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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 300, 550, 752, 771, 831 and 842

RIN 3206-AG37

Agency Administrative Grievance System

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is abolishing regulations at 5 CFR part 771 on the agency administrative grievance system (AGS). However, any AGS established under the current regulations must remain in effect until modified or replaced by the agency with another dispute resolution process. This change implements a human resources management recommendation under the National Performance Review (NPR). The change also is consistent with OPM's initiative under the NPR to sunset the Federal Personnel Manual (FPM), which included abolishing FPM Chapter 771 on the AGS as of December 31, 1993.

EFFECTIVE DATE: October 11, 1995.

FOR FURTHER INFORMATION CONTACT: Gary D. Wahlert (202) 606-2920.

SUPPLEMENTARY INFORMATION: The National Performance Review was issued on September 7, 1993. Appendix C to the NPR is entitled Major Recommendations Affecting Governmental Systems and includes a number of recommendations concerning reinvention of human resource management. One recommendation, HRM08, stated that agencies should "improve processes and procedures establishes to provide workplace due process for employees" and elaborated that "[a]ll agencies should establish alternative dispute resolution [ADR]

methods and options for informal disposition of employment disputes." Among other things, the recommendation specifies that OPM should eliminate "all regulations governing internal agency grievance and appeal procedures, thus freeing agencies to tailor ADR techniques to various situations."

Proposed changes to implement this recommendation were published on December 5, 1994 at 59 FR 62353 for public comment. Comments were received from three agencies, two individuals, and two unions. The agencies were generally supportive of the change while the individuals and the unions were concerned that employees might be deprived of a benefit if agencies are not required to have an AGS. These comments are addressed below.

One agency, while supporting the opportunity to develop a grievance procedure that fits their "needs, resources, and particular characteristics," commented that there is a need for "limited" Government-wide regulation. Here the agency recommends that OPM mandate "universal standards" of due process and a minimal avenue for seeking redress of grievances in the interest of equity and fairness to employees. One union comment was that OPM require the maintenance of the AGS absent establishment of some other system. One individual suggested that it is unnecessary for the current regulations to be abolished in order for agencies to experiment with ADR techniques—such experimentation could take place within the parameters of the regulations.

OPM recognizes the concern that the absence of a regulatory requirement to have an AGS could result in some agencies not having one and that this in turn could result in adverse consequences such as leaving some employees without a forum to resolve some types of workplace disputes. OPM concurs with one agency's comment that the unavailability of a forum could lead to loss of morale, increased disaffection, and diminished worker productivity. OPM, however, believes the risk of agencies not having a system is minimal. First, the absence of an agency dispute resolution system would be contrary to the intent of the NPR recommendation. Second, OPM strongly advises agencies to have an

administrative review system, and this aspect of human resources management will be subject to OPM's review as part of its oversight program. Third, the negative consequences of not having a system are so clear that they should deter any agency from letting that happen. Nevertheless, as suggested by one of the commenters, OPM is retaining the single requirement that any AGS established under the current regulations must remain in effect until modified or until that AGS is replaced with another system or process for the resolution of workplace disputes. The remainder of the current regulations are abolished as proposed. OPM believes this course of action affords agencies maximum flexibility while at the same time preserving the rights of individual employees.

Here, OPM repeats and emphasizes the comment made when proposing this change—that agencies are not precluded from continuing their AGS procedures established under part 771 to resolve workplace disputes (in fact, agencies are required to continue these procedures at least until they are modified or replaced). Again, as noted when OPM proposed this change, agencies, as suggested by the NPR, can take the opportunity to use ADR techniques in helping resolve disputes in the workplace and to do so without the restrictions contained in the current regulations that might negatively affect agency flexibility to design and operate appropriate workplace dispute resolution procedures. OPM's Office of Labor Relations and Workforce Performance will be available upon request to assist agencies in such efforts.

One commenter stated that elimination of the regulations would serve to expand the scope of bargaining on the scope of negotiated grievance procedures. OPM disagrees—the scope of such procedures is dictated by the provisions of Chapter 71 of title 5 of the United States Code. Elimination of part 771 does not expand or in any manner modify the labor-management relations statute.

