

Subpart C [Reserved]**Subpart D—Seasonal and Intermittent Employment**

SOURCE: 60 FR 3061, Jan. 13, 1995, unless otherwise noted.

§ 340.401 Definitions.

(a) *Seasonal employment* means annually recurring periods of work of less than 12 months each year. Seasonal employees are permanent employees who are placed in nonduty/nonpay status and recalled to duty in accordance with preestablished conditions of employment.

(b) *Intermittent employment* means employment without a regularly scheduled tour of duty.

§ 340.402 Seasonal employment.

(a) *Appropriate use.* Seasonal employment allows an agency to develop an experienced cadre of employees under career appointment to perform work which recurs predictably year-to-year. Consistent with the career nature of the appointments, seasonal employees receive the full benefits authorized to attract and retain a stable workforce. As a result, seasonal employment is appropriate when the work is expected to last at least 6 months during a calendar year. Recurring work that lasts less than 6 months each year is normally best performed by temporary employees. Seasonal employment may not be used as a substitute for full-time employment or as a buffer for the full-time workforce.

(b) *Length of the season.* Agencies determine the length of the season, subject to the condition that it be clearly tied to nature of the work. The season must be defined as closely as practicable so that an employee will have a reasonably clear idea of how much work he or she can expect during the year. To minimize the adverse impact of seasonal layoffs, an agency may assign seasonal employees to other work during the projected layoff period. While in nonpay status, a seasonal employee may accept other employment, Federal or non-Federal, subject to the regulations on political activity (part 733 of this title) and on employee re-

sponsibilities and conduct (part 735), as well as applicable agency policies. Subject to the limitation on pay from more than one position (5 U.S.C. 5533), a seasonal employee may hold more than one appointment.

(c) *Employment agreement.* An employment agreement must be executed between the agency and the seasonal employee prior to the employee's entering on duty. At a minimum, the agreement must inform the employee:

(1) That he or she is subject to periodic release and recall as a condition of employment,

(2) The minimum and maximum period the employee can expect to work,

(3) The basis on which release and recall procedures will be effected, and

(4) The benefits to which the employee will be entitled while in a nonpay status.

(d) *Release and recall procedures.* A seasonal employee is released to nonpay status at the end of a season and recalled to duty the next season. Release and recall procedures must be established in advance and uniformly applied. They may be based on performance, seniority, veterans' preference, other appropriate indices, or a combination of factors. A seasonal layoff is not subject to the procedures for furlough prescribed in parts 351 and 752 of this title. Reduction in force or adverse action procedures, as applicable, are required for a seasonal layoff that is not in accordance with the employment agreement, for example, if an agency intends to have an employee work less than the minimum amount of time specified in the employment agreement. However, an agency may develop a new employment agreement to reflect changing circumstances.

(e) *Noncompetitive movement.* Seasonal employees serving under career appointment may move to other positions in the same way as other regular career employees.

§ 340.403 Intermittent employment.

(a) *Appropriate use.* An intermittent work schedule is appropriate only when the nature of the work is sporadic and unpredictable so that a tour of duty cannot be regularly scheduled in advance. When an agency is able to schedule work in advance on a regular

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basis, it has an obligation to document the change in work schedule from intermittent to part-time or full-time to ensure proper service credit.

(b) *Noncompetitive movement.* Intermittent employees serving under career appointment may move to other positions in the same way as other regular career employees.

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AUTHORITY: 5 U.S.C. 1302, 3502, 3503; sec. 351.801 also issued under E.O. 12828, 58 FR 2965.

SOURCE: 51 FR 319, Jan. 3, 1986, unless otherwise noted.

Subpart A [Reserved]

Subpart B—General Provisions

§ 351.201 Use of regulations.

(a)(1) Each agency is responsible for determining the categories within which positions are required, where they are to be located, and when they are to be filled, abolished, or vacated. This includes determining when there is a surplus of employees at a particular location in a particular line of work.

(2) Each agency shall follow this part when it releases a competing employee from his or her competitive level by furlough for more than 30 days, separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work; shortage of funds; insufficient personnel ceiling; reorganization; the exercise of reemployment rights or restoration rights; or reclassification of an employee's position due to erosion of duties when such action will take effect after an agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within 180 days.