

# Rules and Regulations

Federal Register

Vol. 71, No. 111

Friday, June 9, 2006

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 211

#### RIN 3206–ALOO

#### Veterans' Preference

**AGENCY:** Office of Personnel Management.

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

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations to implement statutory changes to veterans' preference contained in the National Defense Authorization Act for FY 2006. These changes expand the definition of a veteran and clarify veterans' preference eligibility for individuals discharged or released from active duty. The intended effect of these changes is to provide conformity between veterans' preference laws and OPM regulations, to further ensure that job seeking veterans receive the preference to which they are entitled.

**DATES:** Interim rule effective June 9, 2006; comments must be received on or before August 8, 2006.

**ADDRESSES:** Send or deliver written comments to Mark Doboga, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415–9700; e-mail [employ@opm.gov](mailto:employ@opm.gov); fax: (202) 606–2329. Comments may also be sent through the Federal eRulemaking Portal at: <http://www.regulations.gov>. All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

**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](mailto:Scott.Wilander@opm.gov).

**SUPPLEMENTARY INFORMATION:** The National Defense Authorization Act for Fiscal Year 2006, Public Law 109–163, was signed into law by the President on January 6, 2006, containing two provisions (sections 1111 and 1112 of Title XI) which amend section 2108(1) of title 5, United States Code. Section 1111 of Title XI of the Act expands the definition of a veteran in 5 U.S.C. 2108(1) 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. OPM is revising its regulation by adding this new definition to § 211.102(a) consistent with this statutory change. In addition, we are taking this opportunity to revise § 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 (Pub. L. 105–85).

The National Defense Authorization Act for Fiscal Year 2006 also amended 5 U.S.C. 2108(1) by clarifying 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. Because this clarification requires agencies to give the same effect to a "release or discharge from active duty" as they would to a "separation from the armed forces," we are modifying the definition of a veteran in § 211.102(a) of this Part to be consistent with this statutory clarification. We are also modifying the definition of a disabled veteran in § 211.102(b) to be consistent with the change to § 211.102(a) and amendments to 5 U.S.C. 2108(1).

Lastly, we are amending § 211.102(g) to correspond with the changes in § 211.102(a) and (b). This amendment replaces the term "Separated under honorable conditions" with "Discharged

or released from active duty" consistent with the statutory change contained in the Act. This new definition does not alter the requirement that a discharge or release from active duty must be under honorable conditions (i.e., an honorable or general discharge).

#### Waiver of Notice of Proposed Rulemaking

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Waiver of advance notice is necessary to ensure that the regulations become effective immediately and agencies understand completely their obligations under the amendments to 5 U.S.C. 2108(1) and do not unwittingly deny veterans' preference based upon regulations that are now obsolete. If OPM's regulations were permitted to remain as currently written, while OPM solicited comments upon its proposed revisions, there is a chance that reservists recently released from active duty in Iraq or Afghanistan, for example, might be denied veterans' preference based upon the language of the current regulations. In light of the sacrifices being made by individuals who do not serve full time in the armed forces, but who have been called to active duty for significant periods of service, the public interest lies with immediate publication, subject to subsequent revisions after comments are received and fully evaluated. The revised language in the interim regulation will ensure that returning individuals discharged or released from active duty in the armed forces receive the veterans preference to which they are entitled under statute.

#### 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 because it affects only Federal employees.

#### List of Subjects in 5 CFR Part 211

Government employees, Veterans.

Office of Personnel Management.

**Linda M. Springer,**  
Director.

■ Accordingly, OPM is amending part 211 of title 5, Code of Federal Regulations, as follows:

## **PART 211—VETERAN PREFERENCE**

■ 1. The authority for part 211 continues to read as follows:

**Authority:** 5 U.S.C. 1302.

■ 2. In § 211.102, revise paragraphs (a), (b), and (g) to read as follows:

### **§ 211.102 Definitions.**

\* \* \* \* \*

(a) *Veteran* means a person who has been discharged or released from active duty in the armed forces under honorable conditions performed—

(1) In a war; or,

(2) In a campaign or expedition for which a campaign badge has been authorized; or

(3) During the period beginning April 28, 1952, and ending July 1, 1955; or

(4) For more than 180 consecutive days, other than for training, any part of which occurred during the period beginning February 1, 1955, and ending October 14, 1976; or

(5) During the period beginning August 2, 1990, and ending January 2, 1992; or

(6) 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.

(b) *Disabled Veteran* means a person who has been discharged or released from active duty in the armed forces under honorable conditions performed at any time and who has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a statute administered by the Department of Veterans Affairs or a military department.

\* \* \* \* \*

(g) *Discharged or released from active duty* means with either an honorable or general discharge from active duty in the armed forces. The Department of Defense is responsible for administering and defining military discharges.

[FR Doc. E6-8962 Filed 6-8-06; 8:45 am]

**BILLING CODE 6325-39-P**

## **DEPARTMENT OF AGRICULTURE**

### **Food and Nutrition Service**

#### **7 CFR Parts 272 and 273**

**RIN 0584-AD32**

### **Food Stamp Program: Employment and Training Program Provisions of the Farm Security and Rural Investment Act of 2002**

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule finalizes the proposed provisions of a rule published on March 19, 2004 to amend Food Stamp Program regulations to codify Food Stamp Employment and Training (E&T) Program provisions of section 4121 of the Farm Security and Rural Investment Act of 2002 (the Farm Bill). This final rule establishes a reasonable formula for allocating the 100 percent Federal grant authorized under the Farm Bill to carry out the E&T Program each fiscal year. This final rule also codifies the Farm Bill provision that makes available up to \$20 million a year in additional unmatched Federal E&T funds for State agencies that commit to offer an education/training or workfare opportunity to every applicant and recipient who is an able-bodied adult without dependents (ABAWD), limited to 3 months of food stamp eligibility in a 36-month period, who would otherwise be terminated. This final rule eliminates the current Federal cost-sharing cap of \$25 per month on the amount State agencies may reimburse E&T participants for work expenses other than dependent care. This final rule codifies Farm Bill provisions that expand State flexibility in E&T Program spending by repealing the requirements that State agencies earmark 80 percent of their annual 100 percent Federal E&T grants to serve ABAWDs; they meet or exceed their fiscal year 1996 State administrative spending levels to access funds made available by the Balanced Budget Act of 1997; and the Secretary be given the authority to establish maximum reimbursement costs of E&T Program components. Lastly, this final rule rescinds the balance of unobligated funds carried over from fiscal year 2001.

**DATES:** This final rule is effective August 8, 2006.

#### **FOR FURTHER INFORMATION CONTACT:**

Micheal Atwell, Senior Program Analyst, Program Design Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, 3101 Park Center Drive, Room

810, Alexandria, Virginia, 703-305-2449, or via the Internet at [micheal.atwell@fns.usda.gov](mailto:micheal.atwell@fns.usda.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Order 12866**

This final rule was determined to be significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

##### **Executive Order 12372**

The Food Stamp Program (FSP) is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3105, subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

##### **Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** paragraph of this final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

##### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that OMB approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. The information collections in this rule were previously approved under OMB control number 0584-0339. The rules in 7 CFR 273.7(d)(1)(i)(D) provide that, if a State Agency will not obligate or expend all of the funds allocated to it for a fiscal year (FY), the Food and Nutrition Service (FNS) will distribute the unobligated, unexpended funds during the current or subsequent FY on a first come-first served basis. State Agencies may request more funds, as needed. Typically, FNS receives nine such requests per year. The burden associated with OMB control number 0584-0339 has been revised by adding 9 hours to it to account for the time it takes State Agencies to prepare the