Office of Personnel Management

§ 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
§ 550.186 Relationship to other payments.

(a) Standby duty pay under §550.141 and administratively uncontrollable overtime pay under §550.151 may not be paid to a criminal investigator receiving availability pay. Receipt of availability pay does not affect an investigator’s entitlement to other types of premium pay (including overtime pay under §550.111) based on hours other than unscheduled duty hours. However, a criminal investigator receiving availability pay may not be paid any other premium pay based on unscheduled duty hours.

(b) Availability pay is treated as part of basic pay or basic salary only for the following purposes:

(1) 5 U.S.C. 5324a, pertaining to advances in pay;

(2) 5 U.S.C. 5595(c), pertaining to severance pay;

(3) 5 U.S.C. 8114(e), pertaining to workers’ compensation;

(4) 5 U.S.C. 8331(3) and 5 U.S.C. 8401(4), pertaining to retirement benefits;

(5) Subchapter III of chapter 84 of title 5, United States Code, pertaining to the Thrift Savings Plan;

(6) 5 U.S.C. 8704(c), pertaining to life insurance;

(7) Sections 609(b)(1), 805, 806, and 856 of the Foreign Service Act of 1980, as amended (Pub. L. 96–465), pertaining to Foreign Service retirement benefits;

(8) For any other purposes explicitly provided for by law or as the Office of Personnel Management or the Secretary of State (for matters exclusively within the jurisdiction of the Secretary) may prescribe by regulation.

(c) The minimum wage and the hours of work and overtime pay provisions of the Fair Labor Standards Act do not apply to criminal investigators receiving availability pay.

§ 550.187 Transitional provisions.

(a) Except as provided in paragraph (b) of this section, not later than the first day of the first pay period beginning on or after October 30, 1994, each criminal investigator qualified to receive availability pay and the appropriate supervisory officer (as designated by the agency head or authorized designee) shall make an initial certification to the head of the agency that the investigator is expected to meet the substantial hours requirement in §550.183. The head of an agency may prescribe procedures necessary to administer this paragraph.

(b)(1) In the case of criminal investigators who are employed in offices of Inspectors General and who, immediately prior to September 30, 1994, were not receiving administratively uncontrollable overtime pay, or were receiving such pay at a rate of less than 25 percent, the employing office may delay implementation of availability pay; however, availability pay shall be implemented (in accordance with §§550.181 through 550.186) no later than—

(i) September 30, 1995, for investigators who are not receiving administratively uncontrollable overtime pay; or

(ii) The first day of the last pay period ending on or before September 30,