



OFFICE OF PERSONNEL MANAGEMENT

5 CFR PARTS 300, 330, 337 and 720

[Docket ID: OPM-2026-0595]

RIN: 3206-AP20

Removal of References to the Uniform Guidelines on Employee Selection Procedures in Federal Personnel Regulations

AGENCY: Office of Personnel Management.

ACTION: Interim final rule; request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim final rule with request for comments to remove references to the Uniform Guidelines on Employee Selection Procedures (UGESP) from Federal civil service regulations. These amendments conform OPM's regulations to the Department of Justice, Office of Legal Counsel's June 9, 2026, opinion finding the UGESP unlawful.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Comment date: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

OPM will consider all timely comments received. After reviewing the comments, OPM may revise, withdraw, or confirm this interim final rule through a subsequent document published in the Federal Register.

ADDRESSES: You may submit comments for this interim final rule within the Federal eRulemaking Portal at <https://www.regulations.gov/>. Follow the instructions for submitting comments.

All comments must be received by the end of the comment period for them to be considered. All comments and other submissions received generally will be posted on the

internet at www.regulations.gov as they are received, without change, including any personal information provided. However, OPM retains discretion to redact personal or sensitive information, including but not limited to personal or sensitive information pertaining to third parties.

A summary of this rule may be found in the docket for this rulemaking at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Aaron Gottesman, Office of Personnel Management, Office of the Director, (202) 606-1300, regulatory.information@opm.gov.

SUPPLEMENTARY INFORMATION:

I. Background

OPM regulations in 5 CFR part 300 establish basic requirements for Federal employment practices. Section 300.103 requires that each employment practice be based on a job analysis, that there be a rational relationship between performance in the position to be filled and the employment practice used, and that employment practices not discriminate on prohibited bases. Current § 300.103(c) also states that employee-selection procedures must meet the standards established by UGESP, where applicable.

OPM's category rating regulation at 5 CFR 337.303(b) currently requires agencies to define each quality category through job analysis conducted in accordance with UGESP at 29 CFR part 1607 and part 300 of title 5. Similar language appears in OPM's regulations regarding the rating and selection of Reemployment Priority List candidates using category rating in 5 CFR 330.213(d). OPM's Federal Equal Opportunity Recruitment Program regulation at 5 CFR 720.206 and the Appendix to that Part advise agencies that selection processes, including job qualifications, personnel procedures, and criteria, must be consistent with UGESP.

On June 9, 2026, the Department of Justice, Office of Legal Counsel (OLC), issued an opinion titled “Constitutionality of Disparate-Impact Liability Under Title VII.”¹ OLC concluded that existing EEOC interpretations, including UGESP, embrace an unconstitutional reading of Title VII insofar as they contemplate liability based on disparate effects alone, without regard to an employer’s likely intent, and pressure employers to engage in race-based decision-making.

OLC also concluded that UGESP’s validation study framework is inconsistent with Title VII’s business-necessity defense, properly understood, because it imposes detailed and burdensome validation requirements beyond what Title VII requires. OLC further concluded that Federal regulations encouraging race-conscious action in response to actual or anticipated disparate impacts conflict with Title VII and the Constitution.

Executive branch legal interpretations issued by the President or the Attorney General are controlling on executive-branch employees. Exec. Order 14215, § 7, 90 Fed. Reg. 10,447, 10,449 (Feb. 24, 2025); cf. Exec. Order No. 12146, 44 Fed. Reg. 42,657, 42,658 (July 20, 1979). OLC exercises, by delegation from the Attorney General, the Attorney General’s statutory authority to render legal advice and opinions to the President and to heads of Executive Branch departments and agencies. *See* 28 U.S.C. 510–513; 28 CFR 0.25(a). OLC’s core function is to provide controlling legal advice to Executive Branch officials on questions of law that are centrally important to the functioning of the Federal Government, and OLC’s legal conclusions are binding within the Executive Branch unless and until superseded by controlling authority.

II. Purpose of this Interim Final Rule

This interim final rule removes OPM regulatory text that incorporates, requires, or advises consistency with UGESP. OPM is taking this action to conform its regulations to OLC’s opinion and to eliminate any suggestion that Federal agencies must apply UGESP’s adverse-

¹ Office of Legal Counsel, U.S. Dep’t of Justice, *Constitutionality of Disparate-Impact Liability Under Title VII*, 50 Op. O.L.C. __ (June 9, 2026), <https://www.justice.gov/olc/media/1444871/dl>

impact and validation-study framework as a binding condition of lawful Federal selection procedures.

The rule is limited. It does not remove the job-analysis requirement in § 300.103(a). It does not remove the requirement in § 300.103(b) that there be a rational relationship between performance in the position to be filled and the employment practice used. It does not remove the requirement that the employment practice be professionally developed. It does not remove the nondiscrimination language in § 300.103(c). It also does not alter agency obligations under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Rehabilitation Act, the Genetic Information Nondiscrimination Act, veterans' preference laws, merit-system principles, prohibited personnel practice provisions under 5 U.S.C. 2301, or any other applicable Federal law.

