

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 Parts 530, 531, 536, 550, 551, 575, 591, and 610

RIN 3206-AH11

Miscellaneous Changes in Compensation Regulations

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing proposed regulations to correct or clarify various regulatory provisions dealing with the compensation of Federal employees. Many of the proposed changes were prompted by questions and comments from users of the regulations. The proposed regulations are intended to assist agencies in administering compensation programs and to provide clearer information to employees covered by those programs.

DATES: Comments must be received on or before January 25, 1999.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington,

DC 20415 (FAX: (202) 606-0824 or e-mail: payleave@opm.gov).

FOR FURTHER INFORMATION CONTACT: Bryce Baker, (202) 606-2858, FAX: (202) 606-0824, or e-mail: payleave@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) proposes to revise a number of miscellaneous pay administration regulations to correct various typographical or technical errors or omissions and to codify or clarify OPM policies. The proposed changes were identified through a general review of compensation regulations by OPM staff—a review that took into account many questions and comments from users of the regulations. The following table lists the specific regulatory sections that are being proposed for revision and briefly describes the purpose and/or effect of each change.

Proposed rule	Description of proposed change
§ 530.202	<i>Aggregate Limitation on Pay: Definitions.</i> Amends the definition of “discretionary payment” to make clear that retention allowances are the only fixed-rate payments made on a continuing basis that are considered to be discretionary after they have been initially authorized. (Also, see 58 FR 50248, Supplementary Information accompanying the final rule on the aggregate pay limitation, dated September 27, 1993.) Amends the definition of “estimated aggregate compensation” to make clear that this term includes the value of all nondiscretionary payments to which the employee is currently entitled as well as projected to be entitled during the course of the calendar year. For example, the amount of the entitlement may be expected to change based on known facts (such as the scheduled date of reassignment to a new locality pay area). The projection would include nondiscretionary payments for which authorization will lapse during the calendar year, but which are expected to be reauthorized (e.g., physicians comparability allowance payments under part 595).
§ 530.203(c)	Corrects a typographical error.
§ 530.203(f)	<i>Aggregate Limitation on Pay: Erroneous Excess.</i> Adds new language to clarify how to correct cases where the aggregate compensation actually received by an employee exceeds the Executive Level I limitation because of an earlier error in computing the employee's estimated aggregate compensation (i.e., the error is discovered too late in the year to prevent the erroneous excess). The correction requires that any erroneous excess be deemed to have been paid on the first day of the next calendar year and counted toward the next year's aggregate compensation in applying the Level I limitation.
§ 530.303(d)	<i>Special Salary Rates.</i> Provides that certifications made in conjunction with requests to establish or adjust special salary rate schedules may be made by an agency official other than the head of the agency in all cases (not just those involving fewer than 1,000 employees or costs of less than \$4 million), as long as that official is officially designated to act in the agency head's behalf in making such a certification and is the sole designee for the agency with respect to any given schedule. Also, eliminates the requirement that the certification address the availability of funds to cover the increased costs associated with the special salary rate request. The funding availability requirement is unnecessary, since an agency would not be making the request for new or higher special salary rates unless it had the necessary funds or was prepared to make adjustments in its budget. Since these requests are made under the authorization of the agency head and transmitted by an agency's headquarters, the agency is in a position to ensure that the budget implications of any request are fully considered.
§ 530.303(i)	<i>Official Duty Station.</i> Revises a paragraph defining “official duty station” for use in connection with special salary rates, consistent with the proposed revision in § 531.602. (Note: Paragraph (i) was originally added to § 530.303 in an interim rule on official duty station determinations published on May 9, 1997 (62 FR 25423).)
§ 531.203(c)(1)	<i>Maximum Payable Rate.</i> Clarifies that the highest rate that can be derived in applying the maximum payable rate rule is the maximum rate (step 10) of the employee's grade.
§ 531.203(d)(2)	<i>Highest Previous Rate.</i> Provides that law enforcement officer special rates under section 403 of the Federal Employees Pay Comparability Act of 1990 are to be used in determining an employee's highest previous rate because these rates are basic pay for all purposes. Also corrects reference to special rate authorities in 5 U.S.C. 5305 and in part 532.
§ 531.203(d)(3)	Corrects reference to special rate authorities in 5 U.S.C. 5305 and in part 532.
§ 531.203(f)	<i>Pay Adjustments.</i> Modifies the simultaneous action rule to clarify the longstanding policy that general pay adjustments must be processed before individual pay actions that take effect at the same time.
§ 531.204(a)(2)	Corrects reference to special rate authority in 5 U.S.C. 5305.

Proposed rule	Description of proposed change
§ 531.301	<i>Official Duty Station.</i> Revises the definition of "official duty station" used in connection with law enforcement officer geographic adjustments, consistent with the proposed revision in § 531.602.
§ 531.304(b)	<i>SES Pay Elections.</i> Clarifies that a career Senior Executive Service (SES) member also retains a law enforcement geographic adjustment when electing to retain SES basic pay during certain Presidential appointments, consistent with 5 U.S.C. 3392(c)(1) and § 317.801.
§ 531.407(d)	<i>Within-Grade Increases.</i> Clarifies that the statutory authority to pay merit increases has been repealed. (The regulatory reference to merit increases is maintained because a past merit increase is considered in making equivalent increase determinations.)
§ 531.602	<i>Locality Pay.</i> Revises the definition of "employee" to remove an obsolete reference to the separate pay authority for employees under the former Stay-in-School Program. Also, revises the definition of "official duty station" so that an employee's duty station is considered unchanged for locality pay purposes when the duty station change is a "paper move" connected to a mass transfer of jobs to another location to facilitate a reduction in force that results in the employee's separation within 3 workdays after the transfer. Any severance pay or lump-sum payment for annual leave owed to such an employee would be based on rates of pay applicable in the area to which assigned <i>before</i> the transfer, thus avoiding either an unfair reduction in benefits or an unwarranted windfall.
§ 531.606(b)	<i>SES Pay Elections.</i> Clarifies that a career SES member also retains locality pay when electing to retain SES basic pay during certain Presidential appointments, consistent with 5 U.S.C. 3392(c)(1) and § 317.801.
§ 536.102	<i>Grade and Pay Retention.</i> Amends the definition of "demotion at an employee's request" to clarify that the term includes a voluntary demotion that is caused or influenced by a management action related to possible demotion for personal cause. Also, corrects typographical error in definition of "rate of basic pay."
§ 536.203(b)	Corrects a typographical error.
§ 536.205(a)(2)	Corrects an erroneous reference.
§ 536.205(b)(4)	<i>Pay Retention.</i> Adds a new rule to ensure that, upon change (with no break in service) to a position where a higher rate schedule applies, a retained rate employee's pay would be set no lower than the rate for step 10 on the newly applicable schedule.
§ 550.101(a)(2)	<i>Premium Pay.</i> Deletes an obsolete reference to the District of Columbia (DC) government. (DC government employees were excluded from coverage under various title 5 provisions by DC Law 2-139, as amended by DC Law 3-109, as authorized by the DC Self Government and Governmental Reorganization Act, Public Law 93-198, December 24, 1973.)
§ 550.101(d)	<i>Premium Pay.</i> Revises an exclusion of certain Customs employees consistent with the Customs Officer Pay Reform Act of 1993 (Public Law 103-66, August 10, 1993) and implementing regulations issued in 1994 by the Department of the Treasury (58 FR 68520 and 19 CFR 24.16). The exclusion now applies only to "customs officers"—i.e., customs inspectors and canine enforcement officers. Clarifies that the paragraph (d) exclusion also applies to any Sunday pay under the listed authorities. Removes unnecessary references in paragraphs (d) (3) and (7).
§ 550.102	<i>Premium Pay.</i> Deletes an obsolete reference to the DC government. (See above description for § 550.101(a)(2).)
§ 550.103	<i>Premium Pay.</i>
	Revises definition of "administrative workweek" to clarify that it may consist of any 7 consecutive 24-hour periods. (See parallel change in § 610.102.)
	Revises the definition of "agency" to delete an obsolete reference to the DC government and to delete erroneous reference to a nonexistent paragraph.
	Adds a new definition of "day" for purposes of overtime pay calculations, consistent with current policy.
	Provides or corrects relevant legal references in the definition of "law enforcement officer." Delegates to agency heads the authority to determine that certain employees under retirement systems other than the Civil Service Retirement System or the Federal Employees Retirement System are law enforcement officers for pay purposes, consistent with the existing delegation of authority to determine retirement coverage.
	Revises the definition of "premium pay" to clarify that it includes compensatory time off and that the dollar value of earned compensatory time off is the overtime pay the employee would have received if the employee had been paid overtime pay instead. This reflects the longstanding policy of the Comptroller General. (See 37 Comp. Gen. 362 (1957).) The same dollar value is used when accumulated and unused compensatory time off is paid off when an employee transfers, separates, or otherwise is entitled to cash payment for compensatory time off. The same dollar value is also used to determine when an employee has reached the biweekly and annual limitations on premium pay under 5 CFR 550.105 and 550.107.
§ 550.107	Corrects language by changing "period" to "pay period."
§ 550.111(g)	<i>Overtime Pay.</i> Adds a cross reference concerning the general prohibition on payment of overtime pay to an employee engaged in training, as provided in § 410.402.
§ 550.112 (k)	<i>Overtime Work: Standby Duty.</i> Adds a paragraph to clarify that an employee is in a standby status with creditable hours of work if, for work-related reasons, the employee (1) is restricted to an agency's premises, or so close to it that the employee's time may not be used effectively for his or her own purposes or (2) is restricted to another location, may not pursue non-work activities, and is required to remain in a state of readiness to perform work. This is consistent with longstanding OPM policy, OPM's regulations on standby duty premium pay, and OPM's regulations on overtime pay under the Fair Labor Standards Act of 1938, as amended (FLSA). (See §§ 550.143(b) and 551.431(a).) (Note: An employee who is compensated for standby duty by payment of standby duty premium pay may not also be compensated by payment of overtime pay on an hour-for-hour basis for the same hours of work.)
§ 550.112(l)	<i>Overtime Work: On-Call Status.</i> Adds a new paragraph to clarify that time in an on-call status does not constitute hours of work under title 5 overtime provisions. This is consistent with OPM's longstanding policy and parallels OPM's regulations on FLSA overtime pay. (See § 551.431(b).) On-call status includes periods when an employee is required to be reachable by telephone or electronic device and ready to report for duty upon request, but is free to pursue personal activities within a reasonable call-back radius. (Note: An agency may determine that certain hours during which a criminal investigator is placed in a duty agent or on-call status may be credited as availability hours under § 550.182(c), subject to the policies and procedures established by the agency.)

