

# Rules and Regulations

Federal Register

Vol. 65, No. 168

Tuesday, August 29, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 330

RIN 3206-AI56

### Interagency Career Transition Assistance for Displaced Former Panama Canal Zone Employees

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is issuing final regulations that provide certain displaced employees of the former Panama Canal Zone with interagency priority consideration for vacant competitive service positions in the continental United States. These regulations are applicable to eligible displaced employees of the former Panama Canal Zone who were separated because of the transfer of Panama Canal operations and full control to the Republic of Panama.

**DATES:** These final regulations are effective September 28, 2000.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Glennon or Jacqueline R. Yeatman, 202-606-0960, FAX 202-606-2329.

#### SUPPLEMENTARY INFORMATION:

#### Background

On May 7, 1999, OPM published interim regulations at 64 FR 24504 that authorize special interagency selection priority for certain employees who are displaced from positions under the Panama Canal Employment System. The interim regulations were effective upon publication in the **Federal Register**. Interested parties had 60 days to submit written comments.

For reference, the Panama Canal Treaty of 1977, as implemented through Public Law 96-70 (93 Stat. 452, The Panama Canal Act of 1979, approved

September 27, 1979, and generally effective October 1, 1979), provides for the final transfer of Panama Canal operations and full control of the former Canal Zone geographic area from the Government of the United States to the Republic of Panama on December 31, 1999. This action resulted in the involuntary separation, or geographic relocation, of most United States citizens working as Federal employees in the Canal Area.

Section 1212(a) of the Panama Canal Act, as codified in 22 U.S.C. 3652, authorized the President to establish the *Panama Canal Employment System* in accordance with applicable Treaty requirements and other provisions of law. Most Federal employees in the Canal Area held excepted service positions under the Panama Canal Employment System. However, § 1212(a) requires full interchange between these excepted service Panama Canal Employment System positions and positions in the competitive service.

Section 1232 of the Panama Canal Act, as codified in 22 U.S.C. 3672, provides certain employees of the former Canal Zone with priority consideration for continuing vacant Federal positions.

Specifically, § 1232(a) of the Act authorizes special selection priority for any citizen of the United States who was an employee of the Panama Canal Company or the Canal Zone Government on March 31, 1979, and was subsequently involuntarily separated by reduction in force. This priority is not available to otherwise eligible employees who are placed in another appropriate Federal position that is located in the Republic of Panama.

Similarly, § 1232(b) of the Act authorizes special selection priority for any citizen of the United States who, on March 31, 1979, was employed in the Canal Zone under the Panama Canal Employment System as an employee of an executive branch agency (including the Smithsonian Institution), and whose position was eliminated as the result of the Panama Canal Treaty of 1977 and related agreements. This priority is not available to otherwise eligible employees who are appointed to another appropriate Federal position that is located in the Republic of Panama.

Section 1232(c) of the Act mandates that OPM establish and administer a Government-wide special selection priority program for all eligible displaced employees of the former Canal Zone.

#### Comments

OPM received one comment, from a Federal agency, on the interim regulations.

The agency suggested that the final regulations limit interagency selection priority only to positions with no greater promotion potential than the displaced employee's former position under the Panama Canal Employment System. OPM did not adopt this suggestion because of the difficulty that a hiring agency could encounter in determining the promotion potential of the employee's former Panama Canal Employment System position, particularly after the cessation of activities on December 31, 1999.

The agency also suggested that the final regulations clarify that, in order to be eligible for this interagency selection program, a displaced employee must have a last performance rating of "Fully Successful" or equivalent (i.e., Summary Level 3, as defined in 5 CFR 430.208(d)). OPM adopted this suggestion, which was implied in the interim regulations. The final regulations clarify OPM's intention that the placement program for displaced former Panama Canal Zone employees follows the general eligibility requirements set forth in 5 CFR 330.704(a)(2) for other displaced employees, who are eligible for selection priority under the Interagency Career Transition Assistance Plan, which is authorized by 5 CFR 330, subpart G.

On another item, the agency suggested that OPM clarify that these regulations follow the same general order of selection that is provided under 5 CFR 330.705(a) for actions under the Interagency Career Transition Assistance Plan. OPM has also adopted this suggestion, again because the final regulations clarify OPM's intention that the placement program for displaced former Panama Canal Zone employees follows the general provisions applicable to displaced employees who are eligible for selection priority under the Interagency Career Transition Assistance Plan.

In addition, the agency suggested that OPM provide a definition of "Continental United States." Upon review, we believe that this issue is presently covered by paragraph 5 CFR 210.102(b)(9), which provides that "Overseas means outside the continental United States, but does not include Alaska, Guam, Hawaii, the Isthmus of Panama, Puerto Rico, or the Virgin Islands."

Finally, the agency suggested that OPM provide information on the payment of relocation expenses for displaced employees. This issue is beyond the scope of OPM's statutory and regulatory responsibility, and is therefore not covered in these final regulations.

