



BILLING CODE: 5001-06

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 233

[Docket ID: DOD-2019-OS-0103]

RIN 0790-AK90

Federal Voting Assistance Program (FVAP)

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

ACTION: Interim final rule.

SUMMARY: This regulatory action amends current policy and assignments of responsibility for the Federal Voting Assistance Program (FVAP). The FVAP assists overseas service members and other overseas citizens to exercising their voting rights by serving as a critical resource to successfully register to vote.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be received by [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number and/or Regulation

Identifier Number (RIN) number and title, by any of the following methods:

Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name and docket number or RIN for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: David Beirne, (571) 372-0727.

SUPPLEMENTARY INFORMATION:

Summary of New and Amended Regulatory Provisions and Their Impact

DoD is making these amendments to maximize voter awareness of Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) eligibility and resources.

This rule modifies existing regulations at 84 FR 59720 to:

- Include the United States Maritime Administration (MARAD) under agreement with the Department of Transportation and the United States Postal Service (USPS).
- Require DoD components to establish component-wide programs to communicate and disseminate voting information, with the goal of improving communication and clarity for the impacted population.
- Require federal agencies to enter into memorandums of understanding (MOU) with the DoD to provide accurate, nonpartisan voting information and assistance to ensure military and overseas voters understand their voting rights, how to register and apply for an absentee ballot, and how to return their absentee ballot successfully.

Entering into MOUs with other federal agencies will allow the FVAP to strengthen its communications by expanding its outreach through other federal agencies. This will allow agencies to link to the FVAP.gov website and augment existing voter assistance information.

These efforts seek to boost voter awareness, education and participation in upcoming election cycles.

For example, including MARAD under agreement with the Department of Transportation will allow the FVAP to better serve Merchant Marine uniformed service members because MARAD will directly coordinate FVAP guidance and instructions to better communicate with Merchant Marine members about how to vote absentee under UOCAVA.

Because the USPS provides essential services to assure the distribution of balloting materials to eligible voters and voted ballots to election official this rule amendment will allow ballots to be more expeditiously carried and tracked by USPS. Thus more ballots will be successfully returned to election officials prior to the deadline to receive ballots.

Background and Legal Basis for this Rule

The FVAP administers the UOCAVA on behalf of the Secretary of Defense, as the Presidential designee under 52 U.S.C. 20301(a) and Executive Order (EO) 12642, “Designation of Secretary of Defense as Presidential Designee” (53 FR 21975, June 8, 1988).

United States citizens under UOCAVA include:

- Members and eligible family members of the Uniformed Services (Army, Navy, Marine Corps, Air Force, Coast Guard, United States Public Health Service Commissioned Corps, and National Oceanic and Atmospheric Administration Commissioned Corps).
- Members of the Merchant Marine.
- U.S. citizens residing outside of the United States.

Under 52 U.S.C. 20506, State voter registration agencies must provide individuals the opportunity to register to vote or to change their voter registration data when they apply for or receive services or assistance. The Secretary of Defense, under 10 U.S.C. 1566, must prescribe regulations to require the Military Services (Army, Navy, Air Force, and Marine Corps) to implement voting assistance programs that comply with DoD directives.

The Military Services, under 10 U.S.C. 1566a, must designate Installation Voter Assistance Offices to make voting assistance available for military members, their eligible family members and eligible citizens. The Secretary of Defense may authorize the Secretaries of the Military Departments to designate offices on military installations as voter registration agencies under 52 U.S.C. 20506(a)(2) for all purposes of such act. Title 52 U.S.C. 20506(c) requires the Secretary of Defense jointly with each State, to develop and implement procedures for persons to apply to register to vote at recruitment offices of the Armed Forces.

Finally, 52 U.S.C. 22301(c)(1) requires Government departments, agencies, and other entities, upon the Presidential designee's request to distribute balloting materials and cooperate in carrying out UOCAVA.

Additional information regarding internal DoD processes related to this program is contained in DoD Instruction 1000.04, "Federal Voting Assistance Program (FVAP)," which is publicly available at

<http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/100004p.pdf?ver=2017-12-01-105434-817>.

Interim Final Rule Justification

- DoD is issuing this rulemaking as an interim final rule and has determined that, under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), it would be impracticable, unnecessary, and contrary to the public interest to delay a final regulation until a public notice-and-comment process has been completed.

The conclusion of a public notice-and-comment period before the rule is finalized would be impracticable because it would impede timely execution of DoD's responsibilities under UOCAVA. Younger uniformed Service members and their family members who have not previously voted make up a large percentage of military voters and may need more explicit instructions on how to vote absentee. This includes understanding the absentee voting process or finding information on registration deadlines. As service members and their families are often stationed outside of the United States, and thus outside of their voting jurisdiction, physically getting to a polling location on Election Day may be impracticable.

Extensive outreach has already begun at www.fvap.gov in preparation for this election cycle to provide specific and detailed voting information. Current outreach includes: identifying the eligible population of uniformed service members and their family members; ongoing efforts to communicate with potential enrollees about eligibility, enrollment, and key dates for enrolling in absentee voting; and FVAP's continuing work to ensure Service members, their eligible family members, and overseas citizens are aware of their right to vote and have the tools and resources to successfully do so from anywhere in the world.

Furthermore, the FVAP office has been working in coordination with the Military Services and federal agencies to inform the current population as absentee ballot voting began in December

2019. This 2020 election schedule requires this rule to be effective immediately for citizens voting under UOCAVA to be supported through enhanced voting assistance programs within the Federal departments and agencies.

The 2020 election cycle started with the February 11, 2020, New Hampshire Presidential Preference Primary and continues through the November 3, 2020, general election. Not having this rule in place would be contrary to the public interest for service members and their families

For these reasons, DoD has determined that good cause exists for waiving proposed rulemaking and instead issuing an Interim Final Rule. DoD will consider public comments received on this Interim Final Rule in a subsequent Final Rule.

Expected Impact of the Interim Final Rule

The amendment of the current policies is intended to establish uniform framework within the Government on how to interact and disseminate communications with the impacted public populations overseas. This includes maximizing awareness of UOCAVA eligibility, and providing resources to the impacted public populations. The goal of these changes is to maximize voting assistance effectiveness and outcomes, addressing known concerns impacting the public, ahead of this upcoming election cycle.

DoD believes these amendments will facilitate the Government's coordination role in providing voter assistance to absent uniformed service voters and overseas voters. This will support the government's efforts to implement a comprehensive program to cover all Executive Branch agencies and overseas citizens more broadly under UOCAVA.

EO 12866, “Regulatory Planning and Review”; EO 13563, “Improving Regulation and Regulatory Review”; and EO 13771, “Reducing Regulation and Controlling Regulatory Costs”

EOs 12866 and 13563 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). EO 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a “significant regulatory action,” under Section 3(f) of EO 12866 and was not reviewed by the Office of Management and Budget. The rule is not expected to be an EO 13771 regulatory action, because it is not significant under EO 12866.

Congressional Review Act, 5 U.S.C. 804(2)

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of \$100 million or more, or have certain other impacts.

This rule is not a major rule under the Congressional Review Act.

Sec. 202, Pub. L. 104-4, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies 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. This rule will not mandate any requirements for State, local, or tribal governments, nor will the rule affect private sector costs.

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

The DoD certifies that this 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 determined that 32 CFR part 233 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, “Federalism”

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 233

Civil rights, Elections, Voting rights.

For the reasons stated in the preamble, the Department of Defense amends 32 CFR part 233 as follows:

PART 233—FEDERAL VOTING ASSISTANCE PROGRAM (FVAP)

1. The authority citation for part 233 is revised to read as follows:

Authority: E.O. 12642; 10 U.S.C. 1566a; 52 U.S.C. 20506; 52 U.S.C. Ch. 203.

2. Amend § 233.2 by:

a. In paragraph (b), removing the period at the end of the first sentence and adding “, and the United States Maritime Administration (MARAD) under agreement with the Department of Transportation.”

b. Adding paragraph (d).

The addition reads as follows:

§ 233.2 Applicability.

* * * * *

(d) United States Postal Service pursuant to 52 U.S.C. 20304(b)(2) and (4).

2. Amend § 233.6 by:

a. Adding paragraph (b)(5).

b. In paragraph (c)(1), after “Department of Health and Human Services,” removing “are encouraged” and adding in its place “ shall enter into agreements with the Presidential designee”.

The addition reads as follows:

§ 233.6 Procedures.

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(b) * * *

(5) Establish a DoD Component-wide means to communicate effectively with and expeditiously disseminate voting information to Commanders, VAOs, and uniformed services and overseas DoD civilian members of the DoD Component and their voting age dependents. This communication effort should be coordinated with the FVAP.

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Dated: February 19, 2020

Morgan E. Park

Alternate OSD Federal Register Liaison Officer

Department of Defense

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