a nonpreference eligible.

§ 330.403 Positions brought into the competitive service.

An agency may convert the appointment of a nonpreference eligible whose restricted position was brought into the competitive service under part 316 of this chapter, and who meets the requirements for conversion under part 315 of this chapter, to career or career conditional appointment.

§ 330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.

An individual agency and OPM both have additional responsibilities when the agency decides, in accordance with the Office of Management and Budget (OMB) Circular A-76, to contract out the work of a preference eligible who holds a restricted position. These additional responsibilities as described in §§ 330.405 and 330.406 are applicable if a preference eligible holds a competitive service position (other than in the Government Printing Office) that is:

- (a) A restricted position as designated in 5 U.S.C. 3310 and § 330.401; and
- (b) In tenure group I or II, as defined in § 351.501(b)(1) and (2) of this chapter.

§ 330.405 Agency placement assistance.

An agency that separates a preference eligible from a restricted position by reduction in force under part 351 of this chapter because of a contracting out situation covered in § 330.404 must, consistent with § 330.603, advise the employee of the opportunity to participate in available career transition programs. The agency is also responsible for:

- (a) Applying OMB's policy directives on the preference eligible's right of first refusal for positions that are contracted out to the private sector; and
- (b) Cooperating with State units as designated or created under title I of the Workforce Investment Act of 1998 to retain displaced preference eligibles for other continuing positions.

§ 330.406 OPM placement assistance.

OPM's responsibilities include:

- (a) Assisting agencies in operating positive placement programs, such as the Career Transition Assistance Plan, which is authorized by subpart F of this part;
- (b) Providing interagency selection priority through the Interagency Career Transition Assistance Plan, which is authorized by subpart G of this part; and

(c) Encouraging cooperation between local Federal activities to assist these displaced preference eligibles in applying for other Federal positions, including positions with the U.S. Postal Service.

§ 330.407 Eligibility for the Interagency Career Transition Assistance Plan.

(a) A preference eligible who is separated from a restricted position by reduction in force under part 351 of this chapter because of a contracting out situation covered in § 330.404 has interagency selection priority under the Interagency Career Transition Assistance Plan, which is authorized by subpart G of this part.

(b) A preference eligible covered by this subpart is eligible for the Interagency Career Transition Assistance Plan for 2 years following separation by reduction in force from a restricted position.

Subpart E—Restrictions To Protect Competitive Principles

§ 330.501 Purpose.

The restrictions in this subpart are designed to prevent circumvention of the open competitive examination system defined in Civil Service Rule 1.3 (5 CFR 1.3). These restrictions limit an appointee's immediate movement to another position after appointment from a competitive certificate of eligibles.

§ 330.502 General restriction on movement after competitive appointment.

(a) An agency must wait at least 90 days after an employee's latest nontemporary competitive appointment before the agency may take the following actions:

- (1) Promote an employee;
- (2) Transfer, reinstate, reassign, or detail an employee to a different position; or
- (3) Transfer, reinstate, reassign, or detail an employee to a different geographical area.

(b) Upon written request from an agency, OPM may waive the restriction against movement to a different geographical area when moving such an employee is consistent with open competition principles.

§ 330.503 Ensuring agency compliance with the principles of open competition.

OPM will review appointments made from competitive examinations and subsequent position changes to determine if agencies are complying with open competition principles. The fact that an agency waited 90 days to make the changes, as required under this subpart, is not an absolute protection. If OPM finds that an agency

has not complied with these principles, either in an individual instance or on a program-wide basis, OPM will order an agency to correct the situation.

§ 330.504 Exception to the general restriction.

The restrictions in this subpart do not apply to a person who is eligible for a competitive appointment from a certificate of eligibles under part 332 of this chapter.

Subpart F—Agency Career Transition Assistance Plan (CTAP) for Local Surplus and Displaced Employees

§ 330.601 Purpose.

(a) An agency's Career Transition Assistance Plan (CTAP) provides intra-agency selection priority for the agency's eligible surplus and displaced employees. This subpart sets forth minimum requirements for agency plans and establishes requirements for CTAP selection priority.

(b) Consistent with these regulations and at their discretion, an agency may supplement these requirements to expand career transition opportunities to its surplus and displaced workers.

(c) With prior OPM approval, an agency may operate an alternate placement program that satisfies the basic requirements of this subpart as an exception to CTAP selection priority under this subpart. This provision allows agencies to adopt different placement strategies that are effective for their programs while satisfying employee entitlements to selection priority.

§ 330.602 Definitions.

For purposes of this subpart:

Agency means an Executive agency as defined in 5 U.S.C. 105.

CTAP eligible means an agency surplus or displaced employee who has a current performance rating of record of at least fully successful (Level 3) or equivalent. As used in this subpart, "CTAP eligible" and "eligible" are synonymous.