OPM expects agencies to continue to use job-related, merit-based, and professionally sound selection procedures. This rule removes UGESP as a binding or advisory regulatory standard in the affected OPM provisions; this rule does not prohibit sound professional assessment practices.

III. Administrative Procedure Act

OPM is issuing this rule as an interim final rule with request for comments. OPM finds good cause under 5 U.S.C. 553(b)(B) to issue this rule without prior notice and comment because prior notice and comment would be impracticable and contrary to the public interest. OLC has concluded that the UGESP framework, as reflected in existing Federal employment-selection guidance, is inconsistent with Title VII and the Constitution. Because OLC's legal conclusions are controlling within the Executive Branch unless superseded by controlling authority, leaving OPM regulatory text in place that incorporates, requires, or advises consistency with UGESP would create immediate confusion for Federal agencies administering employment practices.

This rule is limited and deregulatory. It removes references to UGESP but does not eliminate OPM's independent requirements that Federal employment practices be based on job

analysis, be rationally related to performance in the position to be filled, be professionally developed, and be administered without prohibited discrimination. OPM also finds good cause under 5 U.S.C. 553(d)(3) for this rule to take effect upon publication. In addition, the rule relieves a restriction within the meaning of 5 U.S.C. 553(d)(1) because it removes regulatory text that could be read to require agencies to apply UGESP's adverse-impact and validation-study framework as a condition of OPM regulation.

OPM invites comments on all aspects of this interim final rule. After considering timely comments, OPM may issue a subsequent final rule confirming, modifying, or withdrawing this interim final rule.

IV. Section-by-Section Explanation

Part 300—Employment (General). OPM amends § 300.103(c) by removing the sentence stating that employee-selection procedures must meet the standards established by UGESP, where applicable. The remaining nondiscrimination language in § 300.103(c), and the job-analysis and rational relationship requirements in § 300.103(a) and (b), remain in effect.

Part 330—Recruitment, Selection, and Placement (General). OPM amends § 330.213(d) by removing the reference to UGESP at 29 CFR part 1607. As amended, agencies using category rating to assess Reemployment Priority List placement priority candidates must continue to define each quality category through job analysis conducted in accordance with part 300 of title 5. This preserves OPM's Federal civil service job analysis requirements while eliminating incorporation of UGESP's adverse impact and validation framework.

Part 337—Examining System. OPM amends § 337.303(b) by removing the reference to UGESP at 29 CFR part 1607. As amended, agencies using category rating must continue to define each quality category through job analysis conducted in accordance with part 300 of title 5. This preserves OPM's Federal civil-service job-analysis requirements while eliminating incorporation of UGESP's adverse-impact and validation framework.

Part 720—Affirmative Employment Programs. OPM removes the advisory text in § 720.206 stating that agency selection processes must be consistent with UGESP and reserves the section. In addition, OPM removes similar text in the Part 720 Appendix that states that OPM should advise all agencies that all job qualifications, personnel procedures and criteria must be consistent with UGESP. Part 720 continues to govern recruitment program requirements, and this rule does not otherwise amend agency recruitment obligations.

V. Expected Effects

This rule is deregulatory. It removes regulatory text that could be read to require agencies to apply UGESP's adverse-impact and validation-study framework to Federal selection procedures. The rule does not require agencies to adopt new systems, conduct new studies, or submit new reports. OPM expects that agencies may need to review internal policy documents, delegated examining materials, category-rating procedures, or training materials to remove outdated references to UGESP, but OPM does not expect this review to impose significant costs.

The rule may reduce administrative burden by clarifying that agencies need not conduct UGESP validation studies or adverse-impact analyses as a matter of OPM regulation. Agencies remain responsible for ensuring that selection practices are based on merit, supported by job analysis, rationally related to job performance, professionally developed, and administered without prohibited discrimination.

VI. Severability

The amendments made by this rule are severable. If any provision of this rule, or the application of any provision to any person or circumstance, is held invalid, OPM intends that the remaining provisions and applications remain in effect to the fullest extent permitted by law.

VII. Regulatory Review

OPM has examined this rule under Executive Orders 12866 and 13563. This rule removes regulatory requirements and advisory text and does not impose new compliance

obligations. This rule is not a significant regulatory action under Executive Order 12866. For the reasons discussed above, this rule is a deregulatory action under EO 14192.

VIII. Regulatory Flexibility Act

The Director of OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities because the rule applies only to Federal agencies and Federal employment practices.

IX. Federalism

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule does not have federalism implications warranting preparation of a Federalism Assessment.

