

Proposed Rules

Federal Register

Vol. 78, No. 169

Friday, August 30, 2013

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 550

RIN 3206-AL55

Compensatory Time Off for Religious Observances and Other Miscellaneous Changes

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management is issuing proposed regulations to amend its current regulations on compensatory time off for religious observances. The proposal would clarify employee and agency responsibilities, provide timeframes for earning and using religious compensatory time off, and define key terms. In addition, we are making other miscellaneous changes in the pay and leave area.

DATES: Comments must be received on or before October 29, 2013.

ADDRESSES: You may submit comments, identified by RIN number “3206-AL55,” using any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Email: pay-leave-policy@opm.gov.

Mail: Jeanne Jacobson, Acting Deputy Associate Director, Pay and Leave, Employee Services, U.S. Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415-8200.

FOR FURTHER INFORMATION CONTACT: David Barash, by telephone at (202) 606-2858; by fax at (202) 606-0824; or by email at pay-leave-policy@opm.gov.

SUPPLEMENTARY INFORMATION: Based on comments we received on our proposed regulations issued on January 5, 2005 (70 FR 1068), recent recommendations made in the U.S. Government Accountability Office’s report entitled “Religious Compensatory Time: Office

of Personnel Management Action Needed to Clarify Policies for Agencies” (GAO-13-96, October 12, 2012), and our general experience with the adjustment of work schedules for religious observances (i.e., religious compensatory time off), the U.S. Office of Personnel Management (OPM) is proposing to amend its regulations in 5 CFR part 550, subpart J, Compensatory Time Off for Religious Observances. Under 5 U.S.C. 5550a, OPM is responsible for issuing regulations providing for work schedules under which an employee, whose personal religious beliefs require the abstention from work during certain periods of time, may elect to perform overtime work to make up for time lost for meeting those religious obligations. Any employee who elects to perform such overtime work must be granted equal compensatory time off from his or her scheduled tour of duty (in lieu of overtime pay or other pay that would otherwise apply) for such religious observances, notwithstanding any other provision of law. In summary, the religious compensatory time off authority permits an employee to rearrange work hours to fulfill his or her religious obligations. The intent of our proposal is to help agencies more effectively manage religious compensatory time off by clarifying employee and agency responsibilities, providing timeframes for earning and using religious compensatory time off, and defining key terms.

OPM’s current regulations provide only limited rules and information and require agencies to provide opportunities for employees to earn and use religious compensatory time off to the extent that doing so does not interfere with the efficient carrying out of agencies’ missions. The regulations also explicitly allow the religious compensatory time off to be earned either before or after the corresponding absence from work. Agencies must keep appropriate records on religious compensatory time off that is earned and used to ensure effective administration of religious compensatory time off.

Previous Proposed Regulations

In 2005, OPM issued proposed regulations to put safeguards in place to address some problems with the administration of the religious

compensatory time off program that were surfacing. Those regulations proposed to expand the current regulations to provide more structure and consistency by adding new definitions, allowing agencies to require documentation of the need for religious compensatory time off, and requiring employees to perform additional work within 3 pay periods to make up for religious compensatory time off already used. In addition, the regulations proposed to place limits on an employee’s accumulation of earned religious compensatory time off, and to provide rules regarding how agencies must deal with employees who have a negative or positive balance of earned religious compensatory time off when the employee’s Federal employment ends or when the employee is transferred to another Federal agency.

Comments on Previous Proposed Regulations

Most of the comments we received on the 2005 proposal focused on the provisions regarding the documentation requirements related to the need for time off and the timeframe limits for earning religious compensatory time off. Several commenters expressed concern that allowing agencies to require documentation of the need for religious compensatory time off would lead to agencies making inappropriate judgments about the legitimacy of these requests for religious compensatory time off. Other commenters believed the proposed regulations were not clear enough about the nature of the documentation that could be required. Meanwhile, some commenters thought the requirement to perform overtime work for purposes of earning religious compensatory time off within 3 pay periods after using advanced compensatory time off was too restrictive. It was noted, for example, that there is a cluster of Jewish religious holidays in the fall during which an employee may need to abstain from work for at least 7 days during a 1-month period. We have reexamined our 2005 proposal and have substantially altered the provisions relating to documentation and timeframes; therefore, we are now reissuing proposed regulations with a request for comments.

Based on the comments we received in 2005, we are striving to balance the

protection of an employee's right to practice his or her religious freedoms with management's responsibility to carry out the agency's mission. We believe our proposal balances these needs, and incorporates the comments we received from our 2005 proposal to improve the proposed regulations by (1) increasing the number of pay periods within which an employee can repay advanced religious compensatory time off after using it, and (2) requiring the employee to provide the agency with specific information regarding his or her request to use religious compensatory time off.

Section-by-Section Analysis of Proposed Regulations

OPM continues to believe there is a need for a clearer regulatory structure for the earning and use of religious compensatory time off. However, we found some of the objections to our 2005 proposal were persuasive. Consequently, we are proposing to restructure subpart J of 5 CFR part 550 with eight sections as follows:

Section 550.1001 Purpose. This section sets forth the purpose of the subpart, which is to implement the statutory authority for religious compensatory time off under 5 U.S.C. 5550a.

Section 550.1002 Coverage. The proposed regulations provide that coverage applies to each employee in or under an Executive agency (as defined in 5 U.S.C. 105) who has a scheduled tour of duty.

Employees of the Federal Aviation Administration (FAA) are excluded from coverage under most title 5 provisions, including section 5550a. (See 49 U.S.C. 40122(g).) Employees of the Transportation Security Administration (TSA) are excluded from the same title 5 provisions as FAA employees; thus, they are also not covered by section 5550a. (See 49 U.S.C. 114(n).) Both FAA and TSA may adopt a religious compensatory time off program under their own personnel authorities.

The proposed new coverage section, section 550.1002, also provides that section 5550a and OPM's implementing regulations apply only to employees who have a "scheduled tour of duty." In 5 U.S.C. 5550a(a), the law prescribes that an employee is granted compensatory time off "from his scheduled tour of duty" when the employee's personal religious beliefs require "the abstention from work during certain periods of time." A further discussion of the term "scheduled tour of duty" is included in

the definition section of this supplementary information.

Section 550.1003 Definitions. This section contains definitions of key terms used in subpart J. These terms are "overtime work," "rate of basic pay," "religious compensatory time off," and "scheduled tour of duty." All of these proposed definitions are new and are being added to this section.

We are providing further explanation of certain terms that are defined in this section. For the purposes of subpart J, "overtime work" is performed to earn religious compensatory time off and provides no entitlement to overtime pay or other premium pay. "Overtime work" earned as religious compensatory time off is a limited exception that is not considered in applying the premium pay limitations in 5 U.S.C. 5547 and 5 CFR 550.105–550.107. (See 62 Comp. Gen. 589, July 26, 1983.) In contrast, the dollar value of overtime work resulting in compensatory time off in lieu of overtime pay under 5 U.S.C. 5543 is considered to be premium pay in applying those limitations. We are clarifying in the regulations that overtime work is deemed to include (1) work performed by a part-time employee outside of his or her scheduled tour of duty, even if that work is below applicable overtime thresholds (e.g., below 40 hours in a week), and (2) work performed by an employee on a legal holiday.

The term "rate of basic pay" is the rate of pay fixed by law or administrative action for the position held by an employee, including any applicable locality payment under 5 CFR part 531, subpart F; special rate supplement under 5 CFR part 530, subpart C; retained rate under 5 CFR part 536; or similar payment or supplement under other legal authority, before any deductions and exclusive of additional pay of any other kind. It is used in determining the amount paid to an employee upon separation or transfer for any unused hours of religious compensatory time off earned based on the rate of basic pay in effect when the extra hours of work were performed.

"Religious compensatory time off" is compensatory time off for an employee whose personal religious beliefs require that he or she abstain from work at certain times of the workday or workweek. To the extent that modifications in work schedules do not interfere with the efficient accomplishment of an agency's mission, an employee must be permitted to work overtime hours to meet the religious obligation, and such hours do not create any entitlement to premium pay.

A "scheduled tour of duty" means the regular work hours in an established full-time or part-time work schedule during which the employee is charged leave or time off when absent. The law (5 U.S.C. 5550a) specifically refers to employees using religious compensatory time off by taking time off of their "scheduled tour of duty." Only employees with an established full-time or part-time schedule have a scheduled tour of duty. Employees who do not have a scheduled tour of duty, such as intermittent employees or leave-exempt Presidential appointees (see 5 CFR 630.211), cannot use leave or other time off, including religious compensatory time off. However, in the spirit of the religious compensatory time off law, supervisors should strive to accommodate such employees in their observance of religious activities required by their personal religious beliefs.

