

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-181814

DATE:

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JUN 6 1975

MATTER OF: Proposed revisions of Coast Guard Regulations

DIGEST:

Coast Guard Regulations may not be amended to permit Reserve members serving on inactive duty for training who are permitted to receive rations-in-kind under the last sentence of 37 U.S.C. 402(b), to receive a subsistence allowance in lieu thereof, since 37 U.S.C. 402 (a) limits such entitlement to those members receiving basic pay.

This action is in response to a letter from Rear Admiral J. B. Hayes, Comptroller, United States Coast Guard, requesting an advance decision concerning the propriety of amending Coast Guard Regulations to permit payment of subsistence allowances under 37 U.S.C. 402(b) (1970), in lieu of providing rations-in-kind to certain members of the Coast Guard Reserve in an inactive duty training (INACDUTRA) status.

The submission states that under an augmentation program recently developed for the purpose of assisting performance of Coast Guard missions and providing a meaningful training experience for the Coast Guard Reserve, Reserve members are assigned as relief for members at an active duty operating unit of the Coast Guard, such as a group office, station or cutter. Under this program, often only one Reserve member is assigned to a particular location and in many instances must travel significant distance from his normal INACDUTRA site to the active duty unit, which many times has inadequate messing facilities. Further, the nature of the duties which the reservist is called upon to perform occasionally makes it impossible to provide him with rations-in-kind in such a situation.

The submission goes on to state that as a consequence of the program, it has been found necessary to permit these Reserve members to perform multiple drills for periods extending for more than eight hours in a calendar day instead of the normal training period of four hours. In such circumstances, the affected Reserve members become entitled to rations-in-kind under the provisions of 37 U.S.C. 402(b). However, since such rations-in-kind are often unavailable to them, the Coast Guard is desirous of amending its regulations to permit payment of a monetary allowance in lieu thereof.

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The submission indicates that 37 U.S.C. 402(b) contains the requisite authority for amending the Coast Guard Regulations to permit payment of a monetary allowance in lieu of rations-in-kind to Reserve members in the situation described, as is granted to regular personnel.

The basis for such view is that the last sentence of 37 U.S.C. 402(b) creates an entitlement, in the discretion of the Secretary concerned, to provide rations-in-kind when a member of the Reserve performs INACDUTRA for a period of 8 or more hours in one calendar day. Further, this discretion has been exercised by the Coast Guard and the members of the Reserve meeting these requirements are presently entitled to rations-in-kind. The submission suggests that this entitlement must be construed with the first sentence of the subsection, which grants subsistence allowance to a member when rations-in-kind are not available. As a result, and since many INACDUTRA reservists will perform their duty for more than 8 hours in one day and rations-in-kind are not available, they are entitled to subsistence in lieu thereof.

Section 402 of title 37, United States Code, provides in pertinent part:

"(b) An enlisted member is entitled to the basic allowance for subsistence, on a daily basis, of one of the following types--

"(1) when rations in kind are not available;

* * * * *

" * * * Unless he is entitled to basic pay under chapter 3 of this title, an enlisted member of a reserve component of a uniformed service, or of the National Guard, is entitled, in the discretion of the Secretary concerned, to rations in kind, or a part thereof, when the instruction or duty periods, described in section 206(a) of this title, total at least eight hours in a calendar day."

Prior to the above revision of title 37, United States Code, by Public Law 87-649, approved September 7, 1962, 78 Stat. 451, the basic provisions of subsection 402(b) were contained in 37 U.S.C. 251, 251a and 301(a) (1958 ed.).

Former section 251 provided in pertinent part:

"(a) Except as otherwise provided in this section or by any other provision of law, such member of the uniformed services entitled to receive basic pay shall be entitled to receive a basic allowance for subsistence in such amount and under such circumstances as are provided in this section. For enlisted persons such allowance shall be one of three types: (1) When rations in kind are not available; (2) when permission to mess separately is granted; or (3) when assigned to duty under emergency conditions where no Government messing facilities are available. * * *"

Former section 301, which related to training duty of Reserve and National Guard Personnel, provided in pertinent part:

"(a) * * * in the discretion of the Secretary concerned, enlisted members of the above services /including Coast Guard Reserve/ shall be entitled to rations in kind, or a portion thereof, when the instruction or duty period or periods concerned total eight or more hours in any one calendar day * * *."

While former section 251 of title 37, United States Code, was derived from section 301 of the Career Compensation Act of 1949, approved October 12, 1949, ch. 681, 63 Stat. 812, the before-quoted segment of former section 301 of title 37, United States Code, did not exist until enactment of section 244 the Armed Forces Reserve Act of 1952, approved July 9, 1952, ch. 608, 66 Stat. 494, which amended section 501 of the Career Compensation Act, supra. Thus, enactment of former section 251 could not have been intended to grant a subsistence allowance in lieu of rations-in-kind to reservists in an INACDUTRA status, who were not at that time entitled by statute to rations-in-kind.

The legislative history of former section 251 fails to provide any evidence to the contrary. Additionally, the legislative history

of former section 301 presents no indication of a congressional intent to create an entitlement beyond that of rations-in-kind.

It should also be observed that former section 251 specifically provided that a subsistence allowance in lieu of rations-in-kind is only authorized to a "member of the uniformed services entitled to receive basic pay," which limitation was carried forward in the codification of title 37, United States Code, by Public Law 87-649, supra. In this regard, section 12 of Public Law 87-649 provides that "it is the legislative purpose to restate, without substantive change, the law replaced by" sections 1-11 of the act.

Under the last sentence of subsection 402(b), reservists in an INACDUIRA status are entitled to receive rations-in-kind. It provides this entitlement to a member of a Reserve component of a uniformed service, "unless he is entitled to basic pay under chapter 3 of this title." In this connection, 37 U.S.C. 206(a) (1970), which authorizes pay to a member of a Reserve component on inactive duty training status, contains no language indicating an entitlement to basic pay, but merely entitles a Reserve member "who is not entitled to basic pay" to receive "compensation at the rate of 1/30 of the basic pay authorized," while other sections of chapter 3 which authorize basic pay apart from the general provision of 37 U.S.C. 204 (1970) unambiguously state that only a member serving on active duty is entitled to "basic pay."

At present, the other uniform services carefully limit subsistence allowance in lieu of rations-in-kind to members entitled to basic pay. The Department of Defense Military Pay and Allowances Entitlements Manual clearly distinguishes between reservists serving on active duty and reservists in an inactive duty training status.

Since there is nothing in the legislative history of Public Law 87-649, supra, to indicate that additional rights were created under subsection 402(b) by its enactment, it is our view that the right to receive a subsistence allowance where rations-in-kind are not available must remain limited to a "member of the uniformed services entitled to receive basic pay."

In view of the foregoing, the Coast Guard regulations may not be amended to permit payment of subsistence allowances in lieu of providing rations-in-kind.

[Deputy] E. J. KELLEY
Comptroller General
of the United States