

# Proposed Rules

Federal Register

Vol. 63, No. 157

Friday, August 14, 1998

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 351

RIN 3206-A109

#### Reduction in Force Service Credit; Retention Records

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Office of Personnel Management (OPM) is proposing regulations that cover service credit for retention purposes. These proposed regulations also cover access to retention records by employees and their representatives.

**DATES:** Written comments will be considered if received no later than October 13, 1998.

**ADDRESSES:** Send or deliver written comments to: Associate Director for Employment Service, Room 6F08, Office of Personnel Management, Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Glennon or Jacqui R. Yeatman at (202) 606-0960, FAX (202) 606-2329.

#### SUPPLEMENTARY INFORMATION:

##### Background

OPM's retention regulations found in part 351 are published under authority of 5 U.S.C. 3502(a). The statute provides that OPM's reduction in force regulations must give effect to four factors in releasing employees: (1) tenure of employment (i.e., type of appointment); (2) veterans' preference; (3) length of service; and (4) performance ratings.

These proposed regulations cover the crediting of civilian and uniformed service for purposes of reduction in force competition under part 351 of this title. Specifically, these regulations clarify longstanding OPM policy on what types of service are creditable when an agency establishes the order of

retention for competing employees in a reduction in force.

These regulations are further implemented through instructions found in the OPM Operating Manual, "The Guide to Processing Personnel Actions," Chapter 6, "Determining Creditable Service and Determining Service Computation Dates (SCD's)."

These proposed regulations also cover who has access to reduction in force retention records, when that access is available, and what records are available for review.

##### Service Credit

Proposed § 351.503(a) provides that all civilian service as a Federal employee, as defined in 5 U.S.C. 2105(a), is creditable for purposes of determining the reduction in force rights of a competing employee. Civilian service that does not meet the definition set forth in 5 U.S.C. 2105(a) would be creditable for retention purposes only if specifically authorized by statute.

Proposed § 351.503(b)(1) notes that, except as provided in § 351.501(b)(2) and (b)(3), all active duty in a uniformed service, as defined in 5 U.S.C. 2101(3), is creditable for purposes of determining employees' retention rights.

Consistent with 5 U.S.C. 3502(a)(A) and (b), a retired member of a uniformed service who is receiving retired pay based upon 20 or more years of active service in the Armed Forces is generally entitled to credit under this part only for the length of time in active service in the Armed Forces during a war, or active duty served in a campaign or expedition for which a campaign badge or expeditionary medal has been authorized. The employee is entitled to the total length of time in active service in the Armed Forces only if the employee is considered a preference eligible under 5 U.S.C. 3501(a)(3).

Proposed § 351.503(b)(3) provides that an employee may not receive dual retention service credit for service performed on active duty in the Armed Forces that was performed during concurrent civilian employment as a Federal employee.

Proposed § 351.503(c)(1) provides that the agency is responsible for establishing both the service computation date, and the adjusted service computation date, applicable to each employee competing for retention. Also, the agency is responsible for adjusting the service computation dates

to withhold retention service credit for noncreditable service.

Proposed § 351.503(c)(2) provides that the service computation date includes all actual creditable service under paragraph (a) and paragraph (b) of this section.

Proposed § 351.503(c)(3) provides that the adjusted service computation date includes all actual creditable service under sections 351.503(a) and (b), and additional retention service credit for performance authorized by section 351.504(d).

Proposed § 351.503(d) covers the calculation of the service computation date for retention purposes.

Proposed § 351.503(e) covers the calculation of the adjusted service computation date that includes additional service credit for retention purposes that is authorized by section 351.504(d).

##### Retention Records

Proposed § 351.505(a) provides that the agency is responsible for maintaining the correct personnel records that are used to determine employees' retention standing.

Proposed § 351.505(b) provides that the agency must allow its retention registers and related records to be inspected by an employee of the agency who has received a specific reduction in force notice, and/or the employee's representative if the representative is acting on behalf of that individual employee. Proposed § 351.505(b) also provides that an authorized representative of OPM has the right to review an agency's retention records.

Proposed § 351.505(c) provides that an employee who has received a specific notice of reduction in force has the right to review any completed records used by the agency in a reduction in force action that was taken, or will be taken, against the employee.

Proposed § 351.505(d) provides that an employee who has not received a specific reduction in force notice has no right to review the agency's retention registers and related records.

Proposed § 351.505(e) provides that the agency is responsible for ensuring that each employee's access to retention records is consistent with both the Freedom of Information Act and the Privacy Act.

Proposed § 351.505(f) provides that the agency must preserve all registers and records relating to a reduction in

force for at least 1 year after the date the agency issues specific reduction in force notices.

