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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 550 and 553

RIN 3206-AI92

Repeal of Dual Compensation Reductions for Military Retirees

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the repeal of reductions in military retired or retainer pay required of some military retirees employed in civilian positions. Section 651 of the National Defense Authorization Act for Fiscal Year 2000 repeals section 5532 of title 5, United States Code, effective October 1, 1999. This Act repeals two reductions in military retired or retainer pay previously required of some retired members of the uniformed services when they became Federal employees.

DATES: These regulations are effective April 12, 2000. Comments must be received by June 12, 2000.

ADDRESSES: Send written comments to Mary Lou Lindholm, Associate Director for Employment, Office of Personnel Management, Room 6500, 1900 E Street, NW., Washington, DC 20415-9500.

FOR FURTHER INFORMATION CONTACT: Laurence T. Lorenz on (202) 606-0830, FAX (202) 606-0390, or e-mail ltlorenz@opm.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 5, 1999, President Clinton signed S. 1059, the National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65. Section 651 of this Act repeals section 5532 of title 5, United States Code, effective

retroactively to October 1, 1999. This action ended two reductions in retired or retainer pay previously required of retired members of a uniformed service who are employed in civilian offices or positions of the U.S. Government. This repeal affects positions in the legislative, executive, and judicial branches of the Government of the United States (including Government corporations, nonappropriated fund instrumentalities under the jurisdiction of the armed forces, and the U.S. Postal Service).

Two Reductions Ended

This repeal ends the following two reductions in military retired pay that applied to some Federal employees who had retired from a uniformed service:

1. The pay cap that limited the combined total of Federal civilian basic pay plus military retired pay to \$110,700 (Executive Level V) for all Federal employees who retired from a uniformed service; and
2. The partial reduction in retired pay required of retired officers of a regular component of a uniformed service. As a consequence of the repeal, exceptions and waivers to the reductions for military retirees approved by OPM under criteria in 5 CFR 553, or by agencies under delegated authority, are no longer needed.

GPPA Revised

The Guide to Processing Personnel Actions (GPPA) prior to January 2, 2000 required sending a copy of the Notification of Personnel Action (SF-50) for retired members of a uniformed service to the appropriate uniformed service finance center for all covered personnel actions. OPM and the Department of Defense agreed that this Act eliminated the statutory basis for sending a copy of personnel actions effective on or after October 1, 1999. Accordingly, OPM eliminated this requirement in GPPA Update 33, dated January 2, 2000. Agencies should not send covered personnel actions for military retirees with effective dates on or after October 1, 1999.

Service Credit and Preference Limitations Unchanged

The repeal of 5 U.S.C. 5532 does not repeal two other parts of the Dual Compensation Act of 1964. This Act adopted a "fresh start" policy for military retirees and established limits

on service credit and veterans' preference to ensure that military retirees did not receive unfair advantages in pay and tenure over civilian employees, including other veterans. As a result, unlike other former service members, retired members of a uniformed service generally cannot count their service time as creditable service for retention (RIF), annual leave accrual, and retirement purposes (see 5 U.S.C. 3501(a), 3502(a), 6303(a) and 8411(c)). On the other hand, retirement does not change a service member's entitlement to veterans' preference in the employment process.

Reductions for Civilian Retirees Unchanged

This repeal does not affect the reduction in salary required of reemployed civilian annuitants under the Civil Service Retirement System (CSRS) and Federal Employees' Retirement System (FERS). Agencies may continue to request waivers of these reductions when appropriate under criteria in 5 CFR 553 and 5 U.S.C. 8344 or 8468.

Employee Questions

The uniformed services finance centers are responsible for making all adjustments in military retired or retainer pay. Employee questions regarding restoration of retired pay should be directed to the appropriate uniformed service finance center. These finance centers are identified in Chapter 8, of the Guide to Processing Personnel Actions, page 8-19, issued February 26, 1999 [<http://www.opm.gov/feddata/GPPA/Gppa.html>].

