

Proposed Rules

Federal Register

Vol. 72, No. 50

Thursday, March 15, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

RIN 3206–AL19

Representative Rate; Order of Release From Competitive Level; Assignment Rights

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations clarifying *representative rate* as used in OPM's retention regulations. These regulations clarify how an agency determines employees' retention rights when the agency has positions in one or more pay bands. These regulations also clarify the order in which an agency releases employees from a competitive level. Finally, these regulations clarify how an agency determines employees' retention rights when a competitive area includes more than one local commuting area.

DATES: We will consider comments received on or before May 14, 2007.

ADDRESSES: You may submit comments, identified by RIN 3206–AL19, by any of the following methods:

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

- *E-mail:* employ@opm.gov. Include "RIN 3206–AL19" in the subject line of the message.

- *Fax:* (202) 606–2329.

- *Mail:* Mark Doboga, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street NW., Washington, DC 20415–9700.

- *Hand Delivery/Courier:* OPM, Room 6551, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT:

Thomas A. Glennon by telephone on 202–606–0960, by FAX on 202–606–

2329, by TDD on 202–418–3134, or by e-mail at employ@opm.gov.

SUPPLEMENTARY INFORMATION:

Representative Rate

To determine released competing employees' rights under OPM's reduction in force regulations in part 351 of title 5, Code of Federal Regulations (CFR), an agency may need to compare positions to determine the employee's eligibility to "bump" or "retreat" to a position in a different pay schedule. When two or more positions are in different pay schedules, the agency compares the representative rate of the positions to determine equivalent grade levels and the best offer of assignment for the released employee.

The agency does not use representative rates to determine released employees' retention standing when all positions are in the same pay schedule. In this situation, the agency directly compares the grades or levels of the positions.

Section 351.203 of OPM's current reduction in force regulations defines *representative rate* as (1) the fourth step of the grade for a position under the General Schedule (GS), (2) the prevailing rate for a position under the Federal Wage System (FWS), or similar wage-determining procedure, and (3) for other positions (e.g., positions in an ungraded pay system, pay band positions, negotiated pay systems), the rate designated by the agency as representative of the position.

OPM proposes to update the definition of *representative rate* in § 351.203 with the following revisions:

1. New paragraph (1) in the definition provides that representative rate is the fourth step of the grade for a position covered by the General Schedule, using the applicable locality rate authorized by 5 U.S.C. 5304 and 5 CFR part 531, subpart F, for GS positions in the 48 contiguous states. If the competitive area includes one local commuting area within a single locality pay area, the agency uses the same locality-adjusted representative rate for all GS positions at the same grade in the competitive area (e.g., all GS–7 positions have the same representative rate without regard to other pay such as special rates). For information, new paragraph (c)(5) of § 351.403 explains that the agency selects a single locality-adjusted representative rate for all GS positions

at the same grade when a competitive area includes more than one local commuting area covering more than one locality pay area.

Under the current definition in § 351.203, representative rate for GS positions does not include locality payments authorized by 5 U.S.C. 5304 and 5 CFR part 531, subpart F. In contrast, pay for FWS positions includes a locality component that is defined as basic pay and is included in the current definition of representative rate.

Our proposed change includes locality payments in the representative rate of GS positions located in the 48 contiguous states. This will allow agencies to determine employees' representative rates using a comparable locality component for both GS and FWS positions.

2. New paragraph (2) in the definition continues current policy that representative rate is the prevailing rate for a position covered by an FWS or similar wage-determining procedure.

3. New paragraph (3) in the definition provides that for positions in a pay band, representative rate is the rate the agency designates as representative of that pay band. Consistent with the inclusion of locality payments in the representative rates for GS positions, the proposed regulations also require agencies to include in the representative rate for a pay band any locality payment under 5 U.S.C. 5304 (or equivalent payment under other legal authority) authorized for a position in that pay band for more equitable position comparisons.

For example, the agency could establish a single representative rate for a pay band that includes administrative and support positions that would otherwise be classified from GS–5 through GS–7, or equivalent.

The current definition of *representative rate* in § 351.203 does not specifically address positions in a pay band. At present, for any positions other than GS and FWS (including positions in a banded system), the agency designates a rate that is representative of those positions.