Section 550.1004 Employee responsibilities. This section enumerates an employee's responsibilities when he or she requests to earn and use religious compensatory time off. An employee is required to provide his or her supervisor with a request for religious compensatory time off in advance of the religious observance. Under paragraph (b) of this section, at the time the religious compensatory time off is requested, the employee must provide the agency with (1) the name and/or description of the particular religious observance for which the employee's absence is required; (2) the date(s) and time(s) the employee plans to be absent for religious observances; and (3) the date(s) and time(s) the employee plans to perform overtime work to earn religious compensatory time off to make up for the absence. This information provides appropriate documentation to enable the agency to consider the request. An employee must comply with the agency's procedures for requesting, earning, and using religious compensatory time off, including time limitations, as prescribed in sections 550.1004 and 550.1005.

Section 550.1005 Agency responsibilities. This section enumerates agency responsibilities when considering an employee's request to earn and use religious compensatory time off. Paragraph (a) of this section permits an agency to require an employee to submit his or her religious compensatory time off request either orally or in writing, including the information listed in section 550.1004(b), in a manner that is administratively acceptable to the agency. Although this paragraph provides authority for an agency to

require an employee to submit his or her request in writing under section 550.1004(b), the agency may allow supervisors to approve requests on a more informal basis as long as the supervisor documents the required information regarding the employee's request.

Paragraph (b) of this section states that an agency is required to approve religious compensatory time off to the extent that modifications in work schedules do not interfere with the efficient accomplishment of its mission, consistent with 5 U.S.C. 5550(c).

Paragraph (c) of this section states that the agency must provide the employee with an opportunity to earn religious compensatory time off before the end of the 26th pay period following the use of the time off. However, the specific timing of when an employee is allowed to earn religious compensatory time off is at the agency's discretion. This is consistent with guidance in former Federal Personnel Manual Letter 550-71, September 29, 1978, which stated that "[A]n agency is expected to accommodate to an employee's request to work compensatory overtime. If no productive overtime is available to be worked by the employee at such time as he or she may initially request, alternative times should be arranged for the performance of the compensatory overtime work." A key difference between using and earning religious compensatory time off is that using religious compensatory time off is tied to a specific religious observance on a fixed date, whereas greater flexibility exists regarding when religious compensatory time off may be earned. However, the agency must provide an opportunity for the employee to earn religious compensatory time off before the end of 26th pay period after it was used. Agencies have latitude in scheduling exactly when overtime hours will be worked to earn religious compensatory time off.

Section 550.1006 Scheduling time to earn and use religious compensatory time off. This section provides rules for scheduling time to earn and use religious compensatory time off to establish a consistent and effective Governmentwide approach. An employee must inform his or her agency of the date(s) and time(s) he or she plans to be absent for religious observances and the date(s) and time(s) he or she plans to work to earn religious compensatory time off to make up for the absence. The agency must consider its mission requirements when determining whether to approve changes in work schedules for

scheduling religious compensatory time off, as explained in section 550.1005.

This section also empowers agencies to require employees who are submitting requests for this time off to make the requests sufficiently in advance to allow for workforce adjustments that may be required to accommodate the religious compensatory time off.

For an employee who earns religious compensatory time off prior to using it, religious compensatory time off may be earned up to 26 pay periods in advance of the pay period in which it is intended to be used, as long as the scheduling of religious compensatory time off is linked to specific dates and times and its scheduling is compatible with agency mission requirements. While most agencies may have always required employees to identify specific, future religious observances as a condition for allowing them to earn religious compensatory time off, this proposal now provides a common approach, with specific information regarding the details the employee must supply under section 550.1004.

Where an employee uses religious compensatory time off prior to earning it (i.e., spending an equal amount of time in overtime work), that employee must schedule and fulfill his or her obligation to perform overtime work in exchange for religious compensatory time off within 26 pay periods (52 weeks) after the pay period in which he or she used religious compensatory time off. The 26 pay periods are calculated beginning with the first pay period after the pay period in which the religious compensatory time off was used.

