

Rules and Regulations

Federal Register

Vol. 71, No. 69

Tuesday, April 11, 2006

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

RIN 3206-AK59

Excepted Service—Student Program

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to allow certain job-related experience acquired in a structured work-study program to be credited under the Student Career Experience Program (SCEP or Program). This change will permit agencies to credit a student's job-related work-study experience toward the minimum requirement for conversion to a permanent appointment under the Program.

DATES: *Effective Date:* May 11, 2006.

FOR FURTHER INFORMATION CONTACT: Hakeem Basheerud-Deen at (202) 606-1434, FAX: (202) 606-2329, TTY: (202) 418-3134, or e-mail: hakeem.basheerud-deen@opm.gov.

SUPPLEMENTARY INFORMATION: On March 16, 2005, OPM issued proposed regulations at **Federal Register** 70 FR 12812 to allow agencies to credit certain job-related experience acquired in a structured work-study program or active duty military service toward the requirements of the Student Career Experience Program. In addition, the proposal would allow agencies to waive up to one-half of the required SCEP work experience of 640 hours for students who have exceptional job performance and academic excellence while enrolled in the Program (or equivalent). OPM specifically sought comments from reviewers as to whether they believed this rule would give certain students an unfair advantage

over others, such as fellows appointed under 5 CFR 213.3102(r) or student volunteers under 5 CFR part 308. OPM received comments from four Federal agencies, three professional organizations, and ten individuals. All comments are addressed below.

Comments

The comments we received generally support the proposed changes. Seven comments in particular noted the positive impact of the changes on the SCEP program.

Impact on Other Student Appointments

One agency commented that the proposed rule did not give an unfair advantage over other students such as fellows appointed under 5 CFR 213.3102(r) or student volunteers appointed under 5 CFR part 308. Two agencies, however, recommended OPM allow volunteer service performed under 5 CFR part 308 to be creditable toward the SCEP requirements for non-competitive conversion to the competitive service. Of these two agencies, one suggested that service performed by individuals appointed under 5 CFR 213.3102(r) should also be creditable toward the SCEP minimum requirement for conversion to the competitive service. OPM agrees that service performed by individuals in accordance with 5 CFR 213.3102(r) or 5 CFR part 308 should be creditable toward SCEP requirements (when the individual in question is appointed under SCEP) on the basis that such service is oftentimes indistinguishable from service performed by students working in Federal agencies but not under Federally sponsored intern programs. Consequently, we have modified §§ 213.3202(b)(11)(ii) and 213.3202(b)(11)(ii)(A) to include service performed under 5 CFR 213.3102(r) and 5 CFR part 308. Section 213.3202(b)(11)(ii) now reads, "To be creditable under paragraph (b)(11)(i)(A) of this section, work experience must be in a field or functional area that is related to the student's target position/career field and must be acquired either under a Student Educational Employment Program appointment, any previous Federal appointment (e.g. fellowships and similar programs in accordance with 5 CFR 213.3102(r)), or while the student:". Section 213.3202(b)(11)(ii)(A) now reads,

"Worked in, but not for, a Federal agency, pursuant to a formal work-study agreement between the agency and an accredited academic institution; to include those student volunteers as defined by 5 CFR part 308;"

Nine individuals believed the proposed regulations were unfair to students on Student Temporary Employment Program (STEP) appointments because the STEP authority does not provide for non-competitive conversion to the competitive service. These commenters suggested that OPM create a noncompetitive conversion mechanism for students in the STEP program. OPM has no authority to establish a conversion mechanism for STEP appointees into the competitive service. Such an authority must be provided by Congress or the President via an Executive order. OPM notes, however, that agencies currently have the authority to convert a student on a STEP appointment into a SCEP appointment, in accordance with 5 CFR 213.3202(a)(15).