X. Civil Justice Reform

This rule is intended to provide a clear legal standard by removing obsolete or legally inconsistent cross-references. OPM has reviewed this rule in accordance with applicable civil-justice-reform principles and determined that it is written to minimize litigation, eliminate ambiguity, and reduce burden.

XI. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of \$100 million or more, adjusted annually for inflation, in any one year. Accordingly, no written assessment under the Unfunded Mandates Reform Act is required.

XII. Paperwork Reduction Act

This rule does not contain a collection of information under the Paperwork Reduction Act of 1995. It does not require agencies, employees, applicants, or members of the public to submit information to OPM.

XIII. Congressional Review Act

This rule is subject to the Congressional Review Act. OPM will submit the rule and other required information to Congress and the Comptroller General before the rule takes effect. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects

5 CFR Part 300

Administrative practice and procedure, Government employees, Equal employment opportunity

5 CFR Part 330

Administrative practice and procedure, Armed forces reserves, District of Columbia, Government employees.

5 CFR Part 337

Government employees, Veterans.

5 CFR Part 720

Equal employment opportunity, Government employees, Reporting and recordkeeping requirements.

Signing Statement

The Director of OPM, Scott Kuper, reviewed and approved this document and has authorized the undersigned to electronically sign and submit this document to the Office of the Federal Register for publication.

Office of Personnel Management

Jerson Matias,
Federal Register Liaison.

For the reasons stated in the preamble, the Office of Personnel Management amends 5 CFR parts 300, 330, 337 and 720 as follows:

PART 300—EMPLOYMENT (GENERAL)

1. The authority citation for part 300 continues to read as follows:

Authority: 5 U.S.C. 552, 2301, 2302, 3301, and 3302; E.O. 10577, 19 FR 7521, 3 CFR 1954-1958 Comp., p. 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 11478, 34 FR 12985, 3 CFR 1966-1970 Comp., p. 803; E.O. 13087, 63 FR 30097, 3 CFR 1998 Comp., p. 191; and E.O. 13152, 65 FR 26115, 3 CFR 2000 Comp., p. 264.

Sec. 300.301 also issued under 5 U.S.C. 3341 and E.O. 13562, 75 FR 82585, 3 CFR 2010 Comp., p. 291.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c).

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

Subpart A—Employment Practices

§ 300.103 [Amended]

2. Amend § 300.103 by removing the last sentence of paragraph (c).

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

3. The authority citation for part 330 continues to read as follows:

Authority: 5 U.S.C. 1104, 1302, 3301, 3302, 3304, and 3330; E.O. 10577, 3 CFR, 1954-58 Comp., p. 218; Section 330.103 also issued under 5 U.S.C. 3327; Subpart B also issued under 5 U.S.C. 3315 and 8151; Section 330.401 also issued under 5 U.S.C. 3310; Subparts F and G also issued under Presidential Memorandum on Career Transition Assistance for Federal Employees, September 12, 1995; Subpart G also issued under 5 U.S.C. 8337(h) and 8456(b). § 330.1301 also issued under 5 U.S.C. 9201-9206 and Pub. L. 116-92, sec. 1122(b)(1).

Subpart B—Reemployment Priority List (RPL)

4. Amend § 330.213 by revising paragraph (d)(2)(ii) to read as follows:

§ 330.213 Selection from an RPL.

* * * * *

(d) * * *

(2) * * *

(ii) Define each quality category through job analysis conducted in accordance with part 300 of this chapter. Each quality category must have a clear definition that distinguishes it from other quality categories; and

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PART 337—EXAMINING SYSTEM

5. The authority citation for part 337 continues to read as follows:

Authority: 5 U.S.C. 1104(a), 1302, 2302, 3301, 3302, 3304, 3319, 5364; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; 33 FR 12423, Sept. 4, 1968; and 45 FR 18365, Mar. 21, 1980; 116 Stat. 2135, 2290; 117 Stat. 1392, 1665; and E.O. 13833.

Subpart C—Category Rating

6. Amend § 337.303 by revising paragraph (b) to read as follows:

§ 337.303 Agency responsibilities.

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(b) Define each quality category through job analysis conducted in accordance with part 300 of this chapter. Each category must have a clear definition that distinguishes it from other categories;

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PART 720—AFFIRMATIVE EMPLOYMENT PROGRAMS

7. The authority citation for part 720 continues to read as follows:

Authority: 5 U.S.C. 7201; 42 U.S.C. 2000e, unless otherwise noted.

Subpart B—Federal Equal Opportunity Recruitment Program

§ 720.206 [Removed and Reserved]

8. Remove and reserve § 720.206.

Appendix to Part 720—[Amended]

9. Amend the appendix to part 720, in section IV.B., by removing the words “OPM should advise all agencies that all job qualifications, personnel procedures and criteria must be consistent with the *Uniform Guidelines on Employee Selection Procedures* (43 FR 38290 August 25, 1978)”.

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