CTAP selection priority candidate means a CTAP eligible who applied for and was determined to be well-qualified by the agency and whom the agency must select over any other applicant for the vacancy, unless the action to be taken is listed as an exception under § 330.609.

Displaced describes an agency employee in one of the following two categories:

- (1) A current career or career-conditional (tenure group I or II) competitive service employee at grade GS-15 (or equivalent) or below who:

(i) Received a reduction in force (RIF) separation notice under part 351 of this chapter and has not declined an offer under part 351, subpart G, of this chapter of a position with the same type of work schedule and a representative rate at least as high as that of the position from which the employee will be separated; or

(ii) Received a notice of proposed removal under part 752 of this chapter for declining a directed geographic relocation outside of the local commuting area (e.g., a directed reassignment or change in duty station).

(2) A current excepted service employee on an appointment without time limit at grade level GS-15 (or equivalent) or below who:

(i) Is covered by a law providing both noncompetitive appointment eligibility to, and selection priority for, competitive service positions; and

(ii) Received a RIF separation notice under part 351 of this chapter or a notice of proposed removal under part 752 of this chapter for declining a directed geographic relocation outside the local commuting area (e.g., a directed reassignment or a change in duty station).

Surplus describes an agency employee in one of the following three categories:

(1) A current career or career-conditional (tenure group I or II) competitive service employee at grade GS-15 (or equivalent) or below who received a Certification of Expected Separation under part 351 of this chapter or other official agency certification or notification indicating that the employee's position is surplus (for example, a notice of position abolishment or a notice of eligibility for discontinued service retirement).

(2) A current excepted service employee on an appointment without time limit at grade GS-15 (or equivalent) or below who:

(i) Is covered by a law providing both noncompetitive appointment eligibility to, and selection priority for, competitive service positions; and

(ii) Received a Certification of Expected Separation under part 351 of this chapter or other official agency certification or notification indicating that the employee's position is surplus (for example, a notice of position abolishment or a notice of eligibility for discontinued service retirement).

(3) A current excepted service employee on a Schedule A or B appointment without time limit at grade level GS-15 (or equivalent) or below who is in an agency offering CTAP selection priority to its excepted service employees and who:

(i) Received a Certification of Expected Separation under part 351 of this chapter or other official agency certification indicating that the employee is surplus (for example, a notice of position abolishment, or notice of eligibility for discontinued service retirement); or

(ii) Received a RIF notice of separation under part 351 of this chapter or a notice of proposed removal under part 752 of this chapter for declining a directed geographic relocation outside the local commuting area (e.g., a directed reassignment or a change in duty station).

Vacancy means a vacant competitive service position at grade GS-15 (or equivalent) or below to be filled for a total of 121 days or more, including all extensions, regardless of whether the agency issues a specific vacancy announcement.

§ 330.603 Requirements for agency CTAPs.

(a) Each agency must establish a CTAP for its surplus and displaced employees. Each agency must send its plan, and any modifications, to OPM, Employee Services, after approval by an authorized agency official.

(b) Each agency must uniformly and consistently apply its CTAP and these regulations to all surplus and displaced employees.

(c) In addition to a description of the agency's selection priority policies required by § 330.604, a CTAP must describe the agency's policies with regard to how it will provide career transition services to all its surplus and displaced agency employees, including excepted service and Senior Executive Service employees. The plan must describe:

(1) The types of career transition services the agency will provide;

(2) Policies on employees' and former employees' use of transition services and facilities, including:

(i) Excused absences for transition-related activities;

(ii) Access to services or facilities after separation;

(iii) Orientation sessions on career transition services and information as described in § 330.608(a) and (b), respectively;

(iv) Retraining policies;

(v) Access to agency CTAP services and resources by all employees, including those with disabilities, those in field offices, and those in remote sites;

(vi) Access to other Federal, State, and local resources available to support career transition for employees with disabilities; and

(vii) Availability of employee assistance programs and services.

(d) An agency's CTAP must also describe the agency's policies and procedures for its Reemployment Priority List established under subpart B of this part and the Interagency Career Transition Placement Plan established under subpart G of this part.

§ 330.604 Requirements for agency CTAP selection priority.

In addition to the overall requirements of § 330.603, an agency's CTAP must describe:

(a) How the agency will provide CTAP selection priority to surplus and displaced employees for vacancies in the local commuting area before selecting any other candidate from either within or outside the agency;

(b) Procedures for reviewing CTAP eligibles' qualifications and resolving qualification issues or disputes;

(c) Decisions involving discretionary areas under § 330.607 (such as whether excepted service employees will receive CTAP selection priority, priority of surplus versus displaced employees, designation of agency components, and selection priority beyond the local commuting area); and

(d) When and how the agency will inform its surplus and displaced employees about CTAP eligibility criteria, as required by § 330.608(b), how to apply for agency vacancies, and how to request CTAP selection priority.

