

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 591

RIN 3206-AH51

### Cost-of-Living Allowances (Nonforeign Areas)

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** As authorized by law, the Office of Personnel Management (OPM) provides in its regulations for the payment of nonforeign area cost-of-living allowances (COLA's) in Alaska, Hawaii, and other nonforeign overseas areas. OPM is proposing four regulatory changes in the COLA program. One change would remove obsolete references that refer to hiring authorities no longer in use. A second change would clarify the application of COLA regulations to two pay systems linked to or equivalent to the Senior Executive Service. A third change would clarify the application of COLA regulations to employees under other pay systems. The fourth change would extend nonforeign area post differentials to employees on long-term temporary assignments in the same manner as is provided by the State Department for employees in foreign areas.

**DATES:** Comments must be received on or before May 19, 1997.

**ADDRESSES:** Send or deliver comments to Donald J. Winstead, Assistant Director, Office of Compensation Policy, Human Resources Systems Service, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415, or FAX to (202)606-4264.

**FOR FURTHER INFORMATION CONTACT:** Donald L. Paquin (202) 606-2838.

**SUPPLEMENTARY INFORMATION:** Under section 5941 of title 5, United States Code, and Executive Order 10000, as amended, certain Federal employees in nonforeign areas outside the 48 contiguous States are eligible for cost-of-living allowances (COLA's) when local

living costs are substantially higher than those in the Washington, DC, area. Nonforeign area COLA's are paid in Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, and Guam and the Commonwealth of the Northern Mariana Islands.

#### Obsolete Regulatory References

Section 591.203 of title 5, Code of Federal Regulations, refers to hiring authorities under 5 CFR 213.3102(v) and (w), which are no longer used. These authorities covered Summer Aids paid the minimum wage and Stay-in-School positions paid less than the lowest rate on the General Schedule. Paragraphs (v) and (w) of § 213.3102 are currently reserved, and OPM proposes to remove the references from § 591.203.

#### Pay Systems Linked or Equivalent to the Senior Executive Service

OPM proposes to add parenthetical language in § 591.203(a)(1) and (3) to clarify that the Foreign Service includes the Senior Foreign Service and that the Senior Executive Service includes the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA) Senior Executive Service. Members of the Senior Foreign Service and the FBI-DEA Senior Executive Service currently receive COLA's. The proposed change is a technical amendment designed to make these references consistent with others used in title 5, Code of Federal Regulations.

#### Coverage of Employees Under Other Pay Systems

In place of the obsolete references in § 591.203(b), OPM proposes to add language that would authorize agencies to apply subpart B to other positions as authorized by specific statutes applicable to those other positions and consistent with the intent of 5 U.S.C. 5941. Section 5941 authorizes payment of COLA to employees in nonforeign areas whose rates of pay are set by statute. When 5 U.S.C. 5941 was enacted in 1948, the rates of pay for employees under several pay systems, including the General Schedule, were set by statute. Statutes enacted since that time have removed certain positions from the General Schedule and required or allowed the pay for these positions to be set in a different manner. It has long been the policy of the Federal Government to continue the

payment of allowances and differentials in such cases unless the enabling statutes prohibited such payments. The regulatory change OPM proposes recognizes this longstanding policy and makes clear that such allowances and differentials are paid in accordance with regulations prescribed by OPM under the authority delegated to it by the President of the United States.

#### Post Differential and Long-Term Temporary Assignments

As authorized in § 591.210(f), payment of an allowance or differential begins as of the date of arrival on regular assignment or transfer, or on the date of entrance on duty in the case of local recruitment. OPM proposes to authorize payment of post differentials to employees after 42 consecutive days of temporary assignment in a nonforeign area. The purpose of this regulatory change is to make OPM's post differential program more consistent with the program administered by the State Department for employees temporarily assigned to work in foreign areas. Payment of nonforeign area differentials would stop upon an employee's departure from a differential area.

#### 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 would not have a significant economic impact on a substantial number of small entities because the regulation would affect only Federal agencies and employees.

#### List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend 5 CFR part 591 as follows:

### PART 591—ALLOWANCES AND DIFFERENTIALS

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

1. 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; E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. In § 591.203, paragraphs (a)(1), (a)(3), (a)(6), and (b) are revised to read as follows:

**§ 591.203 Agencies and employees covered.**

(a) \* \* \*

(1) General Schedule.

\* \* \* \* \*

(3) Foreign Service (including the Senior Foreign Service).

