

# Proposed Rules

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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 352

RIN 3206-AI19

#### Reemployment Rights

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of Personnel Management (OPM) proposes to amend its regulations on the detail and transfer of Federal employees to international organizations. The proposed changes will make the regulation consistent with recent statutory changes on determining the rate of basic pay an employee is entitled to receive when reemployed after service with an international organization. The changes also modernize regulatory language.

**DATES:** Submit comments on or before December 3, 2007.

**ADDRESSES:** You may submit comments, identified by RIN number, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [employ@opm.gov](mailto:employ@opm.gov). Include "RIN 3206-AI19" in the subject line of the message.

- *Fax:* (202) 606-2329.

- *Mail:* Angela Bailey, Deputy Associate Director, Center for Talent and Capacity Policy, Division for Strategic Human Resources Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415-9700.

- *Hand Delivery/Courier:* OPM, Room 6500, 1900 E Street, NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Pam Galemore at (202) 606-0960, FAX at (202) 606-2329, TDD at (202) 418-3134, or e-mail at [pamela.galemore@opm.gov](mailto:pamela.galemore@opm.gov).

**SUPPLEMENTARY INFORMATION:** This regulation is being revised for consistency with section 3582(b) of title 5, United States Code. Section 2504 of

Public Law 105-277 amended the statute by eliminating employee entitlement to be paid an "equalization allowance" upon return to Federal service. The equalization allowance was a payment equal to the difference between the pay, allowances, post differential, and other monetary benefits paid by the international organization and the pay, allowances, post differential, and other monetary benefits that would have been paid by the employing agency had the employee been detailed to the international organization. Because of this amendment, an employee who transferred, with the consent of the employing agency, to an international organization on or after October 21, 1998, is entitled, upon reemployment, only to the rate of basic pay the employee would have received had the employee remained in the civil service. We have removed section 352.310 of the current regulations to reflect this change.

We have revised section § 352.309, to provide for easier understanding of agency responsibilities and employee entitlements, and explain action required to retain an employee's coverage under the retirement, health benefits, and group life insurance system when the employee transfers to an international organization.

In addition, the revised regulation clarifies that the Department of State, rather than OPM, is delegated the authority for designating any organization as an international organization.

This revision also modernizes regulatory language.

#### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and 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 352

Administrative practice and procedure, Government employees, Reemployment rights.

Office of Personnel Management.

**Linda M. Springer,**

*Director.*

Accordingly, OPM proposes to amend part 352 of title 5, Code of Federal Regulations, as follows:

### PART 352—REEMPLOYMENT RIGHTS

#### Subpart C—Detail and Transfer of Federal Employees to International Organizations

1. The authority citation for part 352, subpart C, continues to read:

**Authority:** 5 U.S.C. 3584, E.O. 11552, 3 CFR, 1966-1970 Comp., p. 954; Section 352.313 also issued under 5 U.S.C. 7701, *et seq.*

#### § 352.303 [Removed and reserved]

2. Section 352.303 is removed and reserved.

3. Section 352.304 is revised to read as follows:

#### § 352.304 International organizations covered.

(a) An agency may detail or transfer an employee under this subpart, without prior approval, to an organization which the Department of State has designated as an international organization.

(b) An agency may detail or transfer an employee under this subpart to any other public international organization or international organization preparatory commission only when the Department of State agrees that the organization concerned could be designated as an international organization covered by sections 3343 and 3581 of title 5, United States Code.

4. Section 352.305 is revised to read as follows:

#### § 352.305 Eligibility for detail.

An employee is eligible for detail to an international organization with the rights provided for in, and in accordance with, section 3343 of title 5, United States Code, and this subpart, except the following:

(a) A Presidential appointee (other than a postmaster, a Foreign Service officer, or a Foreign Service information officer), regardless of whether the appointment was made by and with the advice and consent of the Senate.

(b) A person serving in the executive branch in a confidential or policy-determining position excepted from the

competitive service under Schedule C of part 213 of this chapter.

(c) A person serving under a non-career, limited emergency, or limited term appointment in the SES.

(d) A person serving under a temporary appointment.

