

# Rules and Regulations

Federal Register

Vol. 64, No. 63

Friday, April 2, 1999

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 532

RIN 3206-A136

#### Prevailing Rate Systems; Environmental Differential Pay for Working at High Altitudes

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a final regulation to establish an 8 percent environmental differential pay (EDP) category for Federal Wage System (FWS) employees who work at land-based worksites located higher than 3900 meters (12,795 feet) in altitude, provided such employees are required to commute to their worksites on the same day from a substantially lower altitude under circumstances in which the rapid change in altitude may result in acclimation problems. OPM is creating this new EDP category so that Federal agencies may provide additional compensation to FWS employees who are exposed to unusual health risks caused by these working conditions.

**DATES:** *Effective Date:* This regulation is effective on April 2, 1999. *Applicability Date:* This regulation applies on the first day of the first applicable pay period beginning on or after April 2, 1999.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hopkins at (202) 606-2848, or send an email message to [jdhopkin@opm.gov](mailto:jdhopkin@opm.gov).

**SUPPLEMENTARY INFORMATION:** On October 13, 1998, the Office of Personnel Management (OPM) published a proposed rule (63 FR 54616) to establish an 8 percent environmental differential pay (EDP) category for Federal Wage System (FWS) employees who work at land-based

worksites located higher than 3900 meters (12,795 feet), provided such employees are required to commute to their worksites on the same day from a substantially lower altitude under circumstances in which the rapid change in altitude may result in acclimation problems. This proposal was similar to a proposed regulation issued on June 30, 1998, to establish a hazard pay differential for General Schedule employees.

The Smithsonian Institution requested that we establish an EDP category for FWS employees who must work at the Smithsonian Astrophysical Observatory (SAO) near the 4206 meter (13,800 foot) summit of Mauna Kea, an extinct volcano on the Island of Hawaii. The Smithsonian Institution stated that suitable employee housing is available only near sea level and that SAO employees must therefore commute back and forth from their homes to the SAO worksite each workday. The Smithsonian Institution submitted research evidence that indicates work at high altitudes may have negative physiological effects such as impaired judgment, increased heart rates, and nausea, especially if employees have not had time to acclimate to lower atmospheric pressures and oxygen levels that exist at high altitudes. In addition, employees are exposed to the possibility of experiencing severe health problems such as high altitude pulmonary edema, high altitude cerebral edema, and acute mountain sickness.

Under 5 U.S.C. 5343(c)(4), OPM is responsible for establishing EDP categories that Federal agencies may use to provide additional compensation to FWS employees whose duties involve unusually severe working conditions or unusually severe hazards. This final regulation will authorize a new EDP category for FWS employees who must work at land-based worksites higher than 3900 meters (12,795 feet), provided such employees are required to commute to the worksite on the same day from a substantially lower altitude under circumstances in which the rapid change in altitude could result in acclimation problems. The establishment of this new EDP category will not relieve an agency of its responsibility to take whatever measures are feasible to minimize the

harmful effects of commuting to work at high altitudes.

The proposed regulation for the establishment of a new EDP category for FWS employees provided a 30-day period for public comment, during which we received one comment from a labor organization. The labor organization recognized and agreed that a need exists for the establishment of a new EDP category for FWS employees, but recommended that we consider establishing a 25 percent differential instead of the proposed 8 percent differential. The proposed differential was thoroughly reviewed by the Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on matters that affect the pay of FWS employees. After careful consideration, the Committee recommended by consensus that the differential be set at 8 percent, an amount in line with other EDP categories and also in line with prevailing non-Federal practices, as reported by the Smithsonian Institution. Based on FPRAC's recommendation, we are establishing the new EDP category with an 8 percent differential.

#### Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make these regulations effective in less than 30 days. Some FWS employees of the Smithsonian Institution are currently commuting from near sea level to a work site near the 4206 meter (13,800 foot) summit of Mauna Kea on the Island of Hawaii. These employees currently meet the criteria in this final regulation for the environmental differential. In addition, the Smithsonian Institution has asked that this authority be made effective as soon as possible.

