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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 352

Reemployment Rights of Senior Executive Service Employees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is updating its regulations to permit Federal agencies to grant reemployment rights to Senior Executive Service (SES) employees who take other civilian employment under certain circumstances. The regulations make the reemployment of SES employees comparable to the existing rights of other civilian employees.

EFFECTIVE DATE: August 11, 1986.

FOR FURTHER INFORMATION CONTACT: John Schultz, 202-632-6817.

SUPPLEMENTARY INFORMATION: Part 352 of Title 5 of the Code of Federal Regulations permits a Federal agency to grant reemployment rights to nontemporary Federal employees in both the competitive and excepted service under terms and conditions specified by law when they accept special assignments or other hard to fill positions outside their agencies.

Proposed regulations to bring SES employees within the coverage of Part 352 were published in the Federal Register on December 27, 1985 [50 FR 52928]. Only one comment was received, which supported the proposed regulations. Except for minor typographical corrections and the rearrangement of section authorities, no substantive changes have been made in the final regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities, (including small businesses, small organizational units, and small governmental jurisdictions) because they apply only to senior executives employed by Federal agencies.

List of Subjects in 5 CFR Part 352

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.
Constance Horner,
Director.

PART 352—[AMENDED]

Accordingly, OPM is amending Part 352 of Title 5, Code of Federal Regulations, as follows:

1. The authority citation for Subpart B of Part 352 is revised as set forth below and the authority citations following all the sections in Part 352 are removed:

Authority: 5 U.S.C. 3101 note, 3301, 3131 et seq. 3302; E.O. 10577, 3 CFR 1954–1958 Com., p. 218; sec. 352. 209 also issued under 5 U.S.C. 7701, et seq.

2. Section 352.204 is amended by redesignating paragraph (a)(2) as (a)(3), adding a new paragraph (a)(2), and revising paragraph (b)(1) to read as follows:

§ 352.204 Basic eligibility for reemployment rights.

(a) * * *

(2) An employee serving under a career appointment in the Senior Executive Service (SES); or

* * * * *

(b) * * *

(1) An employee who is serving a probationary or trial period under an appointment to a position in the excepted or competitive service or the SES.

* * * * *

3. Section 352.205a is revised to read as follows:

§ 352.205a Authority to return employee to his or her former or successor agency.

The transfer of an employee with a grant of reemployment rights under this subpart authorizes the return of the employee to his or her former or successor agency without regard to Parts 351, 752, or 771 of this chapter when the employee is reemployed in his or her former or successor agency—

(a) Without a break in service of 1 workday or more in a position at the same or higher grade in the same occupational field and geographical area as the position he or she last held in the former or successor agency; and

(b) At not less than the rate of pay he or she would have been receiving in the position last held in the former or successor agency if he or she had not been transferred.

4. Section 352.205b is added to read as follows:

§ 352.205b Authority to return an SES employee to his or her former or successor agency.

The transfer of a career SES appointee with a grant of reemployment rights under this subpart authorizes the return of the employee to his or her former or successor agency when the employee is reemployed in his or her former or successor agency—

(a) Without a break in service of 1 workday or more in any position in the SES for which the employee is qualified; and

(b) At not less than the SES pay level at which the employee was being paid immediately before his or her transfer.

5. Section 352.208 is amended by revising paragraph (a), redesignating paragraphs (c) and (d) as (d) and (e), respectively, and adding a new paragraph (c), to read as follows:

§ 352.208 Agency's obligation to reemploy.

(a) *Employee's right to reemployment.* An employee is entitled to be reemployed by the reemploying agency as promptly as possible but not more than 30 calendar days after receipt of his application. Except as provided in paragraph (c) of this section, the employee is entitled to reemployment in the occupational field and at the same grade or level and in the same geographical area as the position which the employee last held in that agency. If the reemployment would cause the separation or demotion of another employee, the applicant shall then be considered an employee for the purpose of applying the reduction-in-force regulations (5 CFR Part 351) to determine to what, if any, position, he or she is entitled.

