



# United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240

IN REPLY REFER TO:

DIRECTOR'S ORDER NO. 181

Subject: Lifting the Biweekly Pay Cap

**Sec. 1 What is the purpose of this Order?** This Order establishes Service policy for declaring an emergency or determining that employees are needed to perform mission-critical work under 5 CFR 550 for the purpose of lifting the biweekly pay cap.

**Sec. 2 What is the scope of this Order?** This Order applies to all employees who must respond to an emergency, as defined in this Order, or perform overtime work that is critical to the mission of the Service.

**Sec. 3 What is an emergency?** For the purposes of this Order, an emergency is a temporary condition posing a direct threat to human life or property, including a forest wildfire emergency.

**Sec. 4 What constitutes a "direct threat"?** A direct threat is one in which authorities have good reason to believe that human life or property is in danger in a specific location at a more or less specific time. Performance of security guard details does not in and of itself constitute an emergency, as in the case of guarding national landmarks when there has been no direct threat. The guarding of national landmarks, particularly during certain holidays, has become a normal practice as a result of the general threat under which the United States routinely operates. The Homeland Security Advisory System threat condition will not be the sole basis for determining whether or not an emergency exists.

**Sec. 5 What is mission-critical work?** Mission-critical work is work that must be performed when the Service is facing an extremely urgent or pressing situation that will have an adverse impact on our ability to accomplish our mission if not addressed immediately.

**Sec. 6 What is the biweekly pay cap?** An employee may receive premium pay (overtime) only to the extent that the payment does not cause the total of his/her basic pay and premium pay for any biweekly pay period to exceed the pay of a GS-15, step 10 (including any applicable locality pay and any special rate of pay), or the biweekly rate payable for Level V of the Executive Schedule, whichever is greater.

**Sec. 7 What happens when the biweekly pay cap is lifted?** When the biweekly pay cap is lifted because the Director declares an emergency or determines that employees are needed to perform mission-critical work, we will pay employees responding to the emergency or performing the mission-critical work against the standard of the annual maximum earnings limitation instead of the biweekly pay cap. The result is that, in some

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cases, an employee is allowed to receive pay in excess of what he/she normally would be allowed to receive on a biweekly basis.

**Sec. 8 What is the annual maximum earnings limitation?** In any calendar year during which an employee has performed emergency or mission-critical work as defined above, an employee may receive premium pay only to the extent that the payment does not cause the total of his/her basic pay and premium pay for the calendar year to exceed the rate of basic pay for a GS-15, step 10 (including any locality pay or special rate of pay) in effect on the last day of the calendar year, or the annual rate payable for level V of the Executive Schedule in effect on the last day of the calendar year, whichever is greater.

**Sec. 9 Who has the authority to declare an emergency or determine that work is mission-critical?** The Director is the Service official who has the authority to make such declarations and determinations for employees. This authority cannot be further delegated. All employees are governed by the decision of the Director in determining whether or not an emergency exists or if work is mission-critical. This also applies to employees serving on a detail with another bureau or agency. A determination made by an official of another bureau or agency does not apply to nor supersede a decision made by the Service Director, including a determination made by the FLETC Director.

**Sec. 10 Who has responsibilities under this Order?**

a. **Regional Directors; Manager, California/Nevada Operations Office; Chief, Law Enforcement; and Assistant Directors** will sign requests for approval of an emergency determination or a determination that work is mission-critical and forward the request to the Washington Office Division of Human Resources (HR).

b. The **Assistant Director – Budget, Planning and Human Resources** is responsible for establishing Servicewide policy relative to the administration of premium pay and for ensuring that the use of premium pay is appropriate and in compliance with regulations and Service, as well as Departmental, policy.

c. **Supervisors** will evaluate work demands and methods of accomplishment, enlisting cost-effective measures when making expenditures for premium pay and will make recommendations to approving officials. They are responsible for ensuring, to the extent possible, that they do not require their employees to work when it is known that the employees will not receive compensation for their time because of the biweekly pay cap. Upon realizing that a potential emergency or mission-critical situation exists, supervisors must immediately initiate the necessary paperwork (see Section 11) and forward it through the appropriate channels to the Washington Office HR to seek a determination. They are also responsible for ensuring that the requests they sign for determinations under this Order contain all the necessary information for the Director to make a decision. Supervisors are further responsible for ensuring that the Director has declared an emergency or determined that work is mission-critical prior to attempting to lift the biweekly pay cap for an employee.

d. **Servicing Human Resources Offices** will ensure regulatory compliance and sufficiency of information provided in requests forwarded to the Washington Office HR for approval of an emergency or mission-critical determination.

e. The **Washington Office HR** will review requests for declaration of an emergency or determination of a mission-critical situation, make a recommendation regarding the request, and forward it for a decision by the Director.

**Sec. 11 What are the procedures for forwarding to the Director a request to make an emergency or mission-critical determination?** The requesting official forwards a memorandum through his/her chain of command, including the servicing human resources office. The appropriate official designated in Section 10a, above, must sign the request.

a. For declaration of an emergency, the requesting official must include a description of the situation, how it poses a direct threat to human life or property, the date the situation began, the estimated duration of the situation (if known), an estimate of the number of employees affected, and the types of premium pay involved (e.g., overtime, Sunday pay, holiday, or night differential).

b. For determination that work is mission-critical, the requesting official must include a statement that adequately describes how the work being performed meets the definition of mission critical, the date the situation began, the estimated duration of the situation (if known), an estimate of the number of employees affected, and the types of premium pay involved.

**Sec. 12 When does the entitlement to premium pay under the annual limitation become effective?** It becomes effective on the first day of the pay period in which the emergency or mission-critical situation is determined to have begun.

**Sec. 13 Can I elect to receive compensatory time off in lieu of overtime in order to avoid going over the biweekly pay cap?** No. The biweekly pay limitation in 5 U.S.C. 5547 is also a ceiling on compensatory time off. Compensatory time off is merely an alternative form of payment for overtime work. As such, the value of any compensatory time off is equal to the overtime hourly rate that is payable in dollars. Thus, the number of hours for which you may receive monetary overtime is also the number of hours of compensatory time off that can be credited in a pay period. You may not exceed the biweekly pay limitation by choosing compensatory time off as a substitute for monetary overtime pay.

**Sec. 14 When is this Order effective?** This Order is effective immediately. We will incorporate the contents of this policy into 225 FW 7. This Order will expire on December 31, 2005, unless it is amended, superseded or revoked.

  
DIRECTOR

Date: December 7, 2004