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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 337

RIN 3206-AK85

Examining System

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation to amend its direct-hire authority regulations to allow non-Department of Defense agencies to recruit and appoint highly qualified individuals for certain Federal acquisition positions deemed as a shortage category under the Services Acquisition Reform Act.

DATES: These regulations are effective August 4, 2005. We will consider comments received on or before October 3, 2005.

ADDRESSES: Send, deliver or fax comments to Mark Doboga, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415-9700; e-mail at employ@opm.gov; or fax at (202) 606-2329.

Comments may also be sent through the Federal eRulemaking Portal at: <http://www.regulations.gov>. All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Watson by telephone at (202) 606-0830; by fax at (202) 606-2329; by TTY at (202) 418-3134; or by e-mail at linda.watson@opm.gov.

SUPPLEMENTARY INFORMATION: On June 15, 2004, OPM published final

regulations at 69 FR 33271, to implement provisions of the Chief Human Capital Officers Act of 2002 (Act), Public Law 107-296. This Act provides Federal agencies with a number of human resources flexibilities to enhance their recruitment and hiring programs. These flexibilities include direct-hire authority and alternative (that is, category) rating and selection procedures. Under direct-hire authority, agencies may recruit and appoint candidates to positions when OPM determines there is a severe shortage of candidates or critical hiring need.

Section 1413 of Public Law 108-136 allows department and agency heads (other than the Secretary of Defense) to determine under regulations prescribed by OPM, when certain Federal acquisition positions are shortage category positions for purposes of direct-hire authority. The Federal acquisition positions covered by section 1413 are listed in title 41, United States Code (U.S.C.) 433(g)(1)(A).

OPM is amending its regulation to allow non-Department of Defense (DoD) agencies to determine whether a shortage of highly qualified individuals exists for Federal acquisition positions covered under title 41, U.S.C. 433(g)(1)(A). When determining the existence of a shortage of highly qualified individuals, agencies are required to use the supporting evidence prescribed in section 337.204(b) of title 5, Code of Federal Regulations (CFR). The supporting evidence must be kept in a file for documentation and reporting purposes.

Agencies must comply with public notice requirements as prescribed in 5 U.S.C. 3327 and 3330, and 5 CFR part 330, subpart G, with respect to these positions.

The direct-hire authority for Federal acquisition positions under the provisions of section 1413 of Public Law 108-136 will terminate on September 30, 2007. Agencies may not appoint any individual to a position of employment using this authority after September 30, 2007.

In accordance with section 1413(c), OPM is required to submit to Congress a report on the implementation and effectiveness of the direct-hire authority in attracting employees with unusually high qualifications to the acquisition workforce and to make any appropriate recommendations regarding whether to

extend the authority. Non-DoD agencies are required to submit a report to OPM on their implementation and use of section 1413 of Public Law 108-136 by December 31, 2006.

E.O. 12866, Regulatory Review

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

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 337

Government employees.

U.S. Office of Personnel Management.

Linda M. Springer,
Director.

■ Accordingly, OPM is amending 5 CFR part 337 as follows:

PART 337—EXAMINING SYSTEM

■ 1. Revise the authority citation for part 337 to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 1302, 2302, 3301, 3302, 3304, 3319, 5364; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; 33 FR 12423, Sept. 4, 1968; 45 FR 18365, Mar. 21, 1980; 116 Stat. 2135, 2290; and 117 Stat. 1392, 1665.

Subpart B—Direct-Hire Authority

■ 2. Add new paragraph (c) to § 337.204 to read as follows:

§ 337.204 Severe shortage of candidates.
* * * * *

(c) A department or agency head (other than the Secretary of Defense) may determine, pursuant to section 1413 of Public Law 108-136, that a shortage of highly qualified candidates exists for certain Federal acquisition positions (covered under section 433(g)(1)(A) of title 41, United States Code). To make such a determination, the deciding agency official must use the supporting evidence prescribed in 5 CFR 337.204(b)(1)-(8) and must maintain a file of the supporting evidence for documentation and reporting purposes.

■ 3. Add new paragraphs (d) and (e) to § 337.206 to read as follows:

§ 337.206 Terminations, modifications, extensions, and reporting.

* * * * *

(d) No new appointments may be made under the provisions of section 1413 of Public Law 108–136 after September 30, 2007; and

(e) Those departments and agencies, excluding the Department of Defense, that use the direct-hire authority provided in § 337.204(c) must submit to OPM a report on their implementation of section 1413 of Public Law 108–136 no later than December 31, 2006. The report must include:

(1) A description of how the agency's implementation satisfied each of the elements laid out in §§ 337.203 and 337.204(b)(1)–(8), as applicable;

(2) An assessment of the effectiveness of the authority in attracting employees with unusually high qualifications to the acquisition workforce; and

(3) Any recommendations on whether the authority should be extended.