Proposed rule	Description of proposed change
§ 550.112(m)	<i>Overtime Work: Meal and Sleep Time.</i> Adds a new paragraph to clarify that bona fide meal periods and sleep time are generally not hours of work under title 5 premium pay provisions, consistent with longstanding OPM policy. However, consistent with 5 CFR 610.111(c), meal and sleep periods during regularly scheduled tours of duty for which an employee receives annual premium pay for regularly scheduled standby duty are included in hours of work. Also, this new paragraph incorporates the "two-thirds rule" for FLSA-exempt employees, as established by Comptroller General opinions, into OPM regulations for the first time. For employees who have substantial time in a standby status as part of tours of duty of 24 hours or more, for which they do not receive annual premium pay for regularly scheduled standby duty, the two-thirds rule permits agencies to exclude up to 8 hours for bona fide meal and sleep periods from hours of work. (See similar rule in OPM's regulations on FLSA overtime pay in § 551.432.)
§ 550.121(c)	<i>Night Pay.</i> Adds a cross reference concerning the general prohibition on payment of night pay to an employee engaged in training, as provided in § 410.402.
§ 550.131(d)	<i>Holiday Premium Pay.</i> Adds a cross reference concerning the general prohibition on payment of holiday premium pay to an employee engaged in training, as provided in § 410.402.
§ 550.153(d)	Corrects an erroneous reference.
§ 550.162(f)	<i>Annual Premium Pay.</i> Adds a paragraph that provides that an agency's existing approval of annual premium pay for administratively uncontrollable overtime (AUO) work or regularly scheduled standby duty may not be discontinued during a period after a job-related injury while an employee is not working and is in receipt of benefits under the Federal Employees' Compensation Act (FECA), 5 U.S.C. chapter 81, or in a paid leave status in lieu of receiving FECA benefits, unless such premium pay is discontinued for all similar positions. This generally prevents the loss of AUO or standby duty pay after a job-related injury. (Note: Section 550.162(e) provides for the continuation of AUO or standby duty pay during paid leave generally, but only if the premium pay remains payable. Thus, various Comptroller General opinions have provided that an agency may discontinue AUO pay for an employee on extended sick leave if there is no reasonable expectation that the employee will return to duty. For example, see Comptroller General opinion B-152061, May 4, 1982. The proposed paragraph would provide a limiting exception barring an agency from so discontinuing AUO or standby duty pay in workers' compensation cases.) The proposed paragraph would also ensure that, if the employee is eligible for retirement, his or her high-3 average salary is not adversely affected. (In determining an employee's high-3 average salary, the position's established rate of "basic pay"—including AUO pay for law enforcement officers and standby duty pay—is used during periods of leave without pay. Thus, even though AUO pay and standby pay are not actually payable during leave without pay, the established AUO/standby duty rates may be used in calculating the high-3 average salary.)
§ 550.171(b)	<i>Sunday Premium Pay.</i> Adds a cross reference concerning the general prohibition on payment of Sunday premium pay to an employee engaged in training, as provided in § 410.402.
§ 550.202	<i>Advances in Pay.</i> Revises the definition of "newly appointed" by replacing an obsolete reference to the former cooperative work-study program with a reference to the Student Educational Employment Program and by making other changes to improve the clarity of the definition.
§ 550.205(b)	Corrects a typographical error.
§ 550.311(b)	Corrects an erroneous reference.
§ 550.312	<i>Allotments.</i> Clarifies that an employee's written signature is not required to effect an allotment from pay. Automated computer programs that allow employees to process allotments themselves using a personal identification code are permitted. Also simplifies existing language on general limitations.
§ 550.341	<i>Allotments.</i> Deletes redundant provisions that are more fully covered in OPM's regulations for the Combined Federal
§ 550.342	Campaign program in part 950. Provides appropriate cross reference.
§ 550.703	<i>Severance Pay: Definitions.</i> Revises the definition of "commuting area," which is used in determining whether an employee is involuntarily separated or has been given a reasonable offer. A proposed new work site is in the employee's commuting area if (1) the employee's residence is in the standard commuting area surrounding that work site or (2) the employee's residence is outside the standard commuting area but within the employee's established commuting range based on his or her existing commuting trip so that the employee would not be compelled to move due to the change to the new work site. The compelled-to-move criterion represents longstanding policy as reflected in Comptroller General opinions (e.g., see B-182300, January 16, 1975, and B-210524, June 6, 1983) and in parallel determinations made for purposes of establishing an employee's entitlement to discontinued service retirement (e.g., see 5 U.S.C. 8336(d) and section 44A2.1-3 of the CSRS and FERS Handbook for Personnel and Payroll Offices). Revises the definition of "employee" to make clear that this definition (tied to 5 U.S.C. 5595(a)(2)) is used only in establishing an individual's initial eligibility for severance pay upon separation. (Note: A broader definition of "employee" (as defined in 5 U.S.C. 2105) is used in determining creditable service (§ 550.708).) Also clarifies the definition of the term "individual employed" in 5 U.S.C. 5595(a)(2)(A). Defines the term "employed by the Government of the United States" consistent with longstanding policy. The Government of the United States encompasses all Federal entities employing civilian personnel, including the legislative branch, the judicial branch, the Postal Service, etc. The term is not limited to employment as an "employee" as defined in 5 U.S.C. 2105.
§ 550.703	<i>Severance Pay: Definitions.</i> (continued) Revises the definition of "immediate annuity" to clarify current policy that, for purposes of determining eligibility for severance pay, Social Security benefits have no effect, but an immediate annuity from a non-Federal retirement system providing benefits for Federal civilian service is disqualifying. (See 54 Comp. Gen. 905 (1975).) Also clarifies that voluntary postponement of annuity commencing dates under any retirement system does not serve to exclude an otherwise covered annuity from being considered an immediate annuity. The key is whether the employee is eligible for ("fulfilled the requirements for") an immediate annuity. Revises the definition of "involuntary separation" to make clear that there may be a personal element to defining an individual employee's commuting area. As provided in the revised definition of the term "commuting area" (described above), an employee's residence may be outside the standard commuting area for the new work site, but the new work site may still be within the employee's commuting area.

Proposed rule	Description of proposed change
	<p>Revises the definition of "nonqualifying appointment" to clarify that this term includes appointments that do not convey coverage under the severance pay provision—e.g., an appointment at a Federal agency not included under the definition of "agency" in 5 U.S.C. 5595(a)(1). Thus, a time-limited appointment at a noncovered agency is a "nonqualifying time-limited appointment" resulting in suspension of severance pay under § 550.710, regardless of the length of the employee's break in service. The definition is also revised to clarify that Veterans Readjustment Appointments (5 CFR part 307) and Presidential Management Intern appointments (5 CFR part 362) are nonqualifying time-limited appointments.</p> <p>Corrects an erroneous reference in the definition of "qualifying appointment" that inadvertently resulted from removal of an obsolete paragraph as part of regulatory changes made in 1993 (58 FR 58257). Clarifies that a qualifying time-limited appointment must be for full-time employment (as required by 5 U.S.C. 5595(a)(2)(ii)) and must be otherwise qualifying. Also clarifies that a series of time-limited appointments at an agency following an initial qualifying time-limited appointment is treated as one qualifying time-limited appointment in applying the severance pay provisions, as long as there is no break in service between the time-limited appointments.</p> <p>Modifies the definition of "reasonable offer" so that an offered position would not be considered unreasonable simply because the position carries greater tenure. (The current regulation requires that the offered position's tenure be exactly the same. The proposed change parallels the tenure rule in the definition of "reasonable offer" in § 536.206(3) for grade and pay.)</p>
§ 550.706	<p><i>Severance Pay: Resignations.</i> Clarifies what constitutes a specific or general written notice that allows a resignation to be treated as an involuntary separation for severance pay purposes. The specific notice must state the effective date of the involuntary separation. The general notice must state the latest date (not more than 1 year after the notice) by which affected employees will be separated, based on current agency plans. In addition, the general notice must be issued by an official with proper authority to issue such a notice and must state that a subsequent resignation will be considered an involuntary separation for severance pay purposes. (A general notice has no standing under the reduction-in-force regulations in 5 CFR part 351, subpart H, and may not be used to effect an employee's separation.) The effect of canceling a notice—specific or general—is addressed separately in a new paragraph.</p>
§ 550.707(b)	<p><i>Severance Pay: Computation.</i> Clarifies how to determine the weekly rate of basic pay used in computing the severance pay fund for employees in positions with regularly varying work schedules or rates of basic pay. In these cases, to ensure equitable treatment, it is necessary to compute an appropriate weekly average for the last position held during the 26 biweekly pay periods immediately preceding separation. The revised language also clarifies that the averaging method applies to employees with pure part-time schedules and seasonal schedules.</p>
§ 550.707(d)	<p><i>Severance Pay: Fund.</i> Adds a provision clarifying that the severance pay fund is capped so that there may not be more than 52 weeks of severance pay over an individual's lifetime, consistent with 5 U.S.C. 5595(c).</p>
§ 550.708(a)	<p><i>Severance Pay: Creditable Service.</i> Clarifies that any service as an employee under 5 U.S.C. 2105 is creditable for purposes of computing service used in the computation of the severance pay fund, excluding only time in nonpay status (e.g., leave without pay) that is not creditable for leave or retirement purposes. This would codify current OPM policy.</p>
§ 550.708(e)	<p><i>Severance Pay: Creditability of DC Government Service.</i> Adds a new paragraph to clarify that employment with the government of the District of Columbia (DC) is creditable service if the individual was first employed by the DC government before October 1, 1987. (See former Federal Personnel Manual letter 630-32, September 7, 1989. Credit for this DC government service was formerly provided via a linkage to the service credit rules for annual leave accrual purposes. Under Public Law 99-335, June 6, 1986, only DC government employees first employed before October 1, 1987, are considered to be employees for purposes of administering the leave system, excluding teachers or librarians of the DC public schools. See 5 U.S.C. 6301(2)(B) and (i).)</p>
§ 550.709	<p><i>Severance Pay: Accrual and Payment.</i> Clarifies that severance pay accrues on a day-to-day basis as a recipient remains unemployed by the Federal Government. Thus, an individual's first and/or last severance payment may be a partial payment when the employee was not eligible for severance pay for the entire pay period. Also, clarifies when an average rate of basic pay is used in determining the amount of the severance payment. Adds a reference to the special payment provisions under 5 U.S.C. 5595(h) for certain individuals employed by the Department of Defense (DOD) or Coast Guard nonappropriated fund instrumentalities. Adds reference to law providing that DOD employees may be paid severance pay in one lump-sum payment. (See section 1035 of Public Law 104-106, February 10, 1996.)</p>
§ 550.710	<p><i>Severance Pay: Suspension.</i> Clarifies a provision dealing with suspension of severance pay during a nonqualifying time-limited appointment. (Under 5 U.S.C. 5595(d), employment by the government of the District of Columbia triggers discontinuation of severance pay. This provision was not affected by laws excluding DC government employees from entitlement to severance pay under 5 U.S.C. 5595, since those laws do not apply to the entitlements of Federal employees based on Federal service.)</p>
§ 550.711	<p><i>Severance Pay: Termination.</i> Clarifies a provision dealing with termination of severance pay upon reemployment. Reemployment by the Federal Government or DC government terminates severance pay in all instances unless severance pay is suspended under § 550.710. (See note regarding DC government in description for § 550.710.) With addition of proposed § 550.707(d), the reference to termination due to application of 1-year limit is unnecessary. The amount of the severance pay fund reflects the 1-year (52-week) limitation.</p>
§ 550.713	<p><i>Severance Pay: Recordkeeping.</i> Deletes a nonessential recordkeeping requirement related to separated employees hired within 90 days by contractors assuming a Federal function. The recordkeeping requirement was intended as a temporary measure to allow evaluation of a regulatory change. (See 54 FR 23215, May 31, 1989.)</p>
§ 550.803	<p><i>Back Pay: Definitions.</i> Revises the definitions of "employee" and "pay, allowances, and differentials" to clarify that, under the law, back pay refers to monetary benefits payable during periods of Federal employment, not to post-separation benefits such as retirement benefits and severance payments. Also, clarifies that agency and employee contributions to a retirement investment fund, such as the Thrift Savings Plan, are not covered by the back pay law and regulations. (Note: Correction of agency errors affecting an employee's Thrift Savings Plan account are subject to applicable law and regulations. See 5 U.S.C. 8432a and 5 CFR parts 1605 and 1606.)</p>