5. Section 352.306 is revised to read as follows:

**§ 352.306 Length of details.**

A detail or series of details must not exceed 5 consecutive years, except that when the Secretary of State, on the recommendation of the head of the agency, determines it to be in the national interest, the 5-year detail may be extended for up to an additional 3 years. A detail or series of details or combination of details and transfers must not exceed 8 years in the aggregate throughout an employee's Federal career.

6. Section 352.308 is amended by revising paragraph (d) to read as follows:

**§ 352.308 Effecting employment by transfer.**

\* \* \* \* \*

(d) *Recording requirement.* The agency must furnish the employee with a leave statement, showing the annual and sick leave balances at the time of transfer. In addition, the notification of personnel action effecting the employee's separation for transfer, must include:

(1) Identification of the international organization to which the employee is transferring,

(2) A clear statement of the period of consent, during which the employee has reemployment rights in the agency under section 3582 of title 5, United States Code, and this subpart, and

(3) The legal and regulatory conditions for reemployment.

7. Section 352.309 is revised to read as follows:

**§ 352.309 Retirement, health benefits, and group life insurance.**

(a) *Agency action.* An employee who is transferred to an international organization is entitled to retain coverage for retirement, health benefits, and group life insurance purposes if he or she so chooses. The period during which coverage, rights, and benefits are retained under this paragraph, during employment with the international organization, is deemed employment by the United States. At the time an employing Federal agency consents to the transfer of an employee, the agency must advise the employee in writing of the employee's right to continue retirement, health benefits, and group

life insurance coverage, as applicable, for the duration of the assignment or transfer. The notice must explain the conditions for continued coverage and the employee's obligations and responsibilities with regard to continued coverage. The notice must also explain that, if the employee elects to retain coverage, the agency will continue to make the agency contributions to the funds, and the employee's coverage will continue as long as employee payments are currently deposited in the respective funds.

(b) *Employee Action.* The employee must acknowledge, in writing, receipt of the notice and state whether or not he or she wishes to retain coverage under the retirement, health benefits, and group life insurance systems or any of them by continuing the required employee payments. The employee must make a written election to retain benefits, as applicable, and make arrangements for the required employee payments. An employee who transfers to an international organization is not eligible to participate in the Thrift Savings Plan (TSP) while employed by the international organization even if he or she elects to retain Federal retirement coverage. However, upon reemployment, an employee who elected to retain Federal retirement coverage while employed by the international organization and has made all deposits required for such coverage may make contributions to the TSP which he or she missed as a result of the service with an international organization, and receive make-up agency contributions and lost earnings on the agency contributions, as provided under § 352.311(e).

(c) *Agency responsibility.* For retirement and group life insurance purposes, the employing agency is responsible for determining the applicable rate of pay in accordance with the provisions of section 3583 of title 5, United States Code. The agency is also responsible for collecting, accounting for, and depositing in the respective funds all retirement, health benefits, and group life insurance employee payments required to be made for the purpose of protecting the rights of the employee so transferred; and for accounting for and depositing in the respective funds all agency contributions. The agency must furnish the employee with specific information as to how, when, and where the payments are to be submitted.

(d) *Coverage.* Employee payments are considered to be currently deposited if received by the agency before, during, or within 3 months after the end of the pay

period covered by the deposit. If the contributions are not currently deposited, coverage terminates on the last day of the pay period for which the required contributions were currently deposited, subject to a 31-day extension of group life insurance and health benefits coverage as provided in parts 870 and 890 of this chapter and to the conversion benefits provided in parts 870 and 890 of this chapter. Coverage so terminated may not be re-established before the employee actually enters on duty, on the first day in a pay status in an agency. However, terminated retirement, health benefits, and group life insurance coverage must be reinstated retroactively when, in the judgment of OPM, the failure to make the required current deposit was due to circumstances beyond the employee's control and the required payments were deposited at the first opportunity. Coverage under a system other than the civil service retirement system must be reinstated retroactively if the agency which administers the retirement system determines that the failure to make the required current deposit was due to circumstances beyond the control of the employee and the required payments were deposited at the first opportunity.

**§ 352.310 [Removed and reserved]**

8. Section 352.310 is removed and reserved.

9. Sections 352.311 through 352.314 are revised to read as follows:

**§ 352.311 Reemployment.**

(a) An employee who transferred to an international organization with the consent of the employing agency is entitled to be reemployed in his or her former position, or one of like seniority, status, and pay within 30 days of applying for reemployment if the employee:

(1) Is separated, either voluntarily or involuntarily, without cause, within the term of employment with an international organization; and

(2) Applies for reemployment with the employing agency or its successor no later than 90 days after separation from the international organization.

