

Rules and Regulations

Federal Register

Vol. 72, No. 50

Thursday, March 15, 2007

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 PART 211

RIN 3206-AL00

Veterans' Preference

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting as a final rule, without changes, an interim rule that implemented amendments to veterans' preference as contained in the National Defense Authorization Act for FY 2006. These amendments expanded the definition of a veteran and clarified veterans' preference eligibility for individuals discharged or released from active duty under honorable conditions. The intended effect of the regulatory changes was to conform OPM's regulations to the changes in the veterans' preference laws, to ensure that job-seeking veterans received the preference to which they are entitled.

DATES: Final rule effective March 15, 2007.

FOR FURTHER INFORMATION CONTACT: Scott A. Wilander by telephone at (202) 606-0960; by fax at (202) 606-0390; TTY at (202) 606-3134; or by e-mail at Scott.Wilander@opm.gov.

SUPPLEMENTARY INFORMATION: On June 9, 2006, OPM issued an interim rule with request for comments at 71 FR 33375, to amend its regulation for implementing statutory changes regarding veterans' preference. This rule: (1) Expanded the definition of a veteran in 5 CFR 211.102(a) to include individuals who served on active duty for more than 180 consecutive days, other than for training, any part of which occurred during the period beginning September 11, 2001, and ending on the date prescribed by Presidential proclamation

or by law as the last day of Operation Iraqi Freedom; (2) revised § 211.102(a) to include anyone who served on active duty during the period beginning August 2, 1990, and ending January 2, 1992, as previously established by the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85); (3) clarified that individuals who are released or discharged from active duty in the armed forces, as opposed to being separated from the armed forces, may receive veterans' preference provided these individuals meet other applicable veterans' preference eligibility requirements; and (4) amended § 211.102(g) to correspond with the changes in § 211.102(a) and (b) by replacing the term "Separated under honorable conditions" with "Discharged or released from active duty" consistent with the statutory change contained in the Act.

OPM received written comments from one agency and 7 individuals, and one voice-mail comment from an individual. Of the nine comments received, three expressed concern and confusion as to whether dishonorably discharged veterans would receive veterans' preference under the new criteria. As stated in the interim regulation and § 211.102(g), a veteran must have been separated under honorable conditions (i.e., an honorable or general discharge) to be eligible for veterans' preference under these provisions.

One individual asked whether agencies must grant veterans' preference to employees currently on their rolls who did not have the preference documented at the time the interim regulation was published. Agencies are not required to update their employees' Official Personnel Files (OPF) as a result of the interim regulation. Because veterans' preference is a consideration in a reduction in force (RIF), any agency preparing for a RIF must update their employees' OPFs (block 26 on the Standard Form—50) to ensure that individuals entitled to veterans' preference are accorded their rights for RIF purposes.

One agency asked OPM to clarify the phrase, "the date prescribed by Presidential proclamation or by law as the last day of Operation Iraqi Freedom" contained in § 211.102(a)(6). The phrase refers to the ending date (yet to be determined) of the period during which anyone who served on active duty and

is otherwise eligible is entitled to veterans' preference under these provisions. The President, through proclamation, or Congress, through legislation, is responsible for designating the termination date of military operations which qualify for veterans' preference. OPM will revise the regulations and update the VetGuide when this ending date becomes available.

Another commenter asked whether the expanded veterans' preference criteria in § 211.102(a)(6) is for purposes of granting 5-point veterans' preference or for some other purpose. Anyone who meets the criteria in § 211.102(a)(6), and is otherwise eligible, is entitled to 5-point veterans' preference as well as additional protection during a reduction in force. Otherwise eligible in this context means the veteran must meet the requirements of § 211.201(g) and have served either 24 months of continuous active duty, or the full period of time called or ordered to active duty. OPM is updating VetGuide to clarify this information.

One individual asked whether the veterans' preference criteria in § 211.102(a)(6) included veterans at the rank of major and above. The provision in § 211.102(a)(6) made no change to the statutory restriction against veterans' preference entitlement for retired officers at the rank of major and above. Therefore, military retirees at the rank of major, lieutenant commander, or higher are not eligible for preference in appointment unless they are disabled veterans (this restriction does not apply to reservists who will not begin drawing military retired pay until age 60).

One individual asked OPM to clarify whether a veteran must have served continuously for 24 months in order to be eligible under § 211.102(a)(6). A veteran must have served continuously for 24 months, or the full period called or ordered to active duty, in order to be eligible for veterans' preference under § 211.102(a)(6). This requirement, contained in 38 U.S.C. 5303A, prescribes a minimum of 2 years, service (or the full period called or ordered to active duty) for those enlisting after September 7, 1980, or who enter on active duty after October 14, 1982. This requirement does not apply to individuals seeking 10-point veterans' preference on the basis of a service-connected disability. OPM will

update VetGuide to further clarify the application of the 24-month requirement.