Proposed rule	Description of proposed change
§ 550.805(e)	<i>Back Pay: Deductions.</i> Clarifies the rules for making offsets and deductions from gross back pay awards. Addresses the withholding of normal pay deductions in a separate paragraph, specifying that such deductions are to be made in accordance with the regular order of precedence established by the agency, subject to applicable law and regulations. (For example, mandatory retirement deductions should be made first, consistent with 5 U.S.C. 8334 (a)–(c) and 8422 (a)–(c).) Clarifies when health and life insurance premiums are to be deducted. Also, adds a paragraph to clarify that agencies may make an administrative offset to recover a debt owed the Government.
§ 550.805(h)	<i>Back Pay: Thrift Savings Plan.</i> Provides cross reference to Federal Retirement Thrift Investment Board regulations on correction of agency errors affecting an employee's Thrift Savings Plan account.
§ 550.806(a)	<i>Back Pay: Interest.</i> Clarifies that interest accrual ends at the time selected by the agency not more than 30 days before the date of the back pay payment, as provided by 5 U.S.C. 5596(b)(2)(B). Also clarifies that no interest will be payable if an agency makes the back pay payment within 30 days after the erroneous denial, withdrawal, or reduction of a payment and sets the interest accrual ending point to coincide with the interest accrual starting point. (This matter was addressed in the Supplementary Information section accompanying the final regulations on back pay interest issued on November 15, 1988. See 53 FR 45886.)
§ 550.806(h)	<i>Back Pay: Interest.</i> Removes paragraph (h), since the reference to the December 1987 effective date of the back pay interest provision is no longer necessary.
Appendix A to subpart H of part 550.	<i>Back Pay: Deductions.</i> This new appendix includes information on how to compute certain common deductions in back pay cases. It includes information on making Federal tax deductions, including new Internal Revenue Service (IRS) guidance clarifying that agencies may adjust Federal tax withholdings to reflect the withholding of corresponding taxes from erroneous payments made in the same calendar year. For additional information on Federal tax withholdings and wage repayments, agencies should review Circular E, Employer's Tax Guide (Publication 15) or other appropriate IRS publications, or contact IRS directly.
§ 550.902	<i>Hazard Pay Differential: Definition of "Employee."</i> Clarifies definition of term "employee," consistent with 5 U.S.C. 5545(d).
§ 550.903(b)	<i>Hazard Pay Differential: Requests.</i> Clarifies that requests for new categories and rates for hazard pay differentials must be submitted by the head of an agency (or authorized designee).
§ 550.905	<i>Hazard Pay Differential: Payment.</i> Clarifies that the differential may not be paid for hours for which employees receive annual premium pay for regularly scheduled standby duty, annual premium pay for administratively uncontrollable overtime work, or law enforcement availability pay. This reflects requirements in law that provide that annual premium pay and availability pay are paid instead of premium pay provided by other provisions of subchapter V of title 5, United States Code. While each of the applicable provisions of law provide for exceptions (other types of premium pay that may be paid for the same hours of work), in all three cases, hazard pay differential is not one of the exceptions. (See 5 U.S.C. 5545(c)(1), 5 U.S.C. 5545(c)(2), and 5 U.S.C. 5545a(c).)
§ 551.401 (f)–(g) and § 551.501(a).	<i>FLSA Overtime: Hours of Work.</i> Corrects regulatory references to reflect recent renumbering of sections in OPM's training regulations. (See interim training regulations published at 61 FR 21947, May 13, 1996.)
§ 551.423(a)	<i>FLSA Overtime: Training Hours.</i> Clarifies that training hours compensable under § 410.402(b) are always hours of work for purposes of determining an employee's FLSA overtime pay entitlements, even if those training hours are related to entry-level and similar types of training and do not involve the performance of productive work. For example, if an employee is required to participate in night training as part of a basic training course because the situations he or she must learn to handle occur only at night, those night training hours would be compensable under § 410.402(b)(2) and would be hours of work under § 551.423(a)(3). This result is consistent with §§ 551.401(f) and (g). In addition, a cross reference to § 410.402(d) is added in § 551.423(a)(2).
§ 551.432	<i>FLSA Overtime: Sleep Hours.</i> Clarifies that a special rule on excludability of bona fide sleep time from hours of work applies to law enforcement and fire protection employees receiving annual premium pay under 5 U.S.C. 5545(c)(1) or (2). (See similar language with respect to meal periods in 5 CFR 551.411(c).) Makes clear that the 8-hour limit on the amount of sleep and meal time that can be excluded in any 24-hour period applies in all situations—regardless of the length of the tour of duty or the applicability of the special rules for law enforcement and fire protection employees. (This parallels the "two-thirds rule" that applies to exempt employees under title 5. See proposed rule in § 550.112(m)(3). Compare also to FLSA regulations in 29 CFR 553.222–223 and 785.19–23.) Also, revises regulations to clearly provide that on-duty sleep hours during regularly scheduled tours that are compensated by standby duty premium pay must be considered hours of work for FLSA purposes. (On-duty sleep hours may be excluded from FLSA hours of work under certain conditions. However, such an exclusion is not appropriate for hours for which the employee receives standby duty premium pay. Since standby duty premium pay is used in the FLSA overtime pay computation, the corresponding hours associated with that premium pay must be fully reflected in the computation.)
§ 551.501(a)(5)	<i>FLSA Overtime: Law Enforcement Officers.</i> Clarifies that OPM never intended to restrict the application of the special overtime standards established under section 7(k) of the Fair Labor Standards Act of 1938 (FLSA), as amended, in the case of Federal employees who are covered by the FLSA but not by the overtime pay provisions of title 5, United States Code. This clarification is necessary because 5 CFR 551.501(a)(5) can be interpreted to authorize an increase in overtime pay for employees of the United States Secret Service Uniformed Division and members of the United States Park Police. These employees are not covered by the overtime pay provisions of title 5, United States Code, but are covered by overtime pay provisions in title 4, United States Code, as well as by the overtime pay provisions of the FLSA. OPM regulations authorized by section 4(f) of the FLSA and 5 U.S.C. 5542(c) are intended to permit one computation of overtime pay instead of two (under title 5 and the FLSA) for employees who are covered by the overtime pay provisions of title 5 and are not intended to result in any significant change in overtime pay entitlement.
§ 551.512(b)	<i>FLSA Overtime: Straight Time Rate.</i> Revises to state expressly that bonuses and awards (including gainsharing) are not included in computing the FLSA straight time rate. This is consistent with the longstanding application of this regulation and with similar Department of Labor regulations. (See 29 CFR 778.110.)