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking because it would be contrary to the public interest to delay access to benefits provided by law. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to waive the effective date and make this amendment effective in less than 30 days in order to implement immediately statutory language in Sec. 651 of the National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65, that is effective retroactively to October 1, 1999.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because the regulations apply only to appointment procedures for certain employees in Federal agencies.

Executive Order 12866, Regulatory Review

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

List of Subjects**5 CFR Part 550**

Administrative practice and procedure, Government employees, Claims, Wages.

5 CFR Part 553

Administrative practice and procedure, Government employees, Military Personnel, Retirement, Wages. Office of Personnel Management.

Janice R. Lachance
Director.

Accordingly, OPM is amending parts 550 and 553 of title 5, Code of Federal Regulations, as follows:

PART 550—PAY ADMINISTRATION (GENERAL)**Subpart F—[Removed and Reserved]**

1. The authority citation for subpart F continues to read as follows:

Authority: 5 U.S.C. 5532.

2. Subpart F consisting of §§ 550.601, 550.602 and 550.603 is removed and reserved.

PART 553—REEMPLOYMENT OF MILITARY AND CIVILIAN RETIREES TO MEET EXCEPTIONAL EMPLOYMENT NEEDS

3. The authority citation for part 553 is revised to read as follows:

Authority: 5 U.S.C. 8344, 8468, Sec. 651, Pub. L. 106–65 (113 STAT. 664).

4. Section 553.101 is revised to read as follows:

§ 553.101 Applicability.

This part applies to employment of civilian annuitants who would be subject to termination of annuity or annuity offset under 5 U.S.C. 8344 or 5 U.S.C. 8468. Agencies may request exceptions as provided in subpart B of this part from the reemployed annuitant

provisions of 5 U.S.C. 8344 (for Civil Service Retirement System annuitants) or 8468 (for Federal Employees' Retirement System annuitants), as appropriate.

5. In § 553.102, paragraph (c) is revised to read as follows:

§ 553.102 Definitions.

* * * * *

(c) Retiree, as used in this part refers to an annuitant as defined in paragraph (b) of this section.

6. In § 553.103, paragraph (b) is revised to read as follows:

§ 553.103 General policy.

* * * * *

(b) Application of exceptions. An exception to the salary offset provisions of 5 U.S.C. 8344 or 8468 authorized by OPM or an agency under this part applies only to the particular individual for whom it was authorized and only while that individual continues to serve in the same or a successor position. The exception terminates upon the individual's assignment to a different position unless a new exception is authorized under the provisions of this part.

7. In § 553.201, paragraph (c)(2), is revised to read as follows:

§ 553.201 Requesting OPM approval for reemployment without reduction in individual cases.

* * * * *

(c) * * *

(2) *Need for the individual's services.*

The agency must show either that the individual is uniquely qualified for the emergency response work to be done or that the number of positions to be filled and/or urgency of response justifies making the particular appointment without further delay. OPM will not approve reemployment without penalty under 5 U.S.C. 8344, or 8468 solely to meet normal seasonal workload fluctuations.

8. In § 553.203, paragraph (b) is revised to read as follows:

§ 553.203 Status of individuals serving without reduction.

* * * * *

(b) *Retired members of the uniformed services.* Except for individuals to whom paragraph (a) of this section is applicable, retired members of uniformed services are considered employees for the purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code, subject to the same conditions as apply to any other employees.

[FR Doc. 00–8838 Filed 4–11–00; 8:45 am]

BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 932**

[Docket No. FV00–932–1 FIR]

Olives Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which decreased the assessment rate established for the California Olive Committee (Committee) for the 2000 and subsequent fiscal years from \$26.18 to \$21.73 per ton of olives handled. The Committee is responsible for local administration of the marketing order which regulates the handling of olives grown in California. Authorization to assess olive handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: May 12, 2000.

FOR FURTHER INFORMATION CONTACT:

Diane Purvis, Marketing Assistant, and Rose Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the