\* \* \* \* \*

(6) Senior Executive Service (including the Federal Bureau of Investigation and the Drug Enforcement Administration Senior Executive Service).

\* \* \* \* \*

(b) This subpart may be applied, at the sole discretion of the employing agency, to civilian employees in other positions authorized by specific law applicable to such positions, consistent with the intent of 5 U.S.C. 5941.

3. In § 591.210, paragraph (f) is removed, paragraphs (b) through (e) are redesignated as (c) through (f), respectively, and a new paragraph (b) is added to read as follows:

**§ 591.210 Payment of allowances and differentials.**

\* \* \* \* \*

(b) Payment of an allowance or differential begins as of the date of an employee's arrival on regular assignment or transfer, or on the date of entrance on duty in the case of local recruitment. An employee who is temporarily assigned to duty in a nonforeign area is eligible for a differential, but not an allowance, except that payment of a differential shall not begin until after 42 consecutive calendar days of assignment in the differential area. Payment of an allowance or differential ceases—

(1) On separation;

(2) As of the date of departure on transfer to a new post of regular assignment; or

(3) As of the date of departure in the case of an employee on temporary assignment to the differential area.

\* \* \* \* \*

[FR Doc. 97-7071 Filed 3-19-97; 8:45 am]

BILLING CODE 6325-01-P

**DEPARTMENT OF ENERGY**

**Office of Civilian and Radioactive Waste Management**

**10 CFR Part 960**

RIN 1901-1172

**General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories**

**AGENCY:** Proposed rule; Reopening of public comment period.

**SUMMARY:** In response to additional requests from several interested persons, the Department of Energy has granted additional time to comment on proposed amendments to 10 CFR Part 960 that were published at 61 FR 66158, December 16, 1996.<sup>1</sup>

**DATES:** Comments should be received no later than April 16, 1997.

**ADDRESSES:** All written comments are to be submitted to April V. Gil, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, PO Box 98608, or provided by electronic mail to 10CFR960@notes.ypm.gov.

**FOR FURTHER INFORMATION CONTACT:** April V. Gil, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, PO Box 98608, Las Vegas, Nevada 89193, (800) 967-3477.

Issued in Washington, DC on this 14th day of March, 1997.

Lake Barrett,

*Acting Director, U.S. Department of Energy, Office of Civilian Radioactive Waste Management.*

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**FEDERAL ELECTION COMMISSION**

**11 CFR Parts 100 and 114**

[Notice 1997 4]

**Rulemaking Petition: Definition of "Member" of a Membership Association; Notice of Availability**

**AGENCY:** Federal Election Commission.

**ACTION:** Rulemaking petition: Notice of availability.

**SUMMARY:** On February 24, 1997, the Commission received a Petition for Rulemaking from James Bopp, Jr., on behalf of the National Right to Life Committee, Inc. The Petition urges the Commission to revise its rules defining

who is a member of a membership association in view of a recent court decision. The Petition is available for inspection in the commission's Public Records Office.

**DATES:** Statements in support of, or in opposition to, the Petition must be filed on or before April 21, 1997.

**ADDRESSES:** Comments must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 219-3690 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The petitioner is requesting the Commission to revise its rules defining who is a member of a membership association in view of the decision by the United States Court of Appeals for the District of Columbia Circuit in *Chamber of Commerce of the United States versus Federal Election Commission*, 69 F.3d 600 (D.C. Cir 1995), amended on denial of rehearing, 76 F.3d 1234 (D.C. Cir. 1996). The decision held that the current rules at 11 CFR 100.8(b)(4)(iv) and 114.1(e), which require members in most instances to have direct or indirect voting rights for at least one member of the association's highest governing body, cannot be applied to the Chamber of Commerce or the American Medical Association, because of other financial and organizational ties that exist between these entities and their members.

Copies of the Petition for Rulemaking are available for public inspection at the Commission's Public Records Office, 999 E Street, NW., Washington, DC 20463, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. Interested persons may also obtain a copy of the Petition by dialing the Commission's FlashFAX service at (202) 501-3413 and following its instructions, at any time of the day and week. Request document #232.

Statements in support of, or in opposition to, the Petition for Rulemaking must be submitted in writing by April 21, 1997.

Consideration of the merits of the Petition will be deferred until the close of the comment period. If the Commission decides that the Petition has merit, it may begin a rulemaking proceeding. Any subsequent action taken by the Commission will be announced in the Federal Register.

<sup>1</sup> See also 62 FR 4941, Feb. 3, 1997.