

U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION
	JTPA
	CORRESPONDENCE SYMBOL
	TWRA
	DATE
	June 22, 1992

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 10-91

FROM: ROBERTS T. JONES
 Assistant Secretary of Labor

SUBJECT: Recognition of the Office of Personnel Management's Certification of Expected Separation as a Notice of Termination for Purposes of Section 301 of the Job Training Partnership Act

1. Purpose. To announce that the Department of Labor recognizes the Office of Personnel Management's (OPM) Certification of Expected Separation as meeting the requirement of Section 301 of the Job Training Partnership Act (JTPA) that a worker receive a notice of termination in order to participate in activities authorized under Title III of JTPA.

2. Background. As a result of the decision by the United States to reduce expenditures for national defense, some mass layoffs and plant closings, in particular those involving military facilities, have been and will continue to be announced considerably in advance of the actual lay-off or closing. In some cases this can be several years.

This situation has raised the question as to when workers affected by these layoffs or closings are eligible to receive certain basic readjustment and retraining services provided pursuant to Title III of JTPA. It is in the interest of both the affected workers and the United States that services to retrain and place those workers in new appropriate employment be provided as early as possible. At the same time, good government and proper management of public funds require that such services be made available to those likely and expected to lose employment, and not to everyone who may be employed at the facility, but who will not actually suffer an employment loss.

For JTPA program operators it is also important to assure that services are provided consistent with the Act and the regulations. This includes assuring that funds are not used to duplicate facilities or services available in the area from other federal, State or local resources as

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required by Section 141(h) of the Act, and that funds are only used for activities which are in addition to those which would otherwise be available in the area in accordance with Section 141(b) of the Act.

It is clear that rapid response assistance may be provided as soon as there is an announcement that there will be a substantial layoff at or permanent closing of a military facility. Pursuant to agreements reached by OPM, the Department of Defense (DoD), and the Department of Labor (DOL), a policy has now been established by OPM which will also make it clear when impacted workers who are otherwise eligible for participation in Title III programs receive a notice of termination as required by Section 301.

3. OPM Policy. OPM has published a change to its regulations which will establish a new Certification of Expected Separation. The Federal Register Notice that contains this regulation is attached for your information. This certification shall be issued no more than 6 months prior to the projected effective date of separation to employees for whom the relevant Federal agency has determined:

- (a) There is a good likelihood the employee will be separated;
- (b) Employment opportunities in the same or similar position in the local community area are limited or nonexistent;
- (c) Placement opportunities within the employee's own or other federal agencies in the local commuting area are limited or non-existent, and;
- (d) If eligible for optional retirement, the employee has not filed a retirement application or otherwise indicated in writing an intent to retire.

It is important to note that this policy applies to all Federal civilian employees, and not just Federal civilian employees on military facilities.

4. DOL Policy. It is the position of the Department of Labor that any worker, otherwise eligible for participation in a JTPA Title III program, who receives a Certification of Expected Separation pursuant to rules promulgated by OPM, has met the requirement of Section 301 of JTPA as having received a notice of termination.

5. Action. All substate grantees designated under Title III of JTPA, should be advised of this new policy. In addition, other interested parties, including employers, associations of employers, and representatives of employees who are eligible to apply for and interested in submitting an application pursuant to the DOL requirements for discretionary awards under the Defense Conversion Adjustment Program administered pursuant to Title III of JTPA, to the extent possible, should be made aware of and provided information regarding this decision.

6. Inquiries. Questions regarding this decision may be addressed to Robert N. Colombo, Director, Office of Worker Retraining and Adjustment Programs, on 202-535-0577.

7. Attachments.

- I Letter Sent to Governors
- II Federal Register notice (57 FR 21889-21891)



JUN 22 1992

The Honorable Guy Hunt
Governor of Alabama
Montgomery, Alabama 36130

Dear Governor Hunt:

Enclosed for your information is a Training and Employment Guidance Letter (TEGL) advising the Job Training Partnership Act (JTPA) system of a new policy with respect to identifying Federal civilian employees who are eligible to participate in programs funded under Title III of JTPA. The purpose of this TEGL is to announce that the Department of Labor recognizes the Office of Personnel Management's (OPM) Certification of Expected Separation to a notice of termination, which is required before an individual can participate in activities authorized under Title III of JTPA.

Your State Worker Adjustment Liaison should be made aware of and provided information regarding this decision. This will enhance our ability to provide needed services to dislocated workers in your State and across the nation.

