Rules and Regulations

Federal Register
Vol. 66, No. 14
Monday, January 22, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 330

RIN 3206–AI28

Federal Employment Priority Consideration Program for Displaced Employees of the District of Columbia Department of Corrections

AGENCY: U.S. Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement provisions of law affecting the priority consideration program for certain displaced employees of the District of Columbia Department of Corrections seeking Federal positions. These regulations also incorporate comments and suggestions received on the interim regulations OPM published on August 4, 1998.

DATES: This interim regulation is effective on January 22, 2001. Written comments will be considered if received no later than March 23, 2001.

ADDRESSES: Send or deliver written comments to: Carol J. Okin, Associate Director for Employment, Office of Personnel Management; Suite 6500, 1900 E Street NW., Washington, DC 20415–9000.

FOR FURTHER INFORMATION CONTACT: Jacqueline Yeatman on (202) 606–0960, FAX (202) 606–2329, TDD (202) 606–0023 or by email at jryeatma@opm.gov.

SUPPLEMENTARY INFORMATION:

Initial Public Law and Regulations

The National Capital Revitalization and Self-Government Improvement Act (part of the Balanced Budget Act of 1997, sec. 11201, Pub. L. 105–33, 111 Stat. 738, enacted August 5, 1997) mandated that the Lorton Correctional Complex be closed by December 31, 2001. Section 11203 of this law gave priority consideration to employees of the District of Columbia (DC) Department of Corrections (DOC) displaced by this closure. The law established two priority consideration programs—one for vacant Bureau of Prisons law enforcement positions (for employees meeting the qualification and suitability requirements for those positions), and another for most other Federal vacancies. The Department of Justice maintains the priority consideration program for displaced Department of Corrections employees interested in Federal Bureau of Prisons law enforcement positions.

On August 4, 1998, OPM issued interim regulations with request for comment to implement the Priority Consideration Program covering most vacancies in Federal agencies. Under the interim regulations, present and former DC DOC employees receiving a reduction in force (RIF) separation notice from the DC Government issued after August 7, 1997, were eligible for priority consideration when applying for certain vacant competitive service positions in Federal Executive Branch agencies (unless they had been appointed to a law enforcement position in the Department of Justice Bureau of Prisons). In order to receive this priority, the DC DOC employee had to apply and be found well-qualified. This priority consideration was similar to the program for Federal employees described in 5 CFR part 330, subpart G—Interagency Career Transition Assistance Plan (ICTAP) for Displaced Employees. The law provided that this program would expire one year after closure of the Lorton correctional complex.

Second Public Law

After we published the interim regulations, President Clinton signed the District of Columbia Courts and Justice Technical Corrections Act of 1998 (Pub. L. 105–274) on October 21, 1998. This law contained several major changes affecting the Priority Consideration Program covering most Federal vacancies. One significant change was elimination of the requirement that DC Corrections employees be ''well-qualified'' to get priority. The other major change in the law was the establishment of a competitive service appointing authority for DC DOC appointees hired through this program.

As a result of this second statute, agencies *must:* (1) Make all new appointments under this program into the competitive service; and (2) retroactively convert/correct appointments of those already hired into competitive service appointments. Because of these significant statutory changes, we have modified these regulations and are reissuing them in interim form with request for comments. This will allow for timely implementation while giving users the opportunity to submit any concerns or questions they may have about the revised regulations.

Comments Received on Initial Regulations Issued

After OPM published the initial regulations in August, 1998, we received comments from three Federal agencies. Two agencies noted the issue of the order of selection as it applies to this program. The interim regulations stated, in § 330.1103(d), that the priority and order of selection for this program are similar to ICTAP (the order of selection and exceptions to ICTAP appear in § 330.705). The commenting agencies believed the exceptions to this program, and the relationship to ICTAP priority, needed clarification. We have therefore attempted to clarify this issue in § 330.1103 of these regulations. In addition, the current ICTAP regulations, issued on July 27, 1999, include a cross-reference in § 330.705 that specifically mentions the DC DOC program.

Two agencies asked about the relationship between meeting the requirements for a Federal Bureau of Prisons (BOP) law enforcement position and this program. These agencies would prefer that OPM restrict DC DOC employees to priority under only one program at a time. However, the second public law includes a specific provision making DC DOC employees not yet ''appointed to a Federal Bureau of Prisons law enforcement position'' eligible for this program. A DC DOC employee would meet this definition up until actual appointment to a BOP law enforcement position. Therefore, we have revised § 330.1101 accordingly, and eliminated paragraph (b) of § 330.1103.

