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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 315

RIN 3206-AG55

Career and Career-Conditional Employment

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting policies on the career-conditional employment system—on career tenure, reinstatement, transfer, and probationary period requirements—previously contained in the former Federal Personnel Manual. Except for several minor adjustments, the previous policies remain intact.

EFFECTIVE DATE: November 15, 1995.

FOR FURTHER INFORMATION CONTACT: Lee Edwards on career tenure, reinstatement and transfer. Raleigh Neville on probation. Both may be reached at 202-606-0830, FAX 202-606-2329, or TDD 202-606-0023.

SUPPLEMENTARY INFORMATION: Career-conditional appointments are permanent appointments to Federal competitive service positions. Under prescribed conditions, employees acquire career tenure, have reinstatement and transfer eligibility, and serve probation. On December 30, 1994 (59 FR 68104), OPM issued interim regulations to adopt policies on career tenure and reinstatement that were in chapter 315 of the former Federal Personnel Manual (FPM). The FPM expired on December 31, 1994, and the interim rules were effective on January 1, 1995.

Earlier, on October 20, 1994 (59 FR 52925), OPM had proposed changes to simplify career tenure and reinstatement, and to incorporate into

the regulations the FPM provisions on crediting prior service toward probation. (The probationary provisions were inadvertently omitted from the December 30, 1994, issuance.)

These final regulations adopt the proposed regulations on probation and transfer and the interim regulations on career tenure and reinstatement. OPM is deferring a decision on the proposed revisions to § 315.201 (tenure) and § 315.401 (reinstatement) issued on October 20, 1994 (59 FR 52925).

We received a total of 52 written comments, including letters from 14 agencies, two union locals, and 36 individuals. The major points are discussed below.

Career Tenure

Currently, the interim rule at 5 CFR 315.201(a) requires 3 years of continuous creditable service for an employee to acquire career tenure. OPM proposed to link career tenure instead to completion of the probationary period.

Recently, OPM also proposed to deregulate performance management, including allowing as few as two levels for performance ratings (60 FR 5542). The impact of that change on the reduction in force (RIF) process is unknown at this time although OPM will be reviewing the matter (performance is one of four statutory factors that determine retention standing). The proposed revision of career tenure also would impact the outcome of the RIF process. This was a concern of some who commented on the proposal. Rather than introduce another new variable at a time when agencies may be facing a significant level of RIF activity, OPM is deferring a decision on the career tenure proposal.

OPM received two comments on the December 30, 1994, interim regulation at 5 CFR § 315.201. One was outside the scope of the regulation. The other suggested, and OPM adopted, a revision to § 314.201(b)(3)(x) to clarify that family members reinstated while overseas are to be treated in the same manner as those returning to the United States after breaks in service of more than 30 days. Otherwise, OPM is adopting as final the interim rules on crediting service toward career tenure.

Reinstatement and Transfer Eligibility

Reinstatement eligibility permits a former career or career-conditional employee to be rehired without

competing in a competitive civil service examination (although they may have to compete under merit promotion procedures). Career-conditional employees with veterans' preference and career employees have unlimited reinstatement eligibility.

A career-conditional employee who is not a preference eligible has a 3-year limit on reinstatement eligibility (which may be extended under certain circumstance). OPM proposed to drop this time limit but is deferring action on the proposal. Thus, the 3-year limit on reinstatement eligibility, as provided in the interim regulation, remains in effect for career-conditional employees who are not preference eligibles. The reinstatement authority in § 315.401(a) is clarified and a reference to ACTION in § 315.401(c)(13) is changed to the Corporation for National and Community Service to reflect the current organizational title. Otherwise, OPM is adopting as final the interim rule on reinstatement at § 315.401.

Appointment by transfer between agencies, § 314.501, is clarified to state that transfer must be without a break of a workday. A clarification was added to § 314.502 to address the movement of a career employee from a position required by law to be filled on a permanent basis. Otherwise, the proposed rule on transfer is adopted without change.

Probationary Period

OPM proposed to clarify basic requirements of the probationary period for new appointments and for new supervisors and managers. Six commenters addressed specific aspects of probation, but most were outside the scope of OPM's proposals and are not dealt with here.

In reviewing the comments, however, we noted the proposed regulation had omitted students serving under the Schedule B Student Career Experience Program who have always been subject to probation when noncompetitively converted to a career or career-conditional appointment under Executive Order 12015. We added these conversions to § 314.801. We changed a reference to ACTION in § 315.802(c) to the Corporation for National and Community Service. We also added a new § 315.906(e), as one commenter suggested, to address the crediting of temporary service in a supervisory or managerial position that occurs prior to

probation. Otherwise, OPM is adopting as proposed the provisions dealing with probation.

