

# Rules and Regulations

Federal Register

Vol. 70, No. 107

Monday, June 6, 2005

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 842

RIN 3206-AK73

#### Retirement Coverage of Air Traffic Controllers

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing this interim rule to revise the regulations governing the retirement coverage of air traffic controllers under the Federal Employees' Retirement System. These rules are necessary because of the recent enactment of new statutory provisions relating to the retirement definition of air traffic controllers. These rules also implement the deposit requirement for crediting past service as a second-level supervisor of air traffic controllers for retirement purposes.

**DATES:** This rule is effective June 6, 2005. We must receive your comments by July 6, 2005.

**ADDRESSES:** You may submit comments, identified by RIN number 3206-AK73, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: [combox@opm.gov](mailto:combox@opm.gov). Include RIN number 3206-AK73 in the subject line of the message.
- Mail: Mary Ellen Wilson, Manager, Retirement Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415-3200.

**FOR FURTHER INFORMATION CONTACT:** Mary Ellen Wilson, (202) 606-0299.

**SUPPLEMENTARY INFORMATION:** Section 226 of Public Law 108-176, 117 Stat. 2490, the Vision 100—Century of Aviation Reauthorization Act, amends

subchapter III of chapter 83 of title 5, United States Code, the statutory provisions for the Civil Service Retirement System (CSRS), and chapter 84 of title 5, United States Code, the Federal Employees' Retirement System (FERS), by adding the definition of *air traffic controller* to each. The new definition of *air traffic controller* includes the class of employees traditionally considered to be air traffic controllers (ATC)—that is, civilian employees of the Department of Transportation or the Department of Defense working in air traffic control facilities or flight service station facilities as either frontline air traffic controllers or immediate supervisors (*i.e.* first-level supervisors) of frontline air traffic controllers. The new definition of *air traffic controller* expands the class of individuals eligible for special ATC retirement benefits to include second-level supervisors (*i.e.*, supervisors of immediate supervisors of frontline ATCs).

Subsection (a)(3)(A) of § 226 of Public Law 108-176 amends 5 U.S.C. 8335(a), the provisions applicable to ATC mandatory retirement under CSRS, to provide that the newly-added second-level supervisory ATCs are not subject to mandatory retirement. Subsection (a)(3)(B) of § 226 similarly amends 5 U.S.C. 8425(a), the provisions applicable to ATC mandatory retirement under FERS.

Subsection (c) provides that the amendments made by § 226 take effect 60 days after the date of enactment (December 12, 2003), making them effective on February 10, 2004. It further provides that, in general, second-level ATC service which was performed before February 10, 2004, is creditable as ATC service for CSRS and FERS retirement purposes when retirement eligibility is based on a separation which occurs on or after February 10, 2004. However, FERS credit for pre-February 10, 2004, second-level supervisory ATC service requires the payment of a deposit.

The deposit with respect to pre-February 10, 2004, FERS second-level supervisory ATC service consists of the amount by which the FERS deductions from pay which would have been required if at the time the service was performed the service had been air traffic controller service exceeds the unrefunded deductions or deposits

actually made at the regular employee rate, plus interest. It should be noted that since an individual can receive credit for second-level supervisory ATC service only when the individual's retirement eligibility is based on a separation occurring on or after February 10, 2004, payment of the deposit under subsection (c) would benefit an individual only when the individual's retirement eligibility is based on a separation occurring on or after that date. Section 226 requires no additional contributions for pre-February 10, 2004, second-level supervisory ATC service under CSRS, because the regular and ATC contribution rates are the same under CSRS.

Therefore, OPM is amending 5 CFR part 842, subpart H, the subpart concerning retirement coverage of law enforcement officers, firefighters, and air traffic controllers under FERS. Specifically, subpart H is amended at 5 CFR 842.802 and 842.806, and a new section 842.811 is being added.

In § 842.802 the definition of *air traffic controller* is amended to include second-level supervisors of ATCs.

Section 842.806(a) is amended to exclude second-level supervisors of ATCs from mandatory separation.

Section 842.811 is being added to subchapter H to establish the time, form, and manner in which deposits permitted under subparagraph (c) of § 226 of Public Law 108-176 must be completed. Section 842.811 provides that agencies employing ATCs (*i.e.*, the Department of Transportation and the Department of Defense) are responsible for processing deposit applications and payments.

#### Waiver of General Notice of Proposed Rulemaking

Under section 553(b)(3)(B), and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making these rules effective in less than 30 days. The processing of deposits for air traffic controller service by qualifying air traffic controllers under these regulations will affect qualifying employees' retirement coverage and eligibility for special retirement benefits under the air traffic controller provisions. Publication of a general notice on proposed rulemaking would be contrary to the public interest

because it would delay the completion of the deposits of qualifying individuals.

