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(1) The employee is involuntarily separated for reasons other than misconduct, unacceptable performance, or a negative suitability determination under 5 CFR part 731; or

(2) The employee leaves the paying agency voluntarily to enter into the service of any other agency, unless reimbursement to the agency is otherwise required in the service agreement, as provided by § 537.107(e).

(c) If an agency and an employee mutually agree to modify an existing service agreement to provide additional student loan repayment benefits for additional service (as provided by § 537.107(b)), the modified service agreement may stipulate that, if the employee completes the initial service period but fails to complete the additional service period, he or she is required to reimburse the paying agency only for the amount of any student loan repayment benefits received during the additional service period.

(d) If an employee fails to reimburse the paying agency for the amount owed under paragraph (a) of this section, a sum equal to the amount outstanding is recoverable from the employee under the agency's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, or through the appropriate provisions governing Federal debt collection if the individual is no longer a Federal employee.

(e) An authorized agency official may waive, in whole or in part, a right of recovery of an employee's debt if he or she determines that recovery would be against equity and good conscience or against the public interest. (See 5 U.S.C. 5379(c)(3).)

(f) Any amount reimbursed by, or recovered from, an employee under this section must be credited to the appropriation account from which the amount involved was originally paid. Any amount so credited must be merged with other sums in such account and must be available for the same purposes and time period, and subject to the same limitations (if any), as the sums with which merged. (See 5 U.S.C. 5379(c)(4).)

### § 537.110 Records and reports.

(a) Each agency must keep a record of each determination to provide student loan repayment benefits under this part and make such records available for review upon request by OPM. Such a record may be destroyed when 3 years have elapsed since the end of the service period specified in the employee's service agreement unless any dispute has arisen regarding the agreement. If the service agreement has not been fulfilled, there are other disputes regarding the agreement or the loan payouts, or the agreement has become the subject of litigation, the records should be kept until the agency is notified by agency counsel that all pending claims have been resolved, all litigation concluded, and any applicable periods for seeking further review has elapsed and, in any event, for a minimum of 6 years from the date the facts giving rise to the dispute occurred. If debt collection is pursued against the employee for repayments made by the agency, the agency must keep the records until the agency is notified by agency counsel that the debt is fully collected, compromised, or settled finally and that any applicable period for seeking further review has elapsed.

(b) By March 31st of each year, each agency must submit a written report to OPM containing information about student loan repayment benefits it provided to employees during the previous calendar year. Each report must include the following information:

(1) The number of employees who received student loan repayment benefits;

(2) The job classifications of the employees who received student loan repayment benefits; and

(3) The cost to the Federal Government of providing student loan repayment benefits.

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SOURCE: 33 FR 12458, Sept. 4, 1968, unless otherwise noted.

## Subpart A—Premium Pay

AUTHORITY: 5 U.S.C. 5304 note, 5305 note, 5504(d), 5541(2)(iv), 5545a(h)(2)(B) and (i), 5547(b) and (c), 5548, and 6101(c); sections 407 and 2316, Pub. L. 105–277, 112 Stat. 2681–101 and 2681–828 (5 U.S.C. 5545a); section 2(h), Pub. L. 113–277, 128 Stat. 3005; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

GENERAL PROVISIONS

### § 550.101 Coverage and exemptions.

(a) *Employees to whom this subpart applies.* (1) This subpart applies to each employee in or under an Executive agency, as defined in 5 U.S.C. 105, except those named in paragraphs (b) and (c) of this section.

(2) The sections in this subpart incorporating special provisions for certain types of work (§§ 550.141 through 550.164, inclusive) apply also to each employee of the judicial branch or the legislative branch who is subject to subchapter V of chapter 55 of title 5, United States Code.

(b) *Employees to whom this subpart does not apply.* This subpart does not apply to:

(1) An elected official;

(2) The head of a department;

(3) [Reserved]

(4) An employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under subchapter IV of chapter 53 of title 5, United States Code, or by a wage board or similar administrative authority serving the same purpose, except that § 550.113(d) is applicable to such an employee whose rate of basic pay is fixed on an annual or monthly basis;

(5) An employee outside the continental United States or in Alaska who is paid in accordance with local prevailing wage rates for the area in which employed;

(6) An employee of the Tennessee Valley Authority;

(7) An employee of the Central Intelligence Agency (sec. 10, 63 Stat. 212, as amended; 50 U.S.C. 403j);

(8) A seaman to whom section 1(a) of the act of March 24, 1943 (57 Stat. 45; 50 U.S.C. App. 1291(a)) applies;

(9) A member of the United States Park Police or the United States Secret Service Uniformed Division, except for the purpose of night pay under §§ 550.121 and 550.122, pay for holiday work under §§ 550.131 and 550.132, and pay for Sunday work under §§ 550.171 and 550.172 of this subpart;

(10) An officer or member of the crew of a vessel, whose pay is fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry (30 Comp. Gen. 158);

(11) A civilian keeper of a lighthouse, or a civilian employed on a lightship or another vessel of the Coast Guard (14 U.S.C. 432(f));

(12) A physician, dentist, nurse, or any other employee in the Department of Medicine and Surgery, Veterans Administration, whose pay is fixed under chapter 73 of title 38, United States Code;

(13) A student-employee as defined by section 5351 of title 5, United States Code;

(14) An employee of the Environmental Science Services Administration engaged in the conduct of meteorological investigations in the Arctic region (62 Stat. 286; 15 U.S.C. 327);

(15) An employee of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives;

(16) A ''teacher'' or an individual holding a ''teaching position'' as defined by section 901 of title 20, United States Code;

(17) A Foreign Service officer or a member of the Senior Foreign Service; or

(18) A member of the Senior Executive Service.

(c) *Employees to whom §§ 550.111, 550.113, and 550.114 of this subpart do not apply.* Except for the purpose of determining hours of work in excess of 8 hours in a day, §§ 550.111, 550.113, and 550.114 of this subpart do not apply to an employee who is subject to the overtime pay provisions of section 7 of the Fair Labor Standards Act of 1938 and part 551 of this chapter.

(d) *Services to which this subpart does not apply.* This subpart does not apply to overtime, night, Sunday, or holiday services for which additional pay is provided by the act of:

(1) February 13, 1911, as amended (36 Stat. 899, as amended; 19 U.S.C. 261, 267), involving customs inspectors and canine enforcement officers;

(2) July 24, 1919 (41 Stat. 241; 7 U.S.C. 394), involving employees engaged in enforcement of the Meat Inspection Act;

(3) March 2, 1931 (46 Stat. 1467; 8 U.S.C. 1353*a*), involving inspectors and employees, Immigration and Naturalization Service;

(4) May 27, 1936, as amended (49 Stat. 1380, as amended; 46 U.S.C. 382b), involving local inspectors of steam vessels and assistants, U.S. shipping commissioners, deputies, and assistants, and customs officers and employees;

(5) March 23, 1941 (55 Stat. 46; 47 U.S.C. 154(f)(3)), involving certain engineers of the Federal Communications OPM;

(6) August 4, 1949 (63 Stat. 495; 7 U.S.C. 349a), involving employees of the Bureau of Animal Industry who work at establishments which prepare virus, serum, toxin, and analogous products for use in the treatment of domestic animals; or

(7) August 28, 1950 (64 Stat. 561; 7 U.S.C. 2260), involving employees of the Department of Agriculture performing inspection or quarantine services relating to imports into and exports from the United States.

[33 FR 12458, Sept. 4, 1968, as amended at 48 FR 3933, Jan. 28, 1983; 56 FR 20341, May 3, 1991; 57 FR 2432, Jan. 22, 1992; 64 FR 69174, Dec. 10, 1999]

### § 550.102 Entitlement.

A department (and for the purpose of §§ 550.141 through 550.164, inclusive, a legislative or judicial branch agency)

must determine an employee's entitlement to premium pay consistent with subchapter V of chapter 55 of title 5, United States Code.

[64 FR 69174, Dec. 10, 1999]

### § 550.103 Definitions.

In this subpart:

*Administrative workweek* means any period of 7 consecutive days (as defined in this section) designated in advance by the head of the agency under section 6101 of title 5, United States Code.

*Agency* means—

(1) A *department* as defined in this section; and

(2) A legislative or judicial branch agency which has positions that are subject to subchapter V of chapter 55 of title 5, United States Code.

*Basic workweek*, for full-time employees, means the 40-hour workweek established in accordance with § 610.111 of this chapter.

*Criminal investigator* means a law enforcement officer as defined in 5 U.S.C. 5541(3) and this section—

(1) Whose position is properly classified under the GS–1811 or GS–1812 series in the General Schedule classification system based on OPM classification standards (or would be so classified if covered under that system);

(2) Who is a pilot employed by the United States Customs Service;

(3) Who is a special agent in the Diplomatic Security Service in a position which has been properly determined by the Department of State to have a Foreign Service primary skill code of 2501;

(4) Who is a special agent in the Diplomatic Security Service who has been placed by the Department of State in a non-covered position on a long-term training assignment that will be career-enhancing for a current or future assignment as a Diplomatic Security Service special agent, provided the employee is expected to return to duties as a special agent in a Foreign Service position with a 2501 primary skill code or to a position properly classified in the GS–1811 series immediately following such training;

(5) Who occupies a position in the Department of State in which he or she performs duties and responsibilities of a special agent requiring Foreign Service primary skill code 2501, pending the opening of a position with primary skill code 2501 and placement in that position as a special agent; or

(6) Who is a special agent in the Diplomatic Security Service with a Foreign Service personal primary skill code of 2501 (or whose position immediately prior to the detail was properly classified in the GS–1811 series) and who meets all of the following three conditions:

(i) The individual is assigned outside the Department of State;

(ii) The assigned position would have a primary skill code of 2501 (or would be properly classified in the GS–1811 series under the General Schedule classification system based on OPM classification standards) if the position were under the Foreign Service (or General Schedule) in the Department of State; and

(iii) The individual is expected to return to a position as a special agent in the Diplomatic Security Service with a 2501 primary skill code (or to a position that is properly classified in the GS–1811 series) immediately following such outside assignment.

*Day* (for overtime pay purposes) means any 24-hour period designated by an agency within the administrative workweek applicable to the employee. A day need not correspond to the 24-hour period of a calendar day. If the agency has not designated another period of time, a day is a calendar day.

*Department* means an executive agency and a military department as defined by sections 105 and 102 of title 5, United States Code.

*Emergency* means a temporary condition posing a direct threat to human life or property, including a forest wildfire emergency.

*Employee* means an employee to whom this subpart applies.

*Head of a department* means the head of a department and, except for the purpose of § 550.101(b)(2), an official who has been delegated authority to act for the head of a department in the matter concerned.

*Holiday work* means nonovertime work performed by an employee during a regularly scheduled daily tour of duty on a holiday designated in accordance with § 610.202 of this chapter.

*Irregular or occasional overtime work* means overtime work that is not part of an employee's regularly scheduled administrative workweek.

*Law enforcement officer* means an employee who—

(1) Is a law enforcement officer within the meaning of 5 U.S.C. 8331(20) (as further defined in § 831.902 of this chapter) or 5 U.S.C. 8401(17) (as further defined in § 842.802 of this chapter), as applicable;

(2) In the case of an employee who holds a secondary position, as defined in § 831.902 of this chapter, and is subject to the Civil Service Retirement System, but who does not qualify to be considered a law enforcement officer within the meaning of 5 U.S.C. 8331(20), would so qualify if such employee had transferred directly to such position after serving as a law enforcement officer within the meaning of such section;

(3) In the case of an employee who holds a secondary position, as defined in § 842.802 of this chapter, and is subject to the Federal Employees Retirement System, but who does not qualify to be considered a law enforcement officer within the meaning of 5 U.S.C. 8401(17), would so qualify if such employee had transferred directly to such position after performing duties described in 5 U.S.C. 8401(17)(A) and (B) for at least 3 years; and

(4) In the case of an employee who is not subject to either the Civil Service Retirement System or the Federal Employees Retirement System—

(i) Holds a position that the agency head (as defined in §§ 831.902 and 842.802 of this chapter) determines would satisfy paragraph (1), (2), or (3) of this definition if the employee were subject to the Civil Service Retirement System or the Federal Employees Retirement System (subject to OPM oversight as described in §§ 831.911 and 842.808 of this chapter); or

(ii) Is a special agent in the Diplomatic Security Service.

*Nightwork* has the meaning given that term in § 550.121, and includes any nightwork preformed by an employee as part of his or her regularly scheduled administrative workweek.

*Overtime work* has the meaning given that term in § 550.111 and includes irregular or occasional overtime work and regular overtime work.

*Performing work in connection with an emergency* means performing work that is directly related to resolving or coping with an emergency or its immediate aftermath.

*Premium pay* means the dollar value of earned hours of compensatory time off and additional pay authorized by subchapter V of chapter 55 of title 5, United States Code, and this subpart for overtime, night, Sunday, or holiday work; or for standby duty, administratively uncontrollable overtime work, or availability duty. This excludes overtime pay paid to employees under the Fair Labor Standards Act and compensatory time off earned in lieu of such overtime pay. This includes an overtime supplement received by a Border Patrol agent under 5 U.S.C. 5550 and subpart P of this part for regularly scheduled overtime hours within the agent's regular tour of duty and the dollar value of hours of compensatory time off earned by such an agent.

*Protective duties* means duties authorized by section 3056(a) of title 18, United States Code, or by section 2709(a)(3) of title 22, United States Code.

*Rate of basic pay* means the rate of pay fixed by law or administrative action for the position held by an employee, including any applicable locality payment under 5 CFR part 531, subpart F; special rate supplement under 5 CFR part 530, subpart C; retained rate under 5 CFR part 536; or similar payment or supplement under other legal authority, before any deductions and exclusive of additional pay of any other kind.

*Regular overtime work* means overtime work that is part of an employee's regularly scheduled administrative workweek.

*Regular tour of duty*, with respect to a Border Patrol agent covered by 5 U.S.C. 5550 and subpart P of this part, means the basic 40-hour workweek plus any regularly scheduled overtime work hours that the agent is assigned to work as part of an officially established 5-day weekly work schedule generally consisting of—

(1) 10-hour workdays (including 2 overtime hours each workday) in exchange for a 25-percent overtime supplement (Level 1); or

(2) 9-hour workdays (including 1 overtime hour each workday) in exchange for a 12.5-percent overtime supplement (Level 2).

*Regularly scheduled administrative workweek*, for a full-time employee, means the period within an administrative workweek, established in accordance with § 610.111 of this chapter, within which the employee is regularly scheduled to work. For a part-time employee, it means the officially prescribed days and hours within an administrative workweek during which the employee is regularly scheduled to work.

*Regularly scheduled work* means work that is scheduled in advance of an administrative workweek under an agency's procedures for establishing workweeks in accordance with § 610.111, excluding any such work to which availability pay under § 550.181 applies.

*Sunday work* means nonovertime work performed by an employee during a regularly scheduled daily tour of duty when any part of that daily tour of duty is on a Sunday. For any such tour of duty, not more than 8 hours of work are Sunday work, unless the employee is on a compressed work schedule, in which case the entire regularly scheduled daily tour of duty constitutes Sunday work.

*Tour of duty* means the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek.

[33 FR 12458, Sept. 4, 1968]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 550.103, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

MAXIMUM EARNINGS LIMITATIONS

### § 550.105 Biweekly maximum earnings limitation.

(a) Except as provided in paragraph (c) of this section, an employee may receive premium pay under this subpart only to the extent that the payment does not cause the total of his or her basic pay and premium pay for any biweekly pay period to exceed the greater of—

(1) The maximum biweekly rate of basic pay payable for GS–15 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law); or

(2) The biweekly rate payable for level V of the Executive Schedule.

(b) In applying the biweekly limitation under this section, premium pay of the types listed in § 550.107(a) must be paid before paying any other type of premium pay.

(c) This section does not apply to—

(1) Any pay period during which an employee is subject to an annual limitation as provided in § 550.106;

(2) An employee of the Federal Aviation Administration or the Department of Defense who receives premium pay under 5 U.S.C. 5546a.

(d) The biweekly rates of pay for the GS–15 maximum rate and for level V of the Executive Schedule are computed as follows:

(1) Compute an hourly rate by dividing the applicable published annual rate of basic pay by 2,087 hours and rounding the result to the nearest cent.

(2) Compute the biweekly rate by multiplying the hourly rate from paragraph (d)(1) of this section by 80 hours.

(e) Notwithstanding any other provision in this section, premium pay for protective services authorized by 18 U.S.C. 3056(a) is subject to the requirements in section 118 of the Treasury and General Government Appropriations Act of 2001 (as enacted into law by section 1(3) of Public Law 106–554).

[67 FR 19320, Apr. 19, 2002, as amended at 69 FR 55942, Sept. 17, 2004]

### § 550.106 Annual maximum earnings limitation.

(a)(1) For any pay period in which the head of an agency (or designee), or the Office of Personnel Management on its own motion, determines that an emergency exists, the agency must pay an affected employee premium pay under the limitations described in paragraph (c) of this section and § 550.107 instead

of under the biweekly limitation described in § 550.105(a). An employee is affected if he or she has been determined by the head of the agency (or designee) to be performing work in connection with the emergency or its aftermath. (See definition of ''emergency'' in § 550.103.)

(2) The head of an agency (or designee) must make the determination under paragraph (a)(1) of this section as soon as practicable after the work in connection with the emergency or its aftermath begins. Entitlement to premium pay under this annual limitation becomes effective on the first day of the pay period in which such work began.

(b)(1) For any pay period in which the head of an agency (or designee), in his or her sole discretion, determines that an employee is needed to perform work that is critical to the mission of the agency, the agency may pay premium pay under the limitations described in paragraph (c) of this section and § 550.107 instead of under the biweekly limitation described in § 550.105(a).

(2) Entitlement to premium pay under this annual limitation becomes effective on the first day of the pay period designated by the head of the agency (or designee).

(c) In any calendar year during which an employee has been determined to be performing emergency or mission-critical work as provided in paragraphs (a) or (b) of this section, the employee may receive premium pay under this subpart (excluding the types of premium pay identified in § 550.107) only to the extent that the payment does not cause the total of his or her basic pay and premium pay for the calendar year to exceed the greater of—

(1) The maximum annual rate of basic pay payable for GS–15 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law) in effect on the last day of the calendar year; or

(2) The annual rate payable for level V of the Executive Schedule in effect on the last day of the calendar year.

(d) The annual rates under paragraphs (c)(1) and (2) of this section must be computed as follows:

(1) Compute an hourly rate by dividing the published annual rate of basic pay by 2,087 hours and rounding the result to the nearest cent;

(2) Compute a biweekly rate by multiplying the hourly rate from paragraph (d)(1) of this section by 80 hours;

(3) Compute an annual rate of pay by multiplying the biweekly rate from paragraph (d)(2) of this section by the number of pay periods for which a salary payment is issued in the given calendar year under the agency's payroll cycle (*i.e.*, either 26 or 27 pay periods).

(e) An agency may defer payment of some or all of the additional premium pay owed an employee as a result of the annual limitation until the end of the calendar year.

(f) Any payment made in the current calendar year that corrects an underpayment of premium pay in a previous calendar year must be treated as being made in the previous calendar year for the purpose of applying the annual cap under this section.

(g) If an agency determines that the emergency or mission-critical work conditions are no longer in effect for an employee, it must resume application of the biweekly limitation. However, any premium pay the employee receives during the remainder of the calendar year is also subject to the annual limitation (as applied to any given pay period as described in paragraph (c) of this section).

[67 FR 19321, Apr. 19, 2002, as amended at 69 FR 55943, Sept. 17, 2004]

### § 550.107 Premium payments capped on a biweekly basis when an annual limitation otherwise applies.

(a) The following types of premium pay remain subject to a biweekly limitation when other premium payments are subject to an annual limitation under § 550.106:

(1) Standby duty pay under 5 U.S.C. 5545(c)(1);

(2) Administratively uncontrollable overtime pay under 5 U.S.C. 5545(c)(2);

(3) Availability pay for criminal investigators under 5 U.S.C. 5545a;

(4) Overtime pay for hours in the regular tour of duty of a firefighter covered by 5 U.S.C. 5545b; and

(5) An overtime supplement for regularly scheduled overtime hours within a Border Patrol agent's regular tour of duty under 5 U.S.C. 5550.

(b) An employee must receive premium pay of the types identified in paragraph (a) of this section before receiving any other type of premium pay.

(c) In any pay period during which an employee is subject to an annual limitation under § 550.106, the employee may receive the types of premium pay identified in paragraph (a) of this section only to the extent that the payment does not cause the total of his or her basic pay and such premium pay for the pay period to exceed the greater of—

(1) The maximum biweekly rate of basic pay payable for GS–15 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law); or

(2) The biweekly rate payable for level V of the Executive Schedule.

(d) The biweekly rates under paragraph (c) of this section are computed as provided in § 550.105(d).

(e) Premium pay paid, or projected to be paid, under this section is included in determining whether the sum of the employee's basic pay and premium pay would exceed the annual limitation under § 550.106.

[67 FR 19321, Apr. 19, 2002, as amended at 69 FR 55943, Sept. 17, 2004; 80 FR 58111, Sept. 25, 2015]

## OVERTIME PAY

### § 550.111 Authorization of overtime pay.

(a) Except as provided in paragraphs (d), (f), and (g) of this section, overtime work means work in excess of 8 hours in a day or in excess of 40 hours in an administrative workweek that is—

(1) Officially ordered or approved; and

(2) Performed by an employee. Hours of work in excess of 8 in a day are not included in computing hours of work in excess of 40 hours in an administrative workweek.

(b) Except as otherwise provided in this subpart, a department shall pay for overtime work at the rates provided in § 550.113.

(c) Overtime work in excess of any included in a regularly scheduled administrative workweek may be ordered or approved only in writing by an officer or employee to whom this authority has been specifically delegated.

(d) For an employee for whom the first 40 hours of duty in an administrative workweek is his basic workweek under § 610.111(b) of this chapter, overtime work means work in excess of 40 hours in an administrative workweek that is:

(1) Officially ordered or approved, and

(2) Performed by an employee, when the employee's basic pay exceeds the minimum rate for GS–10 (including any applicable special rate of pay for law enforcement officers or special pay adjustment for law enforcement officers under section 403 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; a locality-based comparability payment under 5 U.S.C. 5304; and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law) or when the employee is engaged in professional or technical, engineering or scientific activities. For purposes of this section and section 5542(a) of title 5. United States Code, an employee is engaged in professional or technical engineering or scientfic activities when he or she is assigned to perform the duties of a profeesional or support technician position in the physical, mathematical, natural, medical, or social sciences or engineering or architecture.

(e) Notwithstanding paragraphs (a) and (d) of this section, when an employee's basic workweek includes a daily tour of duty of more than 8 hours and his hourly rate of basic pay exceeds the hourly rate of overtime pay provided by § 550.113, the department shall pay him at his basic rate of pay for each hour of his daily tour of duty within his basic workweek.

(f)(1) Except as provided in paragraph (f)(2) of this section, for any criminal investigator receiving availability pay

under § 550.181, overtime work means actual work that is scheduled in advance of the administrative workweek—

(i) In excess of 10 hours on a day containing hours that are part of such investigator's basic 40-hour workweek; or

(ii) On a day not containing hours that are part of such investigator's basic 40-hour workweek.

(2) Notwithstanding paragraph (f)(1) of this section, all overtime work scheduled in advance of the administrative workweek on a day containing part of a criminal investigator's basic 40-hour workweek must be compensated under this section if both of the following conditions are met:

(i) The overtime work involves protective duties authorized by section 3056(a) of title 18, United States Code, or section 2709(a)(3) of title 22, United States Code; and

(ii) The investigator performs on that same day at least 2 consecutive hours of overtime work that are not scheduled in advance of the administrative workweek and are compensated by availability pay.

(3) Any work that would be overtime work under this section but for paragraphs (f)(1) and (f)(2) of this section will be compensated by availability pay under § 550.181.

(g) For firefighters compensated under subpart M of this part, overtime work means officially ordered or approved work in excess of 106 hours in a biweekly pay period, or, if the agency establishes a weekly basis for overtime pay computations, in excess of 53 hours in an administrative workweek.

(h) Availability hours, as described in § 550.182(c), are not hours of work for the purpose of determining overtime pay under this section.

(i) An employee is not entitled to overtime pay under this subpart for time spent in training, except as provided in § 410.402 of this chapter.

(j) For Border Patrol agents covered by 5 U.S.C. 5550 and subpart P of this part, overtime work means hours of work in excess of applicable thresholds, as specified in § 550.1623, excluding hours that are—

(1) Compensated by payment of an overtime supplement for regularly scheduled overtime within the agent's regular tour of duty under § 550.1621;

(2) Compensated by the earning of compensatory time off under § 550.1625; or

(3) Used in substitution or application under § 550.1626.

[33 FR 12458, Sept. 4, 1968, as amended at 34 FR 19495, Dec. 10, 1969; 48 FR 36805, Aug. 15, 1983; 56 FR 20341, May 3, 1991; 57 FR 2434, Jan. 22, 1992; 59 FR 66151, Dec. 23, 1994; 61 FR 3542, Feb. 1, 1996; 63 FR 64592, Nov. 23, 1998; 64 FR 4520, Jan. 29, 1999; 64 FR 69175, Dec. 10, 1999; 80 FR 58111, Sept. 25, 2015]

### § 550.112 Computation of overtime work.

The computation of the amount of overtime work of an employee is subject to the following conditions:

(a) *Time spent in principal activities.* Principal activities are the activities that an employee is employed to perform. They are the activities that an employee performs during his or her regularly scheduled administrative workweek (including regular overtime work) and activities performed by an employee during periods of irregular or occasional overtime work authorized under § 550.111. Overtime work in principal activities shall be credited as follows:

(1) An employee shall be compensated for every minute of regular overtime work.

(2) A quarter of an hour shall be the largest fraction of an hour used for crediting irregular or occasional overtime work under this subpart. When irregular or occasional overtime work is performed in other than the full fraction, odd minutes shall be rounded up or rounded down to the nearest full fraction of an hour used to credit overtime work.

(b) *Time spent in preshift or postshift activities.* A preshift activity is a preparatory activity that an employee performs prior to the commencement of his or her principal activities, and a postshift activity is a concluding activity that an employee performs after the completion of his or her principal activities. Such activities are not principal activities as defined in paragraph (a) of this section.

(1) (i) If the head of a department reasonably determines that a preshift or

postshift activity is closely related to an employee's principal activities, and is indispensable to the performance of the principal activities, and that the total time spent in that activity is more than 10 minutes per daily tour of duty, he or she shall credit all of the time spent in that activity, including the 10 minutes, as hours of work.

(ii) If the time spent in a preshift or postshift activity is compensable as hours of work, the head of the department shall schedule the time period for the employee to perform that activity. An employee shall be credited with the actual time spent in that activity during the time period scheduled by the head of the department. In no case shall the time credited for the performance of an activity exceed the time scheduled by the head of the department. If the time period scheduled by the head of the department for the performance of a pereshift or postshift activity is outside the employee's daily tour of duty, the employee shall be credited with the time spent performing that activity in accordance with paragraph (a)(2) of this section.

(2) A preshift or postshift activity that is not closely related to the performance of the principal activities is considered a preliminary or postliminary activity. Time spent in preliminary or postliminary activities is excluded from hours of work and is not compensable, even if it occurs between periods of activity that are compensable as hours of work.

(c) *Leave with pay.* An employee's absence from duty on authorized leave with pay under subchapter I of chapter 61 of title 5, United States Code, during the time when he would otherwise have been required to be on duty during a basic workweek (including authorized absence on a legal holiday, on a nonworkday established by Executive or administrative order, and on compensatory time off as provided in § 550.114) is deemed employment and does not reduce the amount of overtime pay to which the employee is entitled during an administrative workweek. Leave of absence with pay under subchapter I of chapter 61 of title 5, United States Code, is charged only for an absence that occurs during a basic workweek.

(d) *Leave without pay.* (1) For a period of leave without pay in an employee's basic workweek, an equal period of service performed outside the basic workweek, but in the same administrative workweek, shall be substituted and paid for at the rate applicable to his basic workweek before any remaining period of service may be paid for at the overtime rate on the basis of exceeding 40 hours in a workweek.

(2) For a period of leave without pay in an employee's daily tour of duty, an equal period of service performed outside the daily tour, but in the same workday, shall be substituted and paid for at the rate applicable to his daily tour of duty before any remaining period of service may be paid for at the overtime rate on the basis of exceeding 8 hours in a workday.

(e) *Absence during overtime periods.* Except as provided by paragraph (a) of this section, as expressly authorized by statute, or to the extent authorized while the employee is in a travel status, a period is counted as overtime work only when the employee actually performs work during the period or is taking compensatory time off as provided in § 550.114.

(f) *Night, Sunday, or holiday work.* Hours of night, Sunday, or holiday work are included in determining for overtime pay purposes the total number of hours of work in an administrative workweek.

(g) *Time in travel status.* Time in travel status away from the official dutystation of an employee is deemed employment only when:

(1) It is within his regularly scheduled administrative workweek, including regular overtime work; or

(2) The travel—

(i) Involves the performance of actual work while traveling;

(ii) Is incident to travel that involves the performance of work while traveling;

(iii) Is carried out under such arduous and unusual conditions that the travel is inseparable from work; or

(iv) Results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of the employee to his or her official-duty station.

(h) *Call-back overtime work.* Irregular or occasional overtime work performed by an employee on a day when work was not scheduled for him, or for which he is required to return to his place of employment, is deemed at least 2 hours in duration for the purpose of premium pay, either in money or compensatory time off.

(i) Periods of duty that are compensated by annual premium pay under 5 U.S.C. 5545(c) (1) or (2) shall not be credited for the purpose of determining hours of work in excess of 8 hours in a day.

(j) *Official duty station.* An agency may prescribe a mileage radius of not greater than 50 miles to determine whether an employee's travel is within or outside the limits of the employee's official duty station for determining entitlement to overtime pay for travel under paragraph (g) of this section except that—

(1) An agency's definition of an employee's official duty station for determining overtime pay for travel may not be smaller than the definition of ''official station and post of duty'' under the Federal Travel Regulation issued by the General Services Administration (41 CFR 300–3.1); and

(2) Travel from home to work and vice versa is not hours of work. When an employee travels directly from home to a temporary duty location outside the limits of his or her official duty station, the time the employee would have spent in normal home to work travel shall be deducted from hours of work.

(k) *Standby duty.* (1) An employee is on duty, and time spent on standby duty is hours of work if, for work-related reasons, the employee is restricted by official order to a designated post of duty and is assigned to be in a state of readiness to perform work with limitations on the employee's activities so substantial that the employee cannot use the time effectively for his or her own purposes. A finding that an employee's activities are substantially limited may not be based on the fact that an employee is subject to restrictions necessary to ensure that the employee will be able to perform his or her duties and responsibilities, such as restrictions on alcohol consumption or use of certain medications.

(2) An employee is not considered restricted for ''work-related reasons'' if, for example, the employee remains at the post of duty voluntarily, or if the restriction is a natural result of geographic isolation or the fact that the employee resides on the agency's premises. For example, in the case of an employee assigned to work in a remote wildland area or on a ship, the fact that the employee has limited mobility when relieved from duty would not be a basis for finding that the employee is restricted for work-related reasons.

(l) *On-call status.* An employee is off duty, and time spent in an on-call status is not hours of work if—

(1) The employee is allowed to leave a telephone number or carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back radius; or

(2) The employee is allowed to make arrangements for another person to perform any work that may arise during the on-call period.

(m) *Sleep and meal time.* (1) Bona fide sleep and meal periods may not be considered hours of work, except as provided in paragraphs (m)(2), (m)(3), and (m)(4) of this section. If a sleep or meal period is interrupted by a call to duty, the time spent on duty is hours of work.

(2) Sleep and meal periods during regularly scheduled tours of duty are hours of work for employees who receive annual premium pay for regularly scheduled standby duty under 5 U.S.C. 5545(c)(1).

(3) When employees are assigned to work shifts of 24 hours or more during which they must remain within the confines of their duty station in a standby status, and for which they do not receive annual premium pay for regularly scheduled standby duty under 5 U.S.C. 5545(c)(1), the amount of bona fide sleep and meal time excluded from hours of work may not exceed 8 hours in any 24-hour period. No sleep time may be excluded unless the employee had the opportunity to have an uninterrupted period of at least 5 hours of sleep during the applicable sleep period. For work shifts of less than 24

hours, agencies may not exclude on-duty sleep periods from hours of work, but must exclude bona fide meal periods during which the employee is completely relieved from duty.

(4) For firefighters compensated under 5 U.S.C. 5545b, on-duty sleep and meal time may not be excluded from hours of work.

[33 FR 12458, Sept. 4, 1968, as amended at 33 FR 18669, Dec. 18, 1968; 48 FR 3934, Jan. 28, 1983; 48 FR 36805, Aug. 15, 1983; 56 FR 20342, May 3, 1991; 57 FR 59279, Dec. 15, 1992; 59 FR 66632, Dec. 28, 1994; 64 FR 69175, Dec. 10, 1999; 72 FR 12035, Mar. 15, 2007]

### § 550.113 Computation of overtime pay.

(a) For each employee whose rate of basic pay does not exceed the minimum rate for GS–10 (including any applicable special rate of pay for law enforcement officers or special pay adjustment for law enforcement officers under section 403 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; a locality-based comparability payment under 5 U.S.C. 5304; and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law), the overtime hourly rate is 1½ times his or her hourly rate of basic pay.

(b) For each employee whose rate of basic pay exceeds the minimum rate for GS–10 (as determined under paragraph (a) of this section), the overtime hourly rate is equal to the greater of—(i) one and one-half times the applicable minimum hourly rate of basic pay for GS–10 (as determined under paragraph (a) of this section); or (ii) the employee's hourly rate of basic pay, except as provided in 5 U.S.C. 5542(a)(3) and (5).

(c) An employee is paid for overtime work performed on a Sunday or a holiday at the same rate as for overtime work performed on another day.

(d) An employee whose rate of basic pay is fixed on an annual or monthly basis and adjusted from time to time in accordance with prevailing rates by a wage board or similar administrative authority serving the same purpose is entitled to overtime pay in accordance with the provisions of section 5544 of title 5, United States Code. The rate of pay for each hour of overtime work of such an employee is computed as follows:

(1) If the rate of basic pay of the employee is fixed on an annual basis, divide the rate of basic pay by 2,087 and multiply the quotient by one and one-half; and

(2) If the rate of basic pay of the employee is fixed on a monthly basis, multiply the rate of basic pay by 12 to derive an annual rate of basic pay, divide the annual rate of basic pay by 2,087, and multiply the quotient by one and one-half.

Rates are computed in full cents, counting a fraction of a cent as the next higher cent.

(e)(1) For firefighters compensated under subpart M of this part, the overtime hourly rate for all overtime hours is 1½ times the firefighter's hourly rate of basic pay under § 550.1303(a) or (b)(2), as applicable, except as provided in paragraph (e)(2) of this section.

(2) For firefighters compensated under subpart M of this part who areexempt from the overtime provisions of the Fair Labor Standards Act and whose hourly rate of basic pay under § 550.1303(a) or (b)(2), as applicable, exceeds the applicable minimum hourly rate of basic pay for GS–10 (as computed under paragraph (a) of this section by dividing the annual rate of basic pay by 2087 hours), the overtime hourly rate is equal to the greater of—

(i) One and one-half times the applicable minimum hourly rate of basic pay for GS–10 (as computed under paragraph (a) of this section by dividing the annual rate of basic pay by 2087 hours); or

(ii) The individual's own firefighter hourly rate of basic pay under § 550.1303(a) and (b)(2), as applicable.

[33 FR 12458, Sept. 4, 1968, as amended at 56 FR 20342, May 3, 1991; 57 FR 2434, Jan. 22, 1992; 59 FR 11701, Mar. 14, 1994; 61 FR 3542, Feb. 1, 1996; 63 FR 64592, Nov. 23, 1998; 69 FR 26476, May 13, 2004]

### § 550.114 Compensatory time off.

(a) At the request of an employee, the head of an agency (or designee) may grant compensatory time off from an employee's tour of duty instead of payment under § 550.113 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 (or designee) 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 § 550.113 for an equal amount of overtime work, whether or not irregular or occasional in nature.

(c) The head of an agency may provide that an employee whose rate of basic pay exceeds the maximum rate for GS–10 (including any applicable special rate of pay for law enforcement officers or special pay adjustment for law enforcement officers under section 403 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; a locality-based comparability payment under 5 U.S.C. 5304; and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law) shall be compensated for irregular or occasional overtime work with an equivalent amount of compensatory time off from the employee's tour of duty instead of payment under § 550.113 of this part.

(d) Except as provided in paragraph (f)(2) of this section, an employee must use accrued compensatory time off to which he or she is entitled under paragraph (a) or (b) of this section by the end of the 26th pay period after the pay period during which it was earned. The head of an agency, at his or her sole and exclusive discretion, may provide that an employee who fails to take compensatory time off to which he or she is entitled within 26 pay periods after the pay period during which it was earned must—

(1) Receive payment for such unused compensatory time off at the dollar value prescribed in paragraph (g) of this section; or

(2) Forfeit the unused compensatory time off, unless the failure to take the compensatory time off is due to an exigency of the service beyond the employee's control, in which case the agency head must provide payment for the unused compensatory time off at the dollar value prescribed in paragraph (g) of this section.

