

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

Action Date:

For Information Only

DEPARTMENTAL PERSONNEL MANUAL

DPM BULLETIN NO. 551-3

DATE: JUN - 5 1991

SUBJECT: Pay Administration Under the Fair Labor Standards Act
(FLSA); Overtime Pay Provisions

On May 4, 1991 the attached regulations, which implement section 210 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), became effective. Section 210 of FEPCA eliminates the need to calculate and compare an FLSA non-exempt employee's overtime entitlement under Title 5, United States Code and the provisions of the FLSA. Under FEPCA non-exempt employees will always receive overtime pay under the FLSA. Exempt employees will continue to have overtime calculated under parts 532 or 550, as applicable, of Title 5, Code of Federal Regulations.

The following summarize the changes to FLSA overtime rules:

1. Generally, a non-exempt employee shall be compensated for all hours of work in excess of 8 in a day or 40 in a week at a rate equal to one and one-half times the employee's hourly regular rate of pay.
2. All hours in a pay status, including paid leave, holidays, compensatory time off, or excused absence, are now considered hours of work.
3. Hours in an unpaid nonwork status, such as leave without pay, furlough, and absence without leave, are not considered hours of work.
4. When an employee is required to report to his or her duty station on a day which work is not scheduled or after the normal work day has concluded, the employee is deemed to have worked at least two hours.

Filing Instructions: File after FPM Chapter 551 Bulletins

Bulletin Expires: Upon Notification

Distribution: Personnel Council, APN-300, APN-100, AAC-25,
AAA-100, M-80

OPI: M-16/JKARICHER/X69450

5. For purposes of determining hours of work in excess of 8 in a day or 40 in a week, credit shall be given for hours of work covered under Section 410.602 and Parts 550 and 532 of Title 5, Code of Federal Regulations. Credit shall also be given for hours of work under 5 U.S.C. 5544.
6. Overtime pay under the FLSA shall be in addition to all non-overtime pay to which the employee is entitled under Title 5, United States Code.
7. At the request of an employee, the Head of an Operating Administration or Departmental Officer may grant compensatory time off in lieu of overtime payment.
8. The Head of an Operating Administration or a Departmental Officer may fix time limits for an employee to request and take compensatory time off. If not requested or used within the prescribed time limits, the employee must be paid at the overtime rate in effect for the work period in which it was earned.

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



Director of Personnel

Attachment

**PART 551—PAY ADMINISTRATION
UNDER THE FAIR LABOR
STANDARDS ACT**

13. The authority citation for part 551 is revised to read as follows:

Authority: Sec. 4(f) of the Fair Labor Standards Act of 1938, as amended by Pub. L. 93-259, 88 Stat. 55 (29 U.S.C. 204f); Sec. 210 of the Federal Employees Pay Comparability Act of 1990, Pub. L. 101-509, 104 Stat. 1460.

14. In § 551.401, paragraphs (b) and (c) are revised, and paragraphs (e) through (h) are added to read as follows:

§ 551.401 Basic principles.

(b) Hours in a paid nonwork status (e.g., paid leave, holidays, compensatory time off, or excused absences) are "hours of work" under this part.

(c) Hours in an unpaid nonwork status (e.g., leave without pay, furlough, absence without leave) are not "hours of work" under this part.

(e) Irregular or occasional overtime work performed by an employee on a day on which work was not scheduled for that employee or for which the employee is required to return to his or her place of employment is deemed at least 2 hours in duration for the purpose of determining whether the employee may be entitled to overtime pay under this part, either in money or compensatory time off.

(f) For the purpose of determining hours of work in excess of 8 hours in a day under this part, agencies shall credit hours of work under § 410.602 of this chapter, part 532 of this chapter and 5 U.S.C. 5544, and part 550 of this chapter, as applicable.

(g) For the purpose of determining hours of work in excess of 40 hours in a week or in excess of another applicable overtime work standard under section 7(k) of the Fair Labor Standards Act, agencies shall credit hours of work under § 410.602 of this chapter, part 532 of this chapter and 5 U.S.C. 5544, and part 550 of this chapter, as applicable, that will not be compensated as hours of work in excess of 8 hours in a day, as well as any additional hours of work under this part.

(h) For the purpose of determining overtime pay for work in excess of 40 hours in a workweek under this part, time spent in a travel status is hours of work as provided in § 551.422 of this part and § 550.112(g) of this chapter or 5 U.S.C. 5544, as applicable.

15. In § 551.501, paragraph (a) is revised, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 551.501 Overtime pay.

(a) An agency shall compensate an employee who is not exempt under subpart B of this part for all hours of work in excess of 8 in a day or 40 in a workweek at a rate equal to one and one-half times the employee's hourly regular rate of pay, except that an employee shall not receive overtime compensation under this part—

(1) On the basis of periods of duty in excess of 8 hours in a day when the employee receives compensation for that duty under 5 U.S.C. 5545(c) (1) or (2);

(2) On the basis of hours of work in excess of 8 hours in a day that are not overtime hours of work under § 410.602 of this chapter, part 532 of this chapter and 5 U.S.C. 5544, or part 550 of this chapter;

(3) On the basis of hours of work in excess of 8 hours in a day for an employee covered by 5 U.S.C. 5544 for any hours in a standby or on-call status or while sleeping or eating;

(4) On the basis of hours of work in excess of 40 hours in a workweek for an employee engaged in fire protection or law enforcement activities;

(5) For hours of work that are not "overtime hours," as defined in 5 U.S.C. 6121, for employees under flexible or compressed work schedules;

(6) For hours of work compensated by compensatory time off under § 551.531 of this part; and

(7) For fractional hours of work, except as provided in § 551.521 of this part.

(c) In this subpart, "irregular or occasional overtime work" is overtime work that is not scheduled in advance of the employee's workweek.

§ 551.511 [Amended]

16. In section 551.511, paragraph (b)(2) is removed, and paragraphs (b)(3) through (b)(8) are redesignated as paragraphs (b)(2) through (b)(7), respectively.

17. Section 551.513 is revised to read as follows:

§ 551.513 Entitlement to other forms of pay.

Overtime pay under this part shall be paid in addition to all pay to which the employee is entitled under title 5, United States Code, or any other authority.

18. Section 551.531 is revised to read as follows:

§ 551.531 Compensatory time off.

(a) At the request of an employee, as defined in 5 U.S.C. 5541(2), the head of an agency may grant compensatory time off from an employee's tour of duty instead of payment under § 551.501 of this part for an equal amount of irregular or occasional overtime work.

(b) At the request of an employee, as defined in 5 U.S.C. 2105, the head of an agency may grant compensatory time off from an employee's basic work requirement under a flexible work schedule under 5 U.S.C. 6122 instead of payment under § 551.501 of this part for an equal amount of overtime work, whether or not irregular or occasional in nature.

(c) An agency may not require that an employee be compensated for overtime work under this subpart with an equivalent amount of compensatory time off from the employee's tour of duty.

(d) The head of an agency may fix time limits for an employee to request and take compensatory time off under this section. If compensatory time off is not requested or taken within the established time limits, the employee must be paid for overtime work at the overtime rate in effect for the work period in which it was earned under this subpart.

[FR Doc. 91-10552 Filed 5-2-91; 8:45 am]
BILLING CODE 9325-01-M