



Department of Defense
INSTRUCTION
AD-A270 353

April 10, 1992
NUMBER 1340.9



ASD(FM&P)

SUBJECT: Special Pay for Duty Subject to Hostile Fire or Imminent
Danger

- References:
- (a) DoD Directive 1340.9, subject as above, January 17, 1989 (canceled)
 - (b) Deputy Secretary of Defense memorandum, subject as above, March 12, 1992
 - (c) Section 310 of title 37, United States Code
 - (d) DoD Military Pay and Allowances Entitlements Manual, current edition¹

A. REISSUANCE AND PURPOSE

This Instruction:

1. Reissues reference (a) under the authority delegated in reference (b).
2. Updates policy, responsibilities, and procedures governing the administration of special pay for duty subject to hostile fire or imminent danger.

B. APPLICABILITY

This Instruction applies to the Office of the Secretary of Defense, the Chairman of the Joint Chiefs of Staff and the Joint Staff, and the five Unified Combatant Commands (with geographic area responsibility). The term "Unified Combatant Commands," as used herein, refers to the Atlantic Command, the European Command, the Pacific Command, the Central Command, and the Southern Command. The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

C. DEFINITIONS

1. Certification. A statement issued by the closest on-scene

¹ Available from Superintendent of Documents, Government Printing Office, Washington, DC 20402-0001.

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commander certifying that a Service member was subject to hostile fire or explosion of hostile mines on a specific date and is eligible for special pay for that month.

2. Designated Areas. Areas where it has been determined by the Secretary of Defense, or the Secretary's designee, that Service members are subject to hostile fire or imminent danger under Section 310(a)(2) or 310(a)(4) of 37 U.S.C. reference (b)).

3. Nondesignated Areas. All other locations not designated by the Secretary of Defense, or the Secretary's designee. Service members performing duties in nondesignated areas are eligible for special pay under Section 310(a)(1) or 310(a)(3) of reference (b).

D. POLICY

It is DoD policy that under reference (b), the Department of Defense may authorize special pay for duty subject to hostile fire or imminent danger to a member of a Military Service who is entitled to basic pay and was, as follows:

1. Subject to hostile fire or explosion of hostile mines.

2. On duty in an area in which the Service member was in imminent danger of being exposed to hostile fire or explosion of hostile mines and in which, during the period that the Service member was on duty in that area, other members of the Armed Forces were subject to hostile fire or explosion of hostile mines.

3. Killed, injured, or wounded by hostile fire, explosion of a hostile mine, or any other hostile action.

4. On duty in a foreign area in which the Service member was subject to the threat of physical harm or imminent danger on the basis of civil insurrection, civil war, terrorism, or wartime conditions.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Force Management and Personnel) shall:

a. Serve as the focal point on special pay for duty subject to hostile fire or imminent danger.

b. Review and evaluate requests from the Chairman of the Joint Chiefs of Staff for area designations.

F. PROCEDURES

1. Eligibility. To be eligible for special pay for duty subject to hostile fire or imminent danger, a member of the Military Services who is entitled to basic pay must meet one, or more, of the following conditions:

a. Is permanently assigned and required to perform duty in a designated area. Under this Directive, "permanently assigned" shall include personnel on duty under orders contemplating temporary duty in a designated area for a period of 30 consecutive days, or more.

b. Is not permanently assigned in a designated area, but performs assigned duties in a designated area under temporary orders requiring presence in a designated area. When the airspace is specifically included in the area designation, aviation personnel who only fly through the airspace are eligible for payment. When the airspace is specifically excluded in the area designation, aviation personnel who only fly through the airspace are not eligible for payment (they must land in the designated area to be eligible). Service members who are present in a designated area while on leave from a duty station outside a designated area, or who pass over or through a designated area during the course of a trip between two points both of which lie outside the designated area, or are present in a designated area solely for their own personal convenience shall not be considered to have "performed duty" in a designated area and are not eligible for payment.

c. Was subject to hostile fire or explosion of hostile mines while performing duty in a designated area; i.e., was in such proximity to the actual trajectory or point of impact or explosion of hostile ordnance, or other hostile action, so that the Service members were placed in danger of being wounded, injured, or killed from such causes.

d. Was performing duties in a nondesignated area and was subject to hostile fire or explosion of hostile mines. Eligibility includes all Service members serving on the same vessel or aircraft that was the subject of hostile fire or explosion of hostile mines, and those serving on a vessel or aircraft that was in such close proximity that Service members were in danger of being wounded, injured, or killed. For land forces, only those of the unit (patrol, squad, platoon, or larger unit) that were in the immediate vicinity of the trajectory, point-of-impact, or explosion of hostile ordnance, and were placed in danger of being wounded, injured, or killed from such causes are eligible for payment. Certification of eligibility for payment shall be made at the lowest level of command that includes all the vessels, aircraft, or units that are subject to hostile fire or explosion of hostile mines. For example, in the case of a single vessel that is subject to hostile fire or explosion of hostile mines, the vessel's commanding officer is authorized to certify payment to all Service

members on board the vessel. If two or more vessels are involved in the hostile action, the commanding officer of the unit that includes all of the vessels shall certify eligibility for payment.

e. Was killed, wounded, or injured as a result of hostile fire, explosion of a hostile mine, or any other hostile action.