§ 330.605 Agency responsibilities for deciding who is well-qualified.

(a) An agency must define what constitutes a well-qualified candidate for its specific vacancies, consistent with this subpart, and uniformly apply that definition to all CTAP eligibles being considered for the vacancy.

(b) An agency must conduct an independent second review and document the specific job-related reasons whenever a CTAP eligible is determined to be not well-qualified under the agency's definition. The agency must give the CTAP eligible the written results of this review as required by § 330.608(e).

§ 330.606 Minimum criteria for agency definition of "well-qualified".

(a) At a minimum, the agency must define "well-qualified" as having knowledge, skills, abilities, and/or competencies clearly exceeding the minimum qualification requirements for the vacancy. The agency definition may or may not equate to the highly or best qualified assessment criteria established for the vacancy; however, the agency definition of "well-qualified" must

satisfy the criteria in paragraph (b) of this section.

(b) Under an agency's definition of "well-qualified," the agency must be able to determine whether a CTAP eligible:

(1) Meets the basic eligibility requirements (including employment suitability requirements under part 731 of this chapter and any medical qualifications requirements), qualification standards (including minimum educational and experience requirements), and any applicable selective factors;

(2) Is physically qualified, with or without reasonable accommodation, to perform the essential duties of the position;

(3) Meets any special qualifying conditions of the position;

(4) Is able to satisfactorily perform the duties of the position upon entry; and

(5) At agency discretion, either:

(i) Rates at or above specified level(s) on all quality ranking factors; or

(ii) Rates above minimally qualified in the agency's rating and ranking process.

§ 330.607 Applying CTAP selection priority.

(a) An agency must not place any other candidate from within or outside the agency into a vacancy if there is an available CTAP selection priority candidate, unless the personnel action to be effected is an exception under § 330.609.

(b) In accordance with the conditions of part 300, subpart E, of this chapter, an agency may not procure temporary help services under that subpart until a determination is made that no CTAP eligible is available.

(c) CTAP selection priority applies to a vacancy that:

(1) Is at a grade or pay level with a representative rate no higher than the representative rate of the grade or pay level of the CTAP eligible's permanent position of record;

(2) Has no greater promotion potential than the CTAP eligible's permanent position of record;

(3) Is in the same local commuting area as the CTAP eligible's permanent position of record;

(4) Is filled during the CTAP eligible's eligibility period; and, if applicable,

(5) Is filled under the same excepted appointing authority as the CTAP eligible's permanent position of record if the CTAP eligible is an excepted service employee and the agency CTAP provides selection priority in the excepted service.

(d) An agency may take actions under § 335.102 of this chapter to place a permanent competitive service

employee into a vacancy if there are no CTAP eligible employees in the local commuting area or if no CTAP eligibles apply for the vacancy.

(e) An agency component may place a component employee within the local commuting area in the vacancy after the component applies CTAP selection priority to its employees.

(f) If there are two or more CTAP selection priority candidates for a vacancy, the agency may place any of them. An agency may decide the specific order of selection among CTAP selection priority candidates. For example, an agency may:

(1) Provide a displaced candidate higher priority than a surplus candidate; or

(2) Provide an internal component candidate higher priority than another component's candidate.

(g) After an agency makes the vacancy available to its CTAP eligibles and meets its obligation to any CTAP selection priority candidates, the agency may place into the vacancy any other permanent competitive service candidate from within its workforce, under appropriate staffing procedures.

(h) An agency may provide CTAP selection priority to eligible employees from another commuting area after fulfilling its obligation to CTAP selection priority candidates in the local commuting area.

(i) An agency may deny a CTAP eligible future selection priority if the eligible:

(1) Declines an offer of a permanent appointment at any grade or pay level in the competitive or excepted service; or

(2) Fails to respond within a reasonable period of time, as defined by the agency, to an offer of a permanent appointment at any grade or pay level in the competitive or excepted service.

(j) Before appointing an individual from outside the agency's permanent competitive service workforce, the agency must follow the requirements of subparts B and G of this part.

§ 330.608 Other agency CTAP responsibilities.

(a) An agency must make a career transition orientation session available to all agency surplus and displaced employees with information on selection priority under this subpart and subparts B and G. Such orientation sessions may be in person or web-based through an agency automated training system or intranet.

(b) An agency must give each agency CTAP eligible written information on selection priority under its plan, explaining how to locate and apply for

agency vacancies and request selection priority. The agency may meet this requirement by providing a copy of its CTAP established under § 330.603.

