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DEPARTMENT OF DEFENSE

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Office of the Secretary

32 CFR Part 66

[Docket ID: DOD-2011-OS-0099]

RIN 0790-AI78

Qualification Standards for Enlistment, Appointment, and Induction

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Final rule.

SUMMARY: This rule updates policies and responsibilities for basic entrance qualification standards for enlistment, appointment, and induction into the Armed Forces and delegates the authority to specify certain standards to the Secretaries of the Military Departments. It establishes the age, aptitude, character/conduct, citizenship, dependents, education, medical, physical fitness, and other disqualifying conditions that are causes for rejection from military service. Other standards may be prescribed in the event of mobilization or national emergency. This rule sets standards designed to ensure that individuals under consideration for enlistment, appointment, and/or induction are able to perform military duties successfully, and to select those who are the most suitable for Service life.

DATES: Effective Date: This rule is effective on [INSERT 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Dennis J. Drogo, (703) 697-9268.

SUPPLEMENTARY INFORMATION:

Public Comments and Responses

On March 27, 2015 (80 FR 16269-16277), the Department of Defense published an interim final rule titled “Qualification Standards for Enlistment, Appointment, and Induction” for a 60-day public comment period. The comment period ended on May 26, 2015. Three public comments were received. This section addresses those comments.

Comment 1: “Abstain: the area were I live is not for emergency personnel conducting business that should be known as unwanted security.”

Response: The Department of Defense thanks the commenter for the comment. No changes were made to the final rule as a result.

Comment 2: A 16-year veteran of the Air Force is in favor of having a qualified Armed Service to serve our country but, the commenter thinks interviews should be a part of the entrance process. The commenter says that being able to meet the proposed criteria does not guarantee a qualified member of the Armed Forces.

Response: Prospective recruits are thoroughly vetted, to include multiple interviews at various stages of the entrance process, prior to taking the oath of service. No changes were made to the final rule.

Comment 3: A male 40 years of age asked for help understanding why multiple recruiters in his area are stating that the current cut off age for non-prior service (NPS) is 39 for some Reserve and Guard branches. The commenter states that recruiters sent him away due to him being too old.

Response: This part as further implemented by Department of Defense Instruction 1304.26, “Qualification Standards for Enlistment, Appointment, and Induction,” provides the Department

of Defense's minimum acceptable standards for military Service. The Services can establish more restrictive standards based on the needs and requirements of that specific Service. The difference between these two sets of standards explains the challenges faced by the writer of this comment. No changes were made to the final rule.

Although no changes were made to the final rule based on public comments received, a few edits were made due to reorganization, to provide clarification in the definition of "Dependent" and the waiver process, and to fix some grammatical issues.

Executive Summary

I. Purpose of this Regulatory Action

This rule updates policies and responsibilities for basic entrance qualification standards for enlistment, appointment, and induction into the Armed Forces and delegates the authority to specify certain standards to the Secretaries of the Military Departments.

II. Summary of the Major Provisions of this Regulatory Action

This regulatory action establishes age, aptitude, character/conduct, citizenship, dependents, education, medical, physical fitness, and other disqualifying conditions that are causes for rejection from military service. Other standards may be prescribed in the event of mobilization or national emergency. This regulatory action also sets standards designed to ensure that individuals under consideration for enlistment, appointment, and/or induction are able to perform military duties successfully and to select those who are the most suitable for Service life; and removes provisions related to homosexual conduct.

III. Costs and Benefits of this Regulatory Action

Administrative costs are negligible. The benefit of publishing this final rule is that it establishes standards to ensure that those who are enlisted, appointed, or inducted are the best qualified to

complete their prescribed training and the best able to adapt to the military life. Failure to maintain these standards would result in a high attrition of personnel and would significantly increase training costs. The success of today's All-volunteer military is dependent on this policy.

REGULATORY PROCEDURES

Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”

Executive Orders 13563 and 12866 direct 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, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has not been designated a “significant regulatory action” under section 3(f) of Executive Order 12866.

Pub. L. 104-4, “Unfunded Mandates Reform Act” (2 U.S.C. Ch. 25)

Section 1532 of title 2, United States Code requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately \$141 million. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601)

The Department of Defense certifies that this final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic

impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 66 does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. The following existing clearances will be utilized:

0701-0101 – “Air Force ROTC College Scholarship Application”

0701-0150 – “Air Force Recruiting Information Support System - Total Forces (AFRISS-TF)”

0702-0073 – “U.S. Army ROTC 4-year College Scholarship Application”

0702-0111 – “Army ROTC Referral Information”

0703-0020 – “Enlistee Financial Statement”

0704-0006 – “Request for Verification of Birth”

0704-0173 – “Record of Military Processing - Armed Forces of the United States”

0704-0413 – “Medical Screening of Military Personnel”

0704-0415, “Application for Department of Defense Common Access Card - DEERS Enrollment”

The Department will continue to review its processes to identify collection instruments and consider how these collection tools may be improved and make revisions accordingly. The Department welcomes comments on how you think we can improve on our information collection activities.

Executive Order 13132, “Federalism”

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct

requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 66

Armed forces, Qualification standards.

Accordingly, the interim final rule published at 80 FR 16269-16277 on March 27, 2015 is adopted as a final rule with the following changes:

PART 66—[AMENDED]

1. The authority citation for part 66 continues to read as follows:

Authority: 10 U.S.C. 504, 505, 520, 532, 12102, 12201, and 12205.

2. Amend §66.3 by revising paragraphs (2) and (3) of the definition of “Dependent” to read as follows:

§66.3 Definitions.

* * * * *

Dependent.

* * * * *

(2) An unmarried step-child under the age of 18 living with the applicant.

(3) An unmarried biological child or unmarried adopted child of the applicant under the age of 18.

* * * * *

3. Amend §66.5 by:

a. Revising paragraph (a).

b. Removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

The revision reads as follows:

§66.5 Responsibilities.

(a) Under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), the Assistant Secretary of Defense for Manpower and Reserve Affairs (ASD(M&RA)):

(1) Acts as an advisor to the USD(P&R) on the Reserve enlistment and appointment standards.

(2) Acts as an advisor to the USD(P&R) on the height and weight requirements of the standards in §66.6.

(3) Ensures the U.S. Military Entrance Processing Command assists the Military Services in implementing the standards in §66.6.

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§66.6 [Amended]

4. Amend §66.6 by:

a. In paragraph (b)(2)(ii), adding the words “,when not operating as a Service under the Navy” after “The Secretary of Defense (or the Secretary of Homeland Security for the Coast Guard.”

b. In paragraph (b)(3)(ii), removing “Bearers of alternative credential” and adding in its place “Bearers of an alternative credential.”

c. In paragraph (b)(8)(iii), adding a comma after the words “conviction” and “adjudication.”

d. In paragraph (b)(8)(vi)(A), removing “(OPM)” and adding in its place “(Office of Personnel Management (OPM)).”

e. In paragraph (b)(9)(ii), removing the comma after “The MEPS Chief Medical Officer.”

§66.7 [Amended]

5. Amend §66.7 by:

- a. At the end of paragraph (a) introductory text, adding the sentence “The waiver procedure is not automatic, and approval is based on each individual case.”
- b. In paragraph (a)(3), adding the sentence “Waivers are not authorized for cases noted in §66.6(b)(8)(iii).” at the end of the paragraph.
- c. In paragraph (b)(1), removing “State or federal jurisdiction” and adding in its place “the appropriate State or federal jurisdiction.”

Dated: September 13, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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