One commenter recommended OPM replace the word "badge" with "medal" or "badge or medal" in § 211.102(a)(2). OPM is not adopting this recommendation because the reference to "badge" is contained in law at 5 U.S.C. 2108(1)(A). Further, military personnel receive many awards and decorations which are determined by the Department of Defense. OPM and its predecessor agency, the Civil Service Commission, have always used the terms "badge" and "medal" interchangeably, as appropriate. We believe VetGuide provides sufficient explanation of the many badges and medals which qualify for purposes of veterans' preference.

The same individual asked OPM to clarify in the final regulation whether an Army "service medal" qualifies an individual for veterans' preference under part 211. OPM is not adopting this suggestion. The list of military campaigns, expeditions, awards, and decorations qualifying for veterans' preference is too lengthy to be contained in this part. However, OPM lists this information in Appendix A of VetGuide available on-line at <http://www.opm.gov/veterans/html/vgmedal2.asp>. In general, service medals are not qualifying for purposes of veterans' preference.

One commenter asked OPM to explain the significance of changing "separated" to "released or discharged" in § 211.102(a), (b), and (g). OPM modified part 211 in order to be consistent with recent statutory changes to 5 U.S.C. 2108. With these changes the law, OPM's implementing regulations, and Department of Defense (DD) Form 214, *Certificate of Release or Discharge from Active Duty*, the form used by veterans to claim 5-point veterans' preference, all use the same language which should make it easier for eligible veterans to receive their entitlement.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation would not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because it affects only Federal agencies employees.

List of Subjects in 5 CFR Part 211

Government employees, Veterans.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, the interim rule amending part 211 of title 5, Code of Federal Regulations, which was published at 71 FR 33375 on June 9, 2006, is adopted as a final rule without changes.

[FR Doc. E7-4697 Filed 3-14-07; 8:45 am]

BILLING CODE 6325-39-P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PARTS 317, 353, 550, and 551

RIN 3206-AL21

Employment in the Senior Executive Service, Restoration To Duty From Uniformed Service or Compensable Injury, Pay Administration (General), and Pay Administration Under the Fair Labor Standards Act; Miscellaneous Changes to Pay and Leave Rules

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to amend a number of rules on pay and leave administration, including employment in the Senior Executive Service, use of paid leave during uniformed service, time limits for using compensatory time off earned in lieu of overtime pay, and other miscellaneous changes. The final regulations are being issued to standardize pay and leave policies in support of the consolidation of agency human resources and payroll systems.

DATES: The regulations are effective on May 14, 2007.

FOR FURTHER INFORMATION CONTACT: Sharon Dobson by telephone at (202) 606-2858; by fax at (202) 606-0824; or by e-mail at pay-performance-policy@opm.gov.

SUPPLEMENTARY INFORMATION: On January 5, 2005, the Office of Personnel Management (OPM) issued a comprehensive package of proposed regulations on Restoration to Duty From Uniformed Service or Compensable Injury; Payrates and Systems (General); Pay Under the General Schedule; Pay Administration (General); Pay Administration Under the Fair Labor Standards Act; Recruitment and Relocation Bonuses; Retention Allowances; Supervisory Differentials; Hours of Duty; and Absence and Leave (70 FR 1068). The proposed regulations are available at <http://www.opm.gov/>

fedregis. The 60-day comment period ended on March 7, 2005. We received a total of 93 comments on the proposed regulations.

In these final regulations, we are addressing the revisions to rules concerning the retention of pay and benefits for a Senior Executive Service (SES) member who accepts a Presidential appointment, use of paid leave during uniformed service, time limits for using compensatory time off earned in lieu of overtime pay, and other miscellaneous rules. We have already published regulations for some of the subject areas included in the January 2005 proposed regulations in separate issuances in the **Federal Register**. Comments received on the proposed changes to the rules on Adjustments of Work Schedules for Religious Observances, Hours of Duty, and Absence and Leave will be addressed in subsequent issuances in the **Federal Register**.

Except as otherwise stated in this supplementary information, the purpose of the revisions in these final regulations is to standardize pay and leave policies in support of the consolidation of agency human resources and payroll systems and in general to aid agencies in the administration of these programs. All revisions are being made to regulations in title 5, Code of Federal Regulations.

Regulations Already Issued

Some of the changes included in the January 2005 proposed regulations have already been addressed in subsequent regulations issued by OPM on May 13, 2005, May 31, 2005, and August 17, 2006, as discussed below.

The January 2005 regulations proposed to amend the definition of rate of basic pay in §§ 575.103, 575.203, and 575.303 to clarify that night pay and environmental differential pay under the Federal Wage System are not included in the rate of basic pay for the purposes of recruitment, relocation, and retention incentives. The amended definition of rate of basic pay for the purpose of recruitment, relocation, and retention incentives was included in OPM's interim regulations issued on May 13, 2005, for recruitment, relocation, and retention incentives (70 FR 25732). The interim regulations are available at <http://www.opm.gov/fedregis>.

The January 2005 regulations proposed to add a new § 531.605 to define the requirements for determining an employee's official worksite for the purpose of identifying an employee's location-based pay entitlements, including locality rates and special