

## Office of Personnel Management

## § 550.186

(b) Each criminal investigator who is receiving availability pay and the appropriate supervisory officer (as designated by the head of the agency or authorized designee) shall make an annual certification to the head of the agency attesting that the investigator currently meets, and is expected to continue to meet during the upcoming 1-year period, the substantial hours requirement in § 550.183.

(c) A certification shall no longer apply when the employee separates from Federal service, is employed by another agency, moves to a position that does not qualify as a criminal investigator position, or begins a voluntary opt-out period under § 550.182(e).

(d) The employing agency shall ensure that criminal investigators receiving availability pay comply with the substantial hours requirement in § 550.183, as certified in accordance with this section. The employing agency may deny or cancel a certification based on a finding that an investigator has failed to perform unscheduled duty (availability or work) as assigned or reported, or is unable to perform unscheduled duty for an extended period due to physical or health reasons. If a certification is denied or canceled, the investigator's entitlement to availability pay shall be suspended for an appropriate period, consistent with agency policies. If the investigator's certification was valid when made, the suspension of availability pay shall be effected prospectively.

(e) An involuntary suspension of availability pay resulting from a denial or cancellation of certification under paragraph (d) of this section is a reduction in pay for the purpose of applying the adverse action procedures of 5 U.S.C. 7512 and part 752 of this chapter, except for special agents in the Foreign Service. For special agents in the Foreign Service, an involuntary suspension of availability pay resulting from a denial or cancellation of certification under paragraph (d) of this section will be administered under procedures established by regulations of the Department of State.

(f) The head of an agency (or authorized designee) may prescribe any additional regulations necessary to administer the certification requirement, in-

cluding procedures for retroactive correction in cases in which a certification is issued belatedly or lapses due to administrative error.

[59 FR 66151, Dec. 23, 1994, as amended at 64 FR 4520, Jan. 29, 1999]

### § 550.185 Payment of availability pay.

(a) Availability pay is paid only for periods of time during which a criminal investigator receives basic pay. Availability pay is an amount equal to the lesser of—(1) 25 percent of a criminal investigator's rate of basic pay, as defined in § 550.103, including amounts designated as "salary" for special agents in the Diplomatic Security Service; or

(2) The maximum amount that may be paid to avoid exceeding the maximum earnings limitation on premium pay for law enforcement officers in 5 U.S.C. 5547(c).

(b) Except as provided in paragraph (c) of this section, a criminal investigator who is eligible for availability pay shall continue to receive such pay during any period such investigator is attending agency-sanctioned training, on agency-ordered travel status, on agency-approved leave with pay, or on excused absence with pay for relocation purposes.

(c) Agencies may, at their discretion, provide availability pay to criminal investigators during training that is considered initial, basic training usually provided in the first year of service.

(d) Agencies may, at their discretion, provide for the continuation of availability pay when a criminal investigator is on excused absence with pay, except where payment is mandatory under paragraph (b) of this section.

(e) The amount of availability pay payable to a criminal investigator for a pay period is not affected by the occurrence of a paid holiday during that period.

[59 FR 66151, Dec. 23, 1994, as amended at 60 FR 67287, Dec. 29, 1995; 64 FR 4521, Jan. 29, 1999]

### § 550.186 Relationship to other payments.

(a) Standby duty pay under § 550.141 and administratively uncontrollable overtime pay under § 550.151 may not be