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 employees and 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 315

Government employees.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR part 315, as follows:

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

1. The authority citation for part 315 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted.

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. 11219, 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. 315.710 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.

2. The interim rule amending § 315.201 published on December 30, 1994 (59 FR 68104) is adopted as final, with the following change; § 315.201(b)(3)(x) is revised to read as follows:

§ 315.201 Service requirement for career tenure.

* * * * *

(b) * * *

(3) * * *

(x) Breaks that occur when a career-conditional employee leaves Federal employment to accompany a spouse or parent (if the employee is their unmarried child under 21 years of age) who is a member of the Armed Forces or a Federal civilian employee on

official assignment to an overseas post of duty, provided the employee's separation from employment occurs no more than 90 calendar days prior to going overseas and reinstatement occurs while overseas or within 180 calendar days of return to the United States. Overseas posts of duty are duty locations outside the 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

* * * * *

3. The interim rule amending § 315.401 published on December 30, 1994 (59 FR 68104) is adopted as final, with the following change; § 315.401 (a) and (c)(13) are revised to read as follows:

§ 315.401 Reinstatement.

(a) *Agency authority.* Subject to part 335 of this chapter and paragraph (b) of this section, an agency may appoint by reinstatement to a competitive service position a person who previously was employed under career or career-conditional appointment (or equivalent).

(b) * * *

(c) * * *

(13) Volunteer service and training required prior to actual enrollment as a volunteer with Peace Corps, VISTA, and other programs of the Corporation for National and Community Service if it begins within the period the person is eligible for reinstatement; and

* * * * *

4. Sections 315.501 and 315.502 are revised, to read as follows:

§ 315.501 Transfer.

Subject to part 335 of this chapter, an agency may appoint by transfer to a competitive service position, without a break in service of a single workday, a current career or career-conditional employee of another agency.

§ 315.502 Tenure on transfer.

(a) *General rule.* Except as provided in paragraph (b) of this section, a career employee who transfers remains a career employee and a career-conditional employee who transfers remains a career-conditional employee.

(b) *Exceptions.* (1) A career-conditional employee who transfers to a position required by law to be filled on a permanent basis becomes a career employee.

(2) A career employee who transfers from a position required by law to be filled on a permanent basis becomes a career-conditional employee unless he or she has completed the service requirement for career tenure.

5. In § 315.801, in paragraph (a)(5), the last word "or" is removed; in paragraph (a)(6), the period at the end of the sentence is removed and a semicolon is added; in paragraph (a)(7), the period at the end of the sentence is removed and a semicolon is added; and paragraphs (a)(8), (a)(9), and (d) are added, to read as follows:

§ 315.801 Probationary period; when required.

(a) * * *

(8) Was appointed under § 315.608 and Executive Order 12721 as a family member formerly stationed overseas; or

(9) Had employment converted in accordance with Executive Order 12015 from an appointment in the Student Career Experience Program under § 213.3202(b) of this chapter.

* * * * *

(d) Upon noncompetitive appointment to the competitive service under the Postal Reorganization Act (39 U.S.C. 101 et seq.), an employee of the Postal Career Service (including substitute and part-time flexible) who has not completed 1 year of Postal service, must serve the remainder of a 1-year probationary period in the new agency.

6. Section 315.802 is revised to read as follows:

§ 315.802 Length of probationary period; crediting service.

(a) The probationary period required by § 315.801 is 1 year and may not be extended.

(b) Prior Federal civilian service (including nonappropriated fund service) counts toward completion of probation when the prior service:

(1) Is in the same agency, e.g., Department of the Army;

(2) Is in the same line of work (determined by the employee's actual duties and responsibilities); and

(3) Contains or is followed by no more than a single break in service that does not exceed 30 calendar days.

(c) Periods of absence while in a pay status count toward completion of probation. Absence in nonpay status while on the rolls (other than for compensable injury or military duty) is creditable up to a total of 22 workdays. Absence (whether on or off the rolls) due to compensable injury or military duty is creditable in full upon restoration to Federal service. Nonpay time in excess of 22 workdays extends the probationary period by an equal amount. An employee serving probation who leaves Federal service to become a volunteer with the Peace Corps or the Corporation for National and Community Service serves the

remainder of the probationary period upon reinstatement provided the employee is reinstated within 90 days of termination of service as a volunteer or training for such service.

(d) The probationary period for part-time employees is computed on the basis of calendar time, in the same manner as for full-time employees. For intermittent employees, i.e., those who do not have regularly scheduled tours of duty, each day or part of a day in pay status counts as 1 day of credit toward the 260 days in a pay status required for completion of probation. (However, the probationary period cannot be completed in less than 1 year of calendar time.)