(c) An agency must take reasonable steps to ensure that agency CTAP eligibles have access to information on all vacancies, including how CTAP eligibles can apply, what proof of eligibility is required, and the agency definition of "well-qualified" for the vacancy.

(d) If the agency can document that there are no CTAP eligibles in a local commuting area, the agency need not post the vacancy for CTAP eligibles.

(e) An agency must provide a CTAP eligible who applied for a specific vacancy written notice of the final status of his or her application, including whether the eligible was determined to be well-qualified. The agency notice must include the results of the independent, second review under § 330.605(b), if applicable; whether another CTAP selection priority candidate was hired; whether the position was filled under an exception listed in § 330.609; and whether the recruitment was cancelled.

§ 330.609 Exceptions to CTAP selection priority.

An agency may take the following personnel actions as exceptions to § 330.607:

(a) Reemploy a former agency employee with regulatory or statutory reemployment rights, including the reemployment of an injured worker who either has been restored to earning capacity by the Office of Workers' Compensation Programs, Department of Labor, or has received a notice that his or her compensation benefits will cease because of full recovery from the disabling injury or illness;

(b) Reassign or demote an employee under part 432 or 752 of this chapter;

(c) Appoint an individual for a period limited to 120 or fewer days, including all extensions;

(d) Reassign agency employees between or among positions in the local commuting area (sometimes called job swaps) when there is no change in grade or promotion potential and no actual vacancy results;

(e) Convert an employee currently serving under an appointment providing noncompetitive conversion eligibility to a competitive service appointment, including from:

(1) A Veterans Recruitment Appointment under part 307 of this chapter;

(2) An appointment under 5 U.S.C. 3112 and part 316 of this chapter of a veteran with a compensable service-

connected disability of 30 percent or more; and

(3) Make an excepted service appointment under part 213 of this chapter, such as for persons with disabilities or in the Presidential Management Fellow Program, the Student Career Experience Program, or the Federal Career Intern Program;

(f) Effect a personnel action under, or specifically in lieu of, part 351 of this chapter;

(g) Effect a position change of an employee into a different position as a result of a formal reorganization, as long as the former position ceases to exist and no actual vacancy results;

(h) Assign or exchange an employee under a statutory program, such as subchapter VI of chapter 33 of title 5, United States Code (also called the Intergovernmental Personnel Act), or the Information Technology Exchange Program under chapter 37 of title 5, United States Code;

(i) Appoint an individual under an excepted service appointing authority;

(j) Effect a position change of an employee within the excepted service;

(k) Detail an employee within the agency;

(l) Promote an employee for a period limited to 120 or fewer days, including all extensions;

(m) Effect a position change of a surplus or displaced employee in the local commuting area;

(n) Effect a position change of an employee under 5 U.S.C. 8337 or 8451 to allow continued employment of an employee who is unable to provide useful and efficient service in his or her current position because of a medical condition;

(o) Effect a position change of an employee to a position that constitutes a reasonable offer as defined in 5 U.S.C. 8336(d) and 8414(b);

(p) Effect a position change of an employee resulting from a reclassification action (such as accretion of duties or an action resulting from application of new position classification standards);

(q) Promote an employee to the next higher grade or pay level of a designated career ladder position;

(r) Recall a seasonal or intermittent employee from nonpay status;

(s) Effect a position change of an injured or disabled employee to a position in which he or she can be reasonably accommodated;

(t) Effect a personnel action pursuant to the settlement of a formal complaint, grievance, appeal, or other litigation;

(u) Reassign or demote an employee under § 315.907 of this chapter for failure to complete a supervisory or managerial probationary period;

(v) Retain an individual whose position is brought into the competitive service under part 316 of this chapter and convert that individual, when applicable, under part 315 of this chapter;

(w) Retain an employee covered by an OPM-approved variation under Civil Service Rule 5.1 (5 CFR 5.1);

(x) Reemploy a former agency employee who retired under a formal trial retirement and reemployment program and who requests reemployment under the program's provisions and applicable time limits;

(y) Extend a time-limited promotion or appointment up to the maximum period allowed (including any OPM-approved extensions beyond the regulatory limit on the time-limited promotion or appointment), if the original action was made subject to CTAP selection priority and the original announcement or notice stated that the promotion or appointment could be extended without further announcement;

(z) Transfer an employee between agencies under appropriate authority during an interagency reorganization, interagency transfer of function, or interagency mass transfer;

(aa) Appoint a member of the Senior Executive Service into the competitive service under 5 U.S.C. 3594;

(bb) Transfer an employee voluntarily from one agency to another under a Memorandum of Understanding or similar agreement under appropriate authority resulting from an interagency reorganization, interagency transfer of function, or interagency mass transfer, when both the agencies and the affected employee agree to the transfer;

(cc) Reassign an employee whose position description or other written mobility agreement provides for reassignment outside the commuting area as part of a planned agency rotational program; or

(dd) Transfer or a position change of an employee under part 412 of this chapter.