Another agency asked whether an employee receiving a *time-limited* appointment to a BOP law enforcement position would lose the right to priority under this program. We believe that Congress intended to assist displaced DC DOC employees in securing *permanent* employment, either in a BOP law enforcement position or in another Federal position. Therefore, we are modifying § 330.1101 to make a DC DOC employee eligible for selection priority under this program until appointed to a *permanent* BOP law enforcement position. This means that a former DC DOC employee could accept a time-limited law enforcement position with the Bureau of Prisons, while still exercising the right to selection priority under these regulations for other Federal employment.

One agency objected to the fact that employees under this program receive priority for vacancies nationwide, and potentially for more than one year, while priority under ICTAP is limited to a single commuting area and to one year. Several agencies were concerned that they might be required to pay employee relocation costs, even in cases where they lack the resources to do so. The statute for this program, however, is broad, and precludes us from limiting the area of consideration or the length of eligibility. Therefore, we have not changed these provisions in this regulation. However, we did find that some of the references to the program termination date in the initial regulation did not precisely match the language in the law. Therefore, we have modified references to the program termination date in sections 330.1102 and 330.1106 to better reflect the statutory language. Since the current statute requires DC to close the Lorton Correctional Complex by December 31, 2001, we expect this program to expire on December 31, 2002, at the latest.

Two agencies raised additional questions, including: (1) Will OPM impose any additional requirements for agency reports or vacancy announcements? (2) are competitive service vacancies lasting 120 days or less covered by this program? (3) are there any grade-level requirements? (4) are DC DOC employees required to submit a current performance appraisal? (5) if an employee declines a permanent offer under this program, will they lose their eligibility? and (6) does this program require a second review of applicants when they are found ineligible for priority?

OPM considered imposing additional requirements for announcements or agency reporting for this program, but decided against it. The current regulations under section 330.102 require agencies to notify OPM of competitive service vacancies lasting 121 days or more. Therefore, we have added a similar definition of a ''vacancy'' to these regulations. As for the grade level requirements, differences in the DC Government employment system make it impractical to impose grade level and performance appraisal requirements for applicants under this program. We believe the requirement to be ''qualified'' will screen out candidates with insufficient experience. We do, however, agree with the commenters that we need to address what happens when a candidate declines a job offer; such a provision already exists under ICTAP. Therefore, we are adding language (mirroring the ICTAP) allowing agencies to terminate their future consideration of a candidate under this program if he/she declines, or fails to respond to, a firm offer. We also agree that it is important to have a second review when an applicant initially fails to meet the program requirements. Therefore, we have added this provision to these regulations.

Other Issues Addressed

While we were developing these regulations, two agencies asked us to address some additional questions: (1) Are DC DOC employees entitled to priority under these regulations for *non-law enforcement* jobs in the Bureau of Prisons? and (2) Is the DC DOC employee required to submit proof of their eligibility for priority like ICTAP candidates? We clarified these issues by: (1) Adding language based on the original law to the definition of vacancy in § 330.1103 to clarify which Bureau of Prisons positions are covered; and (2) adding language to § 330.1104(a)(3) requiring applicants to provide proof of their eligibility under this subpart.

One additional issue surfaced during the development of this regulation. A number of DC DOC managers and supervisors were moved into positions in the newly created Management Supervisory Service (MSS), making them, in effect, at-will employees. As a result, these employees would be separated by non-RIF termination procedures under the Lorton closure. We consulted with DC Government to find the best way to clarify the continuing eligibility of these employees for this priority consideration program, and modified section 330.1104 accordingly.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

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 it would be contrary to the public interest to delay access to benefits provided by law. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to waive the delay in the effective date and make this amendment effective in less than 30 days. The delay in the effective date is being waived to give effect to the benefits extended by the amended provisions at the earliest practicable date.

Regulatory Flexibility Act

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

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 330

Armed forces reserves, Government employees.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 330 of title 5, Code of Federal Regulations, as follows:

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

1. The authority citation for part 330 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp., p. 218; § 330.102 also issued under 5 U.S.C. 3327; subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310; subpart G also issued under 5 U.S.C. 8337(h) and 8457(b); subpart K also issued under sec. 11203 of Pub. Law 105–33 (111 Stat. 738) and Pub. Law 105–274 (112 Stat. 2424); subpart L also issued under sec. 1232 of Pub. L. 96–70, 93 Stat. 452.

2. Section 330.1101 is revised to read as follows:

§ 330.1101 Purpose.

A displaced employee of the District of Columbia (DC) Department of Corrections (DOC) who is separated from his/her position as a result of the closure of the Lorton Correctional Complex, and who has not been appointed to a permanent Federal Bureau of Prisons law enforcement position, is entitled to priority consideration for other Federal vacancies when he/she applies and is found qualified.

3. Section 330.1102 is revised to read as follows:

§ 330.1102 Duration.

This program terminates 1 year after the closing of the Lorton Correctional Complex.

4. Paragraph (b) of § 330.1103 is removed and paragraphs (c), (d) and (e) are redesignated as paragraphs (b), (c) and (d) and revised to read as follows:

§ 330.1103 Definitions.

