

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 211

RIN 3206-AL33

#### 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 a change to the definition of "active duty" contained in § 211.102(f) of title 5, Code of Federal Regulations. We are making this change in response to a Merit System Protection Board (MSPB) decision that affects eligibility for veterans' preference based on a service-connected disability. This action will conform OPM's regulations with MSPB's decision.

**DATES:** Interim rule effective July 27, 2007; comments must be received on or before September 25, 2007.

**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:** On February 6, 2007, the Merit Systems Protection Board (the Board) issued a decision in *Edward Thomas Hesse v. Department of the Army* (AT-3443-05-0936-I-1) that affects the eligibility criteria for veterans' preference based on a service-connected disability under 5 U.S.C. 2108(2). The Board decided that, for the purposes of entitlement to veterans' preference, the term "active duty" as used in 5 U.S.C. 2108(2) " \* \* \* may consist entirely of service for training purposes."

OPM is revising the definition of "active duty" in § 211.102(f) consistent with MSPB's decision. Former National Guard and Reserve members who served on active duty, including active duty for training, who were discharged or released from active duty under honorable conditions, and who establish the present existence of a service-connected disability or are receiving compensation, disability retirement benefits, or pension under the laws of the Department of Veterans Affairs or a military department are entitled to veterans' preference under 5 U.S.C. 2108(2).

#### 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 5 U.S.C. 2108(2) and do not unwittingly deny veterans' preference based upon existing regulations. If OPM's regulations were permitted to remain as written while OPM solicited comments upon its proposed revisions, there is a possibility that Reservists or National Guard members with a service-connected disability who are released or discharged from active duty may be denied veterans' preference based upon the current language in regulations. The revised language in this interim regulation will ensure service-connected disabled individuals discharged or released from active duty in the armed forces receive the veterans' preference.

#### 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.  
U.S. 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 paragraph (f) to read as follows:

#### § 211.102 Definitions.

\* \* \* \* \*

211.102(f) Active duty or military duty.

(1) *Active duty or active military duty* for a veteran defined in paragraph (a) of this section means full-time duty with military pay and allowances in the armed forces, except for training or for determining physical fitness and except for service in the Reserves or National Guard.

(2) *Active duty or active military duty* for a disabled veteran defined in paragraph (b) of this section means active duty with military pay and allowances in the armed forces, including training or for determining physical fitness and including service in the Reserves or National Guard.

\* \* \* \* \*

[FR Doc. E7-14490 Filed 7-26-07; 8:45 am]

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