(ee) Convert an employee's time-limited appointment in the competitive or excepted service to a permanent appointment in the competitive service if the employee accepted the time-limited appointment while a CTAP eligible.

§ 330.610 CTAP eligibility period.

(a) CTAP eligibility begins on the date the employee meets the definition of *surplus* or *displaced* in § 330.602.

(b) CTAP eligibility ends on the date the employee:

(1) Separates from the agency either voluntarily or involuntarily;

(2) Receives a notice rescinding, canceling, or modifying the notice which established CTAP eligibility so that the employee no longer meets the definition of *surplus* or *displaced*;

(3) Is placed in another position within the agency at any grade or pay level, either permanent or time-limited, before the agency separates the employee; or

(4) Is appointed to a career, career-conditional, or excepted appointment without time limit in any agency at any grade or pay level.

§ 330.611 Establishing CTAP selection priority.

(a) CTAP selection priority for a specific agency vacancy begins when:

(1) The CTAP eligible submits all required application materials, including proof of eligibility, within agency-established timeframes; and,

(2) The agency determines the eligible is well-qualified for the vacancy.

(b) An agency may allow CTAP eligible employees to become CTAP selection priority candidates for positions in other local commuting areas only if there are no CTAP selection priority candidates within the local commuting area of the vacancy.

(c) An agency may deny future CTAP selection priority for agency positions if the CTAP eligible declines an offer of permanent appointment at any grade level (whether it is a competitive or excepted appointment).

§ 330.612 Proof of eligibility.

(a) The CTAP eligible must submit a copy of one of the documents listed under the definition of *displaced* or *surplus* in § 330.602 to establish selection priority under § 330.611.

(b) The CTAP eligible may also submit a copy of a RIF notice with an offer of another position, accompanied by the signed declination of the offer. The RIF notice must state that declination of the offer will result in separation under RIF procedures.

§ 330.613 OPM's role in CTAP.

OPM has oversight of CTAP and may conduct reviews of agency compliance and require corrective action at any time.

Subpart G—Interagency Career Transition Assistance Plan (ICTAP) for Displaced Employees

§ 330.701 Purpose.

The Interagency Career Transition Assistance Program (ICTAP) provides eligible displaced Federal employees with interagency selection priority for vacancies in agencies that are filling positions from outside their respective

permanent competitive service workforces. The ICTAP selection priority does not apply in the ICTAP eligible's current or former agency and it does not prohibit movement of permanent competitive service employees within an agency, as permitted by subpart F of this part. This subpart establishes requirements for ICTAP selection priority.

§ 330.702 Definitions.

In this subpart:

Agency means an Executive agency as defined in 5 U.S.C. 105.

Displaced describes an individual in one of the following categories:

(1) A current career or career-conditional (tenure group I or II) competitive service employee of any agency at grade GS-15 (or equivalent) or below whose current performance rating of record is at least fully successful (Level 3) or equivalent and who:

(i) Received a reduction in force (RIF) separation notice under part 351 of this chapter and has not declined an offer under part 351, subpart G, of this chapter of a position with the same type of work schedule and a representative rate at least as high as that of the position from which the employee will be separated; or

(ii) Received a notice of proposed removal under part 752 of this chapter for declining a directed geographic relocation outside the local commuting area (e.g., a directed reassignment or a change in duty station).

(2) A former career or career-conditional (tenure group I or II) competitive service employee of any agency at grade GS-15 (or equivalent) or below whose last performance rating of record was at least fully successful (Level 3) or equivalent who was either:

(i) Separated by RIF under part 351 of this chapter and did not decline an offer under part 351, subpart G, of this chapter of a position with the same type of work schedule and a representative rate at least as high as that of the position from which the employee was separated; or

(ii) Removed under part 752 of this chapter for declining a directed geographic relocation outside the local commuting area (e.g., a directed reassignment or a change in duty station).

(3) A former career or career-conditional employee of any agency who was separated because of a compensable work-related injury or illness as provided under 5 U.S.C. chapter 81, subchapter I, whose compensation was terminated and who has received certification from the former employing agency that it is

unable to place the employee as required by part 353 of this chapter.

(4) A former career or career-conditional (tenure group I or II) competitive service employee of any agency who retired with a disability annuity under 5 U.S.C. 8337 or 8451 and who has received notification from OPM that the disability annuity has been or will be terminated.