* * * * *

(c) *Reemployment in SES.* When the employee's right is to a position in the SES, reemployment or return may be to any position in the SES for which the employee is qualified.

* * * * *

6. The authority citation for Subpart C of Part 352 is revised to read as follows:

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.

7. Section 352.305 is revised to read as follows:

§ 352.305 Eligibility for detail.

An employee, including a person serving under a career appointment in the Senior Executive Service (SES), is eligible to be detailed 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.

8. Section 352.307 is amended by redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), respectively, and adding a new paragraph (c), to read as follows:

§ 352.307 Eligibility for transfer.

* * * * *

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

* * * * *

9. Section 352.311 is revised to read as follows:

§ 352.311 Reemployment.

(a) A transferred employee is entitled to be reemployed in his or her former position or one of like seniority, status, and pay within 30 days of his or her application for reemployment if he or she meets the following conditions:

(1) He or she is separated, either voluntarily or involuntarily, within his or her term of employment with an international organization; and

(2) He or she applies for reemployment to his or her former agency or its successor no later than 90 days after his or her separation.

(b) When an employee's right is to a position in the SES, reemployment or return may be to any position in the SES for which the employee is qualified. The employee shall be returned at not less than the SES pay level at which the employee was being paid immediately before his or her transfer.

10. In § 352.405, paragraph (a) is revised to read as follows:

§ 352.405 Resumption of Federal service.

(a) *Pay increase.* Except for an employee whose right is to a position in the Senior Executive Service (SES), an officer who is reemployed in the Federal position which he or she left or one of like seniority, status, and pay within 90 days of his or her separation from the agency following a term of employment, is entitled to the rate of basic pay to which he/she would have been entitled had he or she remained in the Federal service. When the employee's right is to a position in the SES, this subpart authorizes reemployment to any position in the SES for which the employee is qualified at not less than the SES pay level at which the employee was being paid immediately before his or her transfer.

* * * * *

11. The authority citation for Subpart E of Part 352 is revised to read as follows:

Authority: Sec. 625, 75 Stat. 449; 22 U.S.C. 2385; E.O. 10973; 3 CFR 1959–1963 Comp., p. 493; Section 352.508 also issued under 5 U.S.C. 7701 et seq.

12. Section 352.502 is amended by redesignating paragraphs (b) and (c) as (c) and (d), respectively, and by adding a new paragraph (b) to read as follows:

§ 352.502 Coverage.

* * * * *

(b) A person serving under a career appointment in the Senior Executive Service (SES).

* * * * *

13. Section 352.504 is revised to read as follows:

§ 352.504 Basic entitlement.

Subject to the conditions specified in this subpart, an employee who is appointed to a position under authority of section 233(d) or section 625(b) of the Act is entitled, on termination of that appointment for any reason other than his or her own misconduct or delinquency, to be reinstated in his or her former position or in one of like seniority, status, and pay in the same agency. When the employee's right is to a position in the SES, reinstatement may be to any position in the SES for which the employee is qualified. The employee shall be returned at not less than the SES pay level at which the employee was being paid immediately before his or her transfer. If the functions with which the employee's former position was identified have been transferred to another agency, the employee's right to reinstatement is in the gaining agency.

14. The authority citation for Subpart G of Part 352 is revised to read as follows:

Authority: Sec. 105(i), Pub. L. 93–638, 88 Stat. 2210 (25 U.S.C. 450); E.O. 11899; 41 FR 3459; Section 352.707 also issued under 5 U.S.C. 7701, et seq.

15. Section 352.703 is amended by revising the introductory text of paragraph (a) and adding paragraph (a)(3) to read as follows:

§ 352.703 Basic entitlement to reemployment rights on leaving Federal employment.

