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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 575

RIN 3206-AI31

Retention Allowances

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to provide agencies with greater flexibility to pay retention allowances of up to 10 percent of an employee's rate of basic pay (or up to 25 percent with OPM approval) to a group or category of employees in certain limited circumstances. This flexibility will help agencies retain the specialized skills they need to meet their work requirements. The final regulations revise the interim regulations to provide further guidance on defining the covered group or category of employees, to clarify the intended use of a retention allowance, and to add references to a group or category of employees in provisions dealing with the reduction or termination of retention allowances.

EFFECTIVE DATE: January 21, 2000.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606-2858; FAX (202) 606-0824; EMAIL: payleave@open.gov.

SUPPLEMENTARY INFORMATION: On June 23, 1998, the Office of Personnel Management (OPM) published interim regulations to provide agencies with discretionary authority to pay retention allowances of up to 10 percent of an employee's rate of basic pay (up to 25 percent with OPM approval) to a group or category of employees in certain limited circumstances (63 FR 34119). Interested parties were invited to comment for a 60-day period. OPM received comments from three agencies. All three agencies expressed support for

the additional flexibility provided by the interim regulations. Specific comments are discussed below along with a description of changes made in the final regulations.

Administering the Discretionary Authority

One agency expressed concern regarding the administration of the discretionary authority. The agency expressed concern that it may be difficult to justify the exclusion of individuals from an identified group or to identify a group that includes only individuals whom the agency is anxious to retain. The agency believes the decision to approve a group retention allowance might be highly judgmental. Another agency asked whether employees newly hired into a group receiving a retention allowance could be (or should be) excluded from receiving the allowance.

We believe the type of discretion currently used to make a judgment for paying a retention allowance on a case-by-case basis to individual employees is essentially the same used in making a determination for a category of employees. Similar to the case-by-case determinations, agencies must authorize retention allowances based on written determination that employees have unusually high or unique qualifications or that the agency has a special need for the employees' services that makes it essential to retain the employees in that category. What is different is that the regulations do not require agencies to determine whether each individual in the targeted group is likely to leave Federal service. Instead, agencies must determine whether there is a high risk that a significant number of employees in the targeted category are likely to leave Federal service in the absence of an allowance. Section 575.305(d)(1) requires agencies to have evidence of labor market conditions or other factors to fully support this determination.

It is essential, therefore, that agencies clearly define the characteristics and coverage criteria of the identified category of employees. These criteria may include the minimum length of service a newly hired employee must fulfill with the agency before being covered by an identified group. If an appropriate group cannot be clearly defined by specific factors, or if labor market or other conditions do not

indicate that there is a high risk that a significant number of employees in the group is likely to leave, then consideration should be given to granting retention allowances to selected employees in the identified group on a case-by-case basis as justified by the circumstances of the individual case. To provide further guidance to agencies on defining the covered group, we have added language to 5 CFR 575.305(d)(1) that identifies the types of factors that may be used to define the group.

Several agencies have informally requested clarification on whether a retention allowance may be offered when recruiting an employee from another agency when it knows the employee has a private sector job offer and is likely to leave Federal Service. Retention allowances are not intended to be used as a recruitment tool, especially when recruiting an employee from another agency. Section 575.305(b)(2) of the regulations further provides that a retention allowance may only be offered to an employee in or under an agency and based on the agency's determination that the employee's departure would affect the agency's ability to carry out an activity or perform a function that is deemed essential to the agency's mission. Therefore, in order for an agency to make its case, the employee would have to have been hired and performing a critical function for a period of time immediately prior to the payment of a retention allowance. To clarify this intent, we have added a new paragraph (d) to § 575.304 to read, "An agency may not offer a retention allowance to an individual (or authorize the payment of such an allowance) prior to the individual's employment with the agency."

Amount of Retention Allowance

One agency believes the interim regulations effectively allow an agency to provide a 10 percent pay raise to a significant number of employees. The agency supports the requirement for OPM approval of group/category retention allowances of more than 10 percent, thus guarding against the potential for creating an uneven playing field without reasonable notice to similarly-situated agencies. Another agency expressed concern that limiting the amount of the retention allowance

an agency can pay to a group of employees dilutes the effectiveness of extending the flexibility. The agency believes there would be no advantage to invoking this new provision unless 10 percent has already been determined to be a sufficient incentive for the situation. The agency also expressed concern that if it does seek OPM approval of a higher percentage, the agency must coordinate with other agencies, thus removing from the agency's control the discretionary flexibility which is part of the recruitment incentive.

