

§ 591.402 Definitions.

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Domestic partner means a person in a domestic partnership with an employee or annuitant of the same sex.

Domestic partnership means a committed relationship between two adults of the same sex in which the partners—

- (1) Are each other's sole domestic partner and intend to remain so indefinitely;
- (2) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);
- (3) Are at least 18 years of age and mentally competent to consent to contract;
- (4) Share responsibility for a significant measure of each other's financial obligations;
- (5) Are not married or joined in a civil union to anyone else;
- (6) Are not the domestic partner of anyone else;
- (7) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;
- (8) Are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001, and that the method for securing such certification, if required, will be determined by the agency; and
- (9) Are willing promptly to disclose, if required by the agency, any dissolution or material change in the status of the domestic partnership.

Family member means one or more of the following relatives of an employee who would normally reside with the employee except for circumstances warranting the granting of a separate maintenance allowance, but who does not receive from the Government an allowance similar to that granted to the employee and who is not deemed to be a family member of another employee for the purpose of determining the amount of a separate maintenance allowance or similar allowance:

- (1) Children who are unmarried and under 21 years of age or who, regardless of age, are incapable of self-support, including natural children, step and adopted children, and those under legal guardianship or custody of the

employee, or of the employee's spouse or domestic partner, when they are expected to be under such legal guardianship or custody at least until they reach 21 years of age and when dependent upon and normally residing with the guardian;

(2) Parents (including step and legally adoptive parents) of the employee, or of the employee's spouse or domestic partner, when such parents are at least 51 percent dependent on the employee for support;

(3) Sisters and brothers (including step or adoptive sisters and brothers) of the employee, or of the employee's spouse or domestic partner, when such sisters and brothers are at least 51 percent dependent on the employee for support, unmarried and under 21 years of age, or regardless of age, are incapable of self-support;

(4) Spouse, excluding a spouse independently entitled to and receiving a similar allowance; or

(5) Domestic partner, excluding a domestic partner independently entitled to and receiving a similar allowance.

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4. In § 591.403, revise paragraph (a) to read as follows:

§ 591.403 Amount of payment.

(a) The annual rate of the separate maintenance allowance paid to an employee shall be determined by the number of individuals, including a spouse, a domestic partner, and/or one or more other family members, who are maintained at a location other than Johnston Island.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 792

RIN 3206-AL36

Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management is proposing to revise its regulations on agencies' use of appropriated funds to provide child care subsidies for lower-income civilian employees, to make the regulations clearer and more concise. It also would make certain technical corrections, and

substantive changes including in the definition of "child" for purposes of the subpart. The proposed regulations also clarify the scope of regulations concerning alcohol and drug abuse counseling programs for employees and expand the regulations to extend coverage to domestic partners of Federal employees.

DATES: Comments must be received on or before August 29, 2011.

ADDRESSES: Send or deliver comments to Ingrid Burford, Work Life Program Specialist, U.S. Office of Personnel Management, 1900 E Street, NW., Rm. 7456, Washington, DC 20415-9700; or FAX to (202) 606-9939. Comments may also be sent through the Federal eRulemaking Portal at http://www.regulations.gov. All submissions received through the Portal must include the agency name and docket number or the Regulation Identifier Number (RIN) for this rulemaking. Please specify the subpart and section number for each comment.

FOR FURTHER INFORMATION CONTACT: Ingrid Burford, (202) 606-0416.

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is issuing a proposed rule revising part 792 of title 5, Code of Federal Regulations. The proposed rule would make changes in both subparts of that part, concerning employee assistance programs and child care subsidies for low-income employees, respectively, in accordance with the Obama Administration's policy, expressed in Presidential Memoranda dated June 17, 2009, and June 2, 2010, to extend benefits, where possible, to same-sex domestic partners. The changes to subpart A also would remove obsolete references to title 42 of the United States Code.

Background

On June 17, 2009, President Obama issued a Memorandum regarding Federal benefits and non-discrimination that requested the Secretary of State and the Director of OPM, in consultation with the Department of Justice, to extend previously identified statutorily based benefits that those agencies believed could be extended to qualified same-sex domestic partners of Federal employees consistent with underlying law. This Memorandum also directed the heads of executive departments and agencies, in consultation with OPM, to conduct a review of the benefits offered by their respective departments and agencies to determine whether they had the authority to extend such benefits to the same-sex domestic partners of Federal employees. The Memorandum

further requested that OPM, in consultation with the Department of Justice, make recommendations regarding any additional measures that could be taken to provide benefits to the same-sex domestic partners of Federal Government employees, consistent with existing law.