(5) A former Military Reserve Technician or National Guard Technician receiving a special disability retirement annuity under 5 U.S.C. 8337(h) or 8456 and who has certification of such annuity from the military department or National Guard Bureau.

(6) A current or former excepted service employee on an appointment without time limit at grade GS-15 (or equivalent) or below whose current or last performance rating of record is or was at least fully successful (Level 3) or equivalent and who:

(i) Has been provided by law with both noncompetitive appointment eligibility and selection priority for competitive service positions; and

(ii) Has received a RIF separation notice under part 351 of this chapter or notice of proposed removal under part 752 of this chapter for declining a directed geographic relocation outside the local commuting area (e.g., a directed reassignment or a change in duty station) or has been separated by RIF procedures or removed for declining a geographic relocation outside the local commuting area.

ICTAP eligible means an individual who meets the definition of *displaced*. As used in this subpart, "ICTAP eligible" and "eligible" are synonymous.

ICTAP selection priority candidate means an ICTAP eligible who applied for a vacancy, was determined by the agency to be well-qualified for that vacancy, and who the agency must select over any other candidate from outside the agency's current competitive service workforce for the vacancy, unless the action to be taken is listed as an exception under § 330.707.

Vacancy means a vacant competitive service position at grade GS-15 (or equivalent) or below to be filled for 121 days or more, including extensions.

§ 330.703 Agency responsibilities for deciding who is well-qualified.

(a) Agencies must define "well-qualified" for their specific vacancies, consistent with this subpart, and uniformly apply that definition to all ICTAP eligibles being considered for the vacancy.

(b) Agencies must conduct an independent second review and

document the specific job-related reasons whenever an ICTAP eligible is determined to be not well-qualified for the vacancy under the agency's definition. An agency must give the ICTAP eligible the written results of this review as required by § 330.706(d).

§ 330.704 Minimum criteria for agency definition of "well-qualified".

(a) At a minimum, agencies must define "well-qualified" as having knowledge, skills, abilities, and/or competencies clearly exceeding the minimum qualification requirements for the vacancy. The agency definition may or may not equate to the highly or best qualified assessment criteria established for the vacancy; however, the agency definition of "well-qualified" must satisfy the criteria in paragraph (b) of this section.

(b) Under an agency's definition of "well-qualified," the agency must be able to determine whether an ICTAP eligible:

(1) Meets the basic eligibility requirements (including employment suitability requirements under part 731 of this chapter and any medical qualification requirements), qualification standards (including minimum educational and experience requirements), and any applicable selective factors;

(2) Is physically qualified, with or without reasonable accommodation, to perform the essential duties of the position;

(3) Meets any special qualifying conditions of the position;

(4) Is able to satisfactorily perform the duties of the position upon entry; and

(5) At agency discretion, either:

(i) Rates at or above specified level(s) on all quality ranking factors; or

(ii) Rates above minimally qualified in the agency's rating and ranking process.

§ 330.705 Applying ICTAP selection priority.

(a) An agency must not appoint any candidate from outside its permanent competitive service workforce if there is an ICTAP selection priority candidate available for the vacancy, unless the personnel action to be effected is an exception under § 330.707.

(b) ICTAP selection priority applies to a vacancy that:

(1) Is at a grade or pay level with a representative rate no higher than the representative rate of the grade or pay level of the ICTAP eligible's current or last permanent position of record;

(2) Has no greater promotion potential than the ICTAP eligible's current or last permanent position of record;

(3) Is in the same local commuting area as the ICTAP eligible's current or last permanent position of record; and

(4) Is filled during the ICTAP eligible's eligibility period.

(c) An agency may appoint any ICTAP selection priority candidate for a vacancy.

(d)(1) After an agency announces the vacancy and meets its obligation to any ICTAP selection priority candidates, the agency may appoint any other candidate from outside its current permanent competitive service workforce, under appropriate staffing procedures.

(2) An agency may make additional selections or reissue selection certificates in accordance with its merit promotion program without readvertising for ICTAP eligibles only if the additional selections are made from the applicant pool established by the original vacancy announcement, including readvertisements for the same vacancy, under which ICTAP eligibles had an opportunity to apply.

(e) An agency may deny an ICTAP eligible future selection priority for vacancies in that agency if the ICTAP eligible:

(1) Declines an offer of a permanent appointment at any grade or pay level in the competitive or excepted service; or

(2) Fails to respond within a reasonable period of time, as defined by the agency, to an offer or official inquiry of availability for a permanent appointment at any grade or pay level in the competitive or excepted service.

(f) An agency may deny an ICTAP eligible future selection priority for a position previously obtained through ICTAP if the eligible was terminated or removed from that position under part 432 or 752 of this chapter.

§ 330.706 Other agency ICTAP responsibilities.

