

Rules and Regulations

Federal Register

Vol. 70, No. 147

Tuesday, August 2, 2005

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

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: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to implement the staffing provisions of the Federal Career Intern Program (FCIP). This program will help agencies to recruit and to attract exceptional men and women who have a variety of experiences, academic disciplines, and competencies necessary for the effective analysis and execution of public programs.

DATES: Effective September 1, 2005.

FOR FURTHER INFORMATION CONTACT:

Hakeem Basheerud-Deen, hakeem.basheerud-deen@opm.gov; on 202-606-1434 or FAX (202) 606-0390.

SUPPLEMENTARY INFORMATION: Executive Order 13162, dated July 6, 2000, authorized the establishment of the Federal Career Intern Program (FCIP) to assist agencies in recruiting and attracting exceptional individuals with a variety of experiences, academic disciplines, and competencies necessary for the effective analysis and execution of public programs. On December 14, 2000, the Office of Personnel Management (OPM) published an interim rule at 65 FR 78078, now codified at 5 CFR 213.3202(o), to implement the Executive order. The interim rule is adopted as a final rule with the following changes based on agency comments.

OPM received written comments from eight agencies. We also received a number of oral comments and questions

from agencies asking for additional information and/or clarification. The majority of the comments were favorable.

Comments

Appointments, Section 213.3202(o)(1)

Section 213.3202(o)(1) authorizes excepted service appointments under the FCIP. A number of agencies requested clarification on the duration of the internship. In general, career interns are appointed to a 2-year internship, consistent with the time served by individuals appointed under the Presidential Management Fellows (PMF) Program and those appointed under the Veterans' Recruitment Act (VRA) Program. Career intern appointments are made without the not-to-exceed (NTE) dates used with other temporary or time-limited appointments.

The internship portion of the FCIP is generally made for 2 years, but because the appointment permits the noncompetitive conversion to a permanent job, the appointment is not treated as temporary or time-limited. In December, 2000, OPM's Office of Workforce Information provided agencies with the following information on documenting personnel actions under the FCIP:

Appointment Type: Exc Appt; Conv to Exc Apt.

Nature of Action: 170; 570.

Legal Authority: Sch B. 213.3202(o).

Legal Authority Code: YCM.

Agencies should document career intern appointments by including a remark on the Standard Form 50 indicating the nature of the appointment. Such a remark is used when appointing individuals under the PMF and VRA programs. The remark could read as follows:

"This appointment is intended to continue for 2 years, unless extended up to 1 additional year. Upon satisfactory completion of the internship, you may be noncompetitively converted to a career or career-conditional appointment. If you fail to satisfactorily complete the internship, your employment will be terminated."

For employees afforded reemployment rights under § 213.3202(o)(6)(ii), you may end the remark with:

"If your performance is not satisfactory or if you fail to satisfactorily complete the internship, you will be returned to a position

at no lower grade or pay than the position you left to enter the Federal Career Intern Program."

One agency asked if it needed OPM approval for making appointments to trainee positions at grades other than GS-5/7/9. As stated in Executive Order 13162, agencies may make appointments to positions at grades GS-5, 7, and 9 (or equivalent) or other trainee levels (including at one-grade rather than two-grade intervals), appropriate for the FCIP. Agencies do not need OPM approval to fill career intern positions traditionally considered at the trainee level. However, agencies must request OPM approval to fill higher graded positions.

A few agencies asked for more information on the types of positions appropriate for the program. Positions most suited for this program are entry-level positions that require training and development to equip the employee with the competencies needed to successfully perform the job. Examples of such positions include: Accounting and auditing, engineering, human resources management, information technology, law enforcement, and scientific research.

Extensions, Section 213.3202(o)(2)

Executive Order 13162 authorizes OPM to extend career intern appointments up to 1 additional year. One agency suggested that OPM delegate to agencies the authority to extend career intern appointments up to 1 additional year. We did not adopt this suggestion. However, we chose to delegate to agencies the authority to extend an appointment up to 120 days for unforeseen or unusual circumstances. We decided to reserve to OPM the authority to grant extensions beyond 120 days, up to 1 year.

Qualification Requirements for Career Interns, Section 213.3202(o)(3)

Two agencies asked us to clarify the relationship between the qualification requirements of Part 302, Employment in the Excepted Service, and the qualification requirements of Schedule B appointments under this Part. In general, Part 302 authorizes agencies to establish qualification requirements for positions in the excepted service, but that depends on the nature of the excepted appointments. Appointments (other than appointments to student trainee positions) made under Schedule

B of Part 213 are subject to OPM's qualification standards or OPM-approved qualification standards. Therefore, career interns are subject to the OPM qualification requirements outlined in section 213.3202(o)(3) just as any other applicant for a Schedule B position would be.

