

Rules and Regulations

Federal Register

Vol. 76, No. 169

Wednesday, August 31, 2011

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 315

RIN 3206-AM36

Noncompetitive Appointment of Certain Military Spouses

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is issuing final regulations to eliminate the 2-year eligibility limitation for noncompetitive appointment for spouses of certain deceased or 100 percent disabled veterans. OPM is removing this restriction to provide spouses of certain deceased or 100 percent disabled veterans with unlimited eligibility for noncompetitive appointment. The intended effect of this change is to further facilitate the entry of these military spouses into the Federal civil service.

DATES: This rule is effective September 30, 2011.

FOR FURTHER INFORMATION CONTACT: Michelle Glynn, 202-606-1571; Fax: 202-606-2329 by TDD: 202-418-3134, or e-mail: michelle.glynn@opm.gov.

SUPPLEMENTARY INFORMATION: On March 10, 2011, the Office of Personnel Management (OPM) published proposed regulations in the *Federal Register* at 76 FR 13100 to eliminate the 2-year eligibility limitation for noncompetitive appointment for spouses of certain deceased or 100 percent disabled veterans in part 315 of title 5, Code of Federal Regulations (CFR). OPM received 23 comments on the proposed rule: 19 from individuals, one from a Federal agency, and three from national military associations.

Six individuals, two national military associations, and one Federal agency

expressed their general support for the proposed changes.

Four individuals and one national military association suggested that OPM also remove the 2-year window for appointment eligibility for military spouses whose eligibility is based on relocating with their service-member spouses as a result of permanent change of station (PCS) orders. OPM is not adopting this suggestion. The proposed regulation sought to remove the 2-year window for appointment eligibility only for spouses of service members who incurred a 100 percent disability because of the service members' active duty service, and spouses of service members killed while on active duty. OPM proposed to eliminate the 2-year window for spouses of certain deceased and 100 percent disabled service members based on the findings presented to us by the Department of the Navy's Spouse Employment and Empowerment Integrated Process Team. The Integrated Process Team (IPT) found that spouses of service members who were killed or who became 100 percent disabled while on active duty had been unable to make use of the noncompetitive hiring authority within the 2-year eligibility period due to their bereavement, convalescent care responsibilities, dependent care responsibilities, or their need to undergo education or training. The IPT did not indicate the 2-year window for appointment eligibility for PCS military spouses was problematic. Accordingly, OPM's proposal was limited to the problem the IPT did identify. Further, OPM believes 2 years is a reasonable period for spouses authorized to relocate on PCS orders to obtain Federal employment using this hiring authority. All other noncompetitive hiring authorities have a time limitation for appointment eligibility. Elimination of the 2-year window for PCS military spouses would create an inconsistency between this group and other individuals eligible for noncompetitive entry into Federal service. For these reasons, we find no basis for adopting this suggestion.

Five individuals suggested we change all references to "killed while serving on active duty in the armed forces" to "died while serving on active duty in the armed forces" to clarify that eligibility under this part is not limited to spouses of service members killed in

action. OPM is not adopting this suggestion because we do not believe clarification is necessary. Our implementing guidance at <http://www.fedshirevets.gov/hire/hrp/qaspouse/index.aspx> clearly states that, for these purposes, a service member is considered to have been "killed" while on active duty if he or she dies for any reason while serving on active duty in the armed forces. Additionally, the language in the proposed regulation is consistent with the language used in Executive Order (E.O.) 13473 of September 30, 2008, which is the basis of the authority for these noncompetitive appointments.

One individual commented that the proposed rule excludes surviving spouses of service members who died of a service-connected cause, but not while on active duty. OPM has no authority to extend noncompetitive appointment eligibility to surviving spouses of service members who died of a service-connected cause, but not while on active duty. As noted above, E.O. 13473 is the source of the authority for noncompetitive appointment of certain military spouses, and that Order limits eligibility for noncompetitive appointment to military spouses who are relocating with their service-member spouses as a result of permanent change of station (PCS) orders, spouses of service members who incurred a 100 percent disability because of the service members' active duty service, and spouses of service members killed while on active duty.

Two individuals suggested OPM change the date a PCS spouse's eligibility begins from the date of the PCS orders to the date the military spouse actually reports to the new location. OPM is not adopting the suggestions to change the effective date of eligibility for PCS spouses. We believe the PCS document provides an appropriate, standardized basis on which to establish when an individual's eligibility for noncompetitive appointment begins. Further, we see no reliable way to verify when a military spouse actually relocates to the new geographic area, short of imposing a burdensome process on both the military spouse and the potential hiring agency.