OPM believes that providing 26 pay periods before and after a religious observance is a sufficient timeframe for an employee to earn religious compensatory time, and is consistent with the 26 pay period rule for using compensatory time off in lieu of overtime pay after it is earned.

If the employee fails to perform overtime work in exchange for advanced religious compensatory time off within 26 pay periods after the pay period in which it was used, section 550.1006(c) provides that the agency may take corrective action to eliminate or reduce the negative balance by making a corresponding reduction in the employee's annual leave balance. Any remaining negative balance must be resolved by charging the employee leave without pay, which will result in an indebtedness that is subject to the agency's internal debt collection procedures. This approach is consistent with OPM's longstanding position that if an employee has taken advanced

religious compensatory time off and has a negative balance, the employee must be charged annual leave or leave without pay to account for that negative balance. (See also the more detailed discussion regarding section 550.1008(b).)

OPM reminds agencies and employees of the availability of additional workforce flexibilities, including annual leave, advanced annual leave, regular compensatory time off, alternative work schedules, and leave without pay, all of which may play a part in accommodating an employee's need to abstain from work for religious observances. We believe providing 26 pay periods for employees to repay such advanced religious compensatory time off, permitting employees to perform work in advance of a religious observance, and using other existing workforce flexibilities will provide employees with several viable alternatives for meeting religious requirements, while ensuring agencies are able to carry out their missions in a timely manner.

Section 550.1007 Accumulation and documentation. This section requires agencies to keep appropriate records on the amount of religious compensatory time off each employee earns and uses. The agency must credit religious compensatory time off for work performed on a time-for-time basis, under an agency's time and attendance procedures. Except as provided in paragraph (c) of section 550.1007, an employee may accumulate only the amount of religious compensatory time off needed to cover an approved absence for a religious observance or an anticipated absence for a future religious observance for specific dates and times that the employee has identified.

Under section 550.1007(c), if the employee does not use his or her earned religious compensatory time off as planned, the employee may not earn any additional religious compensatory time off until the retained amount of religious compensatory time off has been used or the need to earn additional religious compensatory time off has been established and documented. In other words, earned religious compensatory time off that has not been used as planned may be applied toward a future religious observance that has been properly requested and approved—even if that event is more than 26 pay periods after when the religious compensatory time off was originally earned. If the number of hours of unused religious compensatory time off is not sufficient to cover the future religious observance, the employee may

earn additional religious compensatory time off to cover extra hours—either 26 pay periods before or after the pay period in which the employee takes time off for the approved future religious observance, as provided in section 550.1006.

For example, an employee earns 16 hours of religious compensatory time off toward religious observance “A.” The employee is unable to use the 16 hours as planned due to unforeseen circumstances. The employee then requests and receives approval for religious observance “B.” The employee needs an additional 8 hours to attend the new religious observance. The 16 hours of earned religious compensatory time off from religious observance “A” may be applied toward 24 hours needed for religious observance “B.” The employee may earn the additional 8 hours of religious compensatory time off within 26 pay periods before or after religious observance “B” to cover the religious observance.

Agencies must monitor any accumulation to ensure that the employee is using the religious compensatory time off for the intended religious observance and is not stockpiling the compensatory time off for purposes that do not meet the intent of the law and regulations.

Section 550.1008 Employee separation or transfer. This section addresses how positive and negative balances of religious compensatory time off are to be treated when employees leave Federal service or transfer to another Federal agency. In the case of an employee with a positive balance who is separating from Federal service or transferring to another Federal agency, the losing agency pays the employee at the hourly rate of basic pay in effect when the religious compensatory time off was earned. Though OPM has published this disposition procedure as guidance on its Web site, it is now including it in the regulations to ensure compliance throughout the Federal Government.

Any earned religious compensatory time off may be paid only when an employee separates or transfers to another Federal agency. Religious compensatory time off cannot be forfeited, nor can it be paid out as compensatory time off in lieu of overtime or any other forms of time off. Since religious compensatory time off is earned and approved for specific dates and times, the amount of religious compensatory time off paid out in a lump sum should be minimal.