2. Amount and Method of Payment

a. Service members who qualify for payment may be paid in one of the following ways:

(1) On a case-by-case basis, when a Service member has been certified by the local commander as either having been subject to, wounded, or killed by hostile fire, explosion of hostile mines or other hostile actions.

(2) On a monthly basis when a Service member is performing duty (permanent or temporary) in an area designated by the Secretary of Defense.

(a) Under the case-by-case provision, Service members who qualify for this special pay as a result of being subject to hostile fire, explosion of hostile mines, or other hostile action require only the local commander's approval.

(b) Under the area designation, Service members receive automatic monthly payment in addition to their regular pay. Eligibility for special pay differs between permanent and temporary duty as delineated in paragraphs F.1.a. and F.1.b., above.

b. Special pay of a Service member whose eligibility is based on the condition stated in paragraph F.1.e., above, shall be prorated through the date of death.

c. Service members who are hospitalized outside a designated area for injuries incurred as a result of a hostile action shall be eligible for special pay through the date hospitalization is terminated or for 3 months after the month in which the wound or injury occurred, whichever is earlier.

d. Service members who permanently are assigned to duty in a designated area shall be eligible to receive special pay from the first day of the month on which the Service member originally arrives in the designated area through the last day of the month in which the Service member is detached from the designated area. If such a Service member is absent from the designated area for an entire calendar month, the Service member shall not be eligible for special pay that month.

e. In the case of a Service member (including a Reserve member) who becomes eligible for that special pay in any month, but who loses entitlement to basic pay for a part of that month (e.g., as a result of discharge, release from active duty, or unauthorized absence), the special pay shall be prorated in accordance with the number of days of the month on which the Service member was entitled to basic pay.

f. A Service member shall not be paid more than one special pay for duty subject to hostile fire or imminent danger for any month.

g. A Service member may be paid that special pay in addition to any other pay and allowances to which the Service member is eligible.

h. A Service member who has qualified for that pay shall continue to be credited with that special pay while in a status of missing, missing-in action, interned in a foreign country, or captured by a hostile force.

i. Any determinations of fact made in the administration of that special pay are conclusive. Such determinations are not subject to review by any officer or Agency of the Government, unless there has been fraud or gross negligence. Such determinations may be changed on the basis of new evidence or for other good cause.

3. Criteria for Area Designations. Under 37 U.S.C. 310 (reference (b)), the Secretary of Defense, or the Secretary's designee, may designate specific areas whereby Service members serving in those areas are eligible for special pay. Before 1983, the Secretary of Defense designated areas as "hostile fire areas." Reference (b) was amended in 1983, granting the Secretary of Defense the authority to designate foreign areas as "imminent danger areas" for reasons delineated in subsection D.4., above. The following guidelines shall apply when requesting area designations:

a. Requests shall originate with, or shall be submitted through, the applicable Unified Combatant Command and forwarded to the Chairman of the Joint Chiefs of Staff for evaluation and recommendation. Any requests for area designations received by the Chairman of the Joint Chiefs of Staff that are not so submitted shall be forwarded to the applicable command for evaluation and recommendation.

b. Requests for area designations shall include specific information that fully reflects the conditions in that area, and shall describe the exact location that is to be designated, to include longitude and latitude coordinates, if appropriate.

c. The Chairman of the Joint Chiefs of Staff shall evaluate the area designation requests, including coordination with applicable elements of his staff and the Military Services. Requests supported by

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the Chairman of the Joint Chiefs of Staff shall be forwarded to the ASD(FM&P) for approval, in coordination with the Assistant Secretary of Defense (International Security Affairs) (ASD(ISA)) or the Assistant Secretary of Defense (International Security Policy) (ASD(ISP)).

d. The ASD(FM&P) shall review the requests, in accordance with the Defense Intelligence Agency's most recent threat assessment report and the politico-military analysis of the ASD(ISA), or the ASD(ISP). If the area designation request is approved, the ASD(FM&P), in coordination with the Chairman of the Joint Chiefs of Staff and the ASD(ISA) or the ASD(ISP), shall determine the final parameters. The effective date of the area designation shall be prospective.

e. Commanders continually shall appraise the conditions within designated areas to ensure that such designations warrant continuation. If an existing designation should be considered as no longer necessary, a recommendation to that effect shall be forwarded to the Chairman of the Joint Chiefs of Staff for action.

G. INFORMATION REQUIREMENTS

The reporting requirements in section E., above, have been assigned Report Control Symbol DD-FM&P(A)586.

H. EFFECTIVE DATE

This Instruction is effective immediately.



Christopher Jehu
Assistant Secretary of Defense
(Force Management and Personnel)