* * * * *

(b) *Vacancy* means any competitive service position, including non-law enforcement positions in the Federal Bureau of Prisons, to be filled for a total of 121 days or more, including all extensions, regardless of whether the agency issues a specific vacancy announcement. This program does not apply to law enforcement positions covered by the Federal Bureau of Prisons Priority Consideration Program.

(c) *Priority consideration* means that a displaced DC DOC employee eligible under this subpart who applies for a vacancy and is determined to be qualified, is accorded similar priority and order of selection as an eligible current or former displaced Federal employee under 5 CFR part 330, subpart G—Interagency Career Transition Assistance for Displaced Employees. Actions which are exempt from the requirements of 5 CFR part 330 subpart G will also be exempt from the requirements of this subpart. Agencies must follow the order of selection in § 330.705(a) in filling vacancies in the Federal Government with candidates from outside their own workforce. DC DOC employees are eligible for this priority consideration without regard to any geographical restrictions.

(d) *Qualified* means an eligible employee who:

(1) Possesses the knowledge, skills, and abilities which meet the basic qualification standards and eligibility requirements for the position, including any medical qualifications, suitability, citizenship, minimum educational and experience requirements, and any applicable selective factors;

(2) Is physically qualified, with reasonable accommodation where appropriate, to perform the essential duties of the position;

(3) Meets any special qualifying condition(s) that OPM has approved for the position; and

(4) Is able to satisfactorily perform the duties of the position upon entry.

5. In § 330.1104, paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (b), (c)(2), (c)(4) and (c)(5) are revised, and a new paragraph (c)(6) is added to read as follows:

§ 330.1104 Eligibility.

(a)* * *

(1) Be in receipt of a RIF separation notice, or a similar notice of non-disciplinary termination from the Management Supervisory Service, issued by the DC Department of Corrections in connection with the closure of the Lorton Correctional Complex.

(2) Have not been appointed to a permanent Federal Bureau of Prisons law enforcement position;

(3) Apply for a vacancy within the time frames established by the agency, and include proof of eligibility;

(4) Be found qualified for the specific vacancy.

(b) *Eligibility for priority consideration begins:* on the date the DC DOC employee receives or is issued a specific RIF separation notice, or a similar notice of non-disciplinary termination from the Management Supervisory Service (MSS), issued by the DC DOC due to the closure of the Lorton Correctional Complex.

(c) * * *

(2) When the DC DOC employee is no longer being separated by RIF, or by similar non-disciplinary termination from the Management Supervisory Service, due to the closure of the Lorton Correctional Complex;

* * *

(4) When the DC DOC employee voluntarily separates by resignation or retirement prior to the RIF effective date or the non-disciplinary MSS termination date;

(5) When the DC DOC employee is separated by a non-RIF involuntary separation or disciplinary or other MSS termination not related to the closure of the Lorton correctional complex; or

(6) Eligibility within a specific agency may terminate if the employee:

(i) Declines a permanent appointment offered by the agency (whether competitive or excepted) when the employee applied and was found qualified; or

(ii) Fails to respond within a reasonable period of time to an offer or official inquiry of availability from the agency.

6. Section 330.1105 is revised to read as follows:

§ 330.1105 Selection.

(a) If two or more individuals eligible for priority under subpart G of this part (the Interagency Career Transition Assistance Plan), under subpart K of this part (Federal Employment Priority Consideration for Displaced Employees of the District of Columbia Department of Corrections), and/or under subpart L of this part (Interagency Career Transition Assistance for Displaced Former Panama Canal Zone Employees) apply for a vacancy and are eligible for priority, the agency has the discretion to select any of the individuals.

(b) Agencies will conduct a documented, independent second review whenever an otherwise eligible employee fails to meet the ''qualified'' requirement. The applicant must be advised in writing of the results of the second review.

7. The heading and paragraphs (a) and (b) of § 330.1106 are revised to read as follows:

§ 330.1106 Appointment.

(a)(1) Selectees under this subpart receive noncompetitive appointments to the competitive service under the authority of Public Law 105–274, enacted October 21, 1998.

(2) Agencies must retroactively and noncompetitively convert or correct any excepted appointments made under section 11203(b) of Public Law 105–33 to competitive service appointments under Public Law 105–274. For employees appointed before October 21, 1998, the conversion will be effective on October 21, 1998. For employees appointed on or after October 21, 1998, agencies must correct the record to reflect competitive service appointment as of the original appointment date.

(b) Eligibility for appointment under this subpart expires 1 year after the closing of the Lorton Correctional Complex.

[FR Doc. 01–1487 Filed 1–19–01; 8:45 am]

BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 00–110–1]

West Indian Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are quarantining part of Cameron County, TX, because of the West Indian fruit fly and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the West Indian fruit fly to noninfested areas of the United States.