#### **Final Regulations on the Interagency Career Transition Assistance Program for Displaced Panama Canal Zone Employees**

Eligible displaced employees of the former Panama Canal Zone are eligible for interagency special selection priority in this new program on a similar basis as that provided to many displaced Federal employees under the *Interagency Career Transition Assistance Plan*. However, eligible displaced employees of the former Canal Zone receive special selection priority when applying for vacant positions throughout the continental United States, while the Interagency Career Transition Assistance Plan provides priority consideration to other displaced Federal employees only in the local commuting area where the displaced employee was separated.

#### **Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

#### **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 330**

Armed Forces reserves, Government employees.

U.S. Office of Personnel Management.

**Janice R. Lachance,**  
*Director.*

Accordingly, the interim rule which was published at 64 FR 24504 is adopted as final with the following changes:

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

1. The authority citation for part 330 is revised to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp., p. 218; § 330.102 also issued under 5 U.S.C. 3327; subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310, subpart I also issued under sec. 4432 of Pub. L. 102–484, 106 Stat. 2315; subpart K also issued under sec. 11203 of Pub. L. 105–33, 111 Stat. 738; subpart L also issued under sec. 1232 of Pub. L. 96–70, 93 Stat. 452.

2. Subpart L of part 330 is revised to read as follows:

#### **INTERAGENCY CAREER TRANSITION ASSISTANCE FOR DISPLACED FORMER PANAMA CANAL ZONE EMPLOYEES**

Sec.

330.1201 Purpose.  
330.1202 Definitions.  
330.1203 Eligibility  
330.1204 Selection.

#### **Subpart L—Interagency Career Transition Assistance for Displaced Former Panama Canal Zone Employees**

##### **§ 330.1201 Purpose.**

This subpart implements Section 1232 of Public Law 96–70 (the Panama Canal Act of 1979) and provides eligible displaced employees of the former Panama Canal Zone with interagency special selection priority for continuing Federal vacant positions in the continental United States.

##### **§ 330.1202 Definitions.**

For purposes of this subpart:

(a) *Agency* means an Executive Department, a Government corporation, and an independent establishment as cited in 5 U.S.C. 105. For the purposes of this program, the term "agency" includes all components of an organization, including its Office of Inspector General.

(b) *Canal Zone* is the definition set forth in 22 U.S.C. 3602(b)(1), and means the areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements;

(c) *Eligible displaced employee of the former Panama Canal Zone* means a citizen of the United States who:

(1) Held a position in the Panama Canal Employment System that is in retention tenure group 1 or 2, as defined in § 351.501(a) of this chapter;

(2)(i) Was an employee of the Panama Canal Company or the Canal Zone Government on March 31, 1979, and

was continuously employed in the former Panama Canal Zone under the Panama Canal Employment System; or

(ii) Was continuously employed since March 31, 1979, in the former Panama Canal Zone under the Panama Canal Employment System as an employee of an executive agency, or as an employee of the Smithsonian Institution;

(3) Held a position that was eliminated as the result of the implementation of the Panama Canal Treaty of 1977 and related agreements;

(4) Was not appointed to another appropriate Federal position located in the Republic of Panama; and

(5) Received a specific notice of separation by reduction in force, and meets the additional eligibility criteria covered in § 330.1203.

(d) *Special selection priority* means that an eligible displaced employee of the former Panama Canal Zone who applies for a competitive service vacancy, and who the hiring agency in the continental United States determines is well-qualified, has the same special selection priority as a current or former displaced Federal employee who is eligible under 5 CFR part 330, subpart G (the Interagency Career Transition Assistance Plan), or under 5 CFR part 330, subpart K (Federal Employment Priority Consideration for Displaced Employees of the District of Columbia Department of Corrections). Eligible displaced employees of the former Panama Canal Zone have special selection priority under this subpart to positions throughout the continental United States.

(e) *Vacancy* means a competitive service position to be filled for a total of 121 days or more, including all extensions, which the agency is filling, regardless of whether the agency issues a specific vacancy announcement.

(f) *Well-qualified* employee means an eligible displaced former employee of the Panama Canal Zone who possesses the knowledge, skills, and abilities that clearly exceed the minimum qualification requirements for the position. A well-qualified employee will not necessarily meet the agency's definition of *highly or best qualified*, when evaluated against other candidates who apply for a particular vacancy, but must satisfy the following criteria, as determined and consistently applied by the agency:

(1) Meets the basic qualification standards and eligibility requirements for the position, including any medical qualifications, suitability, and minimum educational and experience requirements;

(2) Satisfies one of the following qualifications requirements:

(i) Meets all selective factors where applicable. Meets appropriate quality rating factor levels as determined by the agency. Selective and quality ranking factors cannot be so restrictive that they run counter to the goal of placing displaced employees. In the absence of selective and quality ranking factors, selecting officials will document the job-related reason(s) the eligible employee is or is not considered to be well-qualified; or

(ii) Is rated by the agency to be above minimally qualified in accordance with the agency's specific rating and ranking process. Generally, this means that the individual may or may not meet the agency's test for highly qualified, but would in fact, exceed the minimum qualifications for the position;

(3) Is physically qualified, with reasonable accommodation where appropriate, to perform the essential duties of the position;

(4) Meets any special qualifying condition(s) that OPM has approved for the position;

(5) Is able to satisfactorily perform the duties of the position upon entry; and

(6) Has a last performance rating of at least "Fully Successful" or equivalent.