Another individual suggested we clarify the effective date of a military spouse's eligibility, when based on

relocation due to PCS orders. This commenter believes agencies have been applying the 2-year eligibility period for PCS spouses inconsistently. As noted in the preceding paragraph, eligibility for PCS spouses begins on the date of the service member's PCS orders. We believe this is a clear standard that can and should be applied consistently.

One commenter stated these provisions do not apply to military spouses in the Department of Defense's (DoD) Priority Placement Program. Neither E.O. 13473 nor OPM's implementing regulation prevents an individual in any DoD military spouse program from utilizing these provisions, assuming that individual is otherwise eligible under 5 CFR 315.612.

Another commenter stated that service members should have the same hiring advantage as military spouses. Executive Order 13473 authorizes noncompetitive appointment only for certain military spouses. We do note that service members may be eligible under several veterans-specific hiring authorities, including Veterans Recruitment Act (VRA) appointments. In addition, service members may be entitled to veterans' preference, depending on when they served on active duty and the character of that service.

One individual asked that we clarify whether these provisions apply to military spouses who are current Federal employees, or individuals who have never been in Federal service. These provisions apply to any military spouse who is otherwise eligible under section 315.612.

Another commenter asked whether the proposed changes apply to all widows of 100 percent disabled veterans. Per E.O. 13473, the proposed changes apply to any spouse of a service member who incurred a 100 percent disability because of the service member's active duty service, provided the individual is otherwise eligible under section 315.612.

One individual commented that non-military spouses should have the same opportunity for obtaining a Federal job as do military spouses. As noted above, E.O. 13473 authorizes noncompetitive appointment only for certain military spouses. Individuals not eligible under this authority must seek consideration under any hiring authority for which they are eligible, or apply through the competitive examining process. Use of the military spouse hiring authority, as is the case with all other noncompetitive hiring authorities, is completely discretionary on the part of the hiring agency. This authority does not constitute, establish, or convey a

hiring preference or a selection priority for eligible military spouses.

Two of the comments we received were beyond the scope of the proposed changes. One individual asked that OPM reinstitute the Defense Civilian Intelligence Personnel System (DCIPS) interchange agreement. The other commenter suggested an improvement in the USAJOBS Web site.

Executive Order 13563 and Executive Order 12855, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 13563 and E.O. 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal agencies and employees.

List of Subjects in 5 CFR Part 315

Government employees.

U.S. Office of Personnel Management.

John Berry,
Director.

Accordingly, OPM is amending 5 CFR part 315 as follows:

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

- 1. The authority citation for part 315 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp. p. 218, unless otherwise noted; and E.O. 13162. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp. p. 111. Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp. p. 303. Sec. 315.607 also issued under 22 U.S.C. 2506. Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp. p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(c). Sec. 315.611 also issued under 5 U.S.C. 3304(f). Sec. 315.612 also issued under E.O. 13473. Sec. 315.708 also issued under E.O. 13318, 3 CFR, 2004 Comp. p. 265. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1978 Comp. p. 229. Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp. p. 264.

Subpart F—Career or Career-Conditional Appointment Under Special Authorities

- 2. In § 315.612, revise paragraph (d)(1) to read as follows:

§ 315.612 Noncompetitive appointment of certain military spouses.

* * * * *

(d) *Conditions.* (1) In accordance with the provisions of this section, spouses

are eligible for noncompetitive appointment:

(i) For a maximum of 2 years from the date of the service member's permanent change of station orders;

(ii) From the date of documentation verifying the member of the armed forces is 100 percent disabled; or

(iii) From the date of documentation verifying the member of the armed forces was killed while on active duty.

* * * * *

[FR Doc. 2011–22268 Filed 8–30–11; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 760

RIN 0560-AH95

Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program, Livestock Indemnity Program, and General Provisions for Supplemental Agricultural Disaster Assistance Programs

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule, technical amendment.

SUMMARY: The Farm Service Agency (FSA) is making several clarifying amendments and corrections to the regulations for the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) and the Livestock Indemnity Program (LIP) to clarify when livestock death losses must have occurred to be eligible losses for LIP and ELAP benefits. This rule also clarifies when adverse weather events or loss conditions must have occurred to be eligible losses of livestock, honeybee, crops, and farm-raised fish for ELAP and Supplemental Revenue Assistance Payments Program (SURE) benefits. This rule clarifies an equitable relief provision for the risk management purchase requirement that applies to the Supplemental Agricultural Disaster Assistance Programs, authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill), except LIP.

DATES: Effective Date: August 31, 2011.

FOR FURTHER INFORMATION CONTACT: Candace Thompson; phone (202) 720–7641; e-mail:

Candy.Thompson@wdc.usda.gov.

Persons with disabilities or who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).