This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 337
RIN 3206–AN65

Examining System


ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a proposed regulation to revise its direct-hire authority (DHA) regulations. The revision is necessary to implement Executive Order (E.O.) 13833 titled, “Enhancing the Effectiveness of Agency Chief Information Officers” (83 FR 23345). The E.O. is aimed at modernizing the Federal Government’s information technology infrastructure and improving the delivery of digital services and the management, acquisition, and oversight of Federal IT. Section 9 of the E.O. directs OPM to propose regulations pursuant to which OPM may delegate to the heads of certain agencies (other than the Secretary of Defense) authority to determine, under regulations prescribed by OPM, whether a severe shortage of candidates (or, for the U.S. Department of Veterans Affairs (VA) a severe shortage of highly qualified candidates) or a critical hiring need exists for positions in the Information Technology Management (IT) Series, general schedule (GS)–2210 or equivalent, for which agency heads would be expected to make use of these templates in making their findings. The supporting evidence used for either determination would be required to be kept in a file for documentation and auditing purposes in accordance with 5 CFR 337.206.

Under the current DHA provisions at 5 U.S.C. 3304(a)(3) and 5 CFR part 337 subpart B, OPM determines the existence of a severe shortage of candidates or a critical hiring need and may grant DHA to one or more agencies pursuant to this determination. Thus OPM is responsible for making both a determination that the DHA is warranted and for granting the actual DHA. While E.O. 13833 authorizes OPM to submit a proposed regulation that would sever these actions for IT positions (in other words, permit the agencies of heads to make the determination, but preserve OPM’s responsibility for granting DHA based on an agency’s determination), OPM is choosing to delegate to agency heads its authority to actually issue the DHA under 5 U.S.C. 1104(a)(2) in the circumstances specified. OPM will, however, maintain oversight of the use of this authority as provided in 5 U.S.C. 1104(b). Therefore, after the determination is made, the deciding agency is required to provide the supporting evidence to OPM. OPM may request access to the underlying documentation at any time, and may require corrective action in accordance with 5 U.S.C. 1104(c) and section 337.206 of the regulation.

The proposed rules contemplate that, after an agency head has authorized DHA under these rules, the agency could use this authority to hire needed individuals for initial appointments lasting longer than 1 year, but not to exceed 4 years. The hiring agency, at its discretion, could extend the initial appointment up to an additional 4 years. No individual hired under these provisions could serve in excess of 8 years. No individual hired under these rules would be required to justify its determination in accordance with the criteria prescribed in 5 CFR 337.205(b). OPM has further developed these criteria in Direct Hire templates available at https://www.opm.gov/policy-data-oversight/hiring-information/direct-hire-authority/templates.pdf. Agency heads would be expected to make use of these templates in making their findings. The supporting evidence used for either determination would be required to be kept in a file for documentation and auditing purposes in accordance with 5 CFR 337.206.

FOR FURTHER INFORMATION CONTACT: Darlene Phelps at (202) 606–0960, by fax at (202) 606–4430, TDD at (202) 418–3134, or by email at Darlene.Phelps@opm.gov.

SUPPLEMENTARY INFORMATION: On May 15, 2018, the President signed E.O. 13833, titled, “Enhancing the Effectiveness of Agency Chief Information Officers” (83 FR 23345). The E.O. is aimed at modernizing the Federal Government’s information technology infrastructure and improving the delivery of digital services and the management, acquisition, and oversight of Federal IT. Section 9 of the E.O. directs OPM to propose regulations pursuant to which OPM may delegate to the heads of certain agencies (other than the Secretary of Defense) authority to determine, under regulations prescribed by OPM, whether a severe shortage of candidates (or, for the U.S. Department of Veterans Affairs (VA) a severe shortage of highly qualified candidates) or a critical hiring need exists for positions in the Information Technology Management (IT) Series, general schedule (GS)–2210 or equivalent, for which agency heads would be expected to make use of these templates in making their findings. The supporting evidence used for either determination would be required to be kept in a file for documentation and auditing purposes in accordance with 5 CFR 337.206.

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years at the same agency. No individual hired under these provisions could be transferred to positions that are not IT positions. An agency would be required to use this authority in accordance with the provisions of 5 CFR part 337 subpart B and in the same manner it would for filling other positions under DHA. Generally speaking, this would entail providing applicants with public notice consistent with the provisions of 5 CFR 337.203, assessing applicants to determine whether they have the level of proficiency required to perform the duties of the position being filled, and giving selection priority to qualified applicants eligible under the agency’s Reemployment Priority List (RPL), Career Transition Assistance Plan (CTAP), and the Interagency Career Transition Assistance Plan (ICTAP) in accordance with 5 CFR part 330 subparts B, F, and G before selecting other qualified applicants. An agency would not be able to assess applicants in order to make more meaningful or relative distinctions as to the quality of the applicant pool; i.e., an agency could not rate and rank applicants and select them based on a numerical rating or categorize and select them in terms of “good, better, best” or similar quality designations. Applicants who met the required proficiency level would be deemed to be equally qualified for these purposes. Each agency would then be expected to select qualified applicants in the order in which their applications were received and processed.

OPM is revising its regulations to:  
1. Revise the authority citation for part 337 to read as follows:  

Subpart B—Direct Hire Authority

§ 337.204 Severe shortage of candidates.  
* * * * *  
(d) Information Technology (IT) positions. (1) The head of a covered agency, as defined in paragraph (d)(2) of this section, may determine whether a severe shortage of candidates exists at that agency for any position in the information technology management series, general schedule (GS)-2210 or equivalent. In making such a determination, a covered agency must adhere to and use the supporting evidence prescribed in 5 CFR 337.204(b)(1)–(8). For purposes of paragraph (b)(5) of this section, the U.S. Department of Veterans Affairs (VA) need only determine whether a severe shortage of highly qualified candidates exists. In addition, a covered agency must maintain a file of the supporting evidence for documentation and reporting purposes. Upon determination of such a finding, an agency head may approve a direct hire authority for covered positions within the agency.