Conforming Amendments

OPM also is deleting references to part 771 as they appear elsewhere in title 5 of the Code of Federal Regulations. In those cases, the language is modified to refer generically to "administrative" grievances or

grievance systems to reflect the fact that agencies may have administrative grievance systems even though they would no longer technically be established under part 771, i.e., 5 CFR §§ 300.104(c)(2), 550.803, 752.203(f), 831.204(e)(2), and 842.106(e)(2). Likewise, other current references to "administrative" grievances in Title 5 (and not also referring to part 771) remain unchanged, i.e., 5 CFR §§ 511.607(a)(1) and 550.804(b)(1).

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

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

List of Subjects

5 CFR Part 300

Freedom of information, Government employees, Reporting and recordkeeping requirements, Selective Service System.

5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

5 CFR Part 752

Administrative practice and procedure, Government employees.

5 CFR Part 771

Administrative practice and procedure, Government employees.

5 CFR Part 831

Administrative practice and procedure, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 842

Air traffic controllers, Alimony, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

James B. King,
Director.

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

PART 300—EMPLOYMENT (GENERAL)

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

Authority: 5 U.S.C. 552, 3301, and 3302; E.O. 10577, 3 CFR 1954-1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 111478, 3 CFR 1966-1970, Comp., page 803.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

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. Secs. 300.801 through 300.802 issued under 5 U.S.C. 1103(c).

2. In § 300.104, paragraph (c)(2) is revised to read as follows:

§ 300.104 Appeals, grievances and complaints.

* * * * *

(c) * * *

(2) Except as provided in paragraph (c)(1) of this section, an employee may file a grievance with an agency when he or she believes that an employment practice which was applied to him or her and which is administered or required by the agency violates a basic requirement in § 300.103. The grievance shall be filed and processed under an agency grievance system, if applicable, or a negotiated grievance system as applicable.

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart H—Back Pay

3. The authority citation for subpart H of part 550 continues to read as follows:

Authority: 5 U.S.C. 5596(c); Pub. L. 100-202, 101 Stat. 1329.

4. In section 550.803, the definition of "grievance" is revised to read as follows:

§ 550.803 Definitions

* * * * *

Grievance has the meaning given that term in section 7103(a)(9) of title 5, United States Code, and (with respect to members of the Foreign Service) in section 1101 of the Foreign Service Act of 1980 (22 U.S.C. 4131). Such a grievance includes a grievance processed under an agency administrative grievance system, if applicable.

* * * * *

PART 752—ADVERSE ACTIONS

5. The authority citation for part 752 continues to read as follows:

Authority: 5 U.S.C. 7504, 7514, and 7543.

6. In section 752.203, paragraph (f) is revised to read as follows:

§ 752.203 Procedures.

* * * * *

(f) *Grievances.* The employee may file a grievance through an agency administrative grievance system (if applicable) or, if the suspension falls within the coverage of an applicable negotiated grievance procedure, an employee in an exclusive bargaining unit may file a grievance only under that procedure. Sections 7114(a)(5) and 7121(b)(3) of title 5 U.S.C., and the terms of any collective bargaining agreement, govern representation for employees in an exclusive bargaining unit who grieve a suspension under this subpart through the negotiated grievance procedure.

* * * * *

PART 771—AGENCY ADMINISTRATIVE GRIEVANCE SYSTEM

7. Part 771 is revised to read as follows:

PART 771—AGENCY ADMINISTRATIVE GRIEVANCE SYSTEM

Sec.
771.101 Continuation of Grievance Systems.

Authority: 5 U.S.C. 1302, 3301, 3302, 7301; E.O. 9830, 3 CFR 1945-1948 Comp., pp. 606-624; E.O. 11222, 3 CFR 1964-1969 Comp., p. 306.

§ 771.101 Continuation of Grievance Systems.

Each administrative grievance system in operation as of October 11, 1995, that has been established under former regulations under this part must remain in effect until the system is either modified by the agency or replaced with another dispute resolution process.

