

# 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 550

RIN 3206-AF89

#### Pay Administration (General); Severance Pay for Panama Canal Commission Employees

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) proposes to amend its regulations to exclude certain categories of employees of the Panama Canal Commission from entitlement to severance pay. On December 31, 1999, the Republic of Panama will take over operation of the Panama Canal under the terms of the Panama Canal Treaty of 1977. The proposed changes would eliminate entitlement to severance pay for Panama Canal Commission employees who are offered reasonably comparable employment with a successor entity or who are hired more than 90 days after the publication of final regulations making these changes.

**DATES:** Comments must be received on or before September 5, 1995.

**ADDRESSES:** Send or deliver written comments to Donald J. Winstead, Assistant Director for Compensation Policy, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Frank Derby, (202) 606-2858.

**SUPPLEMENTARY INFORMATION:** Federal employees employed by the Panama Canal Commission will be affected by the transfer of control over the Panama Canal from the United States to the Republic of Panama under the terms of the Panama Canal Treaty of October 1, 1977. These proposed regulatory changes, requested by the Panama Canal Commission, address this unique transfer of function as it pertains to

severance pay entitlements for certain Federal employees.

Under the proposed regulations, severance pay under title 5, United States Code, would not be payable to those Panama Canal Commission employees who are offered "reasonably comparable employment" by one of the successor public or private entities that the government of the Republic of Panama vests with responsibility for performing functions previously performed by the Commission. In addition, severance pay would not be payable to employees who are appointed as Commission employees after the 90th day following publication of final regulations making these changes.

The severance pay statute (5 U.S.C. 5595) permits the Office of Personnel Management (OPM) to exclude by regulation any employees, officers, or agencies that are not otherwise excluded by law. For example, under OPM's regulations, involuntarily separated employees are not entitled to severance pay if they are given a "reasonable offer" of continued Federal employment by the employing agency or a successor agency (5 CFR 550.704(b)(2)). Similarly, the regulations now being processed would eliminate entitlement to severance pay when Panama Canal Commission employees are offered "reasonably comparable employment" by an entity assuming the functions formerly performed by the Panama Canal Commission. This would prevent a windfall to Commission employees who are able to continue their Canal-related employment.

The concept of "reasonably comparable employment" generally parallels the concept of "reasonable offer" found in OPM's current regulations. A "reasonable offer" is defined at 5 CFR 550.703 as one in which the position is—

- (1) In the employee's agency, including an agency to which the employee is transferred with his or her function;
- (2) Within the employee's commuting area;
- (3) Of the same tenure and work schedule;
- (4) Not lower than two grade or pay levels below the employee's current grade or pay level.

The positions that will be offered to Panama Canal Commission employees

will be in the successor entities to which the Canal functions are being transferred under the terms of the treaty. The proposed regulations also provide that a "reasonably comparable" offer of employment to Panama Canal Commission employees must be (1) Within the employee's commuting area, (2) of the same tenure and work schedule, and (3) not more than 20 percent below the employee's Panama Canal Commission rate of basic pay. (The 20-percent maximum pay differential is based on the current "reasonable offer" provision regarding pay levels. Ten percent represents the approximate difference in pay levels between most General Schedule grades (e.g., GS-8, step 1, and GS-7, step 1). Thus, 20 percent would be the approximate difference in pay between a grade and the grade two grades lower (e.g., GS-9, step 1, compared to GS-7, step 1).) Therefore, the definition of "reasonably comparable employment" contains all of the elements of a "reasonable offer" in the current regulations.

Under the proposed regulations, a Panama Canal Commission employee is also excluded from entitlement to severance pay if he or she *accepts* reasonably comparable employment *within 30 days after* separation from Commission employment. If severance payments are made before an individual's entitlement to severance pay is invalidated by post-separation acceptance of reasonably comparable employment, those payments would be considered erroneous and subject to recovery as a debt due the United States Government. The 30-day rule ensures that employees who have only a short break in their Canal-related employment do not obtain an unwarranted windfall. We believe 30 days is sufficient to prevent abuse. At the same time, 30 days is a short enough period that the amount of erroneous payments should be minimal, keeping the administrative problems associated with recovery efforts to a minimum as well.

The restriction on severance pay entitlement for those individuals hired by the Panama Canal Commission after the 90th day following publication of final regulations making these changes is similar in concept to the restriction in § 550.704(b)(3) of the current regulations. That section denies eligibility for severance pay to