

# Rules and Regulations

Federal Register

Vol. 72, No. 115

Friday, June 15, 2007

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 531 and 550

RIN 3206-AL09

#### Locality-Based Comparability Payments and Evacuation Payments

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** These regulations finalize the interim regulations that provide the rules for determining an employee's official worksite when he or she teleworks from an alternative worksite during an emergency situation, such as a pandemic health crisis, and permit an agency to provide evacuation payments to an employee who is ordered to evacuate from his or her regular worksite and directed to work from home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis. The final regulations revise the interim regulations to clarify that an employee need not have a telework agreement when directed to work from home. These regulations are issued as part of OPM's efforts to provide agencies with guidance to ensure they are able to fulfill their critical missions while at the same time protect their employees should a pandemic health crisis occur.

**DATES:** The regulations are effective July 16, 2007.

**FOR FURTHER INFORMATION CONTACT:** Gene Holson by telephone at (202) 606-2858, by fax at (202) 606-0824, or by e-mail at [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov).

**SUPPLEMENTARY INFORMATION:** On August 17, 2006, the Office of Personnel Management (OPM) published interim regulations (71 FR 47692) in 5 CFR parts 531 and 550 concerning pay actions for employees affected by a pandemic

health crisis. The interim regulations (1) Clarified the rules for determining an employee's official worksite for the purpose of identifying his or her location-based pay entitlements when the employee teleworks from an alternative worksite during an emergency situation such as a pandemic health crisis and (2) authorized agencies to provide evacuation payments to an employee who is ordered to evacuate from his or her regular worksite and directed to work from the employee's home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis. The 60-day comment period for the interim regulations ended on October 16, 2006. OPM received comments from three Federal agencies.

One agency commented on the use of the term "critical missions" in the summary of the interim regulations: "These regulations are issued as part of OPM's efforts to provide agencies with guidance to ensure they are able to fulfill their critical missions while at the same time protect their employees should a pandemic health crisis occur." The commenter noted that "The National Strategy for Pandemic Influenza" and "Federal Preparedness Circular 65" use the term "essential functions" instead of "critical missions." The agency recommended that OPM replace the term "critical missions" with "essential functions" to ensure consistency in the terminology used in other Federal guidance. We are not making this change. We used "critical missions" in the summary accompanying the interim regulations to be consistent with the terminology used in OPM's *Pandemic Influenza* guidance on OPM's Web site at <http://www.opm.gov/pandemic/index.asp>. The term itself is not in the interim or final regulations.

#### Official Worksite

The same agency also requested clarification of the provision in § 531.605(d)(3), which states that an authorized agency official may make a temporary exception to the requirement that a telework employee must report at least once a week on a regular and recurring basis to the regular worksite in order for the employee to continue receiving the locality rate for the regular worksite. The commenter inquired as to whether there is a time limit on how

long a temporary exception under § 531.605(d)(3), may be in effect. There is no such time limit. The intent of § 531.605(d)(3) is to address certain situations where the employee is retaining his or her residence in the commuting area for the regular worksite but is temporarily unable to report to the regular worksite for reasons beyond the employee's control. The fact that an employee may receive lesser pay or benefits if the official worksite is changed to the telework location is not a basis or justification for using this temporary exception. A key consideration is the need to preserve equity between the telework employee and non-telework employees who are working in the same area as the telework location. The temporary exception should generally be used only in cases where (1) the employee is expected to stop teleworking and return to work at the regular worksite in the near future, or (2) the employee is expected to continue teleworking but will be able to report to the regular worksite at least once a week on a regular and recurring basis in the near future. Examples of appropriate temporary situations include: (1) Recovery from an injury or medical condition, or to assist with a family member's recovery from an injury or medical condition; (2) emergency situations that prevent an employee from regularly commuting to the normal worksite, such as a severe weather emergency or a pandemic health crisis; or (3) the employee is away from the area on extended official travel. (See the revised fact sheet, *Official Worksite for Location-Based Pay Purposes*, on OPM's Web site at [http://www.opm.gov/oca/pay/html/Official\\_Duty\\_Station.asp](http://www.opm.gov/oca/pay/html/Official_Duty_Station.asp).) The commenter also asked whether the authority to make a temporary exception may be delegated. The regulatory provisions at § 531.605(d)(3) do not restrict an agency's ability to delegate the authority to make such temporary exceptions.

#### Evacuation Payments

One agency suggested there is too much emphasis on "pandemic health crisis" in the regulations and recommended replacing that term with "emergency situations, such as a pandemic health crisis" because the agency believes that most emergency situations will be weather-related and

not health-related. In addition, the agency suggested there is no need for the new regulations at § 550.409. The agency recommended deleting § 550.409 and suggested adding the term “such as a pandemic health crisis” after “other reasons” to the regulations at § 550.401(a). We are not adopting these recommendations. Unlike emergency situations where employees may be ordered to evacuate a designated geographic area (including evacuating their worksites and homes), during a pandemic health crisis employees may likely be ordered to evacuate their worksites to promote “social distancing” but not ordered to evacuate their homes. Because of these unique conditions, we believe it is imperative to limit the use of the evacuation payment authority in § 550.409 to a pandemic health crisis.

One agency recommended revising § 550.409(a) to make clear that an agency’s authority during a pandemic health crisis to order an employee to evacuate from his or her worksite and perform work from the employee’s home includes the situation where the agency and the employee do not have a telework agreement in place at the time the order to evacuate is issued. We agree and have revised § 550.409(a). The agency also recommended that OPM delete the provision in § 550.409(a) which limits an agency’s authority to order an employee to perform work from a location other than the employee’s home to a location that is “mutually agreeable to the agency and the employee.” The agency believes it is impractical to require an agency and an employee to engage in discussions with the intent of reaching an agreement as to where the employee is going to work, especially in the context of an emergency health crisis. We are not adopting this recommendation. During a pandemic health crisis, if an employee does not comply with his or her agency’s order to work from home, or the agency and the employee cannot agree on an alternative work location, the agency may disapprove the employee’s evacuation payments. Under these circumstances, the employee may be required to use his or her accrued annual leave (*i.e.*, “enforced leave”), may be furloughed, or disciplined, as appropriate.

One agency noted that the issue of temporary promotion pay is not clearly addressed in the regulations. Under § 550.409(a), evacuated employees may be assigned to perform any work necessary or required to be performed without regard to his or her grade, level, or title. The regulations also require agencies to compute evacuation

payments under § 550.404, which states that evacuation payments must be based on the rate of pay to which the employee was entitled immediately before the issuance of the order to evacuate. The commenter recommended revising the regulations to clarify that evacuation payments must be based on the rate of pay to which the employee was entitled immediately before the issuance of the order to evacuate, notwithstanding an agency’s policy or collective bargaining agreement regarding an employee’s entitlement to a noncompetitive temporary promotion when the employee is required to perform higher-level duties during the period of evacuation. We are not adopting this recommendation. While there may be circumstances in which it will be necessary to temporarily suspend certain provisions of an agency policy or a collective bargaining agreement in an emergency, it would be inappropriate to provide such a broad authorization to do so. The decision to take such action must be made on a case-by-case basis taking into consideration the facts and circumstances that exist at that time.

#### **E.O. 12866, Regulatory Review**

The Office of Management and Budget has reviewed this rule in accordance with E.O. 12866.

#### **Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

#### **List of Subjects in 5 CFR Parts 531 and 550**

Administrative practice and procedure, Claims, Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

**Linda M. Springer,**  
*Director.*

■ Accordingly, the interim rule amending 5 CFR parts 531 and 550, which was published at 71 FR 47692 on August 17, 2006, is adopted as final with the following change:

#### **PART 550—PAY ADMINISTRATION (GENERAL)**

■ 1. The authority citation for subpart D of part 550 continues to read as follows:

**Authority:** 5 U.S.C. 5527; E.O. 10982, 3 CFR parts 1959–1963, p. 502.

■ 2. Amend § 550.409 by revising the first sentence of paragraph (a) to read as follows:

#### **§ 550.409 Evacuation payments during a pandemic health crisis.**

(a) An agency may order one or more employees to evacuate from their worksite and perform work from their home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis without regard to whether the agency and the employee have a telework agreement in place at the time the order to evacuate is issued.\* \* \*

\* \* \* \* \*

[FR Doc. E7–11584 Filed 6–14–07; 8:45 am]

BILLING CODE 6325–39–P

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 25**

[Docket No. NM379 Special Conditions No. 25–07–12–SC]

#### **Special Conditions: Boeing Model 777–300ER Airplane; Lithium Ion Battery Installation**

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Boeing Model 777–300ER airplane. This airplane as modified by the Boeing Commercial Airplane Company will have a novel or unusual design feature associated with the use of lithium ion battery technology in on-board systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is June 1, 2007. We must receive your comments by July 30, 2007.

**ADDRESSES:** Comments on this rule may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM379, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked Docket No. NM379. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.