

Rules and Regulations

Federal Register

Vol. 63, No. 120

Tuesday, June 23, 1998

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 575

RIN 3206-A131

Retention Allowances

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to provide agencies with discretionary authority to pay retention allowances of up to 10 percent of an employee's rate of basic pay (or up to 25 percent with OPM approval) to a group or category of employees in certain limited circumstances. This change is being made to address the desire of some agencies to waive the case-by-case determination requirement contained in current regulations in order to expedite the authorization of retention allowances for certain information technology employees. This change will have the effect of providing agencies with greater flexibility in responding to a possible increased need for retention incentives for computer programmers who must make the computer system changes needed to meet the year 2000 conversion requirements.

DATES: June 23, 1998. Comments must be received on or before August 24, 1998.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415; FAX: (202) 606-0824; or email to payleave@opm.gov.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606-2858; FAX: (202)

606-0824; or email to payleave@opm.gov.

SUPPLEMENTARY INFORMATION: The regulatory change set forth below is necessary to provide agencies with discretionary authority to pay retention allowances of up to 10 percent of an employee's rate of basic pay (up to 25 percent with Office of Personnel Management approval) to a group or category of employees (excluding members of the Senior Executive Service (SES), employees in senior-level or scientific or professional (SL/ST) positions, Executive Schedule officials, and Presidential appointees).

The current retention allowance authority in 5 U.S.C. 5754 and 5 CFR part 575, subpart C, provides agencies with discretionary authority to pay a retention allowance of up to 25 percent of basic pay to an employee based on a determination that (1) the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee, and (2) the employee would be likely to leave Federal service without the allowance. It is the intent of the current retention allowance regulations that the determination that an employee is likely to leave the Federal service must be made on a case-by-case basis.

Recently, some agencies have expressed a desire to waive the case-by-case determination requirement in order to expedite the authorization of retention allowances for certain information technology employees. Specifically, agencies have indicated an increased need for recruitment and retention incentives for computer programmers and other employees who must make the required computer system changes to meet the year 2000 conversion requirements. Agencies believe it is essential to retain employees with programming and other information technology skills to meet the year 2000 conversion goals because some of the system changes are critical to agency missions. Some of these employees also have unique knowledge and skills in special programming languages or antiquated computer systems that are often necessary for making year 2000 modifications. Agencies believe employees with such programming skills are likely to leave Federal service for Government

contractor or other private sector jobs with similar programming needs.

Currently, the compensation tool that is primarily used for resolving recruitment and retention problems for categories or groups of employees is the special salary rate authority under 5 U.S.C. 5305 and 5 CFR part 530, subpart B. However, special salary rates may not always be the most appropriate option for resolving temporary or immediate staffing needs such as the year 2000 conversion projects. For example, special rate schedules can be expensive and difficult to terminate when no longer needed because they are basic pay for all purposes. Higher rates of basic pay increase the cost of retirement, life insurance, premium pay, and certain other entitlements and have a continuing effect on the employee's future pay entitlements (for example, upon promotion).

Also, under current law, if a special rate schedule is terminated, each employee's special pay rate must be set at an equivalent rate in the basic General Schedule rate range for the employee's grade, or, if the rate exceeds the maximum rate for that grade, the employee becomes entitled to pay retention under 5 U.S.C. 5363. In both cases, the employee's pay rate would be increased by locality pay, providing an unnecessary windfall pay increase. Establishing special rate schedules with such long-term pay implications for temporary staffing needs can be very costly to agencies.

These interim regulations amend 5 CFR 575.305 by adding a new paragraph (d) to provide agencies with authority to authorize retention allowances of up to 10 percent of an employee's rate of basic pay for a group or category employees in certain limited circumstances. This authority does not apply to employees in senior-level and scientific or professional (SL/ST) positions, members of the Senior Executive Service, Executive Schedule officials, Presidential appointees, or those in similar positions with respect to which the authority to approve retention allowances has been delegated to agency heads by OPM under section 575.302(c). For employees in these categories, retention allowances must continue to be approved on a case-by-case basis.

