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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 451, 531, 550, 551, 591, and 630

RIN 3206-AG15

Incentive Awards; Pay and Leave Administration

AGENCY: Office of Personnel
Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to incorporate certain incentive awards and pay and leave administration rules contained in the provisionally retained Federal Personnel Manual (FPM) material, which expired on December 31, 1994, into the Code of Federal Regulations (CFR) and to remove certain recordkeeping and reporting requirements.

DATES: The final rules are effective on July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Barbara Colchao, (202) 606-2720, concerning questions about the final regulations for incentive awards in 5 CFR part 451, and Bryce Baker (202) 606-2858, concerning questions about the final regulations for pay and leave administration in 5 CFR parts 531, 550, 551, 591, and 630.

SUPPLEMENTARY INFORMATION: On December 28, 1994, OPM published interim regulations (59 FR 66629) to incorporate a small number of miscellaneous incentive awards and pay and leave administration provisions in the provisionally retained FPM, which expired on December 31, 1994, into the CFR.

The rules relate to—

(1) Incentive awards—cash award limitations, documentation of informal

recognition items, and eligible award recipients;

(2) Application of the two-step promotion rule for promotions from GS-1 and GS-2 positions;

(3) Application of leave without pay towards the completion of waiting periods for within-grade increases;

(4) Counting travel time as “hours of work;”

(5) Sunday premium pay for periods of paid leave and excused absence;

(6) Payments during evacuation;

(7) Back pay computations;

(8) Computing cost-of-living allowances for employees receiving pay retention; and

(9) Leave for uncommon tours of duty.

These rules did not establish any new requirements, and they removed the recordkeeping requirements related to waiving the biweekly pay cap on premium pay and the reporting requirements for payments during evacuation.

The 60-day comment period ended on February 27, 1995. OPM received comments from one agency, one employee organization, and one individual. These comments, as well as certain technical changes in the final regulations, are summarized below.

Incentive Awards

An agency noted that the former, provisionally retained FPM material (FPM Chapter 451, Subchapter 3, section 3-2c) encouraging agencies to establish honorary awards for private citizens was not incorporated in regulation. The agency asked under what authority agencies could continue to grant awards to private citizens. Agencies may grant such awards under agency-specific authorities that would be appropriate depending on the nature of the contribution to be recognized. However, awards authorized by chapter 45 of title 5, United States Code, may be granted only to Federal employees or former Federal employees for contributions made while in the Federal service. To clarify that former Federal employees may receive awards authorized by 5 U.S.C. chapter 45 and reflect expired FPM material and statutory intent, OPM is amending 5 CFR 451.104(f) to include separated employees, as well as the legal heirs or estates of deceased employees, as eligible award recipients.

Sunday Premium Pay for Periods of Paid Leave and Excused Absence

An individual commented that part-time employees are not entitled to Sunday premium pay. OPM agrees. To clarify this, we have revised 5 CFR 550.171 and the definition of *Sunday work* in 5 CFR 550.103(o). This clarification is consistent with the information in expired Federal Personnel Manual Letter 550-79, which stated that part-time employees and employees who work intermittently are not entitled to premium pay for Sunday work; it also reflects a Comptroller General opinion regarding the compensation of part-time employees (46 Comp. Gen. 337 (1966)).

Leave for Uncommon Tours of Duty

An employee organization commented that the manner in which leave is to be charged to employees on uncommon tours of duty—specifically, firefighters who work 24-hour shifts—is not clear. In 5 CFR 630.210, the interim regulation provides agencies with the authority to require that an employee with an uncommon tour of duty must accrue and use leave on the basis of that uncommon tour of duty. Leave accrual must be directly proportional to the leave accrual rates in 5 U.S.C. 6303(a). Also, leave must be charged on an hour-for-hour basis for each hour of absence from the uncommon tour of duty. The regulation in 5 CFR 630.210 does not change the methodology for charging leave to employees on uncommon tours of duty that was previously published in the Federal Personnel Manual.

