Rules and Regulations

Federal Register
Vol. 69, No. 180
Friday, September 17, 2004

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206–AJ56

Premium Pay Limitations

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations concerning the rules governing payment of premium pay and premium pay limitations for Federal employees. The final rule implements a statute that raised the premium pay caps for most employees, permitted the use of an annual cap instead of a biweekly cap in additional circumstances, and made certain other changes.

DATES: Effective October 18, 2004.

FOR FURTHER INFORMATION CONTACT: Vicki Draper by phone at (202) 606–2858; by fax at (202) 606–0824; or by e-mail at *pay-performance-policy@opm.gov*.

SUPPLEMENTARY INFORMATION: On April 19, 2002, the Office of Personnel Management (OPM) published interim regulations (67 FR 19319) to implement the new premium pay limitations established by section 1114 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107, December 28, 2001). Section 1114 amended 5 U.S.C. 5547, which establishes biweekly or annual limitations on the premium pay that a covered Federal employee may receive.

By law, the section 1114 amendments became effective on the first day of the first pay period beginning on or after the 120th day following enactment. The 120th day fell on Saturday, April 27, 2002. Since most biweekly pay periods for Federal employees begin on a Sunday, these provisions began to apply on either April 28 or May 5, 2002, depending on the employing agency's payroll cycle.

The 60-day comment period ended on June 18, 2002. We received comments from three Federal agencies.

Applying the Annual Premium Pay Cap

One agency expressed concern that the exact method of applying the annual premium pay cap is not clearly described in the current regulations and that certain interpretations could result in significant administrative burdens. The agency observed that an employee may be employed in multiple locality pay areas over the course of a year. Thus, if the annual cap is based on the last applicable locality pay area in a calendar year, an agency might have to correct payments made in past pay periods. The agency pointed out that the administrative burden would be even greater in cases where an employee transfers to a different agency and payroll provider. The agency recommended that OPM address these issues in regulations. It specifically requested that, in cases where an employee moves from one agency or activity to another, OPM not require the losing agency or activity to recompute the employee's premium pay entitlements based on changes in the applicable GS–15 maximum rate after the employee's departure.

While we understand the agency's concerns about administrative burdens, the law expressly provides that the annual premium pay cap must be applied to an entire calendar year and that it is based on the applicable rates in effect at the end of the calendar year. A geographic move to an area with different pay rates can raise or lower an employee's aggregate basic pay and the end-of-year annual cap on premium pay. In turn, a change in aggregate basic pay or the end-of-year cap can change retroactively the date on which an employee reached the annual premium pay cap. In some cases, an agency may have to recompute retroactively the amount of premium pay owed for one or more pay periods.

In certain cases where an employee transfers to a different agency, the former agency may need to provide the new agency with information on basic pay and premium pay received by the employee in the current calendar year through the date of transfer. In some cases, the new agency may need to provide information to the former agency regarding an employee's aggregate basic pay and end-of-year cap. Each agency is responsible for proper application of the annual cap for the pay periods during which it employed the employee. Agencies cannot avoid certain administrative burdens based on the express statutory language in 5 U.S.C. 5547(b)(2), and we cannot change the regulations without a legislative amendment to reduce or eliminate these administrative burdens.

We note that § 550.106(e) provides that an agency may defer—until the end of the calendar year—payment of additional premium pay owed an employee who is subject to an annual cap. Thus, while some of the administrative burdens associated with applying the annual cap remain, an agency may be able to avoid the burden of collecting an overpayment in some cases.

Emergency and Mission-Critical Work Determinations

Under § 550.106(b)(1), the head of an agency or designee is authorized to make determinations concerning mission-critical work in order to apply the annual cap provisions of § 550.107(c) instead of the biweekly cap provisions in § 550.105(a). An agency commented that some readers have interpreted § 550.106(b)(1) to mean that a new written delegation of authority is required to cover a mission-critical work determination. The commenter recommended clarification that this phrase was not intended to require an agency head to generate new written delegations of authority.

It is not our intent to mandate or require a new written delegation of authority to cover mission-critical work determinations. If an agency head has provided a broad delegation of authority that covers a variety of actions and that delegation can be interpreted to encompass the action of making a mission-critical work determination, a new delegation is not required.

Another agency was concerned that § 550.106(a) and (b) might be interpreted to require agencies to make emergency and mission-critical work determinations for each pay period, which would be administratively burdensome. The agency suggested that OPM clarify that these determinations could be made for a situation or event.

The regulations do not require that separate emergency and mission-critical determinations be made for each pay period. The reference to ''any pay period'' at the beginning of § 550.106(a) and (b) simply means that premium pay is subject to an annual cap instead of the biweekly cap for all pay periods during which the emergency or mission-critical work determination is in effect. Each agency should maintain appropriate documentation to show which pay periods are covered by a determination for each affected employee. The agency must either (1) at the outset, prospectively set a specified period of time during which the determination will be in effect, or (2) leave the ending date open-ended at the outset and then, at the appropriate time, take formal action to terminate the determination as of a specific date.

