

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 315 and 316

RIN 3206-AL73

Noncompetitive Appointment of Certain Military Spouses

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing proposed regulations that allow agencies to noncompetitively appoint certain military spouses to positions in the competitive service. These regulations implement Executive Order 13473, 73 FR 56703 (Sept. 28, 2008), which authorizes noncompetitive appointments in the Civil Service for spouses of certain members of the armed forces. These regulations facilitate the entry of military spouses into the Federal civil service as part of an effort to recruit and retain skilled and experienced members of the armed forces and to recognize and honor the service of members injured, disabled, or killed in connection with their service.

DATES: Comments will be considered if received by January 5, 2009.

ADDRESSES: Send, fax, or deliver written comments to Angela Bailey, Deputy Associate Director, Center for Talent and Capacity Policy, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6500, Washington, DC 20415, e-mail to employ@opm.gov, or FAX to 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: Jacquelyn Carrington at (202) 606-0960, FAX at (202) 606-2329, TDD at (202) 418-3134, or e-mail jacquelyn.carrington@opm.gov.

SUPPLEMENTARY INFORMATION: On September 25, 2008, the President signed Executive Order 13473 (73 FR 56703) allowing agencies to make noncompetitive appointments of spouses of certain members of the armed forces. To implement this Executive order, the Office of Personnel Management is proposing to add a new section 315.612 to subpart F of part 315, title 5, Code of Federal Regulations, and revise part 316, Temporary and Term Appointment, subpart C, section 316.302, and subpart D, section 316.402, to permit noncompetitive permanent, term, or temporary appointment of military spouses, respectively. This authority allows agencies to recruit and noncompetitively appoint spouses of certain members of the armed forces to positions in the competitive service. These regulations do not provide a hiring preference for military spouses, nor do they establish selection priority for these individuals. Consistent with other noncompetitive appointment authorities, these individuals must apply to a Federal vacancy announcement to be considered. This proposal creates a pool of applicants from which agencies may make noncompetitive selections if they choose to do so.

Agency Authority

Paragraph (a) of the proposed new § 315.612 explains the intent of the Executive order, which authorizes agencies to noncompetitively appoint certain military spouses to competitive service positions under certain circumstances. Specifically, agencies are authorized to appoint noncompetitively the spouse of a service member serving on active duty in the armed forces who has received permanent change of station orders, the spouse of a 100 percent disabled service member whose disability resulted from active duty in the armed forces, or the un-remarried widow or widower of a service member who was killed while on active duty in the armed forces.

Definitions

Paragraph (b) of proposed § 315.612 contains six definitions necessary for the administration of the section.

Eligibility

Paragraph (c) of proposed § 315.612 provides the criteria that a military spouse must meet to be eligible for

noncompetitive appointment under this section. This paragraph also contains the eligibility criteria that a member of the armed forces on active duty must meet in order for his or her spouse to be eligible for noncompetitive appointment under this section.

This paragraph specifies that to be eligible for appointment under this section, the spouse of a member of the armed forces who is serving on active duty must be married to the member of the armed forces on, or before, the date of the service member's orders relocating him or her to another permanent duty station. It also specifies that the spouse must accompany the service member to the new permanent duty station.

This paragraph makes clear that the spouse of a deceased service member must be the un-remarried widow or widower of a member of the armed forces killed while on active duty in order to be eligible for noncompetitive appointment under this section.

Lastly, this paragraph provides that under this section agencies may appoint eligible spouses only to positions within the geographic area containing the permanent duty station to which the service member has been transferred or reassigned. The head of an agency, however, may waive this limitation if there are no Federal agencies within the geographic area in which the new duty station is located. Eligible spouses of 100 percent disabled service members, or service members who were killed while on active duty, are not subject to the geographic area limitation.

Conditions

Paragraph (d) of proposed § 315.612 provides the conditions under which an agency may appoint a military spouse noncompetitively under this section. This paragraph specifies that a spouse remains eligible for a noncompetitive appointment for a maximum of 2 years from the date of the (a) service member's orders authorizing a permanent change of station; (b) the documentation showing the service member is 100 percent disabled; or (c) the documentation showing the service member was killed while on active duty.

This paragraph also specifies that an eligible spouse may receive only one noncompetitive appointment to a permanent Federal job per each set of orders authorizing the service member's

permanent change of station. OPM is not proposing a limitation on the number of temporary or term appointments an eligible spouse may have per permanent change of duty location authorization.

This paragraph provides that individuals who accompany their military spouses to the new duty station within 1 year of the effective date of these regulations are eligible for noncompetitive appointment under this section.

Lastly, this paragraph provides that any provision that would disqualify an applicant for Federal appointment also disqualifies a spouse for appointment under these provisions.

Proof of Eligibility

Paragraph (e) of proposed § 315.612 explains the documentation that an agency hiring representative must have received from a spouse before making a noncompetitive appointment under this section. Spouses of active duty military members must submit to the hiring agency the following information: A copy of the military member's active duty orders authorizing a permanent change of duty station, and proof that the spouse was married to the military member at the time of the orders' issuance.

The spouse of an individual with a 100 percent disability rating must submit to the hiring agency documentation that states the individual is 100 percent disabled as a result of a service-connected disability that occurred while the individual was on active military duty, and proof that the spouse is married to the military member.

The spouse of an individual killed while on active duty must submit to the hiring agency documentation that shows the military member was serving on active military duty at the time of his or her death, proof that the spouse was married to the military member at the time of his or her death, and a statement certifying that he or she is the unremarried widow or widower of the service member.

Acquisition of Competitive Status

Paragraph (f) of proposed § 315.612 provides the military spouse appointed under this section acquires competitive status upon completion of a probationary period.

Tenure on Appointment

Paragraph (g) of proposed § 315.612 specifies that an eligible military spouse hired under this authority has a career-conditional appointment until the

employee fulfills the requirements for career tenure.

Temporary and Term Employment

The proposed regulations also revise §§ 316.302 and 316.402 to authorize agencies to make noncompetitive term or temporary appointments, respectively, of spouses eligible under the proposed provisions of § 315.612.

30-Day Comment Period

OPM is imposing a 30-day comment period on this proposed rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

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 Parts 315 and 316

Government employees.
U.S. Office of Personnel Management.
Michael W. Hager,
Acting Director.

Accordingly, OPM proposes to amend title 5, Code of Federal Regulations, part 315, subpart F, and part 316, as follows:

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

1. The authority citation for part 315 is revised 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, 1987 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. Add § 315.612 to subpart F to read as follows:

§ 315.612 Noncompetitive appointment of certain military spouses.

(a) *Agency authority.* In accordance with the provisions of this section, an agency may appoint noncompetitively a spouse of a member of the armed forces serving on active duty who has orders specifying a permanent change of station, a spouse of a 100 percent disabled service member injured while on active duty, or the unremarried widow or widower of a service member who was killed while performing active duty.

(b) Definitions.

In this section,

(1) *Active duty* means full-time duty in the armed forces including full-time National Guard duty, except that for Reserve Component members the term "active duty" does not include training duties or attendance at service schools.

(2) *Armed forces* has the meaning given that term in 10 U.S.C. 101.

(3) *Duty station* means the permanent location to which a member of the armed forces is assigned for duty as specified on the individual's permanent change of station (PCS) orders.

(4) *Member of the armed forces or service member* means an individual who:

(i) Is serving on active duty in the armed forces under orders specifying the individual is called or ordered to active duty for more than 180 consecutive days, has been issued orders for a permanent change of station, and is authorized for dependent travel (i.e., the travel of the service member's family members) as part of the orders specifying the individual's permanent change of station;

(ii) Retired from active duty in the armed forces with a disability rating of 100 percent as documented by a branch of the armed forces, or, retired or was released or discharged from active duty in the armed forces and has a disability rating of 100 percent as documented by the Department of Veterans Affairs.

(iii) Was killed while serving on active duty in the armed forces.

(5) *Permanent change of station* means the assignment, reassignment, or transfer of a member of the armed forces from his or her present duty station or location without return to the previous duty station or location.

(6) *Spouse* means the husband or wife of a member of the armed forces.

(c) Eligibility.

(1) A spouse of a member of the armed forces as defined in paragraph (b)(4)(i) of this section must have:

(i) Married the member of the armed forces on, or prior to, the date of the service member's orders authorizing a permanent change of station; and

(ii) Relocated with the member of the armed forces to the new duty station specified in the documentation ordering a permanent change of station.

(2) A spouse of a member of the armed forces as defined in paragraph (b)(4)(iii) of this section must be the un-remarried widow or widower of the member of the armed forces killed on active duty in the armed forces.

(3) A spouse's eligibility for noncompetitive appointment under this section is limited to the geographic area, as specified on the member of the armed forces' permanent change of station orders. It includes the service member's duty station and the surrounding area from which people reasonably can be expected to travel daily to and from work. The head of an agency may waive this limitation (i.e., accept applications from spouses) if no Federal agency exists in the spouse's geographic area.

(d) *Conditions.*

(1) In accordance with the provisions of this section, spouses are eligible for noncompetitive appointment for a maximum of 2 years from the date of:

(i) The service member's permanent change of station orders;

(ii) Documentation verifying the member of the armed forces is 100 percent disabled; or

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

(2) A spouse may receive only one noncompetitive appointment under this section to a permanent position per the service member's orders authorizing a permanent change of station.

(3) In accordance with the provisions of this section, spouses who relocated with a member of the armed forces to the location provided in the service member's permanent change of station orders within 1 year prior to the effective date of these regulations are eligible for noncompetitive appointment under this section.

(4) Any law, Executive order, or regulation that disqualifies an applicant for appointment also disqualifies a spouse for appointment under this section.

(e) *Proof of Eligibility.*

(1) Prior to appointment, the spouse of a member of the armed forces as defined in paragraph (b)(4)(i) of this section must submit to the employing agency:

(i) A copy of the service member's active duty orders which authorize a permanent change of station. This authorization must include:

(A) A statement authorizing the service member's spouse to accompany the member to the new permanent duty station;

(B) The specific location to which the member of the armed forces is to be assigned, reassigned, or transferred pursuant to permanent change of station orders; and

(C) The effective date of the permanent change of station; and

(ii) Documentation verifying marriage to the member of the armed forces (e.g., a marriage license or other legal documentation verifying marriage).

(2) Prior to appointment, the spouse of a member of the armed forces as defined in paragraph (b)(4)(ii) of this section must submit to the employing agency copies of:

(i) Documentation showing the member of the armed forces was released or discharged from active duty due to a service-connected disability;

(ii) Documentation showing the member of the armed forces retired, or was released or discharged from active duty, with a disability rating of 100 percent; and

(iii) Documentation verifying marriage to the member of the armed forces (e.g., a marriage license or other legal documentation verifying marriage).

(3) Prior to appointment, the spouse of a member of the armed forces as defined in paragraph (b)(4)(iii) of this section must submit to the employing agency copies of:

(i) Documentation showing the individual was released or discharged from active duty due to his or her death while on active duty;

(ii) Documentation verifying the member of the armed forces was killed while serving on active duty; and

(iii) Documentation verifying marriage to the member of the armed forces (e.g., a marriage license or other legal documentation verifying marriage); and

(iv) A statement certifying that he or she is the un-remarried widow or widower of the service member.

(f) *Acquisition of competitive status.* A person appointed under paragraph (a) of this section acquires competitive status automatically upon completion of probation.

(g) *Tenure on appointment.* An appointment under paragraph (a) of this section is career-conditional unless the appointee has already satisfied the requirements for career tenure or is exempt from the service requirement pursuant to § 315.201.

PART 316—TEMPORARY AND TERM EMPLOYMENT

3. 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.

4. Section 316.302(b)(3) is revised to read as follows:

§ 316.302 Selection of term employees.

* * * * *

(b) * * *

(3) Career-conditional appointment under § 315.601, 315.604, 315.605, 315.606, 315.607, 315.608, 315.609, 315.612, or 315.711 of this chapter;

* * * * *

5. Section 316.402(b)(3) is revised to read as follows:

§ 316.402 Procedures for making temporary appointments.

* * * * *

(b) * * *

(3) Career-conditional appointment under § 315.601, 315.604, 315.605, 315.606, 315.607, 315.608, 315.609, 315.612, 315.703, or 315.711 of this chapter;

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[FR Doc. E8–28747 Filed 12–4–08; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2007–0153]

RIN 0579–AC88

Importation of Eggplant From Israel

Correction

In proposed rule document E8–26814 beginning on page 66807 in the issue of Wednesday, November 12, 2008 make the following correction:

§319.56–48 [Corrected]

On page 66811, in the third column, in §319.56–48(e), in the last line, “7 CFR 319.56*48.” should read “7 CFR 319.56–48.”

[FR Doc. E8–26814 Filed 12–4–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. AMS–FV–08–0089; FV09–930–1 PR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2008–2009 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.