

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 550

RIN 3206-AJ57

#### Administratively Uncontrollable Overtime Pay

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is issuing final 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 final 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 declared by the President. In determining the average hours used in computing future AUO payments, this final rule also excludes from consideration the time period for which AUO pay is paid during a temporary assignment.

**DATES:** March 3, 2003.

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

**SUPPLEMENTARY INFORMATION:** On February 13, 2002, the Office of Personnel Management issued interim regulations (67 FR 6640) to permit 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. We proposed that an agency should be permitted to 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. The 90-day comment period ended on April 15, 2002. We received comments from two Federal agencies and an employee association.

One agency suggested that the phrase "declared by the President" be added to the regulation at 5 CFR 550.162(g), which states 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. We agree and have added the phrase "declared by the President" to 5 CFR 550.162(g).

Another agency requested that we explain the relationship between the existing 60-workday annual limitation for temporary assignments in the last paragraph of 5 CFR 550.162(c) and the new 90-workday annual limitation for temporary assignments directly related to a national emergency in 5 CFR 550.162(g). The new 90-workday annual limitation is separate from the 60-workday limitation provided in 5 CFR 550.162(c). Therefore, 150 workdays is the theoretical maximum number of workdays in a calendar year during which an agency may continue to pay AUO pay for temporary assignments provided the conditions in both 5 CFR 550.162(c) and (g) are met.

The employee association provided several comments on issues that are outside the scope of the interim regulations. We are not addressing these issues in these regulations.

#### E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule 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

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employees, Wages. Office of Personnel Management.

**Kay Coles James,**  
*Director.*

Accordingly, OPM is adopting the interim regulations amending 5 CFR part 550, published at 67 FR 6640 on February 13, 2002, as final with the following changes:

## 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 § 550.162, paragraph (g) is revised 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 declared by the President. 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.

[FR Doc. 03-2192 Filed 1-29-03; 8:45 am]

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## OFFICE OF GOVERNMENT ETHICS

### 5 CFR Part 2641

RIN 3209-AA07

#### Post-Employment Conflict of Interest Restrictions; Revision of Departmental Component Designations

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Final rule.

**SUMMARY:** The Office of Government Ethics is issuing this rule to designate

several departmental components, to revoke an existing component designation, and to change the names of two existing departmental components, for purposes of the one-year post-employment conflict of interest restriction at 18 U.S.C. 207(c).

**EFFECTIVE DATES:** This amendatory rule is effective January 30, 2003, except for the removal of the listing for the International Joint Commission, United States and Canada (American Section), as set forth in amendatory instruction 3, which is effective on April 30, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Richard M. Thomas, Associate General Counsel, Office of Government Ethics; telephone: 202-208-8000, extension 1152; TDD: 202-208-8025; FAX: 202-208-8037.

**SUPPLEMENTARY INFORMATION:**

**A. Substantive Discussion**

The Director of OGE (Director) is authorized by 18 U.S.C. 207(h) to designate distinct and separate departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c). The representational bar of 18 U.S.C. 207(c) usually extends to the whole of any department or agency in which a former senior employee served in any capacity during the year prior to termination from a senior employee position. However, eligible senior employees may be permitted to communicate to or appear before parts of their former department or agency if one or more components of the department or agency have been designated as separate agencies or bureaus by OGE.

As specified in 5 CFR 2641.201(e)(3)(iii), the Director of OGE "shall by rule make or revoke a component designation after considering the recommendation of the designated agency ethics official." Component designations are listed in appendix B of 5 CFR part 2641.

Pursuant to the procedures prescribed in 5 CFR 2641.201(e), several departments have forwarded letters to OGE recommending the amendment of appendix B since it was last revised in 1999 (64 FR 5709-5710 (February 5, 1999)). After carefully reviewing these recommendations in light of the criteria in 18 U.S.C. 207(h) as implemented in 5 CFR 2641.201(e)(6), the Director has determined to revise appendix B as explained below.

At the recommendation of the Department of Defense (DOD), the Director is designating the National Reconnaissance Office (NRO) as a distinct and separate component of that Department. NRO is charged, under 50

U.S.C. 403-5(b)(3), with responsibility for the "continued operation of an effective unified organization for the research and development, acquisition, and operation of overhead reconnaissance systems necessary to satisfy the requirements of all elements of the intelligence community." NRO is the sole designer, builder and operator of the United States' reconnaissance satellites. According to DOD, NRO was omitted from the Department's original list of recommended components in 1990 because the existence of the NRO was, at that time and for several years thereafter, a highly classified fact. That is no longer the case, and NRO can now be designated as a new component of the DOD.

The Director is also granting the request of the Department of Labor to designate the Office of Disability Employment Policy (ODEP) as a distinct and separate component of that Department. ODEP is a new office established by legislation enacted on December 21, 2000, section 1(a)(1), Pub. L. 106-554, as codified at 29 U.S.C. 557b. The office, which is headed by an Assistant Secretary, is charged to "provide leadership, develop policy and initiatives, and award grants furthering the objective of eliminating barriers to the training and employment of people with disabilities." 29 U.S.C. 557b.