(e) Except as provided in paragraph (f)(2) of this section, compensatory time off to an employee's credit as of May 14, 2007 must be used by the end of the pay period ending 3 years after May 14, 2007. The head of an agency, at his or her sole and exclusive discretion, may provide that an employee who fails to take compensatory time off to which he or she is entitled by the end of the pay period ending 3 years after May 14, 2007 must—

(1) Receive payment for such unused compensatory time off at the dollar value prescribed in paragraph (g) of this section; or

(2) Forfeit the unused compensatory time off, unless the failure to take the compensatory time off is due to an exigency of the service beyond the employee's control, in which case the agency head must provide payment for the unused compensatory time off at the dollar value prescribed in paragraph (g) of this section.

(f)(1) Except as provided in paragraph (f)(2) of this section, an employee with unused compensatory time off under paragraph (a) or (b) of this section who transfers to another agency or separates from Federal service before the expiration of the time limit established under paragraphs (d) or (e) of this section may receive overtime pay or forfeit the unused compensatory time off, consistent with the employing agency's policy established under paragraphs (d) and (e) of this section.

(2) If an employee with unused compensatory time off under paragraph (a) or (b) of this section separates from Federal service or is placed in a leave without pay status under the following circumstances, the employee must be paid for unused compensatory time off at the dollar value prescribed in paragraph (g) of this section:

(i) The employee separates or is placed in a leave without pay status to perform service in the uniformed services (as defined in 38 U.S.C. 4303 and § 353.102); or

(ii) The employee separates or is placed in a leave without pay status because of an on-the-job injury with entitlement to injury compensation under 5 U.S.C. chapter 81.

(g) The dollar value of compensatory time off when it is liquidated, or for the purpose of applying pay limitations, is the amount of overtime pay

the employee otherwise would have received for the hours of the pay period during which compensatory time off was earned by performing overtime work.

[33 FR 12458, Sept. 4, 1968, as amended at 56 FR 20342, May 3, 1991; 57 FR 2434, Jan. 22, 1992; 61 FR 3542, Feb. 1, 1996; 62 FR 28307, May 23, 1997; 64 FR 69175, Dec. 10, 1999; 72 FR 12035, Mar. 15, 2007]

## NIGHT PAY

### § 550.121 Authorization of night pay differential.

(a) Except as provided by paragraph (b) of this section, nightwork is regularly scheduled work performed by an employee between the hours of 6 p.m. and 6 a.m. Subject to § 550.122, and except as otherwise provided in this subpart, an employee who performs nightwork is entitled to pay for that work at his or her rate of basic pay plus a night pay differential amounting to 10 percent of his or her rate of basic pay.

(b) The head of a department may designate a time after 6 p.m. and a time before 6 a.m. as the beginning and end, respectively, of nightwork for the purpose of paragraph (a) of this section, at a post outside the United States where the customary hours of business extend into the hours of nightwork provided by paragraph (a) of this section. Times so designated as the beginning or end of nightwork shall correspond reasonably with the end or beginning, respectively, of the customary hours of business in the locality.

(c) An employee is not entitled to night pay differential while engaged in training, except as provided in § 410.402 of this chapter.

[33 FR 12458, Sept. 4, 1968, as amended at 48 FR 3934, Jan. 28, 1983; 64 FR 69175, Dec. 10, 1999]

### § 550.122 Computation of night pay differential.

(a) *Absence on holidays or in travel status.* An employee is entitled to a night pay differential for a period when he is excused from nightwork on a holiday or other nonworkday and for night hours of his tour of duty while he is in an official travel status, whether performing actual duty or not.

(b) *Absence on leave.* An employee is entitled to a night pay differential for a period of paid leave only when the total amount of that leave in a pay period, including both night and day hours, is less than 8 hours.

(c) *Relation to overtime, Sunday, and holiday pay.* Night pay differential is in addition to overtime, Sunday, or holiday pay payable under this subpart and it is not included in the rate of basic pay used to compute the overtime, Sunday, or holiday pay.

(d) *Temporary assignment to a different daily tour of duty.* An employee is entitled to a night pay differential when he or she is temporarily assigned during the administrative workweek to a daily tour of duty that includes nightwork. This temporary change in a daily tour of duty within the employee's regularly scheduled administrative workweek is distinguished from a period of irregular or occasional overtime work in addition to the employee's regularly scheduled administrative workweek.

(e) *Border Patrol agents.* For a Border Patrol agent covered by 5 U.S.C. 5550 and subpart P of this part, no night pay differential is payable for regularly scheduled overtime hours within the agent's regular tour of duty, as required by 5 U.S.C. 5550(b)(2)(C), (b)(3)(C), and (c)(1)(A). The overtime supplement payable for such scheduled overtime hours is not part of the agent's rate of basic pay used in computing the night pay differential for other hours that qualify for such a differential.

[33 FR 12458, Sept. 4, 1968, as amended at 48 FR 3934, Jan. 28, 1983; 80 FR 58111, Sept. 25, 2015]

## PAY FOR HOLIDAY WORK

### § 550.131 Authorization of pay for holiday work.

(a) Except as otherwise provided in this subpart, an employee who performs holiday work is entitled to pay at his or her rate of basic pay plus premium pay at a rate equal to his or her rate of basic pay for that holiday work that is not in excess of 8 hours.

(b) An employee is entitled to pay for overtime work on a holiday at the same rate as for overtime work on other days.

(c) An employee who is assigned to duty on a holiday is entitled to pay for at least 2 hours of holiday work.

(d) An employee is not entitled to holiday premium pay while engaged in training, except as provided in § 410.402 of this chapter.

[33 FR 12458, Sept. 4, 1968, as amended at 48 FR 3934, Jan. 28, 1983; 64 FR 69175, Dec. 10, 1999]

### § 550.132 Relation to overtime, night, and Sunday pay.

(a) Premium pay for holiday work is in addition to overtime pay or night pay differential, or premium pay for Sunday work payable under this subpart and is not included in the rate of basic pay used to compute the overtime pay or night pay differential or premium pay for Sunday work.

(b) Notwithstanding premium pay for holiday work, the number of hours of holiday work are included in determining for overtime pay purposes the total number of hours of work performed in the administrative workweek in which the holiday occurs.

(c) The number of regularly scheduled hours of duty on a holiday that fall within an employee's basic workweek on which the employee is excused from duty are part of the basic workweek for overtime pay computation purposes.

(d) For a Border Patrol agent covered by 5 U.S.C. 5550 and subpart P of this part, no holiday premium pay is payable for regularly scheduled overtime hours within the agent's regular tour of duty, as required by 5 U.S.C. 5550(b)(2)(C), (b)(3)(C), and (c)(1)(A). The overtime supplement payable for such scheduled overtime hours is not part of the agent's rate of basic pay used in computing the holiday premium pay for other hours that qualify for such premium pay.

[33 FR 12458, Sept. 4, 1968, as amended at 80 FR 58111, Sept. 25, 2015]

## REGULARLY SCHEDULED STANDBY DUTY PAY

### § 550.141 Authorization of premium pay on an annual basis.

An agency may pay premium pay on an annual basis, instead of the premium pay prescribed in this subpart for regularly scheduled overtime, night, holiday, and Sunday work, to an employee in a position requiring him or her regularly to remain at, or within the confines of, his or her station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work. Premium pay under this section is determined as an appropriate percentage, not in excess of 25 percent, of that part of the employee's rate of basic pay which does not exceed the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under 5 U.S.C. 5304 or special rate of pay under 5 U.S.C. 5305 or similar provision of law).

[56 FR 20342, May 3, 1991, as amended at 61 FR 3542, Feb. 1, 1996]

### § 550.142 General restrictions.

An agency may pay premium pay under § 550.141 only if that premium pay, over a period appropriate to reflect the full cycle of the employee's duties and the full range of conditions in his position, would be:

(a) More than the premium pay which would otherwise be payable under this subpart for the hours of actual work customarily required in his position, excluding standby time during which he performs no work; and

(b) Less than the premium pay which would otherwise be payable under this subpart for the hours of duty required in his position, including standby time during which he performs no work.

### § 550.143 Bases for determining positions for which premium pay under § 550.141 is authorized.

(a) The requirement for the type of position referred to in § 550.141 that an employee regularly remain at, or within the confines of, his station must meet all the following conditions:

(1) The requirement must be definite and the employee must be officially ordered to remain at his station. The employee's remaining at his station must not be merely voluntary, desirable, or a result of geographic isolation, or solely because the employee lives on the grounds.

(2) The hours during which the requirement is operative must be included in the employee's tour of duty. This tour of duty must be established on a regularly recurring basis over a substantial period of time, generally at least a few months. The requirement must not be occasional, irregular, or for a brief period.

(3) The requirement must be associated with the regularly assigned duties of the employee's job, either as a continuation of his regular work which includes standby time, or as a requirement to stand by at his post to perform his regularly assigned duties if the necessity arises.

(b) The words ''at, or within the confines, of his station'', in § 550.141 mean one of the following:

(1) At an employee's regular duty station.

(2) In quarters provided by an agency, which are not the employee's ordinary living quarters, and which are specifically provided for use of personnel required to stand by in readiness to perform actual work when the need arises or when called.

(3) In an employee's living quarters, when designated by the agency as his duty station and when his whereabouts is narrowly limited and his activities are substantially restricted. This condition exists only during periods when an employee is required to remain at his quarters and is required to hold himself in a state of readiness to answer calls for his services. This limitation on an employee's whereabouts and activities is distinguished from the limitation placed on an employee who is subject to call outside his tour of duty but may leave his quarters provided he arranges for someone else to respond to calls or leaves a telephone number by which he can be reached should his services be required.

(c) The words ''longer than ordinary periods of duty'' in § 550.141 mean more than 40 hours a week.

(d) The words ''a substantial part of which consists of remaining in a standby status rather than performing work'' in § 550.141 refer to the entire tour of duty. This requirement is met:

(1) When a substantial part of the entire tour of duty, at least 25 percent, is spent in a standby status which occurs throughout the entire tour;

(2) If certain hours of the tour of duty are regularly devoted to actual work and others are spent in a standby status, that part of the tour of duty devoted to standing by is at least 25 percent of the entire tour of duty; or

(3) When an employee has a basic workweek requiring full-time performance of actual work and is required, in addition, to perform standby duty on certain nights, or to perform standby duty on certain days not included in his basic workweek.

(e) An employee is in a standby status, as referred to in § 550.141, only at times when he is not required to perform actual work and is free to eat, sleep, read, listen to the radio, or engage in other similar pursuits. An employee is performing actual work, rather than being in a standby status, when his full attention is devoted to his work, even though the nature of his work does not require constant activity (for example, a guard on duty at his post and a technician continuously observing instruments are engaged in the actual work of their positions). Actual work includes both work performed during regular work periods and work performed when called out during periods ordinarily spent in a standby status.

### § 550.144 Rates of premium pay payable under § 550.141.

(a) An agency may pay the premium pay on an annual basis referred to in § 550.141 to an employee who meets the requirements of that section, at one of the following percentages of that part of the employee's rate of basic pay which does not exceed the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under 5 U.S.C. 5304 or special rate of pay under 5 U.S.C. 5305 or similar provision of law):

(1) A position with a tour of duty of the 24 hours on duty, 24 hours off duty type and with a schedule of: 60 hours a week—5 percent, unless 25 or more hours of actual work is customarily required, in which event—10 percent; 72 hours a week—15 percent, unless 24 or

more hours of actual work is customarily required, in which event—20 percent; 84 hours or more a week—25 percent.

(2) A position with a tour of duty requiring the employee to remain on duty during all daylight hours each day, or for 12 hours each day, or for 24 hours each day, with the employee living at his station during the period of his assignment to his tour, and with a schedule of: 5 days a week—5 percent, unless 25 or more hours of actual work is customarily required, in which event—10 percent; 6 days a week—15 percent, unless 30 or more hours of actual work is customarily required, in which event 20 percent; 7 days a week—25 percent.

(3) A position in which the employee has a basic workweek requiring fulltime performance of actual work, and is required, in addition, to remain on standby duty: 14 to 18 hours a week on regular workdays, or extending into a nonworkday in continuation of a period of duty within the basic workweek—15 percent; 19 to 27 hours a week on regular workdays, or extending into a nonworkday in continuation of a period of duty within the basic workweek—20 percent; 28 or more hours a week on regular workdays, or extending into a nonworkday in continuation of a period of duty within the basic workweek—25 percent; 7 to 9 hours on one or more of his regular weekly nonworkdays—15 percent; 10 to 13 hours on one or more of his regular weekly nonworkdays—20 percent; 14 or more hours on one or more of his regular weekly nonworkdays—25 percent.

(4) When an agency pays an employee one of the rates authorized by paragraph (a)(1), (2), or (3) of this section, the agency shall increase this rate by adding (i) 2½ percent to the rate when the employee is required to perform Sunday work on an average of 20 to 40 Sundays over a year's period or (ii) 5 percent to the rate when the employee is required to perform Sunday work on an average of 41 or more Sundays over a year's period but the rate thus increased may not exceed 25 percent.

(b) If an employee is eligible for premium pay on an annual basis under § 550.141, but none of the percentages in paragraph (a) of this section is applicable, or unusual conditions are present which seem to make the applicable rate unsuitable, the agency may propose a rate of premium pay on an annual basis for OPM approval. The proposal shall include full information bearing on the employee's tour of duty; the number of hours of actual work required; and how it is distributed over the tour of duty; the number of hours in a standby status required and the extent to which the employee's whereabouts and activities are restricted during standby periods; the extent to which the assignment is made more onerous by night, holiday, or Sunday duty or by hours of duty beyond 8 in a day or 40 in a week; and any other pertinent conditions.

[33 FR 12458, Sept. 4, 1968, as amended at 56 FR 20342, May 3, 1991; 61 FR 3543, Feb. 1, 1996]

## ADMINISTRATIVELY UNCONTROLLABLE WORK

### § 550.151 Authorization of premium pay on an annual basis.

An agency may pay premium pay on an annual basis, instead of other premium pay prescribed in this subpart (except premium pay for regular overtime work, and work at night, on Sundays, and on holidays), to an employee in a position in which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular or occasional overtime work, with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty. Premium pay under this section is determined as an appropriate percentage, not less than 10 percent nor more than 25 percent, of the employee's rate of basic pay (as defined in § 550.103).

[57 FR 2435, Jan. 22, 1992, as amended at 61 FR 3543, Feb. 1, 1996]

### § 550.152 [Reserved]

### § 550.153 Bases for determining positions for which premium pay under § 550.151 is authorized.

(a) The requirement in § 550.151 that a position be one in which the hours of duty cannot be controlled administratively is inherent in the nature of such

a position. A typical example of a position which meets this requirement is that of an investigator of criminal activities whose hours of duty are governed by what criminals do and when they do it. He is often required to perform such duties as shadowing suspects, working incognito among those under suspicion, searching for evidence, meeting informers, making arrests, and interviewing persons having knowledge of criminal or alleged criminal activities. His hours on duty and place of work depend on the behavior of the criminals or suspected criminals and cannot be controlled administratively. In such a situation, the hours of duty cannot be controlled by such administrative devices as hiring additional personnel; rescheduling the hours of duty (which can be done when, for example, a type of work occurs primarily at certain times of the day); or granting compensatory time off duty to offset overtime hours required.

(b) In order to satisfactorily discharge the duties of a position referred to in § 550.151, an employee is required to perform substantial amounts of irregular or occasional overtime work. In regard to this requirement:

(1) A substantial amount of irregular or occasional overtime work means an average of at least 3 hours a week of that overtime work.

(2) The irregular or occasional overtime work is a continual requirement, generally averaging more than once a week.

(3) There must be a definite basis for anticipating that the irregular or occasional overtime work will continue over an appropriate period with a duration and frequency sufficient to meet the minimum requirements under paragraphs (b)(1) and (2) of this section.

(c) The words in § 550.151 that an employee is generally ''responsible for recognizing, without supervision, circumstances which require him to remain on duty'' mean that:

(1) The responsibility for an employee remaining on duty when required by circumstances must be a definite, official, and special requirement of his position.

(2) The employee must remain on duty not merely because it is desirable, but because of compelling reasons inherently related to continuance of his duties, and of such a nature that failure to carry on would constitute negligence.

(3) The requirement that the employee is responsible for recognizing circumstances does not include such clear-cut instances as, for example, when an employee must continue working because a relief fails to report as scheduled.

(d) The words ''circumstances which require him to remain on duty'' as used in § 550.151 mean that:

(1) The employee is required to continue on duty in continuation of a full daily tour of duty or that after the end of his regular workday, the employee resumes duty in accordance with a prearranged plan or an awaited event. Performance of only call-back overtime work referred to in § 550.112(h) does not meet this requirement.

(2) The employee has no choice as to when or where he may perform the work when he remains on duty in continuation of a full daily tour of duty. This differs from a situation in which an employee has the option of taking work home or doing it at the office; or doing it in continuation of his regular hours of duty or later in the evening. It also differs from a situation in which an employee has such latitude in his working hours, as when in a travel status, that he may decide to begin work later in the morning and continue working later at night to better accomplish a given objective.

[33 FR 12458, Sept. 4, 1968, as amended at 35 FR 6311, Apr. 18, 1970; 64 FR 69175, Dec. 10, 1999]

### § 550.154 Rates of premium pay payable under § 550.151.

(a) An agency may pay the premium pay on an annual basis referred to in § 550.151 to an employee who meets the requirements of that section, at one of the following percentages of the employee's rate of basic pay (as defined in § 550.103):

(1) A position which requires an average of at least 3 but not more than 5 hours a week of irregular or occasional overtime work—10 percent;

(2) A position which requires an average of over five but not more than 7

hours a week of irregular or occasional overtime work—15 percent;

(3) A position which requires an average of over seven but not more than 9 hours a week or irregular or occasional overtime work—20 percent;

(4) A position which requires an average of over 9 hours a week of irregular or occasional overtime work—25 percent.

(b) If an agency proposes to pay an employee premium pay on an annual basis under § 550.151 but unusual conditions seem to make the applicable rate in paragraph (a) of this section unsuitable, the agency may propose a rate of premium pay on an annual basis for OPM approval. The proposal shall include full information bearing on the frequency and duration of the irregular or occasional overtime work required; the nature of the work which prevents hours of duty from being controlled administratively; the necessity for the employee being generally responsible for recognizing, without supervision, circumstances which require him to remain on duty; and any other pertinent conditions.

(c) The period of time during which an employee continues to receive premium pay on an annual basis under § 550.151 under the authority of paragraphs (c) or (g) of § 550.162 is not considered in computing the average hours of irregular and occasional overtime work under this section.

[33 FR 12458, Sept. 4, 1968, as amended at 35 FR 6311, Apr. 18, 1970; 55 FR 41178, Oct. 10, 1990; 57 FR 2435, Jan. 22, 1992; 61 FR 3543, Feb. 1, 1996; 67 FR 6641, Feb. 13, 2002]

## General Rules Governing Payments of Premium Pay on an Annual Basis

### § 550.161 Responsibilities of the agencies.

The head of each agency, or an official who has been delegated authority to act for the head of an agency in the matter concerned, is responsible for:

(a) Fixing tours of duty; ordering employees to remain at their stations in a standby status; and placing responsibility on employees for remaining on duty when required by circumstances.

(b) Determining, in accordance with section 5545(c) of title 5, United States Code, and this subpart, which employees shall receive premium pay on an annual basis under § 550.141 or § 550.151. These determinations may not be retroactive.

(c) Determining the number of hours of actual work to be customarily required in positions involving longer than ordinary periods of duty, a substantial part of which consists of standby duty. This determination shall be based on consideration of the time required by regular, repetitive operations, available records of the time required in the past by other activities, and any other information bearing on the number of hours of actual work which may reasonably be expected to be required in the future.

(d) Determining the number of hours of irregular or occasional overtime work to be customarily required in positions which require substantial amounts of irregular or occasional overtime work with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty. This determination shall be based on consideration of available records of the hours of irregular or occasional overtime work required in the past, and any other information bearing on the number of hours of duty which may reasonably be expected to be required in the future.

(e) Determining the rate of premium pay fixed by OPM under § 550.144 or § 550.154 which is applicable to each employee paid under § 550.141 or § 550.151; or, if no rate fixed under § 550.144 or § 550.154 is considered applicable, proposing a rate of premium pay on an annual basis to OPM.

(f) Reviewing determinations under paragraphs (b), (c), (d) and (e) of this section at appropriate intervals, and discontinuing payments or revising rates of premium pay on an annual basis in each instance when that action is necessary to meet the requirements of section 5545(c) of title 5, United States Code, and this subpart.

[33 FR 12458, Sept. 4, 1968, as amended at 35 FR 6311, Apr. 18, 1970]

### § 550.162 Payment provisions.

(a) Except as otherwise provided in this section, an employee's premium pay on an annual basis under § 550.141

or § 550.151 begins on the date that he enters on duty in the position concerned for purposes of basic pay, and ceases on the date that he ceases to be paid basic pay in the position.

(b) When an employee is in a position in which conditions warranting premium pay on an annual basis under § 550.141 or § 550.151 exist only during a certain period of the year, such as during a given season, an agency may pay the employee premium pay on an annual basis only during the period he is subject to these conditions.

(c) An agency may continue to pay an employee premium pay on an annual basis under § 550.141 or § 550.151:

(1) For a period of not more than 10 consecutive prescribed workdays on temporary assignment to other duties in which conditions do not warrant payment of premium pay on an annual basis, and for a total of not more than 30 workdays in a calendar year while on such a temporary assignment.

(2) For an aggregate period of not more than 60 prescribed workdays on temporary assignment to a formally approved program for advanced training duty directly related to duties for which premium pay on an annual basis is payable.

An agency may not continue to pay an employee premium pay on an annual basis under this paragraph for more than 60 workdays in a calendar year.

(d) When an employee is not entitled to premium pay on an annual basis under § 550.141, he is entitled to be paid for overtime, night, holiday, and Sunday work in accordance with other sections of this subpart.

(e) An agency shall continue to pay an employee premium pay on an annual basis under § 550.141 or § 550.151 while he is on leave with pay during a period in which premium pay on an annual basis is payable under paragraphs (a), (b), and (c) of this section.

(f) Unless an agency discontinues authorization of premium pay under § 550.141 or § 550.151 for all similar positions, it may not discontinue authorization of such premium pay for an individual employee's position—

(1) During a period of paid leave elected by the employee and approved by the agency in lieu of benefits under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*), following a job-related injury;

(2) During a period of continuation of pay under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*);

(3) During a period of leave without pay, if the employee is in receipt of benefits under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*). (Note: No premium pay is payable during leave without pay; however, the continued authorization may prevent a reduction in an employee's retirement benefits if the leave without pay period occurs during the employee's high-3 average salary period.)

(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.

[33 FR 12458, Sept. 4, 1968, as amended at 35 FR 6312, Apr. 18, 1970; 64 FR 69175, Dec. 10, 1999; 67 FR 6641, Feb. 13, 2002; 68 FR 4681, Jan. 30, 2003]

### § 550.163 Relationship to other payments.

(a) An employee receiving premium pay on an annual basis under § 550.141 may not receive premium pay for regular overtime work or work at night or on a holiday or on Sunday under any other section of this subpart. An agency shall pay the employee in accordance with §§ 550.113 and 550.114 for irregular or occasional overtime work.

(b) An employee receiving premium pay on an annual basis under § 550.151 may not receive premium pay for irregular or occasional overtime work under any other section of this subpart. An agency shall pay the employee in accordance with other sections of this subpart for regular overtime work, and

work at night, on Sundays, and on holidays.

(c) Overtime, night, holiday, or Sunday work paid under any statute other than subchapter V of chapter 55 of title 5, United States Code, is not a basis for payment of premium pay on an annual basis under § 550.141 or § 550.151.

(d) (1) Except as provided in paragraph (d)(2) of this section, premium pay on an annual basis under § 550.141 or § 550.151 is not base pay and is not included in the base used in computing foreign and nonforeign allowances and differentials, or any other benefits or deductions that are computed on base pay alone.

(2) Premium pay on an annual basis under § 550.141 is base pay for the purpose of section 5595(c), section 8114(e), section 8331(3), and section 8704(c) of title 5, United States Code.

(e) Premium pay on an annual basis under § 550.141 or § 550.151 may not be paid to a criminal investigator receiving availability pay under § 550.181.

[33 FR 12458, Sept. 4, 1968, as amended at 33 FR 19897, Dec. 28, 1968; 35 FR 6312, Apr. 18, 1970; 59 FR 66151, Dec. 23, 1994]

### § 550.164 Construction and computation of existing aggregate rates.

(a) Pursuant to section 208(b) of the act of September 1, 1954 (68 Stat. 1111), nothing in this subpart relating to the payment of premium pay on an annual basis may be construed to decrease the existing aggregate rate of pay of an employee on the rolls of an agency immediately before the date section 5545(c) of title 5, United States Code, is made applicable to him by administrative action.

(b) When it is necessary to determine an employee's existing aggregate rate of pay (referred to in this section as existing aggregate rate), an agency shall determine it on the basis of the earnings the employee would have received over an appropriate period (generally 1 year) if his tour of duty immediately before the date section 5545(c) of title 5, United States Code, is made applicable to him had remained the same. In making this determination, basic pay and premium pay for overtime, night, holiday, and Sunday work are included in the earnings the employee would have received. Premium pay for irregular or occasional overtime work may be included only if it was of a significant amount in the past and the conditions which required it are expected to continue.

(c) An agency shall recompute an employee's rate of pay based on premium pay on an annual basis when he received subsequent increases in his rate of basic pay in order to determine whether or not the employee should continue to receive an existing aggregate rate or be paid premium pay on an annual basis.

(d) Except as otherwise provided by statute, an agency may not use subsequent increases in an employee's rate of basic pay to redetermine or increase the employee's existing aggregate rate. However, these increases shall be used for other pay purposes, such as the computation of retirement deductions and annuities, payment of overseas allowances and post differentials, and determination of the highest previous rate under part 531 of this chapter.

(e) When an agency elects to pay an employee premium pay on an annual basis, he is entitled to continue to receive hourly premium pay properly payable under sections 5542, 5543, 5545 (a) and (b), and 5546 of title 5, United States Code, until his base pay plus premium pay on an annual basis equals or exceeds his existing aggregate rate. When this occurs, the agency shall pay the employee his base pay plus premium pay on an annual basis.

(f) Except when terminated under paragraph (e) of this section, an agency shall continue to pay an employee an existing aggregate rate so long as:

(1) He remains in a position to which § 550.141, § 550.151, or § 550.162(c) is applicable;

(2) His tour of duty does not decrease in length; and

(3) He continues to perform equivalent night, holiday, and irregular or occasional overtime work.

(g) If an employee who is entitled to an existing aggregate rate moves from one position to another in the same agency, both of which are within the scope of section 5545(c) of title 5, United States Code, he is entitled to be paid an existing aggregate rate in the new position such as he would have received had he occupied that position

when the agency elected to make section 5545(c) applicable to it.

PAY FOR SUNDAY WORK

### § 550.171 Authorization of pay for Sunday work.

(a) An employee is entitled to pay at his or her rate of basic pay plus premium pay at a rate equal to 25 percent of his or her rate of basic pay for each hour of Sunday work (as defined in § 550.103).

(b) An employee is not entitled to Sunday premium pay while engaged in training, except as provided in § 410.402 of this chapter.

[60 FR 33098, June 27, 1995, as amended at 60 FR 67287, Dec. 29, 1995; 64 FR 69175, Dec. 10, 1999; 72 FR 12036, Mar. 15, 2007; 76 FR 52539, Aug. 23, 2011]

### § 550.172 Relation to overtime, night, and holiday pay.

(a) Premium pay for Sunday work is in addition to premium pay for holiday work, overtime pay, or night pay differential payable under this subpart and is not included in the rate of basic pay used to compute the pay for holiday work, overtime pay, or night pay differential.

(b) For a Border Patrol agent covered by 5 U.S.C. 5550 and subpart P of this part, no Sunday premium pay is payable for regularly scheduled overtime hours within the agent's regular tour of duty, as required by 5 U.S.C. 5550(b)(2)(C), (b)(3)(C), and (c)(1)(A). The overtime supplement payable for such scheduled overtime hours is not part of the agent's rate of basic pay used in computing the Sunday premium pay for other hours that qualify for such premium pay.

[33 FR 12458, Sept. 4, 1968, as amended at 80 FR 58111, Sept. 25, 2015]

LAW ENFORCEMENT AVAILABILITY PAY

### § 550.181 Coverage.

(a) Each employee meeting the definition of *criminal investigator* in § 550.103, and fulfilling the conditions and requirements of 5 U.S.C. 5545a and §§ 550.181 through 550.186, must receive availability pay to compensate the criminal investigator for unscheduled duty in excess of the 40-hour workweek based on the needs of the employing agency, except as provided in paragraph (b) of this section.

(b) Any Office of Inspector General that employs fewer than five criminal investigators may elect not to cover such criminal investigators under the availability pay provisions of 5 U.S.C. 5545a.

[64 FR 4520, Jan. 29, 1999]

### § 550.182 Unscheduled duty.

(a) *Unscheduled Duty Hours.* For the purpose of availability pay, unscheduled duty hours are those hours during which a criminal investigator performs work, or (except for a special agent in the Diplomatic Security Service) is determined by the employing agency to be available for work, that are not—

(1) Part of the 40-hour basic workweek of the investigator; or

(2) Regularly scheduled overtime hours compensated under 5 U.S.C. 5542 and § 550.111.

(b) *Regularly Scheduled Overtime Hours.* For criminal investigators receiving availability pay, regularly scheduled overtime hours compensated under 5 U.S.C. 5542 and § 550.111 are those overtime hours scheduled in advance of the investigator's administrative workweek, excluding—

(1) The first 2 hours of overtime work on any day containing a part of the investigator's basic 40-hour workweek, as required by § 550.111(f)(1)); or

(2) The first 2 hours of overtime work performing protective duties authorized by section 3056(a) of title 18, United States Code, or section 2709(a)(3) of title 22, United States Code, on any day containing a part of the investigator's basic 40-hour workweek, unless the investigator performs 2 or more consecutive hours of unscheduled overtime work on that same day.

(c) *Actual work hours.* To be considered to be performing work under paragraph (a) of this section, a criminal investigator must be performing work as officially ordered or approved, including work performed without specific supervisory preapproval, if circumstances require the criminal investigator to perform the duty to meet the needs of the employing agency,

subject to agency policies and procedures (including any requirements for after-the-fact validation or approval).

(d) *Availability Hours.* To be considered available for work under paragraph (a) of this section, a criminal investigator must be determined by the employing agency to be generally and reasonably accessible to perform unscheduled duty based on the needs of the agency. Generally, the agency will place the investigator in availability status by directing the investigator to be available during designated periods to meet agency needs, as provided by agency policies and procedures. Placing the investigator in availability status is not considered scheduling the investigator for overtime hours compensated under 5 U.S.C. 5542 and §550.111. Availability hours may include hours during which an investigator places himself or herself in availability status to meet the needs of the agency, subject to agency policies and procedures (including any requirements for after-the-fact validation or approval). A special agent in the Diplomatic Security Service may not be credited with availability hours and will be credited with only hours actually worked.

(e) *Ensuring availability.* Except as provided in paragraphs (e) and (f) of this section, an employing agency shall ensure that each criminal investigator's hours of unscheduled duty are sufficient to enable the investigator to meet the substantial hours requirement in §550.183 and make the certification required under §550.184.

(f) *Voluntary opt-out.* Notwithstanding paragraph (d) of this section, an employing agency may, at its discretion, approve a criminal investigator's voluntary request that the investigator generally be assigned no overtime work (including unscheduled duty) for a designated period of time because of a personal or family hardship situation. The investigator must sign a written statement documenting this request and his or her understanding that availability pay will not be payable during the designated period.

(g) *When availability pay is suspended.* The employing agency is not subject to the requirement of paragraph (d) of this section in the case of a criminal investigator for whom availability pay is suspended in accordance with §550.184(d) due to denial or cancellation of the required certification based on—

(1) Failure to perform unscheduled duty as assigned or reported; or

(2) Inability to perform unscheduled duty for an extended period because of a physical or health condition.

[59 FR 66151, Dec. 23, 1994, as amended at 64 FR 4520, Jan. 29, 1999]

### §550.183 Substantial hours requirement.

(a) A criminal investigator shall be eligible for availability pay only if the annual average number of hours of unscheduled duty per regular workday is 2 hours or more, as certified in accordance with §550.184. This average is computed by dividing the total unscheduled duty hours for the annual period (numerator) by the number of regular workdays (denominator).

(b) For the purpose of this section, *regular workday* means each day in the criminal investigator's basic workweek during which the investigator works at least 4 hours, excluding—

(1) Overtime hours compensated under 5 U.S.C. 5542 and §550.111;

(2) Unscheduled duty hours compensated by availability pay under 5 U.S.C. 5545a and this subpart; and

(3) Hours during which an investigator is engaged in agency-approved training, is traveling under official travel orders, is on approved leave, or is on excused absence with pay (including paid holidays).

(c) In computing average hours under paragraph (a) of this section, the total unscheduled duty hours in the numerator shall include—

(1) Any unscheduled duty hours on a regular workday; and

(2) Any unscheduled duty hours actually worked by an investigator on days that are not regular workdays.

[59 FR 66151, Dec. 23, 1994]

### §550.184 Annual certification.

(a) Each newly hired criminal investigator who will receive availability pay and the appropriate supervisory officer (as designated by the head of the agency or authorized designee) shall

make an initial certification to the head of the agency attesting that the investigator is expected to meet the substantial hours requirement in § 550.183 during the upcoming 1-year period. A similar certification shall be made for a criminal investigator who will begin receiving availability pay after a period of nonreceipt (e.g., a designated voluntary opt-out period under § 550.182(e)).

(b) Each criminal investigator who is receiving availability pay and the appropriate supervisory officer (as designated by the head of the agency or authorized designee) shall make an annual certification to the head of the agency attesting that the investigator currently meets, and is expected to continue to meet during the upcoming 1-year period, the substantial hours requirement in § 550.183.

(c) A certification shall no longer apply when the employee separates from Federal service, is employed by another agency, moves to a position that does not qualify as a criminal investigator position, or begins a voluntary opt-out period under § 550.182(e).

(d) The employing agency shall ensure that criminal investigators receiving availability pay comply with the substantial hours requirement in § 550.183, as certified in accordance with this section. The employing agency may deny or cancel a certification based on a finding that an investigator has failed to perform unscheduled duty (availability or work) as assigned or reported, or is unable to perform unscheduled duty for an extended period due to physical or health reasons. If a certification is denied or canceled, the investigator's entitlement to availability pay shall be suspended for an appropriate period, consistent with agency policies. If the investigator's certification was valid when made, the suspension of availability pay shall be effected prospectively.

(e) An involuntary suspension of availability pay resulting from a denial or cancellation of certification under paragraph (d) of this section is a reduction in pay for the purpose of applying the adverse action procedures of 5 U.S.C. 7512 and part 752 of this chapter, except for special agents in the Foreign Service. For special agents in the Foreign Service, an involuntary suspension of availability pay resulting from a denial or cancellation of certification under paragraph (d) of this section will be administered under procedures established by regulations of the Department of State.

(f) The head of an agency (or authorized designee) may prescribe any additional regulations necessary to administer the certification requirement, including procedures for retroactive correction in cases in which a certification is issued belatedly or lapses due to administrative error.

[59 FR 66151, Dec. 23, 1994, as amended at 64 FR 4520, Jan. 29, 1999]

### § 550.185 Payment of availability pay.

(a) Availability pay is paid only for periods of time during which a criminal investigator receives basic pay. Availability pay is an amount equal to the lesser of—(1) 25 percent of a criminal investigator's rate of basic pay, as defined in § 550.103, including amounts designated as ''salary'' for special agents in the Diplomatic Security Service; or

(2) The maximum amount that may be paid to avoid exceeding the maximum earnings limitation on premium pay for law enforcement officers in 5 U.S.C. 5547(c).

(b) Except as provided in paragraph (c) of this section, a criminal investigator who is eligible for availability pay shall continue to receive such pay during any period such investigator is attending agency-sanctioned training, on agency-ordered travel status, on agency-approved leave with pay, or on excused absence with pay for relocation purposes.

(c) Agencies may, at their discretion, provide availability pay to criminal investigators during training that is considered initial, basic training usually provided in the first year of service.

(d) Agencies may, at their discretion, provide for the continuation of availability pay when a criminal investigator is on excused absence with pay, except where payment is mandatory under paragraph (b) of this section.

(e) The amount of availability pay payable to a criminal investigator for a

pay period is not affected by the occurrence of a paid holiday during that period.

[59 FR 66151, Dec. 23, 1994, as amended at 60 FR 67287, Dec. 29, 1995; 64 FR 4521, Jan. 29, 1999]

### § 550.186 Relationship to other payments.

(a) Standby duty pay under § 550.141 and administratively uncontrollable overtime pay under § 550.151 may not be paid to a criminal investigator receiving availability pay. Receipt of availability pay does not affect an investigator's entitlement to other types of premium pay (including overtime pay under § 550.111) based on hours other than unscheduled duty hours. However, a criminal investigator receiving availability pay may not be paid any other premium pay based on unscheduled duty hours.