Credit for Experience Gained in the Armed Forces

Two agencies recommended OPM define the phrase, "a member in good standing" as used in the context of active duty military service in the proposed regulation. OPM agrees this phrase lacks clarity, so we have modified § 213.3202(b)(11)(ii)(C) so that it now reads, "Served as an active duty member of the armed forces of the United States (including the National Guard and Reserves), as defined in 5 U.S.C. 2101, and has been discharged or released from active duty in the armed forces under honorable conditions."

One agency recommended OPM clarify whether qualifying military service must be performed while the individual is in school, or whether it can be performed prior to enrollment. The agency also asked us to explain whether creditable military experience only includes experience that relates to the student's academic curriculum. Any active duty military service, performed while the individual is in school or prior to enrollment, is creditable toward the 640-hour requirement provided the military service satisfies the requirements of § 213.3202(b)(11)(ii); i.e., the experience must be in a field or

functional area that is related to the student's target position or career field.

The same agency commented the proposed regulation does not stipulate any minimum time requirement for creditable active duty military service nor does it define the type of active duty service (e.g., active duty for training) agencies may credit toward SCEP requirements. OPM is not imposing a minimum time requirement for creditable active duty service. Any active duty military service (including active duty for training) which satisfies the requirements of § 213.3202(b)(11)(ii) may be credited toward the SCEP 640-hour requirement for non-competitive conversion to the competitive service.

Creditable Experience

One agency suggested OPM define creditable experience to include any career-related experience gained through a formal work-study program or experience certified as equivalent to that gained through a formal program by an accredited college/university. OPM did not adopt this suggestion on the basis that work experience gained in non-Federal environments does not provide students with exposure to public service or the work of specific Federal agencies that SCEP students receive by virtue of being in the Program. OPM's intent in crafting the proposed rules was to include non-Federal internships performed in Federal Executive branch agencies because these internships oftentimes closely parallel experience gained through the SCEP. We do not believe the same can be said for experience gained through internships with non-Federal entities.

One agency recommended OPM describe work-study programs that meet the criteria referenced in § 213.3202(b)(11)(ii)(A) and (B) and describe documentation required to verify the criteria have been met. Work-study programs which meet the criteria of § 213.3202(b)(11)(ii)(A) and (B) are those programs which provide for the integration of academic studies and work experience performed in a Federal agency in a manner comparable to the SCEP requirements under § 213.3202(b)(12) (e.g., scheduling and nature of work assignments, relation of work assignments to the student's academic curriculum, evaluating the student's performance, etc.). These programs include, but are not limited to, non-Federal internships, stipend and grant programs, and student volunteer service which the student performs in a Federal executive branch agency. These programs require a formal agreement between the agency and either: (1) The academic institution the student attends

or (2) the intern provider which pays the student. Agencies may evaluate these formal agreements to ensure the program meets regulatory criteria.

One agency asked whether the proposed rules allow agencies to add or combine credit for a student's non-Federal internship and military experience or academic excellence, in excess of 320 hours of credit toward the SCEP requirement of 640 hours needed for non-competitive conversion to the competitive service (i.e., may an agency credit a student with 280 hours for active duty service and 320 hours for academic excellence so that the student need only be employed for 40 hours under SCEP prior to conversion). Agencies may only credit up to a total of 320 hours toward the required 640 hours of career-related work experience. OPM's rationale is that this flexibility is intended to augment, not replace, SCEP program requirements. However, an agency could use multiple sources such as comparable work-study programs, experience gained in the armed forces, and exceptional job performance and academic excellence to credit an individual up to 320 hours for non-SCEP work experience.

One private organization recommended OPM allow students to accrue, under a non-Federal internship, the entire 640 hours of work experience required for noncompetitive conversion to permanent Federal employment. OPM did not adopt this recommendation because it may result in some students spending as little as one day under a SCEP appointment prior to conversion to the competitive service. OPM does not believe such an outcome would be consistent with Executive Order 12015, which authorizes appointment to the competitive service from Federal work-study programs. As previously noted, these flexibilities are meant to enhance SCEP program experience, but not replace that experience completely. Agencies that wish to noncompetitively appoint students to the competitive service that are working for third-party internship providers must first appoint those students to a SCEP position within the agency, and the student must accrue 640 hours of work experience while on this appointment (up to 320 hours of which may be credited from certain non-Federal internships).

Another private organization proposed that all students who have accumulated 640 hours in career-related work-study programs be eligible for noncompetitive conversion. OPM did not adopt this proposal because it is beyond the scope of Executive Order 12015, which provides for appointment

to the competitive service only from Federal work-study programs established by the Office of Personnel Management.

One private organization recommended OPM include a provision in the final rules that allows agencies to credit students for multiple non-Federal internships performed in Federal agencies arranged through third-party internship providers. OPM does not believe such a provision is necessary because the proposed rules do not prohibit agencies from crediting multiple non-Federal internships. We would, however, like to clarify that agencies have the option of crediting up to 320 hours toward the 640-hour requirement only if the student's work experience is related to the duties performed and the position for which the agency is developing the student, per § 213.3202(11)(ii)(A) and (B).

One individual asked if experience gained through a Department of Veterans Affairs, Veterans Benefits Administration sponsored work-study program would qualify as creditable experience under the SCEP. Agencies may credit any work performed in a Federal executive branch agency under a work-study program provided it meets the criteria of § 213.3202(11)(ii)(A) and (B).

Outstanding Academic Achievement and Exceptional Job Performance

Three private organizations suggested OPM lower the 3.5 grade point average (GPA) requirement for outstanding academic achievement to a 3.0 GPA. OPM disagrees with lowering the outstanding academic achievement standard to a 3.0 GPA. The waiver of up to 320 hours for those students under a SCEP appointment with a 3.5 GPA provides an incentive for those students with outstanding academic achievement and exceptional job performance.

Two agencies requested OPM clarify the terms "superior academic achievement" and "outstanding academic achievement" in relation to OPM's *Qualification Standards for General Schedule Positions*. OPM agrees that clarification is needed. Outstanding academic achievement in relation to the SCEP program is different from the definition for superior academic achievement found in the *Qualification Standards for General Schedule Positions*. OPM has rephrased § 213.3202(b)(11)(iii)(A) to state, "Outstanding academic achievement must be demonstrated by an overall grade point average of 3.5 or better, on a 4.0 scale; standing in the top 10 percent of the student's graduating class; and/or induction into a

nationally-recognized scholastic honor society. Notwithstanding these differences, agencies may still refer to "superior academic achievement" in OPM's *Qualifications Standards for General Schedule Positions* available on the OPM Web site at <http://www.opm.gov> to obtain specific guidance on GPA, class standing, and nationally recognized honor societies.

One agency asked OPM to clarify whether the final rules allow agencies to evaluate a student's performance when the student has not served the minimum period (e.g., 90 days) as specified in the agency's performance program. The final rules give agencies the flexibility to evaluate a student's performance based on 320 hours of service under a SCEP appointment. Agencies which choose to require longer periods of service before evaluating a SCEP appointee may do so at their discretion. The final rules were not intended to supersede agency-specific plans in this regard.

One agency expressed concern about consistency in applying the criterion for exceptional job performance because comparable work-study programs may not have approved performance appraisal systems, and appraisal systems throughout the Government typically vary, some with 3, 4, or 5 levels or even pass/fail systems. The agency asked whether OPM is planning to issue additional information and/or guidance on evaluating exceptional job performance under the new student regulations. OPM disagrees that further guidance is required on evaluating exceptional job performance. Under the final rules, agencies may use the same process under § 213.3202(b)(12) to evaluate SCEPs, the only difference being the final rules allow agencies to make such determinations after 320 hours of service when the student demonstrates outstanding academic achievement in accordance with § 213.3202(b)(11)(iii)(A) and (B).

