

Rules and Regulations

Federal Register

Vol. 70, No. 230

Thursday, December 1, 2005

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 300, 307, 315, 316, 330, 335, 550, 551, and 720

RIN 3206-AJ90

Veterans Recruitment Appointments

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to implement provisions of the Jobs for Veterans Act, signed into law on November 7, 2002. This Act makes a major change in the eligibility criteria for obtaining a Veterans Recruitment Appointment (VRA).

EFFECTIVE DATE: January 3, 2006.

FOR FURTHER INFORMATION CONTACT: Darlene Phelps at (202) 606-0960, by FAX on 202-606-2329, TDD at (202) 418-3134, or by e-mail at Darlene.phelps@opm.gov.

SUPPLEMENTARY INFORMATION: On November 5, 2004, OPM issued proposed regulations at 69 FR 64503 to implement Veterans Recruitment Appointments as authorized by the Jobs for Veterans Act (Pub. L. 107-288), and requested comments by January 4, 2005. The Act amends section 4214 of title 38, United States Code, to make a major change in the eligibility criteria for obtaining what previously was called a Veterans Readjustment Appointment and will now be called a Veterans Recruitment Appointment (VRA). Under the revised law, the following veterans are eligible for a VRA:

- Disabled veterans;
- Veterans who served on active duty in the Armed Forces during a war, or in a campaign or expedition for which a campaign badge has been authorized;
- Veterans who, while serving on active duty in the Armed Forces,

participated in a United States military operation for which an Armed Forces Service Medal was awarded; and

- Recently separated veterans.

The law defines *recently separated veteran* as any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty.

Comments

OPM received comments from three Federal agencies, one private organization, and seven individuals. The following comments are addressed according to the corresponding sections of the regulation.

Definitions

One Federal agency recommended that the final regulation clarify what is meant by the term *war*, as used in the context of a *covered veteran*. An individual suggested OPM specify that the term *war* only refers to World Wars I and II. We agree that clarification is needed and have amended section 307.102 to include a definition of the term *war* as any armed conflict declared by Congress as such.

One agency asked that we clarify whether the appointment date for *recently separated veterans* must occur before the end of the 3-year eligibility period for this category of *covered veterans*. OPM agrees that further clarification is needed and has added clarifying language to section 307.104(d) indicating that the Veterans Recruitment Appointment date must occur before the expiration of the 3-year eligibility period. The 3-year eligibility period may not be extended.

An individual suggested we specify that a veteran is eligible for a VRA only if during his or her last active duty tour the veteran served the entire period for which he or she was called or ordered to active duty. OPM disagrees and is not adopting this suggestion because it may limit the eligibility of veterans beyond what is provided for in the Act, which does not define eligibility based on the veteran's fulfillment of his or her last active duty tour.

A Federal agency recommended that we modify the definition of *qualified* to make clear that individuals must meet OPM qualifications for the position being filled under this authority. OPM agrees clarification is necessary in the

final regulation. VRAs are excepted appointments to positions otherwise in the competitive service and as such, agencies must apply either the OPM or OPM-approved agency-specific qualification standard for the position they are filling through this authority as they would when filling any position in the competitive service. Clarification has been added at section 307.103.

One private organization suggested the final regulation specifically state that military service must have been performed *under honorable conditions* as part of the definition of *covered veteran*. OPM disagrees because the definition of *covered veteran* at 307.102 is as that term is defined in 38 U.S.C. 4212(a)(3). We note, however, this requirement is contained in section 307.103, *Nature of VRAs*.

One individual asked that we clarify whether the definition of a *covered veteran* includes all veterans entitled to 5 point preference. The Act's definition of a *covered veteran* does not provide for inclusion of all individuals entitled to 5 point veterans' preference. OPM intends to update VetGuide to provide further guidance regarding *covered veterans*.

A Federal agency suggested the final regulations clearly explain that individuals who did not serve during a war, who are not disabled, or who were not recently separated must have actually received a campaign badge, expeditionary medal, or Armed Forces Service Medal to be eligible for a VRA under section 307.102(2) and (3). We agree and have amended section 307.103 accordingly.

An individual stated that OPM did not define *eligible veterans* under this part and asked whether reservists called to active duty under title 10 of the United States Code, for other than active duty training, would meet the definition of a *recently separated veteran*. OPM does not agree further clarification is needed because section 307.102 clearly states that a *recently separated veteran* means any veteran (including reservists) during the three-year period beginning on the date of such veteran's discharge or release from active duty.

Nature of VRAs

Another Federal agency suggested the final regulations allow military experience to be qualifying at GS-3 or equivalent levels, regardless of the type of appointment. OPM did not adopt this

recommendation because it is beyond the scope of the Act, which only pertains to VRA appointments.