As recommended by the Department of Transportation (DOT), the Director is designating the Federal Motor Carrier Safety Administration (FMCSA) as a distinct and separate component of that Department. The FMCSA commenced operations on January 2, 2000. It was created pursuant to the Motor Carrier Safety Improvement Act of 1999, section 101(a), Pub. L. 106-159, as codified at 49 U.S.C. 113, to perform functions relating to motor carriers and motor carrier safety. These functions were previously performed by DOT's Federal Highway Administration.

Also pursuant to the recommendation of DOT, the Director is designating the Transportation Security Administration (TSA) as a distinct and separate component of that Department. Under the Aviation and Transportation Security Act, section 101(a), Pub. L. 107-71, as codified at 49 U.S.C. 114, TSA was created as an administration of DOT, with the responsibility for civil aviation security as well as the security of other modes of transportation. Although the functions of TSA are expected to be transferred to the new Department of Homeland Security at a later time during 2003, this separate component designation will define the relationship between DOT and TSA

with respect to section 207(c) immediately.

As requested by the Department of the Treasury (Treasury), the Director is designating the Financial Crimes Enforcement Network (FinCEN) as a distinct and separate component of that Department. Under 31 U.S.C. 310, FinCEN is designated as a bureau in Treasury to provide trend analysis and threat assessments, regulate financial and other institutions under the Bank Secrecy Act, and foster international cooperation in efforts to deter and detect money laundering.

Additionally, as recommended by the Department of State, the Director is revoking the designation of the International Joint Commission, United States and Canada (American Section) (IJC). Section 207(h) of 18 U.S.C. authorizes the designation of agencies and bureaus "within" a department or agency. Although the IJC receives funding from the Department of State and Federal employees serve in its American Section, IJC is not a part of the Department of State. Rather, it is an international organization in which the United States participates. *See, e.g.*, 22 U.S.C. 288 (IJC is among the international organizations in which the United States participates which are entitled to certain privileges, exemptions, and immunities).

Finally, the Department of Health and Human Services (HHS) has advised that the names of two HHS components currently listed in appendix B of part 2641 have been changed. According to HHS, the "Agency for Health Care Policy and Research" is now the "Agency for Healthcare Research and Quality," and the "Health Care Financing Administration" is now the "Centers for Medicare and Medicaid Services." Accordingly, the Director is amending the HHS listing in appendix B to reflect the current names of these components.

As indicated in 5 CFR 2641.201(e)(4), a designation "shall be effective as of the effective date of the rule that creates the designation, but shall not be effective as to employees who terminated senior service prior to that date." Initial designations were effective as of January 1, 1991. The effective date of subsequent designations is indicated by means of parenthetical entries in appendix B. The new component designations made by this rulemaking document, as well as the component name changes being reflected herein (which do not affect their underlying component designation dates), are effective January 30, 2003. As also provided in 5 CFR 2641.201(e)(4), a revocation is effective 90 days after the

effective date of the rule that revokes the designation. Accordingly, the component designation revocation made in this rulemaking will take effect April 30, 2003. Revocations are not effective as to any individual terminating senior service prior to the expiration of the 90-day period.

## B. Matters of Regulatory Procedure

### Administrative Procedure Act

Pursuant to 5 U.S.C. 553, as the Director of OGE, I find that good cause exists for waiving the general requirements for notice of proposed rulemaking, opportunity for public comment, and, except as to the component revocation (see the preamble discussion above), a 30-day delayed effective date. It is important and in the public interest that the designation or revocation herein by OGE of the specified separate departmental components, as well as the component name changes, all of which reflect the current organization of the concerned departments and, as to the new component designations, relieve a restriction, be published in the **Federal Register** and take effect as promptly as possible.

### Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule will not have a significant economic impact on a substantial number of small entities because it affects only Federal departments and agencies and current and former Federal employees.

### Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

### Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), the final rule would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

### Congressional Review Act

The Office of Government Ethics has determined that this rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and has submitted a report

thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with the law.

### Executive Order 12866

In promulgating this final rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This rule has not been reviewed by the Office of Management and Budget under that Executive order since it deals with agency organization, management, and personnel matters and is not "significant" under the order.

### Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

### List of Subjects in 5 CFR Part 2641

Conflict of interests, Government employees.

Approved: January 23, 2003.

**Amy L. Comstock,**

*Director, Office of Government Ethics.*

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2641 as follows:

## PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

1. The authority citation for part 2641 continues to read as follows:

**Authority:** 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Effective January 30, 2003, appendix B to part 2641 is amended by revising the listings for the Department of Defense, the Department of Health and Human Services, the Department of Labor, the Department of Transportation, and the Department of the Treasury to read as follows:

### Appendix B to Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

\* \* \* \* \*

### Parent: Department of Defense

Components

Department of the Air Force  
Department of the Army  
Department of the Navy

Defense Information Systems Agency  
Defense Intelligence Agency  
Defense Logistics Agency  
Defense Threat Reduction Agency (effective February 5, 1999)  
National Imagery and Mapping Agency (effective May 16, 1997)  
National Reconnaissance Office (effective January 30, 2003)  
National Security Agency

*Parent: Department of Health and Human Services*  
Components

Administration on Aging (effective May 16, 1997)  
Administration for Children and Families (effective January 28, 1992)  
Agency for Healthcare Research and Quality (formerly Agency for Health Care Policy and Research) (effective May 16, 1997)  
Agency for Toxic Substances and Disease Registry (effective May 16, 1997)  
Centers for Disease Control and Prevention (effective May 16, 1997)  
Centers for Medicare and Medicaid Services (formerly Health Care Financing Administration)  
Food and Drug Administration  
Health Resources and Services Administration (effective May 16, 1997)  
Indian Health Service (effective May 16, 1997)  
National Institutes of Health (effective May 16, 1997)  
Substance Abuse and Mental Health Services Administration (effective May 16, 1997)

\* \* \* \* \*

*Parent: Department of Labor*  
Components:

Bureau of Labor Statistics  
Employment and Training Administration  
Employment Standards Administration  
Mine Safety and Health Administration  
Occupational Safety and Health Administration  
Office of Disability Employment Policy (effective January 30, 2003)  
Pension and Welfare Benefits Administration (effective May 16, 1997)

\* \* \* \* \*

*Parent: Department of Transportation*  
Components:

Federal Aviation Administration  
Federal Highway Administration  
Federal Motor Carrier Safety Administration (effective January 30, 2003)  
Federal Railroad Administration  
Federal Transit Administration  
Maritime Administration  
National Highway Traffic Safety Administration  
Saint Lawrence Seaway Development Corporation  
Surface Transportation Board (effective May 16, 1997)  
Transportation Security Administration (effective January 30, 2003)

United States Coast Guard

*Parent: Department of the Treasury Components*

Bureau of Alcohol, Tobacco and Firearms  
Bureau of Engraving and Printing

Bureau of the Mint

Bureau of the Public Debt

Comptroller of the Currency

Federal Law Enforcement Training Center  
Financial Crimes Enforcement Network  
(FinCEN) (effective January 30, 2003)

Financial Management Service

Internal Revenue Service

Office of Thrift Supervision

United States Customs Service

United States Secret Service

3. Effective April 30, 2003, appendix B to part 2641 is further amended by removing the word and colon “Components:” and adding in place thereof the word and colon “Component:” in the listing for the Department of State and by removing the “International Joint Commission, United States and Canada (American Section)” from that listing.

[FR Doc. 03-2117 Filed 1-29-03; 8:45 am]

**BILLING CODE 6345-02-P**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1738

#### RIN 0572-AB81

### Rural Broadband Access Loans and Loan Guarantees

**AGENCY:** Rural Utilities Service, USDA.  
**ACTION:** Final rule.

**SUMMARY:** The Rural Utilities Service (RUS) is amending its regulations in order to establish the Rural Broadband Access Loan and Loan Guarantee Program as authorized by the Farm Security and Rural Investment Act of 2002 (Pub. L. 101-171) (2002 Act). Section 6103 of the Farm Security and Rural Investment Act of 2002 amended the Rural Electrification Act of 1936, as amended (RE Act), to add Title VI, Rural Broadband Access, to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities. This final rule prescribes the types of loans available, facilities financed, and eligible applicants, as well as minimum credit support requirements to be considered for a loan. In addition, the rule prescribes the process through which RUS will consider applicants

under the priority consideration and the state allocations required in Title VI.

**EFFECTIVE DATE:** This rule is effective January 30, 2003.

#### FOR FURTHER INFORMATION CONTACT:

Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1590, Room 4056, Washington, DC 20250-1590. Telephone number (202) 720-9554, Facsimile (202) 720-0810.

#### SUPPLEMENTARY INFORMATION:

#### Notice and Comment

Section 6103(b) of the 2002 Act requires that the regulations necessary to implement the Rural Broadband Access Loan and Loan Guarantee Program are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture, effective July 24, 1971 (36 FR 13804), relating to notices of proposed rulemaking and public participation in rulemaking. Therefore, these regulations are issued as a final rule.

#### Executive Order 12866

This rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB). In accordance with Executive Order 12866, an Economic Impact Analysis was completed, outlining the costs and benefits of implementing this program in rural America. The complete analysis is available from RUS upon request.

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to the rule and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

#### Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not applicable to this rule because the agency is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed

rulemaking for the subject matter of this rule. The RUS broadband program provides loans to borrowers at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct cost associated with complying with RUS regulations and requirements.

#### Information Collection and Recordkeeping Requirements

Section 1601(c) of the 2002 Act provides that the promulgation of regulations necessary to implement the Rural Broadband Access Loan and Loan Guarantee Program shall be made without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act).

#### Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.851, Rural Telephone Loans and Loan Guarantees; No. 10.852, Rural Telephone Bank Loans; and No. 10.857, Rural Broadband Access Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402. Telephone: (202) 512-1800.

#### Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled “Department Programs and Activities Excluded from Executive Order 12372,” (50 FR 47034).

#### Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandate Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandate Reform Act of 1995.

#### National Environmental Policy Act Certification

RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.