We have not adopted any change in the amount of the retention allowance payable without OPM approval. We do not believe it would be desirable to allow individual Federal agencies to authorize retention allowances greater than 10 percent for an entire group of employees without coordination with other agencies with similar recruitment and retention needs. It would not be productive to have bidding wars between agencies, thereby depleting some agencies of the skilled workers they need. If an agency wishes to authorize an allowance of more than 10 percent, the current retention allowance authority in 5 U.S.C. 5754 and 5 CFR part 575, subpart C, continues to provide agencies with discretionary authority to pay a retention allowance of up to 25 percent of basic pay to individual employees on a case-by-case basis based on their unique qualifications or a special need of the agency if the employee would be likely to leave Federal service without the allowance.

Other Comments

One agency suggested that editorial changes should be made in the existing regulations in §§ 575.301 and 575.305 to add references to a group or category of employees in each place where a single employee is referenced. In addition, the agency suggested that the final regulations discuss the subsequent adjustment or discontinuation of retention allowances that have been approved on a group or category basis. The agency recommended that the regulations explicitly authorize agencies to adjust or discontinue such allowances either on a group/category basis or on a case-by-case basis.

OPM did not adopt the suggestion to add a reference to "a group or category of employees" in each place where an individual employee is referenced. In the interim regulation, we deliberately placed the authority and criteria for paying retention allowances on a group or category basis in a separate paragraph (d) at the end of § 575.305. We continue

to believe this is the simpler and better approach.

OPM agrees with the comment that the final regulations should discuss the subsequent adjustment or discontinuation of retention allowances for a group or category of employees, as applicable. We have added the term "group or category of employees" in § 575.307(b), which discusses the reduction or termination of retention allowances.

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 will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 575

Government employees, Wages.
U.S. Office of Personnel Management.
Janice R. Lachance,
Director.

Accordingly, the interim rule amending part 575 of title 5 of the Code of Federal Regulations, which was published at 63 FR 34119 on June 23, 1998, is adopted as final with the following changes:

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

1. The authority citation for part 575 continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5733, 5754, and 5755; secs. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), 104 Stat. 1462 and 1466, respectively; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

Subpart C—Retention Allowances

2. Section 575.304 is amended by adding a new paragraph (d) to read as follows:

§ 575.304 Conditions for payment.

* * * * *

(d) An agency may not offer a retention allowance to an individual (or authorize the payment of such an allowance) prior to the individual's employment with the agency.

3. In § 575.30, paragraph (d) is revised to read as follows:

§ 575.305 Agency retention allowance plans; higher level review and approval; and criteria for payment.

* * * * *

(d) *Approval of retention allowances for groups or categories of employees.*

(1)(i) An agency may authorize a retention allowance of up to 10 percent of an employee's rate of basic pay for a group or category of employees (excluding individuals covered by § 575.302(a) (2), (3), (5), or (6) or those in similar positions with respect to which the authority to approve retention allowances has been delegated to agency heads by OPM under § 575.302(c)) based on a written determination that the category of employees has unusually high or unique qualifications, or that the agency has a special need for the employees' services that makes it essential to retain the employees in that category, and that it is reasonable to presume that there is a high risk that a significant number of employees in the targeted category are likely to leave Federal service in the absence of the allowance.

(ii) The determination that there is a high risk that a significant number of employees in the targeted category are likely to leave may be based on evidence of extreme labor market conditions, high demand in the private sector for the knowledge and skills possessed by the employees, significant disparities between Federal and private sector salaries, or other similar conditions.

(iii) The targeted category should be narrowly defined using factors that relate to the conditions described in paragraph (d)(1)(i) of this section. Factors that may be appropriate include the following: occupational series, grade level, distinctive job duties, unique qualifications, assignment to a special project, minimum agency service requirements, organization or team designation, geographic location, and performance level.

(While performance level may be a factor used in defining the targeted category, performance level by itself is not sufficient to justify a retention allowance. Performance level may function as a supporting factor in authorizing an allowance or setting the allowance rate only to the extent it directly relates to the conditions in paragraph (d)(1)(i).)