(a) Before appointing any other candidate from outside the agency's permanent competitive service workforce, the agency must first fulfill its obligation to any employees entitled to selection priority under subparts B and F of this part.

(b) In accordance with the conditions of part 300, subpart E, of this chapter, an agency may not procure temporary help services under that subpart until a determination is made that no ICTAP eligible is available.

(c) An agency must announce all vacancies it intends to fill from outside its permanent competitive service workforce. Vacancy announcements must meet the requirements of subpart A of this part.

(d) An agency must provide an ICTAP eligible who applied for a specific

vacancy written notice of the final status of his or her application, including whether the eligible was determined to be well-qualified. The agency notice must include the results of the independent second review under § 330.703(b), if applicable; whether another ICTAP selection priority candidate was hired; whether the position was filled under an exception listed in § 330.707; and whether the recruitment was cancelled.

§ 330.707 Exceptions to ICTAP selection priority.

An agency may take the following personnel actions as exceptions to § 330.705:

(a) Place a current or reinstate a former agency employee with RPL selection priority under subpart B of this part;

(b) Effect a position change of a current permanent competitive service agency employee;

(c) Appoint a 10-point veteran preference eligible through an appropriate appointing authority;

(d) Reemploy a former agency employee with regulatory or statutory reemployment rights, including the reemployment of an injured worker who either has been restored to earning capacity by the Office of Workers' Compensation Programs, Department of Labor, or has received a notice that his or her compensation benefits will cease because of recovery from disabling injury or illness;

(e) Appoint an individual for a period limited to 120 or fewer days, including all extensions;

(f) Effect a personnel action under, or specifically in lieu of, part 351 of this chapter;

(g) Appoint an individual under an excepted service appointing authority;

(h) Convert an employee serving under an appointment that provides noncompetitive conversion eligibility to a competitive service appointment, including from:

(1) A Veterans Recruitment Appointment under part 307 of this chapter;

(2) An appointment under 5 U.S.C. 3112 and part 316 of this chapter of a veteran with a compensable service-connected disability of 30 percent or more; and

(3) An excepted service appointment under part 213 of this chapter, such as for persons with disabilities or in the Presidential Management Fellow Program, the Student Career Experience Program, or the Federal Career Intern Program;

(i) Transfer an employee between agencies under appropriate authority

during an interagency reorganization, interagency transfer of function, or interagency mass transfer;

(j) Reemploy a former agency employee who retired under a formal trial retirement and reemployment program and who requests reemployment under the program's provisions and applicable time limits;

(k) Effect a personnel action pursuant to the settlement of a formal complaint, grievance, appeal, or other litigation;

(l) Extend a time-limited appointment up to the maximum period allowed (including any OPM-approved extension past the regulatory limit on the time-limited appointment), if the original action was made subject to ICTAP selection priority and the original vacancy announcement stated that the appointment could be extended without further announcement;

(m) Reappoint a former agency employee into a hard-to-fill position requiring unique skills and experience to conduct a formal skills-based agency training program;

(n) Retain an individual whose position is brought into the competitive service under part 316 of this chapter and convert that individual, when applicable, under part 315 of this chapter;

(o) Retain an employee covered by an OPM-approved variation under Civil Service Rule 5.1 (5 CFR 5.1);

(p) Appoint an appointee of the Senior Executive Service into the competitive service under 5 U.S.C. 3594;

(q) Assign or exchange an employee under a statutory program, such as subchapter VI of chapter 33 of title 5, United States Code (also called the Intergovernmental Personnel Act), or the Information Technology Exchange Program under chapter 37 of title 5, United States Code;

(r) Detail an employee to another agency;

(s) Transfer employees under an OPM-approved interagency job swap plan designed to facilitate the exchange of employees between agencies to avoid or minimize involuntary separations;

(t) Transfer or reinstate an ICTAP eligible who meets the agency's definition of "well-qualified";

(u) Transfer an employee voluntarily from one agency to another under a Memorandum of Understanding or similar agreement under appropriate authority resulting from an interagency reorganization, interagency transfer of function, or interagency realignment, when both the agencies and the affected employee agree to the transfer; or

(v) Transfer or a position change of an employee under part 412 of this chapter.

§ 330.708 ICTAP eligibility period.

(a) ICTAP eligibility begins on the date the employee or former employee meets the definition of *displaced* in § 330.702.

(b) ICTAP eligibility ends 1 year from the date of:

(1) Separation by RIF under part 351 of this chapter;

(2) Removal by the agency under part 752 of this chapter for declining a directed geographic relocation outside the local commuting area (*e.g.*, a directed reassignment or a change in duty station);

(3) Agency certification that it cannot place the employee under part 353 of this chapter; or

(4) OPM notification that an employee's disability annuity has been, or will be, terminated.

