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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 233

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

RIN 0790-AI27

Federal Voting Assistance Program (FVAP)

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

ACTION: Final rule.

SUMMARY: This regulatory action amends the Department of Defense rule for the Federal Voting Assistance Program (FVAP) to remove internal policy and assignments of responsibility and otherwise make administrative updates. The FVAP assists service members serving away from home and other overseas citizens in exercising their voting rights by serving as a critical resource for these individuals to successfully register to vote and to vote absentee.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Scott Wiedmann, 571-372-0760.

SUPPLEMENTARY INFORMATION:

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

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

This regulatory action amends Part 233 to remove DoD internal policies and procedures, which do not require rulemaking and are otherwise publicly available on www.fvap.gov and in DoD Instruction 1000.04. This rule also makes administrative updates to legal citations. Finally, this rule removes the responsibility for the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) to establish a demonstration project to permit absent uniformed services voters to vote for Federal office through an electronic voting system.

Background

This part was last published on September 18, 2012, as an interim final rule (77 FR 57487). The rule provided direction and guidance to the Department of Defense and other Federal departments and agencies in establishing voting assistance programs for citizens covered by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) as modified by the Military and Overseas Voter Empowerment Act. It established policy and assigned responsibilities for the development and implementation of installation voter assistance (IVA) offices. It also established policy for the development and implementation, jointly with each State, of procedures for persons to apply to register to vote at recruitment offices of the Military Services. No comments were received during the comment period that ended on November 19, 2012. This finalizes the interim final rule with the exception of removing internal policies and procedures and making administrative updates.

Legal Authority for this Program

FVAP administers the UOCAVA, 52 U.S.C. Chapter 203, on behalf of the Secretary of Defense, as the Presidential designee under 52 U.S.C. 20301(a). See Executive Order No. 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 Marines.
- U.S. citizens residing outside of the United States.

52 U.S.C. 20506, requires State voter registration agencies to 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.

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.

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.

Pub. L. 113–291, div. A, title V, §593, Dec. 19, 2014, 128 Stat. 3395 repeals Pub. L. 107–107, div. A, title XVI, §1604, Dec. 28, 2001, 115 Stat. 1277, as amended by Pub. L. 108–375, div. A, title V, §567, Oct. 28, 2004, 118 Stat. 1919, which established a demonstration project under which absent uniformed services voters were permitted to vote in a general election for Federal office through an electronic voting system.

Summary of Major Provisions

This regulatory action:

- Removes DoD internal policies and procedures, which do not require rulemaking and are available on Government websites in order to increase transparency and clarity for the public.
- Removes the responsibility for the USD(P&R) to establish a demonstration project to permit absent uniformed services voters to vote for Federal office through an electronic voting system.

In the National Defense Authorization Act for Fiscal Year 2015, Congress eliminated this requirement. DoD no longer explores program implementation in this area.

- Makes administrative changes to the United State Code citations. In 2014, the Law Revision Counsel, U.S. House of Representatives transferred provisions relating to voting and elections were in the United States Code from Titles 2 and 42 into a new Title 52, Voting and Elections. No statutory text was altered. The provisions were relocated from one place to another in the Code.

Executive Order 12866, “Regulatory Planning and Review”, Executive Order 13563, “Improving Regulation and Regulatory Review”, and Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs”

Executive Orders 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this rule is not a significant regulatory action.

The amendments to this rule remove duplicative and unnecessary rule text, and makes other administrative changes. This rule has been deemed not significant under Executive Order (EO) 12866, “Regulatory Planning and Review,” therefore, the requirements of EO 13771, “Reducing Regulation and Controlling Regulatory Costs,” do not apply.

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 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.

§ 233.1 [Amended]

2. Amend § 233.1 by:

a. In paragraph (a), removing "42 U.S.C. 1973ff-1973ff-6" and adding in its place "52 U.S.C. Ch. 203".

b. In paragraph (c), removing "42 U.S.C. 1973gg-5" and adding in its place "52 U.S.C. 20506".

§ 233.2 [Amended]

3. Amend § 233.2(c) by removing "42 U.S.C. 1973ff(c)" and adding in its place "52 U.S.C. 20301(c)".

4. Amend § 233.3 by:

a. In the introductory paragraph:

i. Removing “Joint Publication 1-02” and adding in its place “DoD Dictionary of Military Terms”.

ii. Removing “http://www.dtic.mil/doctrine/dod_dictionary/” and adding in its place “<http://www.jcs.mil/Doctrine>”.

b. Revising the definition of "Installation voter assistance (IVA) offices".

c. Removing the definitions of “Metrics,” “Senior service voting representative (SSVR),” and “Service voting action officer (SVAO)”.

d. Revising the definitions of “State” and “Uniformed services”.

e. Removing the definition of "Unit voting assistance officer (UVAO)".

f. Revising the definition of “Voter registration agency”.

g. Adding the definition of “Voting assistance officer (VAO)” in alphabetical order.