An agency suggested the final regulation define what *equivalent* means for purposes of qualifying veterans at the GS-3 level or equivalent. OPM agrees in part that clarification is needed and intends to update VetGuide to explain that the term *equivalent* means positions in the Federal Wage System or other pay systems involving duties comparable to those at the GS-3 level.

Another agency recommended that OPM modify the statement in 307.103 that any military service is qualifying at the GS-3 level or equivalent to read any military service is qualifying, at a minimum, at the GS-3 level or equivalent. OPM is not adopting this suggestion because we do not believe the additional language is needed. The sentence immediately preceding the language in question in section 307.103 specifically states that *covered veterans* may be appointed to any position for which the individual is qualified, up to and including the GS-11 or equivalent level. Military experience may be credited towards grade levels above the GS-3 level or equivalent in accordance with OPM or OPM-approved agency-specific qualification standards.

An individual suggested OPM define the phrase "under honorable conditions" to include general and uncharacterized discharges. Two individuals and a Federal agency recommended that we provide detailed explanations and examples of the types of discharges considered to be "under honorable conditions." A third individual asked that we clarify whether an uncharacterized discharge is considered to be a discharge granted "under honorable conditions." OPM is not adopting these suggestions because the Department of Defense (DoD) is responsible for defining terms used for character of military service discharges. OPM agrees clarification would be helpful and intends to provide guidance and examples in VetGuide of the types of discharges DoD has determined to be *under honorable conditions*.

An individual suggested we clarify whether 30 percent disabled veterans are subject to the GS-11 or equivalent grade level limitation. OPM is not adopting this suggestion on the basis that the regulation clearly limits the appointment of any veteran to the GS-11 or equivalent grade level. We note that a separate hiring authority, authorized under section 3112 of title 5, United States Code, specific to 30 percent or more disabled veterans, does not contain a grade level limitation for

initial appointment under that authority.

One individual suggested the final regulations clarify whether agencies are required to post vacancy announcements prior to filling jobs under the VRA authority. OPM disagrees further clarification is necessary. The regulation clearly states that VRAs are excepted appointments made without competition. As a consequence, VRAs do not require public notice as is the case with any appointment in the excepted service. However, agencies may advertise for these positions if they choose to do so.

A Federal agency suggested the final regulations clarify whether an individual can receive more than one VRA appointment, assuming the individual is otherwise eligible. OPM agrees further clarification may be helpful. OPM intends to update VetGuide with a statement explaining there is no limit on the number of VRA appointments an individual may receive as long as the individual meets the definition of *covered veteran* at the time of appointment.

The Act also changed the name of the VRA from "Veterans Readjustment Appointment" to "Veterans Recruitment Appointment." This final regulation also updates those parts of title 5, Code of Federal Regulations, to reflect this name change wherever used in those parts.

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 will not have a significant economic impact on a substantial number of small entities because it would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Parts 300, 307, 315, 316, 330, 335, 550, 551, and 720

Administrative practice and procedure, Armed forces reserves, Civil rights, Claims, District of Columbia, Equal employment opportunity, Freedom of information, Government employees, Individuals with disabilities, Lawyers, Reporting and recordkeeping requirements, Selective Service System, Veterans, Wages.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM amends 5 CFR parts 300, 315, 316, 330, 335, 550, 551, and 720 and revises part 307 as set forth below:

PART 300—EMPLOYMENT (GENERAL)

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 5 U.S.C. 552, 3301, and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 11478, 3 CFR 1966–1970 Comp., page 803.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

■ 2. Revise paragraph (b) of § 300.301 to read as follows:

§ 300.301 Authority.

* * * * *

(b) In accordance with 5 U.S.C. 3341, an agency may detail an employee in the excepted service to a position in the excepted service and may also detail an excepted service employee serving under Schedule A, Schedule B, or a Veterans Recruitment Appointment, to a position in the competitive service.

* * * * *

■ 3. Revise part 307 to read as follows:

PART 307—VETERANS RECRUITMENT APPOINTMENTS

Sec.

307.101 Purpose.

307.102 Definitions.

307.103 Nature of VRAs.

307.104 Treatment of individuals serving under VRAs.

307.105 Appeal rights.

Authority: 5 U.S.C. 3301, 3302; E.O. 11521, 3 CFR, 1970 Comp., p. 912; 38 U.S.C. 4214.

§ 307.101 Purpose.

This part implements 38 U.S.C. 4214 and Executive Order 11521, which authorizes agencies to appoint *qualified covered veterans* to positions in the competitive service under Veterans Recruitment Appointments (VRAs) without regard to the competitive examining system.

§ 307.102 Definitions.

For purposes of this part—
Agency, as defined in 38 U.S.C. 4211(5), means any agency of the Federal Government or the District of Columbia, including any Executive agency as defined in section 105 of title 5, and the United States Postal Service and Postal Rate Commission.

