

# Rules and Regulations

Federal Register

Vol. 67, No. 30

Wednesday, February 13, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 330

RIN 3206-AI28

#### Federal Employment Priority Consideration Program for Displaced Employees of the District of Columbia Department of Corrections

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations to implement provisions of law affecting the priority consideration program for certain displaced employees of the District of Columbia Department of Corrections seeking Federal positions. These regulations respond to comments received on the interim regulations OPM published on January 22, 2001.

**DATE:** This final regulation is effective on March 15, 2002.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Yeatman on (202) 606-0960, FAX (202) 606-2329, TDD (202) 606-0023 or by email at [jryeatma@opm.gov](mailto:jryeatma@opm.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The National Capital Revitalization and Self-Government Improvement Act (part of the Balanced Budget Act of 1997, Sec. 11201, Pub. L. 105-33, 111 Stat. 738, enacted August 5, 1997) mandated that the Lorton Correctional Complex be closed by December 31, 2001. Section 11203 of this law gave priority consideration to employees of the District of Columbia (DC) Department of Corrections (DOC) displaced by this closure. The District of Columbia Courts and Justice Technical Corrections Act of 1998 (Pub. L. 105-274) modified some of the provisions of this priority consideration.

On August 4, 1998, and January 22, 2001, OPM issued interim regulations with request for comment to implement the Priority Consideration Program covering most vacancies in Federal agencies.

#### Comments Received on Interim Regulations

After OPM published interim regulations on January 22, 2001, we received comments from one Federal agency. This agency asked OPM to add the definition of "agency" in 5 CFR 330.604(a) to these regulations. Although this program includes a definition for "vacancy" providing essentially the same program limitations (covering only competitive service positions), we are adding the definition of "agency" as an additional reference aid.

The agency also suggested that OPM modify 5 CFR 330.1104(c)(b)(i) and (ii) to clarify that a DC DOC employee will lose eligibility under this program if they decline an offer, or fail to respond to an inquiry of availability, for a permanent job at any grade level. We agree that this suggestion will provide additional clarity and have modified § 330.1104(c)(6)(i) and (ii) accordingly.

The commenting agency asked OPM to define "reasonable period of time" for the purposes of 5 CFR 330.1104(c)(6)(ii). There are many factors that may determine a reasonable time frame for a candidate's response, including their location and the communication method being used. We prefer to allow each agency flexibility to consider the specifics of each situation and decide what is reasonable.

The agency was also concerned that it will be difficult for large agencies to keep track of priority eligibles who decline a job offer by an agency component. They suggested that OPM either: (1) Develop a form for DC DOC priority eligibles to complete and submit with each application specifically asking prior Federal job offers; or (2) adopt regulatory language specifying the policies, procedures and/or forms agencies may develop and use for this purpose. We believe imposing additional requirements or paperwork on either applicants or agencies would be unnecessarily burdensome since this does not appear to be a widespread problem. Agencies are free to develop internal procedures to track priority

eligibles who decline agency offers, if they wish to do so.

#### Executive Order 12866, Regulatory Review

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

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains only to Federal agencies.

#### List of Subjects in 5 CFR Part 330

Armed forces reserves, Government employees.

Office of Personnel Management.

**Kay Coles James,**

*Director.*

Accordingly, the interim rule amending 5 CFR part 330 which was published at 66 FR 6427 on January 22, 2001, is adopted as a final rule with the following changes:

#### PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

1. The authority citation for part 330 is revised to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 19 FR 7521, 3 CFR, 1954-58, Comp., p. 218; § 330.102 also issued under 5 U.S.C. 3327; subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310; subpart G also issued under 5 U.S.C. 8337(h) and 8456(b); subpart K also issued under sec. 11203 of Pub. L. 105-33 (111 Stat. 738) and Pub. L. 105-274 (112 Stat. 2424); subpart L also issued under sec. 1232 of Pub. L. 96-70, 93 Stat. 452.

2. In § 330.1103, paragraph (b) is redesignated as (e), paragraph (a) is redesignated as (b), and a new paragraph (a) is added to read, as follows:

#### § 330.1103 Definitions.

(a) *Agency* means an Executive Department, a Government corporation, and an independent establishment as cited in 5 U.S.C. 105. For the purposes of this program, the term "agency" includes all components of an organization, including its Office of Inspector General.

\* \* \* \* \*

3. In § 330.1104, paragraphs (c)(6)(i) and (ii) are revised to read as follows:

**§ 330.1104 Eligibility.**

\* \* \* \* \*

(c) \* \* \*

(6) \* \* \*

(i) Declines a permanent appointment, at any grade level, offered by the agency (whether competitive or excepted) when the employee applied and was found qualified; or

(ii) Fails to respond within a reasonable period of time to an offer or official inquiry of availability from the agency for a permanent appointment, at any grade level, offered by the agency (whether competitive or excepted) when the employee applied and was found qualified.