Regarding the case of an employee with a negative balance of religious compensatory time off who is separating

from Federal service or transferring to another Federal agency under 5 CFR 550.1008(b), an agency may take corrective action to eliminate or reduce the negative balance by making a corresponding charge of annual leave. In other words, since the religious compensatory time off was never earned by working overtime hours, the prior use of religious compensatory time off was invalid. Accordingly, the hours improperly used as religious compensatory time off would be converted to annual leave hours by reducing the employee’s annual leave balance. Any negative balance remaining after charging annual leave would be resolved by charging leave without pay. The resulting indebtedness is subject to the agency’s internal debt collection procedures. The losing agency is required to determine the monetary value of the employee’s remaining negative balance and use applicable debt collection procedures (e.g., those authorized under 5 U.S.C. 5514 and applicable agency regulations prepared consistent with subpart K of 5 CFR part 550). The same approach applies to employees covered by section 550.1006(c) who fail to earn advanced religious compensatory time off within 26 pay periods after using religious compensatory time off.

It should be noted that, unlike annual and sick leave, there is no statutory authority to provide for a transfer of unused earned religious compensatory time off when an employee transfers to another agency. Therefore, the proposed regulations do not authorize employees to transfer a balance of earned religious compensatory time off when they move to another agency.

Section 550.1009 Relationship to premium pay and overtime work. This section makes explicit that an employee who earned religious compensatory time off under subpart J will have no entitlement to overtime pay or other premium pay based on the overtime work performed. It further clarifies that religious compensatory time off under subpart J is fundamentally different from other types of compensatory time off in that religious compensatory time off is only for the purpose of adjusting an employee’s work schedule so that the employee may perform overtime work to take time off for religious observances, and such time off is not considered premium pay, as defined in section 550.103.

We are also taking this opportunity to make the following miscellaneous regulatory changes that are unrelated to compensatory time off for religious observances:

Section 550.103 Miscellaneous Change to Definition of Rate of Basic Pay

We propose amending the definition of *rate of basic pay* in 5 CFR 550.103 to include a retained rate under 5 CFR part 536. This is consistent with the provision in 5 CFR 536.307(a)(3) that a retained rate is considered to be an employee’s rate of basic pay for the purpose of computing premium pay under 5 U.S.C. chapter 55, subchapter V, and 5 CFR part 532 and part 550, subparts A and I.

Section 550.1302 Miscellaneous Change to Citation Referenced in the Definition of Firefighter

In section 550.1302, we are correcting a citation referencing section 362.203(e) in paragraph (2)(iii) of the definition of firefighter. The correct citation is section 362.203(f).

E.O. 13563 and E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Orders 13563 and 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 550

Administrative practice and procedure, Claims, Government employees, Wages.

U.S. Office of Personnel Management.

Elaine Kaplan,
Acting Director.

Accordingly, OPM is proposing to amend 5 CFR part 550 as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

- 1. Revise the authority citation for subpart A to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5504(d), 5541(2)(iv), 5545a(h)(2)(B) and (i), 5547(b) and (c), 5548, and 6101(c); sections 407 and 2316, Pub. L. 105–277, 112 Stat. 2681–101 and 2681–828 (5 U.S.C. 5545a); E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316.

- 2. In § 550.103, revise the definition of *rate of basic pay* to read as follows:

§ 550.103 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an

employee, including any applicable locality payment under 5 CFR part 531, subpart F; special rate supplement under 5 CFR part 530, subpart C; retained rate under 5 CFR part 536; or similar payment or supplement under other legal authority, before any deductions and exclusive of additional pay of any other kind.

* * * * *

■ 3. Revise subpart J to read as follows:

Subpart J—Compensatory Time Off for Religious Observances

Sec.	
550.1001	Purpose.
550.1002	Coverage.
550.1003	Definitions.
550.1004	Employee responsibilities.
550.1005	Agency responsibilities.
550.1006	Scheduling time to earn and use religious compensatory time off.
550.1007	Accumulation and documentation.
550.1008	Employee separation or transfer.
550.1009	Relationship to premium pay and overtime work.

Authority: 5 U.S.C. 5550a.

Subpart J—Compensatory Time Off for Religious Observances

§ 550.1001 Purpose.

This subpart implements 5 U.S.C. 5550a, which permits an employee whose personal religious beliefs require the abstention from work during certain periods of time to elect to engage in overtime work and earn a special form of compensatory time off to make up for the time lost in meeting those religious requirements. Religious compensatory time off differs from other forms of compensatory time off in that the sole purpose is to adjust an employee's work schedule to accommodate a religious observance. The employee earns religious compensatory time off by spending an equal amount of time in overtime work either before or after taking time from the employee's scheduled tour of duty to meet religious requirements.