#### 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 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 532**

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.  
**Janice R. Lachance,**  
*Director.*

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

**PART 532—PREVAILING RATE SYSTEMS**

**Subpart E—Premium Pay and Differentials**

1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343.

2. Appendix A to subpart E of part 532 is amended by adding a new

category to the schedule of environmental differentials at the end of Part II of the appendix to read as follows:

**Appendix A to Subpart E of Part 532—Schedule of Environmental Differentials Paid for Exposure to Various Degrees of Hazards, Physical Hardships, and Working Conditions of an Unusual Nature**

**PART II.—PAYMENT ON BASIS OF HOURS IN PAY STATUS**

Differential rate (percent)	Category for which payable	Effective date
8 .....	17. <i>Working at high altitudes.</i> Performing work at a land-based work site more than 3900 meters (12,795 feet) in altitude, provided the employee is required to commute to the work site on the same day from a substantially lower altitude under circumstances in which the rapid change in altitude may result in acclimation problems.	April 2, 1999.

[FR Doc. 99-8107 Filed 4-1-99; 8:45 am]  
BILLING CODE 6325-01-U

**MERIT SYSTEMS PROTECTION BOARD**

**5 CFR Part 1200**

**Board Organization**

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) is amending its organization and functions statement to reflect a change in responsibilities for performance of its human resources management functions.

**EFFECTIVE DATE:** April 2, 1999.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Taylor, Clerk of the Board, (202) 653-7200.

**SUPPLEMENTARY INFORMATION:** Effective September 28, 1998, the Board entered into a cross-servicing arrangement with APHIS Business Services (ABS), a unit of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service, under which ABS provides most human resources management services to MSPB. The MSPB Financial and Administrative Management Division (FAMD) administers the cross-servicing arrangement with ABS and has direct responsibility for certain personnel functions, including policy, training, drug testing, and the Employee Assistance Program. FAMD also administers the cross-servicing arrangement with USDA's National Finance Center (NFC) for accounting and payroll services. The NFC continues to process personnel actions, which are now entered by ABS. This amendment

to 5 CFR part 1200 reflects these changes by removing all references to the Human Resources Management Division and by revising the description of FAMD functions.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

**List of Subjects in 5 CFR Part 1200**

Organization and functions (Government agencies).

Accordingly, the Board amends 5 CFR part 1200, subpart B, as follows:

**PART 1200—[AMENDED]**

**Subpart B—Offices of the Board—[Amended]**

1. The authority citation for part 1200, subpart B, continues to read as follows:

**Authority:** 5 U.S.C. 1204(h) and (j).

2. Section 1200.10 is amended by removing paragraph (a)(9) in its entirety, by redesignating paragraph (a)(10) as paragraph (a)(9), by removing paragraph (b)(9) in its entirety, by redesignating paragraph (b)(10) as paragraph (b)(9), and by revising paragraph (b)(8) to read as follows:

**§ 1200.10 Staff Organizations and Functions.**

\* \* \* \* \*  
(b) \* \* \*  
\* \* \* \* \*

(8) *Financial and Administrative Management Division.* The Financial and Administrative Management Division administers the budget, procurement, property management, physical security, and general services functions of the Board. It develops and coordinates internal management programs and projects, including review of internal controls agencywide. It performs certain personnel functions,

including policy, training, drug testing, and the Employee Assistance Program. It also administers the agency's cross-servicing arrangements with the U.S. Department of Agriculture's National Finance Center for accounting, payroll, and personnel action processing services and with the U.S. Department of Agriculture's APHIS Business Services for most human resources management services.

\* \* \* \* \*

Dated: March 26, 1999.

**Robert E. Taylor,**

*Clerk of the Board.*

[FR Doc. 99-8091 Filed 4-1-99; 8:45 am]

BILLING CODE 7400-01-U

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Part 301**

[Docket No. 98-113-2]

**Pine Shoot Beetle; Addition to Quarantined Areas**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the pine shoot beetle regulations to add 19 counties in Indiana, Michigan, New York, Ohio, Pennsylvania, and West Virginia to the list of quarantined areas. This action was necessary to prevent the spread of