(b) Availability pay is treated as part of basic pay or basic salary only for the following purposes:

(1) 5 U.S.C. 5524a, pertaining to advances in pay;

(2) 5 U.S.C. 5595(c), pertaining to severance pay;

(3) 5 U.S.C. 8114(e), pertaining to workers' compensation;

(4) 5 U.S.C. 8331(3) and 5 U.S.C. 8401(4), pertaining to retirement benefits;

(5) Subchapter III of chapter 84 of title 5, United States Code, pertaining to the Thrift Savings Plan;

(6) 5 U.S.C. 8704(c), pertaining to life insurance;

(7) Sections 609(b)(1), 805, 806, and 856 of the Foreign Service Act of 1980, as amended (Pub. L. 96–465), pertaining to Foreign Service retirement benefits; and

(8) For any other purposes explicitly provided for by law or as the Office of Personnel Management or the Secretary of State (for matters exclusively within the jurisdiction of the Secretary) may prescribe by regulation.

(c) The minimum wage and the hours of work and overtime pay provisions of the Fair Labor Standards Act do not apply to criminal investigators receiving availability pay.

[59 FR 66151, Dec. 23, 1994, as amended at 64 FR 4521, Jan. 29, 1999; 64 FR 36771, July 8, 1999]

### § 550.187 Transitional provisions.

(a) Except as provided in paragraph (b) of this section, not later than the first day of the first pay period beginning on or after October 30, 1994, each criminal investigator qualified to receive availability pay and the appropriate supervisory officer (as designated by the agency head or authorized designee) shall make an initial certification to the head of the agency that the investigator is expected to meet the substantial hours requirement in § 550.183. The head of an agency may prescribe procedures necessary to administer this paragraph.

(b)(1) In the case of criminal investigators who are employed in offices of Inspectors General and who, immediately prior to September 30, 1994, were not receiving administratively uncontrollable overtime pay, or were receiving such pay at a rate of less than 25 percent, the employing office may delay implementation of availability pay; however, availability pay shall be implemented (in accordance with §§ 550.181 through 550.186) no later than—

(i) September 30, 1995, for investigators who are not receiving administratively uncontrollable overtime pay; or

(ii) The first day of the last pay period ending on or before September 30, 1995, for investigators who were receiving administratively uncontrollable overtime pay at a rate of less than 25 percent immediately prior to September 30, 1994.

(2) A criminal investigator who is employed in an Inspector General office and was receiving administratively uncontrollable overtime pay at a rate of less than 25 percent immediately prior to September 30, 1994, shall continue to receive at least that rate or a higher rate, if increased by the employing agency, until the availability pay provision is implemented for the position (no later than as provided in paragraph (b)(1)(ii) of this section).

(3) Implementation of availability pay for criminal investigators under paragraph (b)(1) of this section shall be in accordance with the requirements and conditions set forth in §§ 550.181 through 550.186. For qualified investigators, an initial certification shall

be made, consistent with paragraph (a) of this section.

[59 FR 66151, Dec. 23, 1994]

## Subpart B—Advances in Pay

AUTHORITY: 5 U.S.C. 5524a, 5527, 5545a(h)(2)(B), 5550(d)(1)(B); E.O. 12748, 3 CFR, 1992 comp., p. 316.

SOURCE: 56 FR 12837, Mar. 28, 1991, unless otherwise noted.

### § 550.201 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5524a which provides that the head of each agency may make advance payments of basic pay, covering not more than 2 pay periods, to any individual who is newly appointed to a position in the agency.

### § 550.202 Definitions.

In this subpart: *Agency* means an Executive agency, as defined in 5 U.S.C. 105.

*Employee* means an individual employed in or under an agency who is appointed to a position with a scheduled tour of duty.

*Head of agency* means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

*Newly appointed* means—

(a) The first appointment, regardless of tenure, as an employee of the Federal Government;

(b) A new appointment following a break in service of at least 90 days; or

(c) A permanent appointment in the competitive service following termination of employment in an Internship Program (as described in 5 CFR part 362, subpart B), provided such employee—

(1) Was separated from the service, in a nonpay status, or a combination of both during the entire 90-day period immediately before the permanent appointment; and

(2) Has fully repaid any former advance in pay under § 550.205.

*Offset* or *setoff* means repayment in installments of an advance in pay by payroll deductions or an administrative offset under subpart K of this part to collect a debt under 5 U.S.C. 5514 from an indebted Government employee.

*Pay period* means the pay period established by an agency for an employee under 5 U.S.C. 5504.

*Rate of basic pay* means the rate of pay fixed by law or administrative action for the position held by an employee, excluding additional pay of any kind except the following, as applicable:

(1) Any locality payment under 5 CFR part 531, subpart F; special rate supplement under 5 CFR part 530, subpart C; or similar payment or supplement under other legal authority;

(2) Annual premium pay under 5 U.S.C. 5545(c) or availability pay under 5 U.S.C. 5545a;

(3) Straight-time pay for regular overtime hours for firefighters under 5 U.S.C. 5545b (as provided in § 550.1305(b));

(4) Night differential for prevailing rate employees under 5 U.S.C. 5343(f); and

(5) An overtime supplement for regularly scheduled overtime within a Border Patrol agent's regular tour of duty under 5 U.S.C. 5550 (as allowed under 5 U.S.C. 5550(d)(1)(B)).

[56 FR 12837, Mar. 28, 1991, as amended at 57 FR 2435, Jan. 22, 1992; 58 FR 41625, Aug. 5, 1993; 59 FR 66153, Dec. 23, 1994; 61 FR 3543, Feb. 1, 1996; 63 FR 64592, Nov. 23, 1998; 64 FR 69176, Dec. 10, 1999; 70 FR 31313, May 31, 2005; 73 FR 66156, Nov. 7, 2008; 77 FR 28223, May 11, 2012; 80 FR 58111, Sept. 25, 2015]

### § 550.203 Advances in pay.

(a) The head of an agency may provide for the advance payment of basic pay, in one or more installments covering not more than 2 pay periods, to an employee who is newly appointed to a position in the agency.

(b) The maximum amount of pay that may be advanced to an employee shall be based on the rate of basic pay to which the employee is entitled on the date of his or her new appointment with the agency, reduced by the amount of any allotments or deductions that would normally be deducted from the employee's first regular paycheck.

(c) An advance in pay may be made to an employee no earlier than the date of appointment with the agency and no

later than 60 days after the date of appointment.

(d) An advance in pay under this subpart may not be made to any employee when an agency expects to make an advance in pay to the same employee under 5 U.S.C. 5927 within 2 pay periods after the employee's appointment.

(e) An advance in pay may not be made to the head of an agency or to an employee appointed to a position in the expectation of receiving an appointment as the head of an agency.

[56 FR 12837, Mar. 28, 1991; 56 FR 40360, Aug. 14, 1991; 58 FR 41625, Aug. 5, 1993]

### § 550.204 Agency procedures.

(a) Each agency shall establish written procedures governing advance payments. These procedures shall include—

(1) Criteria to be considered before approval or denial of employee requests for advance payments;

(2) Criteria to be considered before waiving all or part of advance payments; and

(3) Processing and accounting procedures governing advance payments.

(b) Before making an advance payment, an agency shall require that the employee sign an agreement to repay to the Federal Government any amount for which repayment has not been waived by the agency head under § 550.206 of this part.

(c) Before making an advance payment, an agency shall provide the following information to the employee in writing:

(1) A statement indicating how the advance in pay will be recovered from the employee by the Federal Government, either in installments under agency procedures for payroll deductions or by salary offset procedures under subpart K of this part;

(2) The total amount of the advance in pay, the total number of pay periods for repayment of the advance in pay, and the amount that will be deducted from the pay of the employee by payroll deductions or salary offset for each pay period;

(3) A statement indicating that the employee may prepay all or part of the balance of the advance payment at any time before the money is due, including instructions as to where and how such prepayments may be made.

(4) A statement indicating that the amount of the advance in pay not yet repaid by an employee or waived by the agency head is due and must be repaid by the employee if the employee transfers to another agency or the individual's employment with the agency is terminated for any reason; and

(5) A statement indicating that any amount of the remaining balance of the advance in pay that has not been waived or repaid by the employee on transfer or termination for any reason must be recovered by salary offset under subpart K of this part and/or by such other method as is provided by law.

(d) The head of an agency may establish procedures under which an employee is permitted to make allotments out of an advance in pay for such purposes as the head of the agency considers appropriate.

[56 FR 12837, Mar. 28, 1991, as amended at 58 FR 41625, Aug. 5, 1993]

### § 550.205 Recovery of advances in pay.

(a) Unless repayment is waived in whole or in part under § 550.206 of this part, an agency shall recover an advance in pay by installments under agency procedures for payroll deductions or by salary offset procedures established under subpart K of this part. An employee may prepay all or part of the remaining balance of an advance in pay at any time before payments are due.

(b) An agency shall establish a recovery period for each employee to repay an advance in pay, but no agency may establish a recovery period of longer than 14 pay periods beginning on the date the advance in pay is made to the employee under § 550.203 of this part. If a longer period for recovery is necessary to avoid exceeding the limitation on deductions described in § 550.1104(i) of this part, recovery may be accomplished under salary offset procedures established under subpart K of this part. Upon written request, an employee may elect a recovery period of less than 14 pay periods.

(c) If an employee transfers to another agency or employment with an agency is terminated for any reason,

the remaining balance of an advance in pay not yet repaid is due and must be repaid to the Federal Government unless repayment is waived in whole or in part under § 550.206 of this part.

(d) Any remaining balance of an advance in pay that has not been waived under § 550.206 of this part or repaid by an employee upon transfer or termination of employment must be recovered by an agency using procedures for salary offset under subpart K of this part and/or by such other method as is provided by law.

[56 FR 12837, Mar. 28, 1991, as amended at 58 FR 41625, Aug. 5, 1993; 64 FR 69176, Dec. 10, 1999]

### § 550.206 Waiver of repayment.

The head of an agency may waive in whole or in part a right of recovery of an advance payment under 5 U.S.C. 5524a and this subpart if he or she determines that recovery would be against equity and good conscience or against the public interest under criteria established by the agency.

## Subpart C—Allotments From Federal Employees

AUTHORITY: 5 U.S.C. 5527, E.O. 10982, 3 CFR 1959–1963 Comp., p. 502.

SOURCE: 46 FR 2325, Jan. 9, 1981, unless otherwise noted.

DEFINITIONS

### § 550.301 Definitions.

In this subpart:

*Agency* means an Executive agency as defined by section 105 of Title 5, United States Code.

*Allotment* means a recurring specified deduction for a legal purpose from pay authorized by an employee to be paid to an allottee.

*Allottee* means the person or institution to whom an allotment is made payable.

*Allotter* means the employee from whose pay an allotment is made.

*Association of management officials and/or supervisors* means an association composed of either management officials and/or supervisors with which the agency has established official relationships.

*Combined Federal Campaign* means an organization of voluntary health and welfare agencies authorized to solicit charitable contributions in a local area in accordance with arrangements prescribed by the Director of the Office of Personnel Management under Executive Order 10927.

*Continental United States* means the several States and the District of Columbia, but excluding Alaska and Hawaii.

*Dues* means the regular periodic amount specified by an allotter to be withheld from his or her pay which is required to maintain the allotter as a member in good standing in a labor organization or association of management officials and/or supervisors or other organization.

*Employee* means an employee of an agency who satisfies the definition of that term in 5 U.S.C. 2105.

*Foreign affairs agency* means the Department of State, the International Communications Agency, the Agency for International Development and its successor agency or agencies.

*Labor organization* means a labor organization as defined by section 7103(a)(4) of title 5, United States Code, unless specified otherwise.

[46 FR 2325, Jan. 9, 1981, as amended at 65 FR 44644, July 19, 2000; 71 FR 66828, Nov. 17, 2006]

GENERAL PROVISIONS

### § 550.311 Authority of agency.

(a) *Mandatory allotments.* An agency must permit an employee to make—

(1) An allotment for dues to a labor organization under section 7115 of Title 5, United States Code;

(2) An allotment for dues to an association of management officials and/or supervisors under § 550.331;

(3) An allotment for charitable contributions to a Combined Federal Campaign under § 550.341;

(4) An allotment for income tax withholding under § 550.351;

(5) Two or more allotments to an employee's personal account(s) at a financial organization;

(6) An allotment for child support and/or alimony payments under § 550.361; and

(7) Any allotment effecting a salary reduction as part of a flexible benefits

plan established by the Office of Personnel Management in conformance with section 125 of title 26, United States Code.

(b) *Discretionary allotments.* In addition to those allotments provided for in paragraph (a) of this section, an agency may permit an employee to make an allotment for any legal purpose deemed appropriate by the head of the agency (or designee). This paragraph does not constitute an independent authority for an agency to permit pretax allotments in addition to those authorized by the Office of Personnel Management as described in paragraph (a)(7) of this section.

(c) The head of an agency may prescribe such additional regulations governing allotments as appropriate which are consistent with subchapter III of chapter 55 of title 5, United States Code, and this subpart. Discretionary allotments under this subpart may be limited in number as determined appropriate by the head of the agency.

[46 FR 2325, Jan. 9, 1981, as amended at 64 FR 69176, Dec. 10, 1999; 65 FR 44644, July 19, 2000; 66 FR 49086, Sept. 26, 2001; 66 FR 67477, Dec. 31, 2001; 71 FR 66828, Nov. 17, 2006]

### § 550.312 General limitations.

(a) The allotter must specifically designate the allottee and the amount of the allotment.

(b) The total amount of allotments may not exceed the pay due the allotter for a particular period.

(c) The allotter must personally authorize a change or cancellation of an allotment.

(d) The agency has no liability in connection with any authorized allotment disbursed by the agency in accordance with the allotter's request.

(e) Any disputes regarding any authorized allotment are a matter between the allotter and the allottee.

(f) Notwithstanding the requirements in paragraphs (a) and (c) of this section, an agency may make an allotment for an employee's share of Federal Employees Health Benefits premiums under § 550.311(a)(7) and part 892 of this chapter without specific authorization from the employee, unless the employee specifically waives such allotment. Agency procedures for processing employee waivers must be consistent with procedures established by the Office of Personnel Management. (See part 892 of this chapter.)

[46 FR 2325, Jan. 9, 1981, as amended at 64 FR 69176, Dec. 10, 1999; 65 FR 44644, July 19, 2000; 71 FR 66828, Nov. 17, 2006]

## LABOR ORGANIZATION

### § 550.321 Authority.

Section 7115, title 5, United States Code, authorizes an employee to make an allotment for dues to a labor organization as defined in subchapter 1 of chapter 71 of title 5, United States Code. Such an allotment shall be effected in accordance with such rules and regulations as may be prescribed by the Federal Labor Relations Authority.

### § 550.322 Saving provision.

An agency shall permit a supervisor who so desires, to continue an allotment of dues to a labor organization as defined by section 2(e) of Executive Order 11491, as amended, which was permissible when the supervisor was excluded from a formal or exclusive unit by reason of the requirements of former section 24(d) of this Order.

## ASSOCIATION OF MANAGEMENT OFFICIALS AND/OR SUPERVISORS

### § 550.331 Scope.

An agency shall permit an employee to make an allotment for dues to an association of management officials and/or supervisors when the employee is a supervisor or management official, and the employee is a member of an association of management officials and/or supervisors with which the agency has agreed in writing to deduct allotments for the payment of dues to the association.

## COMBINED FEDERAL CAMPAIGN

### § 550.341 Scope.

An agency must permit an employee to make an allotment for charitable contributions to a Combined Federal Campaign in accordance with § 950.901 of this chapter.

[64 FR 69176, Dec. 10, 1999]

INCOME TAX WITHHOLDING

### § 550.351 Scope.

When an employee has a legal obligation to pay, but the agency has no legal obligation to withhold, State, District of Columbia, or local income or employment taxes, an agency shall permit an employee to make an allotment for payment of the taxes.

ALIMONY AND/OR CHILD SUPPORT

### § 550.361 Scope.

An agency shall permit an employee to make an allotment for alimony and/or child support when he or she voluntarily elects to do so. However, this provision does not apply to garnishment orders issued to enforce child support and/or alimony obligations which are codified at part 581 of this title.

[46 FR 2325, Jan. 9, 1981. Redesignated at 71 FR 66828, Nov. 17, 2006]

FOREIGN AFFAIRS AGENCY ORGANIZATIONS

### § 550.371 Scope.

If an agency permits an employee to make an allotment for dues to a foreign affairs agency organization, the agency must also provide, in accordance with section 15 of Executive Order 11636:

(a) that the employee be allowed to revoke the authorization at least every six months; and

(b) that the allotment terminates when the dues withholding agreement between a foreign affairs agency and the organization is terminated or ceases to be applicable to the employee.

[46 FR 2325, Jan. 9, 1981. Redesignated at 71 FR 66828, Nov. 17, 2006]

## Subpart D—Payments During Evacuation

AUTHORITY: 5 U.S.C. 5527; E.O. 10982, 3 CFR 1959–1963, p. 502.

SOURCE: 59 FR 66632, Dec. 28, 1994, unless otherwise noted.

### § 550.401 Purpose, applicability, authority, and administration.

(a) *Purpose.* This subpart provides regulations to administer subchapter III (except sections 5524a and 5525) of chapter 55 of title 5, United States Code. The regulations provide for Governmentwide uniformity in making payments during an evacuation to employees or their dependents, or both, who are evacuated in the United States because of natural disasters or for military or other reasons that create imminent danger to their lives.

(b) *Applicability.* This subpart applies to—

(1) Executive agencies, as defined in section 105 of title 5, United States Code.

(2) Employees of an agency who are U.S. citizens or who are U.S. nationals;

(3) Employees of an agency who are not citizens or nationals of the United States, but who were recruited with a transportation agreement that provides return transportation to the area from which recruited; and

(4) Alien employees of an agency hired within the United States.

(c) *Authority.* The head of an agency may make advance payments and evacuation payments and pay special allowances as provided by this subpart. If the head of an agency proposes to issue regulations that deviate from the provisions of this subpart, prior approval of the agency regulations, as required by section 4(b) of Executive Order 10982 of December 25, 1961, must be secured from the Office of Personnel Management.

(d) *Administration.* The head of an agency having employees subject to this subpart is responsible for the proper administration of this subpart. Payment of advance payments and evacuation payments and any required adjustments shall be made in accordance with procedures established by the agency.

[59 FR 66632, Dec. 28, 1994, as amended at 65 FR 41869, July 7, 2000]

### § 550.402 Definitions.

*Agency* means an Executive agency, as defined in section 105 of title 5, United States Code.

*Day* means a calendar day, except when otherwise specified by the head of an agency.

*Dependent* means a family member of the employee residing with the employee and dependent on the employee for support.

*Designated representative* means a person 16 years of age or over who is named by an employee for the purpose of caring for a dependent.

*Domestic partner* means a person in a domestic partnership with an employee or annuitant of the same sex.

*Domestic partnership* means a committed relationship between two adults of the same sex in which the partners—

(1) Are each other's sole domestic partner and intend to remain so indefinitely;

(2) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(3) Are at least 18 years of age and mentally competent to consent to contract;

(4) Share responsibility for a significant measure of each other's financial obligations;

(5) Are not married or joined in a civil union to anyone else;

(6) Are not the domestic partner of anyone else;

(7) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;

(8) Are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001, and that the method for securing such certification, if required, will be determined by the agency; and

(9) Are willing promptly to disclose, if required by the agency, any dissolution or material change in the status of the domestic partnership.

*Evacuated employee* means an employee of an agency who has received an order to evacuate.

*Family member* means an individual with any of the following relationships to the employee:

(1) Spouse, and parents thereof;

(2) Sons and daughters, and spouses thereof;

(3) Parents, and spouses thereof;

(4) Brothers and sisters, and spouses thereof;

(5) Grandparents and grandchildren, and spouses thereof;

(6) Domestic partner, and children and parents thereof, including a domestic partner of any individual in paragraphs (2)–(5) of this definition; and

(7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

*Order to evacuate* means an oral or written order to evacuate an employee from an assigned area.

*Safe haven* means a designated area to which an employee or dependent will be or has been evacuated.

*United States* means the 50 States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and any territory or possession of the United States.

[59 FR 66632, Dec. 28, 1994, as amended at 65 FR 41869, July 7, 2000; 77 FR 42904, July 20, 2012]

### § 550.403 Advance payments; evacuation payments; special allowances.

(a) An advance payment of pay, allowances, and differentials may be made to an employee who has received an order to evacuate, provided that, in the opinion of the agency head or designated official, payment in advance of the date on which an employee otherwise would be entitled to be paid is required to help the employee defray immediate expenses incidental to the evacuation.

(b) Evacuation payments of pay, allowances, and differentials may be made to an employee during an evacuation and shall be paid on the employee's regular pay days when feasible.

(c) Special allowances, including travel expenses and per diem, may be paid to evacuated employees to offset

any direct added expenses that are incurred by the employee as a result of his or her evacuation or the evacuation of his or her dependents.

(d) An advance payment or an evacuation payment may be paid to the employee, a dependent 16 years of age or over, or a designated representative. When payment is made to someone other than the employee, prior written authorization by the employee must have been provided to the authorizing agency official.

(e) Any agency may make payments in an evacuation situation to an employee of another Federal agency (or his or her dependent(s) or personal representative) who has received an order to evacuate. When a payment is made under this subpart by an agency other than the employee's agency, the agency making the payment shall immediately report the amount and date of the payment to the employee's agency in order that prompt reimbursement may be made.

### § 550.404 Computation of advance payments and evacuation payments; time periods.

(a) Payments shall be based on the rate of pay (including allowances, differentials, or other authorized payments) to which the employee was entitled immediately before the issuance of the order of evacuation. All deductions authorized by law, such as retirement or social security deductions, authorized allotments, Federal withholding taxes, and others, when applicable, shall be made before advance payments or evacuation payments are made.

(b)(1) The amount of advance payments shall cover a time period not to exceed 30 days or a lesser number of days, as determined by the authorizing agency official.

(2) Evacuation payments shall cover the period of time during which the order to evacuate remains in effect, unless terminated earlier, but shall not exceed 180 days. When feasible, evacuation payments shall be paid on the employee's regular pay days.

(c) When an advance payment has been made to or for the account of an employee, the amount of the advance payment shall not diminish the amount of the evacuation payments that would otherwise be due the employee.

(d)(1) For full-time and part-time employees, the amount of an advance payment or an evacuation payment shall be computed on the basis of the number of regularly scheduled workdays for the time period covered.

(2) For intermittent employees, the amount of an advance payment or evacuation payment shall be computed on the basis of the number of days on which the employee would be expected to work during the time period covered. The number of days shall be determined, whenever possible, by approximating the number of days per week normally worked by the employee during an average 6-week period, as determined by the agency.

[59 FR 66633, Dec. 28, 1994; 60 FR 3303, Jan. 13, 1995]

### § 550.405 Determination of special allowances.

In determining the direct added expenses that may be payable as special allowances, the following shall be considered:

(a) An agency must determine the travel expenses and per diem for an evacuated employee and the travel expenses for his or her dependents in accordance with the Federal Travel Regulation (FTR) and any applicable implementing agency regulations, whether or not the employee or dependents are actually covered by or subject to the FTR. In addition, an agency may authorize per diem for dependents of an evacuated employee at a rate equal to the rate payable to the employee, as determined in accordance with the FTR (except that the rate for dependents under 12 years of age is one-half this rate), whether or not the employee or dependents are actually covered by or subject to the FTR. Per diem for an employee and his or her dependents is payable from the date of departure from the evacuated area through the date of arrival at the safe haven, including any period of delay en route that is beyond an evacuee's control or that may result from evacuation travel arrangements.

(b) Subsistence expenses for an evacuated employee or his or her dependents shall be determined at applicable per diem rates for the safe haven or for a station other than the safe haven that has been approved by appropriate authority. Such subsistence expenses shall begin to be paid on the date following arrival and may continue until terminated. The subsistence expenses shall be computed on a daily rate basis, as follows:

(1) An agency must compute the applicable maximum per diem rate by using the ''lodgings-plus per diem system,'' as defined in the FTR, for the employee and each dependent who is 12 years of age or over. For each dependent under 12 years of age, the per diem rate is one-half of the applicable maximum per diem rate for employees and dependents who are 12 years of age or over. An agency may pay these maximum rates for a period not to exceed the first 30 days of evacuation.

(2) If, after expiration of the 30-day period, the evacuation has not been terminated, the per diem rate shall be computed at 60 percent of the rates prescribed in paragraph (b)(1) of this section until a determination is made by the agency that subsistence expenses are no longer authorized. This rate may be paid for a period not to exceed 180 days after the effective date of the order to evacuate.

(3) The daily rate of the subsistence expense allowance actually paid an employee shall be either a rate determined in accordance with paragraphs (b) (1) and (2) of this section or a lower rate determined by the agency to be appropriate for necessary living expenses.

(c) Payment of subsistence expenses shall be decreased by the applicable per-person amount for any period during which the employee is authorized regular travel per diem in accordance with the FTR.

[59 FR 66632, Dec. 28, 1994, as amended at 65 FR 41869, July 7, 2000]

### § 550.406 Work assignments during evacuation; return to duty.

(a) Evacuated employees at safe havens may be assigned to perform any work considered necessary or required to be performed during the period of the evacuation without regard to the grades or titles of the employees. Failure or refusal to perform assigned work may be a basis for terminating further evacuation payments.

(b) When part-time employees are given assigned work at the safe haven, records of the number of hours worked shall be maintained so that payment may be made for any hours of work that are greater than the number of hours on which evacuation payments are computed.

(c) Not later than 180 days after the effective date of the order to evacuate, or when the emergency or evacuation situation is terminated, whichever is earlier, an employee must be returned to his or her regular duty station, or appropriate action must be taken to reassign him or her to another duty station.

### § 550.407 Termination of payments during evacuation.

Advance payments or evacuation payments terminate when the agency determines that—

(a) The employee is assigned to another duty station outside the evacuation area;

(b) The employee abandons or is otherwise separated from his or her position;

(c) The employee's employment is terminated by his or her transfer to retirement rolls or other type of annuity based on cessation of civilian employment;

(d) The employee resumes his or her duties at the duty station from which he or she was evacuated;

(e) The agency determines that payments are no longer warranted; or

(f) The date the employee is determined to be covered by the Missing Persons Act (50 App. U.S.C. 1001 *et seq.*), unless payment is earlier terminated under these regulations.

### § 550.408 Review of accounts; service credit.

(a) The payroll office having jurisdiction over the employee's account shall review each employee's account for the purpose of making adjustments at the earliest possible date after the evacuation is terminated (or earlier if the

circumstances justify), after the employee returns to his or her assigned duty station, or when the employee is reassigned officially.

(b) The employee's pay shall be adjusted on the basis of the rates of pay, allowances, or differentials, if any, to which he or she would otherwise have been entitled under all applicable statutes other than section 5527 of title 5, United States Code. Any adjustments in the employee's account shall also reflect advance payments made to the employee under § 550.403(a) of this subpart.

(c)(1) After an employee's account is reviewed as required by paragraph (a) of this section, if it is found that the employee is indebted for any part of the advance payment made to him or her or his or her dependent(s) or designated representative, recovery of the indebtedness shall be effected by the payroll office having jurisdiction over the employee's account, unless a waiver of recovery has been approved. Repayment of the indebtedness may be made either in full or in partial payments, as determined by the head of the agency or designated official.

(2) Recovery of indebtedness for advance payment shall not be required when it is determined by the head of the agency or designated official that the recovery would be against equity or good conscience or against the public interest. Findings that formed the basis for waiver of recovery shall be filed in the employee's personnel folder on the permanent side.

(d) For the period or periods covered by any payments made under this subpart, the employee shall be considered as performing active Federal service in his or her position without a break in service.

### § 550.409 Evacuation payments during a pandemic health crisis.

(a) An agency may order one or more employees to evacuate from their worksite and perform work from their home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis without regard to whether the agency and the employee have a telework agreement in place at the time the order to evacuate is issued. Under these circumstances, an agency may designate the employee's home (or an alternative location mutually agreeable to the agency and the employee) as a safe haven and provide evacuation payments to the employee. An agency must compute the evacuation payments and determine the time period during which such payments will be made in accordance with § 550.404. An evacuated employee at a safe haven may be assigned to perform any work considered necessary or required to be performed during the period of evacuation without regard to his or her grade, level, or title. The employee must have the necessary knowledge and skills to perform the assigned work. Failure or refusal to perform assigned work may be a basis for terminating evacuation payments, as well as disciplinary action.

(b) The head of an agency, in his or her sole and exclusive discretion, may grant special allowance payments, based upon a case-by-case analysis, to offset the direct added expenses incidental to performing work from home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis.

(c) An agency may terminate evacuation payments under the conditions listed in § 550.407. An agency must make any necessary adjustments in pay consistent with § 550.408 after the evacuation is terminated.

[71 FR 47693, Aug. 17, 2006, as amended at 72 FR 33148, June 15, 2007]

## Subpart E—Pay From More Than One Position

AUTHORITY: 5 U.S.C. 5533.

### § 550.501 Scope.

(a) *Applicability.* (1) This subpart and section 5533 of title 5, United States Code, apply in determining an employee's entitlement to receive pay from more than one position.

(2) This subpart and section 5533(a) of title 5, United States Code, apply only to an employee holding more than one position when the aggregate number of hours worked during a week exceeds 40.

(b) *Coverage.* This subpart and section 5533(a) of title 5, United States Code, apply to each department and agency (including each corporation owned or controlled by the Government of the United States and including nonappropriated fund instrumentalities under the jurisdiction of the armed forces) in the legislative (except as provided in section 5533(c) of that title), judicial, and executive branches of the Government of the United States and to the government of the District of Columbia.

### § 550.502 Definitions.

In this subpart:

*Employee* means a person holding a position.

*Pay* means pay paid for services in a position but excludes fees paid on other than a time basis.

*Position* has the meaning given that term by section 5531 of title 5, United States Code.

*Week* means the period of 7 calendar days from Sunday through Saturday.

[33 FR 12458, Sept. 4, 1968, as amended at 60 FR 67287, Dec. 29, 1995]

### § 550.503 Exceptions in emergencies.

Section 5533(a) of title 5, United States Code, does not apply to pay from a position for services performed under emergency conditions relating to health, safety, protection of life or property, or national emergency.

### § 550.504 Other exceptions.

(a) When a department, agency, or the government of the District of Columbia encounters difficulty in obtaining employees to perform required personal services because of section 5533(a) of title 5, United States Code, it may make an exception from that section upon determining that the required services cannot be readily obtained otherwise. The exception shall specify the position(s) to which it applies.

(b) The Office of Personnel Management will publish exceptions of general application.

(5 U.S.C. 1104; Pub. L. 95–454, sec. 3(5))

[44 FR 54694, Sept. 21, 1979, as amended at 66 FR 66711, Dec. 27, 2001]

### § 550.505 Report to OPM.

OPM may require a department, agency, or the government of the District of Columbia to submit a periodic report on its use of the exceptions from section 5533(a) of title 5, United States Code.

[33 FR 12458, Sept. 4, 1968. Redesignated at 37 FR 22717, Oct. 21, 1972]

## Subpart F—Computation of Pay for Biweekly Pay Periods

AUTHORITY: 5 U.S.C. 5504; Public Law 108–136, 117 Stat. 1637.

SOURCE: 70 FR 24477, May 10, 2005, unless otherwise noted.

### § 550.601 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5504 to compute pay on a biweekly pay period basis for employees in an agency, as defined in § 550.603.

### § 550.602 Coverage.

(a) This subpart applies to—

(1) An employee in or under an agency, except an employee excluded by paragraph (b) of this section;

(2) The head of an agency;

(3) The head of a military department, as defined in 5 U.S.C. 102;

(4) A Foreign Service officer;

(5) A member of the Senior Foreign Service;

(6) A member of the Senior Executive Service; or

(7) A member of the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

(b) This subpart does not apply to—

(1) An employee on the Isthmus of Panama in the service of the Panama Canal Commission; or

(2) An employee or individual excluded from the definition of employee in 5 U.S.C. 5541(2), except employees excluded by 5 U.S.C. 5541(2)(ii), (iii), and (xiv) through (xvii) are covered by this subpart.

### § 550.603 Definitions.

In this subpart—

*Agency* means an executive agency, as defined in 5 U.S.C. 105.

*Employee* has the meaning given that term in 5 U.S.C. 2105.

### § 550.604 Biweekly pay periods and computation of pay.

Agencies must apply the biweekly pay period and computation of pay provisions of 5 U.S.C. 5504 for employees covered by § 550.602(a).

### § 550.605 Exceptions.

An agency head or designee may deem that an employee excluded from coverage under § 550.602(b)(2) is covered by 5 U.S.C. 5504 in situations where he or she determines that continuing to calculate the pay of such employees on a monthly or other basis would diminish the level of services provided to the public by the agency. An agency head or designee also may deem that otherwise excluded employees are covered by 5 U.S.C. 5504 when he or she determines that computing the pay of such employees under that provision of law would provide cost savings in agency operations.

### § 550.606 Reporting exceptions to OPM.

Each agency must notify OPM in writing of any exceptions made under § 550.605.

## Subpart G—Severance Pay

AUTHORITY: 5 U.S.C. 5595; E.O. 11257, 3 CFR, 1964–1965 Comp., p. 357.

SOURCE: 55 FR 6593, Feb. 26, 1990, unless otherwise noted.

### § 550.701 Introduction.

This subpart contains regulations of the Office of Personnel Management to implement the provisions of 5 U.S.C. 5595. These regulations authorize severance pay for employees who are involuntarily separated from Federal service and who meet other conditions of eligibility.

### § 550.702 Coverage.

Except as provided in 5 U.S.C. 5595(a)(2) (i) through (viii), this subpart applies to each full-time or part-time employee; that is, an employee with a regularly scheduled tour of duty who is serving under a qualifying appointment, as defined in § 550.703.

### § 550.703 Definitions.

In this subpart:

*Agency* means an agency as defined in 5 U.S.C. 5595(a)(1), except the government of the District of Columbia.

*Commuting area* means the geographic area surrounding a work site that encompasses the localities where people live and reasonably can be expected to travel back and forth daily to work, as established by the employing agency based on the generally held expectations of the local community. When an employee's residence is within the standard commuting area for a work site, the work site is within the employee's commuting area. When an employee's residence is outside the standard commuting area for a proposed new work site, the employee's commuting area is deemed to include the expanded area surrounding the employee's residence and including all destinations that can be reached via a commuting trip that is not significantly more burdensome than the current commuting trip. This excludes a commuting trip from a residence where the employee planned to stay only temporarily until he or she could find a more permanent residence closer to his or her work site. For this purpose, a commuting trip to a new work site is considered significantly more burdensome if it would compel the employee to change his or her place of residence in order to continue employment, taking into account commuting time and distance, availability of public transportation, cost, and any other relevant factors.

*Comparison rate* has the meaning given that term in § 536.103 of this chapter, except paragraph (2) of that definition should be used for the purpose of comparing grades or levels of work for all situations not covered by paragraph (1) of that definition.

*Employed by the Government of the United States* refers to employment by any part of the Government of the United States, including the United States Postal Service and similar independent entities, but excluding enlistment or activation in the armed forces (as defined in 5 U.S.C. 2101).

*Employee* (for the purpose of establishing initial entitlement to severance pay upon separation) means an employee as defined in 5 U.S.C. 5595(a)(2), excluding an individual employed by the government of the District of Columbia.

NOTE TO DEFINITION OF ''EMPLOYEE'': The term ''individual employed'' in 5 U.S.C. 5595(a)(2)(A) refers to an ''employee'' as defined in 5 U.S.C. 2105.

*Immediate annuity* means—

(a) A recurring benefit payable under a retirement system applicable to Federal civilian employees or members of the uniformed services that the individual is eligible to receive (disregarding any offset described in § 550.704(b)(5)) at the time of the involuntary separation from civilian service or that begins to accrue within 1 month after such separation, excluding any Social Security retirement benefit; or

(b) A benefit that meets the conditions in paragraph (a) of this definition, except that the benefit begins to accrue more than 1 month after separation solely because the employee elected a later commencing date (such as allowed under § 842.204 of this chapter).

*Inefficiency* means unacceptable performance or conduct that leads to a separation under part 432 or 752 of this chapter or an equivalent procedure.

*Involuntary separation* means a separation initiated by an agency against the employee's will and without his or her consent for reasons other than inefficiency, including a separation resulting from the expiration of a time-limited appointment effected within 3 calendar days after separation from a qualifying appointment. In addition, when an employee is separated because he or she declines to accept reassignment outside his or her commuting area, the separation is ''involuntary'' if the employee's position description or other written agreement does not provide for such a reassignment. However, an employee's separation is not ''involuntary'' if, after such a written mobility agreement is added, the employee accepts one reassignment outside his or her commuting area, but subsequently declines another such reassignment.

