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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 530, 531, and 591

RIN 3206—AH84

Official Duty Station Determinations for Pay Purposes

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations in response to changes made by the Federal Employee Travel Reform Act of 1996 that affect the status of employees who are assigned to work in another location for an extended period. Under this law, employing agencies are authorized to pay certain relocation allowances in lieu of temporary duty travel allowances for employees who perform an extended assignment lasting from 6 to 30 months in another location. These interim regulations clarify that the temporary duty station during such an extended assignment must be treated as the official duty station of the employee for purposes of determining the employee's location-based pay entitlements.

DATES: These regulations are effective on May 9, 1997. Comments must be received on or before July 8, 1997.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Policy, Human Resources Systems Service, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415 (FAX: (202) 606-0824 or EMAIL: payleave@opm.gov).

FOR FURTHER INFORMATION CONTACT: Jeanne Jacobson, (202) 606-2858, FAX: (202) 606-0824, or EMAIL: payleave@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing interim regulations in response to changes made by the Federal Employee Travel Reform Act of 1996 (title XVII of Pub. L. 104-201, September 23, 1996), which took effect on March 22, 1997. Section 1716 of the Act amends subchapter II of chapter 57 of title 5, United States Code, by adding a new section 5737. Section 5737 gives agencies discretionary authority to pay certain limited relocation allowances (including payment of various expenses associated with moving family members and household goods) in lieu of temporary duty travel allowances (including payment of a per diem allowance or actual subsistence expenses) for employees who are assigned from their official duty station to another duty station for an extended period of time. Agencies may pay the limited relocation allowances only for extended assignments lasting (or originally expected to last) from 6 to 30 months. These extended temporary assignments may involve a duty station change accompanied by a position change (e.g., reassignment or promotion), or they may merely involve a duty station change.

These interim regulations address the pay entitlements of Federal employees during one of these extended assignments and make related clarifying changes. Certain Federal employee pay entitlements—e.g., locality pay and nonforeign area cost-of-living allowances—are linked to an employee's official duty station (sometimes referred to as the "permanent" duty station). The official duty station is defined as the duty station for the employee's position of record as documented on his or her most recent notification of personnel action. To ensure consistent and equitable treatment of employees, these regulations provide that the employee's temporary duty station in connection with an extended assignment under 5 U.S.C. 5737 must be considered the employee's official duty station for purposes of certain pay programs regulated by OPM. In other words, the employee's position and duty station associated with the extended assignment must be documented by personnel action as the position of record and official duty station for specified pay purposes. Agencies

should follow instructions in OPM's Guide to Processing Personnel Actions when documenting the employee's personnel records. Agency remarks should be used where necessary to distinguish the time limitation of the assignment.

Details Versus Assignments

Previously, agencies that assigned employees to long-term assignments away from their current official duty stations had two options: (1) *Detail* the employee to a temporary duty location and pay temporary duty travel allowances in accordance with subchapter I of chapter 57 of title 5, United States Code, or (2) *assign* the employee, in the interest of the Government, to a new official duty station on an indefinite basis and pay appropriate relocation allowances in accordance with subchapter II of that chapter.

When an employee is *detailed*, the employee's official position of record remains the position the employee occupied before the detail, and the employee's official duty station is the duty station associated with that position. If the temporary duty location associated with the detail is away from the employee's official duty station, the employee is entitled to temporary duty travel allowances as provided in subchapter I of chapter 57 of title 5, United States Code. Since the duty station from which the employee is detailed remains the official duty station, his or her pay entitlements would be determined based on that duty station.

When an employee is *assigned* to a new position and/or duty station, the position and duty station associated with that assignment constitute the employee's position of record and official duty station. The job assignment generally takes the form of a reassignment, promotion, or demotion (as those terms are defined in 5 CFR 210.102), resulting in a change in the employee's position of record, but which may or may not involve a duty station change. In some cases, the assignment is merely a change in duty station without a change in the position of record. The official duty station associated with the assignment constitutes the official duty station for purposes of determining (1) the employee's entitlements to the full array

of relocation allowances under subchapter II of chapter 57 of title 5, United States Code, and (2) the employee's entitlements to various forms of location-based payments.