Proposed rule	Description of proposed change
§ 551.512(d)	<i>FLSA Overtime Pay: Nondiscretionary Awards.</i> Amends OPM's regulations in part 551 on earning overtime pay under the Fair Labor Standards Act (FLSA) to provide two new options for meeting the FLSA requirement to include <i>nondiscretionary</i> individual or group awards (e.g., gainsharing) in overtime pay computations. Currently, this requirement is met using a "recomputation method"—i.e., a retroactive recomputation of the employee's FLSA overtime pay in past periods that involves retroactively allocating the bonus money and deriving a revised FLSA overtime pay entitlement. Under the two new options—referred to as the "percentage awards method" and the "boosted hour method," FLSA overtime requirements may be met by following certain procedures in computing the amount of an employee's nondiscretionary award. These new methods are consistent with the Department of Labor's FLSA regulations and policies.
§ 551.541(b)	Corrects an erroneous reference.
§ 575.102(a)(3)	<i>Recruitment Bonuses.</i> Adds positions in the Federal Bureau of Investigation (FBI) and Drug Enforcement Administration (DEA) Senior Executive Service to the list of positions for which agencies have delegated authority to approve recruitment bonuses. Other SES positions are already covered. This corrects an inadvertent omission.
§ 575.103	<i>Recruitment Bonuses.</i> Removes obsolete language referencing a minimum 12-month service agreement for recruitment bonus recipients. Section 575.106 was previously revised to require only a 6-month minimum period. (See 60 FR 33326, June 28, 1995.) Also, provides a revised definition of "commuting area" by referring to the revised definition used in § 575.203.
§ 575.202(a)(3)	<i>Relocation Bonuses.</i> Adds position in the FBI and DEA Senior Executive Service to the list of positions for which agencies have delegated authority to approve relocation bonuses. Other SES positions are already covered. This corrects an inadvertent omission.
§ 575.203	<i>Relocation Bonuses.</i> Provides a revised definition of "commuting area", consistent with the proposed definition in § 550.703. Also, provides a revised definition of "employee" to cover all individuals employed in the civil service (including those in the legislative or judicial branches) who are relocated to a different commuting area upon appointment to a covered position. (The current regulation can be interpreted to limit coverage to individuals who, before relocation, are in a position in an agency covered by the General Schedule system, which is more restrictive than the law.)
§ 575.205(b)(5)	Corrects a typographical error.
§ 575.302(a)(3)	<i>Retention Allowances.</i> Adds positions in the FBI and DEA Senior Executive Service to the list of positions for which agencies have delegated authority to approve retention allowances. Other SES positions are already covered. This corrects an inadvertent omission.
§ 575.307(a)	<i>Retention Allowances.</i> Simplifies language of provision requiring reduction or termination of authorized retention allowances to the extent necessary to prevent authorization of retention allowances that would cause estimated aggregate compensation to exceed the rate for Executive Level I. Clarifies that reduction or termination of retention allowances may be necessitated by an event other than an increase in a nondiscretionary payment—e.g., discovery of an error in computing estimated aggregate compensation.
§ 591.201	<i>Official Duty Station.</i> Revises the definition of "official duty station" used in connection with nonforeign area cost-of-living allowances and post differentials, consistent with the proposed revision in § 531.602. (Note: A definition of "official duty station" was originally added to § 591.201 in an interim rule on official duty station determinations published on May 9, 1997 (62 FR 25423).)
§ 610.102	<i>Administrative Workweek.</i> Clarifies that an administrative workweek established by an agency may consist of any 7 consecutive 24-hour periods. This recognizes that certain Federal employees (e.g., firefighters) work 24-hour shifts that may not be aligned to the calendar day.
§ 610.111	<i>Workweeks.</i> Clarifies that agency policies concerning the scheduling of work need not be established by promulgation of a formal regulation published in the FEDERAL REGISTER. However, agency work scheduling policies must be established in writing, such as in an agency policy manual or directive. In addition, all employees must be informed of agency work scheduling policies and be permitted to review the written policy statements upon request.
§ 610.407	<i>Holiday Premium Pay.</i> Adds a cross reference concerning the general prohibition on receiving holiday premium pay while engaged in training, as provided in § 410.402.

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 apply only to Federal agencies and employees.

List of Subjects

5 CFR Parts 530, 531, 536, 550, 551, 575, 591, and 610

Administrative practice and procedure, Claims, Freedom of information, Government employees, Holidays, Law enforcement officers, Reporting and Recordkeeping requirements, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.

Janice R. Lachance,
Director.

Accordingly, OPM is proposing to amend parts 530, 531, 536, 550, 551, 575, 591, and 610 of title 5 of the Code of Federal Regulations as follows:

PART 530—PAY RATES AND SYSTEMS (GENERAL)

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

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

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

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

Subpart B—Aggregate Limitation on Pay

2. In § 530.202, the definition of *estimated aggregate compensation* is amended by removing the words "is entitled" and adding in their place the words "is or is expected to be entitled", and the definition of *discretionary payment* is revised to read as follows:

§ 530.202 Definitions.

* * * * *

Discretionary payment means a payment that an agency has discretion to pay or not to pay to an employee, including a retention allowance but

excluding any other payment that is preauthorized to be paid to an employee at a regular fixed rate each pay period.

* * * * *

3. In § 530.203, paragraph (c) is amended by removing the word "proved" and adding in its place the word "provided", and a new paragraph (f) is added at the end of the section to read as follows:

§ 530.203 Administration of aggregate limitation on pay.

* * * * *

(f) If an agency makes an incorrect estimate of aggregate compensation at an earlier date in the calendar year, the sum of an employee's remaining payments of basic pay (which may not be deferred) may exceed the difference between the aggregate compensation the employee has actually received to date in that calendar year and the rate for level I of the Executive Schedule. In this case, the employee will become indebted to the Federal Government for any amount that is paid in excess of the level I aggregate limitation. To the extent that the erroneous excess is attributable to amounts that should have been deferred and would have been payable at the beginning of the next calendar year, the debt will be extinguished on January 1 of the next calendar year. As part of the correction of the error, the amount of the erroneous excess must be deemed to have been paid on January 1 of the next calendar year (when the debt was extinguished) as if it were a deferred excess payment as described in § 530.204 and must be considered part of the employee's aggregate compensation for the new calendar year.

Subpart C—Special Salary Rate Schedules for Recruitment and Retention

4. In § 530.303, paragraphs (d) and (i) are revised to read as follows:

§ 530.303 Establishing and adjusting special salary rate schedules.

* * * * *

(d) All requests to establish or adjust special salary rate schedules must be transmitted directly to OPM's central office by the agency's headquarters. Each request must include a certification by the head of the agency (or other official designated to act on behalf of the head of the agency with respect to the given schedule) that the requested special salary rates are considered necessary to ensure staffing adequate to the accomplishment of the agency's mission.

* * * * *

(i) The determination regarding whether an employee is covered by a special salary rate schedule is based on the employee's position of record and the official duty station for that position. For purposes of this subpart, the employee's position of record and corresponding official duty station are the position and station documented on the employee's most recent notification of personnel action, excluding a notification associated with a new assignment that is followed immediately (i.e., within 3 workdays) by a reduction in force resulting in the employee's separation before he or she is required to report for duty at the new location. For an employee who is authorized to receive relocation allowances under 5 U.S.C. 5737 in connection with an extended assignment, the position and duty station associated with that assignment are the employee's position of record and official duty station.

PART 531—PAY UNDER THE GENERAL SCHEDULE

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

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103-89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

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

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

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

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

Subpart B—Determining Rate of Basic Pay

6. In § 531.203, paragraph (d)(3) is amended by removing "5303" and adding in its place "5305" and removing "§ 532.231" and adding in its place "part 532"; paragraph (c)(1)(ii) is amended by adding a new sentence at the end of the paragraph; the introductory text of paragraph (d)(2)(vii) is revised; and paragraph (f) is revised to read as follows:

§ 531.203 General provisions.

* * * * *

(c) * * *
(1) * * *

(ii) * * * If the employee's highest previous rate was greater than the maximum rate for the grade in which pay is being fixed, the maximum rate of basic pay that may be paid to the employee is the maximum rate for that grade.

* * * * *

(d) * * *
(2) * * *

(vii) A special rate established under 5 U.S.C. 5305 and part 530 of this chapter, part 532 of this chapter, or other legal authority (other than section 403 of the Federal Employees Comparability Act (FEPCA) (Pub. L. 101-509, 104 Stat. 1465), unless, in a reassignment to another position in the same agency—

* * * * *

(f) *Simultaneous actions.* (1) General pay adjustments must be processed before any individual pay action that takes effect at the same time. General pay adjustments include annual adjustments under 5 U.S.C. 5303, adjustments in locality rates of pay under subpart F of this part, adjustments in special law enforcement adjusted rates of pay under subpart C of this part, adjustments in special salary rates under 5 U.S.C. 5305 or similar provision of law (including section 403 of FEPCA), increases in retained rates under part 536 of this chapter, and increases in continued rates under subparts C and G of this part.

(2) Pay adjustments (other than general pay adjustments) that take effect at the same time must be processed in the order that gives the employee the maximum benefit. When a position or appointment change and entitlement to a higher rate of pay occur at the same time, the higher rate of pay is deemed to be an employee's existing rate of basic pay.

* * * * *

§ 531.204 [Amended]

7. In § 531.204, paragraph (a)(2) is amended by removing "5303" and adding in its place "5305".

Subpart C—Special Pay Adjustments for Law Enforcement Officers

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

§ 531.301 Definitions.

* * * * *

Official duty station means the duty station for an employee's position of record as indicated on his or her most recent notification of personnel action, excluding a new duty station for an assignment that is followed immediately

(i.e., within 3 workdays) by a reduction in force resulting in the employee's separation before he or she is required to report for duty at the new location. For an employee who is authorized to receive relocation allowances under 5 U.S.C. 5737 in connection with an extended assignment, the temporary duty station associated with that assignment is the employee's official duty station.

* * * * *

9. In § 531.304, paragraph (b)(4) is amended by removing the word "and"; paragraph (b)(5) is amended by removing the period at the end of the paragraph and adding a semicolon and the word "and" in its place; and a new paragraph (b)(6) is added to read as follows:

§ 531.304 Administration of special law enforcement adjusted rates of pay.

* * * * *

(b) * * *

(6) Basic pay that a career appointee in the Senior Executive Service elects to continue while serving under certain Presidential appointments, as provided by 5 U.S.C. 3392(c)(1) and § 317.801 of this chapter.

* * * * *

Subpart D—Within-Grade Increases

10. In § 531.407, paragraph (d) is revised to read as follows:

§ 531.407 Equivalent increase determinations.

* * * * *

(d) *Merit increases.* For the purpose of applying section 5335 of title 5, United States Code, and this subpart, all or a portion of a merit increase, or a zero merit increase, authorized under former section 5404 of title 5, United States Code (which was repealed as of November 1, 1993, by Public Law 103-89), is an equivalent increase.

Subpart F—Locality-Based Comparability Payments

11. In § 531.602, paragraph (1) of the definition of *employee* and the definition of *official duty station* are revised to read as follows:

§ 531.602 Definitions.

* * * * *

Employee means—

(1) An employee in a position to which subchapter III of chapter 53 of title 5, United States Code, applies and whose official duty station is located in a locality pay area within the continental United States, including a

GM employee (as defined in § 531.202); and

* * * * *

Official duty station means the duty station for an employee's position of record as indicated on his or her most recent notification of personnel action, excluding a new duty station for an assignment that is followed immediately (i.e., within 3 workdays) by a reduction in force resulting in the employee's separation before he or she is required to report for duty at the new location. For an employee who is authorized to receive relocation allowances under 5 U.S.C. 5737 in connection with an extended assignment, the temporary duty station associated with that assignment is the employee's official duty station.

* * * * *

12. In § 531.606, paragraph (b)(4) is amended by removing the word "and"; paragraph (b)(5) is amended by removing the period at the end of the paragraph and adding a semicolon and the word "and" in its place; and a new paragraph (b)(6) is added to read as follows:

§ 531.606 Administration of locality rates of pay.

* * * * *

(b) * * *

(6) Basic pay that a career appointee in the Senior Executive Service elects to continue while serving under certain Presidential appointments, as provided by 5 U.S.C. 3392(c)(1) and § 317.801 of this chapter.

* * * * *

PART 536—GRADE AND PAY RETENTION

13. The authority citation for part 536 continues to read as follows:

Authority: 5 U.S.C. 5361-5366; sec. 7202(f) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), 104 Stat. 1338-336; sec. 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103-89), 107 Stat. 981; § 536.307 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502.

Subpart A—Definitions; Coverage and Applicability

14. In § 536.102, the definition of *rate of basic pay* is amended by removing the words "or any kind" and adding in their place the words "of any kind", and the definition of *demotion at an employee's request* is revised to read as follows:

§ 536.102 Definitions.

* * * * *

Demotion at an employee's request means a reduction in grade that is

initiated by the employee for his or her benefit, convenience, or personal advantage. A demotion that is caused or influenced by a management action is not considered to be at an employee's request, except that a voluntary demotion in response to a management action related to personal cause is considered to be at the employee's request.

* * * * *

Subpart B—Determination of Retained Grade and Rate of Basic Pay; Loss of, or Termination of Eligibility

§ 536.203 [Amended]

15. In § 536.203, paragraph (b) is amended by removing the misspelled word "immediatley" and adding in its place "immediately".

16. In § 536.205, paragraph (a)(2) is amended by removing the reference to "531.204(d)(4)" and adding in its place "531.204(e)(4)", and a new paragraph (b)(4) is added to read as follows:

§ 536.205 Determination of rate of basic pay.

* * * * *

(b) * * *

(4) If an employee moves to another position at the same grade while entitled to pay retention, the employee's rate of basic pay after movement may not be less than the maximum rate of basic pay for the newly applicable rate range.

* * * * *

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

17. The authority citation for subpart A of part 550 continues to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5548 and 6101(c); E.O. 12748, 3 CFR, 1991 Comp., p. 316.

18. In § 550.101, paragraph (a)(2) is revised; the introductory text of paragraph (d) is amended by adding "Sunday," after "night,"; paragraphs (d)(3) and (d)(7) are removed; paragraphs (d)(4) through (d)(6) are redesignated as (d)(3) through (d)(5); paragraphs (d)(8) and (d)(9) are redesignated as (d)(6) and (d)(7); and paragraph (d)(1) is revised to read as follows:

§ 550.101 Coverage and exemptions.

(a) * * *

(2) The sections in this subpart incorporating special provisions for certain types of work (§§ 550.141 through 550.164, inclusive) apply also

to each employee of the judicial branch or the legislative branch who is subject to subchapter V of chapter 55 of title 5, United States Code.

* * * * *

(d) * * *

(1) February 13, 1911, as amended (36 Stat. 899, as amended; 19 U.S.C. 261, 267), involving customs inspectors and canine enforcement officers;

* * * * *

19. Section 550.102 is revised to read as follows:

§ 550.102 Entitlement.

A department (and for the purpose of §§ 550.141 through 550.164, inclusive, a legislative or judicial branch agency) must determine an employee's entitlement to premium pay consistent with subchapter V of chapter 55 of title 5, United States Code.

20. In § 550.103, the definition of *day* is added in alphabetical order, and the definitions of *administrative workweek*, *agency*, *law enforcement officer*, and *premium pay* are revised to read as follows:

§ 550.103 Definitions.

* * * * *

Administrative workweek means any period of 7 consecutive 24-hour periods designated in advance by the head of the agency under section 6101 of title 5, United States Code.

Agency means—

(1) A *department* as defined in this section; and

(2) A legislative or judicial branch agency which has positions that are subject to subchapter V of chapter 55 of title 5, United States Code.

* * * * *

Day (for overtime pay purposes) means any 24-hour period designated by an agency within the administrative workweek applicable to the employee. A day need not correspond to the 24-hour period of a calendar day. If the agency has not designated another period of time, a day is a calendar day.

* * * * *

Law enforcement officer means an employee who—

(1) Is a law enforcement officer within the meaning of 5 U.S.C. 8331(20) (as further defined in § 831.902 of this chapter) or 5 U.S.C. 8401(17) (as further defined in § 842.802 of this chapter), as applicable;

(2) In the case of an employee who holds a secondary position, as defined in § 831.902 of this chapter, and is subject to the Civil Service Retirement System, but who does not qualify to be considered a law enforcement officer within the meaning of 5 U.S.C.

8331(20), would so qualify if such employee had transferred directly to such position after serving as a law enforcement officer within the meaning of such section;

(3) In the case of an employee who holds a secondary position, as defined in § 842.802 of this chapter, and is subject to the Federal Employees Retirement System, but who does not qualify to be considered a law enforcement officer within the meaning of 5 U.S.C. 8401(17), would so qualify if such employee had transferred directly to such position after performing duties described in 5 U.S.C. 8401(17)(A) and (B) for at least 3 years; and

(4) In the case of an employee who is not subject to either the Civil Service Retirement System or the Federal Employees Retirement System—

(i) Holds a position that the agency head (as defined in §§ 831.902 and 842.802 of this chapter) determines would satisfy paragraph (1), (2), or (3) of this definition if the employee were subject to the Civil Service Retirement System or the Federal Employees Retirement System (subject to OPM oversight as described in §§ 831.911 and 842.808 of this chapter); or

(ii) Is a special agent in the Diplomatic Security Service.

* * * * *

Premium pay means additional pay authorized by subchapter V of chapter 55 of title 5, United States Code, and this subpart for overtime, night, Sunday, or holiday work; for compensatory time off; or for standby duty, administratively uncontrollable overtime work, or availability duty. The dollar value of compensatory time off is the amount of overtime pay the employee otherwise would have received for the hours during which compensatory time off was earned.

* * * * *

§ 550.107 [Amended]

21. In § 550.107, the introductory text is amended by removing “any period” and adding in its place “any pay period”.

22. In § 550.111, a new paragraph (g) is added to read as follows:

§ 550.111 Authorization of overtime pay.

* * * * *

(g) An employee is not entitled to overtime pay under this subpart for time spent in training, except as provided in § 410.402 of this chapter.

23. In § 550.112, paragraphs (k), (l), and (m) are added to read as follows:

§ 550.112 Computation of overtime work.

* * * * *

(k) *Standby duty*. An employee is on duty, and time spent on standby duty is hours of work if—

(1) For work-related reasons, the employee is restricted to an agency's premises, or so close thereto that the employee cannot use the time effectively for his or her own purposes; or

(2) For work-related reasons, the employee, although not restricted to the agency's premises, is restricted to his or her living quarters or designated post of duty, has his or her activities substantially limited, and is required to remain in a state of readiness to perform work.

(l) *On-call status*. An employee is off duty, and time spent in an on-call status is not hours of work if—

(1) The employee is allowed to leave a telephone number or carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back status; or

(2) The employee is allowed to make arrangements for another person to perform any work that may arise during the on-call period.

(m) *Sleep and meal time*. (1) Bona fide sleep and meal periods may not be considered hours of work, except as provided by paragraphs (m)(2) and (m)(3) of this section. If a sleep or meal period is interrupted by a call to duty, the time spent on duty is hours of work.

(2) Sleep and meal periods during regularly scheduled tours of duty are hours of work for employees who receive annual premium pay for regularly scheduled standby duty under 5 U.S.C. 5545(c)(1).

(3) When employees have tours of duty of 24 hours or more during which they must remain within the confines of their duty station in a standby status, and for which they do not receive annual premium pay for regularly scheduled standby duty under 5 U.S.C. 5545(c)(1), the amount of bona fide sleep and meal time excluded from hours of work may not exceed 8 hours in any 24-hour period. No sleep time may be excluded unless the employee had the opportunity to have an uninterrupted period of at least 5 hours of sleep during the applicable sleep period. For tours of duty of less than 24 hours, agencies may not exclude on-duty sleep periods from hours of work, but must exclude bona fide meal periods during which the employee is completely relieved from duty.

24. In § 550.121, a new paragraph (c) is added to read as follows:

§ 550.121 Authorization of night pay differential.

* * * * *

(c) An employee is not entitled to night pay differential while engaged in training, except as provided in § 410.402 of this chapter.

25. In § 550.131, a new paragraph (d) is added to read as follows:

§ 550.131 Authorization of pay for holiday work.

* * * * *

(d) An employee is not entitled to holiday premium pay while engaged in training, except as provided in § 410.402 of this chapter.

§ 550.153 [Amended]

26. In § 550.153, paragraph (d)(1) is amended by removing “§ 550.112(f)” and adding in its place “§ 550.112(h)”.

27. In § 550.162, a new paragraph (f) is added to read as follows:

§ 550.162 Payment provisions.

* * * * *

(f) Unless an agency discontinues authorization of premium pay under § 550.141 or § 550.151 for all similar positions, it may not discontinue authorization of such premium pay for an individual employee's position—

(1) During a period of paid leave elected by the employee and approved by the agency in lieu of benefits under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*), following a job-related injury;

(2) During a period of continuation of pay under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*);

(3) During a period of leave without pay, if the employee is in receipt of benefits under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*).

28. In § 550.171, the current paragraph is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 550.171 Authorization of pay for Sunday work.

* * * * *

(b) An employee is not entitled to Sunday premium pay while engaged in training, except as provided in § 410.402 of this chapter.

Subpart B—Advances in Pay

29. The authority citation for subpart B of part 550 continues to read as follows:

Authority: 5 U.S.C. 5524a, 5545a(h)(2)(B); sections 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Public Law 101-509), 104 Stat. 1462 and

1466, respectively; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

30. In § 550.202, paragraph (c) of the definition of *newly appointed* is revised to read as follows:

§ 550.202 Definitions.

* * * * *

Newly appointed * * *

(c) A permanent appointment in the competitive service following termination of employment under the Student Educational Employment Program (as described in § 213.3202 of this chapter), provided such employee—

(1) Was separated from the service, in a nonpay status, or a combination of both during the entire 90-day period immediately before the permanent appointment; and

(2) Has fully repaid any former advance in pay under § 550.205.

* * * * *

§ 550.205 [Amended]

31. In § 550.205, paragraph (b) is amended by removing the word “recover” and adding in its place the word “recovery”.

Subpart C—Allotments and Assignments From Federal Employees

32. The authority citation for subpart C of part 550 continues to read as follows:

Authority: 5 U.S.C. 5527, E.O. 10982, 3 CFR 1959-1963 Comp., p. 502.

§ 550.311 [Amended]

33. In § 550.311, paragraph (b) is amended by removing “paragraph (b)” and adding in its place “paragraph (a)”.

34. In § 550.312, paragraphs (a), (c), (d), and (e) are revised to read as follows:

§ 550.312 General limitations.

(a) The allotter must specifically designate the allottee and the amount of the allotment.

* * * * *

(c) The allotter must personally authorize a change or cancellation of an allotment.

(d) The agency has no liability in connection with any authorized allotment disbursed by the agency in accordance with the allotter's request.

(e) Any disputes regarding any authorized allotment are a matter between the allotter and the allottee.

35. Section 550.341 is revised to read as follows:

§ 550.341 Scope.

An agency must permit an employee to make an allotment for charitable contributions to a Combined Federal

Campaign in accordance with § 950.901 of this chapter.

§ 550.342 [Amended]

36. Section 550.342 is removed.

Subpart G—Severance Pay

37. The authority citation for subpart G of part 550 continues to read as follows:

Authority: 5 U.S.C. 5595; E.O. 11257, 3 CFR, 1964-1965 Comp., p. 357.

38. In § 550.703, the definitions of *commuting area* and *employee* are revised; a new definition of *employed by the Government of the United States* is added in alphabetical order; the definition of *involuntary separation* is amended by removing the words “the commuting area” in both places and adding in each place the words “his or her commuting area”; the definition of *immediate annuity* is revised; the definition of *nonqualifying appointment* is revised; paragraph (g) of the definition of *qualifying appointment* is revised; and paragraph (c)(3) of the definition of *reasonable offer* is revised to read as follows:

§ 550.703 Definitions.

* * * * *

Commuting area means the geographic area surrounding a work site that encompasses the localities where people live and reasonably can be expected to travel back and forth daily to work, as established by the employing agency. In the case of an employee whose place of residence is outside the standard commuting area for a proposed new work site, the employee's commuting area is deemed to include the expanded area surrounding the employee's place of residence and including all destinations that can be reached via a commuting trip that is not significantly more burdensome than the current commuting trip. For this purpose, a commuting trip to a new work site is considered significantly more burdensome if it would compel the employee to change his or her place of residence in order to continue employment, taking into account commuting time and distance, availability of public transportation, cost, and any other relevant factors.

Employee (for purposes of establishing initial entitlement to severance pay upon separation) means an employee as defined in 5 U.S.C. 5595(a)(2), excluding an individual employed by the government of the District of Columbia. (Note: The term “individual employed” in 5 U.S.C.

5595(a)(2)(A) refers to an "employee" as defined in 5 U.S.C. 2105.)

Employed by the Government of the United States refers to employment by any part of the Government of the United States, including the United States Postal Service and similar independent entities, but excluding enlistment or activation in the armed forces (as defined in 5 U.S.C. 2101).

Immediate annuity means—

(a) A recurring benefit payable under a retirement system applicable to Federal civilian employees or members of the uniformed services that the individual is eligible to receive (disregarding any offset described in § 550.704(b)(5)) at the time of the involuntary separation from civilian service or that begins to accrue within 1 month after such separation, excluding any Social Security retirement benefit; or

(b) A benefit that meets the conditions in paragraph (a) of this definition, except that the benefit begins to accrue more than 1 month after separation solely because the employee elected a later commencing date (such as allowed under § 842.204 of this chapter).

Nonqualifying appointment means an appointment that does not convey eligibility for severance pay under this subpart, including—

(a) An appointment at a noncovered agency;

(b) An appointment in which the employee has an intermittent work schedule;

(c) A Presidential appointment;

(d) An emergency appointment;

(e) An excepted appointment under Schedule C; a noncareer appointment in the Senior Executive Service, as defined in 5 U.S.C. 3132(a); or an equivalent appointment made for similar purposes; and

(f) A time-limited appointment (except for a time-limited appointment that is qualifying because it is made effective within 3 calendar days after separation from a qualifying appointment), including—

(1) A term appointment;

(2) A temporary appointment pending establishment of a register (TAPER);

(3) An overseas limited appointment with a time limitation;

(4) A limited term or limited emergency appointment in the Senior Executive Service, as defined in 5 U.S.C. 3132(a), or an equivalent appointment made for similar purposes;

(5) A limited executive assignment under part 305 of this chapter or an equivalent appointment made for similar purposes;

(6) A Veterans Readjustment Appointment under part 307 of this chapter; and

(7) A Presidential Management Intern appointment under part 362 of this chapter.

Qualifying appointment * * *

(g) A time-limited appointment (including a series of time-limited appointments by the same agency without any intervening break in service) for full-time employment that takes effect within 3 calendar days after the end of one of the qualifying appointments listed in paragraphs (a) through (f) of this definition, provided the time-limited appointment is not nonqualifying on grounds other than the time-limited nature of the appointment.

* * * * *

Reasonable offer means * * *

(c) * * *

(3) Of equal or greater tenure and with the same work schedule (part-time or full-time); and

* * * * *

39. In section 550.706, paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 550.706 Criteria for meeting the requirement for involuntary separation.

(a) Employees who resign because they expect to be involuntarily separated are considered to have been involuntarily separated if they resign after receiving—

(1) Specific written notice that they will be involuntarily separated by a particular action effective on a particular date; or

(2) A general written notice of reduction in force or transfer of functions which—

(i) Is issued by a properly authorized agency official;

(ii) Announces that the agency has decided to abolish, or transfer to another commuting area, all positions in the competitive area (as defined in § 351.402 of this chapter) by a particular date (no more than 1 year after the date of the notice); and

(iii) States that, for all employees in that competitive area, a resignation following receipt of the notice constitutes an involuntary separation for severance pay purposes.

* * * * *

(c) A resignation is not considered an involuntary separation if the specific or general written notice is canceled before the separation (based on that resignation) takes effect.

40. In § 550.707, the section heading is revised; paragraph (b) is revised; and a new paragraph (d) is added to read as follows:

§ 550.707 Computation of severance pay fund.

* * * * *

(b) *Basic severance pay allowance for employees with variable work schedules*

or rates of basic pay. In the following circumstances, the weekly rate of basic pay used in computing the basic severance pay allowance is determined based on the weekly average for the last position held by the employee during the 26 biweekly pay periods immediately preceding separation, as follows:

(1) For positions in which the number of hours in the employee's basic work schedule (excluding overtime hours) varies during the year due to part-time work requirements, compute the weekly average of those hours and multiply that average by the hourly rate of basic pay in effect at separation.

(2) For positions in which the rate of annual premium pay for standby duty regularly varies throughout the year, compute the average standby duty premium pay percentage and multiply that percentage by the weekly rate of basic pay (as defined in § 550.103) in effect at separation.

(3) For prevailing rate schedule positions in which the amount of night shift differential pay under 5 U.S.C. 5343(f) varies from week to week under a regularly recurring cycle of work schedules, determine for each week in the averaging period the value of night shift differential pay expressed as a percentage of each week's scheduled rate of pay (as defined in § 532.401 of this chapter), compute the weekly average percentage, and multiply that percentage by the weekly scheduled rate of pay in effect at separation.

(4) For positions with seasonal work requirements, compute the weekly average of hours in a pay status (excluding overtime hours) and multiply that average by the hourly rate of basic pay in effect at separation.

* * * * *

(d) *Lifetime limitation.* The severance pay fund is limited to that amount which would provide 52 weeks of severance pay (taking into account weeks of severance pay previously received, as provided in § 550.712).

41. In § 550.708, paragraph (a) is revised; paragraph (c) is amended by removing the word "and" at the end of the paragraph; paragraph (d) is amended by removing the period at the end of the paragraph and adding a semicolon and the word "and" in its place; and a new paragraph (e) is added to read as follows:

§ 550.708 Creditable service.

* * * * *

(a) Civilian service as an employee (as defined in 5 U.S.C. 2105), excluding time during a period of nonpay status that is not creditable for annual leave accrual purposes under 5 U.S.C. 6303(a);

* * * * *

(e) Service performed with the government of the District of Columbia by an individual first employed by that government before October 1, 1987, excluding service as a teacher or librarian of the public schools of the District of Columbia.

* * * * *

42. Section 550.709 is revised to read as follows:

§ 550.709 Accrual and payment of severance pay.

(a) Severance pay accrues on a day-to-day basis following the recipient's separation from Federal employment. If severance pay begins in the middle of a pay period, 1 day of severance pay accrues for each workday or applicable holiday left in the pay period at the same rate at which basic pay would have accrued if the recipient were still employed. Thereafter, accrual is based on days from Monday through Friday, with each day worth one-fifth of 1 week's severance pay. Accrual ceases when the severance pay entitlement is suspended or terminated, as provided in §§ 550.711 and 550.712. If severance pay is suspended during a nonqualifying time-limited appointment as provided in § 550.711, accrual will resume following separation from that appointment.

(b) Severance payments must be made at the same pay period intervals that salary payments would be made if the recipient were still employed. The amount of the severance payment is computed using the recipient's rate of basic pay in effect immediately before separation, with credit for each day of severance pay accrual during the pay period corresponding to the payment date. A severance payment is subject to appropriate deductions for income and Social Security taxes.

(c) When an individual receives severance pay as the result of separation from a qualifying time-limited appointment, the severance payment is based on the rate of basic pay received at the time of separation from the qualifying time-limited appointment.

(d) When an individual is in a nonpay status immediately before separation, the amount of the severance payment is determined using the basic pay that he or she would have received if he or she had been in a pay status at the time of separation.

(e) When an individual's severance pay fund is computed under § 550.707(b) using an average rate of basic pay, that average rate is used to determine the amount of the severance payment. Exception: In the case of a seasonal employee, the agency may choose instead to use the employee's

rate of basic pay at separation (as computed based on the employee's work schedule during the established seasonal work period) and then authorize severance payments only during that seasonal work period.

(f) In the case of individuals who become employed by a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard under the conditions described in 5 U.S.C. 5595(h)(4), payment of severance pay may be suspended consistent with the rules in 5 U.S.C. 5595(h) and any supplemental regulations issued by the Department of Defense.

(g) Notwithstanding paragraph (b) of this section, the Department of Defense may, upon application by an eligible separated employee, pay the total amount of severance pay in one lump sum, subject to section 1035 of Public Law 104-106 and any other requirements established by the Department of Defense. This authority applies to severance payments based on separations taking effect on or after February 10, 1996, and before October 1, 1999.

43. Section 550.710 is revised to read as follows:

§ 550.710 Suspension of severance pay.

When an individual entitled to severance pay is employed by the Government of the United States or the Government of the District of Columbia under a nonqualifying time-limited appointment, severance pay must be suspended during the life of the appointment. Severance pay resumes, without any recomputation, when the employee separates from the nonqualifying time-limited appointment.

