

3596. Regulations.

SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

3597. Reemployment following limited appointment in the Foreign Service.

SUBCHAPTER VII—RETENTION OF RETIRED SPECIALIZED EMPLOYEES AT THE FEDERAL BUREAU OF INVESTIGATION

3598.<sup>1</sup> Federal Bureau of Investigation reserve service.<sup>2</sup>

3598.<sup>1</sup> Federal Bureau of Investigation Reserve Service.

AMENDMENTS

2004—Pub. L. 108-447, div. B, title I, §114(b), Dec. 8, 2004, 118 Stat. 2869, and Pub. L. 108-458, title II, §2004(b), Dec. 17, 2004, 118 Stat. 3704, amended analysis identically, adding item for subchapter VII.

Pub. L. 108-458, title II, §2004(b), Dec. 17, 2004, 118 Stat. 3704, added item 3598, set out second.

Pub. L. 108-447, div. B, title I, §114(b), Dec. 8, 2004, 118 Stat. 2869, added item 3598, set out first.

2002—Pub. L. 107-296, title XIII, §1313(a)(1)(B), Nov. 25, 2002, 116 Stat. 2294, substituted “RETENTION PREFERENCE, VOLUNTARY SEPARATION INCENTIVE PAYMENTS, RESTORATION, AND REEMPLOYMENT” for “RETENTION PREFERENCE, RESTORATION, AND REEMPLOYMENT” in chapter heading and added item for subchapter II and items 3521 to 3525.

1994—Pub. L. 103-353, §2(b)(2)(C), Oct. 13, 1994, 108 Stat. 3169, struck out item for subchapter II “RESTORATION AFTER ACTIVE DUTY OR TRAINING DUTY” and item 3551 “Restoration; Reserves and National Guardsmen”.

1984—Pub. L. 98-615, title III, §306(c)(2), Nov. 8, 1984, 98 Stat. 3220, added item 3595a.

1981—Pub. L. 97-35, title XVII, §1704(a)(2), Aug. 13, 1981, 95 Stat. 757, redesignated item 3595 as 3596, and added item 3595.

1980—Pub. L. 96-465, title II, §2301(b), Oct. 17, 1980, 94 Stat. 2164, added item for subchapter VI and item 3597.

1978—Pub. L. 95-454, title IV, §404(c), Oct. 13, 1978, 92 Stat. 1167, added item for subchapter V and items 3591 to 3595.

SUBCHAPTER I—RETENTION PREFERENCE

§ 3501. Definitions; application

(a) For the purpose of this subchapter, except section 3504—

(1) “active service” has the meaning given it by section 101 of title 37;

(2) “a retired member of a uniformed service” means a member or former member of a uniformed service who is entitled, under statute, to retired, retirement, or retainer pay on account of his service as such a member; and

(3) a preference eligible employee who is a retired member of a uniformed service is considered a preference eligible only if—

(A) his retirement was based on disability—

(i) resulting from injury or disease received in line of duty as a direct result of armed conflict; or

(ii) caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by sections 101 and 1101 of title 38;

(B) his service does not include twenty or more years of full-time active service, regardless of when performed but not including periods of active duty for training; or

(C) on November 30, 1964, he was employed in a position to which this subchapter applies and thereafter he continued to be so employed without a break in service of more than 30 days.

(b) Except as otherwise provided by this subsection and section 3504 of this title, this subchapter applies to each employee in or under an Executive agency. This subchapter does not apply to an employee whose appointment is required by Congress to be confirmed by, or made with the advice and consent of, the Senate or to a member of the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 428; Pub. L. 94-183, §2(8), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95-454, title IV, §404(a), Oct. 13, 1978, 92 Stat. 1165; Pub. L. 100-325, §2(e), May 30, 1988, 102 Stat. 581; Pub. L. 102-83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i>                               | <i>Revised Statutes and Statutes at Large</i>                                                       |
|-------------------|------------------------------------------------|-----------------------------------------------------------------------------------------------------|
| (a)(1), (2) ...   | 5 U.S.C. 3101 (as applicable to 5 U.S.C. 861). | Aug. 19, 1964, Pub. L. 88-448, §101 (as applicable to §202), 78 Stat. 484.                          |
| (a)(3) .....      | 5 U.S.C. 861(b).                               | June 27, 1944, ch. 287, §12(b); added Aug. 19, 1964, Pub. L. 88-448, §202(4) (“(b)”), 78 Stat. 486. |

In subsection (a), the definitions of “uniformed services” and “armed forces” are omitted as unnecessary in view of the definitions in section 2101. The definition of “civilian office” is omitted as unnecessary as subsection (b) of this section states the application of this subchapter.