4. New paragraph (4) in the definition provides that for positions not covered by new paragraphs (1) through (3) (e.g., positions in an unclassified or negotiated pay system), the representative rate is the rate the agency designates as representative of the

position. Again, the proposed regulations require agencies to include any locality payment under 5 U.S.C. 5304 (or equivalent payment under other legal authority) that applies to such a position in the representative rate that it designates. At present, as noted previously, for any positions other than GS and FWS (including positions in an unclassified or negotiated pay system), the agency designates a rate that is representative of those positions.

We note that, as under the current reduction in force regulations, the definition of *representative rate* in the proposed regulations is different from the definition of *representative rate* for the purposes of grade and pay retention under 5 CFR 536.103, severance pay under 5 CFR 550.703, and discontinued service retirement under 5 CFR 831.503(b)(3)(iv) and 842.206(c)(3)(iv). As under the current rules, agencies would need to apply each definition separately.

Competitive Level

In § 351.403, we revise paragraph (c)(4) and add new paragraphs (a)(5), (c)(5), and (c)(6).

New paragraph (a)(5) of § 351.403 provides that if a competitive area includes positions in one or more pay bands, each pay band set of interchangeable positions under the competitive level provisions of paragraphs (a)(1) through (4) of 5 CFR 351.403 is a separate competitive level. As appropriate, the entire pay band may be one competitive level, or the pay band may include multiple competitive levels.

For example, a pay band includes positions traditionally classified from GS-4 through GS-7. If the employees' official positions are identical (*i.e.*, identical positions are always interchangeable), the pay band includes one competitive level with one representative rate even though employees' actual salaries may vary under the agency's pay band compensation system. If the pay band includes three official positions that are not interchangeable under the competitive level provisions of paragraphs (a)(1) through (4) of § 351.403, the pay band includes three competitive levels with the agency determining the appropriate representative rate for each level.

New paragraph (c)(5) of § 351.403 provides that an agency does not establish separate reduction in force competitive levels solely on the basis of a difference in GS locality payments under 5 U.S.C. 5304 when a competitive level includes more than one locality

pay area listed in § 531.603 of this chapter. If a competitive area includes more than one local commuting area covering more than one locality pay area, the agency establishes GS competitive levels on the basis of the representative rates for one local commuting area and locality pay area within the competitive area. For example, if a competitive area includes GS positions in both Norfolk and Richmond, Virginia, the agency would decide whether to establish GS competitive levels on the basis of the representative rate in Norfolk or the rate in Richmond.

Current paragraph (c)(4) of § 351.403 contains a comparable provision for FWS positions. Revised paragraph (c)(4) clarifies this provision. For example, if a competitive area includes FWS positions in both Pensacola, Florida, and Gulfport, Mississippi, the agency would decide whether to establish FWS competitive levels on the basis of the representative rate in Pensacola or the rate in Gulfport.

New paragraph (c)(6) of § 351.403 provides that if a competitive area includes more than one local commuting area, the agency uses the same local commuting area to establish competitive levels under paragraphs (c)(4) (FWS positions) and (c)(5) (GS positions) of § 351.403. In the example with Norfolk and Richmond, the agency would decide whether to establish all its competitive levels on the basis of representative rates in Norfolk, or the rates in Richmond. The agency may not use one local commuting area in the competitive area to establish representative rates for one pay schedule (*e.g.*, GS), and a different local commuting area in the competitive area to establish representative rates for a different pay schedule (*e.g.*, FWS) used in the same reduction in force.

Release From the Competitive Level

In § 351.601, current paragraph (b) is redesignated paragraph (c), paragraph (a) is revised, and new paragraph (b) is added.

Revised paragraph (a) of § 351.601 clarifies that the agency releases employees from a pay band in the same inverse order of retention standing that the agency releases other employees from a competitive level. New paragraph (b) of § 351.601 clarifies longstanding policy that, at its option, an agency may provide for intervening displacement within the competitive level before final release of the employee with the lowest-retention standing from the competitive level.

Assignment Rights

In § 351.701, paragraph (a) is revised and new paragraphs (g), (h), and (i) are added.

New paragraph (g) of § 351.701 provides that if a competitive area includes more than one local commuting area, the agency determines released employees' assignment rights on the basis of the representative rates for the one local commuting area within the competitive area that the agency used to establish competitive levels under 5 CFR 351.403(c)(4), (5), and (6).

New paragraph (h) explains how the agency determines a released employee's assignment rights when all positions in a competitive area are pay band positions. A released employee has a potential assignment right to a position in an equivalent pay band or one pay band lower. A preference eligible with a service-connected disability of 30 percent or more has a potential assignment right to a position in an equivalent pay band or no more than two pay bands lower. The agency is responsible for determining the scope of assignment rights to other pay bands.

New paragraph (i) explains how the agency determines a released employee's assignment rights when a competitive area includes pay band positions and other positions not covered by a pay band. After the agency determines the representative rates of (1) positions not covered by a pay band (in new (i)(1)) and (2) positions covered by a pay band (in new paragraph (i)(2)), new paragraph (i)(3) provides that the agency applies the representative rate of each pay band position to positions not covered by a pay band to determine the potential assignment rights of employees released by reduction in force from pay band positions.

For example, an agency has a pay band that includes positions traditionally classified from GS-4 through GS-7. The employees' official positions are identical and are otherwise interchangeable for purposes of the competitive level provisions in 5 CFR 351.403(a). Under new paragraph (a)(5) of 5 CFR 351.403, the pay band comprises one competitive level with one representative rate even though employees' actual salaries may vary. The agency would then use the representative rate of the pay band to determine whether employees in positions not included in a pay band have potential assignment rights to positions in the pay band. The agency would also use the representative rate of the pay band to determine whether pay band employees have potential

assignment rights to positions not included in the pay band.

For a second example, an agency again has a pay band that includes positions traditionally classified from GS-4 through GS-7. This time, the pay band includes three different official positions with different salaries. Under new paragraph (a)(5) of § 351.403, the agency finds that the pay band includes three competitive levels, each with its own representative rate. The agency would then use each of the three representative rates of the competitive levels within the pay band to determine whether employees in positions not included in a pay band have potential assignment rights to positions in the pay band. The agency would also use the representative rates of the pay band to determine whether pay band employees have potential assignment rights to positions not included in the pay band.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 351

Administrative practice and procedure, Government employees.

Office of Personnel Management.

Linda M. Springer,
Director.

Accordingly, OPM proposes to amend part 351 of title 5, Code of Federal Regulations, as follows:

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503; sec. 351.801 also issued under E.O. 12828, 58 FR 2965.

2. In § 351.203, the definition of *representative rate* is revised to read as follows:

§ 351.203 Definitions.

In this part:

* * * * *

Representative rate means:

(1) The fourth step of the grade for a position covered by the General Schedule, using the locality rate authorized by 5 U.S.C. 5304 and subpart F of part 531 of this chapter for General Schedule positions;

(2) The prevailing rate for a position covered by a wage-board or similar wage-determining procedure;

(3) For positions in a pay band, the rate (or rates) the agency designates as representative of that pay band or competitive levels within the pay band, including (as appropriate) any applicable locality payment authorized by 5 U.S.C. 5304 and subpart F of part 531 of this chapter (or equivalent payment under other legal authority); and

(4) For other positions (e.g., positions in an unclassified pay system), the rate the agency designates as representative of the position, including (as appropriate) any applicable locality payment authorized by subpart F of part 531 (or equivalent payment under other legal authority).

* * * * *

3. In § 351.403, paragraph (c)(4) is revised, and paragraphs (a)(5), (c)(5), and (c)(6) are added, to read as follows:

§ 351.403 Competitive Level.

(a) * * *

(5) If a competitive area includes positions in one or more pay bands, each set of interchangeable positions in the pay band under paragraphs (a)(1) through (4) of this section is a separate competitive level (e.g., with interchangeable positions under paragraphs (a)(1) through (4) of this section, each pay band is one competitive level; if the positions are not interchangeable under paragraphs (a)(1) through (4) of this section, the pay band may include multiple competitive levels).

* * * * *

(c) * * *

(4) A difference in the local wage areas when a competitive area includes positions covered by more than one wage-board or similar wage-determining procedure;

(5) A difference in locality payments under 5 U.S.C. 5304 and subpart F of part 531 of this chapter when a competitive level includes more than one locality pay area listed in § 531.603 of this chapter; or

(6) Representative rates in different local commuting areas when a competitive area includes General Schedule and wage grade positions in multiple General Schedule locality pay areas, and/or FWS local wage areas.

4. Section 351.601 is revised to read as follows:

§ 351.601 Order of release from competitive level.

(a) Each agency must select competing employees for release from a competitive level (including release

from a competitive level involving a pay band) under this part in the inverse order of retention standing, beginning with the employee with the lowest retention standing on the retention register. An agency may not release a competing employee from a competitive level while retaining in that level an employee with lower retention standing except:

(1) As required under § 351.606 when an employee is retained under a mandatory exception or under § 351.806 when an employee is entitled to a new written notice of reduction in force; or

(2) As permitted under § 351.607 when an employee is retained under a permissive continuing exception or under § 351.608 when an employee is retained under a permissive temporary exception.

(b) At its option an agency may provide for intervening displacement within the competitive level before final release of the employee with the lowest-retention standing from the competitive level.

(c) When employees in the same retention subgroup have identical service dates and are tied for release from a competitive level, the agency may select any tied employee for release.

5. In section 351.701, paragraphs (g), (h), and (i) are added, to read as follows:

§ 351.701 Assignment involving displacement.

* * * * *

(g) If a competitive area includes more than one local commuting area, the agency determines assignment rights under this part on the basis of the representative rates for one local commuting area within the competitive area (i.e., the same local commuting area used to establish competitive levels under § 351.403(c)(4), (5), and (6)).

(h) If a competitive area includes positions under one or more pay bands, a released employee shall be assigned in accordance with paragraphs (a) through (d) of this section to a position in an equivalent pay band or one pay band lower, as determined by the agency, than the pay band from which released. A preference eligible with a service-connected disability of 30 percent or more must be assigned in accordance with paragraphs (a) through (d) of this section to a position in an equivalent pay band or up to two pay bands lower, as determined by the agency, than the pay band from which released.

(i) If a competitive area includes positions under one or more pay bands, and other positions not covered by a pay band (e.g., GS and/or FWS positions),

the agency provides assignment rights under this part by:

(1) Determining the representative rate of positions not covered by a pay band consistent with § 351.203;

(2) Determining the representative rate of each pay band, or competitive level within the pay band(s), consistent with § 351.203;

(3) As determined by the agency, providing assignment rights under paragraph (b) of this section (bumping), or paragraphs (c) and (d) of this section (retreating), consistent with the grade intervals covered in paragraphs (b)(2) and (c)(2) of this section, and the pay band intervals in paragraph (h) of this section.

[FR Doc. E7-4701 Filed 3-14-07; 8:45 am]

BILLING CODE 6325-39-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-27560; Directorate Identifier 2006-NM-211-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 757-200, -200PF, and -200CB Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 757-200, -200PF, and -200CB series airplanes. This proposed AD would require inspections to detect scribe lines and cracks of the fuselage skin, lap joints, circumferential butt splice strap, and external and internal approved repairs; and related investigative/corrective actions if necessary. This proposed AD results from reports of scribe lines adjacent to the skin lap joints. We are proposing this AD to detect and correct cracks, which could grow and cause rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by April 30, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- **DOT Docket Web site:** Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- **Government-wide rulemaking Web site:** Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- **Mail:** Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL-401, Washington, DC 20590.

- **Fax:** (202) 493-2251.

- **Hand Delivery:** Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT:

Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6450; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2007-27560; Directorate Identifier 2006-NM-211-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management

Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received reports of scribe lines found adjacent to the skin lap joints on Model 757-200 airplanes. The scribe lines appear to have been made on the skin when sealant was removed as part of preparation of the airplane for repainting. The airplanes had between 13,300 and 16,800 flight cycles. Although no cracks as a result of scribe lines have been reported on Model 757 airplanes, scribe lines have caused cracks on other airplanes. Undetected cracking, if not corrected, could grow and result in rapid decompression.

Related AD

This proposed AD is similar to AD 2006-07-12, amendment 39-14539 (71 FR 16211), March 31, 2006. That AD applies to all Boeing Model 737-100, -200, -200C, -300, -400, and -500 series airplanes. That AD requires a one-time inspection for scribe lines and cracks in the fuselage skin at certain lap joints, butt joints, external repair doublers, and other areas; and related investigative/corrective actions if necessary. That AD resulted from reports of fuselage skin cracks adjacent to the skin lap joints on airplanes that had scribe lines.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 757-53A0092, Revision 1, dated January 10, 2007. The service bulletin describes procedures for removing paint and sealant at the applicable zonal locations, and doing detailed inspections to detect scribe lines and cracks of the fuselage skin, lap joints, circumferential butt splice strap, and external and internal approved repairs. The service bulletin specifies repairing scribe lines before further flight, except when a limited return to service (LRTS) program for qualifying scribe lines would allow return to service for a limited period before scribe lines are repaired.

The LRTS program includes repetitive inspections to detect cracks where scribe lines were found. To qualify for an LRTS program, a scribe line must meet certain criteria including the total flight cycles on the airplane, and the location and extent of the scribe lines.