Retention allowances authorized for a category of employees must be based on a written determination that the

employees have unusually high or unique qualifications or the agency has a special need for the employees' services that makes it essential to retain the employees in that category and that it is reasonable to presume that there is a high risk that a significant number of employees in the targeted category are likely to leave Federal service in the absence of the allowance. The determination that there is a high risk that a significant number of employees in the targeted category are likely to leave may be based on evidence of extreme labor market conditions, high demand in the private sector for the employees' knowledge and skills, significant disparities between Federal and private sector salaries, or other similar conditions. All other criteria and requirements for payment under 5 CFR part 575, subpart C, must be met before an agency may pay a retention allowance to an individual employee in the targeted category.

The new paragraph (d) also authorizes OPM to approve retention allowances in excess of 10 percent, but not to exceed 25 percent, of an employee's rate of basic pay for a category of employees upon the request of the head of an agency. (The regulations continue to provide agencies with authority to pay retention allowances of up to 25 percent of basic pay to employees on a case-by-case basis without OPM approval.) Such group retention allowance requests must include a description of the category and number of employees to be covered by the proposed retention allowance, a written determination that the group or category of employees meets the criteria for payment of an allowance to a group or category of employees, the proposed percentage retention allowance payment and a justification for that percentage, the expected duration of retention allowance payments, and any other information pertinent to the case at hand. OPM may require that requests be coordinated with other agencies having employees in the same category. This will ensure a level playing field among agencies with similar staffing needs and help avoid the escalation of payroll costs driven primarily by interagency competition for employees.

Agencies should be as specific as possible when identifying and defining the targeted category of employees for which a retention allowance is authorized. The employee category should be narrowly defined by a combination of factors such as occupational series, grade level, duties performed and unique qualifications required, organization or team designation, geographic location, the

specific project the group is working on or service the group is providing, and the level of performance required. (Note that, while an employee's performance level may be one of the supporting factors that is considered in deciding whether to pay a retention allowance and in setting the allowance rate, it should not be the primary determining factor.)

The interim regulations will provide the retention allowance authority as an alternative to the special salary rate authority for resolving recruitment and retention problems related to the year 2000 conversion project and other agency staffing needs on a categorical basis. Retention allowances are more flexible and cost effective than special rates. For example, in the case of allowances approved for individual employees or groups of employees, agencies may vary the size of retention allowance payments based on such factors as the severity of the turnover problem and labor market conditions in a geographic area, the criticality of the particular project, the percentage of time the employee(s) must devote to a project, and special qualifications of the individual employee or group of employees.

Also, retention allowances are more suited for temporary staffing needs because agencies can reduce or terminate retention allowances at any time at no cost. Agencies may reduce or terminate an allowance if a lesser amount or none at all would be sufficient to retain an employee (or group of employees in the case of group-based allowances), if labor market conditions make it more likely to recruit candidates with needed qualifications, if the need for the services of the employee(s) has been reduced, or if budgetary considerations make it difficult to continue paying the allowance. Because retention allowances are not basic pay, reduction or termination of an allowance is not an adverse action under chapter 75 of title 5, United States Code.

Agencies should be aware that providing additional compensation is not the only, nor always the best, way to resolve recruitment and retention problems. Agencies should carefully analyze their staffing needs and employee work situations and explore non-pay human resources management alternatives, as well. For example, agencies should, as appropriate, investigate alternative recruitment strategies, use of temporary or term appointments, employment of experts and consultants, and appointments with varying work schedules, such as part-

time, intermittent, and seasonal schedules. Agencies may redesign jobs so that a pool of candidates may more easily qualify for a position or to make a job more appealing to candidates by adding desirable duties or eliminating undesirable duties.

Other flexibilities include establishing alternative work schedules (i.e., flexible or compressed work schedules) and job sharing and telecommuting programs for employees. As appropriate, agencies may also pay or share the cost of employee training and higher education. Finally, agencies should ensure that the employee's work environment is safe and conducive to enhanced performance and retention. For example, modern equipment and a comfortable work space may be more of a retention incentive than additional compensation. Agencies should weigh the advantages and disadvantages of each of these and the many other human resources management flexibilities to ensure that the most responsive and cost effective staffing strategy is implemented.

Waiver of Notice of Proposed Rule Making and Delay in Effective Date

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 to make this rule effective in less than 30 days. This regulation is needed to provide agencies with an alternative compensation tool to meet their staffing needs in time to successfully meet year 2000 computer system conversion requirements.

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 this regulation will not have a significant economic impact on a substantial number of small entities because it will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 575

Government employees, Wages.
Office of Personnel Management.
Janice R. Lachance,
Director.

Accordingly, OPM is amending part 575 of title 5 of the Code of Federal Regulations as follows:

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

1. The authority citation for part 575 continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, and 5755; secs. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), 104 Stat. 1462 and 1466, respectively; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

Subpart C—Retention Allowances

2. Section 575.305 is amended by adding paragraph (d) to read as follows:

§ 575.305 Agency retention allowance plans; higher level review and approval; and criteria for payment.

* * * * *

(d) *Approval of retention allowances for groups or categories of employees.*

(1) An agency may authorize a retention allowance of up to 10 percent of an employee's rate of basic pay for a group or category of employees (excluding individuals covered by § 575.302(a) (2), (3), (5), or (6) or those in similar positions with respect to which the authority to approve retention allowances has been delegated to agency heads by OPM under § 575.302(c)) based on a written determination that the category of employees has unusually high or unique qualifications, or the agency has a special need for the employees' services that makes it essential to retain the employees in that category, and that it is reasonable to presume that there is a high risk that a significant number of employees in the targeted category are likely to leave Federal service in the absence of the allowance. The determination that there is a high risk that a significant number of employees in the targeted category are likely to leave may be based on evidence of extreme labor market conditions, high demand in the private sector for the knowledge and skills possessed by the employees, significant disparities between Federal and private sector salaries, or other similar conditions.

(2) Upon the request of the head of an agency, OPM may approve a retention allowance in excess of 10 percent, but not in excess of 25 percent, of an employee's rate of basic pay for a group or category of employees that meets the criteria specified in paragraph (d)(1) of this section. OPM may require that such requests be coordinated with other agencies having similarly situated employees in the same category. Group retention allowance requests must include—

(i) A description of the group or category and number of employees to be covered by the proposed retention allowance;

(ii) A written determination that the group or category of employees meets the criteria specified in paragraph (d)(1) of this section;

(iii) The proposed percentage retention allowance payment and a justification for that percentage;

(iv) The expected duration of retention allowance payments; and

(v) Any other information pertinent to the case at hand.

(3) All other criteria and requirements for payment under this subpart must be met before a retention allowance may be paid to any individual employee under this paragraph (d).

[FR Doc. 98-16667 Filed 6-22-98; 8:45 am]

BILLING CODE 6325-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM149, Special Conditions No. 25-138-SC]

Special Conditions: McDonnell Douglas DC-9-81,-82 Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for McDonnell Douglas DC-9-81, -82 airplanes modified by Midwest Express Airlines. These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is June 11, 1998. Comments must be received on or before August 7, 1998.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM-7), Docket No. NM149, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above

address. Comments must be marked: Docket No. NM149. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Connie Beeane, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (425) 227-2799; facsimile (425) 227-2796.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM149." The postcard will be date stamped and returned to the commenter.

Background

On March 12, 1998, Midwest Express Airlines applied for a supplemental type certificate (STC) to modify McDonnell Douglas DC-9-81, -82 airplanes listed on Type Certificate A6WE. The modification incorporates the installation of electronic flight instrument system (EFIS) for display of critical flight parameters (altitude, airspeed, and attitude) to the crew. These displays can be susceptible to disruption to both command/response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and annunciations or present misleading information to the pilot.