On June 2, 2010, the President issued another Memorandum, entitled "Extension of Benefits to Same-Sex Domestic Partners of Federal Employees," that published the results of the review and identified the benefits that could be extended to same-sex domestic partners and their families. These proposed regulations respond to Sections 1(a)(i) and (ii) of the President's Memorandum, which identified additional benefits OPM had concluded it could offer and requested OPM to "(i) clarify that the children of employees' same-sex domestic partners fall within the definition of "child" for purposes of Federal child-care subsidies, and, where appropriate, for child-care services" and "(ii) clarify that, for purposes of employee assistance programs, same-sex domestic partners and their children qualify as "family members."

Also on June 2, 2010, OPM issued a Memorandum for the Heads of Executive Departments and Agencies, entitled "Implementation of the President's Memorandum Regarding Extension of Benefits to Same-Sex Domestic Partners of Federal Employees" to help fulfill the Administration's policy. The Memorandum provides definitions to help ensure its consistent application across the Federal Government.

#### **Changes to Regulations Concerning Drug and Alcohol Abuse Programs**

We are including a new provision in section 792.101 of title 5, Code of Federal Regulations, to clarify that an employee's domestic partner, and any children of the employee's domestic partner, are included within the employee's "family" for purposes of access to alcohol and drug abuse programs. These programs, for the most part, are already accessible by individuals whose personal relationship to the employee (including but not limited to the employee's domestic partner) is close enough to potentially affect the employee's performance on the job. Therefore, the addition of specific references to domestic partners and their children is a clarifying change to promote consistent implementation of this regulation across the Government.

For purposes of this regulation, we have chosen not to define "domestic

partner" or "domestic partnership." Agencies are already providing access to these programs to individuals who are close enough to the employee to potentially affect the employee's performance on the job. Our intent is to clarify that same-sex domestic partners meet this standard, but not to limit agency discretion to decide that other relationships, including opposite-sex domestic partnerships, also meet this standard.

#### **Changes to Child Care Subsidies Regulations**

The proposed changes to subpart B would clarify and consolidate regulations governing Federal agencies' use of appropriated funds to provide child care subsidies for lower-income civilian employees. The revision would correct the way the age limitation for covered children is expressed and update obsolete references and citations. The regulations currently provide that the subsidies may apply to child care for children from birth *through* age 13 and for disabled children *through* age 18. We are amending this provision to state that the regulations apply to children *under* age 13 and disabled children *under* age 18. This change will help ensure that agency child care subsidy programs under part 792 conform to qualification rules used by the Internal Revenue Service for determining the tax treatment of dependent care assistance plans.

The proposed rule would make additional clarifying changes, including elimination of the question-and-answer format that currently appears in subpart B. We are adopting a narrative format to consolidate and remove repetitive content and content that is not regulatory in nature. The changes also include certain corrections to definitions, such as removing the "living with" requirement from the definition of "biological child" and changing the defined term from "child care contractor" to "child care provider", which is the term actually used in the regulation.

We are also adding definitions of "domestic partner" and "domestic partnership" to subpart B. These definitions are based upon the OPM Memorandum described earlier in this Supplementary Information and have been used in other OPM regulations.

Paragraph (4) of the *domestic partnership* definition requires that the partners "share responsibility for a significant measure of each other's financial obligations." This criterion, which appears in this and in prior regulations promulgated pursuant to the President's June 2, 2010, memorandum,

is intended to require only that there be financial interdependence between the partners; it should not be interpreted to exclude partnerships in which one partner stays at home while the other is the primary breadwinner.

We have made a slight change to the wording of criterion (7). That criterion is intended to prohibit recognition of domestic partnerships between individuals who are related in a manner that would preclude them from marrying were they of opposite sexes. We are maintaining this criterion, but clarifying that the determination is to be made at the time the domestic partnership is formed. It should not be re-examined if the couple relocates to a different jurisdiction. This approach is consistent with treatment of opposite-sex marriages.

Unlike the change to the regulations involving drug and alcohol abuse programs discussed above, these regulations extend "domestic partnership" benefits only to same-sex couples who are currently unable to obtain spousal benefits by entering into a Federally recognized marriage. That is because child care subsidies are currently available only for expenses associated with the employee's children or children of the employee's spouse. Accordingly, it is appropriate to include the children of same-sex domestic partners in order to reflect the President's direction to extend benefits to the same-sex domestic partners of Federal employees to the same extent such benefits are available to opposite-sex spouses, consistent with law.

The reference in paragraph (8) of the *domestic partnership* definition to documentation or proof of a dependent or family member relationship for purposes of eligibility for evacuation payments would be based on each agency's internal policies. Agencies have authority to request additional information in cases of suspected abuse or fraud, and they would continue to be able to exercise that authority under these proposed regulations. Agencies would be expected to apply the same standards for verification of requests for payments for all dependent and family member relationships, including domestic partners.

We are also proposing to change OPM's annual requirement to produce a report on agencies' use of the authority to pay child care subsidies, to a biannual requirement. OPM will continue, however, to collect annual data from Federal agencies on their child care subsidy programs.

Finally, these proposed regulations would update the authority citation for part 792 and would change the title of

the part from “Federal Employees’ Health and Counseling Programs” to “Federal Employees’ Health, Counseling, and Work/Life Programs” so that it is broad enough to encompass the child care subsidy program.

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

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866 and 13563.

**Regulatory Flexibility Act**

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

**List of Subjects in 5 CFR Part 792**

Alcohol abuse, Alcoholism, Day care, Drug abuse, Government employees.

U.S. Office of Personnel Management.

**John Berry,**  
*Director.*

Accordingly, the U.S. Office of Personnel Management is proposing to amend 5 CFR part 792 as follows:

1. The title is amended to read as follows:

**PART 792—FEDERAL EMPLOYEES’ HEALTH, COUNSELING, AND WORK/LIFE PROGRAMS**

2. The authority citation for part 792 is revised to read as follows:

**Authority:** 5 U.S.C. 7361–7363; Sec. 643, Pub. L. 106–58, 113 Stat. 477; 40 U.S.C. 590(g). Daily Comp. Pres. Docs., 2010 DCPD No. 00450, p. 1.

3. The heading for subpart A is revised to read as follows:

**Subpart A—Alcoholism and Drug Abuse Programs and Services for Federal Civilian Employees**

4. Section 792.101 is revised to read as follows:

**§ 792.101 Statutory requirements.**

Sections 7361 and 7362 of title 5, United States Code, provide that the Office of Personnel Management is responsible for developing and maintaining, in cooperation with the Secretary of the Department of Health and Human Services and with other agencies, appropriate prevention, treatment, and rehabilitation programs and services for Federal civilian employees with alcohol and drug abuse problems. To the extent feasible, agencies are encouraged to extend services to families (including domestic partners and their children) of alcohol and/or drug abusing employees and to

employees who have family members (including domestic partners and their children) who have alcohol and/or drug problems. Such programs and services shall make optimal use of existing Government facilities, services, and skills.

5. Section 792.102 is revised to read as follows:

**§ 792.102 General.**

It is the policy of the Federal Government to offer appropriate prevention, treatment, and rehabilitation programs and services for Federal civilian employees with alcohol and drug problems. Short-term counseling or referral, or offers thereof, shall constitute the appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse, alcoholism, and drug abuse required under subchapter VI of chapter 73 of title 5, United States Code. Federal agencies must establish programs to assist employees with these problems in accordance with that subchapter.

6. Section 792.105 is amended by revising paragraph (b) to read as follows:

**§ 792.105 Agency responsibilities.**

\* \* \* \* \*

(b) Agencies must issue internal instructions implementing the requirements of 5 U.S.C. 7361–7363 and this subpart.

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7. Subpart B is revised to read as follows:

**Subpart B—Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees**

Sec.

- 792.201 Purpose.
- 792.202 Definitions.
- 792.203 Child care subsidy programs; eligibility.
- 792.204 Agency responsibilities; reporting requirement.
- 792.205 Administration of child care subsidy programs.
- 792.206 Payment of subsidies.

**Subpart B—Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees**

**§ 792.201 Purpose.**

The purpose of this subpart is to implement section 590(g) of title 40, United States Code, which permits an Executive agency to use appropriated funds to improve the affordability of child care for lower-income employees. The law applies to child care in the United States and in overseas locations. Employees can benefit from reduced child care rates at Federal child care

centers, non-Federal child care centers, and in family child care homes.

**§ 792.202 Definitions.**

In this subpart—

*Child* means a child who bears any of the following relationships to either an employee, the employee’s spouse, or the employee’s domestic partner:

- (1) A biological child;
- (2) An adopted child;
- (3) A stepchild;
- (4) A foster child;
- (5) A child for whom a judicial determination of support has been obtained; or

(6) A child to whose support the employee, the employee’s spouse, or the employee’s domestic partner makes regular and substantial contributions.

*Child care provider* means an individual or entity providing child care services for which Federal employees’ families are eligible. The provider must be licensed or regulated, and the provider’s services can be provided in a Federally-sponsored child care center, a non-Federal center, or a family child care home.

*Child care subsidy program* means the program established by an agency in using appropriated funds, as provided in this subpart, to assist lower-income employees with child care costs. The program can include such activities as determining which employees receive a subsidy and the size of their subsidies; distributing agency funds to participating providers; and tracking and reporting information to OPM such as total cost and employee use of the program.

*Disabled child* means a child who is unable to care for himself or herself because of a physical or mental condition as determined by a physician or licensed or certified psychologist.

*Domestic partner* means a person in a domestic partnership with an employee or annuitant of the same sex.

*Domestic partnership* means a committed relationship between two adults of the same sex in which the partners—

- (1) Are each other’s sole domestic partner and intend to remain so indefinitely;
- (2) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);
- (3) Are at least 18 years of age and mentally competent to consent to a contract;
- (4) Share responsibility for a significant measure of each other’s financial obligations;

(5) Are not married or joined in a civil union to anyone else;

(6) Are not the domestic partner of anyone else;

(7) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;

(8) Are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001, and that the method for securing such certification, if required, will be determined by the agency; and

(9) Are willing promptly to disclose, if required by the agency, any dissolution or material change in the status of the domestic partnership.

*Employee* means an employee as defined in section 2105 of title 5, United States Code.

*Executive agency* means an Executive agency as defined in 5 U.S.C. 105 but does not include the Government Accountability Office.

*Federally-sponsored child care center* means a child care center located in a building or space that is owned or leased by the Federal Government.

*OPM* means the U.S. Office of Personnel Management.

#### **§ 792.203 Child care subsidy programs; eligibility.**

(a)(1) An Executive agency may establish a child care subsidy program in which the agency uses appropriated funds, in accordance with this subpart, to assist lower-income employees of the agency with their child care costs. The assistance may be provided for both full-time and part-time child care, and may include before-and-after-school programs and daytime summer programs.

(2) Two or more agencies may pool their funds to establish a child care subsidy program for the benefit of employees who are served by a Federally-sponsored child care center in a multi-tenant facility.

(3)(i) Except as provided under paragraph (a)(3)(ii) of this section, an agency may impose restrictions on the use of appropriated funds for its child care subsidy program based on consideration of employees' needs, its own staffing needs, the local availability of child care, and other factors as determined by the agency. For example,

an agency may decide to restrict eligibility for subsidies to—

(I) Full-time permanent employees;

(II) Employees using an agency on-site child care center;

(III) Employees using full-time child care; or

(IV) Employees using child care in specific locations.

(ii) An agency may not limit the payment of subsidies to only accredited child care providers.

(b) Subject to any restrictions applicable under paragraph (a)(3)(i) of this section, an employee who qualifies as a lower-income employee under the agency's child care subsidy program is eligible to receive a child care subsidy for the care of each child under age 13 or, in the case of a disabled child, under age 18.

#### **§ 792.204 Agency responsibilities; reporting requirement.**

(a) Before funds may be obligated as provided in this subpart, an agency intending to initiate a child care subsidy program must provide notice to the Subcommittees on Financial Services and General Government of the House and Senate Appropriations Committees, as well as to OPM.

(b) Agencies must notify the committees referred to in paragraph (a) of this section and OPM annually of their intention to provide child care subsidies. Funds may be obligated immediately after the notifications have been made.

(c) Agencies are responsible for tracking the utilization of their funds and reporting the results to OPM in a manner prescribed by OPM.

(d) OPM will produce a biannual report on agencies' use of the authority to pay child care subsidies; however, OPM will collect annual data from the agencies.

#### **§ 792.205 Administration of child care subsidy programs.**

(a) An agency may administer its child care subsidy program directly or by contract with another entity, using procedures prescribed under the Federal Acquisition Regulations. Regardless of what entity administers the program, the Federal agency is responsible for establishing how eligibility and subsidy amounts will be determined.

(b) An agency contract must specify that any unexpended funds will be returned to the agency after the contract is completed.

#### **§ 792.206 Payment of subsidies.**

(a) Payment of child care subsidies must be made directly to child care providers, unless one of the following exceptions applies:

(1) In overseas locations, the agency may pay the employee if the provider deals only in foreign currency.

(2) In unique circumstances, an agency may obtain written permission from OPM to pay the employee directly.

(b) An agency may make advance payments to a child care provider in certain circumstances, such as when the provider requires payment up to one month in advance of rendering services. An agency may not make advance payments for more than one month before the employee receives child care services except where an agency has contracted with another entity to administer the child care subsidy program, in which case the agency may advance payments to the entity administering the program as long as the requirements in § 792.205(b) are met.

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

[Docket No. FAA-2009-0555; Directorate Identifier 2009-NE-18-AD]

#### **Airworthiness Directives; Honeywell International Inc. TPE331-10 and TPE331-11 Series Turboprop Engines**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** This action withdraws a notice of proposed rulemaking (NPRM) that proposed an airworthiness directive (AD) superseding, applicable to Honeywell International Inc. TPE331-10 and TPE331-11 series turboprop engines. That action would have required adding 360 first stage turbine disk serial numbers (S/Ns) to the applicability. Since we issued that NPRM, we decided not to supersede AD 2009-17-05, but instead to issue a new NPRM for those additional 360 parts. Accordingly, we withdraw the proposed rule.

**FOR FURTHER INFORMATION CONTACT:** Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712-4137; phone: 562-627-5246; fax: 562-627-5210; e-mail: joseph.costa@faa.gov.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD),