

# Rules and Regulations

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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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 211

RIN 3206-AN47

#### Veterans' Preference

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is issuing a final rule to implement a statutory change pertaining to veterans' preference. This change is made in response to the Gold Star Fathers Act of 2015. The Act broadens the category of individuals eligible for veterans' preference to provide that fathers of certain permanently disabled or deceased veterans shall be included with mothers of such veterans as preference eligibles for treatment in the civil service.

**DATES:** This rule will be effective January 7, 2019.

**FOR FURTHER INFORMATION CONTACT:** Roseanna Ciarlante by telephone on (267) 932-8640, by fax at (202) 606-4430, by TTY at (202) 418-3134, or by email at [Roseanna.Ciarlante@opm.gov](mailto:Roseanna.Ciarlante@opm.gov).

**SUPPLEMENTARY INFORMATION:** On October 7, 2015, the Gold Star Fathers Act of 2015 (the "Act") was enacted as Public Law 114-62. The Act provides an amendment to the eligibility criteria for veterans' preference purposes by amending subparagraphs (F) and (G) to 5 U.S.C. 2108(3). The amendment provides that fathers of certain permanently disabled or deceased veterans shall be included with mothers of such veterans as preference eligibles for treatment in the civil service. The Act also changes the requirements for parents of such veterans to qualify for this preference.

The Act replaces 5 U.S.C. 2108(3)(F) to state that the parent of an individual who lost his or her life under honorable conditions while serving in the armed

forces during a war, in a campaign or expedition for which a campaign badge has been authorized, or during the period beginning April 28, 1952, and ending July 1, 1955, is eligible for preference if the spouse of that parent is totally and permanently disabled; or that parent, when preference is claimed, is unmarried or, if married, legally separated from his or her spouse.

The Act also replaces 5 U.S.C. 2108(3)(G) to state that the parent of a service-connected permanently and totally disabled veteran is eligible for preference if the spouse of that parent is totally and permanently disabled; or that parent, when preference is claimed, is unmarried or, if married, legally separated from his or her spouse.

On December 27, 2016, OPM issued an interim rule at 81 FR 94909, amending 5 CFR 211.102(d) to state that a "preference eligible" is "a veteran, disabled veteran, sole survivor veteran, spouse, widow, widower, or parent who meets the definition of 'preference eligible' in 5 U.S.C. 2108." The amendment replaced the word "mother" with the word "parent" to conform to the statutory definition.

#### Discussion of Comments

During the 60-day comment period between December 27, 2016 and February 27, 2017, OPM received one comment from an individual. The individual expressed concern that absent oversight, agencies will use this change to (1) replace their older career employees with a non-career workforce, and (2) circumvent unspecified special hiring authorities. The commenter did not articulate how giving the fathers of certain permanently-disabled or deceased veterans the same rights as mothers would have these effects. Because the commenter's concern is unclear and speculative, OPM cannot address it.

OPM acknowledges that oversight of veterans' preference is critical. OPM conducts regular reviews of veterans hiring across the Government to ensure that veterans are receiving the entitlements they have earned in the Federal hiring process. We have identified no systemic abuses or issues with veterans' preference or veterans hiring practices.

#### Regulatory Impact Analysis

OPM has examined the impact of this rule as required by Executive Order

12866 and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of \$100 million or more in any one year. This rule was not designated as a "significant regulatory action," under Executive Order 12866 and was not reviewed by the Office of Management and Budget.

#### Reducing Regulation and Controlling Regulatory Costs

This final rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

#### Regulatory Flexibility Act

The Office of Personnel Management certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### Unfunded Mandates Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

#### Paperwork Reduction Act of 1995

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule involves a collection of information subject to the PRA—Standard Form (SF) 15, *Application for 10-Point Veteran Preference*, OMB No. 3206–0001. OPM is currently reinstating this expired collection with changes to include an expanded population. The systems of record notice for this collection is: OPM GOVT–1 (<https://www.opm.gov/information-management/privacy-policy/sorn/opm-sorn-govt-1-general-personnel-records.pdf>).

#### List of Subjects in 5 CFR Part 211

Government employees, Veterans.

U.S. Office of Personnel Management

Alexys Stanley,

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Accordingly, OPM amends part 211 of title 5, Code of Federal Regulations, as follows:

#### PART 211—VETERAN PREFERENCE

■ 1. The authority citation for part 211 continues to read as follows:

**Authority:** 5 U.S.C. 1302, 2108, 2108a.

■ 2. In § 211.102, revise paragraph (d) introductory text to read as follows:

##### § 211.102 Definitions.

\* \* \* \* \*

(d) *Preference eligible* means a veteran, disabled veteran, sole survivor veteran, spouse, widow, widower, or parent who meets the definition of “preference eligible” in 5 U.S.C. 2108.

\* \* \* \* \*

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#### OFFICE OF PERSONNEL MANAGEMENT

##### 5 CFR Part 531

RIN 3206–AN64

#### General Schedule Locality Pay Areas

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** On behalf of the President’s Pay Agent, the Office of Personnel Management (OPM) is issuing final regulations to establish six new General Schedule locality pay areas, make certain changes to the definitions of existing locality pay areas, and make minor clarifying changes to the names of

two locality pay areas. Those changes in locality pay area definitions are applicable on the first day of the first pay period beginning on or after January 1, 2019. Locality pay rates for the six new locality pay areas will be set by the President.

**DATES:** The regulations are effective January 5, 2019, and are applicable on the first day of the first pay period beginning on or after January 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Joe Ratcliffe by email at [pay-leave-policy@opm.gov](mailto:pay-leave-policy@opm.gov) or by telephone at (202) 606–2838.

**SUPPLEMENTARY INFORMATION:** Section 5304 of title 5, United States Code (U.S.C.), authorizes locality pay for General Schedule (GS) employees with duty stations in the United States and its territories and possessions. Section 5304(f) authorizes the President’s Pay Agent (the Secretary of Labor, the Director of the Office of Management and Budget (OMB), and the Director of the Office of Personnel Management (OPM)) to determine locality pay areas. The boundaries of locality pay areas must be based on appropriate factors, which may include local labor market patterns, commuting patterns, and the practices of other employers. The Pay Agent must give thorough consideration to the views and recommendations of the Federal Salary Council, a body composed of experts in the fields of labor relations and pay policy and representatives of Federal employee organizations. The President appoints the members of the Federal Salary Council, which submits annual recommendations on the locality pay program to the Pay Agent. The establishment or modification of locality pay area boundaries must conform to the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553).

On July 9, 2018, OPM published a proposed rule in the **Federal Register** on behalf of the Pay Agent. (See 83 FR 31694.) The proposed rule proposed linking locality pay area definitions to metropolitan statistical areas (MSAs) and combined statistical areas (CSAs) defined by OMB in OMB Bulletin No. 18–03, and proposed establishing four new locality pay areas: Birmingham-Hoover-Talladega, AL; Burlington-South Burlington, VT; San Antonio-New Braunfels-Pearsall, TX; and Virginia Beach-Norfolk, VA-NC. The proposed rule also proposed adding two “Rest of U.S.” locations to the geographic definitions of two existing locality pay areas and making minor, clarifying changes to the names of two locality pay areas. The proposed rule did not

propose modifying the standard commuting and GS employment criteria used in the locality pay program to evaluate, as possible areas of application, locations adjacent to the metropolitan area comprising the basic locality pay area. (A basic locality pay area is an OMB-defined MSA or CSA on which the definition of a locality pay area is based, and an area of application is a location that is not part of a basic locality pay area but is included in the locality pay area. Criteria used to establish areas of application were explained in the proposed rule.)

The proposed rule provided a 30-day comment period. Accordingly, the Pay Agent reviewed comments received through August 8, 2018. After considering those comments, the Pay Agent has decided to implement the locality pay area definitions in the proposed rule, with two additional changes based on recommendations received from the Federal Salary Council on July 10, 2018. Those changes are the establishment of a new Corpus Christi-Kingsville-Alice, TX, locality pay area and establishment of a new Omaha-Council Bluffs-Fremont, NE-IA, locality pay area.

On July 10, 2018—the day after the proposed rule was published—the Pay Agent received the Federal Salary Council’s recommendations for locality pay for January 2019, which included a recommendation to establish a Corpus Christi-Kingsville-Alice, TX, locality pay area and an Omaha-Council Bluffs-Fremont, NE-IA, locality pay area. (The Council’s recommendations for locality pay for January 2019 are posted at <https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/federal-salary-council/recommendation17.pdf>.) Because the Council based that recommendation on the same criteria as used for the four new locality pay areas included in the proposed rule, we have approved the Council’s recommendation regarding the two additional locality pay areas. In addition, a number of commenters on the proposed rule supported the establishment of these two additional locality pay areas. Accordingly, these final regulations establish a Corpus Christi-Kingsville-Alice, TX, locality pay area and an Omaha-Council Bluffs-Fremont, NE-IA, locality pay area. As with the four new locality pay areas included in the proposed rule, locality pay rates for the two additional new locality pay areas will be set by the President at a later date after they are established by these final regulations.