In subsection (a)(3), the words “Notwithstanding any other provision of this Act” are omitted as unnecessary. The words “preference eligible employee” are co-extensive with and substituted for “employee \* \* \* included under section 2 of this Act” in view of the definition of preference eligible in section 2108. In paragraph (3)(C), the words “on November 30, 1964, he was employed in a position to which this subchapter applies and thereafter he continued to be so employed” are substituted for “immediately prior to the effective date of this subsection, he was employed in a civilian office to which this Act applies and, on and after such date, he continues to be employed in any such office”.

Subsection (b) is supplied on authority of sections 2, 12, and 20 of the Act of June 27, 1944, ch. 287, 58 Stat. 387, 391, which are carried into this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preference to the report.

AMENDMENTS

1991—Subsec. (a)(3)(A)(ii). Pub. L. 102-83 substituted reference to section 1101 of title 38 for reference to section 301 of title 38.

1988—Subsec. (b). Pub. L. 100-325 inserted reference to Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

1978—Subsec. (b). Pub. L. 95-454 inserted reference to a member of Senior Executive Service.

1975—Subsec. (b). Pub. L. 94-183 struck out “, except an employee whose appointment is made under section

<sup>1</sup> So in original. Two sections “3598” have been enacted.

<sup>2</sup> So in original. Does not conform to section catchline.

3311 of title 39” after “or made with the advice and consent of, the Senate”.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415 of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

**§ 3502. Order of retention**

(a) The Office of Personnel Management shall prescribe regulations for the release of competing employees in a reduction in force which give due effect to—

- (1) tenure of employment;
- (2) military preference, subject to section 3501(a)(3) of this title;
- (3) length of service; and
- (4) efficiency or performance ratings.

In computing length of service, a competing employee—

(A) who is not a retired member of a uniformed service is entitled to credit for the total length of time in active service in the armed forces;

(B) who is a retired member of a uniformed service is entitled to credit for—

(i) the length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(ii) the total length of time in active service in the armed forces if he is included under section 3501(a)(3)(A), (B), or (C) of this title; and

(C) is entitled to credit for—

(i) service rendered as an employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Allotment Act or of a committee or association of producers described in section 10(b) of the Agricultural Adjustment Act; and

(ii) service rendered as an employee described in section 2105(c) if such employee moves or has moved, on or after January 1, 1966, without a break in service of more than 3 days, from a position in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard to a position in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c).

(b) A preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other preference eligibles.

(c) An employee who is entitled to retention preference and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other competing employees.

(d)(1) Except as provided under subsection (e), an employee may not be released, due to a reduction in force, unless—

(A) such employee and such employee’s exclusive representative for collective-bargaining purposes (if any) are given written notice, in conformance with the requirements of paragraph (2), at least 60 days before such employee is so released; and

(B) if the reduction in force would involve the separation of a significant number of employees, the requirements of paragraph (3) are met at least 60 days before any employee is so released.

(2) Any notice under paragraph (1)(A) shall include—

(A) the personnel action to be taken with respect to the employee involved;

(B) the effective date of the action;

(C) a description of the procedures applicable in identifying employees for release;

(D) the employee’s ranking relative to other competing employees, and how that ranking was determined; and

(E) a description of any appeal or other rights which may be available.

(3) Notice under paragraph (1)(B)—

(A) shall be given to—

(i) the State or entity designated by the State to carry out rapid response activities under section 134(a)(2)(A) of the Workforce Investment Act of 1998; and

(ii) the chief elected official of such unit or each of such units of local government as may be appropriate; and

(B) shall consist of written notification as to—

(i) the number of employees to be separated from service due to the reduction in force (broken down by geographic area or on such other basis as may be required under paragraph (4));

(ii) when those separations will occur; and

(iii) any other matter which might facilitate the delivery of rapid response assistance or other services under title I of the Workforce Investment Act of 1998.

(4) The Office shall prescribe such regulations as may be necessary to carry out this subsection. The Office shall consult with the Secretary of Labor on matters relating to title I of the Workforce Investment Act of 1998.

(e)(1) Subject to paragraph (3), upon request submitted under paragraph (2), the President may, in writing, shorten the period of advance notice required under subsection (d)(1)(A) and (B), with respect to a particular reduction in force, if necessary because of circumstances not reasonably foreseeable.

(2) A request to shorten notice periods shall be submitted to the President by the head of the agency involved, and shall indicate the reduction in force to which the request pertains, the number of days by which the agency head requests that the periods be shortened, and the reasons why the request is necessary.

(3) No notice period may be shortened to less than 30 days under this subsection.

(f)(1) The Secretary of Defense or the Secretary of a military department may—

(A) separate from service any employee who volunteers to be separated under this subpara-