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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 315

RIN 3206–AG81

Career and Career-Conditional Employment, Noncompetitive Appointment of Certain Former Overseas Employees

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations implementing Executive Order 12721 under which Federal agencies can noncompetitively appoint certain former overseas employees who as family members accompanied their sponsors on official assignment overseas. These regulations add a new condition justifying the waiver of a portion of the overseas service requirement. The regulations also remove duplication and add clarifying information.

EFFECTIVE DATE: April 8, 1996.

FOR FURTHER INFORMATION CONTACT: Ellen Russell on 202–606–0830, FAX 202–606–2329, or TDD 202–606–0023.

SUPPLEMENTARY INFORMATION: On August 23, 1995 (60 FR 47324) OPM published proposed regulations to make it easier for family members of U.S. Government personnel stationed abroad to get career Federal jobs when they are brought back to the United States because of military downsizing and other management-initiated actions. Rather than penalize family members who are returned to the States before they had worked the full 52 weeks required for noncompetitive appointment, the regulation delegates to agencies the authority to waive up to 26 weeks of service in nonpersonal situations that necessitate the relocation of family members out of the overseas area. Under the final regulation, to waive up to 26 weeks of the 52-week overseas service requirement, the employing agency overseas must certify that the family member was forced to return to the United States because of military drawdowns or other management-initiated decisions not personal to the individual and must include the number of weeks waived.

Other reasons for waiving up to 26 weeks of the 52-week service requirement remain the same, i.e., an emergency situation which necessitated the family member's relocation to the United States. An emergency situation includes conflict, terrorism, or the threat of terrorism but does not include a personal situation such as ill health.

We received comments from three Federal agencies and one individual. The Department of Defense (DOD) made two major suggestions. First, DOD suggested a change in how an individual's 3-year period of eligibility could be extended when he or she was stationed in an area of the United States with no significant opportunities for Federal employment. DOD suggested the determination be made by the major Federal employer in the area where the applicant last resided.

We have not adopted this suggestion but instead have modified the regulation to allow any agency to make the determination in order to provide the most flexibility. This means that an individual leaving an area with no significant Federal employment opportunities could get verification from the major Federal employers in the area and attach this statement to his or her application for noncompetitive appointment.

Alternatively, an agency considering an application for noncompetitive appointment could contact Federal agencies in the area where the applicant was last stationed to verify an individual's claim that he or she was stationed in an area with no significant Federal employment opportunities. This flexibility allows agencies to set up whatever special procedures they deem necessary as part of the special assistance provided to family members.

DOD also suggested the regulations add a 2-year ''open period'' so that individuals who, prior to the issuance of these regulations, returned to the United States before earning the necessary 52 weeks of service would be on an equal footing with family members who are eligible as soon as these final regulations are effective. We agree that the intent of the Executive order is to help as many family members as possible and therefore have added such a provision. Under the final regulation, individuals will be eligible for appointment for 3 years following their return to the United States or until March 31, 1998, whichever is later.

This provision is consistent with an approach OPM took in final regulations published on April 3, 1991 (56 FR 13575). Those regulations implemented a revision in Executive Order 12721 that reduced the amount of necessary overseas service from 18 months to 52 weeks. The 1991 regulation included a 3-year open period to provide equity to family members whose eligibility had already expired but who would have been eligible under the terms of the revised Executive order.

The Department of the Army suggested the regulation include certain provisions that had been in the former Federal Personnel Manual, specifically that overseas service need not be continuous, that an eligible need not be a family member at the time of noncompetitive appointment in the United States, and the eligibles may be appointed in any occupation and grade level for which they qualify. The final regulation reflects these comments.

Another Federal agency noted an error in the 5 CFR 315.608(d)(4)(iv) appointing authority. We have corrected the authority to read ''Public Law 86–36 (50 U.S.C. 402, note)''.

The individual suggested we expand the definition of the ''United States'' to include American Samoa and the Commonwealth of the Northern Mariana Islands. This change would allow family members to use their noncompetitive appointment eligibility in these two locations.

We have not adopted this suggestion because Executive Order 12721 states that eligible individuals may be appointed noncompetitively to a competitive service position in the executive branch ''within the United States (including Guam, Puerto Rico, and the Virgin Islands).'' Since the order itself is so specific on where family members can use their eligibility, we do not believe OPM's regulations could add additional geographic areas to the definition of the ''United States.''

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulation pertains only to Federal employees and agencies.

List of Subjects in 5 CFR Part 315

Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending part 315 of title 5, Code of Federal Regulations, as follows:

PART 315—CAREER AND CAREER-CONDITIONAL APPOINTMENT

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. Section 315.608 is revised to read as follows:

§ 315.608 Noncompetitive appointment of certain former overseas employees.