7. In § 315.804, the existing text is designated as paragraph (a) and paragraph (b) is added, to read as follows:

§ 315.804 Termination of probationers for unsatisfactory performance or conduct.

* * * * *

(b) Probation ends when the employee completes his or her scheduled tour of duty on the day before the anniversary date of the employee's appointment. For example, when the last workday is a Friday and the anniversary date is the following Monday, the probationer must be separated before the end of the tour of duty on Friday since Friday would be the last day the employee actually has to demonstrate fitness for further employment.

8. Section 315.902 is revised to read as follows:

§ 315.902 Definitions.

In this subpart *supervisory position* and *managerial position* have the meaning given them by the General Schedule Supervisory Guide.

9. In § 315.906, paragraph (b) is revised and new paragraphs (c), (d), and (e) are added, to read as follows:

§ 315.906 Crediting service toward completion of the probationary period.

* * * * *

(b) Service on detail, temporary promotion, or reassignment to another supervisory or managerial position while serving probation is creditable toward completion of probation. Service in a nonsupervisory or nonmanagerial position is not creditable.

(c) Absence in nonpay status while on the rolls (other than for compensable injury or military duty) is creditable up to a total of 22 workdays. Absence (whether on or off the rolls) due to compensable injury or military duty is creditable in full upon restoration to Federal service. Nonpay time in excess of 22 workdays extends the

probationary period by an equal amount.

(d) Service during a probationary period from which an employee was separated or demoted for performance or conduct reasons does not count toward completion of probation required under a subsequent appointment. In other situations in which an employee does not complete probation, service is creditable as determined by agency policy.

(e) Temporary service in a supervisory or managerial position under temporary appointment, promotion, or reassignment *prior to probation* is creditable as determined by agency policy. Prior service under a detail may be credited only when a detail to a supervisory or managerial position is made permanent without a break in service.

10. In § 315.907, paragraph (b) is revised to read as follows:

§ 315.907 Failure to complete the probationary period.

* * * * *

(b) A nonsupervisory or nonmanagerial employee who is demoted into a position in which probation under § 315.904 is required and who, for reasons of supervisory or managerial performance, does not satisfactorily complete the probationary period is entitled to be assigned to a position at the same grade and pay as the position in which he or she was serving probation. The employee is eligible for repromotion in accordance with agency promotion policy.

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50, 70, and 72

RIN 3150-AF27

Physical Security Plan Format Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to eliminate the requirement for applicants for power reactor, Category I fuel cycle, and spent fuel storage licenses to submit physical security plans in two parts. This action is necessary to allow for a quicker and more efficient review of the physical security plans.

EFFECTIVE DATE: November 15, 1995.

FOR FURTHER INFORMATION CONTACT:

Carrie Brown, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-8092.

SUPPLEMENTARY INFORMATION: Under current NRC regulations, applicants for power reactor, Category I fuel cycle, and spent fuel storage licenses must submit physical security plans in two parts. Applicants for power reactor, Category I fuel cycle, and spent fuel storage licenses are required to address, in Part 1 of their plans, how they will comply with the applicable regulations of 10 CFR Parts 11 and 73. They are required to list, in Part 2 of their plans, any test, inspections, audits and any other means to be used to demonstrate compliance with the regulations.

The two-part format is restrictive and has no regulatory advantage. Existing licensees with physical security plans approved before the effective date of the final rule will not be required to adopt the new format. These licensees, however, may revise their plans on a voluntary basis, pursuant to the rules that permit licensees to make changes in security plans that do not decrease the effectiveness of the plans. This final rule will not change any of the substantive content currently required in the physical security plans.

The benefit of this rulemaking is the elimination of an unnecessary requirement and there are no expected adverse impacts. For those licensees who desire to revise their physical security plans, the staff has revised Regulatory Guide, 5.52, "Standard Format and Content of a Licensee Physical Protection Plan for Strategic Special Nuclear Material at Fixed Sites (Other than Nuclear Power Plants)," for use as guidance. NRC encourages applicants or licensees to follow such guidance in order to allow for a quicker and more efficient review of the plans.

Summary of Public Comments

The comment period for the proposed rule published April 17, 1995 (60 FR 19170), closed on May 17, 1995. Two comments were received. The following comment summary and resolution address these comments.

Comment. This commenter complimented NRC for eliminating unnecessary requirements and commented on one statement, in the "Supplementary Information" section, that says licensees may "* * * revise their plans on a voluntary basis pursuant to the rules that permit licensees to make changes in security plans that do not decrease the effectiveness of the plan." The