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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

RIN 3206-AF00; 3206-AF42; 3206-AF63

Reduction in Force Notice-Certification of Expected Separation; Exception to 60 Days Specific Notice; Permissive Temporary Exception

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing final reduction in force (RIF) regulations that authorize: an agency to issue a Certification of Expected Separation to an employee who the agency expects will be separated within 6 months by RIF; the Director of OPM to approve a (RIF) notice period of less than 60 days specific written notice in unforeseeable circumstances; and, an agency to make a permissive temporary exception for more than 90 days past the RIF effective date to satisfy a Government obligation to an employee.

DATES: Final rules effective February 10, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon or Edward P. McHugh, Workforce Restructuring Office, (202) 606-0960; FAX (202) 606-0390.

SUPPLEMENTARY INFORMATION:

Certification of Expected Separation

On May 26, 1992, OPM published interim regulations in the **Federal Register** at 57 FR 21890 with a 60 day comment period. The regulations were inadvertently deleted by regulations published June 8, 1993 (58 FR 32046). To correct this error, the regulations were republished for information in the **Federal Register** on June 27, 1994, at 59 FR 32871.

These interim regulations allowed agencies to issue employees a Certification of Expected Separation (CES) if the agency found that the employee would likely be separated within 6 months by RIF. The CES notice allows employees to register early for outplacement and retraining services provided by the agency, OPM, and programs under the Job Training Partnership Act (JTPA) administered by the Department of Labor.

OPM received fourteen written comments on these interim regulations: Nine from agencies and five from State or local governmental units or their representatives. All of the comments favored the CES option. After consideration of the comments, the interim regulations are published without revision.

Each comment addressed employees' eligibility for the JTPA after receiving a CES.

Eight recommended a minimum CES notice period longer than the 6 month limit provided in 5 CFR 351.807(a) of the interim regulations. After reviewing these comments, we left the 6 month limit unchanged because the maximum time period was consistent with the Department of Labor's policy.

Five requested broader eligibility criteria for registration in the JTPA. Again, we left the eligibility requirements unchanged because we believe 5 CFR 351.807(a) is consistent with the Department of Labor's policy.

Other comments asked that OPM issue technical guidance to clarify receipt of a CES on employees' eligibility for OPM's interagency placement programs and the reemployment priority list. We will provide this guidance to agencies through other sources.

The Discretionary Temporary Exception to the Order of Release and the Liquidation Provision

On May 27, 1994, OPM published proposed regulations in the **Federal Register** at 59 FR 27509 with a 60 day comment period. These regulations proposed elimination of the 90 day limit on the use of a permissive temporary exception to satisfy a Government obligation to an employee during a RIF. These regulations also proposed extending the time limit for use of the liquidation provision because of closure from 90 days to 120 days.

OPM received three written comments on these proposed regulations: Two from agencies, and one from an individual who suggested other changes to the RIF system.

Both agencies favored our proposed change to provide that an agency may use a permissive temporary exception without time limitation to satisfy a Government obligation to the retained employee. For example, a Department of Defense employee is entitled to 120 days written specific notice before release in a significant RIF. If the activity conducting the RIF subsequently finds that it must make a worse offer than that specified in the employee's original RIF notice, the employee is entitled to a new RIF notice period of 120 days. This means that the activity must use a permissive temporary exception to retain the released employee on its rolls past the effective date of the RIF in order to meet its notice obligation. Under a permissive temporary exception, the activity determines the released employee's retention rights on the effective date of the RIF, but the activity does not actually implement the action until it provides the employee with full specific notice of the RIF.

In conforming changes, 5 CFR 351.608(c) is redesignated as 5 CFR 351.608(d) and 5 CFR 351.608(d) is redesignated as 5 CFR 351.608(e).

One agency also requested that OPM expand the liquidation provision found in 5 CFR 351.605 from the present 90 days to 1 year. The liquidation provision in 5 CFR 351.605 allows a closing activity to release employees without regard to their respective service dates in a closure situation, provided that the employees have the same tenure and veterans' preference status.

Under the current regulations, a liquidation situation exists when an agency will abolish all positions in a competitive area within 90 days. In separating employees by RIF, the agency must release employees in group and subgroup order consistent with 5 CFR 351.601(a). (An agency may not apply this section to release an employee who is entitled to retention in the subgroup under 5 CFR 351.606 because of reemployment after military service.) However, the liquidation provision permits the agency, at its discretion, to release employees within a subgroup

regardless of the employees' relative retention standing for up to 90 days before closure of an activity. The 90 day liquidation provision was implemented when the minimum specific RIF notice period was 30 days rather than the present standard of 60 days notice (i.e., the liquidation provision was three times the basic RIF notice period).