*Nonqualifying appointment* means an appointment that does not convey eligibility for severance pay under this subpart, including—

(a) An appointment at a noncovered agency;

(b) An appointment in which the employee has an intermittent work schedule;

(c) A Presidential appointment;

(d) An emergency appointment;

(e) An excepted appointment under Schedule C; a noncareer appointment in the Senior Executive Service, as defined in 5 U.S.C. 3132(a); or an equivalent appointment made for similar purposes; and

(f) A time-limited appointment (except for a time-limited appointment that is qualifying because it is made effective within 3 calendar days after separation from a qualifying appointment), including—

(1) A term appointment;

(2) An overseas limited appointment with a time limitation;

(3) A limited term or limited emergency appointment in the Senior Executive Service, as defined in 5 U.S.C. 3132(a), or an equivalent appointment made for similar purposes;

(4) A Veterans Recruitment Appointment under part 307 of this chapter; and

(5) A Presidential Management Fellows Program appointment under § 213.3402(c) of this chapter.

*Qualifying appointment* means—

(a) A career or career-conditional appointment in the competitive service or the equivalent in the excepted service;

(b) A career appointment in the Senior Executive Service;

(c) An excepted appointment without time limitation, except under Schedule C or an equivalent appointment made for similar purposes;

(d) An overseas limited appointment without time limitation;

(e) A status quo appointment, including one that becomes indefinite when the employee is promoted, demoted, or reassigned;

(f) A time-limited appointment in the Foreign Service, when the employee

was assigned under a statutory authority that carried entitlement to reemployment in the same agency, but this right of reemployment has expired; and

(g) A time-limited appointment (including a series of time-limited appointments by the same agency without any intervening break in service) for full-time employment that takes effect within 3 calendar days after the end of one of the qualifying appointments listed in paragraphs (a) through (f) of this definition, provided the time-limited appointment is not nonqualifying on grounds other than the time-limited nature of the appointment.

*Rate of basic pay* means the rate of pay fixed by law or administrative action for the position held by an employee, excluding additional pay of any kind except the following, as applicable:

(1) Any locality payment under 5 CFR part 531, subpart F; special rate supplement under 5 CFR part 530, subpart C; or similar payment or supplement under other legal authority;

(2) Annual premium pay under 5 U.S.C. 5545(c) or availability pay under 5 U.S.C. 5545a;

(3) Straight-time pay for regular overtime hours for firefighters under 5 U.S.C. 5545b (as provided in § 550.1305(b));

(4) Night differential for prevailing rate employees under 5 U.S.C. 5343(f); and

(5) An overtime supplement for regularly scheduled overtime within a Border Patrol agent's regular tour of duty under 5 U.S.C. 5550 (as required by 5 U.S.C. 5550(d)(1)(A)).

*Reasonable offer* means the offer of a position that meets all the following conditions:

(a) The offer is in writing;

(b) The employee meets established qualification requirements; and

(c) The offered position is—

(1) In the employee's agency, including an agency to which the employee is transferred with his or her function in a transfer of functions between agencies;

(2) Within the employee's commuting area, unless geographic mobility is a condition of employment;

(3) Of equal or greater tenure and with the same work schedule (part-time or full-time); and

(4) Not lower than two grade or pay levels below the employee's current grade or pay level, without consideration of grade or pay retention under part 536 of this chapter or other authority. In movements between pay schedules or pay systems, the comparison rate of the offered position must not be lower than the comparison rate of the grade or pay level that is two grades below the grade of the current position on the same pay schedule as the current position.

*Severance pay fund* means the total severance pay to which an employee is entitled during a single entitlement under 5 U.S.C. 5595. It includes a basic severance pay allowance and, where applicable, an age adjustment allowance, as computed under § 550.707.

[55 FR 6593, Feb. 26, 1990, as amended at 56 FR 20342, May 3, 1991; 56 FR 23736, May 23, 1991; 57 FR 59279, Dec. 15, 1992; 58 FR 58262, Nov. 1, 1993; 59 FR 66153, Dec. 23, 1994; 61 FR 3543, Feb. 1, 1996; 63 FR 64593, Nov. 23, 1998; 64 FR 69176, Dec. 10, 1999; 70 FR 31313, May 31, 2005; 70 FR 28783, May 19, 2005; 70 FR 72068, Dec. 1, 2005; 73 FR 66156, Nov. 7, 2008; 77 FR 28223, May 11, 2012; 80 FR 58112, Sept. 25, 2015]

### § 550.704 Eligibility for severance pay.

(a) To be eligible for severance pay, an employee must:

(1) Be serving under a qualifying appointment;

(2) Have completed at least 12 months of continuous service, as described in § 550.705; and

(3) Be removed from Federal service by involuntary separation.

(b) An employee is not eligible for severance pay if he or she:

(1) Is serving under a nonqualifying appointment;

(2) Declines a reasonable offer;

(3) Is serving under a qualifying appointment in an agency scheduled by law or Executive order to be terminated within 1 year after the date of the appointment, unless on the date of separation, the agency's termination has been postponed to a date more than 1 year after the date of the appointment, or the appointment is effected within 3 calendar days after separation from a qualifying appointment;

(4) Is receiving injury compensation under subchapter I of chapter 81 of title 5, United States Code, unless the compensation is being received concurrently with pay or is the result of someone else's death; or

(5) Is eligible upon separation for an immediate annuity from a Federal civilian retirement system or from the uniformed services. Such an employee is ineligible even if all or part of the annuity is offset by payments from a non-Federal retirement system the employee elected instead of Federal civilian retirement benefits or disability benefits received from the Department of Veterans Affairs.

### § 550.705 Criteria for meeting the requirement for 12 months of continuous employment.

(a) The requirement for 12 months of continuous employment is met if, on the date of separation, an employee has held one or more civilian Federal positions over a period of 12 months without a single break in service of more than 3 calendar days. The positions held must have been under:

(1) One or more qualifying appointments;

(2) One or more nonqualifying temporary appointments that precede the current qualifying appointment; or

(3) An appointment to a position in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard that precedes the current qualifying appointment in the Department of Defense or the Coast Guard, respectively.

(b) When a break in service that is covered by severance pay interrupts otherwise continuous Federal employment, the entire period is considered continuous service.

(c) The period during which an employee receives continuation of pay or compensation for an injury on the job under chapter 81 of title 5, United States Code, is considered continuous Federal service.

[55 FR 6593, Feb. 26, 1990, as amended at 57 FR 12405, Apr. 10, 1992]

### § 550.706 Criteria for meeting the requirement for involuntary separation.

(a) An employee who resigns because he or she expects to be involuntarily separated is considered to have been involuntarily separated if the employee resigns after receiving—

(1) Specific written notice that he or she will be involuntarily separated by a particular action effective on a particular date; or

(2) A general written notice of reduction in force or transfer of functions which—

(i) Is issued by a properly authorized agency official;

(ii) Announces that the agency has decided to abolish, or transfer to another commuting area, all positions in the competitive area (as defined in § 351.402 of this chapter) by a particular date (no more than 1 year after the date of the notice); and

(iii) States that, for all employees in that competitive area, a resignation following receipt of the notice constitutes an involuntary separation for severance pay purposes.

(b) Except for resignations under the conditions described in paragraph (a) of this section, all resignations are voluntary separations and do not carry entitlement to severance pay.

(c) A resignation is not considered an involuntary separation if the specific or general written notice is canceled before the separation (based on that resignation) takes effect.

[55 FR 6593, Feb. 26, 1990, as amended at 64 FR 69177, Dec. 10, 1999]

### § 550.707 Computation of severance pay fund.

(a) *Basic severance pay allowance.* Except as provided in paragraph (b) of this section, the basic severance pay allowance consists of the following:

(1) One week of pay at the rate of basic pay for the position held by the employee at the time of separation for each full year of creditable service through 10 years;

(2) Two weeks of pay at the rate of basic pay for the position held by the employee at the time of separation for each full year of creditable service beyond 10 years; and

(3) Twenty-five percent of the otherwise applicable amount for each full 3 months of creditable service beyond the final full year.

(b) *Basic severance pay allowance for employees with variable work schedules or rates of basic pay.* In the following circumstances, the weekly rate of basic pay used in computing the basic severance pay allowance must be determined based on the weekly average for the last position held by the employee during the 26 biweekly pay periods immediately preceding separation, as follows:

(1) For positions in which the number of hours in the employee's basic work schedule (excluding overtime hours) varies during the year because of part-time work requirements, compute the weekly average of those hours and multiply that average by the hourly rate of basic pay in effect at separation.

(2) For positions in which the rate of annual premium pay for standby duty regularly varies throughout the year, compute the average standby duty premium pay percentage and multiply that percentage by the weekly rate of basic pay (as defined in § 550.103) in effect at separation.

(3) For prevailing rate positions in which the amount of night shift differential pay under 5 U.S.C. 5343(f) varies from week to week under a regularly recurring cycle of work schedules, determine for each week in the averaging period the value of night shift differential pay expressed as a percentage of each week's scheduled rate of pay (as defined in § 532.401 of this chapter), compute the weekly average percentage, and multiply that percentage by the weekly scheduled rate of pay in effect at separation.

(4) For positions with seasonal work requirements, compute the weekly average of hours in a pay status (excluding overtime hours) and multiply that average by the hourly rate of basic pay in effect at separation.

(5) For positions held by firefighters compensated under subpart M of this part, where the firefighter has a recurring cycle of variable workweeks within his or her regular tour of duty (as defined in § 550.1302), compute the weekly average of hours in the regular tour of duty and determine the weekly rate of basic pay based on the average workweek and the rate of basic pay in effect at separation.

(c) *Age adjustment allowance.* The basic severance pay allowance is augmented by an age adjustment allowance consisting of 2.5 percent of the basic severance pay allowance for each full 3 months of age over 40 years.

(d) *Lifetime limitation.* The severance pay fund is limited to that amount which would provide 52 weeks of severance pay (taking into account weeks of severance pay previously received, as provided in § 550.712).

[55 FR 6593, Feb. 26, 1990, as amended at 63 FR 64593, Nov. 23, 1998; 64 FR 69177, Dec. 10, 1999]

### § 550.708 Creditable service.

The following types of service are creditable for computing an employee's severance pay under § 550.707:

(a) Civilian service as an employee (as defined in 5 U.S.C. 2105), excluding time during a period of nonpay status that is not creditable for annual leave accrual purposes under 5 U.S.C. 6303(a);

(b) Service performed with the United States Postal Service or the Postal Rate Commission;

(c) Military service, including active or inactive training with the National Guard, when performed by an employee who returns to civilian service through the exercise of a restoration right provided by law, Executive order, or regulation;

(d) Service performed by an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, as defined in 5 U.S.C. 2105(c), who moves to a position within the civil service employment system of the Department of Defense or the Coast Guard, respectively, without a break in service of more than 3 days; and

(e) Service performed with the government of the District of Columbia by an individual first employed by that government before October 1, 1987, excluding service as a teacher or librarian of the public schools of the District of Columbia.

[55 FR 6593, Feb. 26, 1990, as amended at 57 FR 12405, Apr. 10, 1992; 58 FR 33499, June 18, 1993; 64 FR 69177, Dec. 10, 1999]

### § 550.709 Accrual and payment of severance pay.

(a) Severance pay accrues on a day-to-day basis following the recipient's separation from Federal employment. If severance pay begins in the middle of a pay period, 1 day of severance pay accrues for each workday or applicable holiday left in the pay period at the same rate at which basic pay would have accrued if the recipient were still employed. Thereafter, accrual is based on days from Monday through Friday, with each day worth one-fifth of 1 week's severance pay. Accrual ceases when the severance pay entitlement is suspended or terminated, as provided in §§ 550.710 and 550.711. If severance pay is suspended during a nonqualifying time-limited appointment as provided in § 550.710, accrual will resume following separation from that appointment.

(b) Severance payments must be made at the same pay period intervals that salary payments would be made if the recipient were still employed. The amount of the severance payment is computed using the recipient's rate of basic pay in effect immediately before separation, with credit for each day of severance pay accrual during the pay period corresponding to the payment date. A severance payment is subject to appropriate deductions for income and Social Security taxes. Severance payments are the responsibility of the agency employing the recipient at the time of the involuntary separation that triggered the current entitlement to severance pay.

(c) When an individual receives severance pay as the result of an involuntary separation from a qualifying time-limited appointment, the severance payment is based on the rate of basic pay received at the time of that separation. Severance payments are the responsibility of the agency that employed the individual under the qualifying time-limited appointment.

(d) When an individual is in a nonpay status immediately before separation, the amount of the severance payment is determined using the basic pay that he or she would have received if he or she had been in a pay status at the time of separation.

(e) When an individual's severance pay fund is computed under § 550.707(b) using an average rate of basic pay, that average rate is used to determine the amount of the severance payment. Exception: In the case of a seasonal employee, the agency may choose instead to use the employee's rate of basic pay at separation (as computed based on the employee's work schedule during the established seasonal work period) and then authorize severance payments only during that seasonal work period.

(f) In the case of individuals who become employed by a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard under the conditions described in 5 U.S.C. 5595(h)(4), payment of severance pay may be suspended consistent with the rules in 5 U.S.C. 5595(h) and any supplemental regulations issued by the Department of Defense.

(g) Notwithstanding paragraph (b) of this section, an agency may pay severance pay in a single lump sum if expressly authorized by law.

[64 FR 69177, Dec. 10, 1999]

### § 550.710 Suspension of severance pay.

When an individual entitled to severance pay is employed by the Government of the United States or the government of the District of Columbia under a nonqualifying time-limited appointment, severance pay must be suspended during the life of the appointment. Severance pay resumes, without any recomputation, when the employee separates from the nonqualifying time-limited appointment. The resumed severance payments are the responsibility of the agency that originally triggered the individual's severance pay entitlement by separating the individual while he or she was serving under a qualifying appointment.

[64 FR 69178, Dec. 10, 1999]

### § 550.711 Termination of severance pay entitlement.

Entitlement to severance pay ends when—

(a) The individual entitled to severance pay is employed by the Government of the United States or the government of the District of Columbia, unless employed under a nonqualifying

time-limited appointment as described in § 550.710; or

(b) The severance pay fund is exhausted.

[64 FR 69178, Dec. 10, 1999]

### § 550.712 Reemployment; recredit of service.

(a) When a former employee is reemployed, the employing agency shall record on the appointment document the number of weeks of severance pay received (including partial weeks).

(b) If an employee again becomes entitled to severance pay, the agency in which entitlement arises shall recompute the severance pay allowance on the basis of all creditable service and current age and deduct from the number of weeks it would take to exhaust the allowance the number of weeks for which severance pay previously was received.

### § 550.713 Records.

Agencies shall maintain records, by fiscal year, of the number of employees who receive severance pay and the total amount of severance pay paid. The Office of Personnel Management may require agencies to report such information to the Office.

[55 FR 6593, Feb. 26, 1990, as amended at 64 FR 69178, Dec. 10, 1999]

### § 550.714 Panama Canal Commission employees.

(a) Notwithstanding any other provisions of this subpart, an employee separated from employment with the Panama Canal Commission as a result of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements shall not be entitled to severance pay if he or she—

(1) Receives a written offer of reasonably comparable employment when such offer is made before separation from Commission employment;

(2) Accepts reasonably comparable employment within 30 days after separation from Commission employment; or

(3) Was hired by the Commission on or after December 18, 1997.

(b) The term *reasonably comparable employment* means a position that meets all the following conditions:

(1) The position is with the Panamanian public entity that assumes the functions of managing, operating, and maintaining the Panama Canal as a result of the Panama Canal Treaty of 1977;

(2) The rate of basic pay of the position is not more than 10 percent below the employee's rate of basic pay as a Panama Canal Commission employee;

(3) The position is within the employee's commuting area;

(4) The position carries no fixed time limitation as to length of appointment; and

(5) The work schedule (that is, part-time or full-time) of the position is the same as that of the position held by the employee at the Panama Canal Commission.

(c) A Panama Canal Commission employee who resigns prior to receiving an official written notice that he or she will not be offered reasonably comparable employment shall be considered to be voluntarily separated. Section 550.706(a) shall be applied, as appropriate, to any employee who resigns after receiving such notice.

(d) Except as otherwise provided by paragraphs (a) through (c) of this section, the provisions of this subpart remain applicable to Panama Canal Commission employees.

[62 FR 49127, Sept. 19, 1997]

## Subpart H—Back Pay

AUTHORITY: 5 U.S.C. 5596(c); Pub. L. 100–202, 101 Stat. 1329.

### § 550.801 Applicability.

(a) This subpart contains regulations of the Office of Personnel Management to carry out section 5596 of title 5, United States Code, which authorizes the payment of back pay, interest, and reasonable attorney fees for the purpose of making an employee financially whole (to the extent possible) when, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance), the employee is found by an appropriate authority to have been affected by an unjustified or unwarranted personnel action that resulted in the withdrawal,

reduction, or denial of all or part of the pay, allowances, and differentials otherwise due to the employee. This subpart should be read together with this section of law.

(b) This subpart does not apply to any reclassification action.

[46 FR 58275, Dec. 1, 1981, as amended at 53 FR 18072, May 20, 1988]

### § 550.802 Coverage.

(a) Except as provided in paragraph (b) of this section, this subpart applies to employees, as defined in § 550.803 of this subpart.

(b) This subpart does not apply to—

(1) Employees of the government of the District of Columbia; and

(2) Employees of the Tennessee Valley Authority.

[46 FR 58275, Dec. 1, 1981]

### § 550.803 Definitions.

In this subpart:

*Agency* has the meaning given that term in section 5596(a) of title 5, United States Code.

*Appropriate authority* means an entity having authority in the case at hand to correct or direct the correction of an unjustified or unwarranted personnel action, including (a) a court, (b) the Comptroller General of the United States, (c) the Office of Personnel Management, (d) the Merit Systems Protection Board, (e) the Equal Employment Opportunity Commission, (f) the Federal Labor Relations Authority and its General Counsel, (g) the Foreign Service Labor Relations Board, (h) the Foreign Service Grievance Board, (i) an arbitrator in a binding arbitration case, and (j) the head of the employing agency or another official of the employing agency to whom such authority is delegated.

*Collective bargaining agreement* has the meaning given that term in section 7103(a)(8) of title 5, United States Code, and (with respect to members of the Foreign Service) in section 1002 of the Foreign Service Act of 1980 (22 U.S.C. 4102(4)).

*Employee* means an employee of an agency. When the term *employee* is used to describe an individual who is making a back pay claim, it also may mean a former employee.

*Grievance* has the meaning given that term in section 7103(a)(9) of title 5, United States Code, and (with respect to members of the Foreign Service) in section 1101 of the Foreign Service Act of 1980 (22 U.S.C. 4131). Such a grievance includes a grievance processed under an agency administrative grievance system, if applicable.

*Pay, allowances, and differentials* means pay, leave, and other monetary employment benefits to which an employee is entitled by statute or regulation and which are payable by the employing agency to an employee during periods of Federal employment. Agency and employee contributions to a retirement investment fund, such as the Thrift Savings Plan, are not covered. Monetary benefits payable to separated or retired employees based upon a separation from service, such as retirement benefits, severance payments, and lump-sum payments for annual leave, are not covered.

*Unfair labor practice* means an unfair labor practice described in section 7116 of title 5, United States Code, and (with respect to members of the Foreign Service) in section 1015 of the Foreign Service Act of 1980 (22 U.S.C. 4115).

*Unjustified or unwarranted personnel action* means an act of commission or an act of omission (*i.e.*, failure to take an action or confer a benefit) that an appropriate authority subsequently determines, on the basis of substantive or procedural defects, to have been unjustified or unwarranted under applicable law, Executive order, rule, regulation, or mandatory personnel policy established by an agency or through a collective bargaining agreement. Such actions include personnel actions and pay actions (alone or in combination).

[46 FR 58275, Dec. 1, 1981, as amended at 60 FR 47040, Sept. 11, 1995; 64 FR 69178, Dec. 10, 1999]

### § 550.804 Determining entitlement to back pay.

(a) When an appropriate authority has determined that an employee was affected by an unjustified or unwarranted personnel action, the employee shall be entitled to back pay under section 5596 of title 5, United States Code, and this subpart only if the appropriate authority finds that the unjustified or

unwarranted personnel action resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee.

(b) The requirement for a ''timely appeal'' is met when—

(1) An employee or an employee's personal representative initiates an appeal or grievance under an appeal or grievance system, including appeal or grievance procedures included in a collective bargaining agreement; a claim against the Government of the United States; a discrimination complaint; or an unfair labor practice charge; and

(2) An appropriate authority accepts that appeal, grievance, claim, complaint, or charge as timely filed.

(c) The requirement for an ''administrative determination'' is met when an appropriate authority determines, in writing, that an employee has been affected by an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee.

(d) The requirement for ''correction of the personnel action'' is met when an appropriate authority, consistent with law, Executive order, rule, regulation, or mandatory personnel policy established by an agency or through a collective bargaining agreement, after a review, corrects or directs the correction of an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee.

(e)(1) The pay, allowances, and differentials paid as back pay under this subpart (including payments made under any grievance or arbitration decision or any settlement agreement) may not exceed that authorized by any applicable law, rule, regulation, or collective bargaining agreement, including any applicable statute of limitations.

(2) An agency may not authorize pay, allowances, and differentials under this subpart in any case for a period beginning more than 6 years before the date of the filing of a timely appeal, or, absent such filing, the date of the administrative determination that the employee is entitled to back pay, consistent with 31 U.S.C. 3702(b). (See also § 178.104 of this chapter.)

(3) For back pay claims dealing with payments under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207, *et seq.*), an agency must apply the 2-year statute of limitations (3 years for willful violations) in 29 U.S.C. 255a. (See also § 551.702 of this chapter.)

[46 FR 58275, Dec. 1, 1981, as amended at 64 FR 72458, Dec. 28, 1999]

### § 550.805 Back pay computations.

(a) When an appropriate authority corrects or directs the correction of an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due an employee—

(1) The employee shall be deemed to have performed service for the agency during the period covered by the corrective action; and

(2) The agency shall compute for the period covered by the corrective action the pay, allowances, and differentials the employee would have received if the unjustified or unwarranted personnel action had not occurred.

(b) No employee shall be granted more pay, allowances, and differentials under section 5596 of title 5, United States Code, and this subpart than he or she would have been entitled to receive if the unjustified or unwarranted personnel action had not occurred.

(c) Except as provided in paragraph (d) of this section, in computing the amount of back pay under section 5596 of title 5, United States Code, and this subpart, an agency may not include—

(1) Any period during which an employee was not ready, willing, and able to perform his or her duties because of an incapacitating illness or injury; or

(2) Any period during which an employee was unavailable for the performance of his or her duties for reasons other than those related to, or caused by, the unjustified or unwarranted personnel action.

(d) In computing the amount of back pay under section 5596 of title 5, United

States Code, and this subpart, an agency shall grant, upon request of an employee, any sick or annual leave available to the employee for a period of incapacitation if the employee can establish that the period of incapacitation was the result of illness or injury.

(e) In computing the net amount of back pay payable under section 5596 of title 5, United States Code, and this subpart, an agency must make the following offsets and deductions (in the order shown) from the gross back pay award:

(1) Any outside earnings (gross earnings less any associated business losses and ordinary and necessary business expenses) received by an employee for other employment (including a business enterprise) undertaken to replace the employment from which the employee was separated by the unjustified or unwarranted personnel action during the interim period covered by the corrective action. Do not count earnings from additional or ''moonlight'' employment the employee may have engaged in while Federally employed (before separation) and while erroneously separated.

(2) Any erroneous payments received from the Government as a result of the unjustified or unwarranted personnel action, which, in the case of erroneous payments received from a Federal employee retirement system, must be returned to the appropriate system. Such payments must be recovered from the back pay award in the following order:

(i) Retirement annuity payments (*i.e.*, gross annuity less deductions for life insurance and health benefits premiums, if those premiums can be recovered by the affected retirement system from the insurance carrier);

(ii) Refunds of retirement contributions (*i.e.*, gross refund before any deductions);

(iii) Severance pay (*i.e.*, gross payments before any deductions); and

(iv) A lump-sum payment for annual leave (*i.e.*, gross payment before any deductions).

(3) Authorized deductions of the type that would have been made from the employee's pay (if paid when properly due) in accordance with the normal order of precedence for deductions from pay established by the agency, subject to any applicable law or regulation, including, but not limited to, the following types of deductions, as applicable:

(i) Mandatory employee retirement contributions toward a defined benefit plan, such as the Civil Service Retirement System or the defined benefit component of the Federal Employees Retirement System;

(ii) Social Security taxes and Medicare taxes;

(iii) Health benefits premiums, if coverage continued during a period of erroneous retirement (with paid premiums recoverable by the retirement system) or is retroactively reinstated at the employee's election under 5 U.S.C. 8908(a);

(iv) Life insurance premiums if—

(A) Coverage continued during a period of erroneous retirement;

(B) Coverage was stopped during an erroneous suspension or separation and the employee suffered death or accidental dismemberment during that period (consistent with 5 U.S.C. 8706(d)); or

(C) Additional premiums are owed because of a retroactive increase in basic pay; and

(v) Federal income tax withholdings.

NOTE TO PARAGRAPH (e)(3): See appendix A to this subpart for additional information on computing certain deductions.

(4) Administrative offsets under 31 U.S.C. 3716 to recover any other outstanding debt(s) owed to the Federal Government by the employee, as appropriate.

(f) For the purpose of computing the amount of back pay under paragraph (e) of this section, interest shall be included in the amount from which deductions for erroneous payments are made, as required by § 550.805(e)(2) of this part.

(g) An agency shall credit annual leave restored to an employee as a result of the correction of an unjustified or unwarranted personnel action in excess of the maximum leave accumulation authorized by law to a separate leave account for use by the employee. The employee shall schedule and use annual leave in such a separate leave account as follows:

(1) A full-time employee shall schedule and use excess annual leave of 416

hours or less by the end of the leave year in progress 2 years after the date on which the annual leave is credited to the separate account. The agency shall extend this period by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof.

(2) A part-time employee shall schedule and use excess annual leave in an amount equal to or less than 20 percent of the employee's scheduled tour of duty over a period of 52 calendar weeks by the end of the leave year in progress 2 years after the date on which the annual leave is credited to the separate account. The agency shall extend this period by 1 leave year for each additional number of hours of excess annual leave, or any portion thereof, equal to 10 percent of the employee's scheduled tour of duty over a period of 52 calendar weeks.

(h) Agencies must correct errors that affect an employee's Thrift Savings Plan account consistent with regulations prescribed by the Federal Retirement Thrift Investment Board. (See parts 1605 and 1606 of this title.)

[46 FR 58275, Dec. 1, 1981, as amended at 53 FR 18072, May 20, 1988, and 53 FR 45886, Nov. 15, 1988; 59 FR 66634, Dec. 28, 1994; 64 FR 69178, Dec. 10, 1999]

### § 550.806 Interest computations.

(a)(1) Interest begins to accrue on the date or dates (usually one or more pay dates) on which the employee would have received the pay, allowances, and differentials if the unjustified or unwarranted personnel action had not occurred.

(2) Interest accrual ends at a time selected by the agency that is no more than 30 days before the date of the back pay interest payment. No interest is payable if a complete back pay payment is made within 30 days after any erroneous withdrawal, reduction, or denial of a payment, and the interest accrual ending date is set to coincide with the interest accrual starting date.

(b) In computing the amount of interest due under section 5596 of title 5, United States Code, the agency shall reduce the amount of pay, allowances, and differentials due for each date described in paragraph (a) of this section by an amount determined as follows:

(1) Divide the employee's earnings from other employment during the period covered by the corrective action, as described in § 550.805(e)(1) of this part, by the total amount of back pay prior to any deductions;

(2) Multiply the ratio obtained in paragraph (b)(1) of this section by the amount of pay, allowances, and differentials due for each date described in paragraph (a) of this section.

(c) The agency shall compute interest on the amount of back pay computed under section 5596 of title 5, United States Code, and this subpart before making deductions for erroneous payments, as required by § 550.805(e)(2) of this part.

(d) The rate or rates used to compute the interest payment shall be the annual percentage rate or rates established by the Secretary of the Treasury as the overpayment rate under section 6621(a)(1) of title 26, United States Code (or its predecessor statute), for the period or periods of time for which interest is payable.

(e) On each day for which interest accrues, the agency shall compound interest by dividing the applicable interest rate (expressed as a decimal) by 365 (366 in a leap year).

(f) The agency shall compute the amount of interest due, and shall issue the interest payment within 30 days of the date on which accrual of interest ends.

(g) To the extent administratively feasible, the agency shall issue payments of back pay and interest simultaneously. If all or part of the payment of back pay is issued on or before the date on which accrual of interest ends and the interest payment is issued after the payment of back pay is issued, the amount of the payment of back pay shall be subtracted from the accrued amount of back pay and interest, effective with the date the payment of back pay was issued. Interest shall continue to accrue on the remaining unpaid amount of back pay (if any) and interest until the date on which accrual of interest ends.

[53 FR 18072, May 20, 1988, and 53 FR 45886, Nov. 15, 1988; 64 FR 69179, Dec. 10, 1999]

### § 550.807 Payment of reasonable attorney fees.

(a) An employee or an employee's personal representative may request payment of reasonable attorney fees related to an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee. Such a request may be presented only to the appropriate authority that corrected or directed the correction of the unjustified or unwarranted personnel action. However, if the finding that provides the basis for a request for payment of reasonable attorney fees is made on appeal from a decision by an appropriate authority other than the employing agency, the employee or the employee's personal representative shall present the request to the appropriate authority from which the appeal was taken.

(b) The appropriate authority to which such a request is presented shall provide an opportunity for the employing agency to respond to a request for payment of reasonable attorney fees.

(c) Except as provided in paragraph (e) of this section, when an appropriate authority corrects or directs the correction of an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due an employee, the payment of reasonable attorney fees shall be deemed to be warranted only if—

(1) Such payment is in the interest of justice, as determined by the appropriate authority in accordance with standards established by the Merit Systems Protection Board under section 7701(g) of title 5, United States Code; and

(2) There is a specific finding by the appropriate authority setting forth the reasons such payment is in the interest of justice.

(d) When an appropriate authority determines that such payment is warranted, it shall require payment of attorney fees in an amount determined to be reasonable by the appropriate authority. When an appropriate authority determines that such payment is not warranted, no such payment shall be required.

(e) When a determination by an appropriate authority that an employee has been affected by an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee is based on a finding of discrimination prohibited under section 2302(b)(1) of title 5, United States Code, the payment of attorney fees shall be in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–5(k)).

(f) The payment of reasonable attorney fees shall be allowed only for the services of members of the Bar and for the services of law clerks, paralegals, or law students, when assisting members of the Bar. However, no payment may be allowed under section 5596 of title 5, United States Code, and this subpart for the services of any employee of the Federal Government, except as provided in section 205 of title 18, United States Code, relating to the activities of officers and employees in matters affecting the Government.

(g) A determination concerning whether the payment of reasonable attorney fees is in the interest of justice and concerning the amount of any such payment shall be subject to review or appeal only if provided for by statute or regulation.

(h) This section does not apply to any administrative proceeding that was pending on January 11, 1979.

[46 FR 58275, Dec. 1, 1981. Redesignated at 53 FR 18072, May 20, 1988, and 53 FR 45886, Nov. 15, 1988]

### § 550.808 Prohibition against setting aside proper promotions.

Nothing in section 5596 of title 5, United States Code, or this subpart shall be construed as authorizing the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates.

[46 FR 58275, Dec. 1, 1981, as amended at 53 FR 18072, May 20, 1988, and 53 FR 45886, Nov. 15, 1988]

APPENDIX A TO SUBPART H OF PART 550—INFORMATION ON COMPUTING CERTAIN COMMON DEDUCTIONS FROM BACK PAY AWARDS

To determine the net back payment owed an employee, an agency must make certain required deductions. (See § 550.805(e)(3).) To compute these deductions, an agency must determine the appropriate base or follow other rules, consistent with applicable law. Some deductions, such as tax deductions, are not subject to OPM regulation. To assist agencies, this appendix summarizes the rules for certain common deductions. For further information on Federal tax deductions from back pay awards, please contact the Internal Revenue Service directly or review relevant IRS publications.

| Type of deduction | How to Compute the deduction |
|---|---|
| (a) Mandatory employee retirement contributions | Compute the deduction based on the basic pay portion of gross back pay before adding interest or applying any offset or deduction. |
| (b) Life insurance premiums | Compute the deduction based on the basic pay portion of gross back pay before adding interest or applying any offset or deduction. |
| (c) Social Security (OASDI) and Medicare taxes | Compute the deduction based on adjusted gross back pay (gross back pay less the offset for outside earnings under § 550.805(e)(1), but before adding interest). The deduction may be reduced dollar-for-dollar by the amount of any Social Security or Medicare taxes that were withheld from erroneous payments made in the same calendar year as the back pay award, but only if—<br>(1) Those erroneous payments were actually recovered by the Government by offsetting the back pay award as provided in § 550.805(e)(2); and<br>(2) Those withheld taxes have not already been repaid to the employee.<br>Note: Social Security taxes are subject to the applicable Social Security tax wage base limit. In addition, see IRS guidance regarding possible correction and refunding of Social Security and Medicare taxes withheld from erroneous payments in a prior calendar year. |
| (d) Federal income tax withholdings | Compute the deduction based on adjusted gross back pay (gross back pay less the offset for outside earnings under § 550.805(e)(1), but before adding interest) less any part of back pay not subject to income tax deductions, such as nonforeign area cost-of-living allowances and contributions to the Thrift Savings Plan that are deducted from the pay of the employee. The deduction may be reduced dollar-for-dollar by the amount of any Federal income taxes withheld from erroneous payments made in the same calendar year as the back pay award, but only if—<br>(1) Those erroneous payments were actually recovered by the Government by offsetting the back pay award as provided in § 550.805(e)(2); and<br>(2) Those withheld taxes have not already been repaid to the employee.<br>Note: Additional Federal income tax withholdings from the interest portion of the back pay award may be required by the Internal Revenue Service in certain specific circumstances. |

[64 FR 69179, Dec. 10, 1999]

## Subpart I—Pay for Duty Involving Physical Hardship or Hazard

AUTHORITY: 5 U.S.C. 5545(d), 5548(b).

### § 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.

[56 FR 20344, May 3, 1991]

### § 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* means an employee covered by the General Schedule (*i.e.*, covered by chapter 51 and subchapter III of chapter 53 of title 5, United States Code).

*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.

*Head of an agency* means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

[56 FR 20344, May 3, 1991, as amended at 59 FR 33416, June 29, 1994; 64 FR 69179, Dec. 10, 1999]

### § 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 the head of an agency (or authorized designee). The head of an agency (or authorized designee) may recommend the rate of hazard pay differential to be established and must submit, with its request for an amendment, 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.

[56 FR 20344, May 3, 1991, as amended at 64 FR 69179, Dec. 10, 1999]

### § 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 appendix A of this subpart. However, 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 payment of a differential has been approved under paragraph (b) of this section.

(b) The head of an agency may approve payment of a hazard pay differential when—

(1) The actual circumstances of the specific hazard or physical hardship have changed from that taken into account and described in the position description; and

(2) Using the knowledge, skills, and abilities that are described in the position description, the employee cannot control the hazard or physical hardship; thus, the risk is not reduced to a less than significant level.

(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 considered in establishing the grade of the position—*i.e.*, the knowledge, skills, and abilities required to perform that duty are considered in the classification of the position.

(d) The head of the agency shall maintain records on the use of the authority described in paragraph (b) of this section, including the specific hazardous duty or duty involving physical

hardship; the authorized position description(s); the number of employees paid the differential; documentation of the conditions described in paragraph (b) of this section; and the annual cost to the agency.

(e) So that OPM can evaluate agencies' use of this authority and provide the Congress and others with information regarding its use, each agency shall maintain such other records and submit to OPM such other reports and data as OPM shall require.

[59 FR 33416, June 29, 1994]

### § 550.905 Payment of hazard pay differential.

(a) When an employee performs duty for which a hazard pay differential is authorized, the agency must 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, except as provided in paragraph (b) of this section. Hours in a pay status for work performed during a continuous period extending over 2 days must be considered to have been performed on the day on which the work began, and the allowable differential must be charged to that day.

(b) Employees may not be paid a hazardous duty differential for hours for which they receive annual premium pay for regularly scheduled standby duty under § 550.141, annual premium pay for administratively uncontrollable overtime work under § 550.151, or availability pay for criminal investigators under § 550.181.

[64 FR 69180, Dec. 10, 1999]

### § 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) Safety precautions have reduced the element of hazard to a less than significant level of risk, consistent with generally accepted standards that may be applicable, such as those published by the Occupational Safety and Health Administration, Department of Labor; or

(c) Protective or mechanical devices have adequately alleviated physical discomfort or distress.