Extended Assignments With a Temporary Change of Duty Station

Section 5737 of title 5, United States Code, now provides agencies a third option—the authority to pay, in lieu of temporary duty travel allowances, a limited set of relocation allowances to employees who are assigned from their current official duty station to a new temporary duty station for an extended period of time (i.e., 6 to 30 months). The limited relocation allowances include payment of travel expenses for the employee and his or her immediate family to and from the assignment location, transportation expenses of the employee's household goods, househunting trip expenses (if appropriate), temporary quarters subsistence expenses (if appropriate), expenses of transporting a privately owned vehicle to and from the new assignment location, expenses of storage of household goods and personal effects, a relocation income tax allowance, expenses of property management services in connection with maintaining a residence at the old duty station as a rental property, and certain other miscellaneous expenses. However, residence transaction allowances, which apply to permanent changes in duty station, are not payable. The General Services Administration (GSA) published Federal Travel Regulation (FTR) (41 CFR chapters 301–304) Amendment 64, Temporary Change of Station, implementing this limited relocation allowance authority on Friday, March 21, 1997. (See 62 FR 13770.) The provisions of FTR Amendment 64 became effective on March 22, 1997. Among other things, the GSA regulations clarify that employees who are relocated under 5 U.S.C. 5737 to perform an extended assignment are entitled to allowances to cover the costs of moving them back to the last permanent official duty station area, even if they separate from Federal service.

Section 5737 did not clearly state how the employee's pay entitlements would be affected by the extended assignment to a new duty station. The OPM regulations published in this notice make several changes to ensure that employees on extended assignments who are paid limited relocation allowances under 5 U.S.C. 5737 are paid the appropriate special salary rate, locality payment, law enforcement officer geographic adjustment, and

nonforeign area cost-of-living allowance and/or post differential for the temporary duty station associated with the extended assignment.

As explained in the section titled "Details Versus Assignments," when an employee is temporarily detailed to a new duty location away from his or her official duty station, the employee is entitled to the payment of temporary duty travel allowances and continues to be paid various types of location-based pay based on the position of record and official duty station from which he or she was detailed. In contrast, when an employee receives an extended assignment under 5 U.S.C. 5737, the new duty station associated with the extended assignment is established as the temporary official duty station. Instead of temporary duty travel allowances, the employee is entitled to a limited set of relocation allowances, including many of the same relocation allowances payable to employees assigned to a new official duty station on an indefinite basis. (See subpart C of part 302–1, title 41, Code of Federal Regulations, as added by Federal Travel Regulation Amendment 64, referenced above.) Therefore, the interim regulations provide that employees serving on extended assignments under 5 U.S.C. 5737 must be paid various types of location-based pay based on the temporary official duty station—i.e., in the same manner as employees who are officially stationed in that same pay area on an indefinite basis.

For temporary work in another location expected to last 6 months or more, the employing agency is responsible for determining whether a detail (providing temporary duty travel allowances) or an extended assignment/temporary change of duty station under 5 U.S.C. 5737 (providing limited relocation allowances) would be most appropriate, consistent with the criteria in GSA's Federal Travel Regulation. (See subpart D of part 302–1, title 41, Code of Federal Regulations, as added by Federal Travel Regulation Amendment 64, referenced above.) As explained above, employees' pay entitlements would automatically flow from the approach chosen by the employing agency.

It should be noted that not all temporary assignments involve a change in duty station. In some cases, an employee may be temporarily reassigned or promoted to a new position that is at the same duty station. In these cases, there is no issue as to the payment of relocation allowances, since those allowances only apply when there is a change in duty station. Of course,

the duty station for pay purposes would also be unchanged.

In addition, we note that these regulations deal only with the effect that an extended assignment under 5 U.S.C. 5737 has on an employee's official duty station for purposes of making certain pay determinations. They do not address other personnel rules (e.g., reduction-in-force regulations in 5 CFR part 351).

Regulatory Changes

The interim regulations add a new paragraph to 5 CFR 530.303 that clarifies that an employee is covered by a special salary rate schedule based on the employee's position of record and the official duty station for that position, as documented on the employee's most recent notification of personnel action. The new paragraph also provides that, for special salary rate purposes, when an employee is paid limited relocation allowances under 5 U.S.C. 5737, the employee's position of record and official duty station are the position and duty station associated with the extended assignment. The interim regulations also make a similar change in the definitions of *official duty station* in 5 CFR 531.301 and 531.602 for purposes of paying locality-based comparability payments and law enforcement officer geographic adjustments.