The revisions and additions read as follows:

§ 233.3 Definitions.

* * * * *

Installation voter assistance (IVA) offices. The office designated by the installation commander, pursuant to 10 U.S.C. 1556a, to provide voter assistance to military personnel, voting-age military dependents, Government employees, contractors, and other civilian U.S. citizens with access to the installation. IVA offices also serve as voter registration agencies pursuant to 52 U.S.C. 20506(a)(2).

* * * * *

State. A State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

* * * * *

Uniformed services. The Army, Navy, Air Force, Marine Corps, and Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

Voter registration agency. An office designated pursuant to 52 U.S.C. 20506 to perform voter registration activities. Pursuant to 52 U.S.C. 20506(c), a recruitment office of the Military Services is considered to be a voter registration agency. All IVA offices are also designated as voter registration agencies pursuant to 52 U.S.C. 20506(a)(2).

Voting assistance officer (VAO). An individual responsible for voting assistance.

§ 233.4 [Amended]

5. Amend § 233.4 by:

a. In paragraph (a), removing "42 U.S.C. 1973ff(b)(5)" and adding in its place "52 U.S.C. 20301(b)(5)".

b. In paragraph (d), removing "42 U.S.C. 1973ff" and adding in its place "52 U.S.C. 20301".

§ 233.5 [Amended]

6. Amend § 233.5 by:

a. In paragraph (a)(1), removing "<http://www.dtic.mil/whs/directives/corres/pdf/512402p.pdf>." and adding in its place

"<https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/512402p.pdf>."

b. In paragraph (a)(2), removing "42 U.S.C. 1973gg-5, and 42 U.S.C. 1973ff—1973ff-6" and adding in its place "52 U.S.C. 20506; 52 U.S.C. Ch. 203".

c. In paragraph (a)(3):

i. Removing "42 U.S.C. 1973gg-5, 42 U.S.C. 1973ff—1973ff-6", and adding in its place "52 U.S.C. 20506; 52 U.S.C. Ch. 203".

ii. Removing "Section 1604 of Public Law 107-107, "The National Defense Authorization Act for Fiscal Year 2002," and Section 567 of Public Law 108-375, "The National Defense Authorization Act for Fiscal Year 2005"."

d. In paragraph (a)(4), removing "42 U.S.C. 1973gg-5" and adding in its place "52 U.S.C. 20506".

e. In paragraph (a)(5), removing "42 U.S.C. 1973ff-1(g)" and adding in its place "52 U.S.C. 20302(g)".

f. Removing paragraphs (a)(6), (b), (c), and (d).

g. Redesignating paragraph (e) as paragraph (b).

h. Removing paragraph (f).

7. Amend § 233.6 by:

a. In paragraph (a), removing "The Director,".

- b. In paragraph (a)(1), removing "42 U.S.C. 1973ff" and adding in its place "52 U.S.C. Ch. 203."
- c. Redesignating paragraphs (a)(3) through (19) as (a)(2) through (18).
- d. In newly redesignated paragraph (a)(2):
 - i. Removing "42 U.S.C. 1973ff-1" and adding in its place "52 U.S.C. 20302".
 - ii. Removing "42 U.S.C. 1973ff" and adding in its place "52 U.S.C. Ch. 203."
- e. In newly redesignated paragraph (a)(3), removing "Consult with the Defense State Liaison Office which is the DoD office for contact and coordination with Federal, State, and local government entities for legislative and other policy matters involving voting assistance and elections pursuant to 42 U.S.C. 1973ff *et seq.*".
- f. In newly redesignated paragraph (a)(4):
 - i. Adding a " ," after "DoD Components".
 - ii. Removing "42 U.S.C. 1973ff(b)(5)" and adding in its place "52 U.S.C. 20301(b)(5)".
- g. In newly redesignated paragraph (a)(5), removing "42 U.S.C. 1973ff *et seq.*" and adding in its place "52 U.S.C. Ch. 203".
- h. In newly redesignated paragraph (a)(6)(iv), removing "42 U.S.C. 1973ff-1(e)(4)" and adding in its place "52 U.S.C. 20302(e)(4)."
- i. In newly redesignated paragraph (a)(6)(vii):
 - i. Removing "42 U.S.C. 1973ff(b)(6)" and adding in its place "52 U.S.C. 20301(b)(6)".
 - ii. Removing "42 U.S.C. 1973ff-4A" and adding in its place "52 U.S.C. 20308".
- j. In newly redesignated paragraph (a)(6)(viii), removing "Director,".
- k. In newly redesignated paragraph (a)(7):
 - i. Adding a " ," after "but not limited to".
 - ii. Removing "42 U.S.C. 1973ff *et seq.*" and adding in its place "52 U.S.C. Ch. 203".