Covered veterans, as defined in 38 U.S.C. 4212(a)(3), means any of the following:

- (1) Disabled veterans;
- (2) Veterans who served on active duty in the Armed Forces during a war or in a campaign or expedition for

which a campaign badge has been authorized;

(3) Veterans who, while serving on active duty with the Armed Forces, participated in a United States military operation for which an Armed Forces Service Medal (AFSM) was awarded pursuant to Executive Order 12985 (61 FR 1209); and

(4) Recently separated veterans.

Disabled veteran, as defined in 38 U.S.C. 4211 means:

(1) A veteran who is entitled to compensation (or who, but for the receipt of military retired pay, would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or

(2) A person who was discharged or released from active duty because of a service-connected disability.

Qualified, as defined in 38 U.S.C. 4212(a)(3) with respect to employment in a position, means having the ability to perform the essential functions of the position with or without reasonable accommodation for an individual with a disability.

Recently separated veteran, as defined in 38 U.S.C. 4211(6), means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty.

Substantially continuous service is defined in 5 CFR 315.201(b)(3).

War means any armed conflict declared by Congress as such.

§ 307.103 Nature of VRAs.

VRAs are excepted appointments, made without competition, to positions otherwise in the competitive service. The veterans' preference procedures of part 302 of this chapter apply when there are preference eligible candidates being considered for a VRA. *Qualified covered veterans* who were separated under *honorable conditions* may be appointed to any position in the competitive service at grade levels up to and including GS-11 or equivalent, provided they meet the qualification standards for the position. To be eligible for a VRA as a *covered veteran* under paragraph (2) or (3) of the definition of that term in § 307.102, the veteran must be in receipt of the appropriate campaign badge, expeditionary medal, or AFSM. For purposes of a VRA, any military service is qualifying at the GS-3 level or equivalent. Upon satisfactory completion of 2 years of substantially continuous service, the incumbent's VRA must be converted to a career or career conditional appointment. An individual may receive more than one VRA appointment as long as the individual meets the definition of a

covered veteran at the time of appointment.

§ 307.104 Treatment of individuals serving under VRAs.

(a) Because VRAs are made to positions otherwise in the competitive service, the incumbents, like competitive service employees, may be reassigned, promoted, demoted, or transferred in accordance with the provisions of part 335 of this chapter.

(b) A veteran with less than 15 years of education must receive training or education prescribed by the agency.

(c) Appointments are subject to investigation by OPM. A law, Executive order, or regulation that disqualifies a person for appointment in the competitive service also disqualifies a person for a VRA.

(d) The Veterans Recruitment Appointment date for a *recently separated veteran* must occur before the end of the 3-year eligibility period and may not be extended.

§ 307.105 Appeal rights.

Individuals serving under VRAs have the same appeal rights as excepted service employees under parts 432 and 752 of this chapter. In addition, as established in § 315.806 of this chapter, any individual serving under a VRA, whose employment under the appointment is terminated within 1 year after the date of such appointment, has the same right to appeal that termination as a career or career-conditional employee has during the first year of employment.

PART 315—CAREER AND CAREER-CONDITIONAL APPOINTMENT

■ 4. 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(d). Sec. 315.611 also issued under Section 511, Pub. L. 106–117, 113 Stat. 1575–76. Sec. 315.708 also issued under E.O. 13318. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp., p. 229. Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp., p. 264.

PART 315—[AMENDED]

■ 5. In part 315, remove the word “readjustment” and add in its place the word “recruitment” wherever it appears.

PART 316—TEMPORARY AND TERM EMPLOYMENT

■ 6. The authority citation for part 316 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

PART 316—[AMENDED]

■ 7. In part 316, subparts C and D, remove the word “readjustment” and add in its place the word “recruitment” wherever it appears.

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

■ 8. The authority citation for part 330 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 19 FR 7521, 3 CFR, 1954–58, Comp., p. 218.

Section 330.102 also issued under 5 U.S.C. 3327.

Subpart B also issued under 5 U.S.C. 3315 and 8151.

Section 330.401 also issued under 5 U.S.C. 3310.

Subpart G also issued under 5 U.S.C. 8337(h) and 8456(b).

Subpart K also issued under sec. 11203 of Pub. L. 105–33 (111 Stat. 738) and Pub. L. 105–274 (112 Stat. 2424).

Subpart L also issued under sec. 1232 of Pub. L. 96–70, 93 Stat. 452.

PART 330—[AMENDED]

■ 9. In part 330, subparts B, F, and G, remove the word “readjustment” and add in its place the word “recruitment” wherever it appears.

PART 335—PROMOTION AND INTERNAL PLACEMENT

■ 10. The authority citation for part 335 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3330; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; 5 U.S.C. 3304(f), and Pub. L. 106–117.