We have received questions regarding what happens when the emergency or mission-critical work determination is terminated before the end of the calendar year. As provided in 5 U.S.C. 5547(b) and § 550.106(c), the annual cap applies to the entire calendar year. Even if an employee is again placed under a biweekly cap before the end of the calendar year (because the emergency or mission-critical work conditions are no longer in effect), the employee would still remain subject to the annual cap for the duration of the calendar year. Thus, we are adding a new paragraph (g) to § 550.106 to state more clearly that an employee remains subject to the annual cap through the remainder of the calendar year and thus could be covered simultaneously by both the biweekly cap and the annual cap.

Deferred Payments

One agency commenter was concerned that § 550.106(e) might be interpreted as requiring an agency to defer until the end of the calendar year payment of *all* additional premium pay resulting from application of an annual cap. The commenter recommended revising the regulations to read, ''an agency may defer payment of *some or all* of the additional premium pay.'' The intent of the regulation was to provide agencies with broad authority to defer whatever amount of additional premium pay they determined to be appropriate. (In fact, an agency may even decide to release deferred monies to the employee well before the end of the calendar year if it determines this to be appropriate.) Accordingly, we are revising § 550.106(e) as recommended by the commenter.

Calculation of Biweekly Cap

An agency commenter stated that the calculations used to determine the biweekly cap are not clearly stated in §§ 550.105 and 550.107. The commenter suggested clarifying the calculations to be used in determining the biweekly cap. We calculate the biweekly premium pay cap for each locality pay area and publish this calculation in our annual publication of the Salary Table Book. We also post the biweekly premium pay cap for each locality pay area on our Web site. The premium pay caps can be accessed on our Web site at *http://www.opm.gov/oca/pay/HTML/factindx.asp*. In response to this comment, we are adding a new paragraph (d) to § 550.105 that explains how biweekly rates are computed, consistent with the requirements of 5 U.S.C. 5504. Also, we are adding a paragraph in § 550.107 that refers to § 550.105(d).

Other Comments

An agency commenter recommended replacing the term ''paycheck'' in § 550.106(d)(3) with the term ''salary payment,'' since most employees are paid by direct deposit. We adopted this suggestion.

An agency commenter suggested including a statement in the regulations that ''pursuant to section 118 of the Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 2001, the biweekly cap does not apply to premium pay for protective services authorized under 18 U.S.C. 3056(a).'' (Section 118 provides for use of a special annual cap. This provision applies mainly to Secret Service agents.) We agree that the regular biweekly and annual premium pay caps do not apply to employees performing such protective services. Thus, we are adding a new paragraph (e) to § 550.105 to acknowledge that, notwithstanding the provisions in § 550.105, premium pay for protective services authorized by 18 U.S.C. 3056(a) is subject to the requirements in section 118 of the Treasury and General Government Appropriations Act of 2001 (as enacted into law by section 1(3) of Pub. L. 106–554).

An agency questioned why the special rules in § 550.107 (dealing with use of a biweekly cap for certain types of premium payments for employees otherwise under an annual cap) apply to non-law enforcement officers who are receiving annual premium pay for administratively uncontrollable overtime (AUO) work. The agency noted that AUO pay is retirement-creditable for law enforcement officers only and that one of the rationales given for continued use of a biweekly cap was the retirement creditability of the types of payments listed in § 550.107. The interim regulations offered another rationale for the special treatment of AUO pay and other listed premium payments. These payments are intended to be stable salary supplements that employees can count on from pay period to pay period. Placing AUO pay under the annual cap provisions could result in loss of this salary supplement during the latter part of the calendar year. This rationale applies equally to non-law enforcement officers. Therefore, we believe it is appropriate that AUO pay be included under the special rules in § 550.107 regardless of the type of employee receiving it.

Regulatory Flexibility Act

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

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 550

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

Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, the interim rule amending part 550 of title 5 of the Code of Federal Regulations, which was published at 67 FR 19319 on April 19, 2002, is adopted as final with the following changes:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

■ 1. The authority citation for subpart A of part 550 is revised to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5504(c), 5541(2)(iv), 5545a(h)(2)(B) and (i), 5547(b) and (c), 5548, and 6101(c); sections 407 and 2316 of Pub. L. 105–277, 112 Stat. 2681–101 and 2681–828 (5 U.S.C. 5545a); E.O. 12748, 3 CFR, 1992 Comp., p. 316.

■ 2. In § 550.105, a new paragraph (d) and (e) are added to read as follows:

§ 550.105 Biweekly maximum earnings limitation.