(c) ICTAP eligibility ends 2 years after RIF separation if eligible under subpart D of this part.

(d) ICTAP eligibility also ends on the date the eligible:

(1) Receives a notice rescinding, canceling, or modifying the notice which established ICTAP eligibility so that the employee no longer meets the definition of *displaced* in § 330.702;

(2) Separates from the agency for any reason before the RIF or removal effective date; or

(3) Is appointed to a career, career-conditional, or excepted appointment without time limit in any agency at any grade or pay level.

(e) OPM may extend the eligibility period when an ICTAP eligible does not receive a full 1 year (or 2 years under subpart D of this part) of eligibility, for example, because of administrative or procedural error.

(f) ICTAP eligibility for a former Military Reserve Technician or National Guard Technician described in § 330.702 ends when the Technician no longer receives the special disability retirement annuity under 5 U.S.C. 8337(h) or 8456.

§ 330.709 Establishing ICTAP selection priority.

ICTAP selection priority for a specific vacancy begins when:

(a) The ICTAP eligible submits all required application materials, including proof of eligibility, within agency-established timeframes; and

(b) The agency determines the eligible is well-qualified for the vacancy.

§ 330.710 Proof of eligibility.

(a) The ICTAP eligible must submit a copy of one of the documents listed under paragraphs (1) or (3) through (6) of the definition of *displaced* in § 330.702, as applicable, to establish

selection priority under § 330.709. To establish selection priority under the paragraph (2) of the definition of *displaced* in § 330.702, the ICTAP eligible must submit documentation of the separation or removal, as applicable, for example, the Notification of Personnel Action, SF 50.

(b) The ICTAP eligible may also submit a copy of the RIF notice with an offer of another position accompanied by the signed declination of that offer. The RIF notice must state that declination of the offer will result in separation under RIF procedures.

§ 330.711 OPM's role in ICTAP.

OPM has oversight of ICTAP and may conduct reviews of agency compliance and require corrective action at any time.

Subpart H—[Reserved]**Subpart I—[Reserved]****Subpart J—Prohibited Practices****§ 330.1001 Withdrawal from competition.**

An applicant for competitive examination, an eligible on a register, and an officer or employee in the executive branch of the Government may not persuade, induce, or coerce, or attempt to persuade, induce, or coerce, directly or indirectly, a prospective applicant to withhold filing application, or an applicant or eligible to withdraw from competition or eligibility, for a position in the competitive service, for the purpose of improving or injuring the prospects of an applicant or eligible for appointment. OPM will cancel the application or eligibility of an applicant or eligible who violates this section, and will impose such other penalty as it considers appropriate.

Subpart K—[Reserved]**Subpart L—[Reserved]****PART 335—PROMOTION AND INTERNAL PLACEMENT**

■ 4. The authority citation for part 335 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3330; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; 5 U.S.C. 3304(f), and Pub. L. 106–117.

■ 5. In § 335.105, remove “§ 330.707 of subpart C” and add, in its place, “part 330, subpart A”.

PART 337—EXAMINING SYSTEM

■ 6. The authority citation for part 337 continues to read as follows:

Authority: 5 U.S.C. 1104(a), 1302, 2302, 3301, 3302, 3304, 3319, 5364; E.O. 10577,

3 CFR 1954–1958 Comp., p. 218; 33 FR 12423, Sept. 4, 1968; and 45 FR 18365, Mar. 21, 1980; 116 Stat. 2135, 2290; and 117 Stat. 1392, 1665.

§ 337.203 [Amended]

■ 7. In § 337.203, remove “subpart G” and add, in its place, “subpart A”.

PART 410—TRAINING

■ 8. The authority citation for part 410 continues to read as follows:

Authority: 5 U.S.C. 4101, *et seq.*; E.O. 11348, 3 CFR, 1967 Comp., p. 275.

§ 410.307 [Amended]

■ 9. In § 410.307:

■ a. In paragraph (c)(3), remove the phrase “5 CFR 330.604(b) and (f)” and add in its place the phrase, “5 CFR 330.602”.

■ b. In paragraph (c)(4), remove the phrase “5 CFR 330.602” and add in its place the phrase, “5 CFR part 330, subpart F”.

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DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 920**

[Doc. No. AMS–FV–08–0085; FV08–920–3 FIR]

Kiwifruit Grown in California; Changes to District Boundaries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that removed the grower district boundaries contained in the administrative rules and regulations of the kiwifruit marketing order (order). The interim rule removed regulatory language referring to eight grower districts from the order's administrative rules and regulations to make them consistent with the recently amended order provisions, which now provide for three grower districts.

DATES: *Effective Date:* Effective November 4, 2010.

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