§ 335.103 [Amended]

■ 11. In § 335.103, remove the word “readjustment” and add in its place the word “recruitment” wherever it appears.

**PART 550—PAY ADMINISTRATION
(GENERAL)****Subpart G—Severance Pay**

- 12. The authority citation for part 550, subpart G, continues to read as follows:

Authority: 5 U.S.C. 5595; E.O. 11257, 3 CFR, 1964–1965 Comp., p. 357.

§ 550.703 [Amended]

- 13. In § 550.703, remove the word “readjustment” and add in its place the word “recruitment” wherever it appears.

**PART 551—PAY ADMINISTRATION
UNDER THE FAIR LABOR
STANDARDS ACT (GENERAL)**

- 14. The authority citation for part 551 continues to read as follows:

Authority: 5 U.S.C. 5542(c); Sec. 4(f) of the Fair Labor Standards Act of 1938, as amended by Pub. L. 93–259, 88 Stat. 55 (29 U.S.C. 204(f)).

§ 551.423 [Amended]

- 15. In § 551.423, remove the word “readjustment” and add in its place the word “recruitment” wherever it appears.

**PART 720—AFFIRMATIVE
EMPLOYMENT PROGRAMS**

- 16. The authority citation for part 720 continues to read as follows:

Authority: 5 U.S.C. 7201; 42 U.S.C. 2000e; 38 U.S.C. 101(2), 2011(3), 2014; 5 U.S.C. 3112; 29 U.S.C. 791(b).

- 17. Revise § 720.301 to read as follows:

§ 720.301 Purpose and authority.

This subpart sets forth requirements for agency disabled veteran affirmative action programs (DVAAPs) designed to promote Federal employment and advancement opportunities for qualified disabled veterans. The regulations in this subpart are prescribed pursuant to responsibilities assigned to the Office of Personnel Management (OPM) under 38 U.S.C. 4214, and section 307 of the Civil Service Reform Act of 1978 (5 U.S.C. 3112).

[FR Doc. 05–23497 Filed 11–30–05; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection
Service****7 CFR Part 319**

[Docket No. 03–019–4]

**Certification Program for Imported
Articles of *Pelargonium* spp. and
Solanum spp. to Prevent Introduction
of Potato Brown Rot; Correction**

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: We are correcting an error in the amendatory instructions in our final rule that amended the provisions of a certification program for articles of *Pelargonium* spp. and *Solanum* spp. imported from countries where the bacterium *Ralstonia solanacearum* race 3 biovar 2 is known to occur. The final rule was effective and published in the **Federal Register** on October 24, 2005 (70 FR 61351–61362, Docket No. 03–019–3).

EFFECTIVE DATE: December 1, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne Van Dersal, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6653.

SUPPLEMENTARY INFORMATION: In a final rule effective and published in the **Federal Register** on October 24, 2005 (70 FR 61351–61362, Docket No. 03–019–3), we amended the provisions of a certification program for articles of *Pelargonium* spp. and *Solanum* spp. imported from countries where the bacterium *Ralstonia solanacearum* race 3 biovar 2 is known to occur.

In the final rule, it was our intention to amend the regulations by amending paragraph (r)(3)(viii) of § 319.37–5 to modify its restrictions on growing media used in production of articles of *Pelargonium* spp. and *Solanum* spp. under the certification program. However, our amendatory instruction referred instead to paragraph (r)(3)(vii). This document corrects that error by revising paragraph (r)(3)(viii).

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

- Accordingly, 7 CFR part 319 is corrected by making the following correcting amendments:

**PART 319—FOREIGN QUARANTINE
NOTICES**

- 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

- 2. In § 319.37–5, revise paragraph (r)(3)(viii) to read as follows:

**§ 319.37–5 Special foreign inspection and
certification requirements.**

* * * * *

(r) * * *

(3) * * *

(viii) Growing media for articles of *Pelargonium* spp. and *Solanum* spp. must be free of *R. solanacearum* race 3 biovar 2. Growing media and containers for articles of *Pelargonium* spp. and *Solanum* spp. must not come in contact with growing media that could transmit *R. solanacearum* race 3 biovar 2 and must be grown in an APHIS-approved growing medium.

* * * * *

Done in Washington, DC, this 22nd day of November 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–23531 Filed 11–30–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 23**

[Docket No. CE218, Special Condition 23–158–SC]

**Special Conditions; Cessna Aircraft
Company; Protection of Systems for
High Intensity Radiated Fields (HIRF)**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Cessna Aircraft Co., for the Type Certificate of Model 510 Mustang airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. The novel and unusual design features include the installation of an Electronic Flight Instrumentation System (EFIS), Digital Air Data Computer (ADC), and a Full Authority Digital Engine Control (FADEC). The applicable regulations do not adequately consider failure of