



Approved for Release
Deborah A. Jefferson
Director for Human Resources
Management

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Date

DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT

HUMAN RESOURCES (HR) BULLETIN #055, FY 07, (5 U.S.C. 5547)

SUBJECT: Extension of Annual Pay Limitation for Overseas Emergency Work

EFFECTIVE DATE: Upon release of this HR Bulletin and retroactive to salary payments payable on or after January 1, 2007

EXPIRATION DATE: Effective until canceled or superseded

SUPERSEDES: HR Bulletin #035, FY 06, U.S.C., "National Defense Authorization Act for Fiscal Year 2006, Public Law 109-163"

BACKGROUND: In calendar year (CY) 2005 and 2006 employees performing emergency work in overseas locations in connection with a military operation or an operation in response to a declared emergency were allowed to exceed premium pay earnings limitations and apply alternative annual limitations. On October 17, 2006, the "Fiscal Year 2007 National Defense Authorization Act, Public Law 109-364" was signed to authorize agencies to waive the premium pay cap provisions under 5 U.S.C. 5547 in CY 2007 and increase the alternative pay cap for employees performing emergency work in connection with a military operation or an operation in response to a declared emergency in an overseas location.

PURPOSE: The purpose of this HR Bulletin is to authorize agencies to waive the annual limitation on total basic pay and premium pay and apply an alternative limit of up to \$212,100.00.

CHANGES: In accordance with Section 1101 of Public Law 109-364, employees performing emergency work in connection with a military operation or an operation in response to a declared emergency in an overseas location may have the alternative annual earnings limitation of \$212,100.00 applied in lieu of the 2006 alternative annual earnings limitation. This means that employees may receive premium pay in CY 2007 to the extent that such premium pay would not cause the employee's aggregate amount of basic pay and premium pay payable in the CY to exceed \$212,100.00. This limitation is applied to premium payments that are "payable" during the 2007 CY. That is, payments

earned in a pay period for which the pay date falls in the CY, or up to and including pay period 22, 2007.

The alternative annual limitation continues to apply to an employee's annual aggregate basic pay plus premium pay even after the employee has stopped performing work covered under this authority. At that point the employee's earnings will again be subject to the bi-weekly premium pay limitation under 5 U.S.C. 5547, and the employee may receive payments up to the section 5547 bi-weekly premium pay limitation each pay period until the alternative annual limitation is reached.

Section 1105 does not provide authority to waive the aggregate compensation limitation in 5 U.S.C. 5307, which bars payment of compensation (including premium pay) under title 5 in addition to basic pay to the extent such payment would cause the employee's aggregate annual compensation received in a CY to exceed a specified annual rate¹. Since the section 1105 annual limitation is greater than the rate for level 1 of the Executive Schedule, an employee may be entitled to premium pay under section 1105 that cannot be paid during CY 2007 due to the section 5307 limitation. In this case, any such excess payments should be deferred until the beginning of CY 2008 (See 5 CFR 530.203(f) and 530.204) and are counted toward the 2007 aggregate pay limitation under section 5307. (A deferred payment of premium pay is not considered in applying the applicable 2008 premium pay limitation under 5 U.S.C. 5547 or similar authority.)

APPLICABILITY: This HR Bulletin applies to employees performing emergency work in connection with a military operation or an operation in response to a declared emergency in overseas location under the area of responsibility of the Commander of the U.S. Central Command. The following 27 countries are in the area of responsibility: Djibouti, Egypt, Eritrea, Sudan, Kenya, Ethiopia, Somalia, Jordan, Saudi Arabia, Yemen, Oman, United Arab Emirates, Qatar, Bahrain, Kuwait, Pakistan, Iran, Iraq, Afghanistan, Tajikistan, Kyrgyzstan, Kazakhstan, Uzbekistan, Turkmenistan, Seychelles, Syria, and Lebanon. The following conditions must be met for an employee to be eligible:

- (1) The employee is covered by 5 U.S.C. 5547 (dealing with limitations on premium pay).
- (2) The employee is assigned to work in an overseas location under the responsibility of the Commander of the U.S. Central Command and remains in that location for at least 42 consecutive calendar days. If the employee meets the 42-day requirement, this limitation may be applied to days before that requirement was met, as long as the employee was performing work in a covered and approved

¹ Based on laws in effect as of the date of issuance of OPM's covering memorandum (November 3, 2006), the rate for level 1 of the Executive Schedule (EX) is scheduled to be adjusted by 1.7 percent to \$186,000.00 effective with the first day of the first pay period beginning on or after January 1, 2007. However, since this rate adjustment has not been finalized the aggregate annual compensation may not change. You will be notified under separate cover once the rate is finalized.

category on those days. The 42-day period may overlap a CY, that is, begin in 2006 and end in 2007, or begin in 2007 and end in 2008.

- (3) The employee performs work in direct support of, or directly related to, a military operation (including a contingency operation).

PROCEDURES: Before applying the annual salary cap, time and attendance reports (T&As) must first be coded to allow employees to exceed the biweekly salary cap. To effect this change, the T&A report must be coded with a "4" in the RSO/Salary Cap field on the Employee Data Screen of the DOS T&A software or in the T&A Profile of webTA. Note that the following types of premium pay remain subject to the bi-weekly salary cap when other premium pay entitlements are subject to the annual salary cap: standby duty under 5 U.S.C. 5545(c)(1); administratively uncontrollable overtime under 5 U.S.C. 5545(c)(2); availability pay for criminal investigators under 5 U.S.C. 5545a; and firefighter overtime pay for hours in the regular tour of duty under 5 U.S.C. 5545b. Since the National Finance Center does not track the annual salary cap, agencies will have to track premium pay earned to ensure employees do not exceed the new annual cap.

Waivers resulting in receipt of additional premium pay that is normally creditable as basic pay for retirement (or any other purpose) is not to be considered basic pay and may not be used in computing a lump-sum payment for accumulated and accrued annual leave under 5 U.S.C. 5551.

REFERENCES: Section 1105 of Public Law 109-364, 5 U.S.C. 5547, 5 U.S.C. 5551, 5 U.S.C. 5307

OFFICE OF POLICY AND PROGRAMS: Felicia Purifoy, Director,
fpurifoy@doc.gov, (202) 482-5291

PROGRAM MANAGER CONTACT INFORMATION: Sheila Fleishell, Program
Manager, sfleishell@doc.gov, (202) 482-0022