One private organization proposed that students who have completed 320 hours on a SCEP appointment and have exceptional job performance, but lack outstanding academic achievement, be granted a waiver of the additional 320-hour work requirement. OPM is not adopting this suggestion on the basis that because we are waiving half of the 640-hour requirement, SCEP appointees should be held to a higher or more rigorous standard (in this case a GPA of 3.5 or better) to gauge the student's success in these work-study programs. In addition, we do not believe 320 hours of SCEP experience, in and of itself, provides an adequate basis for converting students non-competitively to the competitive service.

Conversion

One private organization recommended OPM change the number of days available for noncompetitive conversion from the current 120 days to 180 days to provide graduating seniors who intern with Federal agencies during the summer months enough time to complete the required 640 hours for noncompetitive conversion. OPM has no authority to adopt this recommendation because the Executive order, which allows for conversion from SCEP to the competitive service, specifies a 120-day period before which all program requirements needed for conversion must be met (i.e. students cannot use the 120-day period to accrue the 640 hours necessary for conversion to the competitive service).

One agency recommended OPM delete the term "generally" from section 213.3202(11)(ii) because it implies that it is optional for work to be related to the target position. OPM agrees and has deleted the term.

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 certain Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 213

Government employees, Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.

Linda M. Springer,
Director.

■ Accordingly, OPM amends 5 CFR part 213 as follows:

PART 213—EXCEPTED SERVICE

■ 1. The authority citation for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3161; 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; Sec. 213.101 also issued under 5 U.S.C. 2103; Sec. 213.3102 also issued under 5 U.S.C. 3307, 8337(h) and 8456; E.O. 13318, 68 FR 66317, Nov. 25, 2003; 38 U.S.C. 4301 *et seq.*; Pub. L. 105–339, 112 Stat 3182–83; and E.O. 13162, 65 FR 43211, July 12, 2000.

■ 2. Revise § 213.3202, paragraphs (a)(2), (b)(2), and (b)(11) to read as follows:

§ 213.3202 Entire executive civil service.

(a) * * *

(2) *Definition of student.* A student is an individual who has been accepted for enrollment or who is enrolled and seeking a degree (diploma, certificate, etc.) in a high school whose curriculum has been approved by a State or local governing body, or in a technical or vocational school, 2-year or 4-year college or university, or graduate or professional school, that has been accredited by an accrediting body recognized by the Secretary of the U.S. Department of Education. The definition of *half-time* is the definition provided by the school in which the student is enrolled. Students need not be in actual physical attendance, so long as all other requirements are met. An individual who needs to complete less than the equivalent of half an academic/vocational or technical course-load in the class enrollment period immediately prior to graduating is still considered a student for purposes of this program.

* * * * *

(b) * * *

(2) *Definition of student.* A student is an individual who has been accepted for enrollment or who is enrolled and seeking a degree (diploma, certificate, etc.) in a high school whose curriculum has been approved by a State or local governing body, or in a technical or vocational school, 2-year or 4-year college or university, or graduate or professional school, that has been accredited by an accrediting body recognized by the Secretary of the U.S. Department of Education. The definition of *half-time* is the definition provided by the school in which the student is enrolled. Students need not be in actual physical attendance, so long as all other requirements are met. An individual who needs to complete less than the equivalent of half an academic/vocational or technical course-load in the class enrollment period immediately prior to graduating is still considered a student for purposes of this program.

* * * * *

(11) *Program requirements for noncompetitive conversion.* (i) A student who is a U.S. citizen may be noncompetitively converted from the Student Career Experience Program to a term, career-conditional, or career appointment under Executive Order 12015 (as amended by Executive Order 13024) when the student has:

(A) Completed at least 640 hours of career-related work experience acquired through a Federal work-study program while otherwise enrolled as a full-time or part-time, degree-seeking student. Up to 320 hours acquired through a comparable non-Federal work-study program meeting the criteria set forth in

paragraph (b)(11)(ii) of this section may be credited toward the 640-hour minimum for students pursuing degrees under paragraphs (b)(1)(i)(D) through (F) of this section;

(B) Completed a course of academic study from an accredited school conferring a diploma, certificate, or degree, within the 120-day period preceding the appointment;

(C) Received a favorable recommendation regarding such an appointment by an official of the agency or agencies in which the job-related work experience was acquired; and

(D) Met the qualification standards for the position to which the student will be appointed.

