

HHS Transmittal 96.15  
Personnel Manual  
Issue Date: 6/12/96

Material Transmitted:

HHS Instruction 550-1, Premium Pay

Material Superseded:

HHS Instruction 550-1 (all)  
HHS Instruction 610-2 (all)

Background:

This Instruction has been revised consistent with recent changes in the organization of HHS, and in support of HHS administrative initiatives calling for more streamlined rules greater delegation of authority.

Under this issuance, the rules were streamlined by consolidating two Instructions containing similar subject matter and the delegations of authority were increased.

Any reference to "OPDIV" in this Instruction now includes AHCPR, ATSDR, CDC, FDA, HRSA, IHS, NIH, SAMHSA, the Office of the Secretary, the Program Support Center, HCFA, ACF, and AOA.

This issuance is effective immediately. Implementation of this issuance must be carried out in accordance with applicable laws, regulations, and bargaining agreements.

Filing Instructions:

Remove superseded material and file new material. Post receipt of this transmittal to the HHS Check List of Transmittals and file this transmittal in sequential order after the check list.

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INSTRUCTION 550-1

Distribution: MS (PERS) : HRFC-001

HHS PERSONNEL INSTRUCTION 550-1  
PREMIUM PAY

550-1-00	Purpose
10	Coverage
20	References
30	Policies
40	Overtime
50	Compensatory Time
60	Call-Back Overtime
70	Regularly Scheduled Standby Duty Pay
80	Pay for Administrative Uncontrollable Work
90	Night Differential
100	Pay for Work on a Holiday
110	Sunday Differential
120	Hazardous Duty Pay
130	Preshift and Postshift Activity

Exhibit 550-1-A, Delegation of Authority to Approve Premium Pay

550-1-00 PURPOSE

The purpose of this Instruction is to state the Department's policies and provide guidance concerning premium pay of all types.

550-1-10 COVERAGE

This Instruction covers General Schedule (GS) employees and like-GS employees in the excepted service (pay plan GG) . It does not cover Federal Wage System, Senior Executive Service, and Student Stipend employees.

550-1-20 REFERENCES

- A. 5 U.S. Code, Chapter 55, Subchapter V (law - premium pay)
- B. 5 U.S. Code, Chapter 61, Subchapter II (law - flexible and compressed work schedules)
- C. 5 CFR Part 550 (regulations - pay administration (general))
- D. 5 CFR Part 551 (regulations - pay administration under the Fair Labor Standards Act (FLSA))
- E. 5 CFR Part 610 (regulations - hours of duty)

- F. Comptroller General Decisions:
1. 37 Comp. Gen. 1
  2. 37 Comp. Gen. 362
  3. 41 Comp. Gen. 8
  4. 46 Comp. Gen. 337
  5. 52 Comp. Gen. 319
  6. 53 Comp. Gen. 181
  7. 53 Comp. Gen. 264
  8. 55 Comp. Gen. 629
  9. 56 Comp. Gen. 551
  10. 58 Comp. Gen. 638
  11. 60 Comp. Gen. 198
  12. 62 Comp. Gen. 589
  13. 63 Comp. Gen. 316
  14. B-181237, April 15, 1975
  15. B-194821, April 24, 1980
  16. B-212486, October 31, 1983
  17. B-217502, October 31, 1985

#### 550-1-30 POLICIES

- A. It is the Department's policy to provide employees with premium pay in accordance with the laws and regulations for overtime, holiday, night or Sunday work, and for hazardous or standby duty or administratively uncontrollable work when the work has been ordered and approved by authorized persons and performed by an employee(s).
- B. OPDIVs are required to ensure that overtime is properly recorded and documented.

#### 550-1-40 OVERTIME

Overtime is paid for work approved, ordered, and performed in excess of 8 hours a day or in excess of 40 hours in an administrative workweek. The following are exceptions to this rule:

1. Employees who are authorized to work compressed workweeks (e.g., a 10-hour day, 4 days a week) receive overtime pay for work in excess of those specified hours that constitute the compressed schedule.
2. Employees who are authorized to work flexible schedules and for whom credit hours are applicable receive overtime pay only for hours which are not credit

hours.