I appreciate your attention to this important matter.

Sincerely,



ROBERTS T. JONES
Assistant Secretary of Labor

Enclosure

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 Parts 330 and 351

RIN 3206-AF00

Advance Certification To Participate in Retraining and Placement Assistance Programs

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing revised interim regulations that provide an "early warning" to employees who an agency expects will be separated by reduction in force. Under these regulations, employees who receive an "early warning" may be eligible to participate in outplacement and retraining programs administered by the Department of Labor and to receive early placement assistance through OPM and agency programs.

DATES: Interim rules effective May 26, 1992. Written comments will be considered if received no later than July 27, 1992.

ADDRESS: Send or deliver written comments to Leonard R. Klein, Associate Director for Career Entry, Office of Personnel Management, room 6F08, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Sylvia Cole on placement programs and Thomas Glennon on reduction in force procedures. Both may be reached on 202-606-0960 (FAX 202-606-0390).

SUPPLEMENTARY INFORMATION: Employees separated from Federal employment by reduction in force (RIF) may be eligible for job assistance under programs operated by their employing agencies, OPM, and the U.S. Department

of Labor. The purpose of these regulations is to provide a mechanism to give employees an early warning of expected separation from employment and to enable them to register in these job assistance programs up to 6 months prior to their expected separation. Experience has shown that the earlier individuals are registered in such programs, the greater their chances of finding other employment and avoiding or minimizing any period of unemployment. These regulations address early participation in three programs: The Job Training Partnership Act (JTPA), Reemployment Priority List (RPL), and Displaced Employee Program (DEP).

Job Training Partnership Act

Under title III of the Job Training Partnership Act (29 U.S.C. 1651 *et seq.*), the U.S. Department of Labor provides funding for retraining and readjustment assistance to displaced workers, including Federal employees. Types of assistance available through the Job Training Partnership Act (JTPA) include retraining, counseling, testing, placement assistance, and other support activities. Eligibility under the law is limited to those workers who have been terminated from employment or have received a notice of termination.

With these regulations, OPM is providing a mechanism to enable the Department of Labor to identify those Federal workers who are eligible for JTPA benefits before they receive a specific RIF notice. Competing employees are entitled to receive a specific RIF notice at least 60 days prior to the effective date of a RIF. However, 60 days may be too limited a time for employees to benefit from JTPA services. Because agencies often are unable to give a longer RIF notice, OPM is giving agencies the option of issuing a Certification of Expected Separation to each competing employee who most likely will be separated and will have limited job opportunities in the local area in both the Federal and private sectors. The certification provision is included in a new § 351.807. The Department of Labor intends to issue regulations that will recognize individuals who receive a Certification of Expected Separation as eligible for JTPA benefits. Such certification is not necessary for employees whose

eligibility for participation in JTPA programs has been established.

The use of this "early warning" procedure will not in any way relieve an agency of its obligation to provide a proper notice of a RIF action, including a minimum 60 days specific notice, under subpart H of part 351.

Reemployment Priority List (RPL) and Displaced Employee Program (DEP)

Displaced employees are eligible for placement assistance by their own agencies as well as OPM. Through the RPL, agencies give reemployment consideration to their former competitive service employees separated by reduction in force. When filling vacancies, agencies must give RPL registrants priority consideration over certain outside job applicants. This consideration extends to positions in the commuting area where the employees were separated.

OPM, in turn, operates the DEP to give separated employees priority consideration for positions in other Federal agencies. When a DEP participant is referred to an agency through OPM procedures, the agency cannot pass over the individual to reach an outside candidate unless an objection is sustained by OPM.

Previously, participation in both the RPL and DEP was limited to employees who had received a specific RIF notice. Under these regulations, receipt of a Certification of Expected Separation means the employee will be eligible to be enrolled in both the RPL and the DEP. The provision for acceptance of a Certification of Expected Separation is included in § 330.203, § 330.302, § 330.303, and § 330.307.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking because it would be contrary to the public interest to delay access to benefits. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The delay in the effective date is being waived to give effect to the benefits extended by the amended provisions at the earliest practicable date.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined in E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

List of Subjects**5 CFR Part 330**

Armed forces reserves, Government employees.

5 CFR Part 351

Administrative practice and procedure, Government employees.

Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending parts 330 and 351 of title 5, Code of Federal Regulations, as follows:

**PART 330—RECRUITMENT,
SELECTION, AND PLACEMENT
(GENERAL)**

1. The authority citation for part 330 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-58 Comp., p. 218; § 330.102 also issued under 5 U.S.C. 3327; subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310; subpart H also issued under 5 U.S.C. 8337(h) and 8457(b).

2. In § 330.203, paragraphs (a)(3) and (b) are revised to read as follows:

§ 330.203 Eligibility due to reduction in force.

(a) . . .

(3) Have received a specific notice of separation under part 351 of this chapter, or a Certification of Expected Separation as provided in § 351.807 of this chapter; and

(b) At the time it gives a specific RIF notice of separation or a Certification of Expected Separation, the agency must give each eligible employee information about the RPL, including appeal rights.

3. In § 330.302, paragraph (a) is revised to read as follows:

§ 330.302 OPM Programs.

(a) OPM operates two placement programs—the Interagency Placement Assistance Program (IPAP) and the Displaced Employee Program (DEP). In general, the IPAP provides placement assistance in advance of an impending

work force reduction to employees who have been identified by their agencies as surplus. The DEP provides assistance to employees who have received a Certification of Expected Separation or specific notice of separation, or who have been separated.

4. In § 330.303, paragraph (b)(4)(i) is revised to read as follows:

§ 330.303 Eligibility.

(b) . . .

(4) . . .

(i) Has received a specific notice of separation under part 351 of this chapter, or a Certification of Expected Separation as provided in § 351.807 of this chapter.

5. In § 330.307, paragraph (a)(2) and paragraph (b) are revised to read as follows:

§ 330.307 Agency responsibilities.

(a) . . .

(2) Each agency is required to operate a positive placement program for its own surplus and displaced employees. The program must, at a minimum, provide for the establishment and maintenance of a reemployment priority list for the commuting area for those employees who have received a specific notice of separation through reduction in force or a Certification of Expected Separation, as provided for in subpart B of this part. Additionally, each agency is expected to supplement this basic requirement with other forms of appropriate assistance to be given to employees prior to actual separation. An agency's positive placement program should include the following elements:

(b) *Registration of eligible employees.* Agencies are encouraged to participate in the IPAP and inform their employees about this program as soon as they are reasonably sure that separations will be necessary. In accordance with subpart H of part 351 of this chapter, agencies must inform affected employees about the Displaced Employee Program at the same time that Certifications of Expected Separation or specific reduction in force notices are distributed. Agencies are responsible for assisting employees with their registration forms, for completing the information requested on the forms, and for sending them to appropriate offices as instructed by OPM.

PART 351—REDUCTION IN FORCE

6. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503.

7. A new § 351.807 is added to subpart H to read as follows:

§ 351.807 Certification of expected separation.

(a) For the purpose of enabling otherwise eligible employees to be considered for eligibility to participate in dislocated worker programs under the Job Training Partnership Act administered by the U.S. Department of Labor, an agency may issue a Certification of Expected Separation to a competing employee who the agency believes, with a reasonable degree of certainty, will be separated from Federal employment by reduction in force procedures under this part. A certification may be issued up to 6 months prior to the effective date of the reduction in force.

(b) This certification may be issued to a competing employee only when the agency determines:

(1) There is a good likelihood the employee will be separated under this part;

(2) Employment opportunities in the same or similar position in the local commuting area are limited or nonexistent;

(3) Placement opportunities within the employee's own or other Federal agencies in the local commuting area are limited or nonexistent, and

(4) If eligible for optional retirement, the employee has not filed a retirement application or otherwise indicated in writing an intent to retire.

(c) A certification is to be addressed to each individual eligible employee and must be signed by an appropriate agency official. A certification must contain the expected date of reduction in force, a statement that each factor in paragraph (b) of this section has been satisfied, and a description of Job Training Partnership Act programs, the Displaced Employee Program, and the Reemployment Priority List.

(d) A certification may not be used to satisfy any of the notice requirements elsewhere in this subpart.

(e) An agency determination of eligibility for certification may not be appealed to OPM or the Merit Systems Protection Board.

(f) An agency also may enroll eligible employees in the Displaced Employee Program and the Reemployment Priority List up to 6 months in advance of a reduction in force. For requirements and

criteria for these programs, see subparts B and C of part 330 of this chapter.

[FR Doc. 92-12188 Filed 5-20-92; 1:03 pm]

BILLING CODE 6325-01-01

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 154, 155, 157, 159, 160, 260, 281, and 375

[Docket No. RM92-4-000; Order No. 542]

Deletion of Certain Outdated or Nonessential Regulations Pertaining to the Commission's Jurisdiction Over Natural Gas

Issued May 1, 1992.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has reviewed its regulations and has determined that certain of its regulations pertaining to natural gas matters are either outdated or serve no useful purpose. Consequently, these outdated or nonessential regulations will be deleted from the Commission's body of natural gas regulations.

EFFECTIVE DATE: This final rule is effective May 1, 1992.

FOR FURTHER INFORMATION CONTACT: James Whitfield, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, (202) 208-0119.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the

Commission's contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Final Rule

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

I. Introduction and Background

The Federal Energy Regulatory Commission (Commission) has reviewed its regulations and has determined that certain of its regulations pertaining to natural gas matters are either outdated or serve no useful purpose.¹ Consequently, these outdated or nonessential regulations will be deleted from the Commission's body of natural gas regulations. The regulations to be deleted are located in 18 CFR parts 2, 154, 155, 157, 159, 160, 260, 281, and 375. The list of regulations to be deleted here is not all inclusive, but reflects, in part, the Commission's ongoing review of its regulations to identify other outdated or nonessential regulations for deletion.

The Commission derives its initial responsibility regarding natural gas matters from the Natural Gas Act of 1938, 15 U.S.C. 717-717(w), (NGA).² Subsequently, Congress amended the NGA by enacting the Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (NGPA). The NGPA was enacted to deal with the shortages of gas occurring in the 1970's in the interstate market. Under the NGPA, certain categories of natural gas were promptly removed from the Commission's jurisdiction, and other categories were gradually removed between 1978 and 1985. The NGPA's removal of the Commission's jurisdiction over certain natural gas eliminated the need for a certificate of public convenience and necessity, and removed regulatory controls over the sale and use of natural gas, the curtailment, or the abandonment service over such gas. More recently, Congress passed the Natural Gas Wellhead Decontrol Act (Decontrol Act).³ The Decontrol Act is the final step in the wellhead decontrol of natural gas that was initially begun by the NGPA. The Decontrol Act deregulates certain categories of first sales of natural gas prior to January 1, 1993, and provides for

¹ Most of the regulations under the Natural Gas Act at issue here were promulgated by the Federal Energy Regulatory Commission's predecessor, the Federal Power Commission.

² In *Phillips Petroleum Company v. Wisconsin*, 347 U.S. 672 (1954), the Court held that the NGA also extended the Commission's jurisdiction over wellhead prices.

³ Public Law No. 101-60; 103 Stat. 157 (1989).

the complete decontrol of wellhead prices of first sales by January 1, 1993, by repealing title I of the NGA. To implement these laws, the Commission has promulgated various regulations. Over the years, many of these regulations, particularly those promulgated under the NGA by the Commission's predecessor agency, the Federal Power Commission, have become obsolete or nonessential, and will be deleted.

II. Public Reporting Burden

The Commission believes that there will be no impact on the public reporting burden from the elimination of these nonessential and outdated regulations. The current reporting burden from Commission information collections arises only from the collection of current data, and the regulations being eliminated do not collect current data. Therefore, the deletion of these regulations will not change current reporting burdens.

III. Discussion

Part 2

Part 2 concerns the Commission's general policy and interpretations regarding the NGA, the National Environmental Policy Act of 1969, the Economic Stabilization Act of 1970 and Executive Orders 11615 and 11627, the NGPA, and the Public Utility Regulatory Policies Act of 1978. The sections of the regulations being deleted here pertain only to the NGA, and are discussed below.

Section 2.53 is a policy statement issued in December of 1947, concerning certificate applications by natural gas companies for construction or operation of facilities. This section warned that appropriate action would be taken against any natural gas company contracting or operating a facility in violation of section 7 of the NGA. This section has been superseded by regulations promulgated under part 157 of the Commission's regulations; accordingly, this section will be deleted.

Section 2.56(a) is a policy statement concerning area rates for natural gas sales by independent producers. Section 2.56a concerns national rates for sale of natural gas from wells commenced on or after January 1, 1973, and certain other sales. Section 2.56b concerns national rates for sales of natural gas from wells started before January 1, 1973. The Commission has not established area or national rates since passage of the NGPA in 1978. The NGPA established maximum lawful prices for all first sales, which reflected the area and