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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 531

RIN 3206-AK56

### Locality-Based Comparability Payments

**AGENCY:** Office of Personnel Management.

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

**SUMMARY:** The Office of Personnel Management is issuing interim regulations to provide that a locality rate of pay is considered basic pay for the purpose of computing danger pay allowances and post differentials for certain employees temporarily assigned to work in foreign areas for which the Department of State has established danger pay allowances. These regulations will aid agencies in responding to emergency, mission-critical staffing needs in support of the Global War on Terrorism and other international activities in imminently dangerous overseas work locations by increasing the danger pay allowance and post differential benefits for employees temporarily assigned to such locations.

**DATES:** *Effective Date:* August 5, 2004.

*Applicability Date:* These regulations apply on the first day of the first applicable pay period beginning on or after August 5, 2004.

*Comment Date:* Comments must be received on or before October 4, 2004.

**ADDRESSES:** Send or deliver comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, 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:** Jeanne Jacobson, (202) 606-2858; FAX:

(202) 606-0824; or e-mail: [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov).

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management (OPM) is issuing interim regulations that amend 5 CFR 531.606(b) to provide that a locality rate of pay is considered basic pay for the purpose of computing danger pay allowances under 5 U.S.C. 5928 and post differentials under 5 U.S.C. 5925(a) for certain employees temporarily assigned to work in foreign areas for which the Department of State has established danger pay allowances. These regulations will aid agencies in responding to emergency, mission-critical staffing needs in imminently dangerous overseas work locations in support of the Global War on Terrorism and other international activities by increasing the danger pay allowance and post differential benefits for employees temporarily assigned to such locations.

### Overseas Danger Pay Allowances and Post Differentials

Under 5 U.S.C. 5928, the Department of State may establish a danger pay allowance for a foreign area on the basis of civil insurrection, civil war, terrorism, or wartime conditions in that area which threaten physical harm or imminent danger to the health or well-being of an employee. A danger pay allowance may not exceed 25 percent of an employee's rate of basic pay. Employees are entitled to receive a danger pay allowance if they work in an approved danger pay post for a minimum of 4 hours in one day (including while on detail or in a temporary duty travel status).

Under 5 U.S.C. 5925(a), the Department of State may establish a post differential for an overseas location based on conditions of environment that differ substantially from conditions of environment in the continental United States and warrant additional pay as a recruitment and retention incentive. A past differential may not exceed 25 percent of an employee's rate of basic pay. Employees working on extended detail or in a temporary duty travel status in an overseas location with an approved post differential are entitled to receive the post differential after working in a hardship post location for 42 days.

The allowance and differential rates established by the Department of State

apply to all United States Government civilian employees overseas, regardless of agency affiliation. Additional information on danger pay allowances and post differentials may be obtained from the Department of State at <http://www.state.gov/m/a/als/>.

### Locality Rates of Pay

Locality rates of pay under 5 U.S.C. 5304 and 5 CFR part 531, subpart F, are authorized for employees whose official duty stations (as defined in 5 CFR 531.602) are located in one of the locality pay areas listed in 5 CFR 531.603, covering all locations in the 48 contiguous States and Washington, DC. Employees with official duty stations outside the 48 contiguous States are not entitled to locality pay. However, the official duty station of an employee who is temporarily assigned to work in a location outside the 48 contiguous States while on detail or in a temporary duty travel status generally remains the duty station of his or her permanent position of record as indicated on the most recent notification of personnel action. Such employees are entitled to receive the locality rate of pay associated with their official duty station while working overseas.

Under 5 U.S.C. 5304(c)(2), a locality rate of pay must be considered part of basic pay for purposes of retirement under 5 U.S.C. chapters 83 or 84, as applicable; life insurance under 5 U.S.C. chapter 87; premium pay under 5 U.S.C. chapter 55, subchapter V; and for such other purposes as may be expressly provided for by law or as OPM may prescribe by regulation. OPM regulations provide that a locality rate of pay is considered basic pay for purposes of severance pay under 5 CFR part 550, subpart G, and advances in pay under 5 CFR part 550, subpart B. (See 5 CFR 531.606(b).)