(2) Covered agency. A covered agency is an entity listed in 31 U.S.C. 901(b) (except the Department of Defense), or an independent regulatory agency defined in 44 U.S.C. 3502(1).

(3) Notification to the U.S. Office of Personnel Management (OPM). Once the head of a covered agency affirmatively determines the presence of a severe shortage and the direct hire authority is approved by the agency head, he or she must notify OPM within 10 business days. Such notification must include a description of the supporting evidence relied upon in making the determination.

(4) Using this authority. A covered agency must adhere to all provisions of subpart B of this part.
covered positions within the agency.

(ii) A covered agency may extend any appointment under this authority for up to 4 additional years, if the direct hire authority remains in effect.

(iii) No individual hired under these provisions may be transferred to positions that are not IT positions.

§ 337.205 Critical hiring needs.

(c) Information Technology (IT) positions. (1) The head of a covered agency, as defined in paragraph (c)(2) of this section, may determine whether a critical hiring need exists for any position in the information technology management series, general schedule (GS)–2210 or equivalent. In making such a determination, a covered agency must adhere to and use the supporting evidence criteria prescribed in paragraphs (b)(1)–(4) of this section. In addition, a covered agency must maintain a file of the supporting evidence for documentation and reporting purposes. Upon determination of such a finding, an agency head may approve a direct hire authority for covered positions within the agency.

(2) Covered agency. A covered agency is an entity listed in 31 U.S.C. 901(b) (excluding the Department of Defense), or an independent regulatory agency defined in 44 U.S.C. 3502(5).

(3) Notification to the U.S. Office of Personnel Management (OPM). Once the head of a covered agency affirmatively determines the presence of a critical hiring need and the direct hire authority is approved by the agency head, he or she must notify OPM within 10 business days. Such notification must include a description of the supporting evidence relied upon in making the determination.

(4) Using this authority. A covered agency must adhere to all provisions of subpart B of this part.

(5) Length of appointments. A covered agency may use this authority to appoint individuals for a period of more than 1 year, but not more than 4 years, if the direct hire authority remains in effect.

(i) A covered agency may extend any appointment under this authority for up to 4 additional years.

(ii) No individual may serve more than 8 years on an appointment made under these provisions for information technology positions.

(iii) No individual hired under these provisions may be transferred to positions that are not IT positions.

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BILLING CODE 6325–39–P

DEPARTMENT OF ENERGY

10 CFR Part 1004

RIN 1901–AB44

Critical Electric Infrastructure Information; New Administrative Procedures

AGENCY: Office of Electricity, U.S. Department of Energy.

ACTION: Notice of proposed rulemaking and opportunity for comment.

SUMMARY: The Department of Energy (DOE or Department) publishes a proposed rule for public comment to implement DOE’s critical electric infrastructure information (CEII) designation authority under the Federal Power Act. The proposed administrative procedures are intended to ensure that stakeholders and the public understand how the Department would designate, protect, and share CEII under the Federal Power Act.

DATES: Public comment on this proposed rule will be accepted until December 28, 2018.

ADDRESSES: You may submit comments, identified by RIN 1901–AB44, by any of the following methods:


2. Email: Send email to oeregs@hq.doe.gov. Include RIN 1901–AB44 in the subject line of the email. Please include the full body of your comments in the text of the message or as an attachment.


Due to potential delays in the delivery of postal mail, we encourage respondents to submit comments electronically to ensure timely receipt. This notice of proposed rulemaking and any comments that DOE receives will be made available on regulations.gov on the DOE Office of Electricity website at: https://www.energy.gov/oe/electricity.


SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviations. A number of acronyms and abbreviations are used in this preamble. While this may not be an exhaustive list, to ease the reading of this preamble and for reference purposes, the following terms, acronyms, and abbreviations are defined as follows:

DHS Department of Homeland Security
DOE Department of Energy
CEII Critical Electric Infrastructure Information
FAST Act Fixing America’s Surface Transportation Act
FERC Federal Energy Regulatory Commission
FOIA Freedom of Information Act
FPA Federal Power Act
NTIA National Telecommunications and Information Administration
OE Office of Electricity (office within DOE)
PMA Power Marketing Administration

Table of Contents

I. Introduction and Background
II. Discussion of Proposed Rule
   A. General
   B. Definitions
   C. Summary of Proposed Procedural Rules for CEII Designation
   D. General
   1. Application Matters
      a) Application Requirements
      b) Application Filing Procedures
      c) Application Amendment and Withdrawal
      d) Public Participation
      (a) Comments
      (b) Motions
      (c) Intervention
   III. Public Comment Procedures
   IV. Regulatory Review
      A. Executive Order 12866
      B. Executive Orders 13771, 13777, and 13783
      C. National Environmental Policy Act
      D. Regulatory Flexibility Act
      E. Paperwork Reduction Act
      F. Unfunded Mandates Reform Act of 1995
      G. Treasury and General Government Appropriations Act, 1999
      H. Executive Order 13132
      I. Executive Order 13211
      V. Approval of the Office of the Secretary

I. Introduction and Background

In this proposed rule, DOE proposes to establish procedures for the designation of critical electric infrastructure information (CEII) under the Fixing America’s Surface Transportation Act (FAST Act), Public Law 114–94. The FAST Act contains...