

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 550

RIN 3206-AM58

### Flag Recognition Benefit for Fallen Federal Civilian Employees

**AGENCY:** Office of Personnel Management.

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

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is issuing proposed regulations to implement the Civilian Service Recognition Act of 2011. The proposed regulations will assist agencies in administering a United States flag recognition benefit for fallen Federal civilian employees, and describe the eligibility requirements and procedures to request a flag.

**DATES:** OPM must receive comments on or before August 16, 2013.

**ADDRESSES:** You may submit comments, identified by “RIN 3206-AM58,” using any of the following methods:

*Federal eRulemaking Portal:* Submit comments electronically to <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Email:* Send to [performance-management@opm.gov](mailto:performance-management@opm.gov). Include “RIN 3206-AM58” in the subject line of the message.

*Fax:* Send to (202) 606-4264.

*Mail, Hand Deliver/Courier comments:* Address comments to Mr. Stephen T. Shih, Deputy Associate Director, Senior Executive Service and Performance Management, Suite 7412, 1900 E Street NW., Washington, DC 20415-1000.

**FOR FURTHER INFORMATION CONTACT:** Nikki Johnson at (202) 606-2720, by fax at (202) 606-4264, or by email at [nikki.johnson@opm.gov](mailto:nikki.johnson@opm.gov).

**SUPPLEMENTARY INFORMATION:** The U.S. Office of Personnel Management, following coordination with the U.S. Department of Defense and the U.S. Department of Homeland Security, is issuing proposed regulations to implement the Civilian Service Recognition Act of 2011 (Pub. L. 112-73, December 20, 2011), hereafter referred to as the “Act.” Congress passed the Act to acknowledge that the Federal Government’s unique mission requires some Federal civilian employees to be subjected to dangerous situations. For those civilian employees who die in the course of serving their country, the Act authorizes agency heads to give United States flags to beneficiaries as a way to formally

express sympathy and gratitude on behalf of the Nation.

The Act, together with these proposed regulations, provides policies for recognizing deceased Federal civilian employees for their duty and sacrifice. Prior to this legislation, a few agencies had limited authority to do so. Under the Act, Executive agencies, the United States Postal Service, and the Postal Regulatory Commission may furnish flags on behalf of employees who die of injuries incurred in connection with their employment as a result of criminal acts, acts of terrorism, natural disasters, or other circumstances as determined by the President.

OPM is amending part 550 of title 5, Code of Federal Regulations, by adding a new subpart (subpart O) titled “Flag Recognition Benefit for Fallen Federal Civilian Employees” that establishes a comprehensive Governmentwide approach to honor Federal civilian employees who die of certain injuries incurred in connection with their employment. These regulations also provide agencies flexibility to develop additional procedures when honoring these employees.

#### Approach

OPM conferred with the Senior Executives Association, one of the principal supporters of the Act, to better understand the full intent behind this legislation. In addition, OPM talked with representatives from the U.S. Department of Veterans Affairs and the National Funeral Directors Association to determine how they administer similar benefits. Finally, OPM coordinated with the Department of Defense and the Department of Homeland Security, as specified by the Act, to obtain input in drafting this proposed regulation.

#### Regulation

The proposed regulations clarify that an agency may furnish a flag only for an employee who died on or after December 20, 2011, the effective date of the legislation authorizing the flag recognition benefit. The employee’s death must be the result of injuries incurred in connection with his or her employment with the Federal Government under certain circumstances. Furnishing the flag is not limited to burial purposes or functions.

The regulations include the four circumstances specified by statute that may warrant such employee recognition—death resulting from a criminal act, an act of terrorism, a natural disaster, or other circumstances as determined by the President. To be eligible, the employee’s injuries must

occur because of the employee’s status as a Federal employee, thereby excluding accidents that happen in the normal course of events.

The proposed regulations define various terms used and describe beneficiary and agency responsibilities. The beneficiary must request a flag from the employing agency. The request must be in a format specified by the employing agency, which often might be in writing (including electronic formats), and include any necessary documentation required by the agency. To assist beneficiaries and agencies with written requests, OPM will create an optional form for requesting a flag. In addition, agencies should reach out to survivors of employees who die of injuries incurred in connection with their employment to provide information and offer assistance in obtaining flags. Agencies will determine how to procure and distribute flags for this purpose in a manner that is most efficient and cost-effective for the agency while keeping in mind the meaningfulness of prompt delivery to beneficiaries. Agencies may choose to coordinate with other agencies or organizations to furnish flags.

#### E.O. 12866, Regulatory Review

This rule has been reviewed by the U.S. Office of Management and Budget in accordance with E.O. 12866.

#### Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

#### List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

U.S. Office of Personnel Management.

**Elaine Kaplan,**  
*Acting Director.*

Accordingly, OPM is proposing to amend part 550 of title 5, Code of Federal Regulations, by adding a new subpart O to read as follows:

### PART 550—PAY ADMINISTRATION (GENERAL)

#### Subpart O—Flag Recognition Benefit for Fallen Federal Civilian Employees

**Authority:** 5 U.S.C. 5570 note; also issued under Sec. 2 of Pub. L. 112-73, 125 Stat. 784-785.

Sec.

550.1501 General.

550.1502 Coverage.

550.1503 Definitions.

- 550.1504 Eligibility.
- 550.1505 Order of precedence.
- 550.1506 Beneficiary responsibilities.
- 550.1507 Agency responsibilities.

**§ 550.1501 General.**

(a) *Statutory authority.* This subpart implements the note in section 5570 of title 5, United States Code, as added by the Civilian Service Recognition Act of 2011 (Public Law 112–73; December 20, 2011), which authorizes agencies to give a flag of the United States to the beneficiary of Federal civilian employees who die under specific circumstances.

(b) *Effective date.* Agencies may furnish a flag to the beneficiary (as defined in § 550.1503) of an eligible employee (as specified in § 550.1504) who died on or after December 20, 2011.

**§ 550.1502 Coverage.**

This subpart applies to—

(a) Executive agencies as defined in section 105 of title 5, United States Code, the United States Postal Service, and the Postal Regulatory Commission; and

(b) Employees as defined in section 2105 of title 5, United States Code; an officer or employee of the United States Postal Service; and an officer or employee of the Postal Regulatory Commission.

**§ 550.1503 Definitions.**

In this subpart—

*Agency* means an Executive agency as defined in 5 U.S.C. 105, the United States Postal Service, or the Postal Regulatory Commission.

*Authorized agency official* means the head of an agency or an official who is authorized to act for the head of the agency in the matter concerned.

*Beneficiary* means the eligible person who can request the flag following the order of precedence specified in § 550.1505.

*Employee* means an employee as defined in section 2105 of title 5, United States Code; an officer or employee of the United States Postal Service; and an

officer or employee of the Postal Regulatory Commission.

*Flag* means a standard United States flag that is at least 3 feet by 5 feet.

**§ 550.1504 Eligibility.**

(a) An authorized agency official may, upon the request of a beneficiary, furnish one United States flag for an individual who—

(1) Was an employee of the agency at the time of death; and

(2) Died of injuries incurred in connection with such individual's employment with the Federal Government suffered as a result of—

- (i) A criminal act;
- (ii) An act of terrorism;
- (iii) A natural disaster; or
- (iv) Other circumstances, as determined by the President.

(b) An authorized agency official may not furnish a flag when the death is the result of—

- (1) Unlawful or negligent action of the employee;
- (2) Willful misconduct of the employee; or
- (3) Activities unrelated to the employee's status as a Federal employee.

(c) The decision whether to furnish a flag to the beneficiary of an eligible employee is at the discretion of the agency. When an authorized agency official determines the agency will furnish a flag for a deceased eligible employee, the official must follow the order of precedence specified in § 550.1505.

**§ 550.1505 Order of precedence.**

Flags must be issued in the following order of precedence—

- (a) The widow or widower;
- (b) If none, to a child (including step, foster, or adopted child), according to age (i.e., oldest to youngest);
- (c) If none, to a parent (including step, foster, or adoptive parent);
- (d) If none, to a sibling (including step, half, or adopted sibling), according to age (i.e., oldest to youngest);
- (e) If none, to any individual related by blood or close family affiliation.

**§ 550.1506 Beneficiary responsibilities.**

When requesting a flag for an eligible employee, a beneficiary must—

(a) Submit a request to the employing agency. The beneficiary will submit the request —

(1) In the format required by the agency, which is usually written and can include electronic submissions; and

(2) Within any timeframe the agency establishes, particularly as may be needed to adhere to the order of precedence established in § 550.1505;

(b) Establish his or her relationship to the deceased employee so that the authorized agency official can determine whether the beneficiary may receive the flag, consistent with the order of precedence under § 550.1505; and

(c) Provide any documentation on the date and nature of death of the employee requested by the authorized agency official to confirm the employee's eligibility.

**§ 550.1507 Agency responsibilities.**

To efficiently and effectively implement the provisions of the law and these regulations, the agency must—

(a) Establish procedures for procuring and furnishing a flag, including reaching out to survivors of known eligible employees to provide information and offer assistance on obtaining a flag;

(b) Notify its employees of the flag benefit and remind them annually, usually as part of the agency's regular benefits information sharing;

(c) Disclose information necessary to prove that a deceased individual is an eligible employee as described in § 550.1504 to the extent that such information is not classified and to the extent that such disclosure does not endanger the national security of the United States.

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