### Computing Danger Pay Allowances and Post Differentials Using Locality Rates of Pay

These interim regulations amend 5 CFR 531.606(b) to provide that a locality rate of pay is considered basic pay for the purpose of computing danger pay allowances under 5 U.S.C. 5928 and post differentials under 5 U.S.C. 5925(a) for employees temporarily assigned to work in a foreign area for which the Department of State has established a danger pay allowance. Covered employees must be temporarily assigned

to locations with an approved danger pay allowance (e.g., via a detail or while in temporary duty travel status), have an official duty station that is located in a locality pay area specified in 5 CFR 531.603, and receive a locality rate of pay under 5 U.S.C. 5304. Using locality rates of pay to compute danger pay allowances and post differentials for employees who must work temporarily in imminently dangerous overseas duty locations will increase the size of these payments and enhance their benefit for affected employees. This, in turn, will help agencies better respond to critical staffing needs in certain overseas duty locations in support of the Global War on Terrorism and other important international activities.

Prior to the effective date of these regulations, a locality rate of pay under 5 U.S.C. 5304 and 5 CFR part 531, subpart F, cannot be considered part of an employee's basic pay for the purpose of computing any overseas allowance or differential, including those paid to employees detailed to or on official travel in a foreign area. Agencies must correct the payment of any danger pay allowance, post differential, or other overseas allowance or differential paid prior to the effective date of these regulations if it was computed using a locality rate of pay authorized under 5 U.S.C. 5304. An overpayment may be recovered under an agency's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, or through the appropriate provisions governing Federal debt collection if the individual is no longer a Federal employee. However, the head of an agency may waive an overpayment under 5 U.S.C. 5584, as appropriate.

#### **Waiver of Notice of Proposed Rulemaking and Delay in Effective Date**

In order to give practical effect to these regulations at the earliest possible moment, I find that good cause exists to waive the general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b)(3)(B). Also, I find that good cause exists for making this rule effective in less than 30 days. The delay in effective date is waived so that affected agencies and employees may benefit from the new provisions as quickly as possible. Increasing the danger pay allowance and post differential benefits for employees temporarily assigned to imminently dangerous overseas work locations will help agencies respond to emergency, mission-critical staffing needs in support of the Global War on Terrorism and other important international activities.

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

The Office of Management and Budget has reviewed this rule 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 Part 531**

Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

**Kay Coles James,**  
*Director.*

■ Accordingly, OPM is amending 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 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 Federal Employees Pay Comparability Act of 1990 (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 and E.O. 1306, 63 FR 68151, 3 CFR, 1998 Comp., p. 224; Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the FEPCA, Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

#### **Subpart F—Locality-Based Comparability Payments**

■ 2. In § 531.606, a new paragraph (b)(6) is added to read as follows:

##### **§ 531.606 Administration of locality rates of pay.**

\* \* \* \* \*

(b) \* \* \*

(6) Post differentials under 5 U.S.C. 5925(a) and danger pay allowances under 5 U.S.C. 5928 for an employee temporarily assigned to work in a foreign area for which the Department of State has established a danger pay allowance under 5 U.S.C. 5928, when the employee's official duty station is

located in a locality pay area under § 531.603.

\* \* \* \* \*

[FR Doc. 04–17842 Filed 8–4–04; 8:45 am]

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 23**

[Docket No. CE209, Special Condition 23–149–SC]

#### **Special Conditions; Garmin AT, Inc., Piper PA–32; Protection of Electronic Flight Instrument Systems (EFIS) for High Intensity Radiated Fields (HIRF)**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued to Garmin AT, Inc., 2345 Turner Road, Salem, OR 97302, for a Supplemental Type Certificate for the Piper PA–32. This airplane, as modified by Garmin AT, Inc., will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of an electronic flight instrument system (EFIS) display, Model G–1000, manufactured by Garmin AT, Inc., for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to this airplane.

**DATES:** The effective date of these special conditions is July 26, 2004. Comments must be received on or before September 7, 2004.

**ADDRESSES:** Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE209, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE209. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane