

# Rules and Regulations

Federal Register

Vol. 74, No. 186

Monday, September 28, 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 Part 531

RIN 3206-AL96

#### General Schedule Locality Pay Areas

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

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

**SUMMARY:** On behalf of the President's Pay Agent, the U.S. Office of Personnel Management is issuing interim regulations on the locality pay program for General Schedule employees. The interim regulations move the McGuire Air Force Base, NJ, and Fort Dix, NJ, Philadelphia locality pay area portions of the new Joint Base McGuire-Dix-Lakehurst, from the Philadelphia locality pay area to the New York locality pay area.

**DATES:** *Effective Date:* The regulations are effective October 28, 2009.

*Applicability Date:* The regulations apply on the first day of the first pay period beginning on or after the date of publication in the **Federal Register**, but no earlier than the first day of the first pay period beginning on or after October 1, 2009.

*Comment Date:* We must receive comments on or before November 27, 2009.

**ADDRESSES:** Send or deliver comments to Charles D. Grimes III, Deputy Associate Director for Performance and Pay Systems, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415-8200; *Fax:* (202) 606-4264; or *e-mail:* [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** Allan Hearne, (202) 606-2838; *Fax:* (202) 606-4264; *e-mail:* [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov).

**SUPPLEMENTARY INFORMATION:** Section 5304 of title 5, United States Code, authorizes locality pay for General Schedule (GS) employees with duty stations in the 48 contiguous United States and the District of Columbia.

Section 5304(f) of title 5, United States Code, authorizes the President's Pay Agent (the Secretary of Labor, the Director of the Office of Management and Budget, and the Director of the Office of Personnel Management) to determine locality pay areas. The boundaries of locality pay areas must be based on appropriate factors, which may include local labor market patterns, commuting patterns, and the practices of other employers. The Pay Agent must give thorough consideration to the views and recommendations of the Federal Salary Council, a body composed of experts in the fields of labor relations and pay policy and representatives of Federal employee organizations. The President appoints the members of the Council, which submits annual recommendations to the Pay Agent about the locality pay program.

Most locality pay areas follow county lines under the methods recommended by the Council and adopted by the Pay Agent. However, exceptions are made for Federal facilities that cross county borders under the following criteria:

- *For Federal facilities that cross locality pay area boundaries:* To be included in an adjacent locality pay area, the whole facility must have at least 500 GS employees, with the majority of those employees in the higher-paying locality pay area, or that portion of a Federal facility outside of a higher-paying locality pay area must have at least 750 GS employees, the duty stations of the majority of those employees must be within 10 miles of the separate locality pay area, and a significant number of those employees must commute to work from the higher-paying locality pay area.

See 2005 Annual Report on General Schedule Locality-Based Comparability Payments, p. 13 at <http://www.opm.gov/oca/payagent/2005/2005PayAgentReport.pdf>.

We presently have two exceptions under these criteria; all of Edwards Air Force Base, CA, is included in the Los Angeles locality pay area, and all of the Federal Prison at Butner, NC, is

included in the Raleigh locality pay area.

As part of the base realignment and closure process, the Department of Defense is required to establish Joint Base McGuire-Dix-Lakehurst and will do so effective October 1, 2009. Presently, McGuire AFB and Fort Dix, in Burlington County, are in the Philadelphia locality pay area while Lakehurst, in Ocean County, is in the New York locality pay area. The new joint base commander wrote to the Federal Salary Council requesting that all employees on the joint base be included in the higher paying New York locality pay area. As justification for this proposal, the base commander noted that (1) 49 percent of employees at McGuire AFB and Fort Dix commute from the New York locality pay area, (2) the work locations of the majority of those employees are within 10 miles of the New York locality pay area, (3) McGuire AFB and Fort Dix have higher vacancy rates than found at Lakehurst, and (4) "[T]o effectively and efficiently provide installation management, the joint base commander must be able to move and/or consolidate civilian employees \* \* \* as needed, without impacting employees pay".

Since the McGuire AFB and Fort Dix portions of Joint Base McGuire-Dix-Lakehurst outside of the New York locality pay area have more than 750 GS employees, with the duty stations of the majority of those employees within 10 miles of the New York locality pay area, and a significant proportion of those employees commute from the New York locality pay area, the President's Pay Agent concludes the joint base meets the Council's existing criteria to be included in the New York locality pay area. This interim rule implements the change in pay areas effective with the first pay period beginning on or after the date of publication in the **Federal Register**, but no earlier than the first day of the first pay period beginning on or after October 1, 2009. Because the Federal Salary Council will not be able to meet until after October 1, 2009, we will discuss this matter with the Council and hear their views when the Council holds its next public meeting. In the meantime, we see no reason to delay the regulatory process needed to implement this change.