We proposed revision of 5 CFR 351.605 to provide that the liquidation provision is applicable in a closure situation when an agency will abolish all positions in a competitive area within 120 days. After considering the agency's comments, 5 CFR 351.605 is revised to provide that the liquidation provision is applicable when an agency will abolish all positions in a competitive area within 180 days (i.e., three times the basic RIF notice period of 60 days). The new 180 day standard for the liquidation provision will also provide the Department of Defense with needed flexibility in carrying out large scale closures in which a Defense activity must provide its employees with a minimum of 120 days RIF notice because of a significant RIF. An employee released from a competitive level under the liquidation provision found in 5 CFR 351.605 may still have assignment rights to a position in a different competitive level, as provided in subpart G of part 351.

RIF Notices

On June 8, 1993, OPM published interim RIF notice regulations in the **Federal Register** at 58 FR 32047, effective upon publication with a 60 day comment period. These regulations implement section 4433 of Public Law 102-484 (the National Defense Authorization Act for Fiscal Year 1993), which revised 5 U.S.C. 3502 by adding new sections (d) and (e) containing new notice requirements for RIF actions.

OPM received five written comments on these interim regulations: Three from agencies and two from local offices of national unions.

All three agencies favored the proposal. However, one agency requested that OPM expand 5 CFR 351.802(b) to affirm that an agency must provide an employee who receives a specific RIF notice with a copy of OPM's retention regulations, upon the employee's request. We have reviewed the proposed language and believe that 5 CFR 351.802(b) as written specifically covers this requirement.

A second agency requested that OPM revise 5 CFR 351.803(b) to provide that the agency must meet special notice requirements only when 50 or more employees are actually separated from a competitive area. In the interim

regulations, 5 CFR 351.803(b) provides that an agency must provide additional notice when 50 or more employees in a competitive area receive specific RIF separation notices. The agency must send this additional notice of a large RIF to (1) the appropriate State dislocated worker unit under the Job Training Partnership Act, (2) the chief elected local government official where the separations will take place, and (3) OPM. We retained the language in 5 CFR 351.803(b) without revision because we believe that an employee who receives a specific notice of separation in a large RIF is entitled to the same benefits as an employee who is actually separated.

The two union locals were concerned that OPM could approve a shortened RIF notice period that would be detrimental to their members. Both locals are in Department of Defense (DoD) activities. 5 CFR 351.801(a)(2) provides that DoD components must provide their employees with a minimum of 120 days specific notice when a significant number of employees will be separated by RIF.

5 U.S.C. 3502(e)(1) provides that the President of the United States may approve a RIF notice period of less than, as appropriate, 60 or 120 days, based on unforeseeable circumstances. However, 5 U.S.C. 3503(e)(3) provides that a shortened RIF notice period must always cover at least 30 days. E.O. 12828, approved on January 5, 1993 (58 FR 2965), authorizes OPM to shorten the applicable mandatory 60 or 120 day specific written RIF notice requirement to a minimum of 30 days. 5 CFR 351.801(b) implements E.O. 12828 and authorizes the Director of OPM to approve a shortened notice period at the request of an agency head or designee.

We have adopted 5 CFR 351.801(b) without revision because OPM is limited by law and Executive Order in granting exceptions to the minimum RIF notice period.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 351

Government employees.
Office of Personnel Management.
James B. King,
Director.

Accordingly, OPM is adopting as final its interim and proposed rules published under 5 CFR part 351 on May 26, 1992, at 57 FR 21890 (as corrected

on June 27, 1994, at 59 FR 32871), on June 8, 1993, at 58 FR 32047, and on May 27, 1994, at 59 FR 27509, with the following changes:

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503; S351.801 also issued under E.O. 12828, 58 FR 2965.

2. Section 351.605 is revised to read as follows:

§ 351.605 Liquidation provisions.

When an agency will abolish all positions in a competitive area within 180 days, it must release employees in group and subgroup order consistent with § 351.601(a). At its discretion, the agency may release the employees in group order without regard to retention standing within a subgroup, except as provided in § 351.606. When an agency releases an employee under this section, the notice to the employee must cite this authority and give the date the liquidation will be completed. An agency may also apply §§ 351.607 and 351.608 in a liquidation.

3. In § 351.608, paragraphs (c) and (d) are redesignated as paragraphs (d) and (e) respectively, paragraph (b) is revised, and paragraph (c) is added, to read as follows:

§ 351.608 Permissive temporary exceptions.

* * * * *

(b) *Exception not to exceed 90 days.* An agency may make a temporary exception for not more than 90 days when needed to continue an activity without undue interruption.

(c) *Government obligation.* An agency may make a temporary exception to satisfy a Government obligation to the retained employee.

