

# Rules and Regulations

Federal Register

Vol. 74, No. 98

Friday, May 22, 2009

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-AL61

#### Determining Rate of Basic Pay; Collection by Offset From Indebted Government Employees

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Personnel Management is issuing final regulations to conform with provisions of the National Defense Authorization Act for Fiscal Year 2008. The final regulations revise the rules regarding setting pay for certain employees who move from nonappropriated fund instrumentality (NAFI) positions to General Schedule positions. Also, the final regulations allow certain NAFIs to collect debts owed to them by Federal employees via salary offset and allow Federal agencies to collect debts by offsetting salary payments of certain NAFI employees.

**DATES:** The regulations are effective on June 22, 2009.

**FOR FURTHER INFORMATION CONTACT:** David Barash 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 27, 2008, the U.S. Office of Personnel Management (OPM) issued proposed regulations (73 FR 50575) to revise the rules regarding setting pay for certain employees who move from nonappropriated fund instrumentality (NAFI) positions to General Schedule (GS) positions. Also, the regulations proposed to allow certain NAFIs to collect debts owed to them by Federal employees via salary offset and allow Federal agencies to collect debts by offsetting salary payments of certain

NAFI employees. OPM issued the proposed regulations to conform with sections 652 and 1114 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181, January 28, 2008), hereafter referred to as "the Act." These sections became effective on January 28, 2008. (**Note:** We issued guidance, including examples, as a complement to the changes in law under section 1114 of the Act regarding pay setting. We encourage agencies and employees to review these materials on OPM's Web site at <http://www.opm.gov/oca/pay/HTML/NAFI.asp>.)

The 60-day comment period for the proposed regulations ended on October 27, 2008. This **Federal Register** notice addresses the one comment we received from an individual.

#### Comment Applicable to General Schedule Basic Pay Setting

The individual commented on the proposed revisions to the pay-setting rules. Proposed 5 CFR 531.216(c) provides that when an employee moves voluntarily to a GS position in the Department of Defense (DOD) or the United States Coast Guard (USCG) from a NAFI position in DOD or USCG, respectively, without a break in service of more than 3 days, the agency may set the employee's rate of basic pay above the minimum step based on the employee's NAFI highest previous rate (HPR). The agency also may use the maximum payable rate rule in § 531.221 based on a non-NAFI rate of basic pay if that rule produces a higher rate than using the employee's NAFI HPR.

Under § 531.216(d), when such an employee in DOD or USCG is moved involuntarily to a GS position from a NAFI position in DOD or USCG, respectively, without a break in service of more than 3 days, the employee is entitled to an initial payable rate of basic pay at the lowest step rate of the GS grade that is equal to or greater than the employee's rate of basic pay in the NAFI position immediately before the move.

The individual expressed concern about the additional costs for such pay-setting rules and believed that every move to a GS position will result in a pay increase. The individual recommended that OPM provide cost data.

We disagree and are not adopting this recommendation. Because of the small number of affected employees and the

limited conditions under which the pay-setting rules may be applied, the incrementally higher cost of setting pay under the revised rules is negligible. In addition, a covered NAFI employee would not necessarily receive a pay increase when he or she moves voluntarily to a GS position; his or her NAFI HPR could equal a GS step rate, for example, or the agency may set the employee's pay at any GS step rate below the employee's NAFI HPR or non-NAFI maximum payable rate.

The commenter also recommended that OPM revise the regulations to ensure that employees who move to pay banding positions do not receive a pay increase. This recommendation is outside of the scope of the regulations. The regulations provide the pay-setting rules for NAFI employees moving to GS positions, not NAFI employees moving to pay banding positions.

Therefore, we are adopting the proposed rule as final without a change.

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

This rule has been reviewed by the Office of Management and Budget 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.

**John Berry,**

*Director, U.S. Office of Personnel Management.*

■ Accordingly, OPM amends 5 CFR parts 531 and 550 as follows:

#### PART 531—PAY UNDER THE GENERAL SCHEDULE

■ 1. The authority citation for part 531 is revised to read as follows:

**Authority:** 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Public Law 103-89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316; Subpart B also issued under 5 U.S.C. 5303(g), 5305, 5333, 5334(a) and (b), and 7701(b)(2); Subpart D also issued under 5 U.S.C. 5335 and 7701(b)(2); Subpart E also issued under 5 U.S.C. 5336; Subpart F also

issued under 5 U.S.C. 5304 and 5305; E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682; and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224.

**Subpart B—Determining Rate of Basic Pay**

■ 2. In § 531.216, paragraphs (a), (c)(1), (c)(2)(i), (c)(2)(ii), (d)(1), and (d)(2)(i) are revised to read as follows:

**§ 531.216 Setting pay when an employee moves from a Department of Defense or Coast Guard nonappropriated fund instrumentality.**

(a) *General.* This section governs the setting of pay for an employee who moves to a GS position in the Department of Defense or the Coast Guard from a position in a nonappropriated fund instrumentality (NAFI) (as described in 5 U.S.C. 2105(c)) of the Department of Defense or the Coast Guard, respectively, without a break in service of more than 3 days. If an employee moves from a NAFI position to a GS position with a break of more than 3 days or moves from a NAFI position in the Department of Defense or the Coast Guard to a GS position outside of the Department of Defense or the Coast Guard, respectively, the employee has no special conversion rights and this section does not apply.