(2) Upon the request of the head of an agency, OPM may approve a retention allowance in excess of 10 percent, but not more than 25 percent, of an employee's rate of basic pay for a group of category or employees which meets the conditions specified in paragraph (d)(1) of this section. OPM may require that such requests be coordinated with other agencies having similarly situated employees in the same category. Group

retention allowance requests must include—

(i) A description of the group or category and number of employees to be covered by the proposed retention allowance;

(ii) A written determination that the group or category of employees meets the conditions specified in paragraph (d)(1) of this section;

(iii) The proposed percentage retention allowance payment and a justification for that percentage;

(iv) The expected duration of retention allowance payments; and

(v) Any other information pertinent to the case at hand.

(3) All other conditions and requirements for payment under this subpart must be met before a retention allowance may be paid to any individual employee under paragraphs (d)(1) or (d)(2) of this section.

4. In § 575.307, paragraphs (b)(1), (b)(2), and (b)(3) are revised to read as follows:

§ 575.307 Reduction or termination of retention allowance.

* * * * *

(b) * * *

(1) A lesser amount (or none at all) would be sufficient to retain the employee (or group or category of employees);

(2) Labor-market factors make it more likely (or reasonably likely) to recruit a candidate with qualifications similar to those possessed by the employee (or group or category of employees);

(3) The agency's need for the services of the employee (or group or category of employees) has been reduced to a level that makes it unnecessary to continue payment at the level originally approved (or at all); or

* * * * *

[FR Doc. 99-33178 Filed 12-21-99; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584-AC74

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Local Agency Expenditure Reports

AGENCY: Food and Nutrition Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This rule announces that no adverse comments were received in

response to the direct final rule which amends the provisions of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) regulations to permit quarterly reporting of local agency expenditures. The rule was published in the **Federal Register** on November 9, 1999 (64 FR 61015).

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT:

Debbie McIntosh, Branch Chief, Supplemental Food Program Division, Food and Nutrition Service, U.S. Department of Agriculture, Park Office Center, Room 540, 3101 Park Center Drive, Alexandria, VA 22302-1594, (703) 305-2710.

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Rule?

On November 9, 1999 (64 FR 61015), we published a direct final rule which amends the WIC Program regulations to allow State agencies to permit local agencies to submit their expenditure reports quarterly. State agencies may require more frequent reports if they wish. This rule also makes a parallel change to the requirement that State agencies offset advances against incoming claims each month.

The rule provided a 30-day comment period and stipulated that unless we received written adverse comments, or written rule of intent to submit adverse comments, the rule would become effective on January 24, 2000, which is 75 days after publication in the **Federal Register**. Since no adverse comments were received, this rule confirms the rule's effective date as January 24, 2000.

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act.

Paperwork Reduction Act of 1995

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under 10.557. For the reasons set forth in 7 CFR Part 3015, Subpart V and the final rule-related rule published at 48 FR 29115, June 24, 1983, this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: December 15, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99-33133 Filed 12-21-99; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-323-AD; Amendment 39-11456; AD 99-25-13 C1]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 777-200 and -300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects two typographical errors that appeared in airworthiness directive (AD) 99-25-13 that applies to all Boeing Model 777-200 and -300 series airplanes. That AD currently requires revising the Limitations Section of the Airplane Flight Manual to prohibit the dispatch of certain airplanes under certain conditions. That AD also requires repetitive inspections to ensure correct operation of the backup generators; and, for certain airplanes, a one-time inspection to detect damage of the engine external gearbox; and corrective actions, if necessary. This document corrects incorrect paragraph references. This correction is necessary to ensure that operators accomplish the appropriate requirements of the AD.

DATES: Effective December 23, 1999. The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of December 23, 1999 (64 FR 68618, December 8, 1999).

FOR FURTHER INFORMATION CONTACT: Ed Hormel, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2681; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION:

Airworthiness Directive (AD) 99-25-13, amendment 39-11456, applicable to all Boeing Model 777-200 and -300 series airplanes, was published in the **Federal Register** on December 8, 1999 (64 FR 68618). That AD requires revising the Limitations Section of the Airplane Flight Manual to prohibit the dispatch