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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

RIN 3206-AH15

Appointment of Nonstatus Employees Entitled to Placement in a Different Agency Upon Restoration to Duty From Uniformed Service

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to permit Schedule A appointments of certain excepted service employees who are entitled to placement in a different agency if their original employing agency cannot reemploy them following uniformed service. These regulations implement the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Public Law 103-353, which mandates such placement. Interim regulations setting out the categories of employees who are eligible for this assistance and OPM's responsibility for placing them were published for comment on September 1, 1995 (60 FR 45650).

DATES: Effective: October 30, 1995.

Comments must be received on or before December 29, 1995.

ADDRESSES: Send or deliver comments to Leonard R. Klein, Associate Director for Employment, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Raleigh M. Neville, (202) 606-0830.

SUPPLEMENTARY INFORMATION: USERRA clarifies, expands, and strengthens the restoration rights of employees who perform active duty in a uniformed service. Among the changes are a

requirement that OPM place in the executive branch certain categories of employees when their former agencies determine that it is "impossible or unreasonable" to reemploy them. The employees entitled to special placement assistance are:

- (1) Executive branch employees (including those serving under excepted or time-limited appointments) whose agencies no longer exist and the functions have not been transferred, or it is otherwise impossible or unreasonable to reemploy them;
- (2) Legislative and judicial branch employees;
- (3) National Guard Technicians; and
- (4) Employees of the intelligence agencies.

Placement in executive branch positions frequently requires that an individual have competitive civil service status or be hired through competitive examination. Executive branch employees who left career or career-conditional appointments or who had established reinstatement eligibility based on prior service are eligible for noncompetitive placement in competitive service positions. Executive branch employees who left temporary or term appointments are generally eligible for noncompetitive reappointment to complete any unexpired portion of those appointments. The remaining employees entitled to placement, however, have no status that would permit their noncompetitive appointment in the competitive service.

Under USERRA, the employees are entitled to placement in positions that are equivalent in terms of pay, grade, and status to the positions they left. Since the employees covered by this interim regulation left positions filled under excepted appointment, it is appropriate that they be placed in the executive branch under an excepted appointment. Such appointment would permit the restored employees to continue serving indefinitely (or up to any time limit of their original appointment) and to be promoted or reassigned to other positions in their new agency, but would not give them competitive status they could not have earned in their original positions.

Excepted appointing authority already exists under § 213.3102(j) for National Guard Technicians who are applying for or receiving a civil service annuity based on a disability that disqualifies

them from membership in the National Guard or from holding the military grade required as a condition of their Technician employment. These interim regulations expand that authority to cover nonstatus employees entitled to placement under USERRA, with one exception.

The Schedule A authority does not cover employees who held Schedule C appointments or appointments under statutory authorities that specified the employees served at the discretion, will, or pleasure of the agency. We find that such at-will employees are not entitled to placement in other agencies if their original employing agency declines to reemploy them. Since their original appointments could be terminated at any time, their positions afforded "no reasonable expectation that employment will continue indefinitely or for a reasonable period," as required by USERRA.

Waiver of Notice of Proposed Rulemaking

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking, because the statutory provisions for reemployment in other agencies became effective on December 12, 1994. The Schedule A appointing authority set out in these interim regulations is needed for practical implementation of that law.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 213

Government employees, Reporting and recordkeeping requirements.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending part 213, as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h), and 8456; E.O. 12364,

47 FR 22931, 3 CFR 1982 Comp., p. 185; and Pub. L. 103-353.

2. In § 213.3102, paragraph (j) is revised to read as follows:

§ 213.3102 Entire executive civil service.

* * * * *

(j) Positions filled by current or former Federal employees eligible for placement under special statutory provisions. Appointments under this authority are subject to the following conditions.

(1) *Eligible employees.* (i) Persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) who are entitled to placement under § 353.110 of this chapter, or who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) or 8456 by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment.

(ii) Executive branch employees (other than employees of intelligence agencies) who are entitled to placement under § 353.110 but who are not eligible for reinstatement or noncompetitive appointment under the provisions of part 315 of this chapter.

(iii) Legislative and judicial branch employees and employees of the intelligence agencies defined in 5 U.S.C. 2302(a)(2)(C)(ii) who are entitled to placement under § 353.110.

(2) *Employees excluded.* Employees who were last employed in Schedule C or under a statutory authority that specified the employee served at the discretion, will, or pleasure of the agency are not eligible for appointment under this authority.

(3) *Position to which appointed.* Employees who are entitled to placement under § 353.110 will be appointed to a position that OPM determines is equivalent in pay and grade to the one the individual left, unless the individual elects to be placed in a position of lower grade or pay. National Guard Technicians whose eligibility is based upon a disability may be appointed at the same grade, or equivalent, as their National Guard Technician position or at any lower grade for which they are available.

(4) *Conditions of appointment.* (i) Individuals whose placement eligibility is based on an appointment without time limit will receive appointments without time limit under this authority. These appointees may be reassigned, promoted, or demoted to any position within the same agency for which they qualify.

(ii) Individuals who are eligible for placement under § 353.110 based on a

time-limited appointment will be given appointments for a time period equal to the unexpired portion of their previous appointment.

* * * * *

[FR Doc. 95-26851 Filed 10-27-95; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 532

RIN 3206-AH16

Prevailing Rate Systems; Abolishment of Marin-Sonoma, CA, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to abolish the Marin-Sonoma, CA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine the two counties having continuing FWS employment (Marin and Sonoma Counties) as areas of application to the Solano, CA, NAF wage area for pay-setting purposes. No employee's wage rate will be reduced as a result of this change.

DATES: This interim rule becomes effective on October 30, 1995. Comments must be received by November 29, 1995. Employees currently paid rates from the Marin-Sonoma, CA, NAF wage schedule will continue to be paid from that schedule until their conversion to the Solano, CA, NAF wage schedule one day prior to the effective date of the next Solano, CA, wage schedule to be issued.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Policy, Human Resources Systems Service, U.S. Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415, or FAX: (202) 606-0824.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606-2848.

SUPPLEMENTARY INFORMATION: The Department of Defense (DOD) recommended to the Office of Personnel Management that the Marin-Sonoma, CA, FWS NAF wage area be abolished and that the two counties having continuing FWS employment (Marin and Sonoma Counties) be added as areas of application to the Solano, CA, NAF wage area. This change is necessary because the pending closure of the Hamilton DOD Housing Facility (host activity) leaves the Marin-Sonoma wage area without an activity having the capability to conduct a wage survey.

The remaining Marin-Sonoma wage area counties (Del Norte, Humboldt, and Mendocino) have no NAF FWS employees.

As required in regulation, 5 CFR 532.219, the following criteria were considered in redefining these wage areas:

(1) Proximity of largest activity in each county;

(2) Transportation facilities and commuting patterns; and

(3) Similarities of the counties in:

(i) Overall population;

(ii) Private employment in major industry categories; and

(iii) Kinds and sizes of private industrial establishments.

While proximity favors the San Francisco wage area, distances to all the candidate wage areas are in a very close range, especially from the Coast Guard Training Center that will soon be the largest remaining activity in the counties to be redefined. Transportation facilities and commuting patterns favor San Francisco, while similarities in population, private sector employment, and industry patterns favor Solano.

The Federal Prevailing Rate Advisory Committee reviewed this recommendation and by consensus recommended approval.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because preparations for the 1995 Marin-Sonoma, CA, NAF wage areas survey must otherwise begin immediately.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows: