

Rules and Regulations

Federal Register

Vol. 81, No. 216

Tuesday, November 8, 2016

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 315

RIN 3206-AM64

Career and Career-Conditional Employment

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a final rule on creditable service for career tenure. The final regulation removes the requirement for creditable service to be *substantially continuous* and instead allows an individual to attain career tenure after completing at least 3 years of *total* creditable service.

DATES: Effective December 8, 2016.

FOR FURTHER INFORMATION CONTACT: Cathy Thornton by telephone at (202) 418-4321; by TTY at (202) 418-3134; by fax at (202) 606-4430; or by email to cathryn.thornton@opm.gov.

SUPPLEMENTARY INFORMATION: On January 6, 2014, the Office of Personnel Management (OPM) proposed regulations at 79 FR 610 to revise part 315, title 5, Code of Federal Regulations (CFR), to change the criteria for career tenure in the Federal competitive service. The current regulations require an employee to serve a 3-year period of *substantially continuous* creditable service to attain career tenure. With certain exceptions, the current regulations also require a career-conditional employee who separates from Federal service to restart the 3-year period if there is a break in service of more than 30 days.

This final rule removes “substantially continuous” from the requirement for career tenure. Under this final rule, an individual may attain career tenure after completing at least 3 years of *total*

creditable service as described in section 315.201(b). Each period of creditable service would stand alone. Once the employee accumulates 3 years of creditable service, he/she would be converted to career tenure. This change also removes the basis for the 30-day break-in-service rule. Because each period of creditable service would stand alone, breaks in service are now irrelevant.

This final rule also makes conforming changes to section 315.201(b) and removes references to outdated and obsolete appointing authorities.

Comments

OPM received 12 sets of comments in response to the proposed rule. Eleven individuals and one professional organization provided comments. All 11 individuals supported the proposed changes. A discussion of the comments follows.

One individual suggested the final rule apply to term appointments. OPM is not adopting this suggestion because term appointments are not career or career-conditional appointments and thus do not count towards career tenure. However, creditable service for these purposes may include service on certain overseas limited term appointments under 5 CFR part 301, in accordance with section 315.201(b)(1)(i), and certain term appointments served in accordance with 315.201(b)(3)(iv).

Another individual asked how this rule will impact persons employed as overseas family members. For these purposes creditable service may begin, but not end, with an overseas limited appointment of indefinite duration or an overseas limited term appointment under 5 CFR part 301 in accordance with § 315.201(b)(1)(i).

Another commenter suggested that the final rule allow time under excepted service appointments to count as creditable service towards the attainment of career tenure. OPM is not adopting this suggestion. Generally speaking, career tenure is acquired through service on a permanent appointment in the competitive service that provides or leads to competitive status. Excepted service appointments, in general, do not lead to or provide competitive status. However, for these purposes creditable service may begin with an excepted service appointment that leads to non-competitive conversion to the competitive service.

Readers can find a list of qualifying excepted service appointments in 5 CFR 315.201(b).

One commenter asked that OPM consider similar rules for purposes of annual leave accrual. OPM is not adopting this suggestion because it is beyond the scope of the proposed rule.

The professional organization provided a comment pertaining to suicide prevention, which was beyond the scope of the proposed rule.

OPM is adopting the proposed rule as final without any changes.

E.O. 12866, Regulatory Review

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

Regulatory Flexibility Act

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

Paperwork Reduction Act

The information collection requirements contained in this proposed rule are currently approved by the Office of Management and Budget under 3206-A120. This regulation does not modify this approved collection.

List of Subjects in 5 CFR Part 315

Government employees.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

Accordingly, OPM amends 5 CFR part 315 as follows:

PART 315—CAREER AND CAREER- CONDITIONAL EMPLOYMENT

■ 1. The authority citation for part 315 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, and 3302; E.O. 10577, 3 CFR, 1954-1958 Comp. p. 218, unless otherwise noted; and E.O. 13562. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp. p. 111. Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964-1965 Comp. p. 303. Sec. 315.607 also issued under 22 U.S.C. 2506. Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp. p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(c).

Sec. 315.611 also issued under 5 U.S.C. 3304(f). Sec. 315.612 also issued under E.O. 13473. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp. p. 229. Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp. p. 264.

■ 2. In § 315.201, revise paragraphs (a) and (b) to read as follows:

§ 315.201 Service requirement for career tenure.

(a) *Service requirement.* A person employed in the competitive service for other than temporary, term, or indefinite employment is appointed as a career or career-conditional employee subject to the probationary period required by subpart H of this part. Except as provided in paragraph (c) of this section, an employee must serve at least 3 years of creditable service as defined in paragraph (b) of this section to become a career employee.

(b) *Creditable service.* Unless otherwise approved by OPM, the service required for career tenure must include service as described in paragraph (b)(1) of this section and total at least 3 years.

(1) *Nontemporary employment.* To be creditable, the 3 years of service must begin with one of the following:

(i) Nontemporary appointment in the competitive service: For this purpose, nontemporary appointment includes a career-conditional appointment. The 3 years may also begin, but not end, with status quo employment under subpart G of part 316 of this chapter, an overseas limited appointment of indefinite duration, or an overseas limited term appointment under part 301 of this chapter. The 3 years also may have begun with permanent employment under now obsolete appointing authorities such as probational, war service indefinite, emergency indefinite, nontemporary appointment from a civil service register to a position in the excepted service before January 23, 1955, temporary appointment pending establishment of a register (also known as TAPER authority), nontemporary appointment to a position in the District of Columbia Government before January 23, 1955, and appointment based on Public Law 83–121. Determinations of whether an obsolete authority provides the basis for creditable service may be obtained from OPM;

(ii) Nontemporary appointment to an excepted position, provided the employee's excepted position was brought into the competitive service and, on that basis, the employee acquired competitive status or was converted to a career-conditional appointment;

(iii) Nontemporary appointment to a nonappropriated fund (NAF) position in

or under the Department of Defense or in or under the U.S. Coast Guard, Department of Homeland Security, provided the employee's NAF position was brought into the competitive service and, on that basis, the employee acquired competitive status or was converted to a career or career-conditional appointment;

(iv) Nontemporary excepted or nonappropriated fund appointment, Foreign Service appointment, or appointment in the Canal Zone Merit System, provided the employee is appointed to a competitive service position under the terms of an interchange agreement with another merit system under § 6.7 of this chapter, under Executive Order 11219 as amended by Executive Order 12292, or under Executive Order 11171;

(v) The date of appointment to a position on the White House Staff or in the immediate office of the President or Vice President, provided the service has been continuous and the individual was appointed to a competitive service position under § 315.602 of this chapter;

(vi) The date of nontemporary excepted appointment under § 213.3202(b) of this chapter (the former Student Career Experience Program) as in effect immediately before July 10, 2012, the effective date of the regulations removing that paragraph, provided the student's appointment was converted to a career or career-conditional appointment under Executive Order 12015 or under Executive Order 13562, with or without an intervening term appointment, and without a break in service of one day;

(vii) The date of veterans recruitment appointment (VRA), provided the appointment is converted to a career or career-conditional appointment under § 315.705 of this chapter, or the person is appointed from a civil service register without a break in service while serving under a VRA;

(viii) The date of nontemporary appointment to the Postal Career Service or the Postal Regulatory Commission after July 1, 1971, provided the individual is appointed to a career or career-conditional appointment under 39 U.S.C. 1006;

(ix) The date of nontemporary appointment under Schedule A, § 213.3102(u) of this chapter, of a person with an intellectual disability, severe physical disability, or a psychiatric disability, provided the employee's appointment is converted to a career or career-conditional appointment under § 315.709;

(x) The date of appointment in the Presidential Management Fellows Program under the provisions of

Executive Order 13318, provided the employee's appointment was converted without a break in service to a career or career-conditional appointment under § 315.708 as in effect immediately before July 10, 2012, the effective date of the regulations that removed and reserved that section, or under Executive Order 13562;

(xi) The starting date of active service as an administrative enrollee in the United States Merchant Marine Academy;

(xii) Appointment as a career intern under Schedule B, § 213.3202(o) of this chapter, provided the employee's appointment was converted to a career or career-conditional appointment under § 315.712 as in effect immediately before July 10, 2012, the effective date of the regulations that removed and reserved that section;

(xiii) The date of appointment as a Pathways Participant in the Internship Program under Schedule D, § 213.3402(a) of this chapter, provided the employee's appointment is converted to a career or career-conditional appointment under § 315.713(a), with or without an intervening term appointment, and without a break in service of one day;

(xiv) The date of appointment as a Pathways Participant in the Recent Graduates Program under Schedule D, § 213.3402(b) of this chapter, provided the employee's appointment is converted to a career or career-conditional appointment under § 315.713(b), with or without an intervening term appointment, and without a break in service of one day;

(xv) The date of appointment as a Pathways Participant in the Presidential Management Fellows Program under Schedule D, § 213.3402(c) of this chapter, provided the employee's appointment is converted to a career or career-conditional appointment under § 315.713(c), with or without an intervening term appointment, and without a break in service of one day; and

(xvi) Employment with the District of Columbia Government after January 1, 1980 (the date the District implemented an independent merit personnel system not tied to the Federal system), provided the person was a District employee on December 31, 1979, was converted to the District system on January 1, 1980, and is employed by nontemporary appointment in the competitive service.

(2) *Competitive status.* An individual may attain career tenure only when employed (or reemployed) in a permanent appointment in the competitive service that provides or leads to competitive status.

(3) *Crediting service.* An employee's creditable service must total at least 3 years, under the following conditions:

(i) *Work schedule.* (A) Full-time service, and part-time service on or after July 1, 1962, are counted as calendar time from the date of appointment to date of separation.

(B) Intermittent service on or after July 1, 1962, is counted as 1 day for each day an employee is in pay status, regardless of the number of hours for which the employee is actually paid on a given day. Agencies should consult the "260-Day Work Year Chart" in OPM's *Guide to Processing Personnel Actions* to convert intermittent days worked to calendar time. The service requirement may not be satisfied in less than 3 years of calendar time.

(ii) *Nonpay status on the rolls and time off the rolls.* An agency may not credit periods of nonpay status and time off the rolls except as follows:

(A) Credit the first 30 calendar days of each period of nonpay status on the rolls during full-time employment, or during part-time employment on or after July 1, 1962. On this same basis, a seasonal employee receives credit for the first 30 calendar days of each period of nonduty/nonpay status. Nonpay status in excess of 30 days is not creditable.

(B) Credit periods of nonpay status and time off the rolls incident to entry into and return from military service and return from defense transfer, provided the person is reemployed in Federal service during the period of his or her statutory or regulatory restoration or reemployment rights.

(C) Credit periods of nonpay status and time off the rolls incident to transfer to and return from an international organization, provided the person is reemployed in Federal service under subpart C of part 352 of this chapter.

(D) Credit periods of nonpay status during which an employee was eligible to receive continuation of pay or injury compensation from the Office of Workers' Compensation Programs. Also credit periods of time off the rolls during which an employee was eligible to receive injury compensation from the Office of Workers' Compensation Programs, provided the person is reemployed under part 353 of this chapter.

(E) Credit up to 30 calendar days for time off the rolls that follows separation by reduction in force of employees who are eligible for entry on the reemployment priority list under subpart B of part 330 of this chapter, provided the person is reemployed in Federal service during the period of his or her reemployment priority.

(F) Credit up to 30 calendar days for time off the rolls that follow involuntary separation without personal cause of employees who are eligible for a noncompetitive appointment based on an interchange agreement with another merit system under § 6.7 of this chapter, provided the person is employed in the competitive service under the agreement during the period of his or her eligibility.

(G) Credit periods of nonpay status incident to an assignment to a State, local, or Indian tribal government, institution of higher education, or other eligible organization provided the employee returns to a creditable appointment pursuant to an agreement established under subchapter VI of chapter 33, title 5, U.S.C., and part 334 of this chapter.

(iii) *Restoration based on unwarranted or improper actions.* Based on a finding made on or after March 30, 1966, that a furlough, suspension, or separation was unwarranted or improper, an employee restored to duty receives full calendar time credit for the period of furlough, suspension, or separation for which he or she is eligible to receive back pay. If the employee is restored to duty at a date later than the original adverse action, credit for intervening periods of nonpay status is given in accordance with other provisions of this subsection. If the employee had been properly separated from the rolls of the agency before a finding was made that the adverse action was unwarranted or improper, the correction and additional service credit given the employee may not extend beyond the date of the proper separation.

(iv) *Intervening service.* Certain types of service that ordinarily are not creditable are counted when they intervene between two periods of creditable service. Under these conditions, credit each period of service:

(A) In the excepted service of the Federal executive branch, including employment in nonappropriated fund positions in or under any Federal agency;

(B) Under temporary, term, or other nonpermanent employment in the Federal competitive service;

(C) In the Senior Executive Service;

(D) In the Federal legislative branch;

(E) In the Federal judicial branch;

(F) In the armed forces;

(G) In the District of Columbia Government through December 31, 1979. For an employee on the District rolls on December 31, 1979, who converted on January 1, 1980, to the District independent personnel system,

credit is also given for service between January 1, 1980, and September 25, 1980. Otherwise, service in the District of Columbia Government on or after January 1, 1980, is not creditable as intervening service; and

(H) Performed overseas by family members, as defined by § 315.608 of this chapter.

* * * * *

[FR Doc. 2016-26888 Filed 11-7-16; 8:45 am]

BILLING CODE 6325-39-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 112

[Docket No. APHIS-2008-0008]

RIN 0579-AD19

Viruses, Serums, Toxins, and Analogous Products; Packaging and Labeling

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: In a final rule published in the **Federal Register** on August 30, 2016, and effective on October 31, 2016, we amended the Virus-Serum-Toxin Act regulations to make veterinary biologics labeling requirements more consistent with current science and veterinary practice. However, we inadvertently removed a requirement for an indications statement that should appear on final container labels, carton labels, and enclosures. This document corrects that error.

DATES: Effective November 8, 2016.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Malloy, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road, Unit 148, Riverdale, MD 20737; (301) 851-2352.

SUPPLEMENTARY INFORMATION: In a final rule¹ that was published in the **Federal Register** on August 30, 2016 (81 FR 59427, Docket No. APHIS-2008-0008), and effective on October 31, 2016, we amended the Virus-Serum-Toxin Act regulations to make veterinary biologics labeling requirements more consistent with current science and veterinary practice. Among other things, in 9 CFR part 112, we amended § 112.2(a)(5) to clarify that "full instructions for the

¹ To view the final rule and supporting documents, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0008>.