§ 550.1002 Coverage.

This subpart applies to each employee in or under an Executive agency (as defined in 5 U.S.C. 105) who has a scheduled tour of duty.

§ 550.1003 Definitions.

In this subpart:

Overtime work means work performed by an employee outside his or her scheduled tour of duty for the purpose of making up time lost for meeting religious requirements, for which overtime pay would normally be payable. It is also deemed to include work performed by a part-time

employee outside of his or her scheduled tour of duty, even if that work is below applicable overtime thresholds (e.g., below 40 hours in a week), and work performed by an employee on a legal holiday.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, including any special rate under 5 CFR part 530, subpart C; locality rate under 5 CFR part 531, subpart F; retained rate under 5 CFR part 536; or similar rate under other legal authority, before any deductions and excluding additional pay of any other kind. For example, a *rate of basic pay* does not include additional pay such as night shift differentials under 5 U.S.C. 5343(f) or environmental differentials under 5 U.S.C. 5343(c)(4).

Religious compensatory time off means compensatory time off, as authorized by 5 U.S.C. 5550a, under which an employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to perform overtime work in order to make up for time the employee takes off to meet those religious requirements. An employee approved to perform overtime work under this subpart will be granted an equal amount of compensatory time off from his or her scheduled tour of duty (in lieu of overtime pay or other pay otherwise payable) to meet his or her religious obligations.

Scheduled tour of duty means the regular work hours in an established full-time or part-time work schedule during which the employee is charged leave or time off when absent.

§ 550.1004 Employee responsibilities.

(a) An employee is required to provide his or her supervisor with a request for religious compensatory time off in advance of the religious observance by following the agency's procedures established in accordance with §§ 550.1005 and 550.1006.

(b) At the time the religious compensatory time off is requested, the employee must provide the agency with the following information:

(1) The name and/or description of the religious observance for which the employee's absence from work is required based on the employee's personal religious beliefs;

(2) The date(s) and time(s) the employee plans to be absent to participate in the religious observances identified in paragraph (b)(1) of this section; and

(3) The date(s) and time(s) the employee plans to perform overtime

work to earn religious compensatory time off to make up for the absence.

(c) An employee must comply with the agency's procedures for requesting religious compensatory time off, including any time limitations prescribed under § 550.1006.

§ 550.1005 Agency responsibilities.

(a) An agency may require an employee to submit his or her request to use religious compensatory time off in writing (including electronic communications) with all the information specified in § 550.1004(b) in a manner that is administratively acceptable to the agency. If the agency accepts an oral request, the supervisor must document all the information specified in § 550.1004(b). An agency may require an employee to submit a request to use religious compensatory time off sufficiently in advance to accommodate necessary scheduling changes without interfering with the agency's ability to efficiently carry out its mission.

(b) An agency must approve an employee's request to use religious compensatory time off unless the agency determines that approving the request would interfere with the agency's ability to efficiently carry out its mission.

(c) The agency must provide the employee with an opportunity to earn religious compensatory time off before the end of the 26th pay period following the use of the time off, although the specific timing of when an employee will be allowed to earn religious compensatory time off by performing overtime work is a matter of agency discretion based on the needs of the agency.

§ 550.1006 Scheduling time to earn and use religious compensatory time off.

(a) The scheduling of time to earn and use religious compensatory time off by an employee is subject to the agency's approval as provided in § 550.1005.

(b) For an employee who earns religious compensatory time off prior to using it, religious compensatory time off may be earned up to 26 pay periods in advance of the pay period in which the targeted religious observance commences and must be linked to specific dates and times for future use, as compatible with agency mission requirements.

(c)(1) An employee who uses religious compensatory time off prior to earning it must fulfill his or her obligation to perform overtime work in exchange for the advanced religious compensatory time off within 26 pay periods after the pay period in which he or she used religious compensatory time off, or the

agency must take action as provided in paragraph (c)(3) of this section.

(2) The 26 pay periods described in paragraph (c)(1) of this section are calculated beginning with the first pay period beginning after the date on which the religious compensatory time off was used.

