

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

Action Date:

For Information Only

DEPARTMENTAL PERSONNEL MANUAL

DPM BULLETIN NO. 550-26

DATE: MAY 24 1991

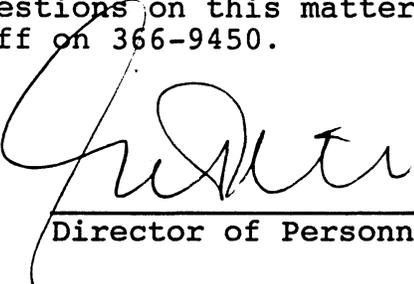
SUBJECT: Pay Administration (General); Hazard Pay Differentials

On May 4, 1991 the attached regulations, which implement section 203 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), became effective. Section 203 of FEPCA modifies current hazard pay differential regulations by deleting all references to "irregular or intermittent" duty as a requirement for entitlement to a hazard pay differential.

Additionally, it establishes provisions for requesting an Office of Personnel Management (OPM) waiver of the rule that prohibits payment of hazard pay differential to employees whose hazardous duty has been taken into account in the classification of their position. Requests for waiver in accordance with the attached regulations must be submitted to the Office of the Secretary, Director of Personnel (ATTN: M-16), for consideration before transmission to OPM.

When requesting establishment of a hazard pay differential or a waiver request, agencies are now required to provide cost estimate information.

If you have any questions on this matter, please contact Jan Karicher of my staff on 366-9450.



Director of Personnel

Attachment

Filing Instructions: File after FPM Chapter 550 Bulletins

Bulletin Expires: Upon Notification

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5 CFR Part 550

RIN 3206-AE31

Pay Administration (General); Hazard Pay Differentials**AGENCY:** Office of Personnel Management.**ACTION:** Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations on the hazard pay differential program that is modified by section 203 of the Federal Employees Pay Comparability Act of 1990 (FEPCA). The interim regulations delete the restriction that hazardous duty must be "irregular or intermittent" for entitlement to a hazard pay differential. In addition, provisions are established for requesting a waiver of the rule that prohibits payment of a hazard pay differential to employees whose hazardous duty has been taken into account in the classification of their position.

DATES: The amendments made by section 203 of FEPCA and the interim regulations set forth below are effective on May 4, 1991. Comments must be received by July 2, 1991.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Pay and Performance, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 7H28, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Phyllis Foley (202) 606-2848 or (FTS) 266-7848.

SUPPLEMENTARY INFORMATION: Section 203 of the Federal Employees Pay Comparability Act of 1990 (Public Law 101-509, November 5, 1990) modified section 5545(d) of title 5, United States Code, which contains the legal basis for the payment of a differential for duty involving unusual physical hardship or hazard. FEPCA changed the law in two ways:

(1) The restriction that hazardous duty must be "irregular or intermittent" for entitlement to a hazard pay differential is deleted.

(2) The Office of Personnel Management is given authority to establish regulations that would allow a waiver of the rule prohibiting payment of a hazard pay differential to employees whose hazardous duty has been taken into account in the classification of their position.

The interim regulations delete all references to "irregular or intermittent" duty as a requirement for entitlement to a hazard pay differential. In addition, rules are established governing requests for a waiver of the provision that prohibits payment of a hazard pay differential to employees whose hazardous duty has been taken into account in the classification of their position. Since cost estimate information must be provided for waiver requests, a similar provision is added to the existing documentation requirements for amendments to appendix A. This change will provide OPM with additional information that will be useful in evaluating such requests.

Deletion of the "irregular or intermittent" duty requirement brings OPM regulations into conformance with the law. However, it is important to note that the law still prohibits payment of the hazard pay differential when the hazardous duty has been taken into consideration in the classification of the position, unless a waiver is granted. The interim regulations further clarify this prohibition by providing that hazard pay differential is not payable in such a situation whether or not the hazardous duty is grade controlling. The waiver authority is designed to address unusual circumstances and atypical situations in which major inequities are identified and cannot be addressed using other authorities.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days to make these changes-effective within 180 days after the enactment of Public Law 101-509, as required by section 305 of FEPCA.

Waiver of Notice of Proposed Rulemaking

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they would affect only Federal employees and Federal agencies.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM is amending 5 CFR part 550 as follows:

PART 550—PAY ADMINISTRATION (GENERAL)**Subpart I—Pay for Duty Involving Physical Hardship or Hazard**

1. The authority citation for subpart I of part 550 continues to read as follows:

Authority: 5 U.S.C. 5545(d) and 5548(b).

2. In subpart I, §§ 550.901 through 550.907 are revised to read as follows:

§ 550.901 Purpose.

This subpart prescribes the regulations required by sections 5545(d) and 5548(b) of title 5, United States Code, for the payment of differentials for duty involving unusual physical hardship or hazard to employees.

§ 550.902 Definitions.

In this subpart: *Agency* has the meaning given that term in 5 U.S.C. 5102(a)(1).

Duty involving physical hardship means duty that may not in itself be hazardous, but causes extreme physical discomfort or distress and is not adequately alleviated by protective or mechanical devices, such as duty involving exposure to extreme temperatures for a long period of time, arduous physical exertion, or exposure to fumes, dust, or noise that causes nausea, skin, eye, ear, or nose irritation.

Employee has the meaning given that term in 5 U.S.C. 5102(a)(2).

Hazardous duty means duty performed under circumstances in which an accident could result in serious injury or death, such as duty performed on a high structure where protective facilities are not used or on an open structure where adverse conditions such as darkness, lightning, steady rain, or high wind velocity exist.

Hazard pay differential means additional pay for the performance of hazardous duty or duty involving physical hardship.

§ 550.903 Establishment of hazard pay differentials.

(a) A schedule of hazard pay differentials, the hazardous duties or duties involving physical hardship for which they are payable, and the period during which they are payable is set out as appendix A to this subpart and incorporated in and made a part of this section.

(b) Amendments to appendix A of this subpart may be made by OPM on its own motion or at the request of an agency. An agency may recommend the rate of hazard pay differential to be established and shall submit with its request for an amendment of the appendix information about the hazardous duty or duty involving physical hardship showing—

- (1) The nature of the duty;
- (2) The degree to which the employee is exposed to hazard or physical hardship;
- (3) The length of time during which the duty will continue to exist;
- (4) The degree to which control may be exercised over the physical hardship or hazard; and
- (5) The estimated annual cost to the agency if the request is approved.

550.904 Authorization of hazard pay differential.

(a) An agency shall pay the hazard pay differential listed in appendix A of this subpart to an employee who is assigned to and performs any duty specified in the appendix. However, a hazard pay differential may not be paid to an employee when the hazardous duty or physical hardship has been taken into account in the classification of his or her position, without regard to whether the hazardous duty or physical hardship is grade controlling, unless a waiver has been approved by OPM.

(b) A waiver may be approved by OPM at the request of an agency. An agency shall submit with its request information showing—

(1) The specific hazardous duty or duty involving physical hardship involved;

(2) The organizational component, position (title, series, and grade), and number of employees to be covered;

(3) The impact of the hazardous duty or physical hardship on the classification of the position;

(4) The justification for the waiver; and

(5) The estimated annual cost to the agency if the waiver is approved.

(c) For the purpose of this section, the phrase "has been taken into account in the classification of his or her position" means that the duty constitutes an element used in establishing the grade of the position.

§ 550.905 Payment of hazard pay differential.

When an employee performs duty for which hazard pay differential is authorized, the agency shall pay the hazard pay differential for the hours in a pay status on the day (a calendar day or a 24-hour period, when designated by the agency) on which the duty is performed. Hours in a pay status for work performed during a continuous period extending over 2 days shall be considered to have been performed on the day on which the work began, and the allowable differential shall be charged to that day.

§ 550.906 Termination of hazard pay differential.

An agency shall discontinue payment of hazard pay differential to an employee when—

- (a) One or more of the conditions requisite for such payment ceases to exist;
- (b) Adequate safety precautions have reduced the element of hazard to a negligible level; or
- (c) Protective or mechanical devices have adequately alleviated physical discomfort or distress.

§ 550.907 Relationship to additional pay payable under other statutes.

Hazard pay differential is in addition to any additional pay or allowances payable under other statutes. It shall not be considered part of the employee's rate of basic pay in computing additional pay or allowances payable under other statutes.

3. The heading for appendix A to Subpart I is revised to read as follows:

Appendix A—Schedule of Pay Differentials Authorized for Hazardous Duty Under Subpart I

4. In the table titled "Hazard Pay Differential, of Part 550 Pay Administration (General)" under Appendix A to subpart I, the heading to column 1 that reads "Irregular or intermittent duty" is revised to read "Duty".

[FR Doc. 91-10553 Filed 5-2-91; 8:45 am]

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