#### **§ 330.1203 Eligibility.**

(a) In order to be eligible for special selection priority, an eligible displaced employee of the former Panama Canal Zone must:

(1) Have received a specific notice of separation by reduction in force;

(2) Have not been appointed to another appropriate position in the Government of the United States in Panama;

(3) Apply for a vacancy within the time frames established by the hiring agency; and

(4) Be found by the hiring agency as well-qualified for that specific vacancy.

(b) Eligibility for special selection priority as an eligible displaced employee of the former Panama Canal Zone begins on the date that the employee received a specific notice of separation by reduction in force.

(c) Eligibility for special selection priority as an eligible displaced employee of the former Panama Canal Zone expires on the earliest of:

(1) One year after the effective date of the reduction in force;

(2) The date that the employee receives a career, career-conditional, or excepted appointment without time limit in any agency at any grade level; or

(3) The date that the employee is separated involuntarily for cause prior

to the effective date of the reduction in force action.

#### **§ 330.1204. Selection.**

(a) If two or more individuals apply for a vacancy and the hiring agency determines the individuals to be well-qualified, the agency has the discretion to select any of the individuals eligible for priority under subpart G of this part (the Interagency Career Transition Assistance Plan), under subpart K of this part (Federal Employment Priority Consideration for Displaced employees of the District of Columbia Department of Corrections), or under subpart L of this part (Interagency Career Transition Assistance for Displaced Former Panama Canal Zone Employees).

(b) Except as provided in § 330.705(c), when filling a position from outside the agency's workforce, the agency must select:

(1) Current or former agency employees eligible under the agency's Reemployment Priority List described in subpart B of this part; then

(2) At the agency's option, any other former employee displaced from the agency (under appropriate selection procedures, then:

(3) Current or former Federal employees displaced from other agencies who are eligible under subparts G, K, or L of this part, and then:

(4) Any other candidate (under appropriate selection procedures) (optional).

[FR Doc. 00-21947 Filed 8-28-00; 8:45 am]

BILLING CODE 6325-01-P

### **OFFICE OF PERSONNEL MANAGEMENT**

#### **5 CFR Parts 831 and 842**

**RIN 3206-AI66**

#### **Retirement Eligibility for Nuclear Materials Couriers Under CSRS and FERS**

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is adopting its interim regulations applicable to nuclear materials couriers employed under the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS). These final rules are pursuant to the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 enacted on October 17, 1998. The Act provides early retirement and enhanced annuity benefits for nuclear materials

couriers employed by the United States Department of Energy under CSRS and FERS; requires an increase in the percentage rate of withholdings from the basic pay of nuclear material couriers; and establishes mandatory retirement of nuclear materials couriers at age 57. These regulations are necessary to put the new retirement provisions into effect.

**DATES:** Final rules effective September 28, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Brown, (202) 606-0299.

**SUPPLEMENTARY INFORMATION:** On January 18, 2000, we published (at 65 FR 2521) interim regulations to implement the provisions of section 3154 of Public Law 105-261, enacted October 17, 1998, which governs the retirement eligibility, annuity benefits and deductions from basic pay of nuclear materials couriers employed by the United States Department of Energy under CSRS and FERS.

OPM received comments from one Federal agency. The commenter proposed that, for the purpose of entitlement to early retirement and enhanced annuity authorized by Public Law 105-261, the regulations be amended to extend coverage under that law for service performed as a nuclear materials courier prior to October 1, 1977, by employees of the predecessor agencies of the Department of Energy. We are unable to implement that proposal. Section 3154 of Public Law 105-261, for purposes of benefits under CSRS and FERS, specifically defines nuclear materials courier as "an employee of the Department of Energy \* \* \*". We are aware that the nuclear materials courier function was performed by employees of the Department of Energy's predecessor agencies (Atomic Energy Commission and the Energy Research and Development Administration). However, the statutory definition reflects the specific intent and understanding between OPM and the Department of Energy that only service performed by couriers since the establishment of the Department of Energy on October 1, 1977, would be used in determining entitlement to early retirement and enhanced benefits under sections 8336(c) (CSRS) and 8412(d) (FERS) of title 5 U.S. Code as amended by Public Law 105-261. This intent is further manifested in 5 U.S.C. 8334, as amended by the law, which lists the applicable employee deductions for nuclear materials couriers under CSRS beginning on October 1, 1977. Additionally, the higher agency contributions and additional annual