

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 213 AND 315

RIN 3206-AJ28

#### Excepted Service; Career and Career-Conditional Employment

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim regulations with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations to implement the staffing provisions of the Federal Career Intern Program. This program will serve to assist agencies in recruiting and attracting exceptional men and women who have a variety of experience, academic disciplines, or competencies necessary for the effective analysis and execution of public programs.

**DATES:** This interim rule is effective December 14, 2000. Comments must be received on or before January 16, 2001.

**ADDRESSES:** Send or deliver written comments to: Carol J. Okin, Associate Director for Employment, Office of Personnel Management, Room 6500, 1900 E Street, NW., Washington, DC 20415-9000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Suzy Barker, [smbarker@opm.gov](mailto:smbarker@opm.gov); Ms. Karen Jacobs, [kkjacobs@opm.gov](mailto:kkjacobs@opm.gov); or Mr. Mike Mahoney, [mjmahone@opm.gov](mailto:mjmahone@opm.gov); on 202-606-0830 or FAX (202) 606-0390.

**SUPPLEMENTARY INFORMATION:** On July 6, 2000, President Clinton signed Executive Order 13162 authorizing the establishment of the Federal Career Intern Program to assist agencies in recruiting and attracting exceptional individuals with a variety of experience, academic disciplines, or competencies necessary for the effective analysis and execution of public programs. Agencies

have the authority to recruit from a variety of sources to locate candidates that would most likely meet their mission and needs. The executive order tasked OPM to develop appropriate procedures for the recruitment, screening, placement and continuing career development for the Career Interns. These procedures must conform to the merit systems principles and assure equal employment opportunity and the application of appropriate veterans' preference criteria.

The program is intended to be used for grades GS-5, 7, and 9 (and equivalent) positions or other trainee positions appropriate for the program. Agencies must request OPM approval to cover additional grades to meet unique or specialized needs. For those positions subject to the *Luevano* Consent Decree, agencies will be required to use those assessment tools permitted under the decree. Interns will be appointed in the excepted service (Schedule B) for a period not to exceed 2 years, unless extended up to 1 additional year with the approval of OPM. Upon successful completion of the internships, the interns will be eligible for noncompetitive conversion to career or career-conditional appointments. Throughout the internship, the employee must participate in a formal training program and job assignments to develop competencies appropriate to the agency's mission and needs.

If an agency selects one of its internal career or career-conditional employee for the program, and he/she fails to complete the program for reasons unrelated to misconduct or suitability, the agency shall place the employee back in a position of equivalent status, tenure and pay as the position the employee left. Here are some examples:

(1) If an employee of the Environmental Protection Agency (EPA) is selected for an internship with EPA and the employee fails to complete the internship, EPA will be responsible for placing the employee.

(2) If an employee of the Department of Treasury (Treasury) is selected for an internship with EPA and the employee fails to complete the internship, EPA is not obligated to place the employee. Also, Treasury is not obligated to place the employee.

(3) Within Departments that have components or bureaus, such as the Department of Justice (Justice), the

Department would have the discretion to decide whether or not to treat all of its components as separate and independent agencies or as part of the Department. For example: If an employee of Immigration and Naturalization Service (INS), a bureau within Justice, is selected for an internship within Justice headquarters and the employee fails to complete the internship, neither the headquarters office nor the INS is obligated to place the employee. The INS and the headquarters office are treated as separate agencies.

#### Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to waive the delay in effective date and make these regulations effective in less than 30 days. The delay in the effective date is being waived because the executive order was signed on July 6, 2000, and agencies began developing their intern programs. Agencies will be able to make appointments immediately upon publication of the regulations.

#### Regulatory Flexibility Act

I certify that these regulations will not have a significant impact on a substantial number of small entities (including small businesses, small organizational units and small governmental jurisdictions) because the regulations apply only to appointment procedures for certain employees in Federal agencies.

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

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

#### List of Subjects in 5 CFR Parts 213 and 315

Government employees, Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.