[FR Doc. 02-3409 Filed 2-12-02; 8:45 am]

BILLING CODE 6325-38-M

**OFFICE OF PERSONNEL  
MANAGEMENT****5 CFR Part 550**

RIN 3206-AJ57

**Administratively Uncontrollable  
Overtime Pay**

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management is issuing interim regulations concerning the rules governing payment of administratively uncontrollable overtime (AUO) pay. AUO is a form of premium pay paid to employees in positions in which the hours of duty cannot be controlled administratively and which require substantial amounts of irregular or occasional overtime work. This interim rule permits agencies to pay AUO pay to an employee during a temporary assignment that would not otherwise warrant the payment of AUO pay, if the temporary assignment is directly related to a national emergency. In determining the average hours used in computing future AUO payments, this interim rule also excludes from consideration, the time period for which AUO pay is paid during a temporary assignment.

**DATES:** This interim rule is effective on September 11, 2001; comments must be received on or before April 15, 2002.

**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 email: [payleave@opm.gov](mailto:payleave@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** Kevin Kitchelt, (202) 606-2858; FAX: (202) 606-0824; email: [payleave@opm.gov](mailto:payleave@opm.gov).

**SUPPLEMENTARY INFORMATION:** Pay for administratively uncontrollable overtime (AUO) work is a form of premium pay paid to employees in positions in which the hours of duty cannot be controlled administratively and which require substantial amounts of irregular or occasional overtime work. Current OPM regulations at 5 CFR 550.162(c)(1) provide that an agency may continue to pay AUO pay for a period of not more than 10 consecutive workdays on a temporary assignment to other duties in which conditions do not warrant AUO pay and for a total of not more than 30 workdays in a calendar year while on such a temporary assignment. An agency must discontinue an employee's AUO pay when a temporary assignment exceeds these time limits.

In response to the terrorist attacks at the World Trade Center and the Pentagon, the President declared a national emergency. (See the Proclamation issued by the President on September 14, 2001, at <http://www.whitehouse.gov/news/releases/2001/09/20010914-4.html>.) In reaction to this emergency, Federal agencies have temporarily assigned some Federal employees who normally receive AUO pay to positions in which overtime work is generally regularly scheduled and does not warrant AUO pay. An agency has expressed concern that OPM's current regulations are too restrictive and may result in the loss of AUO pay for some employees. Since AUO pay is basic pay for retirement purposes for law enforcement officers, the suspension of AUO pay would reduce agency and employee contributions to the Thrift Savings Plan and may reduce retirement annuities for employees who are close to retirement (by reducing the "high-3" average rate of basic pay for these employees).

These interim regulations add a new provision at 5 CFR 550.162(g) to provide that an agency may continue to pay AUO pay, during a temporary assignment that would not otherwise warrant AUO pay, if the temporary assignment is directly related to a national emergency declared by the President. An agency may continue to pay AUO pay for a period of not more than 30 consecutive workdays for such a temporary assignment and for a total of not more than 90 workdays in a

calendar year while on such a temporary assignment. These new provisions apply only during a national emergency declared by the President and only to those employees performing work directly related to the emergency.

In addition, these interim regulations add a provision at 5 CFR 550.154(c) to provide that the period of time during which an employee continues to receive AUO pay under the authority of paragraphs (c) or (g) of § 550.162 is not considered in computing the weekly average number of irregular overtime hours used in determining the amount of an employee's future AUO payments. This change is necessary since the loss of the opportunity to work irregular overtime hours during the temporary assignment otherwise could result in a reduction in future AUO payments, since these payments are based on the weekly average number of irregular overtime hours in a past period.

**Waiver of Notice of Proposed Rule  
Making and Waiver of Delay in  
Effective Date**

Pursuant to 5 U.S.C. 553(b)(3)(B) and 5 U.S.C. 553(d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and to make these regulations effective in less than 30 days. Due to the terrorist attacks at the World Trade Center and the Pentagon, agencies have temporarily assigned some Federal employees who normally receive AUO pay for irregular or occasional overtime work to positions in which overtime work is generally regularly scheduled and does not warrant AUO pay. An agency has expressed concern that current OPM regulations are too restrictive and may result in the loss of AUO pay, which could have a negative impact on affected employees' retirement benefits. Waiving the notice and the 30-day delay is justified in this national emergency.

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

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

**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 apply only to Federal agencies and employees.

**List of Subjects in 5 CFR Part 550**

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