44. Section 550.711 is revised to read as follows:

§ 550.711 Termination of severance pay entitlement.

Entitlement to severance pay ends when—

(a) The individual entitled to severance pay is employed by the Government of the United States or the government of the District of Columbia, unless employed under a nonqualifying time-limited appointment as described in § 550.710; or

(b) The severance pay fund is exhausted.

§ 550.713 [Amended]

45. Section 550.713 is amended by removing the second sentence.

Subpart H—Back Pay

46. The authority citation for subpart H of part 550 continues to read as follows:

Authority: 5 U.S.C. 5596(c); Pub. L. 100-202, 101 Stat. 1329.

47. In § 550.803, the definitions of *employee* and *pay, allowances, and differentials* are revised to read as follows:

§ 550.803 Definitions.

* * * * *

Employee means an employee of an agency. When the term *employee* is used to describe an individual who is making a back pay claim, it also may mean a former employee.

* * * * *

Pay, allowances, and differentials means pay, leave, and other monetary employment benefits to which an employee is entitled by statute or regulation and which are payable by the employing agency to an employee during periods of Federal employment. Agency and employee contributions to a retirement investment fund, such as the Thrift Savings Plan, are not covered. Monetary benefits payable to separated or retired employees based upon a separation from service, such as retirement benefits, severance payments, and lump-sum payments for annual leave, are not covered.

* * * * *

48. In § 550.805, paragraph (e) is revised and a new paragraph (h) is added to read as follows:

§ 550.805 Back pay computations.

* * * * *

(e) In computing the net amount of back pay payable under section 5596 of title 5, United States Code, and this subpart, an agency must make the following offsets and deductions (in the order shown) from the gross back pay award:

(1) Any outside earnings (gross earnings less any associated business losses and ordinary and necessary business expenses) received by an employee for other employment (including a business enterprise) undertaken to replace the employment from which the employee was separated by the unjustified or unwarranted personnel action during the interim period covered by the corrective action. Do not count earnings from additional or "moonlight" employment the employee may have engaged in both while Federally employed and erroneously separated.

(2) Any erroneous payments received from the Government as a result of the

unjustified or unwarranted personnel action, which, in the case of erroneous payments received from a Federal employee retirement system, must be returned to the appropriate system. Such payments must be recovered from the back pay award in the following order:

(i) Retirement annuity payments (i.e., gross annuity less deductions for life insurance and health benefits premiums, if those premiums can be recovered by the affected retirement system from the insurance carrier);

(ii) Refunds of retirement contributions (i.e., gross refund before any deductions);

(iii) Severance pay (i.e., gross payments before any deductions); and
(iv) Lump-sum payment for annual leave (i.e., gross payment before any deductions).

(3) Authorized deductions of the type that would have been made from the employee's pay (if paid when properly due) in accordance with the normal order of precedence for deductions from pay established by the agency, subject to any applicable law and regulation, including, but not limited to, the following types of deductions, as applicable:

(i) Mandatory employee retirement contributions toward a defined benefit plan, such as the Civil Service Retirement System or the defined benefit component of the Federal Employees Retirement System;

(ii) Social Security taxes and Medicare taxes;

(iii) Health benefits premiums, if coverage continued during a period of erroneous retirement (with paid premiums recoverable by the retirement system) or is retroactively reinstated at the employee's election under 5 U.S.C. 8908(a);

(iv) Life insurance premiums if—

(A) Coverage continued during a period of erroneous retirement;

(B) Coverage was stopped during an erroneous suspension or separation and the employee suffered death or accidental dismemberment during that period (consistent with 5 U.S.C. 8706(d)); or

(C) Additional premiums are owed due to a retroactive increase in basic pay; and

(v) Federal income tax withholdings.

(Note to paragraph (e)(3): See appendix A to this subpart for additional information on computing certain deductions.)

(4) Administrative offsets under 31 U.S.C. 3716 to recover any other outstanding debt(s) owed to the Federal Government by the employee, as appropriate.

* * * * *

(h) Agencies must correct errors that affect an employee's Thrift Savings Plan account consistent with regulations prescribed by the Federal Retirement Thrift Investment Board. (See parts 1605 and 1606 of this title.)

49. In § 550.806, paragraph (h) is removed, and paragraph (a) is amended by redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2) to read as follows:

§ 550.806 Interest computations.

(a) * * *

(2) Interest accrual ends at a time selected by the agency that is no more than 30 days before the date of the back pay interest payment. No interest is payable if a complete back pay payment is made within 30 days after any erroneous withdrawal, reduction, or denial of a payment, and the interest accrual ending date is set to coincide with the interest accrual starting date.

* * * * *

50. A new appendix A is added to subpart H of part 550 to read as follows:

**Appendix A to Subpart H of Part 550—
Information on Computing Certain Common Deductions From Back Pay Awards**

To determine the net back payment owed an employee, an agency must make certain required deductions. (See § 550.805(e)(3).) To compute these deductions, an agency must determine the appropriate base or follow other rules. Some deductions, such as tax deductions, are not subject to OPM regulation. To assist agencies, this appendix summarizes the rules for certain common deductions. For further information on Federal tax deductions from back pay awards, please contact the Internal Revenue Service directly or review relevant IRS publications.

Type of deduction	How to compute the deduction
Mandatory employee retirement contributions.	Compute the deduction based on the basic pay portion of gross back pay before adding interest or applying any offset or deduction.
Life insurance premiums	Compute the deduction based on the basic pay portion of gross back pay before adding interest or applying any offset or deduction.
Social Security (OASDI) and Medicare taxes.	Compute the deduction based on adjusted gross back pay (gross back pay less the offset for outside earnings under § 550.805(e)(1), but before adding interest). The deduction may be reduced dollar-for-dollar by the amount of any Social Security or Medicare taxes that were withheld from erroneous payments made in the same calendar year as the back pay award, but only if— (1) those erroneous payments were actually recovered by the Government by offsetting the back pay award as provided in § 550.805(e)(2); and (2) those withheld taxes have not already been repaid to the employee. Note: Social Security taxes are subject to the applicable Social Security tax wage base limit. In addition, see IRS guidance regarding possible correction and refunding of Social Security and Medicare taxes withheld from erroneous payments in a prior calendar year.
Federal income tax withholdings	Compute the deduction based on adjusted gross back pay (gross back pay less the offset for outside earnings under § 550.805(e)(1), but before adding interest) less any part of back pay not subject to income tax deductions, such as employee contributions to the Thrift Savings Plan and nonforeign area cost-of-living allowances. The deduction may be reduced dollar-for-dollar by the amount of any Federal income taxes withheld from erroneous payments made in the same calendar year as the back pay award, but only if— (1) those erroneous payments were actually recovered by the Government by offsetting the back pay award as provided in § 550.805(e)(2); and (2) those withheld taxes have not already been repaid to the employee. Note: Additional Federal income tax withholdings from the interest portion of the back pay award may be required by the Internal Revenue Service in certain specific circumstances.

Subpart I—Pay for Duty Involving Physical Hardship or Hazard

51. The authority citation for subpart I of part 550 continues to read as follows:

Authority: 5 U.S.C. 5545(d), 5548(b).

52. In § 550.902, the definition of *employee* is revised to read as follows:

§ 550.902 Definitions.

* * * * *

Employee means an employee covered by the General Schedule (i.e., covered by chapter 51 and subchapter III of chapter 53 of title 5, United States Code).

53. In § 550.903, the introductory text of paragraph (b) is revised to read as follows:

§ 550.903 Establishment of hazard pay differentials.

* * * * *

(b) Amendments to appendix A of this subpart may be made by OPM on its own motion or at the request of the head of an agency (or authorized designee). The head of an agency (or authorized designee) may recommend the rate of hazard pay differential to be established and must submit, with its request for an amendment, information about the hazardous duty or duty involving physical hardship showing—

* * * * *

54. Section 550.905 is revised to read as follows:

§ 550.905 Payment of hazard pay differential.

(a) When an employee performs duty for which a hazard pay differential is authorized, the agency must pay the hazard pay differential for the hours in a pay status on the day (a calendar day or a 24-hour period, when designated by the agency) on which the duty is performed, except as provided in paragraph (b) of this section. Hours in a pay status for work performed during a continuous period extending over 2 days must be considered to have been performed on the day on which the work began, and the allowable differential must be charged to that day.

(b) Employees may not be paid a hazardous duty differential for hours for which they receive annual premium pay for regularly scheduled standby duty under § 550.141, annual premium pay for administratively uncontrollable overtime work under § 550.151, or law enforcement availability pay under § 550.181.

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

55. The authority citation for part 551 continues to read as follows:

Authority: 5 U.S.C. 5542(c); Sec. 4(f) of the Fair Labor Standards Act of 1938, as amended by Pub. L. 93-259, 88 Stat. 55 (29 U.S.C. 204f).

Subpart D—Hours of Work**§ 551.401 [Amended]**

56. In § 551.401, paragraphs (f) and (g) are amended by removing “§ 410.602” and adding in its place “§ 410.402”.

§ 551.423 [Amended]

57. In § 551.423, paragraph (a)(2)(ii) is amended by adding at the end of the paragraph “(See also § 410.402(d) of this chapter.)”, and paragraph (a)(3) is amended by removing the period at the end of the paragraph and adding in its place “, except as provided by § 410.402(b) of this chapter and paragraphs (f) and (g) of § 551.401.”

58. In section § 551.432, paragraphs (b) and (c) are revised and a new paragraph (e) is added to read as follows:

§ 551.432 Sleep time.

* * * * *

(b) For employees engaged in law enforcement or fire protection activities who receive annual premium pay under 5 U.S.C. 5545(c) (1) or (2), the requirements of paragraph (a) of this section apply, except that on-duty sleep time may be excluded from hours of work only if the tour of duty is more than 24 hours.

(c) The total amount of bona fide sleep and meal time that may be excluded from hours of work may not exceed 8 hours in a 24-hour period.

* * * * *

(e) On-duty sleep and meal time during regularly scheduled hours for which standby duty premium pay under 5 U.S.C. 5545(c)(1) is payable may not be excluded from hours of work.

Subpart E—Overtime Pay Provisions

59. In § 551.501, paragraph (a)(2) is amended by removing “§ 410.602” and adding in its place “§ 410.402”, and paragraph (a)(5) is revised to read as follows:

§ 551.501 Overtime pay.