### 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 Part 351

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

Accordingly, OPM proposes to amend part 351 of title 5, Code of Federal Regulations, as follows:

## PART 351—REDUCTION IN FORCE

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

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

2. Section 351.503 is revised to read as follows:

### § 351.503 Length of service.

(a) All civilian service as a Federal employee, as defined in 5 U.S.C. 2105(a), is creditable for purposes of this part. Civilian service performed in employment that does not meet the definition of *Federal employee* set forth in 5 U.S.C. 2105(a) is creditable for purposes of this part only if specifically authorized by statute as creditable for retention purposes.

(b)(1) As authorized by 5 U.S.C. 3502(a)(A), all active duty in a uniformed service, as defined in 5 U.S.C. 2101(3), is creditable for purposes of this part, except as provided in paragraphs (b)(2) and (b)(3) of this section.

(2) As authorized by 5 U.S.C. 3502(a)(B), a retired member of a uniformed service who is covered by § 351.501(d) is entitled to credit under this part only for:

(i) The length of time in active service in the Armed Forces during a war, or in a campaign or expedition for which a campaign or expedition badge has been authorized; or

(ii) The total length of time in active service in the Armed Forces if the employee is considered a preference eligible under 5 U.S.C. 2108 and 5 U.S.C. 3501(a), as implemented in § 351.501(d).

(3) An employee may not receive dual service credit for purposes of this part for service performed on active duty in

the Armed Forces that was performed during concurrent civilian employment as a Federal employee, as defined in 5 U.S.C. 2105(a).

(c)(1) The agency is responsible for establishing both the service computation date, and the adjusted service computation date, applicable to each employee competing for retention under this part. If applicable, the agency is also responsible for adjusting the service computation date and the adjusted service computation date to withhold retention service credit for noncreditable service.

(2) The service computation date includes all actual creditable service under paragraph (a) and paragraph (b) of this section.

(3) The adjusted service computation date includes all actual creditable service under paragraph (a) and paragraph (b) of this section, and additional retention service credit for performance authorized by § 351.504(d).

(d) The service computation date is computed on the following basis:

(1) The effective date of appointment as a Federal employee under 5 U.S.C. 2105(a) when the employee has no previous creditable service under paragraph (a) or (b) of this section; or if applicable,

(2) The date calculated by subtracting the employee's total previous creditable service under paragraph (a) or (b) of this section from the most recent effective date of appointment as a Federal employee under 5 U.S.C. 2105(a).

(e) The adjusted service computation date is calculated by subtracting from the date in paragraph (d)(1) or (d)(2) of this section the additional service credit for retention authorized by § 351.504(d).

3. § 351.505 is revised to read as follows:

### § 351.505 Records.

(a) The agency is responsible for maintaining correct personnel records that are used to determine the retention standing of its employees competing for retention under this part.

(b) The agency must allow its retention registers and related records to be inspected by:

(1) An employee of the agency who has received a specific reduction in force notice, and/or the employee's representative if the representative is acting on behalf of the individual employee; and

(2) An authorized representative of OPM.

(c) An employee who has received a specific notice of reduction in force under authority of subpart H of this part has the right to review any completed records used by the agency in a

reduction in force action that was taken, or will be taken, against the employee, including:

(1) The complete retention register with the released employee's name and other relevant retention information (including the names of all other employees listed on that register, their individual service computation dates calculated under § 351.503(d), and their adjusted service computation dates calculated under § 351.503(e)) so that the employee may consider how the agency constructed the competitive level, and how the agency determined the relative retention standing of the competing employees; and

(2) The complete retention registers for other positions that could affect the composition of the employee's competitive level, and/or the determination of the employee's assignment rights (e.g., registers to which the released employee may have potential assignment rights under § 351.701(b) and (c)).

(d) An employee who has not received a specific reduction in force notice has no right to review the agency's retention registers and related records.

(e) The agency is responsible for ensuring that each employee's access to retention records is consistent with both the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act (5 U.S.C. 552a).

(f) The agency must preserve all registers and records relating to a reduction in force for at least 1 year after the date it issues a specific reduction in force notice.

[FR Doc. 98-21802 Filed 8-13-98; 8:45 am]

BILLING CODE 6325-01-P

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### 7 CFR Part 810

#### United States Standards for Sorghum

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Grain Inspection, Packers and Stockyards Administration (GIPSA) is conducting a review of the United States Standards for Sorghum. GIPSA invites comments and suggested changes to these standards.

**DATES:** To be assured of consideration, written comments must be filed before October 13, 1998.