[56 FR 20345, May 3, 1991, as amended at 59 FR 33417, June 29, 1994]

### § 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.

[56 FR 20345, May 3, 1991]

## APPENDIX A TO SUBPART I OF PART 550—SCHEDULE OF PAY DIFFERENTIALS AUTHORIZED FOR HAZARDOUS DUTY UNDER SUBPART I

HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)

| Duty | Rate of hazard pay differential (percent) | Effective date |
|---|---|---|
| Exposure to Hazardous Weather or Terrain: | | |
| (1) *Work in rough and remote terrain.* When working on cliffs, narrow ledges, or near vertical mountainous slopes where a loss of footing would result in serious injury or death, or when working in areas where there is danger of rock falls or avalanches. | 25 | First pay period beginning after July 1, 1969. |
| (2) *Traveling under hazardous conditions.* (a) When travel over secondary or unimproved roads to isolated mountain top installations is required at night, or under adverse weather conditions (such as snow, rain, or fog) which limits visibility to less than 30 meters (100 feet), when there is danger of rock, mud, or snow slides. | 25 | Do. |
| (b) When travel in the wintertime, either on foot or by means of vehicle, over secondary or unimproved roads or snow trails, in sparsely settled or isolated areas to isolated installations is required when there is danger of avalanches, or during "whiteout" phenomenon which limits visibility to less than 3 meters (10 feet). | 25 | Do. |

HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)

| Duty | Rate of hazard pay differential (percent) | Effective date |
|---|---|---|
| (c) When work or travel in sparsely settled or isolated areas results in exposure to temperatures and/or wind velocity shown to be of considerable danger, or very great danger, on the windchill chart (appendix A–1), and shelter (other than temporary shelter) or assistance is not readily available. | 25 | Do. |
| (3) *Snow or ice removal operations.* When participating in snowplowing or snow or ice removal operations, regardless of whether on primary, secondary or other class of roads, when (a) there is danger of avalanche, or (b) there is danger of missing the road and falling down steep mountainous slopes because of lack of snow stakes, ''white-out'' conditions, or sloping ice-pack covering the snow. | 25 | Do. |
| (4) *Water search and rescue operations.* Participating as a member of a water search and rescue team in adverse weather conditions when winds are blowing at 56 km/h (35 m.p.h.) (classified as gale winds) or in water search and rescue operations conducted at night. | 25 | Do. |
| (5) *Travel on Lake Pontchartrain.* (a) When embarking, disembarking or traveling in small craft (boat) on Lake Pontchartrain when wind direction is from north, northeast, or northwest, and wind velocity is over 7.7 meters per second (15 knots); or. | 25 | Do. |
| (b) When travelling in small crafts, where craft is not radar equipped, on Lake Pontchartrain is necessary due to emergency or unavoidable conditions and the trip is made in a dense fog under fog run procedures. | 25 | Do. |
| (6) *Hazardous boarding or leaving of vessels.* When duties (a), (b), or (c) are performed under adverse conditions of foul weather, ice, or night and when the sea state is high (0.9 meter (3 feet) and above): | | |
| (a) Boarding or leaving vessels at sea or standing offshore during lightering or personnel transfer operations. | 25 | First pay period beginning after May 7, 1970. |
| (b) Boarding, leaving, or transferring equipment between small boats or rafts and steep, rocky, or coral surrounded shorelines. | | |
| (c) Transferring equipment between a small boat and rudimentary dock by improvised or temporary facility such as an unfastened plank leading from boat to dock. | | |
| (7) *Small craft tests under unsafe sea conditions.* Conducting craft tests to determine the seakeeping characteristics of small craft in a seaway when U.S. storm warnings normally indicate unsafe seas for a particular size craft. | 25 | First pay period beginning on or after Sept. 28, 1972. |
| (8) *Working on a drifting sea ice floe.* When the job requires that the work be performed out on sea ice, e.g., installing scientific instruments and making observations for research purposes. | 25 | First pay period beginning after March 16, 1973. |
| Exposure to Physiological Hazards: | | |
| (1) *Pressurechamber subject.* (a) Participating as a subject in diving research tests which seek to establish limits for safe pressure profiles by working in a pressure chamber simulating diving or, as an observer to the test or as a technician assembling underwater mock-up components for the test, when the observer or technician is exposed to high pressure gas piping systems, gas cylinders, and pumping devices which are susceptible to explosive ruptures. | 25 | Do. |
| (b) *Working in pressurized sonar domes.* Performing checkout of sonar system after sonar dome has been pressurized. This may include such duties as changing transducer elements, setting of transducer turntables, checking of cables, piping, valves, circuits, underwater telephone, and pressurization plugs. | 8 | First pay period beginning after Feb. 16, 1975. |
| (c) Working in nonpressurized sonar domes that are a part of an underwater system. Performing certification pretrial inspections, involving such duties as calibrating, adjusting, and photographing equipment, in limited space and with limited egress. | 4 | First pay period beginning after Feb. 16, 1975. |
| (2) *Simulated altitude chamber subjects. Observers.* Participating in simulated altitude studies ranging from 5500 to 45,700 meters (18,000 to 150,000 feet) either as subject or as observer exposed to the same conditions as the subject. | 25 | Do. |
| (3) *Centrifuge subjects.* Participating as subject in centrifuge studies involving elevated G forces above the level of 49 meters per second$^2$ (5 G's) whether or not at reduced atmospheric pressure. | 25 | Do. |
| (4) *Rotational flight simulator subject.* Participating as a subject in a Rotational Flight Simulator in studies involving continuous rotation in one axis through 360° or in a combination of any axes through 360° at rotation rates greater than 15 r.p.m. for periods exceeding three minutes. | 25 | First pay period beginning after July 1, 1969. |
| Hot Work—Working in confined spaces wherein the employee is subject to temperatures in excess of 43 °C (110 °F). | 4 | First pay period beginning after Feb. 16, 1975. |
| (5) *Environmental thermal-chamber tests:* Subjects and observers exposed to the hazards and physical hardships of an environmental chamber-thermal test which simulates adverse weather or sea conditions such as the exposure to subzero temperatures; high heat and humidiity; and cold water, spray, wind, and wave action. | 25 | May 4, 1988. |
| (6) *Working at high altitudes.* Performing work at a land-based worksite more than 3900 meters (12,795 feet) in altitude, provided the employee is required to commute to the worksite on the same day from a substantially lower altitude under circumstances in which the rapid change in altitude may result in acclimation problems.. | 8 | January 11, 1999. |

HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)

| Duty | Rate of hazard pay differential (percent) | Effective date |
|---|---|---|
| Exposure to Hazardous Agents, work with or in close proximity to: | | |
| (1) *Explosive or incendiary materials.* Explosive or incendiary materials which are unstable and highly sensitive. | 25 | First pay period beginning after July 1, 1969. |
| (2) *At-sea shock and vibration tests.* Arming explosive charges and/or working with, or in close proximity to, explosive armed charges in connection with at-sea shock and vibration tests of naval vessels, machinery, equipment and supplies. | 25 | Do. |
| (3) *Toxic chemical materials.* Toxic chemical materials when there is a possibility of leakage or spillage. | 25 | Do. |
| (4) *Fire retardant materials tests.* Conducting tests on fire retardant materials when the tests are performed in ventilation restricted rooms where the atmosphere is continuously contaminated by obnoxious odors and smoke which causes irritation to the eyes and respiratory tract. | 25 | Do. |
| (5) *Virulent biologicals.* Materials of micro-organic nature which when introduced into the body are likely to cause serious disease or fatality and for which protective devices do not afford complete protection. | 25 | Do. |
| (6) Asbestos. Significant risk of exposure to airborne concentrations of asbestos fibers in excess of the permissible exposure limits (PELS) in the standard for asbestos provided in title 29, Code of Federal Regulations, §§ 1910.1001 or 1926.58, when the risk of exposure is directly connected with the performance of assigned duties. Regulatory changes in § 1910.1001 or 1926.58 are hereby incorporated in and made a part of this category, effective on the first day of the first pay period beginning on or after the effective date of the changes. | 8 | June 8, 1993 |
| Participating in Liquid Missile Propulsion Tests and Certain Solid Propulsion Operations: | | |
| (1) *Tanking and detanking.* Tanking or detanking operations of a missile or the test stand ''run'' bottles with liquid propellants. | 25 | First pay period beginning after July 1, 1969. |
| (2) *Hoisting a tanked missile.* Hoisting a tanked missile or a solid propellant propulsion system into and/or over the test stand. | 25 | Do. |
| (3) *Pressure tests.* Pressure tests on loaded missiles, missile tanks, or run bottles during prefire preparations. | 25 | Do. |
| (4) *Test stand tests.* Test stand operations on loaded missiles under environmental conditions where the high or low temperatures could cause a failure of a critical component. | 25 | Do. |
| (5) *Disassembly and breakdown.* Disassembly and breakdown of a contaminated missile system or test stand plumbing after test. | 25 | Do. |
| (6) *''Go'' condition test stand work.* Working on any test stand above the 15-meter (50-foot) level or any stand work while the system is in a ''go'' condition. | 25 | Do. |
| (7) *Arming and dearming propulsion systems.* Arming, dearming or the installation and/or removal of any squib, explosive device, or a component thereof connected to, or part of, any live or potentially expended liquid or solid propulsion system. | 25 | Do. |
| (8) *Demolition and destruct tests.* Demolition, hazards classification, or destruct type tests where the specimen is nonstandard and/or unproven and the test techniques do not conform to standard or proven procedures. | 25 | Do. |
| Work in Fuel Storage Tanks: | | |
| When inspecting, cleaning or repairing fuel storage tanks where there is no ready access to an exit, under conditions requiring a breathing apparatus because all or part of the oxygen in the atmosphere has been displaced by toxic vapors or gas, and failure of the breathing apparatus would result in serious injury or death within the time required to leave the tank. | 25 | Do. |
| Firefighting: | | |
| (1) *Forest and range fires.* Participating as a member of a firefighting crew in fighting forest and range fires on the fireline. | 25 | Do. |
| (2) *Equipment, installation, or building fires.* Participating as an emergency member of a firefighting crew in fighting fires of equipment, installations, or buildings. | 25 | Do. |
| (3) *In-water under-pier firefighting operations.* Participating in in-water under-pier firefighting operations (involving hazards beyond those normally encountered in firefighting on land, e.g., strong currents, cold water temperature, etc.). | 25 | Do. |
| Work in Open Trenches: | | |
| Work in an open trench 4.6 meters (15 feet) or more deep until proper shoring has been installed. | 25 | Do. |
| Underground Work: | | |
| Work underground performed in the construction of tunnels and shafts, and the inspection of such underground construction, until the necessary lining of the shaft or tunnel has eliminated the hazard. | 25 | Do. |

HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)

| Duty | Rate of hazard pay differential (percent) | Effective date |
|---|---|---|
| Underwater Duty: | | |
| (1) *Submerged submarine or deep research vehicle.* Duty aboard a submarine or deep research vehicle when it submerges. | 25 | Do. |
| (2) *Diving.* Diving, including SCUBA (self-contained underwater breathing apparatus) diving, required in scientific and engineering pursuits, or search and rescue operations, when:<br>(a) at a depth of 6 meters (20 feet) or more below the surface; or,<br>(b) visibility is restricted; or,<br>(c) in rapidly flowing or cold water; or,<br>(d) vertical access to the surface is restricted by ice, rock, or other structure; or,<br>(e) testing or working with hardware which presents special hazards (such as work with high voltage equipment or work with underwater mockup components in an underwater space simulation study). | 25 | Do. |
| Sea Duty Aboard Deep Research Vessels: | | |
| Participating in sea duty wherein the team member is engaged in handling equipment on or over the side of the vessel when the sea-state is high (6.2 meter-per-second winds (12-knot winds) and 0.9-meter waves (3-foot waves) and the work is done on deck in relatively unprotected areas. | 25 | Do. |
| Collection of Aircraft Approach and Landing Environmental Data: | | |
| When operating or monitoring camera equipment adjacent to flight deck in the area of maximum hazard during landing sequence while conducting photographic surveys aboard aircraft carriers during periods of heavy aircraft operations. | 25 | First pay period beginning after July 1, 1969. |
| Experimental Landing/Recovery Equipment Tests: | | |
| Participating in tests of experimental or prototype landing and recovery equipment where personnel are required to serve as test subjects in spacecraft being dropped into the sea or laboratory tanks. | 25 | Do. |
| Land Impact or Pad Abort of Space Vehicle: | | |
| Actual participating in dearming and safing explosive ordinance, toxic propellant and high pressure vessels on vehicles that have land impacted or on vehicles on the launch pad that have reached a point in the countdown where no remote means are available for returning the vehicle to a safe condition. | 25 | Do. |
| Height Work: | | |
| Working on any structure of at least 15 meters (50 feet) above the base level, ground, deck, floor, roof, etc., under open conditions, if the structure is unstable or if scaffolding guards or other suitable protective facilities are not used, or if performed under adverse conditions such as snow, sleet, ice on walking surfaces, darkness, lightning, steady rain, or high wind velocity. | 25 | Do. |
| Flying, participating in: | | |
| (1) *Pilot proficiency training.* Flights for pilot proficiency training in aircraft new to the pilot under simulated emergency conditions which parallel conditions encountered in performing flight tests. | 25 | Do. |
| (2) *Delivery of new aircraft for flight testing.* Flights to deliver aircraft which has been prepared for one-time flight without being test flown prior to delivery flight. | 25 | Do. |
| (3) *Test flights of new modified, or repaired aircraft.* Test flights of a new or repaired aircraft or modified aircraft when the modification may affect the flight characteristics of the aircraft. | 25 | Do. |
| (4) *Reduced gravity—parabolic arc flights—subjects/observers.* Reduced gravity flight testing in an aircraft flying a parabolic flight path and providing a testing environment ranging from weightlessness up through + 20 meters per second$^2$ (+ 2 gravity conditions). | 25 | Do. |
| (5) *Launch and recovery.* Test flights involving launch and recovery aboard an aircraft carrier. | 25 | Do. |
| (6) *Limited control flights.* Flights undertaken under unusual and adverse conditions (such as extreme weather, maximum load or overload, limited visibility, extreme turbulence, or low level flights involving fixed or tactical patterns) which threaten or severely limit control of the aircraft. | 25 | Do. |
| (7) *Flight tests of expandable aircraft tires.* Landing to test aircraft tires designed to deflate upon retraction, undertaken to appraise the normal deflate-reinflate cycle and also to evaluate the capability to make a satisfactory landing with the tires deflated. | 25 | Do. |
| (8) *Landing and taking-off in polar areas.* Landing in polar areas on unprepared snow or ice surfaces and/or taking-off under the same conditions. | 25 | Do. |
| Experimental Parachute Jumps: | | |
| Participating as a jumper in field exercises to test and evaluate new types of jumping equipment and/or jumping techniques. | 25 | Do. |

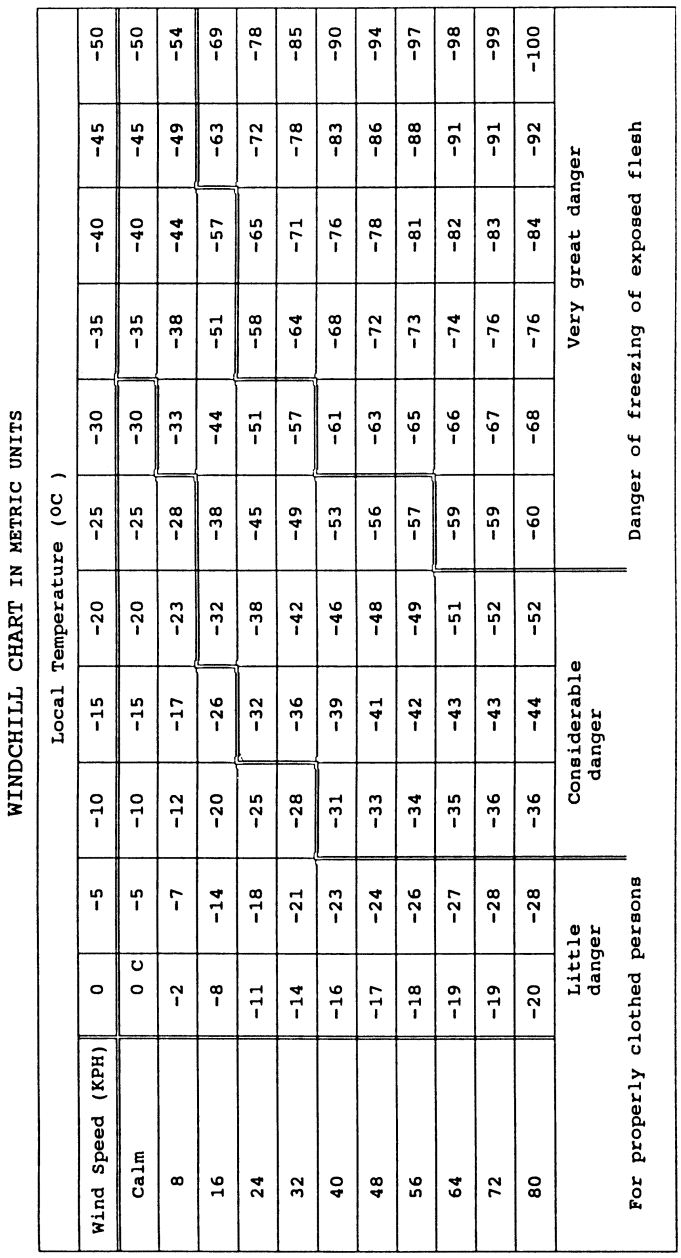
HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)

| Duty | Rate of hazard pay differential (percent) | Effective date |
|---|---|---|
| Ground Work Beneath Hovering Helicopter: | | |
| Participating in ground operations to attach external load to helicopter hovering just overhead. | 25 | Do. |
| *Sling-suspended transfers.* When performance of duties requires transfer from a helicopter to a ship via a sling on the end of a steel cable or from a ship to another ship via a chair harness hanging from a highline between the ships when both vessels are underway. | 25 | First pay period beginning after Oct. 11, 1969. |
| *Carrier suitability trials aboard aircraft carriers.* Participating in carrier suitability trials aboard aircraft carriers when work is performed on the flight deck during launch, recovery, and refueling operations. | 25 | Do. |
| *Cargo handling during lightering operations.* Off-loading of cargo and supplies from surface ships to Landing Craft—Medium (LCM) boats involving exposure not only to falling cargo but such other hazards as shifting cargo within the LCM, swinging cargo hooks, and possibility of falling between the LCM and cargo vessel. | 25 | Do. |
| Work in unsafe structures: Working within or immediately adjacent to a building or structure which has been severely damaged by earthquake, fire, tornado, flood, or similar cause, when the structure has been declared unsafe by competent technical authority, and when such work is considered necessary for the safety of personnel or recovery of valuable materials or equipment, and the work is authorized by competent authority. | 25 | First pay period beginning on or after Apr. 11, 1976. |
| Tropical Jungle Duty: Work outdoors in undeveloped jungle regions outside the continental United States. Work must involve both of the following:<br>(1) An unusual degree of physical hardship caused by high heat, humidity, or other inclement conditions; and<br>(2) An unusual danger of serious injury or illness due to:<br>(a) Travel on unimproved roads or rudimentary trails in rugged terrain (e.g., walking on narrow trails in steep mountainous areas, fording deep, fast-moving rivers, and crossing deep crevasses via log or other unsafe means);<br>(b) Immediate presence of dangerous wildlife (e.g., venomous snakes, poisonous insects, and large carnivores); or<br>(c) Known exposure to serious disease for which adequate protection cannot be provided. | 25 | June 14, 1989. |

(5 U.S.C. 5595; E.O. 11257, 3 CFR 1964–1965 Comp., p. 357)

[34 FR 11083, July 1, 1969; 34 FR 12623, Aug. 2, 1969, as amended at 34 FR 15747, Oct. 11, 1969; 35 FR 7172, May 7, 1970; 37 FR 20248, Sept. 28, 1972; 39 FR 7115, Mar. 16, 1973; 40 FR 7437, Feb. 20, 1975; 41 FR 12635, Mar. 26, 1976; 41 FR 14165, Apr. 2, 1976; 53 FR 36557, Sept. 21, 1988; 54 FR 8267, Feb. 28, 1989; 54 FR 25224, June 14, 1989 and 55 FR 1354, Jan. 14, 1990; 56 FR 20345, May 3, 1991; 58 FR 32050, June 8, 1993; 58 FR 32276, June 9, 1993; 64 FR 1502, Jan. 11, 1999]

APPENDIX A–1 TO SUBPART I OF PART 550—WINDCHILL CHART



WINDCHILL CHART IN METRIC UNITS

| Wind Speed (KPH) | Local Temperature (OC ) | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 0 | -5 | -10 | -15 | -20 | -25 | -30 | -35 | -40 | -45 | -50 |
| Calm | 0 C | -5 | -10 | -15 | -20 | -25 | -30 | -35 | -40 | -45 | -50 |
| 8 | -2 | -7 | -12 | -17 | -23 | -28 | -33 | -38 | -44 | -49 | -54 |
| 16 | -8 | -14 | -20 | -26 | -32 | -38 | -44 | -51 | -57 | -63 | -69 |
| 24 | -11 | -18 | -25 | -32 | -38 | -45 | -51 | -58 | -65 | -72 | -78 |
| 32 | -14 | -21 | -28 | -36 | -42 | -49 | -57 | -64 | -71 | -78 | -85 |
| 40 | -16 | -23 | -31 | -39 | -46 | -53 | -61 | -68 | -76 | -83 | -90 |
| 48 | -17 | -24 | -33 | -41 | -48 | -56 | -63 | -72 | -78 | -86 | -94 |
| 56 | -18 | -26 | -34 | -42 | -49 | -57 | -65 | -73 | -81 | -88 | -97 |
| 64 | -19 | -27 | -35 | -43 | -51 | -59 | -66 | -74 | -82 | -91 | -98 |
| 72 | -19 | -28 | -36 | -43 | -52 | -59 | -67 | -76 | -83 | -91 | -99 |
| 80 | -20 | -28 | -36 | -44 | -52 | -60 | -68 | -76 | -84 | -92 | -100 |

Little danger

Considerable danger

Very great danger

For properly clothed persons

Danger of freezing of exposed flesh

WINDCHILL CHART IN NON-METRIC UNITS

APPENDIX A–1—WINDCHILL CHART

| WINDCHILL CHART | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Local Temperature (°F) | | | | | | | | | | |
| Wind Speed (MPH) | 32 | 23 | 14 | 5 | -4 | -13 | -22 | -31 | -40 | -49 | -58 |
| | | | | | | | | | | | |
| Calm | 32 | 23 | 14 | 5 | -4 | -13 | -22 | -31 | -40 | -49 | -58 |
| 5 | 29 | 20 | 10 | 1 | -9 | -18 | -28 | -37 | -47 | -56 | -65 |
| 10 | 18 | 7 | -4 | -15 | -26 | -37 | -48 | -59 | -70 | -81 | -92 |
| 15 | 13 | -1 | -13 | -25 | -37 | -49 | -61 | -73 | -85 | -97 | -109 |
| 20 | 7 | -6 | -19 | -32 | -44 | -57 | -70 | -83 | -96 | -109 | -121 |
| 25 | 3 | -10 | -24 | -37 | -50 | -64 | -77 | -90 | -104 | -117 | -130 |
| 30 | 1 | -13 | -27 | -41 | -54 | -68 | -82 | -97 | -109 | -123 | -137 |
| 35 | -1 | -15 | -29 | -43 | -57 | -71 | -85 | -99 | -113 | -127 | -142 |
| 40 | -3 | -17 | -31 | -45 | -59 | -74 | -87 | -102 | -116 | -131 | -145 |
| 45 | -3 | -18 | -32 | -46 | -61 | -75 | -89 | -104 | -118 | -132 | -147 |
| 50 | -4 | -18 | -33 | -47 | -62 | -76 | -91 | -105 | -120 | -134 | -148 |
| For Properly Clothed Persons | Little Danger | | Considerable Danger | | | Very Great Danger | | | | | |
| Danger From Freezing of Exposed Flesh | | | | | | | | | | | |

[33 FR 12458, Sept. 4, 1968, as amended at 58 FR 32277, June 9, 1993]

## Subpart J—Compensatory Time Off for Religious Observances

AUTHORITY: 5 U.S.C. 5550a.

SOURCE: 84 FR 17939, Apr. 29, 2019, unless otherwise noted.

### § 550.1001 Purpose.

This subpart implements 5 U.S.C. 5550a, which permits an employee whose personal religious beliefs require the abstention from work during certain periods of time to elect to engage in overtime work and earn a special form of compensatory time off to make up for the time lost in meeting those personal religious requirements. Religious compensatory time off differs from other forms of compensatory time off in that the sole purpose is to adjust an employee's work schedule to accommodate a religious observance. The employee earns religious compensatory time off by spending an equal amount of time in overtime work before and/or after taking time from the employee's scheduled tour of duty to meet personal religious requirements. Hours worked to earn religious compensatory time off provide a time off credit in lieu of any pay that would otherwise be payable for that work.

### § 550.1002 Coverage.

This subpart applies to each employee (as defined in 5 U.S.C. 2105) in or under an Executive agency (as defined in 5 U.S.C. 105) who has a scheduled tour of duty. The definition of ''employee'' in section 5541(2) does not apply to this subpart.

### § 550.1003 Definitions.

In this subpart:

*Overtime work* means work performed by an employee outside his or her scheduled tour of duty for the purpose

of making up time lost for meeting personal religious requirements, as such term is explained in the definition of ''religious compensatory time off'' in this section. It is also deemed to include work performed by a part-time employee outside of his or her scheduled tour of duty, even if that work is below applicable overtime thresholds (e.g., below 40 hours in a week), and work an employee performs during holiday hours (within the employee's scheduled tour of duty) during which the employee would otherwise be excused from duty.

*Rate of basic pay* means the rate of pay fixed by law or administrative action for the position held by an employee, including any special rate under 5 CFR part 530, subpart C; locality rate under 5 CFR part 531, subpart F; retained rate under 5 CFR part 536; or similar rate under other legal authority, before any deductions and excluding additional pay of any other kind. For example, a *rate of basic pay* does not include additional pay such as night shift differentials under 5 U.S.C. 5343(f) or environmental differentials under 5 U.S.C. 5343(c)(4).

*Religious compensatory time off* means compensatory time off, as authorized by 5 U.S.C. 5550a, under which an employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to perform overtime work in order to make up for time the employee takes off to meet those personal religious requirements. Those requirements need not be officially mandated by a religious organization to which the employee belongs. It is sufficient that the employee's personal religious beliefs cause the employee to feel an obligation that he or she should be absent from work for a religious purpose. An employee approved to perform overtime work under this subpart will be granted an equal amount of compensatory time off from his or her scheduled tour of duty (in lieu of overtime pay or other pay otherwise payable) to meet his or her personal religious obligations.

*Scheduled tour of duty* means the regular work hours in an established full-time or part-time work schedule during which the employee is charged leave or time off when absent.

### § 550.1004 Employee responsibilities.

(a) An employee is required to provide his or her supervisor with a request for religious compensatory time off in advance of the religious observance by following the agency's procedures established in accordance with §§ 550.1005 and 550.1006.

(b) At the time the religious compensatory time off is requested, the employee must provide the agency with the following information:

(1) The name and/or description of the religious observance that is the basis of the employee's request to be absent from work in order to meet the employee's personal religious requirements;

(2) The date(s) and time(s) the employee plans to be absent to participate in the religious observances identified in paragraph (b)(1) of this section; and

(3) The date(s) and time(s) the employee plans to perform overtime work to earn religious compensatory time off to make up for the absence.

(c) An employee must comply with the agency's procedures for requesting religious compensatory time off, including any time limitations prescribed under § 550.1006.

(d) In the event that an adjustment to the dates and times of planned overtime work is required due to unforeseen circumstances, the employee must submit for approval a revised schedule to reflect those changes.

### § 550.1005 Agency responsibilities.

(a) An agency may require an employee to submit his or her request to use religious compensatory time off with all the information specified in § 550.1004(b) in a manner that is administratively acceptable to the agency. To the maximum extent practicable, the agency must require that the request be in writing (including electronic communications). If the agency accepts an oral request, the agency must document all the information specified in § 550.1004(b) and must require the employee to submit a written document containing all the information as soon as practicable. An agency may require an employee to submit a

request to use religious compensatory time off sufficiently in advance to accommodate necessary scheduling changes without interfering with the agency's ability to efficiently carry out its mission.

(b) An agency must approve an employee's request to use religious compensatory time off unless the agency determines that approving the request would interfere with the agency's ability to efficiently carry out its mission. If the employee's request to use religious compensatory time off is denied, the agency must provide a written explanation as to the reason the request has been denied, regardless of whether the employee's request was written or oral.

(c) The agency must provide the employee with an opportunity to earn religious compensatory time off before the deadline established in § 550.1006(c), although the specific timing of when an employee will be allowed to earn religious compensatory time off by performing overtime work is a matter of agency discretion based on the needs of the agency.

### § 550.1006 Scheduling time to earn and use religious compensatory time off.

(a) The scheduling of time to earn and use religious compensatory time off by an employee is subject to the agency's approval as provided in § 550.1005.

(b) For an employee who earns religious compensatory time off prior to using it, religious compensatory time off may be earned up to 13 pay periods in advance of the pay period in which the targeted religious observance commences and must be linked to specific dates and times for future use, as compatible with agency mission requirements.

(c)(1) An employee who uses religious compensatory time off prior to earning it must fulfill his or her obligation to perform overtime work in exchange for the advanced religious compensatory time off within 13 pay periods after the pay period in which he or she used religious compensatory time off, or the agency must take action as provided in paragraph (c)(3) of this section.

(2) The 13 pay periods described in paragraph (c)(1) of this section are calculated beginning with the first pay period beginning after the date on which the religious compensatory time off was used.

(3) If the employee fails to earn religious compensatory time off within 13 pay periods after taking religious compensatory time off, the agency may take corrective action to eliminate or reduce the negative balance by making a corresponding reduction in the employee's balance of annual leave, credit hours, compensatory time off in lieu of regular overtime pay, compensatory time off for travel, or time-off awards. An agency may determine the order of precedence for applying the various types of paid time off to offset the negative balance. Any negative balance of religious compensatory time off remaining after any charging of these types of paid time off must be resolved by charging the employee leave without pay, which would result in an indebtedness that is subject to the agency's internal debt collection procedures.

### § 550.1007 Accumulation and documentation.

(a) Agencies must keep records of the name and/or description of the religious observance, and the dates, times, and amount of religious compensatory time off each employee earns and uses. An agency must credit religious compensatory time off for work performed on a time-for-time basis, under its time and attendance procedures.

(b) Except as provided in paragraph (c) of this section, an employee may accumulate only the amount of religious compensatory time off needed to cover an approved absence for a religious observance that has already occurred or to cover an approved absence for a future religious observance. An employee may only accumulate the amount of religious compensatory time off needed to cover the specific dates and times for which the employee has submitted a request for religious compensatory time off under § 550.1004.

(c) If the employee does not use his or her earned religious compensatory time off as planned—

(1) The positive balance of unused compensatory time off may be redirected toward a future religious observance that has been approved, even if that future observance is more than 13 pay periods after the compensatory time off was originally earned (notwithstanding § 550.1006(b)); and

(2) The employee may not earn any additional religious compensatory time off until the retained amount of religious compensatory time off has been used or the need to earn additional religious compensatory time off has been properly established and documented.

(d) Accumulated religious compensatory time off that is not used as planned is not subject to time limits for usage. Unused religious compensatory time off hours remain to the employee's credit until used (subject to the agency's approval under § 550.1005), or the employee's separation or transfer (subject to § 550.1008), as applicable.

### § 550.1008 Employee separation or transfer.

(a) Upon an employee's separation from Federal service or transfer to another Federal agency, the losing agency must compensate the employee for any positive balance of earned religious compensatory time off to his or her credit. The agency must pay the employee for hours of earned religious compensatory time off at the hourly rate of basic pay in effect at the time religious compensatory time off was earned.

(b) For an employee who has a negative balance of religious compensatory time off upon an employee's separation from Federal service or transfer to another Federal agency, the losing agency may take corrective action to eliminate or reduce the negative balance by making a corresponding reduction in the employee's balance of annual leave, earned credit hours, compensatory time off in lieu of regular overtime pay, compensatory time off for travel, or time-off awards. An agency may determine the order of precedence for applying the various types of paid time off to offset the negative balance. Any negative balance of religious compensatory time off remaining after any charging of these types of paid time off must be resolved by charging the employee leave without pay, which would result in an indebtedness that is subject to the agency's internal debt collection procedures.

(c) For purposes of applying paragraphs (a) and (b) of this section, an hourly rate of basic pay is computed by dividing the annual rate of basic pay by 2,087 hours (or 2,756 hours for firefighter hours subject to that divisor under subpart F of this part).

### § 550.1009 Relationship to premium pay and overtime work.

The premium pay provisions for overtime work in subpart A of this part and section 7 of the Fair Labor Standards Act of 1938, as amended (FLSA), do not apply to overtime work performed by an employee that is used to earn religious compensatory time off under this subpart. The overtime hours worked to earn religious compensatory time off under this subpart do not create an entitlement to premium pay (including overtime pay) under subpart A of this part or FLSA overtime pay under 5 CFR part 551. Religious compensatory time off is not considered in applying the premium pay limitations described in §§ 550.105, 550.106, and 550.107.

### § 550.1010 Transitional provisions.

(a) This section applies only with respect to employees who as of May 29, 2019 had a positive balance of earned but unused religious compensatory time off hours or a negative balance (*i.e.*, a debt) of used religious compensatory time off hours not yet repaid by earned hours.

(b) If an employee described in paragraph (a) of this section has a negative balance (*i.e.*, a debt) of used but not-yet-earned religious compensatory time off hours as of the date specified in paragraph (a) of this section, the 13 pay period limitation in § 550.1006(c) is applied as if such date were the date on which the hours of religious compensatory time off were used.

(c) If an employee described in paragraph (a) of this section has a positive balance of earned but unused religious compensatory time off hours as of the date specified in paragraph (a) of this section, the agency must confirm and document that the hours are connected

to one or more specific religious observances requiring the employee's absence from work in order to meet the employee's personal religious requirements. The agency must give the employee an opportunity to direct all unused hours to such a future religious observance. If the employee does not so direct all of those unused hours, the employee may not earn any additional religious compensatory time off hours until the employee establishes a need to earn such time off hours.

## Subpart K—Collection by Offset From Indebted Government Employees

AUTHORITY: 5 U.S.C. 5514; sec. 8(1) of E.O. 11609; redesignated in sec. 2–1 of E.O. 12107.

SOURCE: 49 FR 27472, July 3, 1984, unless otherwise noted.

### § 550.1101 Purpose.

This subpart provides the standards to be used by Federal agencies to prepare regulations implementing 5 U.S.C. 5514 and by OPM to review and approve such agency regulations, and establishes procedural guidelines to recover debts from the current pay account of an employee when the employee's creditor and paying agencies are not the same.

### § 550.1102 Scope.

(a) *Coverage.* This subpart applies to agencies and employees defined by § 550.1103.

(b) *Applicability.* This subpart and 5 U.S.C. 5514 apply in recovering certain debts by administrative offset, except where the employee consents to the recovery, from the current pay account of the employee. Because salary offset is a type of administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and these regulations should be consistent with the provisions of the Federal Claims Collections Standards (FCCS) (dealing with administrative offset generally) and 31 CFR part 285 (dealing with centralized administrative offset under 31 U.S.C. 3716). Section 550.1108 addresses the use of centralized administrative offset procedures to effect salary offset. Generally, the procedures under § 550.1109 should apply only when centralized administrative offset cannot be accomplished.

(1) *Excluded debts.* The procedures contained in this subpart do not apply to—

(i) Debts arising under the Internal Revenue Code (26 U.S.C. 1 *et seq.*);

(ii) Debts arising under the tariff laws of the United States;

(iii) Any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108); or

(iv) Any other debt excluded by the FCCS or 31 CFR part 285.

(2) *Waiver requests.* This subpart does not preclude an employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt, in the manner prescribed by the head of the responsible agency. Similarly, this subpart does not preclude an employee from requesting waiver of the collection of a debt under any other applicable statutory authority.

(3) *Compromise, suspension, or termination of collection actions.* This subpart does not preclude the compromise, suspension, or termination of collection actions, where appropriate, as provided in the FCCS (31 CFR 900.4) or the use of alternative dispute resolution methods if they are not inconsistent with agency-specific laws and regulations.

[49 FR 27472, July 3, 1984, as amended at 63 FR 72099, Dec. 31, 1998; 79 FR 530, Jan. 6, 2014]

### § 550.1103 Definitions.

For purposes of this subpart—

*Agency* means an executive department or agency; a military department; the United States Postal Service; the Postal Regulatory Commission; any nonappropriated fund instrumentality described in 5 U.S.C. 2105(c); the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government corporation. If an

agency under this definition is a component of an agency, the broader definition of *agency* may be used in applying the provisions of 5 U.S.C. 5514(b) (concerning the authority to prescribe regulations).

*Creditor Agency* means the agency to which the debt is owed, including a debt collection center when acting in behalf of a creditor agency in matters pertaining to the collection of a debt (as provided in § 550.1110).

*Debt* means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

*Debt collection center* means the Department of the Treasury or other Government agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

*Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with parts 581 and 582 of this chapter). Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (title 26, United States Code) and deductions described in § 581.105(b) through (f) of this chapter.

*Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

*FCCS* means the Federal Claims Collections Standards published in 31 CFR parts 900 through 904.

*Paying agency* means the agency employing the individual and authorizing the payment of his or her current pay.

*Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

*Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

[49 FR 27472, July 3, 1984, as amended at 51 FR 16670, May 6, 1986; 63 FR 72100, Dec. 31, 1998; 74 FR 23938, May 22, 2009; 79 FR 530, Jan. 6, 2014]

### § 550.1104 Agency regulations.

Under this subpart and 5 U.S.C. 5514, each creditor agency must issue regulations, subject to approval by the Office of Personnel Management (OPM), governing the collection of a debt by salary offset. Each agency is responsible for assuring that the regulations governing collection of internal debts are uniformly and consistently applied to all its employees. Agency regulations issued under authority of 5 U.S.C. 5514 must contain the following minimum provisions:

(a) *Applicability or scope.* Indicate whether regulations cover internal or Government-wide collections under 5 U.S.C. 5514, or both.

(b) *Entitlement to notice, hearing, written responses and decisions.* Identify when the employee is entitled to notice, when hearings will be offered, when the employee is entitled to a response or decision after exercising his or her rights under § 5514 and this subpart, and if the hearing official's decision is not in the employee's favor or the employee chooses not to request a hearing, what other rights and remedies are available under the statutes or regulations governing the program that requires the collection to be made. Except as provided in paragraph (c) of this section, each employee from whom the creditor agency proposes to collect a debt under this subpart is entitled to receive from the creditor agency—

(1) A written notice as described in paragraph (d) of this section;

(2) The opportunity to petition for a hearing and, if a hearing is given, to receive a written decision from the official holding the hearing on the following issues:

(i) The determination of the creditor agency concerning the existence or amount of the debt; and

(ii) The repayment schedule, if it was not established by written agreement between the employee and the creditor agency.

(c) *Exception to entitlement to notice, hearing, written responses, and final decisions.* In regulations covering internal collections, an agency must except from the provisions of paragraph (b) of this section—

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over 4 pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the 4 pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(d) *Notification before deductions begin.* Provide for notification before deductions begin. Except as provided in paragraph (c) of this section, deductions under the authority of 5 U.S.C. 5514 must not be made unless the head of the creditor agency (or authorized designee) provides the employee a written notice at least 30 days before any deduction begins. (For debts outstanding more than 10 years on or before June 11, 2009, see also 31 CFR 285.7(d) for additional notification requirements.) The written notice must state at a minimum:

(1) The creditor agency's determination that a debt is owed, including the origin, nature, and amount of that debt;

(2) The creditor agency's intention to collect the debt by means of deduction from the employee's current disposable pay account;

(3) The frequency and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay except as provided in paragraph (i) of this section) and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

(4) An explanation of the creditor agency's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the FCCS as defined in § 550.1103;

(5) The employee's right to inspect and copy Government records relating to the debt or, if employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records;

(6) If not previously provided, the opportunity (under terms agreeable to the creditor agency) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the creditor agency; and documented in the creditor agency's files (see the FCCS);

(7) The employee's right to a hearing conducted by an official arranged by the creditor agency (an administrative law judge, or alternatively, a hearing official not under the control of the head of the agency) if a petition is filed as prescribed by the creditor agency;

(8) The method and time period for petitioning for a hearing;

(9) That the timely filing of a petition for hearing will stay the commencement of collection proceedings;

(10) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the

petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under chapter 75 of title 5, United States Code, part 752 of title 5, Code of Federal Regulations, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, §§ 3729–3731 of title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under §§ 286, 287, 1001, and 1002 of title 18, United States Code or any other applicable statutory authority.

(12) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(e) *Petitions for hearing.* (1) Prescribe the method and time period for petitioning for a hearing. Ordinarily, a hearing may be requested by filing a written petition addressed to the appropriate creditor agency official stating why the employee believes the determination of the creditor agency concerning the existence or amount of the debt is in error.

(2) The employee's petition or statement must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(f) *Petitions for hearing made after time expires.* Prescribe the action to be taken on a petition for hearing made after the expiration of the period provided in the notice described in paragraph (d) of this section. Ordinarily a creditor agency should accept requests if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the time limit (unless otherwise aware of it).

(g) *Form of hearings, written responses, and final decisions.* (1) Define the form and content of hearings, written responses, and written decisions to be provided when the employee exercises his or her rights under § 5514 and this subpart.

(2) The form and content of hearings granted under this subpart will depend on the nature of the transactions giving rise to the debts included within each debt collection program. Agencies should refer to the FCCS for information on hearing form and content.

(3) Written decisions provided after a request for hearing must, at a minimum, state the facts purported to evidence the nature and origin of the alleged debt; the hearing official's analysis, findings and conclusions, in light of the hearing, as to the employee's and/or creditor agency's grounds, the amount and validity of the alleged debt and, where applicable, the repayment schedule.

(h) *Method and source of deductions.* Identify the method and source of deductions. At a minimum, agency regulations must identify the method of collection as salary offset and the source of deductions as current disposable pay, except as provided in paragraphs (l) and (m) of this section.

(i) *Limitation on amount of deductions.* Prescribe the limitations on the amount of the deduction. Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay (see the FCCS at 31 CFR 901.8). However, the amount deducted for any period under this subpart may not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount or a higher deduction has been ordered by a court under section 124 of Public Law 97–276 (96 Stat.1195).

(j) *Duration of deductions.* Prescribe the duration of deductions under this subpart. Ordinarily, debts must be collected in one lump sum where possible. However, if the employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent

of disposable pay (or other applicable limitation as provided in paragraph (i) of this section) for an officially established pay interval, collection must be made in installments. Such installment deductions must be made over a period not greater than the anticipated period of active duty or employment, as the case may be, except as provided in paragraphs (1) and (m) of this section.

(k) *When deductions may begin.* Prescribe when deductions will be scheduled to begin in internal agency collections.

(l) *Liquidation from final check.* Provide for offset under 31 U.S.C. 3716, if the employee retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, from subsequent payments of any nature (e.g., final salary payment, lump-sum leave, etc.) due the employee from the paying agency as of the date of separation to the extent necessary to liquidate the debt.

(m) *Recovery from other payments due a separated employee* Provide for offset under 31 U.S.C. 3716 from later payments of any kind due the former employee from the United States, where appropriate, if the debt cannot be liquidated by offset from any final payment due the former employee as of the date of separation. (See the FCCS.)

(n) *Interest, penalties, and administrative costs.* Provide for the assessment of interest, penalties, and administrative costs on debts being collected under this subpart. These charges and the waiving of them must be prescribed in accordance with the FCCS.

(o) *Non-waiver of rights by payments.* Provide that an employee's involuntary payment, of all or any portion of a debt being collected under 5 U.S.C. 5514 must not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary.

(p) *Refunds.* (1) Provide for promptly refunding to the appropriate party, amounts paid or deducted under this subpart when—

(i) A debt is waived or otherwise found not owing to the United States (unless expressly prohibited by statute or regulation); or

(ii) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(2) Refunds do not bear interest unless required or permitted by law or contract.

[33 FR 12458, Sept. 4, 1968, as amended at 63 FR 72100, Dec. 31, 1998; 64 FR 69180, Dec. 10, 1999; 79 FR 530, Jan. 6, 2014]

### § 550.1105 Review and approval of agency regulations.

(a) *Initial OPM review of agency regulations.* (1) Creditor agencies must submit regulations to the Office of Personnel Management (OPM) for review in accordance with 5 U.S.C. 5514 and this subpart prior to publication of final regulations or prior to implementation, if intragency collection procedures are not published. Submissions must be for agency-wide and/or Government-wide collections.

(2) Creditor agency regulations must contain all provisions specified in § 550.1104. If agency regulations are incomplete, OPM will return them with information as to what must be done to obtain approval.

(b) *Proposed changes in salary offset regulations.* If a creditor agency proposes significant changes in the regulations covering provisions specified in § 550.1104, the proposed revisions must be submitted to OPM for review and approval prior to implementation.

(c) *Supplemental regulations.* When a creditor agency has issued approved regulations covering the provisions specified in § 550.1104, the agency may issue any supplemental regulations or instructions, consistent with its approved regulations, which are necessary for solely internal operations, without prior OPM approval.

### § 550.1106 Time limit on collection of debts.

Agencies may initiate salary offset to collect a debt without time limitations on any debt outstanding after the Government's right to collect the debt first accrued. (See § 550.1108 for requirement when debts are delinquent over 180 days.)

[79 FR 530, Jan. 6, 2014]

### § 550.1107 Obtaining the services of a hearing official.

(a) When the debtor does not work for the creditor agency and the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement, the creditor agency may contact an agent of the paying agency designated in appendix A of part 581 of this chapter to arrange for a hearing official, and the paying agency must then cooperate as provided by the FCCS as defined in § 550.1103 and provide a hearing official.

(b) When the debtor works for the creditor agency, the creditor agency may contact any agent (of another agency) designated in appendix A of part 581 of this chapter to arrange for a hearing official. Agencies must then cooperate as required by the FCCS and provide a hearing official.

(c) The determination of a hearing official designated under this section is considered to be an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. A creditor agency may make a certification to the Secretary of the Treasury under § 550.1108 or a paying agency under § 550.1109 regarding the existence and amount of the debt based on the certification of a hearing official. If a hearing official determines that a debt may not be collected via salary offset, but the creditor agency finds that the debt is still valid, the creditor agency may still seek collection of the debt through other means, such as offset of other Federal payments, litigation, etc.

[51 FR 16670, May 6, 1986, as amended at 63 FR 72100, Dec. 31, 1998]

### § 550.1108 Requesting recovery through centralized administrative offset.

Under 31 U.S.C. 3716, creditor agencies must notify the Secretary of the Treasury of all debts that are delinquent as defined in the FCCS (over 180 days) so that recovery may be made by centralized administrative offset. This includes those debts the agency seeks to recover from the pay account of an employee of another agency via salary offset. The Secretary of the Treasury and other Federal disbursing officials will match payments, including Federal salary payments, against these debts. Where a match occurs, and all the requirements for offset have been met, the payments will be offset to collect the debt. Prior to offset of the pay account of an employee, an agency must comply with the requirements of 5 U.S.C. 5514, this subpart, and agency regulations issued thereunder. Specific procedures for notifying the Secretary of the Treasury of a debt for purposes of collection by centralized administrative offset are contained in 31 CFR part 285 and the FCCS. At its discretion, a creditor agency may notify the Secretary of the Treasury of debts that have been delinquent for 180 days or less, including debts the agency seeks to recover from the pay account of an employee via salary offset.

[63 FR 72101, Dec. 31, 1998]

### § 550.1109 Requesting recovery when the current paying agency is not the creditor agency.

When possible, salary offset through the centralized administrative offset procedures in § 550.1108 should be attempted before applying the procedures in this section.

(a) *Responsibilities of creditor agency.* Upon completion of the procedures established by the creditor agency under 5 U.S.C. 5514, the creditor agency must do the following:

(1) The creditor agency must certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM.

(2) If the collection must be made in installments, the creditor agency also must advise the paying agency of the amount or percentage of disposable pay to be collected in each installment, and if the creditor agency wishes, the number and the commencing date of the installments (if a date other than the next officially established pay period is required).

(3) Unless the employee has consented to the salary offset in writing or

signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the paying agency, the creditor agency also must advise the paying agency of the action(s) taken under 5 U.S.C. 5514 and give the date(s) the action(s) was taken.

(4) Except as otherwise provided in this paragraph, the creditor agency must submit a debt claim containing the information specified in paragraphs (a) (1) through (3) of this section and an installment agreement (or other instruction on the payment schedule), if applicable, to the employee's paying agency.

(5) If the employee is in the process of separating, the creditor agency must submit its debt claim to the employee's paying agency for collection as provided in § 550.1104(1). The paying agency must certify the total amount of its collection and notify the creditor agency and the employee as provided in paragraph (c)(1) of this section. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the provisions of this section have been fully complied with. However, the creditor agency must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(6) If the employee is already separated and all payments due from his or her former paying agency have been paid, the creditor agency may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 *et seq.*), or other similar funds, be administratively offset to collect the debt. (See 31 U.S.C. 3716 and the FCCS.)

(b) *Responsibilities of paying agency*—(1) *Complete claim.* When the paying agency receives a properly certified debt claim from a creditor agency, deductions should be scheduled to begin prospectively at the next officially established pay interval. The employee must receive written notice that the paying agency has received a certified debt claim from the creditor agency (including the amount) and written notice of the date deductions from salary will commence and of the amount of such deductions.

(2) *Incomplete claim.* When the paying agency receives an incomplete debt claim from a creditor agency, the paying agency must return the debt claim with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) *Review.* The paying agency is not required or authorized to review the merits of the determination with respect to the amount or validity of the debt certified by the creditor agency.

(c) *Employees who transfer from one paying agency to another.* (1) If, after the creditor agency has submitted the debt claim to the employee's paying agency, the employee transfers to a position served by a different paying agency before the debt is collected in full, the paying agency from which the employee separates must certify the total amount of the collection made on the debt. One copy of the certification must be furnished to the employee, another to the creditor agency along with notice of the employee's transfer. However, the creditor agency must submit a properly certified claim to the new paying agency before collection can be resumed.

(2) When an employee transfers to another paying agency, the creditor agency need not repeat the due process procedures described by 5 U.S.C. 5514 and this subpart to resume the collection. However, the creditor agency is responsible for reviewing the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

[51 FR 21325, June 12, 1986. Redesignated and amended at 63 FR 72100, Dec. 31, 1998]

### § 550.1110 Debt collection centers.

A debt collection center may act in behalf of a creditor agency to collect claims via salary offset consistent with this section, subject to any limitations

on its authority established by the creditor agency it represents or by the U.S. Department of the Treasury.

(a) A debt collection center may be authorized to enter into a written agreement with the indebted employee regarding the repayment schedule or, in the absence of such agreement, to establish the terms of the repayment schedule.

(b) A debt collection center may make certifications to the Secretary of the Treasury under § 550.1108 or to a paying agency under § 550.1109 based on the certifications it has received from the creditor agency or a hearing official.

(c) A debt collection center responsible for collecting a particular debt may not act in behalf of a creditor agency for the purpose of making determinations regarding the existence or amount of that debt.

(d) A debt collection center responsible for collecting a particular debt may arrange for a hearing on the existence or amount of the debt or the repayment schedule by an administrative law judge or, alternatively, another hearing official not under the supervision or control of the head of the creditor agency or the debt collection center.

[63 FR 72101, Dec. 31, 1998]

## Subpart L—Lump-Sum Payment for Accumulated and Accrued Annual Leave

AUTHORITY: 5 U.S.C. 5553, 6306, and 6311.

SOURCE: 64 FR 36771, July 8, 1999, unless otherwise noted.

### § 550.1201 Purpose, applicability, and administration.

(a) *Purpose.* This subpart provides regulations to implement sections 5551, 5552, and 6306 of title 5, United States Code, and must be read together with those sections. Sections 5551 and 5552 provide for the payment of a lump-sum payment for accumulated and accrued annual leave when an employee:

(1) Separates from Federal service; or

(2) Enters on active duty in the armed forces and elects to receive a lump-sum payment for accumulated and accrued annual leave. Section 6306 requires that when an employee is reemployed in the Federal service prior to the expiration of the lump-sum period, he or she must refund an amount equal to the pay covering the period between the date of reemployment and the expiration of the period of annual leave (*i.e.*, the lump-sum leave period).

(b) *Applicability.* This subpart applies to—

(1) Any employee who separates, dies, or transfers under the conditions prescribed in § 550.1203; and

(2) Any employee or individual employed by a territory or possession of the United States who enters on active duty in the armed forces and who elects to receive a lump-sum payment for accumulated and accrued annual leave.

(c) *Administration.* The head of an agency having employees subject to this subpart is responsible for the proper administration of this subpart.

### § 550.1202 Definitions.

In this subpart—*Accumulated and accrued annual leave* means any annual leave accumulated and accrued, as these terms are defined in § 630.201 of this chapter, plus any annual leave credited to an employee under 5 U.S.C. 6304(c) and § 630.301(d) of this chapter and any annual leave restored under 5 U.S.C. 6304(d). Accumulated and accrued annual leave does not include annual leave received by a leave recipient under the voluntary leave transfer or leave bank programs established under subchapters III and IV of chapter 63 of title 5, United States Code, or annual leave advanced to an employee under 5 U.S.C. 6302(d).

*Administrative workweek* has the meaning given that term in § 610.102 of this chapter.

*Agency* means—(1) An executive agency and a military department as defined in sections 105 and 102 of title 5, United States Code, respectively; and

(2) A legislative or judicial agency or a unit of the legislative or judicial branch of the Federal Government that has positions in the competitive service.

*Employee* has the meaning given that term in 5 U.S.C. 2105.

*Lump-sum payment* means a final payment to an employee for accumulated and accrued annual leave.

*Mixed tour of duty* means a condition of employment for positions in which a fluctuating workload requires an employee to work full-time or part-time for a limited portion of the year and on an intermittent basis for the remainder of the year.

*Rate of basic pay* means the rate of pay fixed by law or administrative action for the position held by an employee, including any applicable locality payment under 5 CFR part 531, subpart F; special rate supplement under 5 CFR part 530, subpart C; or similar payment or supplement under other legal authority, before any deductions and exclusive of additional pay of any other kind.

*Transfer* means the movement of an employee to another position without a break in service of 1 workday or more.

[64 FR 36771, July 8, 1999, as amended at 70 FR 31314, May 31, 2005]

### § 550.1203 Eligibility.

(a) An agency must make a lump-sum payment for accumulated and accrued annual leave when an employee—
(1) Separates or retires from the Federal service;
(2) Dies; or
(3) Transfers to a position that is not covered by subchapter I of chapter 63 of title 5, United States Code, and his or her accumulated and accrued annual leave cannot be transferred, except as provided in paragraphs (c), (d), and (e) of this section.

(b) The Department of Defense (DOD) must make a lump-sum payment to an employee who has unused annual leave that was restored under 5 U.S.C. 6304(d)(3) when he or she transfers from a DOD installation undergoing closure or realignment to a position in any other department or agency of the Federal Government or moves to a position within DOD not located at an installation undergoing closure or realignment.

(c) An employee who enters on active duty in the armed forces may elect to receive a lump-sum payment for accumulated and accrued annual leave or may request to have the annual leave remain to his or her credit until return from active duty. However, an agency must make a lump-sum payment for any annual leave previously restored under 5 U.S.C. 6304(d) when the employee enters active duty. The agency may not recredit the restored leave when the employee returns to Federal service.

(d) An employee who transfers to a position in a public international organization under 5 U.S.C. 3582 may elect to retain accumulated and accrued annual leave to his or her credit at the time of transfer or receive a lump-sum payment for such annual leave under 5 U.S.C. 3582(a)(4). However, the agency must make a lump-sum payment for any annual leave previously restored under 5 U.S.C. 6304(d) when the employee transfers to the public international organization. The agency may not recredit the leave under these circumstances.

(e) An agency must make a lump-sum payment to an employee who transfers to a position excepted from subchapter I of chapter 63 of title 5, United States Code, by 5 U.S.C. 6301(2)(x)–(xiii) for any annual leave restored under 5 U.S.C. 6304(d) upon transfer to an excepted position. However, the agency may not make a lump-sum payment for any annual leave in the employee's regular leave account upon transfer to the excepted position. The agency must hold such annual leave in abeyance for recredit if the employee is subsequently reemployed without a break in service in a position to which his or her accumulated and accrued annual leave may be transferred. If the employee later becomes eligible for a lump-sum payment under the conditions specified in this section, the current employing agency must make a lump-sum payment for the annual leave held in abeyance. The agency must compute the lump-sum payment under § 550.1205(b) based on the pay the employee was receiving immediately before the date of the transfer to the position excepted by 5 U.S.C. 6301(2)(x)–(xiii). An employee who elects to retain his or her leave benefits upon accepting a Presidential appointment, as permitted by 5 U.S.C. 3392(c), is not entitled to receive a lump-sum payment.

(f) In the case of an employee who transfers to a position that is not covered by subchapter I of chapter 63 of title 5, United States Code, and to which only a portion of his or her accumulated and accrued annual leave may be transferred, the agency must make a lump-sum payment for any remaining annual leave that cannot be transferred. The agency must compute the lump-sum payment under §550.1205(b) based on the pay the employee was receiving immediately before the date of the transfer to the position not covered by subchapter I of chapter 63 of title 5, United States Code. This does not apply to an employee transferring to an excepted position covered by paragraph (e) of this section.

(g) An agency must make a lump-sum payment for accumulated and accrued annual leave to an employee in a missing status (as defined in 5 U.S.C. 5561(5)) on or after January 1, 1965, or the employee may elect to have such leave restored in a separate leave account under 5 U.S.C. 6304(d)(2) upon his or her return to Federal service. The agency must compute the lump sum payment under §550.1205(b) based on the rate of pay in effect at the time the annual leave became subject to forfeiture under 5 U.S.C. 6304(a), (b), or (c).

(h) An agency may not make a lump-sum payment for accumulated or accrued annual leave to—(1) An employee who transfers between positions covered by subchapter I of chapter 63 of title 5, United States Code;

(2) An employee who transfers to a position not covered by subchapter I of chapter 63 of title 5, United States Code, but to which all of his or her accumulated and accrued annual leave may be transferred;

(3) An employee who transfers to the government of the District of Columbia or the U.S. Postal Service;

(4) A nonappropriated fund employee of the Department of Defense or the Coast Guard who moves without a break in service of more than 3 days to an appropriated fund position within the Department of Defense or the Coast Guard, respectively, under 5 U.S.C. 6308(b); or

(5) An employee who is concurrently employed in more than one part-time position and who separates from one of the part-time positions. Instead, the former employing agency must transfer the employee's accumulated and accrued annual leave to the current agency (if the part-time positions are in different agencies) or credit the employee's annual leave account in the current position (if the part-time positions are in the same agency).

(6) An employee who elects to retain his or her leave benefits upon accepting a Presidential appointment, as permitted by 5 U.S.C. 3392(c).

(i) An agency must establish a policy for determining when an employee in a continuing employment program with a mixed tour of duty will receive a lump-sum payment for annual leave. The agency may choose to pay an employee a lump-sum payment when he or she is assigned intermittent duty or hold the employee's annual leave in abeyance during intermittent duty and recredit it when the employee returns without a break in service to full-time or part-time employment. If the agency decides to hold the employee's annual leave in abeyance, it must also hold in abeyance the credit for any fractional pay period earned and recredit the annual leave on a pro rata basis, as provided in §630.204 of this chapter, when the employee returns to full-time or part-time employment. In developing its policy, each agency must consider the likelihood that the employee will return to work, as well as the agency's mission requirements and staffing needs. The agency's policy must ensure that employees are treated in a fair and equitable manner.

### § 550.1204 Projecting the lump-sum leave period.

(a) A lump-sum payment must equal the pay an employee would have received had he or she remained in the Federal service until the expiration of the accumulated and accrued annual leave to the employee's credit. The agency must project the lump-sum period leave beginning on the first workday (counting any holiday) occurring after the date the employee becomes eligible for a lump-sum payment under §550.1203 and counting all subsequent workdays and holidays until the expiration of the period of annual leave. The period of leave used for calculating

the lump-sum payment must not be extended by any holidays under 5 U.S.C. 6103 (or applicable Executive or administrative order) which occur immediately after the date the employee becomes eligible for a lump-sum payment under § 550.1203; annual leave donated to an employee under the leave transfer or leave bank programs under subparts I and J of part 630 of this chapter; unused compensatory time off earned under 5 U.S.C. 5543 and § 550.114(d) or § 551.531(d) or under 5 U.S.C. 5542(g) and § 550.1625; or credit hours accumulated under an alternative work schedule established under 5 U.S.C. 6126.

(b) For employees whose annual leave was held in abeyance immediately prior to becoming eligible for a lump-sum payment, the agency must project the lump-sum payment beginning on the first workday occurring immediately after the date the employee becomes eligible for a lump-sum payment under § 550.1203, consistent with paragraph (a) of this section.

[64 FR 36771, July 8, 1999, as amended at 80 FR 58112, Sept. 25, 2015]

### § 550.1205 Calculating a lump-sum payment.

(a) An agency must compute a lump-sum payment based on the types of pay listed in paragraph (b) of this section, as in effect at the time the affected employee becomes eligible for a lump-sum payment under § 550.1203 and any adjustments in pay included in paragraphs (b)(2), (3), and (4) of this section. The agency must calculate a lump-sum payment by multiplying the number of hours of accumulated and accrued annual leave by the applicable hourly rate of pay, including other applicable types of pay listed in paragraph (b) of this section, or by using a mathematically equivalent method, such as multiplying weeks of annual leave by the applicable weekly rate of pay. If the agency calculates a lump-sum payment using weekly rates, the number of weeks of annual leave must be rounded to the fourth decimal place (e.g., 0.4444). The agency must convert an annual rate of pay to an hourly rate of pay by dividing the annual rate of pay by 2,087 (or 2,756 for firefighters, if applicable) and rounding it to the nearest cent, counting one-half cent and over as the next higher cent.

(b) The agency must compute a lump-sum payment using the following types of pay and pay adjustments, as applicable:

(1) An employee's rate of basic pay (as defined in § 550.1202);

(2) Any statutory adjustments in pay or any general system-wide increases in pay, such as adjustments under sections 5303, 5304, 5305, 5318, 5362, 5363, 5372, 5372a, 5376, 5382, or 5392 of title 5, United States Code, that become effective during the lump-sum leave period. The agency must adjust the lump-sum payment to reflect the increased rate on and after the effective date of the pay adjustment.

(3) In the case of a prevailing rate employee, the agency must include in the lump-sum payment the scheduled rate of pay under 5 U.S.C. 5343, 5348, or 5349 and any applicable adjustments in rates that are determined under 5 U.S.C. 5343, 5348, or 5349 that become effective during the lump-sum leave period. The agency must adjust the lump-sum payment to reflect the increased prevailing rate on and after the effective date of the rate adjustment.

(4) A within-grade increase under 5 U.S.C. 5335 or 5343(e)(2) if the employee has met the requirements of § 531.404 or § 532.417 of this chapter prior to the date the employee becomes eligible for a lump-sum payment under § 550.1203.

(5) The following types of premium pay (to the extent such premium pay was actually payable to the employee):

(i) Night differential under 5 U.S.C. 5343(f) at the applicable percentage rate received by a prevailing rate employee for all regularly scheduled periods of night shift duty covered by the unused annual leave as if the employee had continued to work beyond the effective date of separation, death, or transfer. In the case of an employee who is assigned to a regular rotating schedule involving work on both day and night shifts, the night differential is payable for that portion of the lump-sum period that would have occurred when the employee was scheduled to work night shifts.

(ii) Premium pay under 5 U.S.C. 5545(c) or 5545a if the employee was receiving premium pay for the pay period

immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203. The agency must base the lump-sum payment on the percentage rate received by the employee for the pay period immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203. In cases where the amount of premium pay actually payable in the final pay period was limited by a statutory cap, the agency must base the lump-sum payment on a reduced percentage rate that reflects the actual amount of premium pay the employee received in that pay period.

(iii) Overtime pay under 5 U.S.C. 5545b and § 550.1304 of this chapter for overtime hours in an employee's uncommon tour of duty (as defined in § 630.201 of this chapter), established in accordance with § 630.210 of this chapter. The uncommon tour of duty must be applicable to the employee for the pay period immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203. The agency must calculate overtime pay using the same methodology it used to calculate the employee's entitlement to overtime pay as provided in § 550.1304 of this chapter in the pay period immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203. An agency may not change an employee's work schedule for the sole purpose of avoiding or providing payment of premium pay under § 550.1205(b)(5)(i)–(iv) in a lump-sum payment.

(iv) An overtime supplement for regularly scheduled overtime within a Border Patrol agent's regular tour of duty under 5 U.S.C. 5550, as in effect immediately prior to the date the agent became eligible for a lump-sum payment under § 550.1203. The agency must base the lump-sum payment on the agent's assigned overtime supplement percentage. The assigned percentage will be considered fixed for the duration of the lump-sum annual leave projection period described in § 550.1204, even if an annual period for elections under 5 U.S.C. 5550 begins during that projection period. In cases where the amount of the overtime supplement actually payable in a pay period was limited by a statutory cap, the agency must base the lump-sum payment on a reduced percentage rate that reflects the actual amount of the overtime supplement the agent could receive in a pay period.

(6) Overtime pay under the Fair Labor Standards Act of 1938, as amended (FLSA), for overtime work that is regularly scheduled during an employee's established uncommon tour of duty, as defined in § 630.201(b)(1) of this chapter and established under § 630.210(a) of this chapter, for which the employee receives standby duty pay under 5 U.S.C. 5545(c)(1). The agency must include FLSA overtime pay in a lump-sum payment if an uncommon tour of duty was applicable to the employee for the pay period immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203. The agency must calculate FLSA overtime pay using the same methodology it used to calculate the employee's entitlement to FLSA overtime pay for the pay period immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203. An agency may not change an employee's work schedule for the sole purpose of avoiding or providing payment of FLSA overtime pay in a lump-sum payment.

(7) A supervisory differential under 5 U.S.C. 5755 based on the percentage rate (or dollar amount) received by the employee for the pay period immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203.

(8) A cost-of-living allowance and/or post differential in a nonforeign area under 5 U.S.C. 5941 if the employee's official duty station is in the nonforeign area when he or she becomes eligible for a lump-sum payment under § 550.1203.

(9) A post allowance in a foreign area under 5 U.S.C. 5924(1) and the *Standardized Regulations* (Government Civilians, Foreign Areas) if the employee's official duty station is in the foreign area when he or she becomes eligible for a lump-sum payment under § 550.1203.

(c) The head of an agency must prescribe regulations or standards for the inclusion of any other kinds of pay authorized in statutes other than title 5, United States Code, in a lump-sum

payment. Such regulations or standards must be consistent with 5 U.S.C. 5551, 5552, 6306, and other applicable provisions of law.

(d) A lump-sum payment may not include any other pay not specifically listed in paragraph (b) of this section, except as provided in paragraph (c) of this section.

(e) An employee may not earn leave for the period covered by a lump-sum payment.

(f) A lump-sum payment is not subject to deductions for retirement under the Civil Service Retirement System or the Federal Employees' Retirement System established by chapters 83 and 84 of title 5, United States Code, respectively; health benefits under the Federal Employees Health Benefits program established by chapter 89 of title 5, United States Code; life insurance under the Federal Employees' Group Life Insurance program established by chapter 87 of title 5, United States Code; and savings under the Thrift Savings Plan established by subchapter III of chapter 84 of title 5, United States Code.

(g) For a reemployed annuitant who becomes eligible for a lump-sum payment under § 550.1203, the agency must compute the lump-sum payment using the annuitant's pay before any reductions required under § 837.303 of this chapter.

(h) A lump-sum payment is subject to garnishment under parts 581 and 582 of this chapter and to administrative offset (for recovery of debts to the Federal Government) under 31 U.S.C. chapter 37.

[64 FR 36771, July 8, 1999, as amended at 70 FR 31314, May 31, 2005; 72 FR 12036, Mar. 15, 2007; 80 FR 58112, Sept. 25, 2015]

### § 550.1206 Refunding a lump-sum payment.

(a) When an employee who received a lump-sum payment for accumulated and accrued annual leave under 5 U.S.C. 5551 is reemployed in the Federal service prior to the end of the period covered by the lump-sum payment, the employee must refund to the employing agency an amount equal to the pay included in the lump-sum payment under § 550.1205(b) that covers the period between the date of reemployment and the expiration of the lump-sum leave period, except as provided in paragraphs (b) and (c) of this section. The agency must compute the refund based on the pay used to compute the lump-sum payment under § 550.1205(b). However, annual leave restored under 5 U.S.C. 6304(d) that was included in a lump-sum payment is not subject to refund if an agency reemploys the employee prior to the expiration of the lump-sum leave period. The agency must subtract such restored annual leave from the lump-sum leave period before calculating the refund. An agency may permit an employee to refund the lump-sum payment for annual leave in installments, but may not waive collection. If an agency permits the lump-sum refund to be paid in installments, the employee must refund the lump-sum payment in full within 1 year after the date of reemployment.

(b) An employee who is reemployed in a position listed in 5 U.S.C. 6301(2)(ii), (iii), (vi), or (vii) is not required to refund a lump-sum payment under paragraph (a) of this section.

(c) An employee who is reemployed in a position that has no leave system to which annual leave can be recredited is not required to refund a lump-sum payment under paragraph (a) of this section, except that individuals reemployed as Presidential appointees must refund a lump-sum payment and the annual leave will be held in abeyance, as provided in § 550.1207(e).

(d) An individual first hired by the District of Columbia government on or after October 1, 1987, who received a lump-sum payment upon separation from the District of Columbia government and who is employed by the Federal Government prior to the expiration of the lump-sum leave period must refund the lump-sum payment, and the agency must recredit the annual leave under § 550.1207.

(e) An employee who retired from the Federal Government and received a lump-sum payment under § 550.1203 of this chapter, and who is reemployed under a temporary appointment of less than 90 days prior to the expiration of the lump-sum leave period, is required to refund the lump-sum payment, and the agency must recredit the annual leave under § 550.1207. The employee

may use the recredited annual leave during the temporary appointment.

**§ 550.1207 Recrediting annual leave.**

(a) When an employee pays a full refund to an agency under § 550.1206(a), the agency must recredit to the employee an amount of annual leave equal to the days or hours of work (including holidays) remaining between the date of reemployment and the expiration of the lump-sum period. The recredited annual leave is available for use by the employee on and after the date the annual leave is recredited. The agency must recredit annual leave as follows:

(1) When an employee is reemployed in the Federal service in a position covered by subchapter I of chapter 63 of title 5, United States Code, the employing agency must recredit an amount of annual leave equal to the days or hours of work (including holidays) remaining between the date of reemployment and the expiration of the lump-sum period.

(2) When an employee is reemployed in the Federal service in a position that is not covered by subchapter I of chapter 63 of title 5, United States Code, but is covered by a different leave system, the employing agency must recredit to the employee an amount of annual leave representing the days or hours of work (including holidays) remaining between the date of reemployment and the expiration of the lump-sum period, as determined under § 630.501(b) of this chapter. If the unexpired period of leave covers a larger amount of leave than can be recredited under the different leave system, the employee must refund only the amount that represents the leave that can be recredited.

(3) When an employee is reemployed prior to the expiration of the lump-sum leave period, the agency may not recredit to the employee the annual leave restored under 5 U.S.C. 6304(d) that was included in a lump-sum payment. The agency must subtract such restored annual leave from the lump-sum leave period before it determines the amount of annual leave to recredit under paragraph (a)(1) of this section.

(b) Any annual leave the agency recredits to the employee under paragraph (a) of this section is subject at the beginning of the next leave year to the maximum annual leave limitation established by 5 U.S.C. 6304(a), (b), (c), or (f), as appropriate, for the position in which the employee is reemployed, except as provided in paragraphs (c) and (d) of this section.

(c) If the amount of annual leave to be recredited under paragraph (a) of this section is more than the maximum annual leave limitation for the position in which reemployed, and the employee's former maximum annual leave limitation was established under 5 U.S.C. 6304(a), (b), (c), or (f), as appropriate, the agency must establish the employee's new maximum annual leave limitation on the date of reemployment as a personal leave ceiling equal to the amount of annual leave to be recredited under paragraph (a) of this section. The new maximum annual leave limitation is subject to reduction in the same manner as provided in 5 U.S.C. 6304(c) until the employee's accumulated annual leave is equal to or less than the maximum annual leave limitation for the position in which reemployed.

(d) If the amount of annual leave to be recredited under paragraph (a) of this section is more than the maximum annual leave limitation for the position in which the employee is reemployed, and the employee's former maximum annual leave limitation was established under an authority other than 5 U.S.C. 6304(a), (b), (c), or (f), as appropriate, the agency must establish the employee's new maximum annual leave limitation on the date of reemployment as a personal leave ceiling equal to the employee's former maximum annual leave limitation. The new maximum annual leave limitation is subject to reduction in the same manner as provided in 5 U.S.C. 6304(c) until the employee's accumulated annual leave is equal to or less than the maximum annual leave limitation for the position in which reemployed.

(e) When an employee is reemployed in a position listed in 5 U.S.C. 6301(2)(x)–(xiii), the agency must recredit and hold in abeyance the amount of annual leave that would have been recredited under paragraph (a) of this section. The agency must include unused annual leave in a lump-

sum payment when the employee becomes eligible for a lump-sum payment under § 550.1203. If the employee transfers from a position listed in 5 U.S.C. 6301(2)(x)–(xiii) to a position covered by subchapter I of chapter 63 of title 5, United States Code, or to a position under a different formal leave system to which his or her annual leave can be recredited, the employing agency must recredit the annual leave to the employee's credit as provided in paragraph (a) of this section.

(f) An agency must document the calculation of an employee's lump-sum payment as provided in § 550.1205(b) so as to permit the subsequent calculation of any refund required under § 550.1206(a) and any recredit of annual leave required under this section.

## Subpart M—Firefighter Pay

AUTHORITY: 5 U.S.C. 5545b, 5548, and 5553.

SOURCE: 63 FR 64593, Nov. 23, 1998, unless otherwise noted.

### § 550.1301 Purpose, applicability, and administration.

(a) *Purpose.* This subpart provides regulations governing the pay of covered Federal firefighters. It implements sections 5542(f) and 5545b of title 5, United States Code, as added by section 628 of section 101(h) of Pub. L. 105–277, and must be read together with those sections of law.

(b) *Applicability.* This subpart applies to any firefighter as defined in § 550.1302.