**Janice R. Lachance,**  
*Director.*

#### PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 is revised to read as follows:

**Authority:** 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; Sec. 213.101 also issued under 5 U.S.C. 2103; Sec. 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; 38

U.S.C. 4301 *et seq.*; Pub. L. 105-339, 112 STAT. 3182-83; and E.O. 13162.

2. In § 213.3202, paragraph (o) is added to read as follows:

**§ 213.3202 Entire executive civil service.**

\* \* \* \* \*

(o) *The Federal Career Intern Program—(1) Appointments.*

Appointments made under the Federal Career Intern Program may not exceed 2 years, except as described in paragraph (o)(2) of this section. Initial appointments shall be made to a position at the grades GS-5, 7, or 9 (and equivalent) or other trainee levels appropriate for the Program. Agencies must request OPM approval to cover additional grades to meet unique or specialized needs. Agencies will use part 302 of this chapter when making appointments under this Program.

(2) *Extensions.* (i) Agencies must request, in writing, OPM approval to extend internships for up to 1 additional year beyond the authorized 2 years for additional training and/or developmental activities.

(ii) Agencies are delegated the authority to extend, without prior OPM approval, 2-year internships for up to an additional 120 days to cover rare or unusual circumstances, and where agencies have established criteria for approving extensions.

(3) *Qualifications.* Candidates will be evaluated using OPM qualification requirements or OPM-approved, agency-specific qualification requirements.

(4) *Tenure Group.* Career interns are in the excepted service Tenure Group II for purposes of § 351.502 of this chapter. Expiration of the internship is not subject to part 351 of this chapter.

(5) *Promotions.* During the internship period, individuals participating in the program may receive promotions as determined by an agency's plan. This provision does not confer entitlement to promotion.

(6) *Conversion to Competitive Service.* Except as provided in paragraph (o)(6)(ii) of this section, service as an intern shall confer no rights to further Federal employment in either the competitive or excepted service upon the expiration of the internship period.

(i) Competitive civil service status may be granted to career interns who successfully complete their internships and meet all qualification, suitability, and performance requirements. These noncompetitive conversions will be effective on the date the 2-year service requirement is met, or at the end of the extended period.

(ii) An employee who held a career or career-conditional appointment in an

agency immediately before entering the Career Intern Program in the same agency, and who fails to complete the Career Intern Program for reasons unrelated to misconduct or suitability, shall be placed in a career or career-conditional position in the current agency at no lower grade or pay than the one the employee left to accept the position in the Career Intern Program. For purposes of this paragraph, agency means an Executive Department, Government corporation, or independent establishment as defined in 5 U.S.C. 105. An Executive Department may treat each of its bureaus or components (first major subdivision that is separately organized and clearly distinguished from other bureaus or components in work function and operation) as a separate agency or as part of one agency, but must do so by agency directive in establishing the program.

(iii) Service under the Career Intern Program counts toward career tenure in the competitive service, if the Career Intern is converted to a career-conditional appointment under § 315.712 of this chapter.

(7) *Terminations.* The appointment of a career intern expires at the end of the 2-year internship period, plus any extensions. The employing agency may, with no break in service, convert the intern to a career or career-conditional appointment in accordance with § 315.712 of this chapter. If an employee is not converted to a career or career-conditional appointment, the career intern appointment terminates, unless specifically eligible for placement under paragraph (o)(6)(ii) of this section.

(8) *Career Development.* Agencies will provide the career interns with formal training and developmental opportunities to acquire the appropriate agency-identified competencies needed for conversion. These activities may include, but are not limited to, formal training classes, rotational or other job assignments, attendance at conferences and seminars, interagency assignments, or other activities approved by the agency.

(9) *Agency Responsibilities.* Each agency will determine the appropriate use of the Career Intern Program relating to recruitment needs in specific occupational series, grades, and geographical areas, ensuring that programs are developed and implemented in accordance with the merit system principles. Agencies may adapt the program to meet their individual requirements, including, but not limited to such aspects as:

(i) Deciding how to delegate the authority to develop Career Intern

Programs (*e.g.*, department-wide versus bureaus and agency components);

(ii) Defining the roles and responsibilities of supervisors and other key officials in career intern program administration, such as human resources staff, budget and finance staff, career counselors, or mentors;

(iii) Designing, implementing, and documenting formal program(s) for the training and development of employees selected under the provisions of this Part, including the type and duration of assignments;

(iv) Deciding how to inform the career interns of what will be expected during the internship, including developmental assignments and performance requirements; and

(v) Planning, coordinating, implementing and monitoring program activities.

**PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT**

3. The authority citation for part 315 is revised to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, and 3302; E.O. 10577. 3 CFR, 1954-1958 Comp. P. 218, unless otherwise noted; and E.O. 13162. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 120034, 3 CFR, 1978 Comp. p. 111. Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964-1965 Comp. p. 303. Sec. 315.607 also issued under 22 U.S.C. 2506. Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp., p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(d). Sec. 315.611 also issued under Section 511, Pub. L. 106-117, 113 STAT. 1575-76. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987, Comp., p. 229. Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp., p. 264.

4. In § 315.201, a new paragraph (b)(1)(xix) is added to read as follows:

**Subpart B—The Career-Conditional Employment System**

**§ 315.201 Service requirement for career tenure.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(xix) The date of appointment as a career intern under Schedule B, § 213.3202(o) of this chapter, provided the employee's appointment is converted to career or career-conditional appointment under § 315.712.

5. A new section § 315.712 is added to subpart G to read as follows:

### Subpart G—Conversion to Career or Career-Conditional Employment From Other Types of Employment

\* \* \* \* \*

#### § 315.712 Conversion based on service as a Career Intern

(a) *Agency authority.* An agency may convert noncompetitively to career or career-conditional employment, a career intern who:

(1) Has successfully completed a Career Intern Program, under § 213.3202(o) of this chapter, at the time of conversion; and

(2) Meets all citizenship, suitability and qualification requirements.

(b) *Tenure on conversion.* An employee whose appointment is converted to career or career-conditional employment under paragraph (a) of this section becomes:

(1) A career-conditional employee except as provided in paragraph (b)(2) of this section;

(2) A career employee when he or she has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* An employee whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on conversion.

[FR Doc. 00-31887 Filed 12-13-00; 8:45 am]

BILLING CODE 6325-01-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 929

[Docket No. FV00-929-5 FR]

#### Cranberries Grown in the States of Massachusetts, et al.; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate for the Cranberry Marketing Committee (Committee) for the 2000-2001 and subsequent fiscal periods from \$.06 to \$.08 per barrel of cranberries acquired by handlers. The Committee is responsible for local administration of the marketing order which regulates the handling of cranberries grown in the production area. Authorization to assess cranberry handlers enables the Committee to incur expenses that are reasonable and

necessary to administer the program. The fiscal period began September 1 and ends August 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** December 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone: (301) 734-5243; Fax: (301) 734-5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 929, as amended (7 CFR part 929), regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the "order." The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, cranberry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable cranberries beginning September 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any

handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2000-2001 and subsequent fiscal periods for cranberries from \$0.06 to \$0.08 per barrel of cranberries.

The cranberry marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of cranberries. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1999-2000 fiscal period, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The assessment rate for the 1999-2000 fiscal period was increased from \$0.04 to \$0.06 cents per barrel to generate enough funds to cover increased costs due to the industry's oversupply situation. Committee expenses in 1999-2000 were initially estimated at \$548,231, but were increased to \$675,339 to cover additional meeting and other expenses related to the development of volume regulation for the 2000-2001 season.

At its June 6, 2000, meeting the Committee developed its 2000-2001 budget and assessment rate. In July, the Committee conducted a mail vote, and unanimously recommended 2000-2001