### Executive Order 12866, Regulatory Review

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

### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect the retirement benefits of a small number of air traffic controllers.

### List of Subjects in 5 CFR Part 842

Air traffic controllers, Alimony, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

**Dan G. Blair,**  
Acting Director.

■ For the reasons stated in the preamble, the Office of Personnel Management amends 5 CFR part 842 as follows:

### PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

■ 1. The authority citation for part 842 is revised to read as follows:

**Authority:** 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under sections 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321–102; Sec. 842.107 also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251, and section 7(b) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.108 also issued under section 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and section 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388; Sec. 842.707 also issued under section 6001 of Pub. L. 100–203, 101 Stat. 1300; Sec. 842.708 also issued under section 4005 of Pub. L. 101–239, 103 Stat. 2106 and section 7001 of Pub. L. 101–508, 104 Stat. 1388; subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under section 636 of Appendix C to Pub. L. 106–554 at 114 Stat. 2763A–164; Sec. 842.811 also issued under section 226(c)(2) of Public Law 108–176, 117 Stat. 2529.

### Subpart H—Law Enforcement Officers, Firefighters, and Air Traffic Controllers

■ 2. In § 842.802, revise the definition of *air traffic controller* to read as follows:

#### § 842.802 Definitions.

\* \* \* \* \*

*Air traffic controller* means a civilian employee of the Department of Transportation or the Department of Defense in an air traffic control facility or flight service station facility who is actively engaged in the separation and control of air traffic or in providing preflight, inflight, or airport advisory service to aircraft operators, or who is the immediate supervisor of such an employee, as provided by 5 U.S.C. 8401(35)(A). Also included in this definition is a civilian employee of the Department of Transportation or the Department of Defense who is the immediate supervisor of a person described under 5 U.S.C. 2109(1)(B) (*i.e.*, a second-level supervisor), as provided by 5 U.S.C. 8401(35)(B).

\* \* \* \* \*

■ 3. Amend § 842.806 by revising the first sentence of paragraph (a) to read as follows:

#### § 842.806 Mandatory separation.

(a) The mandatory separation provisions of 5 U.S.C. 8425 apply to all law enforcement officers and firefighters, including those in secondary positions, and air traffic controllers, with the exception of a civilian employee of the Department of Transportation or the Department of Defense who is the immediate supervisor of a person described under 5 U.S.C. 2109(1)(B) (*i.e.*, a second-level supervisor). \* \* \*

\* \* \* \* \*

■ 4. Add § 842.811 to read as follows:

#### § 842.811 Deposits for second-level supervisory air traffic controller service performed before February 10, 2004.

(a)(1) *Eligibility—current and former employees, and retirees.* A current or former employee, or a retiree who was employed as a civilian employee of the Department of Transportation or the Department of Defense before February 10, 2004, as the immediate supervisor of a person described in 5 U.S.C. 2109(1)(B) may make a deposit for such service, in a form prescribed by OPM, so that such service may be credited as air traffic controller service for FERS purposes subject to paragraph (h) of this section.

(2) *Eligibility—survivors.* A survivor of a current employee, former employee, or a retiree eligible to make a deposit under paragraph (a)(1) of this section

may make a deposit under this section when the current or former employee, or a retiree—

(i) Dies during the period beginning February 10, 2004, and ending November 28, 2006, without submitting an application under this section; or

(ii) Dies after submitting an application to make a deposit under this section within the time limit set out in paragraph (c) of this section without completing a deposit.

(b) *Filing of deposit application.* An individual eligible to make a deposit under paragraph (a) of this section for service described under paragraph (a)(1) of this section must submit a written application to make a deposit for such service with the appropriate office in the agency where such service was performed.

(c) *Time limit for filing application.* An application to make a deposit under this section must be submitted on or before November 28, 2006.

(d)(1) *Amount of deposit.* A deposit under this section shall be computed using distinct periods of service. For the purpose of this section, a distinct period of service means a period of service not interrupted by a break in service of more than 3 days. A deposit may be made for a distinct period of service; however, such a deposit shall be ineffective if deposits are not completed for all distinct periods of service described under paragraph (a) of this section.

(2) The amount of deposit under this section shall be an amount equal to the amount by which the deductions from pay which would have been required under 5 U.S.C. chapter 84, subchapter II, if at the time the service was performed the service had been air traffic controller service exceeds the unrefunded deductions or deposits actually made under 5 U.S.C. chapter 84, subchapter II, with respect to such service, plus interest.

(e)(1) *Interest.* Interest shall be computed as described under paragraphs (2) and (3) of 5 U.S.C. 8334(e). Interest shall be computed for each distinct period of service from the midpoint of the distinct period of service.

(2) The computation of interest is on the basis of 30 days to the month. Interest is computed for the actual calendar time involved in each case.

(f) *Forms of deposit.* A deposit under this section may be made as a single lump sum or in installments.

(g)(1) *Processing deposit applications and payments.* Upon receiving an application for deposit under this section, the agency shall determine whether the application meets the requirements of this section; compute

the deposit, including interest; and advise the applicant of the total amount of deposit due.

(2) The agency shall establish a deposit account showing the total amount due and a payment schedule (unless deposit is made in one lump sum) to record the date and amount of each payment.

(3) If an eligible individual cannot make payment in one lump sum, the agency shall accept installment payments (by allotments or otherwise). The agency, however, is not required to accept individual checks in amounts less than \$50.

(4) Payments received by the agency shall be remitted to OPM immediately for deposit to the Civil Service Retirement and Disability Fund.

(5) Once a deposit has been paid in full or otherwise closed out, the agency shall submit the documentation pertaining to the deposit to OPM in accordance with instructions issued by OPM.

(h) *Effect of deposit.* An individual completing a deposit under this section whose entitlement to an annuity is based on a separation from service on or after February 10, 2004, will receive air traffic controller retirement credit for such service, for annuity entitlement and computation purposes, when OPM receives certification that the deposit has been paid in full, and the deposit payment is remitted to the Civil Service Retirement and Disability Fund.

[FR Doc. 05-11134 Filed 6-3-05; 8:45 am]

BILLING CODE 6325-39-P

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1738

RIN 0572-AB81

#### Rural Broadband Access Loans and Loan Guarantees

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of confirmation of direct final rule.

**SUMMARY:** The Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture's Rural Development Utilities Programs, gives notice that no adverse comments were received regarding the direct final rule amending its regulations to revise the definition for "eligible rural community" as it relates to the rural access broadband loans and loan guarantees program, and confirms the effective date of the direct final rule.

**DATES:** The direct final rule published in the **Federal Register** on April 4, 2005, (70 FR 16930) was effective on May 19, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Jonathan Claffey, Acting Assistant Administrator, Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1590, Room 4056, Washington, DC 20250-1590. Telephone number (202) 720-9554, Facsimile (202) 720-0810.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Rural Utilities Service (RUS) published in the **Federal Register** on January 30, 2003, at 68 FR 4684, a final rule amending its regulations in order to establish the Rural Broadband Access Loan and Loan Guarantee Program as authorized by the Farm Security and Rural Investment Act of 2002 (Pub. L. 101-171) (2002 Act). Section 6103 of the Farm Security and Rural Investment Act of 2002 amended the Rural Electrification Act of 1936, as amended (RE Act), to add Title VI, Rural Broadband Access, to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities.

The direct final rule amended § 1738.2, Definitions, to conform the rule to substantive changes in authority. The definition for "eligible rural community" in section 601(b)(2) of the Rural Electrification Act of 1936 (7 U.S.C. 950bb(b)(2)) was amended on January 23, 2004, by section 772 of Pub. L. 108-199, of the Consolidated Appropriations Act, 2004 to eliminate the requirement that a community exist outside a standard metropolitan statistical area. The rule incorporated language of the revised statute and explained RUS' interpretation of the language.

#### Confirmation of Effective Date

This is to confirm the effective date of May 19, 2005, for the direct final rule, 7 CFR 1738, Rural Broadband Access Loans and Loan Guarantees, published in the **Federal Register** on April 4, 2005.

Dated: May 26, 2005.

**Curtis M. Anderson,**

*Acting Administrator, Rural Utilities Service.*

[FR Doc. 05-11137 Filed 6-3-05; 8:45 am]

BILLING CODE 3410-15-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 23

[Docket No. CE224, Special Condition 23-164-SC]

#### Special Conditions; West Star Aviation, EFIS on the Cessna 441; Protection of Systems for High Intensity Radiated Fields (HIRF)

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

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

**SUMMARY:** These special conditions are issued to West Star Aviation, 796 Heritage Way, Grand Junction, CO 81506, for a Supplemental Type Certificate for the Cessna 441 Conquest. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of an electronic flight instrument system (EFIS) in the form of two digital altimeters. The digital altimeters will be Honeywell/Ametek AM-250 models, one on the pilot side and one on the copilot side, for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

**DATES:** The effective date of these special conditions is May 18, 2005. Comments must be received on or before July 6, 2005.

**ADDRESSES:** Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. CE224, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE224. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Wes Ryan, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329-4127.