PART 831—RETIREMENT

8. The authority citation for part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.204 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 105-508, 104 Stat. 1388-339; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964-1965 Comp.; § 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); §§ 831.663 and 831.664 also issued under section

11004(c)(2) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66; § 831.682 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99-251, 100 Stat. 23; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, 101 Stat. 1330-275; § 831.2203 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508; 104 Stat. 1388-328.

9. In section 831.204, paragraph (e)(2) is revised to read as follows:

§ 831.204 Elections of retirement coverage under the Portability of Benefits for Nonappropriated Fund Employees Act of 1990.

* * * * *

(e) * * *

(2) The procedures must not allow review under any employee grievance procedures, including those established by chapter 71 of title 5, United States Code.

* * * * *

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

10. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); Sections 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under sec. 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508, and 5 U.S.C. 8402(c)(1); Sections 842.604 and 842.611 also issued under 5 U.S.C. 8417; Section 842.607 also issued under 5 U.S.C. 8416 and 8417; section 842.614 also issued under 5 U.S.C. 8419; section 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under sec. 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508; section 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203; section 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101-239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508; subpart H also issued under 5 U.S.C. 1104.

11. In Section 842.106, paragraph (e)(2) is revised to read as follows:

§ 842.106 Elections of retirement coverage under the Portability of Benefits for Nonappropriated Fund Employees Act of 1990.

* * * * *

(e) * * *

(2) The procedures must not allow review under any employee grievance procedures, including those established

by chapter 71 of title 5, United States Code.

* * * * *

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 274

[Release Nos. 33-7208; IC-21332; S7-3-95]

RIN 3235-AG29

Registration Fees for Certain Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rule amendments and form.

SUMMARY: The Commission is adopting amendments to rule 24f-2 under the Investment Company Act of 1940, the rule that permits certain investment companies to register an indefinite number of securities under the Securities Act of 1933. The Commission is also adopting a new form, Form 24F-2, to provide a standard form for annual notices filed under rule 24f-2. The amendments and the new form are intended to clarify the application of certain provisions of rule 24f-2 and make the rule's filing deadlines more flexible under certain circumstances.

DATES: The amendments are effective October 10, 1995. The rule amendments and Form 24F-2 will apply to filings that cover fiscal periods ending on or after the effective date, and to mergers and reorganizations completed on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Karen J. Garnett, Attorney, or Joseph E. Price, Deputy Chief, (202) 942-0721, Office of Disclosure and Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. After the effective date, questions concerning filings should be addressed to Carolyn A. Miller, Senior Financial Analyst, (202) 942-0510, Office of Financial Analysis, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is adopting amendments to rules 24f-1 (17 CFR 270.24f-1) and 24f-2 (17 CFR 270.24f-2) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) ("1940

Act") and a new Form 24F-2 (17 CFR 274.24).

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Executive Summary

The Commission is amending rule 24f-2 under the 1940 Act, the rule that permits certain investment companies to register an indefinite number of securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act"). The amendments provide that annual notices required by rule 24f-2 will be deemed timely filed if the investment company establishes that it timely transmitted the notice to a company or governmental entity that guaranteed delivery to the Commission no later than the filing date. In addition, the amendments modify certain filing periods under rule 24f-2 and clarify the operation of the rule's termination provisions in the case of investment company business combination transactions. The Commission also is adopting Form 24F-2, a standard form for annual notices required by rule 24f-2. Form 24F-2 solicits the information currently required by rule 24f-2 for annual notices and includes a work sheet for calculating filing fees. The form is intended to improve the accuracy of information contained in Rule 24f-2 Notices and improve the Commission's ability to process the notices. Finally, the Commission is adopting conforming amendments to rule 24f-1, the rule that permits certain investment companies to register securities sold in excess of the number of shares included in a registration statement.

I. Background

Section 6(b) of the Securities Act (15 U.S.C. 77f(b)) specifies the fees that must be paid in connection with registering securities with the Commission under the Securities Act. Section 24 of the 1940 Act (15 U.S.C. 80a-24) modifies these provisions for certain investment companies