

§ 330.1104 Eligibility.

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(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.

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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.

FOR FURTHER INFORMATION CONTACT: Kevin Kitchelt, (202) 606-2858; FAX: (202) 606-0824; email: 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.

U.S. Office of Personnel Management.

Kay Coles James,
Director.

Accordingly, OPM is amending part 550 of title 5 of the Code of Federal Regulations as follows:

**PART 550—PAY ADMINISTRATION
(GENERAL)**

Subpart A—Premium Pay

1. The authority citation for part 550, subpart A, continues to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5545a(h)(2)(B) and (i), 5548, and 6101(c); sections 407 and 2316, 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 § 550.154, paragraph (c) is added to read as follows:

§ 550.154 Rates of premium pay payable under § 550.151.

* * * * *

(c) The period of time during which an employee continues to receive premium pay on an annual basis under § 550.151 under the authority of paragraphs (c) or (g) of § 550.162 is not considered in computing the average hours of irregular and occasional overtime work under this section.

3. In § 550.162, paragraph (g) is added to read as follows:

§ 550.162 Payment provisions.

* * * * *

(g) Notwithstanding paragraph (c)(1) of this section, an agency may continue to pay premium pay under § 550.151 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. An agency may continue to pay premium pay under § 550.151 for 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.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AEA–24FR]

**Establishment of Class E Airspace;
Beebe Memorial Hospital Heliport,
Lewes, DE**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Beebe Memorial Hospital Heliport, Lewes, DE. Development of an Area Navigation (RNAV), Helicopter Point in Space Approach, for the Beebe Memorial Hospital Heliport, has made this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach to the Beebe Memorial Hospital Heliport.

EFFECTIVE DATE: 0901 UTC March 22, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On September 28, 2001 a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet Above Ground Level (AGL) for an RNAV, Helicopter Point in Space approach to the Beebe Memorial Hospital Heliport, DE, was published in the **Federal Register** (66 FR 49574–49575).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before October 29, 2001. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83.

Class E airspace areas designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001 and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting Instrument Flight Rules (IFR) operations at the Beebe Memorial Hospital Heliport, Lewes, DE.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AEA DE E5 Lewes, DE [New]

Beebe Memorial Hospital Heliport
(lat 38°47'16" N.; long 75°08'42" W.)
Point in Space Coordinates
(lat 38°46'14" N.; long 75°12'05" W.)

That airspace extending upward from 700 feet above the surface within a 6 mile radius of the point in space for the SIAP to the