(a) *Authority.* An executive branch agency may noncompetitively appoint, to a competitive service position within the United States (including Guam, Puerto Rico, and the Virgin Islands), an individual who has completed 52 weeks of creditable overseas service as defined in paragraph (b) of this section and is appointed within the time limits in paragraph (d) of this section. Any law, Executive order, or regulation that disqualifies an applicant for appointment in the competitive service, such as the citizenship requirement, also disqualifies the applicant for appointment under this section. An individual may be appointed to any occupation and grade level for which qualified. An agency may waive any requirement for a written test after determining that the duties and responsibilities of the applicant's overseas position were similar enough to make the written test unnecessary.

(1) *Tenure.* A person appointed under this section becomes a career-conditional employee unless he or she has already satisfied the requirements for career tenure or is exempt from the service requirement in 5 CFR 315.201.

(2) *Competitive status.* A person appointed under this section acquires competitive status automatically upon completion of probation.

(b) *Creditable overseas service.* For purposes of this section only, creditable service is service in an appropriated fund position(s) performed by a family member under a local hire appointment(s) overseas during the time the family member was accompanying a sponsor officially assigned to an overseas area and for which the family member received a fully successful or better (or equivalent) performance rating. Creditable overseas service is computed in accordance with the procedures in the OPM Guide to Processing Personnel Actions. Creditable service may have been under more than one appointment and need not be continuous. Leave without pay taken during the time an individual is in the overseas area is credited on the same basis as time worked.

(c) *Service waiver.* Up to 26 weeks of the 52-week service requirement is waived when the head of an agency (or designee) that employed the family member overseas certifies that the family member's expected 52 weeks of employment were cut short because of a nonpersonal situation that necessitated the relocation of the family member from the overseas area. The certification must include the number of weeks waived. For this purpose, a nonpersonal situation includes disaster, conflict, terrorism or the threat of terrorism, and those situations when a family member is forced to return to the United States because of military deployment, drawdowns, or other management-initiated actions. A nonpersonal situation does not include circumstances that specifically relate to a particular individual, for example, ill health or personal interest in relocating.

(d) *Time limit on eligibility.* An individual is eligible for appointment(s) under this authority for a period of 3 years following the date of returning from overseas to the United States to resume residence or until March 31, 1998, whichever date is later. An agency may extend an individual's appointment eligibility beyond 3 years for periods equivalent to—

(1) The time the individual was accompanying a sponsor on official assignment to an area of the United States with no significant opportunities for Federal employment; or

(2) The time an individual was incapacitated for employment.

(e) *Definitions.* In this section terms have the following meaning:

(1) *Family member.* An unmarried child under age 23 or a spouse. An individual must have been a family member at the time he or she met the overseas service requirement and other conditions but does not need to be a family member at the time of noncompetitive appointment in the United States.

(2) *Sponsor.* A Federal civilian employee, a Federal nonappropriated fund employee, or a member of a uniformed service who is officially assigned to an overseas area.

(i) *Officially assigned.* Under active orders issued by the United States Government.

(ii) *Federal civilian employee.* An employee of the executive, judicial, or legislative branch of the United States Government who serves in an appropriated fund position.

(iii) *Nonappropriated fund employee.* An employee paid from nonappropriated funds of the Army and Air Force Exchange Service, Navy Ship's Stores Ashore, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or other instrumentalities of the United States.

(iv) *Member of a uniformed service.* Personnel of the U.S. Armed Forces (including the Coast Guard), the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

(3) *Accompanying.* The family member resided in the overseas area while the sponsor was officially assigned to an overseas post of duty. The family member need not have physically resided with the sponsor at all times or have traveled with the sponsor to or from the overseas area.

(4) *Local hire appointment.* An appointment that is not actually or potentially permanent and that is made from among individuals residing in the overseas area. In this section only, a local hire appointment includes nonpermanent employment under:

(i) Overseas limited appointment under 5 CFR 301.203(b) or (c);

(ii) Expected appointment under Schedule A 213.3106(b)(1), 213.3106(b)(6), or 213.3106(d)(1)) when the duration of the appointment is tied to the sponsor's rotation date or when the appointment is made on a not-to-exceed (NTE) basis;

(iii) An ''American family member'' or ''part-time intermittent temporary (PIT)'' appointment in U.S. diplomatic establishments;

(iv) 50 U.S.C. 403j; Public Law 86–36 (50 U.S.C. 402, note); the Berlin Tariff Agreement; or as a local national employee paid from appropriated funds; or

(v) Any other nonpermanent appointment in the competitive or excepted service approved by OPM.

(5) *Overseas.* A location outside the 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 164

[Docket No. 93N–0473]

Peanut Butter; Amendment of Standard of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the standard of identity for peanut butter to remove the specific reference to the addition of vitamins, so that modified peanut butter products with added vitamins can be made in accordance with the agency's general definition and standard of identity for food named by the use of a nutrient content claim (such as ''reduced fat'' or ''reduced calorie'') in conjunction with the standardized term, peanut butter. This action will assist consumers in maintaining healthy dietary practices by providing for modified forms of peanut butter. This action will also promote honesty and fair dealing in the interest of consumers.

DATES: Effective March 8, 1996.

FOR FURTHER INFORMATION CONTACT: Felicia Satchell, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of February 3, 1994 (59 FR 5153), FDA published a proposal to amend the standard of identity for peanut butter in § 164.150 (21 CFR 164.150) to remove the specific prohibition against added vitamins. The proposal was based on comments the agency received in response to a final rule that was published in the Federal Register of January 6, 1993 (58 FR 2066). The comments noted that the requirements of the general definition and standard of identity in § 130.10 (21 CFR 130.10) create a problem for firms interested in producing modified (e.g., ''reduced fat'') peanut butter products. They pointed out that § 130.10(b) requires that the modified food may not be nutritionally inferior to the traditional standardized food, and that § 130.10(d)(3) prohibits the addition of ingredients that are specifically prohibited by the standard for the traditional food. Because there is a specific prohibition against the addition of vitamins to peanut butter in § 164.150(c), modified peanut butter products that are not nutritionally inferior to peanut butter could not be made under § 130.10.

To eliminate this problem, FDA proposed to remove the specific prohibition against the addition of vitamins in the peanut butter standard. The agency stated in that proposal that removal of the term ''added vitamins'' from § 164.150(c) would allow the addition of vitamins to modified peanut butter products made to comply with § 130.10, but that the agency still felt that added vitamins are not suitable ingredients for peanut butter when the food is used in a balanced diet. Interested persons were given until April 4, 1994, to submit comments.

II. Comments

The agency received 12 letters, each containing one or more comments, from a manufacturer, several trade associations, and food processors. Seven letters supported the proposal, and five opposed it. One comment that expressed support for the proposed change suggested an additional change in the standard of identity for peanut butter, and others requested clarification of the nutrient requirements for modified peanut butter. Most of the comments that opposed amendment of the peanut butter standard cited, as grounds for their opposition, issues that are outside the scope of this rulemaking (e.g., whether a modified peanut butter product under the general definition and standard of identity could or should be made with 90 percent of peanuts, as required by the standard of identity for peanut butter, and whether FDA is enforcing its regulations with respect to modified peanut butter products in the marketplace) and they need not be addressed here. A summary of the relevant comments and the agency's responses follow.

1. A comment from a trade association that opposed the proposal stated that its membership believes it would be misleading if the standard of identity for peanut butter were changed. It expressed the opinion that peanut butter is nutritionally sound without vitamin additives.

The agency agrees that peanut butter is nutritionally sound without added vitamins. The removal of the specific prohibition against added vitamins in the peanut butter standard is only to permit their addition, as necessary, to modified peanut butter products made under the general definition and standard of identity in § 130.10. FDA clearly stated in the proposed rule that the removal of this prohibition would not change the agency's position that added vitamins are not suitable ingredients in peanut butter when it is not being modified to reduce, for example, its fat content. Thus, in this final rule, the agency is merely removing the prohibition on the addition of vitamins to peanut butter in the standard of identity in § 164.150. It is not making any provision for the addition of these ingredients to this food under § 164.150. If vitamins are added to peanut butter, it would have to be labeled in compliance with § 130.10, i.e., ''peanut butter with added vitamins.'' Any such addition of vitamins to the food would have to be consistent with the provisions of the fortification policy in 21 CFR 104.20, or be otherwise rational.

2. One comment stated that it supported the proposal to remove the phrase ''added vitamins'' in § 164.150(c), but that the proposal did not go far enough. It stated that the agency should remove the entire statement contained in paragraph § 164.150(c), i.e., ''except that artificial flavorings, artificial sweeteners, chemical preservatives, added vitamins, and color additives are not suitable ingredients of peanut butter.'' The comment stated that none of these ingredients would be permitted in peanut butter notwithstanding the above language because the only optional ingredients permitted in peanut butter under the standard are ''safe and suitable seasoning and stabilizing ingredients.'' The comment contended that few would argue that these ''prohibited'' ingredients (artificial flavorings, artificial sweeteners, chemical preservatives, vitamins, and color additives) qualify as seasoning or stabilizing ingredients. The comment further contended that if the agency has a concern in this regard, it could state for the record that stabilizing and seasoning ingredients, as used in the