

Proposed Rules

Federal Register

Vol. 60, No. 130

Friday, July 7, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206-AF89

Pay Administration (General); Severance Pay for Panama Canal Commission Employees

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend its regulations to exclude certain categories of employees of the Panama Canal Commission from entitlement to severance pay. On December 31, 1999, the Republic of Panama will take over operation of the Panama Canal under the terms of the Panama Canal Treaty of 1977. The proposed changes would eliminate entitlement to severance pay for Panama Canal Commission employees who are offered reasonably comparable employment with a successor entity or who are hired more than 90 days after the publication of final regulations making these changes.

DATES: Comments must be received on or before September 5, 1995.

ADDRESSES: Send or deliver written comments to Donald J. Winstead, Assistant Director for Compensation Policy, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Frank Derby, (202) 606-2858.

SUPPLEMENTARY INFORMATION: Federal employees employed by the Panama Canal Commission will be affected by the transfer of control over the Panama Canal from the United States to the Republic of Panama under the terms of the Panama Canal Treaty of October 1, 1977. These proposed regulatory changes, requested by the Panama Canal Commission, address this unique transfer of function as it pertains to

severance pay entitlements for certain Federal employees.

Under the proposed regulations, severance pay under title 5, United States Code, would not be payable to those Panama Canal Commission employees who are offered "reasonably comparable employment" by one of the successor public or private entities that the government of the Republic of Panama vests with responsibility for performing functions previously performed by the Commission. In addition, severance pay would not be payable to employees who are appointed as Commission employees after the 90th day following publication of final regulations making these changes.

The severance pay statute (5 U.S.C. 5595) permits the Office of Personnel Management (OPM) to exclude by regulation any employees, officers, or agencies that are not otherwise excluded by law. For example, under OPM's regulations, involuntarily separated employees are not entitled to severance pay if they are given a "reasonable offer" of continued Federal employment by the employing agency or a successor agency (5 CFR 550.704(b)(2)). Similarly, the regulations now being processed would eliminate entitlement to severance pay when Panama Canal Commission employees are offered "reasonably comparable employment" by an entity assuming the functions formerly performed by the Panama Canal Commission. This would prevent a windfall to Commission employees who are able to continue their Canal-related employment.

The concept of "reasonably comparable employment" generally parallels the concept of "reasonable offer" found in OPM's current regulations. A "reasonable offer" is defined at 5 CFR 550.703 as one in which the position is—

- (1) In the employee's agency, including an agency to which the employee is transferred with his or her function;
- (2) Within the employee's commuting area;
- (3) Of the same tenure and work schedule;
- (4) Not lower than two grade or pay levels below the employee's current grade or pay level.

The positions that will be offered to Panama Canal Commission employees

will be in the successor entities to which the Canal functions are being transferred under the terms of the treaty. The proposed regulations also provide that a "reasonably comparable" offer of employment to Panama Canal Commission employees must be (1) Within the employee's commuting area, (2) of the same tenure and work schedule, and (3) not more than 20 percent below the employee's Panama Canal Commission rate of basic pay. (The 20-percent maximum pay differential is based on the current "reasonable offer" provision regarding pay levels. Ten percent represents the approximate difference in pay levels between most General Schedule grades (e.g., GS-8, step 1, and GS-7, step 1). Thus, 20 percent would be the approximate difference in pay between a grade and the grade two grades lower (e.g., GS-9, step 1, compared to GS-7, step 1).) Therefore, the definition of "reasonably comparable employment" contains all of the elements of a "reasonable offer" in the current regulations.

Under the proposed regulations, a Panama Canal Commission employee is also excluded from entitlement to severance pay if he or she *accepts* reasonably comparable employment *within 30 days after* separation from Commission employment. If severance payments are made before an individual's entitlement to severance pay is invalidated by post-separation acceptance of reasonably comparable employment, those payments would be considered erroneous and subject to recovery as a debt due the United States Government. The 30-day rule ensures that employees who have only a short break in their Canal-related employment do not obtain an unwarranted windfall. We believe 30 days is sufficient to prevent abuse. At the same time, 30 days is a short enough period that the amount of erroneous payments should be minimal, keeping the administrative problems associated with recovery efforts to a minimum as well.