* * * * *

(d) The biweekly rates of pay for the GS–15 maximum rate and for level V of

the Executive Schedule are computed as follows:

(1) Compute an hourly rate by dividing the applicable published annual rate of basic pay by 2,087 hours and rounding the result to the nearest cent.

(2) Compute the biweekly rate by multiplying the hourly rate from paragraph (d)(1) of this section by 80 hours.

(e) Notwithstanding any other provision in this section, premium pay for protective services authorized by 18 U.S.C. 3056(a) is subject to the requirements in section 118 of the Treasury and General Government Appropriations Act of 2001 (as enacted into law by section 1(3) of Public Law 106–554).

■ 3. In § 550.106, paragraphs (d)(3) and (e) are revised and a new paragraph (g) is added to read as follows:

§ 550.106 Annual maximum earnings limitation.

* * * * *

(d) * * *

(3) Compute an annual rate of pay by multiplying the biweekly rate from paragraph (d)(2) of this section by the number of pay periods for which a salary payment is issued in the given calendar year under the agency's payroll cycle (*i.e.*, either 26 or 27 pay periods).

(e) An agency may defer payment of some or all of the additional premium pay owed an employee as a result of the annual limitation until the end of the calendar year.

* * * * *

(g) If an agency determines that the emergency or mission-critical work conditions are no longer in effect for an employee, it must resume application of the biweekly limitation. However, any premium pay the employee receives during the remainder of the calendar year is also subject to the annual limitation (as applied to any given pay period as described in paragraph (c) of this section).

■ 4. In § 550.107, paragraph (d) is redesignated as paragraph (e) and a new paragraph (d) is added to read as follows:

§ 550.107 Premium payments capped on a biweekly basis when an annual limitation otherwise applies.

* * * * *

(d) The biweekly rates under paragraph (c) of this section are computed as provided in § 550.105(d).

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[FR Doc. 04–20952 Filed 9–16–04; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–40–AD; Amendment 39–13795; AD 2004–19–04]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 206, P206, U206, TP206, TU206, 207, T207, 210, T210, 336, 337, and T337 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) that will supersede AD 86–26–04, which applies to certain Cessna Aircraft Company (Cessna) 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 205, 205A, 206, P206, P206E, TP206A, TU206, TU206E, U206, U206E, 207, T207, 210, T210, 336, 337, and T337 series airplanes. AD 86–26–04 currently requires you to inspect and, if necessary, modify the pilot/co-pilot upper shoulder harness adjusters that have certain Cessna accessory kits incorporated. This AD is the result of reports that additional airplanes have the same unsafe condition and the manufacturer revised the service information to add these airplanes and correct the part number of the shoulder harness adjusters. Consequently, this AD retains the actions of 86–26–04, adds additional airplanes to the applicability section of this AD, and incorporates the revised service information. We are issuing this AD to prevent slippage of the pilot/co-pilot shoulder harness, which could result in failure of the shoulder harness to maintain proper belt length adjustment and tension. Such failure could result in pilot/co-pilot injury.

DATES: This AD becomes effective on November 1, 2004.

As of November 1, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from The Cessna Aircraft Company, Product Support P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–40–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary D. Park, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4123; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

What is the background of the subject matter? Cessna designed add-on shoulder harness assembly accessory kits for the pilot/co-pilot seats for certain Cessna airplanes. These shoulder harness assemblies incorporate a retainer spring in the adjuster on the upper and lower shoulder harness. The retainer spring may have been inadvertently installed on the belt friction pin. This installation of the spring in the upper shoulder harness adjuster will not allow the belt webbing to lock in place.

This caused us to issue AD 86–26–04, Amendment 39–5503 (52 FR 520, January 7, 1987). AD 86–26–04 currently requires the following on certain Cessna 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 205, 205A, 206, P206, P206E, TP206A, TU206, TU206E, U206, U206E, 207, T207, 210, T210, 336, 337, and T337 series airplanes:

—Inspecting the upper shoulder harness adjuster for the presence of a retainer spring;

—If a retainer spring is found, removing the retainer spring; and

—Stamping out the –401 identification number.

What has happened since AD 86–26–04 to initiate this action? We have received reports that additional airplanes have the same unsafe condition. Cessna has revised the related service information to include these additional airplanes.

Cessna also revised the service information to correct the reference to the part number (P/N) of the shoulder harness adjusters. The P/N is referenced as 44030–401 in Cessna Single Engine Service Bulletin SEB86–8 and Cessna Multi-engine Service Bulletin MEB86–22, both dated November 21, 1986. The correct P/N is 443030–401.

What is the potential impact if FAA took no action? If not corrected, the shoulder harness could fail to maintain proper belt length adjustment and