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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 930

RIN 3206-AH31

Funding of Administrative Law Judge Examination

AGENCY: Office of Personnel Management.

ACTION: Final rule.

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SUMMARY: The Office of Personnel Management (OPM) is issuing a final regulation to require agencies employing administrative law judges to reimburse OPM for the cost of developing and administering examinations for judge positions. The regulation implements OPM's authority to delegate examining authority for all competitive service positions except for administrative law judges, and to require employing agencies to reimburse OPM for the cost of administrative law judge examinations.

EFFECTIVE DATE: March 14, 1997.

FOR FURTHER INFORMATION CONTACT: Richard A. Whitford on 202-606-2525, TDD 202-606-0591, or FAX 202-606-1768.

SUPPLEMENTARY INFORMATION: On July 29, 1996, OPM issued an interim regulation at 61 FR 39267 to implement the new funding arrangement for administrative law judge examinations as required by the Treasury, Postal Service, and General Government Appropriations Act, 1996 (Pub. L. 104-52, November 19, 1995). This act amended 5 U.S.C. 1104 to require OPM to continue examining for administrative law judges and to require employing agencies to reimburse OPM for the cost of doing so.

OPM's interim regulation added a new paragraph (c) to 5 CFR 930.201 to require affected agencies to reimburse OPM annually for the cost of developing and administering administrative law judge examinations. Each employing agency's share of reimbursement will be based on its relative number of such judges as of March 31 of the preceding fiscal year. The regulation also provided that OPM would work with employing agencies to review the examination program for effectiveness and efficiency and identify needed improvements, consistent with statutory requirements. On this basis, OPM would compute and notify each agency of its share, along with a full accounting of costs.

We received two written comments, both from agencies employing administrative law judges. One agency questioned the basis for the fee, pointing out that the law does not specify any specific reimbursement method. This agency agreed with OPM's proposal to establish a working group of officials from OPM and affected agencies but suggested that this group determine how costs are to be allocated and have a continuing role in overseeing the operation of the examination.

OPM will continue consulting, as we have been, with the stakeholders in the administrative law judge program, including Chief Administrative Judges from agencies with the largest judge populations. For this fiscal year, however, OPM has not allocated any of its appropriated funds and has no other funding source to operate this examination. Therefore, we must bill affected agencies, as indicated in the interim regulation, based on their relative share of the

administrative law judge workforce.

Another agency did not object to the fee or the reimbursement method but requested that OPM refer for its appointment consideration only those candidates who possess specialized experience related to its programs. Inasmuch as this action would require a substantive change to 5 CFR part 930 that is outside the scope of this rulemaking, OPM cannot act on the proposal at this time. We will, however, consider it in the future.

OPM is adopting without change the new paragraph (c) to Sec. 930.201 contained in the interim regulation published on July 29, 1996.

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains only to Federal agencies.

#### Executive Order 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 Part 930

Administrative practice and procedure, Government employees, Motor vehicles.

Office of Personnel Management.  
James B. King,  
Director.

Accordingly, OPM is adopting its interim regulation at 5 CFR part 930 as published on July 29, 1996 (61 FR 39267) as final with the following change:

1. The part title is corrected to read as follows:

**PART 930--PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS  
(MISCELLANEOUS)**

**Subpart B--Appointment, Pay, and Removal of Administrative Law Judges**

2. The authority citation for subpart B continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 1305, 3105, 3323(b), 3344, 4301(2)(D), 5372, 7521.

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