The interim regulations add a definition of *official duty station* to 5 CFR 591.201 (consistent with the revised definitions of *official duty station* in 5 CFR 531.301 and 531.602) for purposes of paying nonforeign area cost-of-living allowances and post differentials and change the term "permanent duty station" to "official duty station" in 5 CFR 591.210(a) to make these terms consistent with those used in the locality pay regulations. The regulations also make conforming changes in § 591.201 and in paragraphs (b)(1), (c), and (f) of § 591.210.

Waiver of Notice of Proposed Rulemaking and of 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. As explained in this notice, these regulatory changes are needed to address new situations created by the Federal Employee Travel Reform Act of 1996, which took effect on March 22, 1997. The regulations are necessary to ensure that Federal employees are treated equitably and consistently in

determining their location-based pay entitlements.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Parts 530, 531, and 591

Government employees, Law enforcement officers, Reporting and recordkeeping requirements, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending parts 530, 531, and 591 of title 5 of the Code of Federal Regulations as follows:

PART 530—PAY RATES AND SYSTEMS (GENERAL)

1. The authority citation for part 530 continues to read as follows:

Authority: 5 U.S.C. 5305 and 5307; E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under secs. 302(c) and 404(c) of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), 104 Stat. 1462 and 1466, respectively;

Subpart C also issued under sec. 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103-89), 107 Stat. 981.

2. In § 530.303, a new paragraph (i) is added to read as follows:

§ 530.303 Establishing and adjusting special salary rate schedules.

* * * * *

(i) The determination regarding whether an employee is covered by a special salary rate schedule is based on the employee's position of record and the official duty station for that position. For purposes of this subpart, the employee's position of record and corresponding official duty station are the position and station documented on the employee's most recent notification of personnel action. For an employee who is authorized to receive relocation allowances under 5 U.S.C. 5737 in connection with an extended assignment, the position and duty station associated with that assignment are the employee's position of record and official duty station.

PART 531—PAY UNDER THE GENERAL SCHEDULE

3. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 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), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101-509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102-378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336; Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682;

Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101-509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

4. In § 531.301, the definition of *official duty station* is revised to read as follows:

§ 531.301 Definitions.

* * * * *

Official duty station means the duty station for the law enforcement officer's position of record as indicated on his or her most recent notification of personnel action. For an employee who is authorized to receive relocation allowances under 5 U.S.C. 5737 in connection with an extended assignment, the temporary duty station associated with that assignment is the employee's official duty station.

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5. In § 531.602, the definition of *official duty station* is revised to read as follows:

§ 531.602 Definitions.

* * * * *

Official duty station means the duty station for an employee's position of record as indicated on his or her most recent notification of personnel action. For an employee who is authorized to receive relocation allowances under 5 U.S.C. 5737 in connection with an extended assignment, the temporary duty station associated with that assignment is the employee's official duty station.

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PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

6. The authority citation for subpart B of part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943-1948 Comp., p. 792; and E.O. 12510, 3 CFR, 1985 Comp., p. 338.

7. In § 591.201, the definitions of *date of arrival* and *date of departure* are removed and the definition of *official duty station* is added in alphabetical order to read as follows:

§ 591.201 Definitions.

* * * * *

Official duty station means the duty station for an employee's position of record as indicated on his or her most recent notification of personnel action. For an employee who is authorized to receive relocation allowances under 5 U.S.C. 5737 in connection with an extended assignment, the temporary duty station associated with that assignment is the employee's official duty station.

* * * * *

8. In § 591.210, paragraph (a) is amended by removing the word "permanent" and adding the word "official" in its place; paragraph (c) is amended by removing the words "a duty station" and adding the words "an official duty station" in their place; paragraph (b)(1) is amended by removing the last sentence and adding a new sentence in its place; and paragraph (f) is revised to read as follows:

§ 591.210 Payment of allowances and differentials.

* * * * *

(b)(1) * * * Allowances and differentials that an employee is receiving in accordance with this subpart at the time of separation or death shall be included in any lump-sum payment for accumulated and current accrued annual leave issued under sections 5551 or 5552 of title 5, United States Code.

* * * * *

(f) Payment of an allowance or differential will begin on the effective date of the change in the employee's official duty station to a duty station within the allowance or differential area or on the effective date of the appointment in the case of local recruitment. Payment of an allowance or differential will cease upon separation or on the effective date of an assignment or transfer to a new official duty station outside the allowance or differential area.

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