(ii) To be creditable under paragraph (b)(11)(i)(A) of this section, work experience must be in a field or functional area that is related to the student's target position/career field and must be acquired either under a Student Educational Employment Program appointment, any previous Federal appointment (e.g. fellowships and similar programs in accordance with 5 CFR 213.3102(r)), or while the student:

(A) Worked in, but not for, a Federal agency, pursuant to a formal work-study agreement comparable to the SCEP agreements under 213.3202(b)(12) between the agency and an accredited academic institution; to include those student volunteers as defined by 5 CFR part 308;

(B) Worked in, but not for, a Federal agency, pursuant to a written contract comparable to the SCEP agreements under 213.3202(b)(12) between the agency and an organization officially established to provide internship experiences to students; or

(C) Served as an active duty member of the armed forces of the United States (including the National Guard and Reserves), as defined in 5 U.S.C. 2101, and has been discharged or released from active duty in the armed forces under honorable conditions.

(iii) Agencies may waive up to one-half (i.e., 320 hours) of the 640-hour minimum service requirement in paragraph (b)(11)(i)(A) of this section if a student enrolled in an accredited college or university completes 320 hours of career-related work experience under a Student Educational Employment Program appointment and has demonstrated high potential, as evidenced by outstanding academic achievement and exceptional job performance.

(A) Outstanding academic achievement must be demonstrated by an overall grade point average of 3.5 or better, on a 4.0 scale; standing in the top 10 percent of the student's graduating

class; and/or induction into a nationally-recognized scholastic honor society. Notwithstanding these differences, agencies may still refer to "superior academic achievement" in OPM's *Qualifications Standards for General Schedule Positions* available on the OPM Web site at <http://www.opm.gov> to obtain specific guidance on GPA, class standing, and nationally recognized honor societies.

(B) Exceptional job performance must be demonstrated by a formal evaluation conducted by the student's work-study supervisor(s), in a manner consistent with the applicable performance appraisal program established under an approved performance appraisal system.

(iv) Service credited under paragraphs (b)(ii)(A) and (B) of this section is not creditable for any other purpose of this chapter. Student volunteer service under part 308 of this chapter and fellows appointed under 5 CFR 213.3102(r) may be evaluated, considered, and credited under this section when that experience is determined to be comparable in scope to experience gained in the Student Career Experience Program.

(v) Noncompetitive conversion may be to a position within the same agency or any other agency within the Federal Government but must be to an occupation related to the student's academic training and work-study experience.

(vi) Agencies that noncompetitively convert a Student Career Experience Program graduate to a term appointment may also noncompetitively convert that individual to a career or career-conditional appointment before the term appointment expires.

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[FR Doc. 06-3391 Filed 4-10-06; 8:45 am]

BILLING CODE 6325-39-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV06-982-1 FIR]

Hazelnuts Grown in Oregon and Washington; Establishment of Final Free and Restricted Percentages for the 2005-2006 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim

final rule establishing final free and restricted percentages for domestic inshell hazelnuts for the 2005-2006 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. This rule continues in effect the final free and restricted percentages of 11.4388 and 88.5612 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market (free) and the quantity of domestically produced hazelnuts that must be disposed of in other approved outlets (restricted). Volume regulation is intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts with the goal of providing producers with reasonable returns. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

DATES: *Effective Date:* May 11, 2006. This rule applies to all 2005-2006 marketing year restricted hazelnuts until they are properly disposed of in accordance with applicable marketing order requirements.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326-2724, Fax: (503) 326-7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 115 and Marketing Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."