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4. Subpart H, consisting of §§ 351.801 through 351.806, is revised to read as follows:

Subpart H—Notice to Employee

- Sec.
- 351.801 Notice period.
- 351.802 Content of notice.
- 351.803 Notice of eligibility for reemployment and other placement assistance.
- 351.804 Expiration of notice.
- 351.805 New notice required.
- 351.806 Status during notice period.
- 351.807 Certification of Expected Separation.

Subpart H—Notice to Employee**§ 351.801 Notice period.**

(a)(1) Except as provided in paragraph (b) of this section, each competing employee selected for release from a competitive level under this part is entitled to a specific written notice at least 60 full days before the effective date of release.

(2) Under authority of section 4433 of Public Law 102-484, each competing employee of the Department of Defense is entitled, under implementing regulations issued by that agency, to a specific written notice at least 120 full days before the effective date of release when a significant number of employees will be separated by reduction in force. This 120 days notice requirement is applicable during the period from January 20, 1993, through January 31, 2000. The basic requirement for 60 full days specific written notice set forth in paragraph (a) of this section is still applicable when less than a significant number of employees will be separated by reduction in force.

(3) At the same time an agency issues a notice to an employee, it must give a written notice to the exclusive representative(s), as defined in 5 U.S.C. 7103(a)(16), of each affected employee at the time of the notice. When a significant number of employees will be separated, an agency must also satisfy the notice requirements of §§ 351.803 (b) and (c).

(b) When a reduction in force is caused by circumstances not reasonably foreseeable, the Director of OPM, at the request of an agency head or designee, may approve a notice period of less than 60 days, or a notice period of less than 120 days when a significant number of Department of Defense employees will be separated. The shortened notice period must cover at least 30 full days before the effective date of release. An agency request to OPM shall specify:

- (1) The reduction in force to which the request pertains;
- (2) The number of days by which the agency requests that the period be shortened;
- (3) The reasons for the request; and
- (4) Any other additional information that OPM may specify.

(c) The notice period begins the day after the employee receives the notice.

(d) When an agency retains an employee under § 351.607 or § 351.608, the notice to the employee shall cite the date on which the retention period ends as the effective date of the employee's release from the competitive level.

§ 351.802 Content of notice.

(a) The notice shall state specifically:

(1) The action to be taken and its effective date;

(2) The employee's competitive area, competitive level, subgroup, service date, and annual performance ratings of record received during the last 4 years;

(3) The place where the employee may inspect the regulations and record pertinent to this case;

(4) The reasons for retaining a lower-standing employee in the same competitive level under § 351.607 or § 351.608;

(5) Information on reemployment rights, except as permitted by § 351.803(a); and

(6) The employee's right, as applicable, to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations or to grieve under a negotiated grievance procedure. The agency shall also comply with § 1201.21 of this title.

(b) When an agency issues an employee a notice, the agency must, upon the employee's request, provide the employee with a copy of OPM's retention regulations found in part 351 of this chapter.

§ 351.803 Notice of eligibility for reemployment and other placement assistance.

(a) An employee who receives a specific notice of separation under this part must be given information concerning the right to reemployment consideration under subparts B (Reemployment Priority List) and C (Displaced Employee Program) of part 330 of this chapter. The employee also must be given information concerning how to apply for unemployment insurance through his or her appropriate State program. This information must be provided either in or with the specific reduction in force notice, or as a supplemental notice to the employee.

(b) When 50 or more employees in a competitive area receive separation notices under this part, the agency must provide written notification of the action, at the same time it issues specific notices of separation to employees, to:

(1) The State dislocated worker unit(s), as designated or created under title III of the Job Training Partnership Act;

(2) The chief elected official of local government(s) within which these separations will occur; and

(3) OPM.

(c) The notice required by paragraph (b) of this section must include:

(1) The number of employees to be separated from the agency by reduction in force (broken down by geographic area or other basis specified by OPM);

(2) The effective date of the separations; and

(3) Any other information specified by OPM, including information needs identified from consultation between OPM and the Department of Labor to facilitate delivery of placement and related services.

§ 351.804 Expiration of notice.

A notice expires except when followed by the action specified, or by an action less severe than specified, in the notice or in an amendment made to the notice before the agency takes the action. An agency may not take the action specified before the effective date in the notice. An action taken after the specific date in the notice shall not be ruled invalid for that reason except when it is challenged by a higher-standing employee in the competitive level who is reached out of order for reduction in force as a result of the action.

§ 351.805 New notice required.

An employee is entitled to a written notice of, as appropriate, at least 60 or 120 full days if the agency decides to take an action more severe than first specified.

§ 351.806 Status during notice period.