- iii. Removing "42 U.S.C. 1973ff(6)" and adding in its place "52 U.S.C. 20301(6)".
- iv. Removing "42 U.S.C. 1973ff-4A" and adding in its place "52 U.S.C. 20308."
- l. In newly redesignated paragraph (a)(8), removing "42 U.S.C. 1973ff(7)" and adding in its place "52 U.S.C. 20301(7)".
- m. Removing newly redesignated paragraphs (a)(10) and (11), and redesignating newly redesignated (a)(12) and (a)(13) as (a)(10) and (a)(11).
- n. In newly redesignated paragraph (a)(10), removing "42 U.S.C. 1973ff-1(g)" and adding in its place " 52 U.S.C. 20302(g)".
- o. Removing newly redesignated paragraphs (a)(14) and (15), and redesignating newly redesignated (a)(16) as (a)(12).
- p. Removing newly redesignated paragraph (a)(17).
- q. Redesignating newly redesignated paragraph (a)(18) as (a)(13).
- r. In newly redesignated paragraph (a)(13), removing "42 U.S.C. 1973ff" and adding in its place "52 U.S.C. 20301."
- s. Removing paragraphs (b)(1) through (b)(4), and redesignating (b)(5) as (b)(1).
- t. In newly redesignated paragraph (b)(1)(i), removing "42 U.S.C. 1973gg-5(a)(2)" and adding in its place "52 U.S.C. 20506(a)(2)".
- u. In newly redesignated paragraph (b)(1)(iii), removing "42 U.S.C. 1973gg-5(a)(4)" and adding in its place "52 U.S.C. 20506(a)(4)".
- v. In newly redesignated paragraph (b)(1)(iv)(B), removing “uniformed services members” and adding in its place “members of a uniformed service”.
- w. Removing newly redesignated paragraphs (b)(1)(iv)(C)(2), (D) and (H), and redesignating paragraphs (b)(1)(iv)(E), (F), and (G) as paragraphs (b)(1)(iv)(D), (E), and (F).

- x. Removing paragraphs (b)(6) through (b)(22), and redesignating (b)(23) as (b)(2).
- y. Removing paragraphs (b)(24) through (b)(29), and redesignating (b)(30) as (b)(3).
- z. In newly redesignated paragraph (b)(3)(i):
 - i. Removing "http://www.eac.gov/voter/Register_to_Vote" and adding in its place "<https://www.eac.gov/voters/register-and-vote-in-your-state/>".
 - ii. Removing "<http://www.dtic.mil/whs/directives/infomgt/forms/forminfo/forminfopage2084.html>" and adding in its place "<http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2645.pdf>".
- aa. In newly redesignated paragraph (b)(3)(v):
 - i. Removing "Director,".
 - ii. Removing "two" and adding in its place "2".
 - iii. Removing "42 U.S.C. 1973gg(6)(i)" and adding in its place "52 U.S.C. 20507(i)."
- bb. Removing paragraphs (b)(31) through (b)(32), and redesignating (b)(33) as (b)(4).
- cc. In paragraph (c)(2), removing "42 U.S.C. 1973ff(c)" and adding in its place "52 U.S.C. 20301(c)."
- dd. In paragraph (c)(2)(ii), removing "42 U.S.C. 1973ff" and adding in its place "52 U.S.C. 20301" and revising the last sentence.
- ee. In paragraph (c)(2)(iii), removing "Director,".
- ff. In paragraph (c)(2)(v), removing "Director,".
- gg. In paragraph (c)(2)(vi):
 - i. Adding "installation," before "embassy".
 - ii. Adding "U.S." before "civilians".

The revisions and additions read as follows:

§233.6 Procedures.

(c)

(2)

(iii)*** The name, mailing address, email address, and telephone number of this individual shall be provided to the FVAP.

Dated: October 28, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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