The restriction on severance pay entitlement for those individuals hired by the Panama Canal Commission after the 90th day following publication of final regulations making these changes is similar in concept to the restriction in § 550.704(b)(3) of the current regulations. That section denies eligibility for severance pay to

individuals who are appointed in an agency within 1 year before the date the agency is scheduled by law or Executive order to be terminated. A longer period of time is being established for the Panama Canal Commission employees to ensure that the Panama Canal Commission can determine its severance pay liabilities well in advance of the transfer of Canal operations.

Under the Panama Canal Treaty of 1977, the Canal operation must be transferred to the Republic of Panama free of any debt or encumbrances. Thus, severance pay liabilities must be estimated in advance and prefunded. This prefunding would require increasing Canal tolls paid by the world shipping community. Furthermore, we believe a special rule is justified for this unique situation. In this case, an organization or operation is not being "terminated" in the normal sense, but instead is being transferred to a foreign government under a treaty signed over 20 years before the transfer. (It should be noted that, prior to 1990, OPM regulations provided for a 5-year rule instead of the current 1-year rule in § 550.704(b)(3).)

The proposed regulations provide that those employees who resign before receiving notice of the successor entity's intention not to offer them reasonably comparable employment will be considered voluntarily separated and not entitled to severance pay. This is consistent with the current regulatory provision at § 550.706, which provides that an employee who resigns is considered voluntarily separated unless he or she has received definite notice of involuntary separation (5 CFR 550.706). In the case of Panama Canal Commission employees, there is no loss of continued employment unless the employee is not offered a job with one of the Canal successor entities. If an employee is officially notified that he or she will not be offered reasonably comparable employment and subsequently resigns, the resignation would be considered to be an involuntary separation under § 550.706.

Since the transfer of control of the Panama Canal is a unique situation, the special severance pay rules we are proposing are consolidated in a separate section at the end of subpart G § 550.714.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

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

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend part 550 of title 5, Code of Federal Regulations, as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart G—Severance Pay

1. The authority citation for subpart G is revised to read as follows:

Authority: 5 U.S.C. 5595; E.O. 11257, November 13, 1965, 3 CFR 1964–1965 Comp., p357.

2. Section 550.714 is added to read as follows:

§ 550.714 Panama Canal Commission Employees.

(a) Notwithstanding any other provisions of this subpart, an employee separated from employment with the Panama Canal Commission as a result of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements shall not be entitled to severance pay if he or she—

(1) Receives a written offer of reasonably comparable employment when such offer is made before separation from Commission employment;

(2) Accepts reasonably comparable employment within 30 days after separation from Commission employment; or

(3) Was hired by the Commission on or after (date to be inserted is the date 90 days after publication of final regulations in the **Federal Register**).

(b) The term *reasonably comparable employment* means a position that meets all the following conditions—

(1) The position is with a public or private entity assuming functions previously performed by the Panama Canal Commission for or on behalf of the Republic of Panama;

(2) The rate of basic pay of the position is not more than 20 percent below the employee's rate of basic pay as a Panama Canal Commission employee;

(3) The position is within the employee's commuting area;

(4) The position carries no fixed time limitation as to length of appointment; and

(5) The work schedule (that is, part-time or full-time) of the position is the same as that of the position held by the

employee at the Panama Canal Commission.

(c) A Panama Canal Commission employee who resigns prior to receiving an official written notice that he or she will not be offered reasonably comparable employment shall be considered to be voluntarily separated. Section 550.706(a) shall be applied, as appropriate, to any employee who resigns after receiving such notice.

(d) Except as otherwise provided by paragraphs (a) through (c) of this section, the provisions of this subpart remain applicable to Panama Canal Commission employees.

[FR Doc. 95–16546 Filed 7–6–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 82, 145, and 147

[Docket No. 94–091–1]

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by providing new or modified administrative and testing procedures for Plan participants and participating flocks. The proposed changes were voted on and approved by the voting delegates at the Plan's 1992 and 1994 National Plan Conferences. These changes would keep the provisions of the Plan current with changes in the poultry industry, reduce paperwork requirements for some Plan participants, establish new program classifications, and allow the use of new sampling and laboratory procedures.

DATES: Consideration will be given only to comments received on or before September 5, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–091–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 94–091–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday,