

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 38

RIN 1076-AE02

Southwestern Indian Polytechnic Institute (SIPI) Personnel System

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs of the Department of the Interior is amending its regulations to allow the Southwestern Indian Polytechnic Institute to develop a new alternative personnel system.

EFFECTIVE DATE: The new personnel system becomes operational on October 27, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Carolyn Elgin, SIPI, 505-346-2347.

SUPPLEMENTARY INFORMATION: This final rule is published in the exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Bureau of Indian Affairs is issuing this final rule in accordance with the Administrative Systems Act of 1998, Pub. L. 105-337, to establish an alternative personnel system at SIPI. This personnel system will be a demonstration project to provide an alternative to OPM's government-wide personnel system. It will allow SIPI greater autonomy in administration and improvement of the academic program while maintaining SIPI and its employees as an integral part of the Bureau of Indian Affairs. Under this demonstration project, employees at SIPI will be converted to the excepted service and all future appointments to positions at SIPI will be in the excepted service. SIPI management will establish qualifications and classification standards that will directly support the mission of SIPI in providing quality education programs for its students. The employee compensation and pay system will be converted to that of the current contract education pay system with no loss of pay or benefits. The current Title 5 benefits (i.e., retirement, health, life insurance and thrift savings plan) will be continued. The current annual and sick leave program will be continued. The personnel system will be in the excepted service and will specifically address the areas of classification, staffing, pay, performance, discipline and separation. Other areas of personnel such as leave, retirement, life insurance, health benefits, thrift savings, etc., will

remain under the current jurisdiction of the Office of Personnel Management (OPM). All current employees of SIPI will be converted to the excepted service with no loss of pay under this personnel system.

A new 5-step performance evaluation system will be utilized under the project. Any collective bargaining agreement in effect on the day before this demonstration project commences shall be recognized by SIPI until the earlier of:

- (1) The date occurring 3 years after the commencement date of the project;
- (2) The date as of which the agreement is scheduled to expire (disregarding any option to renew); or
- (3) Such date as may be determined by mutual agreement of the parties.

The demonstration project will terminate on October 31, 2005, or on such date beyond October 31, 2005, as deemed necessary to validate the results of the project, or as determined by Congress.

Proposed rulemaking to establish this project was published in the **Federal Register** on May 8, 2000 (65 FR 26727), and invited comments for 30 days ending June 7, 2000. Comments were received from two individuals. The comments did not prompt any changes to the proposed rule.

Comments and Responses

Comment 1: One commenter asked if pay under the new system would be based on experience and education and who would decide the pay.

Response: No employee will lose any pay because of the change in pay systems. Some employees will be converted to a higher rate of pay based on the education and experience of the individual involved. This will be the result of the qualification requirements of the position which will be published in the Personnel Manual prior to the implementation of the demonstration project. These qualification standards were developed by the management of SIPI.

Comment 2: A commenter asked if they transferred to another agency, would they go back to the GS pay system.

Response: If the employee returns to another agency under the GS pay system, they would then return to the GS pay system.

Comment 3: A commenter asked if they transferred to another agency, would the pay be set at their current pay under the demonstration project.

Response: The receiving agency would determine the pay based on current guidelines.

Comment 4: A commenter asked if all employees would be grand fathered into the new system.

Response: All employees will be converted to the excepted service at the pay set by the new qualification standards. No one will lose pay.

Comment 5: A commenter asked if an instructor with an Associate Degree at a grade GS-9 would be impacted.

Response: All employees will be impacted by the conversion. No one will lose any pay. Some employees will receive raises.

Comment 6: A commenter asked if it is possible that they will get a raise.

Response: It is possible, depending on the particular qualification standards for your position.

Comment 7: A commenter asked if SIPI would be following Part 38 of the CFR for Contract Educators.

Response: Part 38, Title 25 of the Code of Federal Regulations (CFR) is the part of the CFR that covers the personnel system in the excepted service for the Bureau of Indian Affairs.

Comment 8: A commenter wanted to know if the leave system would change from what it is currently under Title 5.

Response: No, the leave system will remain the same.

Comment 9: A commenter wanted to know if their eligibility for retirement would change with the new system.

Response: The answer is no, nothing in the retirement system will change.

Comment 10: A commenter asked if the employees would be told what portions of their experience will count for pay purposes under the new pay system.

Response: The qualifications standards, classification standards, and pay levels for each position will be published in the personnel manual. They will be available for all to review.

Comment 11: A commenter wanted to know who is management in SIPI.

Response: The President, Deans, and Department Chairs are considered management.

Comment 12: A commenter wanted to know if a GS-11 supervisor were a part of management.

Response: A supervisor is a part of management. However, they may not have participated in the development of the various parts of the personnel manual.

Comment 13: A commenter wanted to know if employees would still be furloughed each school year.

Response: Since furloughs are budget driven, everything depends on the allocations made by Congress each session.

Regulatory Planning and Review (E.O. 12866)

This rule is not a significant regulatory action because it affects only a small number of employees (approximately 185) and have no additional affect on SIPI employees beyond the current approved budget. Therefore, this rule is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will have no effect beyond the current approved budget which is less than \$6 million.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because it only effects the 185 total positions located at SIPI and has no economic impact on the incumbents of those positions.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(1) Does not have any annual effect on the economy beyond the current approved budget of less than \$6 million.

(2) Will not cause any increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(3) Does not have any adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose any unfunded mandate on State, local, or

tribal governments or the private sector. The rule does not have any effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have any takings implications. A takings implication assessment is not required.

Federalism (E.O. 13132)

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. The rule does not propose any regulation that:

(1) Has any direct effect on the States, the relationship between national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) Impose any compliance costs on State and local governments; or,

(3) Preempts state law.

Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not impact the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This rule does not require information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I is not required.

National Environmental Policy Act

This rule does not constitute a major Federal action affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Consultation and Coordination With Indian Tribal Governments (E.O. 13084)

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084. Because the rule would not affect the Indian tribal governments, the funding and consultation requirement of Executive Order 13084 does not apply.

List of Subjects in 25 CFR Part 38

Indians—education, personnel.

For the reasons set out in the preamble, we are amending part 38 in chapter I of title 25 of the Code of Regulations as follows.

PART 38—EDUCATION PERSONNEL

1. The authority citation for part 38 is revised to read as follows:

Authority: 25 U.S.C. 2011 and 2015, Secs. 1131 and 1135 of the Act of November 1, 1978, 92 Stat. 2322 and 2327; Secs. 511 and 512, Pub. L. 98–511; Secs. 8 and 9, Pub. L. 99–89; Title V of Pub. L. 100–297; Pub. L. 105–337.

2. Add § 38.15 to read as follows:

§ 38.15 Southwestern Indian Polytechnic Institute.

(a) The Southwestern Indian Polytechnic Institute has an independent personnel system established under Public Law 105–337, the Administrative Systems Act of 1998, 112 Stat. 3171. The details of this system are in the Indian Affairs Manual (IAM) at Part 20. This manual system may be found in Bureau of Indian Affairs Regional and Agency Offices, Education Line Offices, and the Central Office in Washington, DC.

(b) The personnel system is in the excepted service and addresses the areas of classification, staffing, pay, performance, discipline, and separation. Other areas of personnel such as leave, retirement, life insurance, health benefits, thrift savings, etc., remain under the jurisdiction of the Office of Personnel Management.

Dated: September 19, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

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