A firefighter whose leave is administered on the basis of a 144-hour biweekly tour of duty, and who has 15 or more years of service, accrues 374 hours of annual leave over a period of 26 biweekly pay periods (25 pay periods times 14 hours, plus 1 pay period times 24 hours), which equals 10 percent of the number of hours in 26 biweekly pay periods (3,744 hours). Similarly, an employee whose leave is administered on the basis of an 80-hour biweekly tour of duty, and who has 15 or more years of service, accrues 208 hours of annual leave over a period of 26 biweekly pay periods (26 pay periods times 8 hours), which also equals 10 percent of the number of hours in 26 biweekly pay periods (2,080 hours). This proportional relationship between the annual leave

accrual rates of the affected employees ensures equitable treatment.

In the interim regulations, section 630.210(a) states that "[o]ne hour (or appropriate fraction thereof) of leave shall be charged for each hour (or appropriate fraction thereof) of absence from the uncommon tour of duty." Since the leave accrual rates for firefighters on uncommon tours of duty have been adjusted to fully reflect their longer work schedule, an hour-for-hour charging methodology is necessary to maintain an equitable relationship with other employees. When an employee with 15 or more years of service who works 80 hours per day period takes 1 week of annual leave, the employee is charged 40 hours, or about 19 percent of the leave accrued in 1 year. Similarly, when a firefighter with 15 or more years of service who works 144 hours per pay period takes 1 week of annual leave, the employee is charged 72 hours, or about 19 percent of the leave accrued in 1 year. OPM believes the manner in which leave must be charged for employees on uncommon tours of duty was clearly stated in the interim regulation. Therefore, no change has been made in this provision of the final regulations.

Miscellaneous Amendments

The authority cited in 5 CFR 531.401(c) for within-grade increase purposes is being revised to give the correct citation. (The Executive order previously cited has been revoked.) The definition of *acceptable level of competence* in 5 CFR 531.403, for within-grade increase purposes, is being revised to refer to the next higher rate within the grade, as well as the next higher step of the grade, in order to address the situation of GM employees, whose rates of basic pay are between General Schedule step rates.

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 employees and agencies.

List of Subjects in 5 CFR Parts 451, 531, 550, 551 and 630

Administrative practice and procedure, Claims, Decorations, medals, awards, Government employees, Law enforcement officers, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, the interim rule amending parts 451, 531, 550, 551, 591,

and 630 of title 5 of the Code of Federal Regulations, which was published at 59 FR 66629 on December 28, 1994, is adopted as final with the following changes:

PART 451—INCENTIVE AWARDS

1. The authority citation for part 451 continues to read as follows:

Authority: 5 U.S.C. 4501–4507.

2. In § 451.104, paragraph (f) is revised to read as follows:

§ 451.104 Policy.

* * * * *

(f) An award under this subpart may be granted to a separated employee or the legal heir(s) or estate of a deceased employee.

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PART 531—PAY UNDER THE GENERAL SCHEDULE

3. The authority citation for part 531 is revised 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 A 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 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 D—Within-Grade Increases

4. In § 531.401, paragraph (c) is revised to read as follows:

§ 531.401 Principal authorities.

* * * * *

(c) Section 5338 of title 5, United States Code, provides that "The Office of Personnel Management may prescribe regulations necessary for the administration" of General Schedule pay rates, including within-grade increases.

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5. In § 531.403, the definition of *acceptable level of competence* is revised to read as follows:

§ 531.403 Definitions.

* * * * *

Acceptable level of competence means fully successful performance by an employee of the duties and responsibilities of his or her assigned position that warrants advancement of the employee's rate of basic pay to the next higher step of the grade or the next higher rate within the grade (as defined in this section) of his or her position, subject to the requirements of § 531.404 of this subpart.

* * * * *

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

6. The authority citation for part 550, subpart A, is revised 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.

7. In § 550.103, paragraph (o) is revised to read as follows:

§ 550.103 Definitions.

* * * * *

(o) *Sunday work* means nonovertime work performed by a full-time employee during a regularly scheduled daily tour of duty when any part of that daily tour of duty is on a Sunday. For any such tour of duty, not more than 8 hours of work are Sunday work, unless the employee is on a compressed work schedule, in which case the entire regularly scheduled daily tour of duty constitutes Sunday work.

* * * * *

8. Section 550.171 is revised to read as follows:

§ 550.171 Authorization of pay for Sunday work.

A full-time employee is entitled to pay at his or her rate of basic pay plus premium pay at a rate equal to 25 percent of his or her rate of basic pay for each hour of Sunday work (as defined in § 550.103(o)) and each hour that would be Sunday work but for the placement of the employee in paid leave or excused absence status.

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