(b) Pay upon reemployment will be set at that to which the employee would have been entitled had the employee remained with the employing agency.

(c) When an employee's reemployment right is to a position in the SES, reemployment may be to any position in the SES for which the employee is qualified. The employee must be returned at not less than the SES rate of basic pay as determined under 5 CFR part 534, subpart D, at

which the employee was being paid immediately before transfer to the international organization, or if pay has been adjusted under § 352.314(c), at not less than the adjusted pay level.

(d) The period of separation caused by the employment of the employee with the international organization and the period necessary to effect reemployment are creditable service for all appropriate civil service employment purposes.

(e) An employee who elected to retain Federal retirement coverage while employed by the international organization and has made all deposits required for such coverage may make contributions to the TSP which he or she missed as a result of the service with the international organization, and receive make-up agency contributions and lost earnings on the agency contributions, consistent with applicable TSP requirements.

#### **§ 352.312 When to apply.**

An employee may apply for reemployment, in writing, either before or after separation from the international organization. If the employee applies before separation, the 30-day period prescribed in § 352.311 begins either with the date of the application or 30 days before the employee's date of separation from the international organization, whichever is later. If the employee applies for reemployment after separation, the application must be received by the employing agency no later than 90 days after separation from the international organization.

#### **§ 352.313 Failure to reemploy and right of appeal.**

(a) When an agency fails to reemploy an employee within 30 days of receiving the employee's application, it must notify the employee, in writing, of the reasons and of the employee's right to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency must comply with the provisions of § 1201.21 of this title.

(b) If the agency fails to reach and issue a decision to the employee within 30 days from the date of the application for reemployment, the employee is entitled to appeal the agency's failure to issue a decision to the Merit Systems Protection Board under the provisions of the Board's regulations.

(c) An employee may submit an appeal, alleging that the agency has failed to comply with any of the other provisions of sections 3343 and 3581–3584 of title 5, United States Code, or of this part, to the Merit Systems

Protection Board under the provisions of the Board's regulations.

#### **§ 352.314 Consideration for promotion and pay increases.**

(a) The employing agency must consider an employee who is detailed or transferred to an international organization for all promotions for which the employee would be considered if not absent. A promotion based on this consideration is effective on the date it would have been effective if the employee were not absent.

(b) When the position of an employee who is absent on detail or transfer to an international organization is upgraded during the employee's absence, the employing agency must place the employee in the upgraded position.

(c) The employing agency must consider an employee who is detailed or transferred to an international organization from an ungraded pay system for all pay increases for which the employee would be considered if not absent. An increase is effective on the date it would have been effective if the employee were not absent.

[FR Doc. E7–19447 Filed 10–1–07; 8:45 am]

BILLING CODE 6325–39–P

## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

#### **32 CFR Part 212**

[DoD–2006–OS–0041; 0790–AB04]

#### **Procedures and Support for Non-Federal Entities Authorized To Operate on Department of Defense (DoD) Installations**

**AGENCY:** Department of Defense.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposed to update responsibilities and procedures to define and reestablish a framework for non-Federal entities (NFEs) (previously called private organizations) authorized to operate on DoD installations.

Requires heads of DoD Components to conduct periodic reviews of facilities, programs, services, and membership provisions of NFEs operating on DoD installations and authorizes installation commanders or higher authority to determine if an NFE detracts from DoD programs and to eliminate duplication. Identifies those NFEs having statutory authorization for particular support and restates DoD policy on sponsorship of NFEs by DoD personnel acting in an official capacity, specifically as it applies to chartering Boy Scout

organizations authorized to operate on DoD installations.

**DATES:** Comments must be received by December 3, 2007.

**ADDRESSES:** You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Pam Crespi, 703–602–5004.

#### **SUPPLEMENTARY INFORMATION:**

#### **Executive Order 12866, “Regulatory Planning and Review”**

It has been determined that 32 CFR part 123 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

#### **Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)**

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

#### **Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. 601)**

It has been certified that this rule is not subject to the Regulatory Flexibility