(3) If the employee fails to earn religious compensatory time off within 26 pay periods after taking religious compensatory time off, the agency may take corrective action to eliminate or reduce the negative balance by making a corresponding reduction in the employee's annual leave balance. Any negative balance of religious compensatory time off remaining after charging annual leave must be resolved by charging the employee leave without pay, which would result in an indebtedness that is subject to the agency's internal debt collection procedures.

§ 550.1007 Accumulation and documentation.

(a) Agencies must keep appropriate records of the name and/or description of the religious observance, and the dates, times, and amount of religious compensatory time off each employee earns and uses. An agency must credit religious compensatory time off for work performed on a time-for-time basis, under its time and attendance procedures.

(b) Except as provided in paragraph (c) of this section, an employee may accumulate only the amount of religious compensatory time off needed to cover an approved absence for a religious observance that has already occurred or to cover an approved absence for a future religious observance. An employee may only accumulate the amount of religious compensatory time off needed to cover the specific dates and times for which the employee has submitted a request for religious compensatory time off under § 550.1004.

(c) If the employee does not use his or her earned religious compensatory time off as planned—

(1) The positive balance of unused compensatory time off may be redirected toward a future religious observance that has been approved, even if that future observance is more than 26 pay periods after the compensatory time off was originally earned (notwithstanding § 550.1006(b));

(2) The employee may not earn any additional religious compensatory time off until the retained amount of religious compensatory time off has been used or the need to earn additional religious compensatory time off has

been properly established and documented.

§ 550.1008 Employee separation or transfer.

(a) Upon an employee's separation from Federal service or transfer to another Federal agency, the losing agency must compensate the employee for any positive balance of earned religious compensatory time off to his or her credit. The agency must pay the employee for hours of earned religious compensatory time off at the hourly rate of basic pay in effect at the time religious compensatory time off was earned.

(b) For an employee who has a negative balance of religious compensatory time off upon an employee's separation from Federal service or transfer to another Federal agency, the losing agency may take corrective action to eliminate or reduce the negative balance by making a corresponding reduction in the employee's annual leave balance. Any negative balance of religious compensatory time off remaining after charging annual leave must be resolved by charging the employee leave without pay, which would result in an indebtedness that is subject to the agency's internal debt collection procedures.

(c) For purposes of applying paragraphs (a) and (b) of this section, an hourly rate of basic pay is computed by dividing the annual rate of basic pay by 2,087 hours (or 2,756 hours for firefighter hours subject to that divisor under subpart F of this part).

§ 550.1009 Relationship to premium pay and overtime work.

The premium pay provisions for overtime work in subpart A of this part and section 7 of the Fair Labor Standards Act of 1938, as amended (FLSA), do not apply to overtime work performed by an employee that is used to earn religious compensatory time off under this subpart. The overtime hours worked to earn religious compensatory time off under this subpart do not create an entitlement to premium pay (including overtime pay) under subpart A of this part or FLSA overtime pay under 5 CFR part 551. Religious compensatory time off is not considered in applying the premium pay limitations described in §§ 550.105, 550.106, and 550.107 of this part.

Subpart M—Firefighter Pay

■ 4. The authority citation for subpart M of part 550 continues to read as follows:

Authority: 5 U.S.C. 5545b, 5548, and 5553.

■ 5. In § 550.1302, revise paragraph (2)(iii) of the definition of “firefighter” to read as follows:

§ 550.1302 Definitions.

* * * * *

Firefighter * * *

(2) * * *

(iii) Covered by the General Schedule and classified in the GS-0099, General Student Trainee Series (as required by § 362.203(f) of this chapter), if the position otherwise would be classified in the GS-0081 series.

* * * * *

[FR Doc. 2013-21221 Filed 8-29-13; 8:45 am]

BILLING CODE 6325-39-P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA-2012-0075]

RIN 0960-AH54

Revised Medical Criteria for Evaluating Hearing Loss and Disturbances of Labyrinthine-Vestibular Function

AGENCY: Social Security Administration.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: We are requesting your comments on whether and how we should revise the criteria in our Listing of Impairments (listings) for evaluating hearing loss and disturbances of labyrinthine-vestibular function in adults and children. We are requesting your comments as part of our ongoing effort to ensure that our listings reflect current medical knowledge. If we propose specific revisions, we will publish a notice of proposed rulemaking in the **Federal Register**.

DATES: To ensure that we consider your comments, we must receive them by no later than October 29, 2013.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA-2012-0075 so that we may associate your comments with this ANPRM.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the