(a) * * *

(5) On the basis of hours of work in excess of 40 hours in a workweek for an employee engaged in fire protection or law enforcement activities when the employee receives annual premium pay

under 5 U.S.C. 5545(c) (1) or (2) or is not an employee, as defined in 5 U.S.C. 5541(2), for the purposes of 5 U.S.C. 5542, 5543, and 5544;

* * * * *

60. In § 551.512, paragraph (b) is amended by removing “(exclusive of any premiums or differentials)” and adding in its place “(exclusive of any premiums, differentials, bonuses, or awards)”, and a new paragraph (d) is added to read as follows:

§ 551.512 Overtime pay entitlement.

* * * * *

(d) When an employee is granted a nondiscretionary individual or group (e.g., gainsharing) award, the award must be included in determining overtime pay for the period of time during which the award was earned. An agency may meet the overtime pay requirements for the period of time during which the award was earned by employing any one of the following procedures—

(1) *Recomputation method.* (i) Allocate the award payable to each individual employee under the award plan to the weeks or hours when it was earned;

(ii) Include any allocated award payment in total remuneration in computing the employee's hourly regular rate of pay for each applicable workweek in the award period;

(iii) Recompute the employee's overtime pay for each applicable workweek in the bonus period; and

(iv) Determine the total additional overtime pay owed.

(2) *Percentage awards method.* Identify the amount of the award as a fixed percentage of total pay (straight time pay plus overtime pay) earned by the employee during the award period. The product of total earnings times the award percentage satisfies in full the overtime pay requirements.

(3) *Boosted hour method.* (i) Identify the amount of the individual award or the group award under the bonus plan and the period of time during which it was earned;

(ii) Determine the number of boosted hours for the individual employee or for all employees under the group award plan by summing the total hours of work (straight time hours plus overtime hours) plus one-half of the total number of overtime hours;

(iii) Divide the amount of the individual award or the group award fund by the number of boosted hours for the individual employee or for all employees under the group award plan, as applicable, to determine the amount of the award allocable to each hour; and

(iv) Multiply this hourly award amount by the number of boosted hours credited to the individual employee or to each employee under the group award plan during the award period, as applicable, to determine the amount of the award for the individual employee or for each employee under the group award plan.

§ 551.541 [Amended]

61. In § 551.541, paragraph (b) is amended by removing "511.411(c)" and adding in its place "551.411(c)".

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

62. The authority citation for part 575 is revised to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, and 5755; secs. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), 104 Stat. 1462 and 1466, respectively; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

Subpart A—Recruitment Bonuses

63. In § 575.102, paragraph (a)(3) is revised to read as follows:

§ 575.102 Delegation of authority.

(a) * * *

(3) A Senior Executive Service position paid under 5 U.S.C. 5383 or a Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service position paid under 5 U.S.C. 3151.

* * * * *

64. In § 575.103, the definition of *involuntary separation* is amended by removing the words "the commuting area" wherever it appears and adding in its place the words "his or her commuting area"; the definition of *service agreement* is amended by removing the words "of a minimum of 12 months" and the definition of *commuting area* is revised to read as follows:

§ 575.103 Definitions.

* * * * *

Commuting area has the meaning given that term in § 575.203.

* * * * *

Subpart B—Relocation Bonuses

65. In § 575.202, paragraph (a)(3) is revised to read as follows:

§ 575.202 Delegation of authority.

(a) * * *

(3) A Senior Executive Service position paid under 5 U.S.C. 5383 or a Federal Bureau of Investigation and

Drug Enforcement Administration Senior Executive Service position paid under 5 U.S.C. 3151.

* * * * *

66. In § 575.203, the definition of *involuntary separation* is amended by removing the words "the commuting area" wherever it appears and adding in its place the words "his or her commuting area"; and the definitions of *commuting area* and *employee* are revised to read as follows:

§ 575.203 Definitions.

* * * * *

Commuting area means the geographic area surrounding a work site that encompasses the localities where people live and reasonably can be expected to travel back and forth daily to work, as established by the employing agency. In the case of an employee whose place of residence is outside the standard commuting area for a proposed new work site, the employee's commuting area is deemed to include the expanded area surrounding the employee's place of residence and including all destinations that can be reached via a commuting trip that is not significantly more burdensome than the current commuting trip. For this purpose, a commuting trip to a new work site is considered significantly more burdensome if it would compel the employee to change his or her place of residence in order to continue employment, taking into account commuting time and distance, availability of public transportation, cost, and any other relevant factors.

Employee means—

(a) An individual in the civil service (as defined in 5 U.S.C. 2101) who is relocated without a break in service upon appointment to a position in or under an agency in a different commuting area; or

(b) An employee in or under an agency whose duty station is changed permanently or temporarily to a different commuting area.

* * * * *

§ 575.205 [Amended]

67. In § 575.205, paragraph (b)(5) is amended by adding a parenthesis after the word "Code".

Subpart C—Retention Allowances

68. In § 575.302, paragraph (a)(3) is revised to read as follows:

§ 575.302 Delegation of authority.

(a) * * *

(3) A Senior Executive Service position paid under 5 U.S.C. 5383 or a

Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service position paid under 5 U.S.C. 3151.

* * * * *

69. In § 575.307, paragraph (a) is revised to read as follows:

§ 575.307 Reduction or termination of retention allowances.

(a) The agency must reduce or terminate the authorized amount of a retention allowance to the extent necessary to ensure that the employee's estimated aggregate compensation, as defined in § 530.202 of this chapter, does not exceed the rate for level I of the Executive Schedule at the end of the calendar year.

* * * * *

PART 591—ALLOWANCES AND DIFFERENTIALS

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

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

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

71. In § 591.201, the definition of *official duty station* is revised to read as follows:

§ 591.201 Definitions.

* * * * *

Official duty station means the duty station for an employee's position of record as indicated on his or her most recent notification of personnel action, excluding a new duty station for an assignment that is followed immediately (i.e., within 3 workdays) by a reduction in force resulting in the employee's separation before he or she is required to report for duty at the new location. For an employee who is authorized to receive relocation allowances under 5 U.S.C. 5737 in connection with an extended assignment, the temporary duty station associated with that assignment is the employee's official duty station.

* * * * *

PART 610—HOURS OF DUTY

Subpart A—Weekly and Daily Scheduling of Work

72. The authority citation for subpart A of part 610 continues to read as follows:

Authority: 5 U.S.C. 6101; sec. 1(1) of E.O. 11228, 3 CFR, 1964-1965 Comp., p. 317.

73. In § 610.102, the definition of *administrative workweek* is revised to read as follows:

§ 610.102 Definitions.

* * * * *

Administrative workweek means any period of 7 consecutive 24-hour periods designated in advance by the head of the agency under section 6101 of title 5, United States Code.

* * * * *

§ 610.111 [Amended]

74. Section 610.111 is amended by removing the word "regulation" in the introductory text of paragraph (a) and adding the words "a written agency policy statement" in its place; by removing the word "regulation" in paragraphs (a)(1) and (a)(2) and adding in each place the words "written agency policy statement"; and by removing the words "regulation of the agency" in paragraph (c)(2) and adding the words "a written agency policy statement".

Subpart D—Flexible and Compressed Work Schedules

75. The authority citation for subpart D of part 610 continues to read as follows:

Authority: 5 U.S.C. 6133(a).

76. In § 610.407, the current paragraph is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 610.407 Premium pay for holiday work for employees on compressed work schedules.

* * * * *

(b) An employee on a compressed work schedule is not entitled to holiday premium pay while engaged in training, except as provided in § 410.402 of this chapter.

[FR Doc. 98-31284 Filed 11-23-98; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 208, 240, 274a, and 299

[INS No. 1915-98; AG Order No. 2192-98]

RIN 1115-AF14

Suspension of Deportation and Special Rule Cancellation of Removal for Certain Nationals of Guatemala, El Salvador, and Former Soviet Bloc Countries

AGENCY: Immigration and Naturalization Service and Executive Office for Immigration Review, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Department of Justice (Department) regulations by offering certain beneficiaries of the Nicaraguan Adjustment and Central American Relief Act (NACARA) who currently have asylum applications pending with the Immigration and Naturalization Service (Service), and their qualified dependents, the option of applying to the Service for suspension of deportation or cancellation of removal under the statutory requirements set forth in NACARA ("special rule cancellation of removal").

Described in very general terms, both suspension of deportation and special rule cancellation of removal are forms of discretionary relief that, if granted, permit an individual subject to deportation or removal to remain in the United States. Integrating the processing of certain applications under NACARA into the Service's Asylum Program will provide an efficient mechanism for considering the suspension of deportation and special rule cancellation of removal applications of most of the approximately 240,000 registered class members of the *American Baptist Churches v. Thornburgh (ABC)* litigation and certain other beneficiaries of NACARA who have asylum applications pending with the Service, as well as their qualified family members. The Immigration Court will retain exclusive jurisdiction over most suspension of deportation and special rule cancellation of removal applications submitted by NACARA beneficiaries who have been placed in deportation or removal proceedings.

In addition, this rule proposes to compile and codify the relevant factors and standards for extreme hardship identified within existing case law in order to provide a more uniform and focused mechanism for evaluating this

aspect of a person's eligibility for suspension of deportation or special rule cancellation of removal.

DATES: Written comments must be submitted on or before January 25, 1999.

ADDRESSES: Please submit written comments in triplicate to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1915-98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: *For matters relating to the Immigration and Naturalization Service:* John Lafferty or Wenona Paul, International Affairs, Department of Justice, Immigration and Naturalization Service, 425 I Street NW., ULLICO Bldg., third floor, Washington, DC 20536, telephone number (202) 305-2663. *For matters relating to the Executive Office for Immigration Review:* Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone number (703) 305-0470.

SUPPLEMENTARY INFORMATION:

I. Background

What is the Nicaraguan Adjustment and Central American Relief Act? On November 19, 1997, President Clinton signed the Nicaraguan Adjustment and Central American Relief Act, enacted as title II of Pub. L. No. 105-100 (111 Stat. 2160, 2193) (as amended by the Technical Corrections to the Nicaraguan Adjustment and Central American Relief Act, Pub. L. No. 105-139 (111 Stat. 2644)). This new law amended the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Immigration and Nationality Act (Act) by providing several distinct forms of relief to certain aliens who are presently residing unlawfully in the United States. Section 202 of NACARA permits certain Nicaraguan and Cuban nationals who meet the standards set forth in that section to apply for adjustment of status to that of lawful permanent resident. The interim rule governing applications for adjustment under section 202 was published in the **Federal Register** on May 21, 1998, at 63 FR 27823.

This proposed rule implements section 203 of NACARA, which permits certain Guatemalans, Salvadorans, and nationals of the former Soviet bloc to apply for suspension of deportation or