Conversion to Competitive Service, Section 213.3202(o)(6)

Section 213.3202(o)(6)(i) grants civil service status to career interns who successfully complete their internships and who meet all other applicable requirements (*i.e.*, qualifications, performance, and suitability). Several agencies asked for clarification concerning the appropriate coding for these conversions. We have not revised the regulations in response to this comment, but we updated Chapter 9 of OPM's Guide to Processing Personnel Actions, Table 9–G, and established the following set of codes for career intern conversions under rules 61–64:

Appointment Type: Career; Career Conditional.

Nature of Action: 100, 500; 101, 501.

Legal Authority: Reg. 315.712.

Legal Authority Code: LYP.

Mandatory Placement Rights, Section 213.3202(o)(6)

Section 213.3202(o)(6)(ii) grants mandatory placement rights to employees who accept a Career Intern appointment in the same agency and who fail to complete the Program for reasons unrelated to misconduct or suitability. Executive Order 13162 requires that the employee 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 under the FCIP.

One agency asked if the position to which the employee is to be returned had to have the same promotion potential as the position the employee left. Mandatory placement rights were included in the Executive order to ensure that Federal employees could participate in this new program without having to fear losing their jobs if they could not successfully complete the internship. The Executive order ensures that agencies place those employees who did not complete the internship back into a position that does not cause the employees to lose their grades or pay. The Executive order, however, does not require the new job to have the same promotion potential as the job the employee left to accept a position under the FCIP.

In a related matter, one agency suggested that the mandatory placement

rights be discretionary. We did not adopt this suggestion because the Executive order makes this provision mandatory and not left to the discretion of agencies.

One agency asked if pay retention was discretionary or mandatory for career or career-conditional employees appointed to the FCIP at a lower grade. Pay retention is mandatory. Section 536.104—coverage and applicability of pay retention—of this chapter applies to any employee whose rate of basic pay would otherwise be reduced, among other reasons, “as a result of the placement of the employee in a formal employee developmental program generally utilized Governmentwide.” The FCIP is listed as one of these programs.

Movement Between Career Intern Positions, New Section 213.3202(o)(8)

Several agencies asked for clarification on employees moving between career intern positions. As a result, we are including regulatory language on the movement between career intern positions at section 213.3202(o)(8). A career intern may move between career intern positions without a break in service. Service under a career intern appointment counts toward the completion of a subsequent career intern appointment. Although the career intern is not required to begin a new 2-year internship, the career intern is subject to other terms and conditions of the new appointment, including an agency's request for an extension. However, the total time spent under a career intern appointment may not exceed 3 years.

Federal Career Intern Program Agency Plans, Section 213.3202(o)(10)

Several agencies asked that OPM clarify what was required in an agency's plan for using the FCIP. Section 213.3202(o)(10) establishes the requirement for agencies to develop FCIP plans within their agencies. An agency must decide what type of program it will develop and the specifics of that program must be in writing, including the covered positions and the procedures used to fill these positions in the excepted service. We have included language in that section to clarify agency responsibilities.

Other

One agency commented that the FCIP does not provide sufficient flexibility because it requires agencies which use it to follow the provisions of part 302. OPM disagrees noting that by law, the application of veterans' preference is a requirement when filling positions in

the excepted service. OPM promulgated part 302 for the sole purpose of ensuring that eligible veterans receive their preference when being considered for appointments in the excepted service. In addition to this assurance to our nation's veterans, FCIP contains several flexibilities such as: It does not require public notice, competitive service placement assistance programs do not apply (*e.g.*, the Interagency Career Transition Assistance Plan), and individuals appointed as Career Interns are not subject to time-in-grade restrictions while in the Program.

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.

List of Subjects in 5 CFR Parts 213 and 315

Government employees, Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM is adopting the interim regulations amending 5 CFR parts 213 and 315 which were published on December 14, 2000, at 65 FR 78078 as final regulations with the following changes:

PART 213—EXCEPTED SERVICE

■ 1. The authority citation for part 213 continues 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. 05–339, 112 Stat. 3182–83; and E.O. 13162.

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

§ 213.3202 Entire executive civil service.

* * * * *

(o) *The Federal Career Intern Program.* (1) *Appointments.* Appointments under the Federal Career Intern Program (FCIP) may not exceed 2 years, except as described in paragraph (o)(2) of this section. Initial appointments are made to a position at the grade GS–5, 7, or 9 (and equivalent) or other trainee levels appropriate for the Program, unless otherwise approved by OPM. 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 establish or extend internships for up to 1 additional year beyond the authorized 2 years for additional training and/or developmental activities.

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

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

(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, career interns 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 a career intern confers 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 an agency or OPM-approved extension.

(ii) An employee who held a career or career-conditional appointment in an agency immediately before entering the FCIP in the same agency, and who fails to complete the FCIP 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 FCIP. For purposes of this paragraph, "agency" means an Executive agency 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 FCIP 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.* As a condition of employment, the appointment of a career intern expires at the end of the 2-year internship period, plus any extension. 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 the employee is specifically eligible for placement under paragraph (o)(6)(ii) of this section.

(8) *Movement between career intern positions.* A career intern may move from one career intern position to another career intern position without a break in service. If the move involves different agencies, the career intern must separate from the current agency and be reappointed under a career intern appointment by the new employing agency. The career intern does not begin a new 2-year internship period; however, the career intern is subject to any other employment condition the new agency requires, including a possible extension of the internship period up to a maximum period of 1 year. The time previously served under a career intern appointment counts toward the completion of the 2-year period required for conversion.

(9) *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.

(10) *Agency Responsibilities.* Each agency will determine the appropriate use of the FCIP relating to recruitment needs in geographical areas, specific occupational series, and grades, pay bands or other pay levels, ensuring that programs are developed and implemented in accordance with the merit system principles. Each agency must describe in writing how it will use the FCIP, including, but not limited to, such aspects as:

(i) Delegating the authority to develop FCIPs (e.g., department-wide versus bureaus and agency components);

(ii) Defining the roles and responsibilities of supervisors and other key officials in FCIP administration,

such as human resources staff, budget and finance staff, career counselors, or mentors;

(iii) Identifying the positions or occupations that will be covered under the FCIP;

(iv) Developing procedures for accepting applications, and evaluating and selecting candidates according to part 302 of this chapter on employment in the excepted service and any other applicable requirements;

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

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

(vii) 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. 12034, 3 CFR, 1978 Comp., p. 111; sec. 315.606 also issued under E.O. 1219, 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, paragraph (b)(1)(xix) is revised to read as follows:

§ 315.201 Service requirement for career tenure.

* * * * *

(b) * * *

(1) * * *

(xix) 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. Section 315.712 is revised to read as follows:

* * * * *

§ 315.712 Conversion based on service as a Federal 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 Federal 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 competitive status on conversion.

[FR Doc. 05–15173 Filed 8–1–05; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****7 CFR Part 301**

[Docket No. 04–118–2]

Karnal Bunt; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations by adding certain areas in La Paz, Maricopa, and Pinal Counties, AZ, and Riverside County, CA, to the list of regulated areas and by removing certain areas or fields in Maricopa and Pinal Counties, AZ, and Imperial County, CA, from the list of regulated areas. Those actions were necessary to prevent the spread of Karnal bunt to noninfected areas of the United States and to relieve restrictions on certain areas that are no longer necessary

EFFECTIVE DATE: The interim rule became effective on March 28, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Vedpal Malik, Agriculturalist, Invasive Species and Pest Management, PPQ,

APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–6774.

SUPPLEMENTARY INFORMATION:**Background**

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the fungus *Tilletia indica* (Mitra) Mundkur and is spread primarily through the planting of infected seed. Some countries in the international wheat market regulate Karnal bunt as a fungal disease requiring quarantine; therefore, without measures taken by the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture, to prevent its spread, the presence of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–16 (referred to below as the regulations).

In an interim rule effective and published in the **Federal Register** on March 28, 2005 (70 FR 15553–15557, Docket No. 04–118–1), we amended the regulations by adding certain areas in La Paz, Maricopa, and Pinal Counties, AZ, and Riverside County, CA, to the list of regulated areas either because they were found during surveys to contain a bunted wheat kernel, or because they are within the 3-mile-wide buffer zone around fields or areas affected with Karnal bunt. In the same interim rule, we also amended the regulations by removing certain areas or fields in Maricopa and Pinal Counties, AZ, and Imperial County, CA, from the list of regulated areas based on our determination that those fields or areas had met our criteria for release from regulation.

Comments on the interim rule were required to be received on or before May 27, 2005. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 70 FR 15553–15557 on March 28, 2005.

Done in Washington, DC, this 27th day of July 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–15166 Filed 8–1–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE**Federal Crop Insurance Corporation****7 CFR Part 400**

RIN 0563–AB84

General Administrative Regulations, Submission of Policies, Provisions of Policies, Rates of Premium, and Premium Reduction Plans

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Administrative Regulations, which implement the statutory mandates of the Agricultural Risk Protection Act of 2000 (ARPA) related to the submission of policies for approval for reinsurance and the reimbursement of research and development costs and maintenance costs.

DATES: Effective September 1, 2005.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the Cost-Benefit Analysis, contact Louise Narber, Risk Management Specialist, Research and Development, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, it