When possible, the agency shall retain the employee on active duty status during the notice period. When in an emergency the agency lacks work or funds for all or part of the notice period, it may place the employee on annual leave with or without his or her consent, or leave without pay with his or her consent, or in a nonpay status without his or her consent.

§ 351.807 Certification of Expected Separation.

(a) For the purpose of enabling otherwise eligible employees to be considered for eligibility to participate in dislocated worker programs under the Job Training Partnership Act administered by the U.S. Department of Labor, an agency may issue a Certificate of Expected Separation to a competing employee who the agency believes, with a reasonable degree of certainty, will be separated from Federal employment by reduction in force procedures under this part. A certification may be issued up to 6 months prior to the effective date of the reduction in force.

(b) This certification may be issued to a competing employee only when the agency determines:

(1) There is a good likelihood the employee will be separated under this part;

(2) Employment opportunities in the same or similar position in the local

commuting area are limited or nonexistent;

(3) Placement opportunities within the employee's own or other Federal agencies in the local commuting area are limited or nonexistent; or

(4) If eligible for optional retirement, the employee has not filed a retirement application or otherwise indicated in writing an intent to retire.

(c) A certification is to be addressed to each individual eligible employee and must be signed by an appropriate agency official. A certification must contain the expected date of reduction in force, a statement that each factor in paragraph (b) of this section has been satisfied, and a description of Job Training Partnership Act programs, the Interagency Placement Program, and the Reemployment Priority List.

(d) A certification may not be used to satisfy any of the notice requirements elsewhere in this subpart.

(e) An agency determination of eligibility for certification may not be appealed to OPM or the Merit Systems Protection Board.

(f) An agency may also enroll eligible employees in the Interagency Placement Program and the Reemployment Priority List up to 6 months in advance of a reduction in force. For requirements and criteria for these programs, see subparts B and C of part 330 of this chapter.

[FR Doc. 95-643 Filed 1-10-95; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1425

RIN 0560-AD70

Cooperative Marketing Associations; Eligibility Requirements for Price Support

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts, without change, the proposed rule published in the **Federal Register** at 59 FR 44947-44952 on August 31, 1994. This rule amends the regulations governing the participation of cooperative marketing associations (CMA) in Commodity Credit Corporation (CCC) price support programs to ensure: the equitable treatment of CMA members and individual producers; the Government does not accept undue risk in providing CMA price support program benefits;

and the efficient delivery of CMA price support program benefits. This rule: changes CMA bylaw requirements to reflect current CMA organizational and operational procedures; requires approved cotton CMA retention of services provided by servicing agent banks; requires approved CMA monitoring of payment they receive on behalf of their members to ensure that member payments do not exceed payment limits; and makes other administrative changes.

EFFECTIVE DATE: January 11, 1995.

FOR FURTHER INFORMATION CONTACT: Richard M. Ackley, Chief, Cooperative and Analysis Branch; Cotton, Grain, and Rice Price Support Division, Consolidated Farm Service Agency, USDA, P.O. Box 2415, Washington, DC 20013-2415.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by Office of Management and Budget (OMB).

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of human environment.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, into **Federal Register** at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This final rule has been reviewed pursuant to Executive Order 12778. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that

the terms of the regulations prevail. Prior to any judicial action in a court of competent jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

Public reporting burden for all collections is estimated to average from 1 to 2 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and competing and reviewing the collection of information. The information collections have previously been cleared under the current regulations by OMB, and assigned OMB No. 0560-0040.

Comments

No comments were received during the comment period which ended on September 30, 1994.

List of Subjects in 7 CFR Part 1425

Cooperatives, Price support programs, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 1425 is amended as follows:

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

1. The authority citation for 7 CFR part 1425 is revised to read as follows:

Authority: 7 U.S.C. 1421(a), 1441, 1444(a), 1446(d), and 1447; 15 U.S.C. 714b, 714c, and 714j.

- 2. Section 1425.3 is amended.
 - A. Revising paragraph (d),
 - B. Redesignating paragraphs (i) and (j) as paragraphs (j) and (k) respectively,
 - C. Adding a new paragraph (i), and
 - D. Revising redesignated newly redesignated paragraphs (j) and (k):

§ 1425.3 Definitions.

* * * * *

(d) *Authorized commodity* means those commodities for which an approved cooperative may apply for price support, including barley, canola, corn, cotton, flaxseed, honey, shorn mohair, mustard seed, oats, rapeseed, rice, rye, safflower, seed cotton, shorn wool, sorghum, soybeans, sunflower seed, and wheat.

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(i) *Participate in a Price Support Program* means the pledging, on behalf of members, of an eligible commodity as collateral for CCC price support loans, entering into purchase agreements, and, when applicable, obtaining loan deficiency payments.

(j) *Person* means an individual, joint stock company, corporation, estate or