**Impact and Implementation**

The change in the coverage of the New York locality pay area will affect about 2,300 Federal white-collar employees of the Department of Justice, the Department of Defense, and the Department of Veterans Affairs stationed at McGuire AFB or Fort Dix, at an annual cost of about \$8 million.

**Waiver of Notice of Proposed Rulemaking**

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making this rule effective in less than 30 days. This notice is being waived and the regulation is being made effective in less than 30 days because the joint base goes into effect on October 1, 2009, and it will have an undesirable effect on base management to delay the implementation of a common locality pay rate for all employees on the base.

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

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

**Paperwork Reduction Act**

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13.

**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 Part 531**

Government employees, Law enforcement officers, Wages.

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

■ Accordingly, OPM amends 5 CFR part 531 as follows:

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

■ 1. The authority citation for part 531 continues 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 F—Locality-Based Comparability Payments**

■ 2. In § 531.603, paragraph (b)(20) is revised to read as follows:

**§ 531.603 Locality pay areas.**

\* \* \* \* \*

(b) \* \* \*

(20) New York-Newark-Bridgeport, NY-NJ-CT-PA—consisting of the New York-Newark-Bridgeport, NY-NJ-CT-PA CSA, plus Monroe County, PA, Warren County, NJ, and all of Joint Base McGuire-Dix-Lakehurst;

\* \* \* \* \*

[FR Doc. E9-23359 Filed 9-25-09; 8:45 am]

**BILLING CODE 6325-39-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Office of the Secretary**

**6 CFR Part 37**

[Docket No. DHS-2006-0030]

RIN 1601-AA37

**Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes**

**AGENCY:** Office of the Secretary, DHS.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Department of Homeland Security's REAL ID regulations, States seeking an extension of the date by which they must begin to comply with REAL ID requirements currently must submit a request for extension by October 11, 2009. This final rule changes that date to December 1, 2009.

**DATES:** This rule is effective September 28, 2009.

**FOR FURTHER INFORMATION CONTACT:** Steve Kozar, Office of State-Issued Identification Support, Screening Coordination Office, Department of Homeland Security, Washington, DC 20528 (202) 447-3368.

**SUPPLEMENTARY INFORMATION:**

**I. Analysis of This Final Rule**

The REAL ID Act of 2005 (the Act)<sup>1</sup> prohibits Federal agencies, effective

<sup>1</sup> Division B—REAL ID Act of 2005, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Public Law 109-13m 119 Stat. 231, 302 (May 11, 2005) (codified at 49 U.S.C. 30301 note).

May 11, 2008, from accepting a driver's license or personal identification card for any official purpose unless the license or card has been issued by a State that is meeting the requirements set forth in the Act. The Act sets forth certain minimum standards applicable to the driver's license issuance process. Section 205(b) of the REAL ID Act authorizes the Secretary of Homeland Security to grant States extensions of time to meet the requirements of the Act if the State provides adequate justification for noncompliance.

On January 29, 2008, DHS promulgated a final rule implementing the requirements of the Act. See 73 FR 5272; also 6 CFR part 37. The final rule, pursuant to the Secretary's authority under § 205(b) of the REAL ID Act, extended the original compliance date from May 11, 2008 to January 1, 2010, for each State that timely filed a request for extension. All States timely filed the required requests for extensions and were granted an extension of the compliance date. The final rule further provided that any State requiring an extension of the compliance date must submit a request for such an extension to DHS no later than October 11, 2009, and include with that submission a material compliance checklist demonstrating that the State has met certain compliance milestones. See 6 CFR 37.63.

DHS has determined that additional time is warranted for States to submit a request for an additional extension. Accordingly, under this final rule, DHS is revising the regulatory text at 6 CFR 37.63(b) to change the deadline by which States must file a request for an extension of the compliance date from October 11, 2009 to December 1, 2009.

**II. Regulatory Analyses**

*A. Administrative Procedure Act*

This final rule addresses requirements that are procedural in nature. This rule does not change the January 1, 2010 compliance date—the date by which States must begin to issue licenses and identification cards that are in compliance with the standards and requirements under the REAL ID Act and regulations—but merely changes the date by which States may seek a further extension of that deadline. This rule, therefore, does not alter the substantive rights of, nor impose new requirements on, any State or individual. This final rule, therefore, is exempt from notice and comment requirements under 5 U.S.C. 553(b)(A). For the same reason, under 5 U.S.C. 553(d)(3), this rule is effective