\* \* \* \* \*

(c) *Voluntary move.* (1) For a Department of Defense or Coast Guard employee who moves voluntarily, without a break in service of more than 3 days, from a NAFI position in the Department of Defense or the Coast Guard to a GS position in the Department of Defense or the Coast Guard, respectively, the agency may set the employee's initial payable rate of basic pay at the lowest step rate in the highest applicable rate range currently in effect for the employee's GS position of record and official worksite which equals or exceeds the employee's NAFI highest previous rate of pay, or any lower step rate, except as provided in paragraph (c)(2) or (3) of this section. The employee's initial payable rate of basic pay may not exceed the maximum step rate (step 10).

(2) \* \* \*

(i) Compare the NAFI highest previous rate to the highest applicable rate range currently in effect in the location where the employee was stationed while earning that rate. The highest applicable rate range is determined based on the pay schedules that would be applicable to the employee's current GS position of record if the employee were stationed in that location. Identify the lowest step

rate in the highest applicable rate range that was equal to or exceeded the NAFI highest previous rate. If the NAFI highest previous rate is less than the range minimum, identify the minimum step rate (step 1). If the NAFI highest previous rate exceeds the range maximum, identify the maximum step rate (step 10).

(ii) Identify the step rate in the highest applicable rate range for the employee's current official worksite and position of record that corresponds to the step rate derived under paragraph (c)(2)(i) of this section. That corresponding rate is the maximum payable rate at which the agency may set the employee's pay under this section, except as provided by paragraph (c)(3) of this section. The agency may set the employee's rate of basic pay at any step rate that does not exceed that maximum payable rate.

\* \* \* \* \*

(d) *Involuntary move.* (1) For a Department of Defense or Coast Guard employee who is moved involuntarily (as defined in paragraph (d)(3) of this section), without a break in service of more than 3 days, from a NAFI position in the Department of Defense or the Coast Guard to a GS position with substantially the same duties in the Department of Defense or the Coast Guard, respectively, the employee is entitled to an initial payable rate of basic pay at the lowest step rate of the grade that is equal to or greater than the employee's rate of basic pay in the NAFI position immediately before the move. If the employee's former NAFI rate exceeds the range maximum, identify the maximum step rate (step 10).

(2) \* \* \*

(i) The lowest step rate within the highest applicable rate range for the employee's GS position of record and official worksite that equals or exceeds the employee's NAFI highest previous rate, or any lower step rate (consistent with the method prescribed in paragraphs (c)(1) and (2) of this section);

\* \* \* \* \*

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

**Subpart K—Collection by Offset From Indebted Government Employees**

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

**Authority:** 5 U.S.C. 5514; sec. 8(1) of E.O. 11609; redesignated in sec. 2–1 of E.O. 12107.

■ 4. In § 550.1103, the definition of agency is revised to read as follows:

**§ 550.1103 Definitions.**

\* \* \* \* \*

*Agency* means an executive department or agency; a military department; the United States Postal Service; the Postal Regulatory Commission; any nonappropriated fund instrumentality described in 5 U.S.C. 2105(c); the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government corporation. If an agency under this definition is a component of an agency, the broader definition of *agency* may be used in applying the provisions of 5 U.S.C. 5514(b) (concerning the authority to prescribe regulations).

\* \* \* \* \*

[FR Doc. E9–12006 Filed 5–21–09; 8:45 am] BILLING CODE 6325–39–P

**DEPARTMENT OF TRANSPORTATION  
Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA–2009–0473; Directorate Identifier 2009–CE–027–AD; Amendment 39–15915; AD 2009–11–05]

RIN 2120–AA64

**Airworthiness Directives; Air Tractor, Inc. Models AT–400, AT–400A, AT–402, AT–402A, AT–402B, AT–502, AT–502A, AT–502B, AT–503A, AT–602, AT–802, and AT–802A Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.  
**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) to supersede AD 2008–10–12, which applies to certain Air Tractor, Inc. AT–400, AT–500, AT–600, and AT–800 series airplanes. AD 2008–10–12 currently requires repetitively inspecting the engine mounts for cracks, repairing any crack damage found, and installing gussets as a terminating action for the repetitive inspections. This AD results from a report of a Model AT–602 airplane with a crack completely through the gusset that was installed as required in AD 2008–10–12. Consequently, this AD would require you to continue repetitively inspecting the engine mounts for cracks for all previously affected Air Tractor, Inc. AT–400, AT–500, AT–600, and AT–800 series airplanes with or without gussets installed, and repairing any crack damage found. We are issuing this AD to detect and correct cracks in the