(c) *Administration.* The head of an agency having employees subject to this subpart is responsible for the proper administration of this subpart.

### § 550.1302 Definitions.

In this subpart:

*Annual rate of basic pay* (except as otherwise provided in §§ 550.1305 and 550.1308) means the annual rate fixed under the rate schedule applicable to the position held by the firefighter, including a locality rate schedule established under 5 U.S.C. 5304 or a special rate schedule established under 5 U.S.C. 5305, before any deductions and exclusive of additional pay of any other kind.

*Basic 40-hour workweek* means—

(1) A standard 40-hour workweek consisting of five 8-hour workdays that is part of the firefighter's regular tour of duty; or

(2) A designated block of hours within a firefighter's regular tour of duty that, on a fixed and recurring basis, consists of 40 hours of actual work during each administrative week (or 80 hours of actual work in each biweekly pay period), excluding sleep and standby duty hours, provided the regular tour of duty does not consist primarily of 24-hour shifts.

*Firefighter* means an employee—

(1) Whose regular tour of duty, as in effect throughout the year, averages at least 106 hours per biweekly pay period; and

(2) Who is in a position—

(i) Covered by the General Schedule and classified in the Fire Protection and Prevention Series, GS–0081, consistent with standards published by the Office of Personnel Management;

(ii) In a demonstration project established under chapter 47 of title 5, United States Code, or an alternative personnel system under a similar authority, which otherwise would be covered by the General Schedule, and which is classified in the Fire Protection and Prevention Series, GS–0081, consistent with standards published by the Office of Personnel Management, but only if application of 5 U.S.C. 5545b has not been waived; or

(iii) Covered by the General Schedule and classified in the GS–0099, General Student Trainee Series (as required by § 362.203(f) of this chapter), if the position otherwise would be classified in the GS–0081 series.

*Firefighter hourly rate of basic pay* means an hourly rate computed by dividing the applicable annual rate of basic pay by 2756 hours, as described in § 550.1303.

*Irregular hours* means hours of work that are outside a firefighter's regular tour of duty.

*Overtime hours* means hours of work in excess of 106 hours in a biweekly pay period, or, if the agency establishes a weekly basis for overtime pay computations, hours of work in excess of 53 hours in an administrative workweek.

*Overtime pay* means pay for overtime hours.

*Regular tour of duty* means a firefighter's official work schedule, as established by the employing agency on a regular and recurring basis (or on a temporary basis in cases where a temporary change in schedules results in a reduction in regular work hours or a change in the pay computation method used under § 550.1303). The tour of duty may consist of a fixed number of hours each week or a fixed recurring cycle of work schedules in which the number of hours per week varies in a repeating pattern. The regular tour of duty includes only those overtime hours that are part of the fixed recurring work schedule. However, irregular hours are deemed to be included in a firefighter's regular tour of duty if those hours are substituted for hours in the regular tour of duty for which leave without pay is taken, as provided in § 550.1303(d).

[63 FR 64593, Nov. 23, 1998, as amended at 67 FR 15466, Apr. 2, 2002; 77 FR 28223, May 11, 2012; 84 FR 17941, Apr. 29, 2019]

### § 550.1303 Hourly rates of basic pay.

(a) For firefighters with a regular tour of duty that does not include a basic 40-hour workweek (e.g., firefighters whose schedules generally consist of 24-hour shifts with a significant amount of designated standby and sleep time), the hourly rate of basic pay is computed by dividing the applicable annual rate of basic pay by 2756 hours. The resulting firefighter hourly rate of basic pay is multiplied by all nonovertime hours to determine the pay for those hours.

(b) For firefighters with a regular tour of duty that includes a basic 40-hour workweek, the hourly rate of basic pay is computed by dividing the applicable annual rate of basic pay by—

(1) 2087 hours, for hours within the basic 40-hour workweek (or 80-hour biweekly pay period); and

(2) 2756 hours, for any additional nonovertime hours.

(c) A firefighter's daily, weekly, or biweekly rate of basic pay must be computed using the applicable rates, as derived under paragraphs (a) and (b) of this section.

(d) If a firefighter takes leave without pay during his or her regular tour of duty, the agency shall substitute any irregular hours worked in the same biweekly pay period for those hours of leave without pay. (If a firefighter's overtime pay is computed on a weekly basis, the irregular hours must be worked in the same administrative workweek.) For firefighters whose regular tour of duty includes a basic 40-hour workweek, the agency shall first substitute irregular hours for hours of leave without pay in the basic 40-hour workweek, which are paid at an hourly rate based on the 2087 divisor. All other substituted hours are paid at an hourly rate based on the 2756 divisor, using the applicable overtime rate for overtime hours. The annual rate used to compute any such hourly rate is the annual rate in effect at the time the hour was actually worked.

[63 FR 64593, Nov. 23, 1998, as amended at 67 FR 15467, Apr. 2, 2002]

### § 550.1304 Overtime hourly rates of pay.

(a) For a firefighter who is covered by (*i.e.*, nonexempt from) the overtime provisions of the Fair Labor Standards Act (FLSA), the overtime hourly rate of pay equals 1½ times the firefighter hourly rate of basic pay for that firefighter, as established under § 550.1303(a) and (b)(2).

(b) For a firefighter who is exempt from the FLSA, the overtime hourly rate is computed as provided in § 550.113(e).

(c) For any firefighter, overtime pay for any pay period is derived by multiplying the applicable overtime hourly rate by all overtime hours within that period.

### § 550.1305 Treatment as basic pay.

(a) The sum of pay for nonovertime hours that are part of a firefighter's regular tour of duty (as computed under § 550.1303) and the straight-time portion of overtime pay for hours in a firefighter's regular tour of duty is treated as basic pay only for the following purposes:

(1) Retirement deductions and benefits under chapters 83 and 84 of title 5, United States Code;

(2) Life insurance premiums and benefits under chapter 87 of title 5, United States Code;

(3) Severance pay under section 5595 of title 5, United States Code;

(4) Cost-of-living allowances and post differentials under section 5941 of title 5, United States Code; and

(5) Advances in pay under section 5524a of title 5, United States Code.

(b) The straight-time portion of overtime pay for hours in a firefighter's regular tour of duty is derived by multiplying the applicable firefighter hourly rate of basic pay computed under § 550.1303(a) and (b)(2) by the number of overtime hours in the firefighter's regular tour of duty.

(c) Pay for any nonovertime hours outside a firefighter's regular tour of duty is computed using the firefighter hourly rate of basic pay as provided in § 550.1303(a) and (b)(2), but that pay is not considered basic pay for any purpose, except in applying §§ 550.105 and 550.106.

(d) For firefighters compensated under § 550.1303(b), pay for nonovertime hours within the regular tour of duty, but outside the basic 40-hour workweek, is basic pay only for the purposes listed in paragraph (a) of this section and for the purpose of applying § 410.402(b)(6) of this chapter and §§ 550.105 and 550.106.

(e) Locality pay under 5 U.S.C. 5304 is basic pay for firefighters only to the extent provided in this subpart, § 531.610 of this chapter, or other specific provision of law.

[63 FR 64593, Nov. 23, 1998, as amended at 67 FR 15467, Apr. 2, 2002; 70 FR 31314, May 31, 2005]

### § 550.1306 Relationship to other entitlements.

(a) A firefighter who is compensated under this subpart is entitled to overtime pay as provided under this subpart, but may not receive additional premium pay under any other provision of subchapter V of chapter 55 of title 5, United States Code, including night pay, Sunday pay, holiday pay, and hazardous duty pay. A firefighter is not entitled to receive paid holiday time off when not working on a holiday, but may be allowed to use annual or sick leave, as appropriate, or may be granted excused absence at the agency's discretion.

(b) A firefighter who is subject to section 7(k) of the Fair Labor Standards Act (FLSA) and who is subject to this subpart is deemed to be appropriately compensated under section 7(k) of the FLSA if the requirements of § 550.1304(a) are satisfied.

(c) In computing a lump-sum payment for accumulated annual leave under 5 U.S.C. 5551 and 5552 for firefighters with an uncommon tour of duty established under § 630.210 of this chapter for leave purposes, an agency must use the rates of pay for the position held by the firefighter that apply to hours in that uncommon tour of duty, including regular overtime pay for such hours.

(d) A firefighter compensated under this subpart shall receive basic pay and overtime pay for his or her regular tour of duty in any week in which attendance at agency-sanctioned training reduces the hours in the firefighter's regular tour of duty, as provided in § 410.402(b)(6) of this chapter.

(e) In applying the compensatory time off provision in § 550.114(c), compare the firefighter's annual rate of basic pay to the annual rate of basic pay for GS–10, step 10.

[63 FR 64593, Nov. 23, 1998, as amended at 67 FR 15467, Apr. 2, 2002]

### § 550.1307 Authority to regularize paychecks.

Upon a written request from the head of an agency (or designee), the Office of Personnel Management may approve an agency's plan to reduce or eliminate variation in the amount of firefighters' biweekly paychecks caused by work scheduling cycles that result in varying hours in the firefighters' tours of duty from pay period to pay period. Such a plan must provide that the total pay any firefighter would otherwise receive for regular tours of duty over the firefighter's entire work scheduling cycle must, to the extent practicable, remain the same.

## Subpart N—Compensatory Time Off for Travel

AUTHORITY: 5 U.S.C. 5548(a).

SOURCE: 70 FR 3856, Jan. 27, 2005, unless otherwise noted.

### § 550.1401 Purpose.

This subpart contains OPM regulations implementing 5 U.S.C. 5550b, which establishes a separate type of compensatory time off. Subject to the conditions specified in this subpart, an employee is entitled to earn, on an hour-for-hour basis, compensatory time off for time in a travel status away from the employee's official duty station when the travel time is not otherwise compensable.

[70 FR 3856, Jan. 27, 2005, as amended at 72 FR 19098, Apr. 17, 2007]

### § 550.1402 Coverage.

This subpart applies to an employee as defined in 5 U.S.C. 5541(2) who is employed by an agency. In accordance with section 1111 of Public Law 110–181, an employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under subchapter IV of chapter 53 of title 5, United States Code, or by a wage board or similar administrative authority serving the same purpose, is covered by this subpart effective April 27, 2008.

[73 FR 30455, May 28, 2008]

### § 550.1403 Definitions.

In this subpart:

*Accrued compensatory time off* means the compensatory time off earned by an employee that has not been used or forfeited.

*Agency* means an Executive agency as defined in 5 U.S.C. 105.

*Authorized agency official* means the head of the agency or an official who is authorized to act for the head of the agency in the matter concerned.

*Compensable* refers to periods of time that are creditable as hours of work for the purpose of determining a specific pay entitlement, even when that work time may not actually generate additional compensation because of applicable pay limitations.

*Compensatory time off* means compensatory time off for travel that is credited under the authority of this subpart.

*Official duty station* means the geographic area surrounding an employee's regular work site that is the same as the area designated by the employing agency for the purpose of determining whether travel time is compensable for the purpose of determining overtime pay, consistent with the regulations in 5 CFR 550.112(j) and 551.422(d).

*Regular working hours* means the days and hours of an employee's regularly scheduled administrative workweek established under 5 CFR part 610.

*Scheduled tour of duty for leave purposes* means an employee's regular hours for which he or she may be charged leave under 5 CFR part 630 when absent. For full-time employees, it is the 40-hour basic workweek as defined in 5 CFR 610.102. For employees with an uncommon tour of duty as defined in 5 CFR 630.201, it is the uncommon tour of duty.

*Travel* means officially authorized travel—*i.e.*, travel for work purposes that is approved by an authorized agency official or otherwise authorized under established agency policies. Time spent traveling in connection with union activities is excluded.

*Travel status* means travel time as described in § 550.1404 that is creditable in accruing compensatory time off for travel under this subpart, excluding travel time that is otherwise compensable under other legal authority.

[70 FR 3856, Jan. 27, 2005, as amended at 72 FR 19098, Apr. 17, 2007]

### § 550.1404 Creditable travel time.

(a) *General.* Subject to the conditions specified in this subpart, an agency must credit an employee with compensatory time off for time in a travel status if—

(1) The employee is required to travel away from the official duty station; and

(2) The travel time is not otherwise compensable hours of work under other legal authority.

(b)(1) *Travel status.* Time in a travel status includes the time an employee actually spends traveling between the official duty station and a temporary duty station, or between two temporary duty stations, and the usual waiting time that precedes or interrupts such travel, subject to the exclusion specified in paragraph (b)(2) of this

section and the requirements in paragraph (c), (d) and (e) of this section. Time spent at a temporary duty station between arrival and departure is not time in a travel status. Time in a travel status ends when the employee arrives at the temporary duty worksite or his or her lodging in the temporary duty station, wherever the employee arrives first. Time in a travel status resumes when an employee departs from the temporary duty worksite or his or her lodging in the temporary duty station, from whichever the employee departs last. Travel time in connection with an employee's permanent change of station is not time in a travel status. Determinations regarding what is creditable as ''usual waiting time'' are within the sole and exclusive discretion of the employing agency.

(2) If an employee experiences an extended (*i.e.*, not usual) waiting time between actual periods of travel during which the employee is free to rest, sleep, or otherwise use the time for his or her own purposes, the extended waiting time is not creditable as time in a travel status.

(c) *Travel between home and a temporary duty station.* (1) If an employee is required to travel directly between his or her home and a temporary duty station outside the limits of the employee's official duty station, the travel time is creditable as time in a travel status if otherwise qualifying under this subpart. However, the agency must deduct from such travel hours the time the employee would have spent in normal home-to-work or work-to-home commuting.

(2) In the case of an employee who is offered one mode of transportation and who is permitted to use an alternative mode of transportation, or who travels at a time or by a route other than that selected by the agency, the agency must determine the estimated amount of time in a travel status the employee would have had if the employee had used the mode of transportation offered by the agency or traveled at the time or by the route selected by the agency. In determining time in a travel status under this subpart, the agency must credit the employee with the lesser of the estimated time in a travel status or the actual time in a travel status.

(3) In the case of an employee who is on a multiple-day travel assignment and who chooses, for personal reasons, not to use temporary lodgings at the temporary duty station, but to return home at night or on a weekend, only travel from home to the temporary duty station on the 1st day and travel from the temporary duty station to home on the last day that is otherwise qualifying as time in a travel status under this subpart is mandatorily creditable (subject to the deduction of normal commuting time). Travel to and from home on other days is not creditable travel time unless the agency, at its discretion, determines that credit should be given based on the net savings to the Government from reduced lodging costs, considering the value of lost labor time attributable to compensatory time off. The dollar value of an hour of compensatory time off for this purpose is equal to the employee's hourly rate of basic pay as defined in § 550.103.

(d) *Time spent traveling to or from a transportation terminal as part of travel away from the official duty station.* If an employee is required to travel between home and a transportation terminal (e.g., airport or train station) within the limits of his or her official duty station as part of travel away from that duty station, the travel time outside regular working hours to or from the terminal is considered to be equivalent to commuting time and is not creditable time in a travel status. If the transportation terminal is outside the limits of the employee's official duty station, the travel time to or from the terminal outside regular working hours is creditable as time in a travel status, but is subject to an offset for the time the employee would have spent in normal home-to-work or work-to-home commuting. If the employee travels between a worksite and a transportation terminal, the travel time outside regular working hours is creditable as time in a travel status, and no commuting time offset applies.

(e) *Travel involving two or more time zones.* When an employee's travel involves two or more time zones, the time zone from the point of first departure must be used to determine how many hours the employee actually

spent in a travel status for the purpose of accruing compensatory time off.

[70 FR 3856, Jan. 27, 2005, as amended at 72 FR 19098, Apr. 17, 2007]

### § 550.1405 Crediting compensatory time off.

(a) Upon a request filed in accordance with the procedures established under paragraph (b) of this section, an employee is entitled to credit for compensatory time off for travel under the conditions specified in this subpart. The employing agency must credit an employee with compensatory time off for creditable time in a travel status as provided in § 550.1404. The agency may authorize credit in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes). Agencies must track and manage compensatory time off granted under this subpart separately from other forms of compensatory time off.

(b) An employee must comply with his or her agency's procedures for requesting credit of compensatory time off under this section. Employees must file such requests within the time period required by the agency. An employee's request for credit of compensatory time off for travel may be denied if the request is not filed within the time period required by the agency.

[70 FR 3856, Jan. 27, 2005, as amended at 72 FR 19098, Apr. 17, 2007]

### § 550.1406 Use of accrued compensatory time off.

(a) An employee must request permission from his or her supervisor to schedule the use of his or her accrued compensatory time off in accordance with agency-established policies and procedures.

(b) Compensatory time off may be used when the employee is granted time off from his or her scheduled tour of duty established for leave purposes. An employee must use earned compensatory time off under this subpart in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes). Agencies must charge compensatory time off in the chronological order in which it was earned, with compensatory time off earned first being charged first.

[70 FR 3856, Jan. 27, 2005, as amended at 72 FR 19098, Apr. 17, 2007]

### § 550.1407 Forfeiture of unused compensatory time off.

(a) *After 26 pay periods.* (1) Except as provided in paragraphs (a)(2) and (e) of this section, an employee must use accrued compensatory time off by the end of the 26th pay period after the pay period during which it was earned. If an employee fails to use the compensatory time off within 26 pay periods after it was earned, he or she must forfeit such compensatory time off.

(2) If an employee with unused compensatory time off separates from Federal service or is placed in a leave without pay status in the following circumstances and later returns to service with the same (or successor) agency, the employee must use all of the compensatory time off by the end of the 26th pay period following the pay period in which the employee returns to duty, or such compensatory time off will be forfeited:

(i) The employee separates or is placed in a leave without pay status to perform service in the uniformed services (as defined in 38 U.S.C. 4303 and 5 CFR 353.102) and later returns to service through the exercise of a reemployment right provided by law, Executive order, or regulation; or

(ii) The employee separates or is placed in a leave without pay status because of an on-the-job injury with entitlement to injury compensation under 5 U.S.C. chapter 81 and later recovers sufficiently to return to work.

(b) *Upon transfer to another agency.* When an employee voluntarily transfers to another agency (including a promotion or change to lower grade action), he or she must forfeit his or her unused compensatory time off.

(c) *Upon separation.* (1) When an employee separates from Federal service, any unused compensatory time off is forfeited, except as provided in paragraph (c)(2) of this section.

(2) Unused compensatory time off will not be forfeited but will be held in abeyance in the case of an employee who separates from Federal service and later returns to service with the same

(or successor) agency under the circumstances described in paragraph (a)(2) of this section.

(d) *Upon movement to a noncovered position.* When an employee moves to a Federal position not covered by this subpart, he or she forfeits any unused compensatory time off. This requirement does not prevent an agency from using another legal authority to give the employee credit for compensatory time off equal to the forfeited amount.

(e) *Exception due to an exigency.* If an employee fails to use his or her compensatory time earned under § 550.1404(a) by the end of the 26th pay period after the pay period during which it was earned due to an exigency of the service beyond the employee's control, an authorized agency official, at his or her sole and exclusive discretion, may extend the time limit for using such compensatory time off for travel for up to an additional 26 pay periods.

[70 FR 3856, Jan. 27, 2005, as amended at 72 FR 19098, Apr. 17, 2007]

### § 550.1408 Prohibition against payment for unused compensatory time off.

As provided by 5 U.S.C. 5550b(b), an individual may not receive payment under any circumstances for any unused compensatory time off he or she earned under this subpart. This prohibition against payment applies to surviving beneficiaries in the event of the individual's death.

### § 550.1409 Inapplicability of premium pay and aggregate pay caps.

Accrued compensatory time off under this subpart is not considered in applying the premium pay limitations established under 5 U.S.C. 5547 and 5 CFR 550.105 through 550.107 or the aggregate limitation on pay established under 5 U.S.C. 5307 and 5 CFR part 530, subpart B.

## Subpart O—Flag Recognition Benefit for Fallen Federal Civilian Employees

AUTHORITY: 5 U.S.C. 5570 note; also issued under Sec. 2 of Pub. L. 112–73, 125 Stat.784–785.

SOURCE: 79 FR 53602, Sept. 10, 2014, unless otherwise noted.

### § 550.1501 General.

(a) *Statutory authority.* This subpart implements the Civilian Service Recognition Act of 2011 (Public Law 112–73; December 20, 2011), reprinted as a note to 5 U.S.C.A. 5570, which authorizes agencies to give a flag of the United States to a beneficiary of a Federal civilian employee who dies of injuries incurred in connection with his or her employment with the Federal Government, under specific circumstances.

(b) *Eligibility.* Agencies may furnish a flag to the beneficiary (as defined in § 550.1503) of an eligible employee (as specified in § 550.1504) who died on or after December 20, 2011.

### § 550.1502 Coverage.

This subpart applies to—

(a) Executive agencies as defined in section 105 of title 5, United States Code, the United States Postal Service, and the Postal Regulatory Commission; and

(b) Employees as defined in section 2105 of title 5, United States Code; an officer or employee of the United States Postal Service; and an officer or employee of the Postal Regulatory Commission.

### § 550.1503 Definitions.

In this subpart—

*Agency* means an Executive agency as defined in 5 U.S.C. 105, the United States Postal Service, or the Postal Regulatory Commission.

*Authorized agency official* means the head of an agency or an official who is authorized to act for the head of the agency in the matter concerned.

*Beneficiary* means the eligible person who may request the flag following the order of precedence specified in § 550.1505.

*Employee* means an employee as defined in section 2105 of title 5, United States Code; an officer or employee of the United States Postal Service; and an officer or employee of the Postal Regulatory Commission.

*Flag* means a standard United States flag that is at least 3 feet by 5 feet.

### § 550.1504 Eligibility.

(a) An authorized agency official may, upon the request of a beneficiary, furnish one United States flag for an individual who—

(1) Was an employee of the agency at the time of death; and

(2) Died of injuries incurred in connection with such individual's employment with the Federal Government suffered as a result of—

(i) A criminal act;

(ii) An act of terrorism;

(iii) A natural disaster; or

(iv) Other circumstances, as determined by the President.

(b) An authorized agency official may not furnish a flag when the death is the result of—

(1) Unlawful or negligent action of the employee;

(2) Willful misconduct of the employee; or

(3) Activities unrelated to the employee's status as a Federal employee.

(c) The decision whether to furnish a flag to the beneficiary of an eligible employee is at the discretion of the agency. When an authorized agency official determines the agency will furnish a flag for a deceased eligible employee, the official must follow the order of precedence specified in § 550.1505.

### § 550.1505 Order of precedence.

If the authorized agency official determines the agency will furnish a flag, it must be issued to one beneficiary pursuant to the following order of precedence—

(a) The widow or widower;

(b) If none, to a child (including step, foster, or adopted child), according to age (*i.e.*, oldest to youngest);

(c) If none, to a parent (including step, foster, or adoptive parent);

(d) If none, to a sibling (including step, half, or adopted sibling), according to age; (*i.e.*, oldest to youngest);

If none, to any individual related by blood or close family affiliation.

### § 550.1506 Beneficiary receipt of a flag.

One eligible beneficiary, following the order of precedence in § 550.1505, may be provided a flag by the agency once the agency has—

(a) Documented the date and nature of death of the employee and certified that it conforms to the eligibility criteria in § 550.1504;

(b) Received a request from a beneficiary; and

(c) Established the beneficiary's relationship to the deceased employee and determined whether the beneficiary may receive the flag, consistent with the order of precedence under 550.1505.

### § 550.1507 Agency responsibilities.

To efficiently and effectively implement the provisions of the law and these regulations, an agency that wishes to furnish a flag pursuant to this part must —

(a) Establish procedures for procuring and furnishing a flag, including reaching out to survivors of known eligible employees to provide information and offer assistance on obtaining a flag;

(b) Notify its employees of the flag benefit annually; and

(c) Disclose information necessary to prove that a deceased individual is an eligible employee as described in § 550.1504 to the extent that such information is not classified and to the extent that such disclosure does not endanger the national security of the United States.

## Subpart P—Overtime Pay for Border Patrol Agents

AUTHORITY: 5 U.S.C. 5548 and 5550(b)(1)(B) and (d)(1)(B); section 2(h), Pub. L. 113–277, 128 Stat. 3005.

SOURCE: 80 FR 58112, Sept. 25, 2015, unless otherwise noted.

### GENERAL PROVISIONS

### § 550.1601 Purpose and authority.

This subpart contains OPM regulations to implement section 2 of the Border Patrol Agent Pay Reform Act of 2014 (Pub. L. 113–277), which added section 5550 in title 5, United States Code, and made related statutory amendments. The Act created a special overtime pay program for Border Patrol agents in the U.S. Customs and Border Protection component within the Department of Homeland Security. OPM has authority under 5 U.S.C.

5548(a) to regulate subchapter V (Premium Pay) of chapter 55 of title 5, United States Code, including section 5550 and the Act's amendments to sections 5542 and 5547. OPM was also granted broad authority to promulgate necessary regulations to carry out the Act and the amendments made by the Act under section 2(h) of the Act.

### § 550.1602 Coverage.

This subpart applies to an employee of the U.S. Customs and Border Protection component of the Department of Homeland Security (or any successor organization) who holds a position assigned to the Border Patrol Enforcement classification series 1896 or any successor series, consistent with classification standards established by OPM. Such an employee is referred to as a ''Border Patrol agent'' or ''agent'' in this subpart.

### § 550.1603 Definitions.

For the purpose of this subpart—

*Advanced training* means all training, other than initial training, provided on a whole-workday basis. Advanced training excludes training that covers only part of an 8-hour basic workday.

*Agent* means a Border Patrol agent.

*Annual period* means a 1-year period that begins on the first day of the first pay period beginning on or after January 1 of a given year and ends on the day before the first day of the first pay period beginning on or after January 1 of the next year. The term ''year'' in 5 U.S.C. 5550(b)(1)(A) and (C) and the term ''leave year'' in 5 U.S.C. 5542(g)(5)(A) are interpreted to be an annual period as defined here.

*Basic regular tour of duty* means an officially established weekly regular tour of duty consisting of five 8-hour workdays (including no overtime hours) for which no overtime supplement is payable.

*Basic workday* means the 8 nonovertime hours on a day within an agent's basic workweek.

*Basic workweek,* for full-time employees, means the 40-hour workweek established in accordance with 5 CFR 610.111.

*Border Patrol agent* means an employee to whom this subpart applies, as provided in § 550.1602.

*CBP* means the component of the Department of Homeland Security known as U.S. Customs and Border Protection (or any successor organization). When this term is used in the context of CBP making determinations or taking actions, it means management officials of CBP who are authorized to make the given determination or take the given action.

*Hybrid pay period* means a biweekly pay period within which—

(1) An agent has one type of established regular tour of duty for one part of the pay period and another type of regular tour of duty for a different part of the pay period; or

(2) An individual is employed as an agent for only a portion of the pay period.

*Initial training* means training for newly hired agents—including initial orientation sessions, basic training, and other preparatory activities—provided prior to the agent's first regular work assignment in which he or she will be authorized to make arrests and carry a firearm.

*Irregular overtime work* means officially ordered or approved overtime work that is not regularly scheduled overtime work—*i.e.,* overtime work that is not part of the agent's regularly scheduled administrative workweek.

*Leave without pay* means a period of time within an agent's basic workweek during which the agent is in nonpay status, including periods of unpaid voluntary absence with approval, absence without approval (AWOL), suspension, or furlough.

*Level 1 regular tour of duty* means an officially established weekly regular tour of duty generally consisting of five 10-hour workdays (including 2 overtime hours each workday) that provides entitlement to a 25 percent overtime supplement.

*Level 2 regular tour of duty* means an officially established weekly regular tour of duty generally consisting of five 9-hour workdays (including 1 overtime hour each workday) that provides entitlement to a 12.5 percent overtime supplement.

*Obligated overtime hours* means regularly scheduled overtime hours that an agent with a Level 1 or Level 2 regular tour of duty is obligated to work as

part of the agent's regular tour of duty, if the agent performs any amount of work during regular time on same day, and that are converted into an overtime hours debt when the agent fails to work the hours.

*Overtime hours debt* means the balance of obligated overtime hours not worked for which the agent has not satisfied the hours obligation by applying compensatory time off hours or other overtime hours of work outside the agent's regular tour of duty.

*Overtime supplement* means a payment received (in addition to the regular amount of basic pay for nonovertime work) in exchange for regularly scheduled overtime work within an agent's Level 1 or Level 2 regular tour of duty. For an agent who is assigned a 10-hour workday as part of the agent's Level 1 regular tour of duty, the overtime supplement is 25 percent. For an agent who is assigned a 9-hour workday as part of the agent's Level 2 regular tour of duty, the overtime supplement is 12.5 percent. The overtime supplement is computed as provided in § 550.1621(a)(4) and (b)(4). For an agent with a Basic regular tour of duty, the overtime supplement is 0 percent.

*Pay period* means a 14-day biweekly pay period.

*Rate of basic pay* means the regular nonovertime rate of pay payable to an agent, excluding any overtime supplement, but including any applicable locality payment under 5 CFR part 531, subpart F; special rate supplement under 5 CFR part 530, subpart C; or similar payment or supplement under other legal authority, before any deductions and exclusive of additional pay of any other kind. An overtime supplement is included as part of an agent's rate of basic pay for purposes outside this subpart, as provided in § 550.1633.

*Regularly scheduled administrative workweek*, for a full-time employee, means the period within an administrative workweek, established in accordance with 5 CFR 610.111, within which the employee is regularly scheduled to work.

*Regularly scheduled work* means work (including overtime work) that is scheduled in advance of an administrative workweek under an agency's procedures for establishing workweeks in accordance with 5 CFR 610.111.

*Regular time* means the regular basic (nonovertime) hours within an agent's 8-hour basic workday within the 40-hour basic workweek.

*Regular tour of duty* means the basic 40-hour workweek plus any regularly scheduled overtime work hours that the agent is assigned to work as part of an officially established 5-day weekly work schedule generally consisting of—

(1) 10-hour workdays (including 2 overtime hours each workday) in exchange for a 25 percent overtime supplement (Level 1); or

(2) 9-hour workdays (including 1 overtime hour each workday) in exchange for a 12.5 percent overtime supplement (Level 2).

### § 550.1604 Authority of U.S. Customs and Border Protection.

Authorized management officials of U.S. Customs and Border Protection are responsible for determining the mission requirements and operational needs of the organization and have the right to assign scheduled and unscheduled work as necessary to meet those requirements and needs, regardless of an agent's officially established regular tour of duty. (See subsections (a) and (f)(1) of section 2 of Pub. L. 113–277 and 5 U.S.C. 5550(g).)

### § 550.1605 Interpretation instruction.

As required by section 2(f) of the Border Patrol Agent Pay Reform Act of 2014 (Public Law 113–277), nothing in section 2 of the Act or this subpart may be construed to require compensation of an agent other than for hours during which the agent is actually performing work or using approved paid leave or other paid time off. This section does not prevent CBP from granting paid excused absence from an agent's basic workweek under other authority.

## Assignment of Regular Tour of Duty and Overtime Supplement

### § 550.1611 Assignments for an annual period.

(a) *Annual period.* The assignment of a regular tour of duty and overtime supplement to an agent is in effect for

a full annual period (or the portion of such period during which the individual is employed as an agent), except as otherwise provided in this subpart. The annual period is a 1-year period that begins on the first day of the first pay period beginning on or after January 1 of a given year and ends on the day before the first day of the first pay period beginning on or after January 1 of the next year.

(b) *Information regarding annual election opportunity.* No later than November 1 of each year, CBP must provide each currently employed agent with information regarding the opportunity to elect a regular tour of duty and corresponding overtime supplement for the next annual period. The information must include an explanation of election options and procedures. For an agent who will be in initial training status on the first day of the annual period, this paragraph is not applicable, and §550.1612(a) and (b) will apply instead.

(c) *Annual election opportunity.* No later than December 1 of each year, an agent to whom paragraph (b) of this section is applicable may make an election among three options for the regular tour of duty and corresponding overtime supplement (as described in §550.1621) that the agent wishes to be applicable to him or her during the next annual period.

(d) *Failure to make an election.* If an agent fails to make a timely election under paragraph (c) of this section, CBP must assign the agent a Level 1 regular tour of duty for the annual period (*i.e.,* deemed election) with a 25 percent overtime supplement, except as otherwise provided in paragraph (f) of this section or §550.1622.

(e) *Effect of agent election.* CBP must assign an agent the regular tour of duty elected by the agent under paragraph (c) or (d) of this section unless CBP informs the agent of an alternative assignment, as provided under paragraph (f) of this section or §550.1622. CBP may change the assignment during the annual period, as provided under §550.1612(d). An annual election under paragraph (c) or (d) of this section that is superseded as provided under paragraph (f) of this section or §550.1622 remains as the default election in the event that the superseding circumstances cease to be applicable, subject to §550.1612(d).

(f) *Management assignment to tour.* CBP may assign a different regular tour of duty than that elected by the agent under paragraph (c) or (d) of this section for an upcoming annual period under the following circumstances:

(1) An agent who is assigned canine care duties must be assigned a Level 1 regular tour of duty, subject to §550.1622(c);

(2) An agent who is unable to perform overtime on a daily basis, as determined by CBP, must be assigned a Basic regular tour of duty with no overtime supplement until such time as CBP determines the agent is able to perform the required overtime on a daily basis, subject to the rules in §550.1612(e);

(3) An agent who holds a position at CBP headquarters, as a training instructor at a CBP training facility, or as a fitness instructor—or who holds another type of position that CBP has determined to be an administrative position— must be assigned a Basic regular tour of duty unless CBP determines a Level 1 or Level 2 regular tour of duty may be assigned to the agent based on a comprehensive staffing analysis conducted for the agent's duty station as required by section 2(e) of the Border Patrol Agent Pay Reform Act of 2014 (Public Law 113–277);

(4) CBP determines that an agent must be assigned to a Level 1 regular tour of duty to ensure that not more than 10 percent (or higher percentage established under §550.1614(b)) of agents stationed at a location are assigned to a Level 2 regular tour of duty or a Basic regular tour of duty, as required by 5 U.S.C. 5550(b)(1)(E) and §550.1614; or

(5) CBP determines that assignment of a different regular tour of duty is necessary to comply with the pay assignment continuity provisions in 5 U.S.C. 5550(b)(1)(G) and §550.1615, notwithstanding any other provision of law or this subpart (including paragraphs (f)(1) through (4) of this section).

(g) *Temporary detail.* If an agent is serving in a position under a temporary detail, that position may not be

considered, for the purpose of applying paragraph (f)(3) of this section, to be the position held by the agent during the first 90 days of the detail. After completing 90 days under a temporary detail, an agent will be considered, for the purpose of applying paragraph (f)(3) of this section, to hold the position to which temporarily detailed for the remainder of the detail, notwithstanding the agent's official position of record.

### § 550.1612 Assignments made at other times.

(a) *Initial training period.* An individual who is newly hired as an agent must be assigned a Basic regular tour of duty during any period of initial training. After completing any period of initial training, an agent must be assigned a Level 1 regular tour of duty for any portion of the annual period remaining at that point, except under applicable circumstances described in paragraph (f) of § 550.1611 or paragraph (b) of this section.

(b) *Election by new agent.* An agent who would otherwise be assigned a regular tour of duty under paragraph (a) of this section may submit an election of a different regular tour of duty to be effective on a prospective basis for the remaining portion of the annual period. CBP must provide the agent with election information no later than the date the agent begins a regular work assignment (*i.e.,* after completing any period of initial training). CBP must assign an agent the regular tour of duty elected by the agent under this section unless CBP informs the agent of an alternative assignment based on the circumstances described in paragraph (f) of § 550.1611. Such election must be submitted to CBP no later than 30 days after the agent begins a regular work assignment and, if approved by CBP, is effective on the first day of the first pay period beginning on or after the later of—

(1) The date the election was submitted; or

(2) The date the agent completed initial training.

(c) *Belated election for new agent's first annual period.* An individual who is newly hired as an agent during the period beginning on November 2 and ending on the day before the first day of the next annual period may make an election to take effect at the beginning of the next annual period notwithstanding the normally applicable December 1 election deadline, if the agent will not be in initial training status on the first day of the annual period. Such election must be submitted no later than 30 days after receiving election information, but before the first day of the annual period. Such an election is subject to the same requirements and conditions that apply to an election for an annual period under paragraphs (e) and (f) of § 550.1611. If such election is not made, CBP must assign the agent a Level 1 regular tour of duty with a 25 percent overtime supplement for the next annual period, except under applicable circumstances described in paragraph (f) of § 550.1611.

(d) *Change in tour during annual period.* CBP may change an agent's assigned regular tour of duty during an annual period based on a change in the circumstances described in § 550.1611(f) or in § 550.1622. For example, an agent's regular tour of duty may be changed one or more times during an annual period as necessary to comply with the pay assignment continuity provision described in § 550.1611(f)(5). As provided in § 550.1611(e), an annual election under § 550.1611(c) or (d) that is superseded by operation of § 550.1611(f) or § 550.1622 remains as the default election and becomes effective in the event that § 550.1611(f) or § 550.1622 ceases to be applicable. A tour change under this paragraph is effective with the change in circumstances, as determined by CBP, except as otherwise provided in paragraph (e)(2) of this section and § 550.1622(c)(2).