[FR Doc. 05–15259 Filed 8–3–05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 257

[OST Docket No. 2004–19083]

RIN 2105–AD49

Disclosure of Code-Sharing and Long-Term Wet Lease Arrangements

AGENCY: Department of Transportation; Office of the Secretary.

ACTION: Final rule.

SUMMARY: This action amends the rule governing the disclosure of code-share and long-term wet lease arrangements in print advertisements of scheduled passenger services to permit carriers to disclose generically that some of the advertised service may involve travel on another carrier, so long as they also identify a list of all potential carriers involved in serving the markets advertised. The action is taken in response to a petition for rulemaking filed by United Airlines, Inc.

DATES: This final rule becomes effective September 6, 2005.

FOR FURTHER INFORMATION CONTACT: Trace Atkinson, Air Carrier Fitness Division, Office of Aviation Analysis (X–56), U.S. Department of Transportation, 400 Seventh Street, SW., Room 6401, Washington, DC

20590, 202–366–3176 or Daeleen Chesley, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (C–70), U.S. Department of Transportation, 400 Seventh Street, SW., Room 10118, Washington, DC 20590, 202–366–1617.

SUPPLEMENTARY INFORMATION:

Background

Notice of Proposed Rulemaking

These amendments follow a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on January 30, 2005 (70 FR 2372). In that NPRM, the Department of Transportation (Department) proposed to amend Part 257 of its rules, 14 CFR Part 257. Section 257.5(d) requires carriers in any print advertisement for service in a city-pair market that is provided under a code-sharing arrangement or long-term wet lease to clearly indicate the nature of the service in reasonably sized type and identify the transporting carrier[s] by corporate name and by any other name under which the service is held out to the public. The NPRM proposed to amend the rule to permit carriers to disclose generically that some of the advertised service may involve travel on another carrier, so long as they also identify a list of all potential carriers involved in serving the markets advertised.

The NPRM was prompted by a petition for rulemaking filed by United Airlines, Inc., (United) with the Department on September 7, 2004. In that filing, United asserted that the current print advertisement disclosure regime required by section 257.5(d) has become increasingly burdensome on network carriers while failing to provide meaningful off-setting consumer benefits and asked that we amend that provision. United pointed out that a network carrier typically publishes print advertisements offering service for travel in multiple domestic and international city-pairs over a large number of alternative routings, some of which are provided by carriers other than the advertising carrier pursuant to a code-share or a wet lease arrangement. Currently, in order to comply with section 257.5(d), such a carrier must provide consumers with a detailed set of disclosures that will vary depending on the number of alternative routings that may be available for travel in a specific city-pair. Compliance with the current rule results in print advertisements that include numerous footnotes relating exclusively to the disclosure of code-share and wet lease arrangements. According to United, not only do such disclosures impose a significant

administrative burden on carriers, but the excessive footnoting required by the rule may also serve to increase consumer confusion and, at best, provides only limited information to consumers about the carrier that will be operating a particular flight.

To ease the burden on carriers, United requested that section 257.5(d) be reinterpreted to permit carriers to provide a generic disclosure in print advertisements indicating that some of the service offered may involve travel on one or more of its listed partner carriers. United contended that if its proposal were adopted, the information consumers obtain, in practical terms, would not change and the burden on carriers would be eliminated. United emphasized that print advertisements serve only as the first opportunity to inform consumers about an airline's service offerings and consumers will, through telephone inquiries to reservation offices or by reviewing Internet flight listings, continue to receive sufficiently detailed disclosure concerning any code-sharing arrangement relevant to their travel plans before making any travel purchase decisions.

In commenting on United's petition, American Airlines and Orbitz urged that any change to the Department's rule governing the disclosure of code-share and long-term wet lease arrangements in print advertisements be applied to Internet advertisements as well.

In issuing our NPRM, we granted United's petition and proposed to amend our rule governing code-share and long-term wet lease disclosure in print advertisements to permit the inclusion of a generic statement representing that some of the advertised service may involve travel on another carrier, so long as such advertisements also included a list of all potential code-share or wet lease carriers involved in serving the markets advertised. However, we pointed out that we tentatively were not persuaded that the same relief would be warranted with respect to Internet advertisements. Rather, the Department posited that entities soliciting air transportation via the Internet can easily and clearly disclose information to consumers regarding each specific partner carrier that serves each particular city-pair route or market being advertised by using hyperlinks or other techniques. Accordingly, the Department did not propose to include Internet solicitations in the changes to our code-share and wet lease disclosure rule being proposed in the NPRM. However, we did solicit comments on any differences or similarities between Internet and print