(a) *Employees entitled.* The following employees of the Bureau of Indian Affairs, Department of the Interior, and the Indian Health Service and the Public Health Service of the Department of Health and Human Services, are granted reemployment rights subject to the conditions of this subpart, to the Bureau of Indian Affairs, the Indian Health Service, or the Public Health Service, as appropriate, if they leave their Federal employment to be employed, with no break in service following separation from their agency, by an Indian tribal organization to work in a function of their respective agency contracted under the Indian Self-Determination Act to be performed by that tribal organization:

* * * * *

(3) An employee serving under a career appointment in the Senior Executive Service (SES) who is not serving a probationary period.

* * * * *

16. Section 352.706 is amended by redesignating paragraphs (d) and (e) as (e) and (f) respectively and adding a new paragraph (d) to read as follows:

§ 352.706 Agency response to reemployment application.

* * * * *

(d) *Reemployment to an SES position.* When the employee's right is to a position in the SES, reemployment or return may be to any position in the SES for which the employee is qualified. The employee shall be returned at not less than the SES pay level at which the employee was being paid immediately before his or her transfer.

* * * * *

17. The authority citation for Subpart H of Part 352 is revised to read as follows:

Authority: 22 U.S.C. 3310; E.O. 12143, 44 FR 37191; Section 352.807 also issued under 22 U.S.C. 3310; E.O. 12143, 45 FR 37452.

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[FR Doc. 86–15663 Filed 7–10–86; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Regulation 371]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 371 establishes the quantity of California-Arizona Valencia oranges that may be shipped to market during the period July 11–17, 1986. The regulation is needed to balance the supply of fresh Valencia oranges with market demand for the period specified due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: Regulation 371 (§ 908.671) is effective for the period July 11–17, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202/447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The regulation is consistent with the marketing policy for 1985–86. The committee met publicly on July 8, 1986, to consider the current and prospective conditions of supply and demand and recommended the quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports that the market for Valencia oranges is slow.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which this regulation is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the regulation and the effective date.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges, Valencias.

PART 908—[AMENDED]

1. The authority citation for 7 CFR Part 908 continues to read:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

2. Section 908.671 is added to read as follows:

§ 908.671 Valencia Orange Regulation 371.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period July 11, 1986, through July 17, 1986, are established as follows:

(a) District 1: 322,000 cartons;

(b) District 2: 378,000 cartons;

(c) District 3: Unlimited cartons.

Dated: July 9, 1986.

Joseph A. Gribbin,

Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–15789 Filed 7–10–86; 8:45 am]

BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Wholesale Trade Size Standard

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: SBA is amending its size standard, or definition of small business, for the entire wholesale trade industry division from 500 employees to 100 employees for all SBA programs. This action is based on an internal study of the structure of this industry group, which showed that wholesale trade has the highest size standard of any major industry division, in terms of percentage of concerns defined as small. More recent data from the Bureau of the Census confirm this picture. Only two comments were received from the private sector on the proposed rule of October 1, 1985; both favored this reduction. Nearly all Government procurement officials who were queried also concurred with this change.

EFFECTIVE DATE: August 11, 1986.

FOR FURTHER INFORMATION CONTACT: Alan Odendahl, Economist, Size Standards Staff, (202) 653–6373.

SUPPLEMENTARY INFORMATION: On October 1, 1985, SBA published in the **Federal Register** a proposed lowering of the size standard for all wholesale trade industries to 100 employees from its present 500 employees. SBA's proposal was based on a comprehensive internal study of the industry structure of the wholesale trade sector, of the pattern of Federal procurement from wholesalers, and of public comments on previous proposals for wholesale trade size standards.

In 1977, the latest year for which data was available at the time the study was done, there were over 230,000 merchant wholesaler firms in the United States with total sales of about $1.2 trillion. However, the average firm had only 14.6 employees, and the median firm was smaller yet, with only 6.5 employees.

Only 0.13 percent of merchant wholesaler firms (or exactly 309 companies out of 230,234) had more than 500 employees and are defined as large. The other 99.87 percent are defined as small. This is the highest percentage of firms defined as small among all major industry groups; the overall average for all nonfarm industries is 98.70 percent small.

New data for the year 1982 is now available from the U.S. Bureau of the Census. It shows an industry structure pattern that is almost unchanged from