(e) *Inability determination and effective date of tour change.* The action to assign a Basic regular tour of duty based on a determination that an agent is unable to perform overtime on a daily basis under § 550.1611(f)(2) is subject to the following rules:

(1) The inability determination may be made—

(i) When an agent's law enforcement authority is revoked (e.g., in connection with an investigation, loss of security clearance, or a suspension);

(ii) When an agent is unable to perform overtime duties for an extended

period due to physical or health reasons; or

(iii) For any other appropriate reason, as determined by CBP, but excluding inability based on lack of work (as opposed to inability based on the employee's availability).

(2) The change to a Basic regular tour of duty is effective on the next workday following a CBP inability determination, except that—

(i) CBP may delay the effective date to coincide with the beginning of a week or a biweekly pay period;

(ii) CBP may delay the effective date as necessary to allow an agent who is able to work during regular time to exhaust a positive balance of unused compensatory time off (by applying that balance against the newly accruing overtime hours debt resulting from work during regular time);

(iii) CBP may delay the effective date as necessary to allow an agent to use accrued paid leave or other paid time off if the agent will be performing no work during regular time for a continuous period;

(iv) CBP may delay the effective date during a continuous period of leave without pay granted under 5 U.S.C. chapter 63, subchapter V (dealing with family and medical leave); and

(v) CBP must delay the effective date during any period of paid leave, continuation of pay, or leave without pay granted in connection with application of 5 U.S.C. chapter 81 (dealing with workers' compensation due to a job-related injury).

### § 550.1613 Selection of agents for assignment.

If application of paragraphs (f)(3) and (4) of § 550.1611 (or application of those paragraphs through § 550.1612) requires CBP to select agents for assignment to a particular regular tour of duty out of a pool of agents who prefer a different assignment, CBP must make any such selection consistent with an established written plan that includes the criteria that will be considered and the priority of those criteria. Such plan must be consistent with the requirements of this subpart.

### § 550.1614 Limit on percentage of agents who do not have a Level 1 regular tour of duty.

(a) CBP must take such action as is necessary, including unilateral assignment of agents to a Level 1 regular tour of duty, to ensure that not more than 10 percent of agents stationed at a location are assigned to a Level 2 regular tour of duty or a Basic regular tour of duty, as required by 5 U.S.C. 5550(b)(1)(E), notwithstanding any other provision of law or this subpart, except as provided by paragraphs (b), (c), and (d) of this section. For the purpose of this paragraph, the term ''location'' means a Border Patrol sector, which includes all subordinate organizational structures and related geographic areas within the sector (e.g., stations).

(b) CBP may waive the 10 percent limit in paragraph (a) of this section and apply a higher percentage limit if CBP determines it is able to adequately fulfill its operational requirements under that higher limit based on a comprehensive staffing analysis conducted for the agent's duty station under section 2(e) of the Border Patrol Agent Pay Reform Act of 2014 (Pub. L. 113–277).

(c) The 10 percent limit in paragraph (a) does not apply to agents working at CBP headquarters or at a CBP training location.

(d) Regardless of the percentage limits set under this section, assignments of regular tours of duty to individual agents must be made consistent with the requirement to ensure pay assignment continuity under § 550.1615.

### § 550.1615 Pay assignment continuity.

(a) *Plan.* (1) In consultation with OPM, CBP must develop and implement a plan to ensure, to the greatest extent practicable, that the assignment of a regular tour of duty to an agent during all consecutive 3-year periods within the control period specified in paragraph (b) of this section produces an average overtime supplement percentage (during each 3-year period) that is consistent with the agent's average overtime supplement percentage during the course of the agent's career prior to the beginning of

that control period, subject to paragraph (c) of this section. The purpose of this plan is to protect the retirement fund and ensure that agents are not able to artificially enhance their retirement annuities during the period when the high-3 average pay may be determined (in accordance with 5 U.S.C. 8331(4) or 5 U.S.C. 8401(3)).

(2) In applying paragraph (a)(1) of this section, the career average overtime supplement percentage for an agent is the greater of—

(i) The average of overtime supplement percentages (25 percent, 12.5 percent, or 0 percent) assigned during service as an agent on or after January 10, 2016, that is prior to the beginning of the agent's control period (as specified in paragraph (b) of this section); or

(ii) The average of the overtime supplement percentages during all service as an agent that is prior to the beginning of the agent's control period (as specified in paragraph (b) of this section), with assigned overtime supplement percentages (25, 12.5, or 0 percent) assigned during service on or after January 10, 2016, and with assigned percentages of administratively uncontrollable overtime under 5 U.S.C. 5545(c)(2) treated as overtime supplement percentages for any period of service prior to January 10, 2016.

(3) In applying paragraph (a)(2) of this section, the assigned overtime supplement percentage is used regardless of whether or not the payable amount of the overtime supplement is limited by a premium pay cap.

(4) In applying paragraph (a)(2) of this section, if an agent's control period begins on January 10, 2016, as provided in paragraph (b), the agent's initially assigned overtime supplement percentage must be considered the agent's career average under paragraph (a)(2)(i).

(b) *Control period.* The period of time during which CBP must control an agent's assignment to a regular tour of duty (*i.e.,* the control period) begins on the date 3 years before the agent meets age and service requirements for an immediate retirement and remains in effect during all subsequent service in a Border Patrol agent position. If, as of January 10, 2016, the date that is 3 years before the agent first met age and service requirements for an immediate retirement has already passed, then the agent's control period is considered to have begun on January 10, 2016.

(c) *Consistency requirement.* (1) The consistency requirement in paragraph (a) of this section is considered to be met when the agent's average overtime supplement percentage during all consecutive 3-year periods within the control period specified in paragraph (b) of this section is within 2.5 percentage points of the agent's average overtime supplement percentage during the course of the agent's career prior to the beginning of that control period, except as provided in paragraph (c)(2) of this section.

(2) Notwithstanding the consistency requirement in paragraph (a) of this section, the CBP plan may allow an agent to be assigned a regular tour of duty that provides an overtime supplement percentage that is less than that necessary to produce an average percentage (during all consecutive 3-year periods within the control period specified in paragraph (b)) that is consistent with the agent's career average percentage if—

(i) The agent's overtime supplement is limited by the premium pay cap under §§ 550.105 and 550.107 and the agent voluntarily elects a regular tour of duty providing such a lesser overtime supplement percentage that is approved by CBP; or

(ii) CBP determines an agent is unable to perform overtime on a daily basis due to a physical or medical condition affecting the agent and assigns the agent a Basic regular tour of duty, as described in § 550.1611(f)(2), (but only if such assignment makes it impossible to satisfy the consistency requirement during any given consecutive 3-year period).

(d) *CBP authority.* (1) CBP may take such action as is necessary, including the unilateral assignment of a regular tour of duty to implement the plan described in paragraph (a) of this section, notwithstanding any other provision of law or this subpart, except as provided in paragraph (d)(2) of this section.

(2) Notwithstanding the requirements of 5 U.S.C. 5550(b)(1)(G) and this section, CBP is authorized to assign

agents to regular tours of duty as necessary to meet operational requirements. Before exercising the authority to allow assignment of a regular tour of duty that does not comply with the plan described in paragraph (a) of this section, CBP must first determine that it cannot adequately address the specific operational requirements in question by other means, such as the assignment of overtime work outside the regular tour of duty to the affected agent or other agents. If this authority is exercised, CBP must return an affected agent to a regular tour of duty that complies with the plan described in paragraph (a) of this section as soon as possible.

(e) *Reporting requirements*—(1) *Annual data reporting for agents within their control period.* For each agent within the control period specified in paragraph (b) of this section, CBP must provide to OPM no later than March 30th of each year the following information (in a format specified by OPM) based on data compiled through the end of the most recent annual period:

(i) The date the agent became subject to controls on the assignment to a regular tour of duty;

(ii) The date the agent will become subject to mandatory separation under 5 U.S.C. 8335(b) or 5 U.S.C. 8425(b);

(iii) The service computation date based on eligibility under 5 U.S.C. 8336(c) or 5 U.S.C. 8412(d);

(iv) The average overtime supplement percentage during the course of the agent's career prior to the beginning of the control period specified in paragraph (b);

(v) The average overtime supplement percentage for the time period beginning with the date the agent became subject to controls on the assignment to a regular tour of duty and ending on the last day of the most recent annual period;

(vi) The average overtime supplement percentage for the last three annual periods (excluding any time that was not within a control period specified in paragraph (b) of this section);

(vii) The average overtime supplement percentage for the most recent annual period (excluding any time that was not within a control period specified in paragraph (b) of this section), and;

(viii) Any other information requested by OPM.

(2) *Annual data reporting for all agents.* No later than March 30th of each year, CBP must provide to OPM the following information (in a format specified by OPM) for each agent compiled for the preceding calendar year based on salary payments made during that year:

(i) The amount of earnings subject to retirement deductions, including overtime supplement payments, received during the most recent calendar year;

(ii) The amount of earnings subject to retirement deductions during the most recent calendar year minus the total amount of the overtime supplement payments during that year;

(iii) The service computation date computed as though law enforcement officer service is regular employee service (*i.e.*, the ''regular'' SCD);

(iv) The service computation date computed with credit for law enforcement officer service, and any other service creditable for eligibility under 5 U.S.C. 8336(c) or 5 U.S.C. 8412(d) (*i.e.*, the ''LEO'' SCD);

(v) Date of birth;

(vi) Gender;

(vii) Retirement system (e.g., CSRS, FERS, FERS–RAE, FERS–FRAE); and

(viii) Any other information requested by OPM.

(3) *Additional data.* CBP must provide additional data as requested by OPM at any time, including data on the percentage rate of administratively uncontrollable overtime under §550.154 during the period before the annual period that begins in January 2016.

(f) *Corrective actions.* If it is determined that the consistency requirement described in paragraphs (a) and (c) of this section is not being met for a particular agent, CBP must document why the differential occurred and establish any necessary actions, including the modification of the plan described in paragraph (a) of this section, to ensure that the goal of pay assignment continuity is achieved going forward. Consistent with §550.1616(b), CBP is not required to retroactively correct an agent's assigned tour or

overtime supplement based on violation of the consistency requirement, except when CBP determines there exists, in connection with an agent's assigned overtime supplement, evidence of fraud, misrepresentation, fault, or lack of good faith on the part of that agent.

### § 550.1616 Corrective actions.

(a) Except at provided in paragraph (b) of this section, an error made in connection with the assignment of an agent's regular tour of duty (including any associated overtime supplement) must be corrected as soon as possible.

(b) A retroactive correction of a tour assignment (*i.e.*, actual assigned work schedule as opposed to an error in the payroll system) may not be made in the following circumstances, unless CBP determines there exists, in connection with an agent's assigned tour, evidence of fraud, misrepresentation, fault, or lack of good faith on the part of the affected agent:

(1) Correction of an error in applying the consistency requirement described in §§ 550.1611(f)(5) and 550.1615; and

(2) Correction of an error that caused an employee to have a Level 1 regular tour of duty based solely on misapplication of the applicable percentage limitation described in §§ 550.1611(f)(4) and 550.1614.

## Treatment of Overtime Work

### § 550.1621 Rules for types of regular tour of duty.

(a) *Level 1 regular tour of duty*. For an agent with a Level 1 regular tour of duty and a 25 percent overtime supplement, the following rules apply:

(1) The agent has an officially established weekly regular tour of duty generally consisting of five 10-hour workdays (an 8-hour basic workday and 2 regularly scheduled overtime hours);

(2) The agent's 8-hour basic workday (regular time) may be interrupted by an unpaid off-duty meal break;

(3) The obligation to perform 2 hours of overtime work on a day including part of the agent's regular tour of duty does not apply if the agent performs no work during regular time on that day, subject to paragraph (e) of this section;

(4) As compensation for regularly scheduled overtime hours within the regular tour of duty, the agent is entitled to an overtime supplement equal to 25 percent of the agent's hourly rate of basic pay times the number of paid hours of regular time for the agent in the pay period (subject to the premium cap in §§ 550.105 and 550.107 and the restriction in § 550.1626(a)(5)), and no additional compensation or compensatory time off may be provided for such overtime hours;

(5) For any additional regularly scheduled overtime hours outside the regular tour of duty, the agent is entitled to overtime pay as provided in § 550.1624, except as otherwise provided by § 550.1626;

(6) For any irregular overtime hours, the agent is entitled to be credited with compensatory time off as provided in § 550.1625, except as otherwise provided by § 550.1626;

(7) The agent must be charged corresponding amounts of paid leave, compensatory time off, other paid time off, or time in nonpay status for each hour (or part thereof) the agent is absent from duty during regular time, as provided in § 550.1634, except as otherwise provided in § 550.1626(a); and

(8) If the agent is absent during regularly scheduled overtime hours within the agent's regular tour of duty that the agent is obligated to work, the agent accrues an obligation to perform other overtime work for each hour (or part thereof) the agent is absent, and such obligation must be satisfied as provided in § 550.1626.

(b) *Level 2 regular tour of duty*. For an agent with a Level 2 regular tour of duty and a 12.5 percent overtime supplement, the following rules apply:

(1) The agent has an officially established weekly regular tour of duty generally consisting of five 9-hour workdays (an 8-hour basic workday and 1 regularly scheduled overtime hour);

(2) The agent's 8-hour basic workday (regular time) may be interrupted by an unpaid off-duty meal break;

(3) The obligation to perform 1 hour of overtime work on a day including part of the agent's regular tour of duty does not apply if the agent performs no work during regular time on that day, subject to paragraph (e) of this section;

(4) As compensation for regularly scheduled overtime hours within the regular tour of duty, the agent receives an overtime supplement equal to 12.5 percent of the agent's hourly rate of basic pay times the number of paid hours of regular time for the agent in the pay period (subject to the premium cap in §§ 550.105 and 550.107 and the restriction in § 550.1626(a)(5)), and no additional compensation or compensatory time off may be provided for such overtime hours;

(5) For any additional regularly scheduled overtime hours outside the regular tour of duty, the agent is entitled to overtime pay as provided in § 550.1624, except as otherwise provided by § 550.1626;

(6) For any irregular overtime hours, the agent is entitled to be credited with compensatory time off as provided in § 550.1625, except as otherwise provided by § 550.1626;

(7) The agent must be charged corresponding amounts of paid leave, compensatory time off, other paid time off, or time in nonpay status for each hour (or part thereof) the agent is absent from duty during regular time, as provided in § 550.1634, except as otherwise provided in § 550.1626(a); and

(8) If the agent is absent during regularly scheduled overtime hours within the agent's regular tour of duty that the agent is obligated to work, the agent accrues an obligation to perform other overtime work for each hour (or part thereof) the agent is absent, and such obligation must be satisfied as provided in § 550.1626.

(c) *Basic regular tour of duty.* For an agent with a Basic regular tour of duty that includes no scheduled overtime hours and provides no overtime supplement, the following rules apply:

(1) The agent has an officially established weekly regular tour of duty generally consisting of five 8-hour basic workdays;

(2) The agent's 8-hour basic workday (regular time) may be interrupted by an unpaid off-duty meal break;

(3) For any regularly scheduled overtime hours, the agent is entitled to overtime pay as provided in § 550.1624, except as otherwise provided by § 550.1626;

(4) For any irregular overtime hours, the agent is entitled to be credited with compensatory time off as provided in § 550.1625, except as otherwise provided by § 550.1626; and

(5) The agent must be charged corresponding amounts of paid leave, compensatory time off, other paid time off, or time in nonpay status for each hour (or part thereof) the agent is absent from duty during regular time, as provided in § 550.1634, except as otherwise provided in § 550.1626(a).

(d) *Effect of premium pay cap.* If a premium pay cap established under 5 U.S.C. 5547 and §§ 550.105 and 550.107 limits payment of an overtime supplement or regularly scheduled overtime pay, or limits crediting of compensatory time off, the affected agent is still required to perform assigned overtime work.

(e) *Meaning of ''work''.* In applying paragraphs (a)(3) and (b)(3) of this section, the term ''work'' refers to paid hours of work, consistent with § 550.112, except that paid leave and other paid time off when an agent is excused from duty are not considered to be work hours. Official time under 5 U.S.C. 7131 during regular time is considered to be paid hours of ''work'' during the time an employee otherwise would be in a duty status.

(f) *Approval of absences.* Any absence during obligated overtime hours (as described in paragraphs (a)(8) and (b)(8) of this section) is subject to management approval under CBP policies.

### § 550.1622 Circumstances requiring special treatment.

(a) *General.* The rules in paragraphs (b) and (c) of this section provide for special treatment based on specified circumstances and apply notwithstanding any other provision of this subpart.

(b) *Advanced training.* (1) During the first 60 days of advanced training in a calendar year, an agent's assigned regular tour of duty must be considered to continue and the agent must be deemed to have worked during any nonwork period within obligated overtime hours for the purpose of determining the agent's total hours to be compared to the applicable overtime threshold (as provided in § 550.1623(a)(2)(iv)), except

as provided under paragraph (b)(2) of this section.

(2) If an agent, during the period covered by paragraph (b)(1) of this section, performs creditable overtime work outside the agent's regular tour of duty on a day when the agent performed less than the required amount of obligated overtime work, the overtime work outside the regular tour of duty must be applied towards the obligated overtime hours, as provided in § 550.1626(b). After any such substitution, CBP must credit the agent with hours of work for any remaining nonwork time during obligated overtime hours on the same day for the purpose of determining the agent's total hours to be compared to the applicable overtime threshold. For example, if an agent performs 2 creditable hours of regularly scheduled overtime work outside the agent's Level 1 regular tour of duty on a training day when the agent performed half an hour of work during the 2 hours of obligated overtime, CBP would substitute 1.5 hours of regularly scheduled overtime outside the regular tour of duty for 1.5 hours of obligated overtime when no work was performed. CBP would not provide the agent with any credit for nonwork hours under paragraph (b)(1) of this section, since the 0.5 hours of actual work plus the 1.5 substituted hours account for the entire 2-hour period. The agent would be paid for the unsubstituted half hour of creditable regularly scheduled overtime work under § 550.1624.

(3) For days of advanced training in excess of 60 days in a calendar year, an agent must be assigned a Basic regular tour of duty and be treated accordingly. If this results in a hybrid pay period in which an agent has two types of regular tours of duty within the same biweekly pay period, CBP must determine the number of overtime hours outside the regular tour of duty as provided in § 550.1623(c). For an agent who is assigned a Basic regular tour of duty during advanced training under this paragraph, CBP must change the agent's regular tour of duty to the type in effect before the Basic tour was assigned when the agent is no longer participating in advanced training.

(4) Paragraphs (b)(1) through (3) of this section apply solely to advanced training that is provided in whole-workday increments (*i.e.*, covering an entire 8-hour basic workday).

(c) *Canine care.* (1) For an agent assigned to provide care for a canine and assigned to the Level 1 regular tour of duty border patrol rate of pay, the combined sum of basic pay plus the 25 percent overtime supplement is considered to provide compensation for all canine care. Such an agent must be credited with 1 hour of regularly scheduled overtime work as part of the regular tour of duty on each day containing a part of that tour, without regard to the actual duration of such care or the time and day when such care was actually provided. That leaves the agent with an additional obligation to perform 1 other hour of regularly scheduled overtime work as part of the agent's regular tour of duty on any day containing a part of the employee's tour, if the agent performs work during regular time on that day and thus has obligated overtime hours. An agent may receive no other compensation or compensatory time off for hours of canine care beyond what is specifically provided under this paragraph.

(2) If an agent is generally assigned to provide care for a canine, but is temporarily relieved of that duty for any reason (e.g., no dog available), the agent may not receive the 1-hour credit for canine care on a day when the agent is relieved from providing canine care. If the period during which the agent is temporarily relieved from providing canine care lasts more than two full pay periods, CBP must assign the agent's tour based on the agent's default election for the annual period as provided in § 550.1611(c) or (d) unless other circumstances described in paragraph (f) of § 550.1611 are applicable. For shorter periods, the Level 1 regular tour of duty assigned based on canine care responsibilities will continue unless the agent requests a different tour based on the agent's default election for the annual period.

### § 550.1623 Overtime work outside the regular tour of duty.

(a) *General.* (1) For the purpose of determining hours of overtime work outside an agent's regular tour of duty in order to apply §§ 550.1624, 550.1625, and

550.1626, CBP must apply the applicable biweekly overtime threshold prescribed in paragraphs (b) and (c) of this section. An agent's total hours of work (as determined under paragraph (a)(2) of this section) must be compared to the applicable threshold, and hours in excess of that threshold are overtime hours in applying §§550.1624, 550.1625, and 550.1626. The 8-hour daily and 40-hour weekly overtime thresholds under 5 U.S.C. 5542(a) and §550.111 are not applicable to agents.

(2) An agent's total hours of work in a pay period for the purpose of applying applicable overtime thresholds is equal to the sum of:

(i) Time determined to be hours of work in duty status (regular time or overtime), subject to this subpart, 5 U.S.C. 4109 and 5 CFR 410.402 (related to training periods), and 5 U.S.C. 5542(b) and §550.112 (establishing general rules), except that paragraphs (d) and (e) of §550.112 are superseded by §550.1626;

(ii) Paid leave or other paid time off during a period of nonduty status within an agent's regular time;

(iii) Obligated overtime hours during which no work is performed (creating a debt of hours) and for which no substitution is made under §550.1626(b);

(iv) Nonwork hours deemed to be hours of work during obligated overtime hours on a day of advanced training under §550.1622(b); and

(v) Overtime hours normally scheduled within an agent's regular tour of duty that an agent is not obligated to work because the agent performs no work during regular time on that day (as provided in paragraphs (a)(3) and (b)(3) of §550.1621).

(b) *Overtime thresholds for standard tours.* (1) The applicable biweekly overtime threshold prescribed in paragraph (b)(2) of this section applies during a pay period to an agent whose regular tour of duty is fixed at one of the three standard tours for the entire pay period. (2) For an agent covered by paragraph (b)(1) of this section, the threshold used to determine whether an agent has performed overtime work outside the regular tour of duty in a given pay period is—

(i) 100 hours for a Level 1 regular tour of duty;

(ii) 90 hours for a Level 2 regular tour of duty; or

(iii) 80 hours for a Basic regular tour of duty.

(c) *Overtime threshold for hybrid pay period.* (1) For a hybrid pay period in which an agent has one type of regular tour of duty in effect for one part of the period and another type for another part of the period, the threshold used to determine whether an agent has performed overtime work outside the regular tour of duty in a given pay period is equal to the sum of the regular time hours (paid or unpaid) and the number of normally scheduled overtime hours within a regular tour of duty (whether obligated or not and whether worked or not) in the pay period. For example, if an agent has a Level 1 regular tour of duty in the first week of a pay period and a Level 2 regular tour of duty in the second week, the agent's regular time hours would be 40 in the first week and 40 in the second week and the normally scheduled overtime hours within a regular tour of duty would be 10 (5 days times 2 hours each day) in the first week and 5 (5 days times 1 hour each day) in second week, resulting in an biweekly overtime threshold of 95 hours.

(2) For a hybrid pay period in which an individual is employed as a Border Patrol agent for only part of the pay period, the threshold used to determine whether an agent has performed overtime work outside the regular tour of duty in a given pay period is equal to the sum of the paid regular time hours (paid or unpaid) and the number of normally scheduled overtime hours within a regular tour of duty (whether obligated or not and whether worked or not) during the portion of the pay period the individual was employed as an agent. For example, if an individual is employed as an agent only during the second week of a pay period and has a Level 1 regular tour of duty, the overtime threshold would be 50 hours (40 regular time hours plus 10 normally scheduled overtime hours) in determining whether the agent has overtime hours in that week that are compensable under §§550.1624, 550.1625, and 550.1626.

### § 550.1624 Regularly scheduled overtime outside the regular tour of duty.

(a) *Coverage.* Any regularly scheduled overtime hours outside an agent's regular tour of duty, as specified in § 550.1623, are covered by this section, except that such hours are excluded from coverage under this section when required by the superseding provisions in § 550.1626.

(b) *Rates.* Agents receive overtime pay at the rates specified under 5 U.S.C. 5542(a) and § 550.113 for regularly scheduled overtime hours covered by paragraph (a) of this section, subject to the premium pay limitation established under 5 U.S.C. 5547 and §§ 550.105 and 550.107. An agent's rate of basic pay (without any overtime supplement) is used in computing overtime pay for such hours.

(c) *Avoiding additional regularly scheduled overtime.* (1) As required by section 2(c)(2) of the Border Patrol Agent Pay Reform Act of 2014 (Public Law 113–277), CBP must, to the maximum extent practicable, avoid the use of regularly scheduled overtime work by agents outside of the regular tour of duty.

(2) Notwithstanding paragraph (c)(1) of this section, CBP may allow use of regularly scheduled overtime work outside an agent's regular tour of duty if an agent volunteers to perform such overtime (e.g., to reduce an overtime hours debt).

### § 550.1625 Irregular overtime and compensatory time off.

(a) *Coverage.* An agent is entitled to compensatory time off as provided in this section for irregular overtime hours outside an agent's regular tour of duty, as specified in § 550.1623, except that such hours are excluded from coverage under this section (except paragraph (c) of this section) when required by the superseding provisions in § 550.1626. The compensatory time off provisions in 5 U.S.C. 5543 and 5 CFR 550.114 are not applicable to an agent.

(b) *Earning on an hour-for-hour basis for irregular overtime.* Subject to the limitations specified in this section and the superseding provisions in § 550.1626, an agent must receive compensatory time off for an equal amount of time spent performing irregular overtime work.

(c) *Call-back overtime work.* Notwithstanding paragraph (b) of this section, consistent with 5 U.S.C. 5542(b)(1) and § 550.112(h), an agent must be deemed to have performed 2 hours of irregular overtime work for a lesser amount of irregular overtime work if—

(1) An agent is required perform such work on a day when the agent was not scheduled to work; or

(2) An agent is required to return to the agent's place of employment to perform such work.

(d) *Earning limited by premium pay cap.* An agent may not be credited with earning compensatory time off if the value of such time off would cause the sum of the agent's basic pay and premium pay in the given pay period to exceed the limitation established under 5 U.S.C. 5547 and §§ 550.105 and 550.107 in the period in which it was earned. The dollar value of compensatory time off for the purpose of this paragraph is the amount of overtime pay the agent would have received for the period during which compensatory time off was earned if the overtime had been regularly scheduled outside the agent's regular tour of duty.

(e) *Pay period limit.* (1) An agent may not earn more than 10 hours of compensatory time off during any pay period unless—

(i) CBP, as it determines appropriate, approves in writing a waiver of the 10-hour limit; and

(ii) Such waiver approval is executed in advance of the performance of any work for which compensatory time off is earned.

(2) If a waiver of the 10-hour limit described in paragraph (e)(1) of this section is not granted, the agent involved may not be ordered to perform the associated overtime work.

(f) *Annual period limit.* An agent may not earn more than 240 hours of compensatory time off during an annual period.

(g) *Usage.* (1) An agent may use compensatory time off by being excused from duty during regular time (in an amount equal to the compensatory time off being used) during the agent's basic workweek.

(2) An agent's balance of unused compensatory time off is used to satisfy an overtime hours debt, as provided in § 550.1626(c)(1).

(h) *Time limit for usage and forfeiture.* An agent must use any hours of compensatory time off not later than the end of the 26th pay period after the pay period during which the compensatory time off was earned. Any compensatory time off not used within that time limit, or prior to separation from an agent position, is forfeited and not available for any purpose, regardless of the circumstances. An agent may not receive any cash value for unused compensatory time off. An agent may not receive credit towards the computation of the agent's retirement annuity for unused compensatory time off.

### § 550.1626 Leave without pay during regular time and absences during obligated overtime hours.

(a) *Substitution for leave without pay during regular time.* (1) For any period of leave without pay during an agent's regular time (basic workweek), an equal period of work outside the agent's regular time in the same pay period must be substituted to the extent such work was performed. Any time substituted for leave without pay must be treated for all pay computation purposes as if it were regular time (except as provided in paragraph (a)(5) of this section) and may not be considered an overtime hour of work for any purpose, including §§ 550.1621(a)(4) and (b)(4), 550.1624, and 550.1625.

(2) Hours of work must be substituted for regular time work under paragraph (a)(1) of this section before being substituted for regularly scheduled overtime within the agent's regular tour of duty under paragraph (b) of this section.

(3) Hours used for substitution under paragraph (a)(1) of this section must be substituted in the following priority order: first, irregular overtime hours; second, regularly scheduled overtime hours outside the regular tour of duty; and third, regularly scheduled overtime hours within the regular tour of duty.

(4) The substitution of overtime hours for leave without pay is solely for pay computation purposes. The substitution does not change the hours of an agent's basic workweek or the fact that the agent was in a particular type of nonpay status during those hours. The hours that are substituted are considered to have been performed when they were worked, not during the leave without pay hours for which they are substituted. For example, if an agent performs 4 hours of overtime work outside the agent's regular tour of duty during the first week of a pay period and then is placed in leave without pay during the second week due to a shutdown furlough caused by a lapse in appropriations, the 4 hours must be substituted for furlough hours for the purpose of computing pay owed the agent for the week before the furlough began.

(5) If overtime hours are substituted for an absence without approval (AWOL) or a suspension, the basic pay for such substituted hours may not be used in computing an agent's overtime supplement.

(b) *Substitution for absences during obligated overtime hours within the regular tour of duty.* (1) For a period of absence during obligated overtime hours within an agent's regular tour of duty, an equal period of work outside the agent's regular tour of duty in the same pay period must be substituted to the extent such work was performed. Any time so substituted must be treated for all pay computation purposes as if it were obligated overtime work and may not be considered an overtime hour of work for any other purpose, including §§ 550.1624 and 550.1625.

(2) In substituting hours of work under paragraph (b)(1) of this section, work performed on the same day as the period of absence must be substituted first in circumstances described in § 550.1622(b)(2). Hours substituted under this paragraph must be substituted in the following priority order: first, irregular overtime hours; and second, regularly scheduled overtime hours outside the regular tour of duty.

(3) After substituting hours under paragraph (b)(2) of this section, any remaining hours used for substitution under paragraph (b)(1) of this section must be substituted in the following priority order: first, irregular overtime hours; and second, regularly scheduled

overtime hours outside the regular tour of duty.

(4) The substitution of overtime hours outside the regular tour of duty for obligated overtime hours not worked is solely for pay computation purposes. The substitution does not change the hours of an agent's regular tour of duty. The hours that are substituted are considered to have been performed when they were worked, not during the obligated overtime hours for which they are substituted.

(c) *Application of compensatory time off or future overtime work to offset overtime hours debt.* (1) If a Border Patrol agent does not have sufficient additional work in a pay period to substitute for all periods of absence during obligated overtime hours within the agent's regular tour of duty for that pay period, any unused balance of compensatory time off hours previously earned under § 550.1625 must be applied towards the newly accrued overtime hours debt.

(2) If an agent has a remaining overtime hours debt after applying paragraphs (b) and (c)(1) of this section, any additional overtime work outside the agent's regular tour of duty in subsequent pay periods that would otherwise be credited under § 550.1624 or § 550.1625 must be applied towards the overtime hours debt until that debt is satisfied. The application of such hours must be done in the following priority order: first, irregular overtime hours; and second, regularly scheduled overtime hours outside the regular tour of duty. Any overtime hour applied under this paragraph (c)(2) may not be considered an overtime hour of work for any other purpose.

(d) *Unsatisfied overtime hours debt at movement to a non-agent position or separation.* (1) Any unsatisfied overtime hours debt that exists at the time of movement to a non-agent position or separation from Federal service must be recovered to the extent possible by offsetting the affected employee's positive balance (if any) of annual leave, time-off awards, or compensatory time off for travel. In cases where the offset will totally eliminate the debt, an agent's balances must be applied in the following order: first, the balance of annual leave; second, the balance of time-off awards; and third, the balance of compensatory time off for travel.

(2) Any unsatisfied overtime hours debt that exists at the time of movement to a non-agent position or separation from Federal service after applying paragraph (d)(1) of this section must be converted to a monetary debt equal to the result of multiplying the agent's hourly rate of basic pay at the time of movement to a non-agent position or separation by the number of hours in the overtime hours debt. CBP must follow standard debt collection procedures to recover any debt.

RELATIONSHIP TO OTHER PROVISIONS

### § 550.1631 Other types of premium pay.

(a) An agent may not receive premium pay for night, Sunday, or holiday work for hours of regularly scheduled overtime work within the agent's regular tour of duty.

(b) An agent may receive premium pay for night, Sunday, or holiday work, as applicable, for hours not covered by paragraph (a) of this section, in accordance with 5 U.S.C. 5545(a) and (b) and section 5546 and corresponding regulations, except that section 5546(d) does not apply. (For an agent, pay for overtime work on a Sunday or holiday is determined under 5 U.S.C. 5542(g), not under section 5546(d).) The agent's rate of basic pay (without any overtime supplement) must be used in computing such premium payments.

(c) An agent may not be paid standby duty premium pay under 5 U.S.C. 5545(c)(1) or administratively uncontrollable overtime pay under 5 U.S.C. 5545(c)(2).

### § 550.1632 Hazardous duty pay.

An agent is eligible for hazardous duty pay, subject to the requirements in 5 U.S.C. 5545(d) and subpart I of this part. The agent's rate of basic pay (without any overtime supplement) must be used in computing any hazardous duty pay.

### § 550.1633 Treatment of overtime supplement as basic pay.

Regularly scheduled overtime pay within an agent's regular tour of duty is treated as part of basic pay or basic salary only for the following purposes:

(a) 5 U.S.C. 5524a and 5 CFR part 550, subpart B, pertaining to advances in pay;

(b) 5 U.S.C. 5595(c) and 5 CFR part 550, subpart G, pertaining to severance pay;

(c) 5 U.S.C. 8114(e), pertaining to workers' compensation;

(d) 5 U.S.C. 8331(3) and 5 U.S.C. 8401(4) and related provisions that rely on the definition in those paragraphs, pertaining to retirement benefits;

(e) Subchapter III of chapter 84 of title 5, United States Code, pertaining to the Thrift Savings Plan;

(f) 5 U.S.C. 8704(c), pertaining to life insurance; and

(g) For any other purposes explicitly provided for by law or as the Office of Personnel Management may prescribe by other regulation.

### § 550.1634 Leave and other paid time off.

(a) An agent is subject to the rules governing leave accrual and usage under 5 U.S.C. chapter 63 on the same basis as other employees. The tour of duty for leave accrual and usage purposes is the basic workweek, which excludes regularly scheduled overtime hours within the regular tour of duty established under this subpart. The agent must be charged corresponding amounts of leave for each hour (or part thereof) the agent is absent from duty during regular time (except that full days off for military leave must be charged when required).

(b) An agent is subject to the normally applicable rules governing other types of paid time off (such as holiday time off under 5 U.S.C. chapter 61, compensatory time off for religious observances under subpart J of this part, or compensatory time off for travel under subpart N of this part) on the same basis as other covered employees. The tour of duty used in applying those rules is the basic workweek, which excludes regularly scheduled overtime hours within the regular tour of duty established under this subpart. The agent must be charged corresponding amounts of paid time off for each hour (or part thereof) the agent is absent from duty during regular time.

(c) In computing a lump-sum annual leave payment under 5 U.S.C. 5551–5552, an overtime supplement for an agent's regularly scheduled overtime hours within the agent's regular tour of duty is included, as provided in § 550.1205(b)(5)(iv).

### § 550.1635 Alternative work schedule.

An agent may not have a flexible or compressed work schedule under 5 U.S.C. chapter 61, subchapter II. The regular tour of duty established under this subpart is a special work schedule established under 5 U.S.C. 5550. CBP may allow flexible starting and stopping times for an agent's basic workday if it determines such flexibility is appropriate for the position in question.

### § 550.1636 Exemption from Fair Labor Standards Act.

The minimum wage and the hours of work and overtime pay provisions of the Fair Labor Standards Act do not apply to Border Patrol agents. (See also 5 CFR 551.217.)

### § 550.1637 Travel time.

(a) A Border Patrol agent's travel time to and from home and the agent's regular duty station (or to an alternative work location within the limits of the agent's official duty station, as defined in § 550.112(j)) may not be considered hours of work under any provision of law.

(b) Official travel time away from an agent's official duty station may be creditable hours of work as provided in § 550.112(g). When an agent travels directly between home and a temporary duty location outside the limits of the agent's official duty station (as defined in § 550.112(j)), the time the agent would have spent in normal home to work travel must be deducted from any creditable hours of work while traveling.

### § 550.1638 Official time.

An agent who uses official time under 5 U.S.C. 7131 may be assigned to a Level 1 or Level 2 regular tour of duty, but is required to perform agency work during obligated overtime hours or to accrue an overtime hours debt. Official time may be used during overtime hours only when, while the agent is engaged in the performance of agency work, an event arises incident to representational functions that must

be immediately addressed during the overtime hours. CBP may excuse the agent from duty during scheduled obligated overtime hours if it determines that an agent's official time duties during the basic workday make it impracticable to perform agency work during the scheduled obligated overtime hours on that day. The agent will accrue an overtime hours debt for that excused time. If CBP excuses the agent in this manner, then it must provide the agent with an opportunity to eliminate the resulting overtime hours debt by performing agency work outside the agent's regular tour of duty at another time. As provided in §550.1621(e), official time during regular time is considered to be ''work'' when an agent otherwise would be in a duty status in applying paragraphs (a)(3) and (b)(3) of §550.1621.

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

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