- B. Employees may not be compensated for overtime work unless the work is ordered or approved in advance of its being performed (see 52 Comp. Gen. 319 and 53 Comp. Gen. 181). In emergencies, employees may be ordered to work overtime without prior approval of the overtime approving official provided approval is documented the next work day.
- C. For employees on non-reimbursable details outside the Department, OPDIVs must ensure that a clear understanding exists with the gaining organization with respect to when overtime may be worked and whether the cost of any overtime will be reimbursed.

#### 550-1-50 COMPENSATORY TIME

- A. Compensatory time is compensation for overtime work on the basis of time off equal to overtime work performed. Except as indicated in C below for religious observance compensatory time, compensatory time may only be substituted for pay for irregular or occasional overtime (see 5 CFR 550.103(f)). For employees exempt from FLSA, OPDIVs may require that employees whose basic rate of pay exceeds the maximum rate for GS-10 earn compensatory time instead of overtime. Compensatory time that is not used within 8 pay periods will automatically be paid at the overtime rate at which it was earned. This applies to both FLSA exempt (not covered) and nonexempt (covered) employees.
- B. In conformity with 37 comp. Gen. 362, overtime and compensatory time off for FLSA exempt employees can only be earned within the aggregate salary limitation specified in 5 U.S. Code 5547. This limitation prohibits overtime compensation in either money or compensatory time off when either would cause the employee's aggregate biweekly basic pay plus premium pay to exceed the biweekly rate payable to a GS-15, Step 10. The Comptroller General states that compensator time is equivalent to pay at the authorized overtime rate of pay. Therefore, when figuring the maximum number of compensatory time hours FLSA exempt employees may earn, the maximum number of overtime hours must be computed, and the number of compensatory time hours will be the same. Note the following exceptions:
  - 1. This limitation is not applicable to FLSA nonexempt (covered) employees.
  - 2. In accordance with 5 U.S. Code 5547, the limitation for a pay period may be exceeded in emergency situations which pose a direct threat to life or property. OPDIV Heads or their designees have the authority to make emergency

determinations. NOTE: Even when an emergency determination is made, the maximum yearly aggregate salary may not exceed the highest yearly rate payable for GS-15.

3. In accordance with 5 U.S. Code 5547, the maximum limitation for law enforcement officers is either 150 percent of the minimum rate for GS-15 or the rate for Level V of the Executive Schedule, whichever is less.
- C. Religious observance compensatory time is exempt from the normal overtime rules for both nonexempt and exempt employees. Therefore, it is possible for an employee to earn compensatory time for religious observance while performing regularly scheduled overtime (see HHS Instruction 550-11). Religious observance compensatory time must be distinguished from compensatory time for overtime.

#### 550-1-60 CALL-BACK OVERTIME

- A. Call-back overtime occurs when employees are required to return to work after leaving the work site or perform overtime work on a day for which they are not scheduled to work. A minimum of 2 hours overtime is credited, even though the employee may perform no work after returning to the work site (see 37 Comp. Gen. 1 and B-217502, October 31, 1985). It is possible to have several call-backs in a 24-hour period. Each call-back is individually payable until the aggregate pay for exempt employees totals the maximum payable rate for grade GS-15 in a pay period. (There is no aggregate pay limit for FLSA nonexempt and wage grade employees.)
- B. Because call-back work is irregular/occasional overtime work, compensatory time off may be substituted for pay at the employee's request (see 37 Comp. Gen. 1 and 5 CFR 550.112(h)). The employee receives a minimum of 2 hours compensatory time per call-back.
- C. Call-backs on a holiday are paid at the holiday rate for hours which correspond to the employee's regularly scheduled work time. Outside these hours, call-backs are paid at the authorized overtime rate of pay (see 37 Comp. Gen. 1) . For example, an employee may have five call-backs on July 4 causing him/her to be paid for 10-hours work; however, the first four call-backs (8 hours) are paid at the holiday work pay rate. The fifth call-back is paid at the normal overtime rate of pay.

#### 550-1-70 REGULARLY SCHEDULED STANDBY DUTY PAY

- A. Regularly scheduled standby duty pay is premium pay approved on an annual basis. This is appropriate when an employee is required to remain within the confines of a duty station or living quarters and the employees whereabouts and activities are severely limited. Standby duty includes periods of time during which no work is performed while the employee is waiting for an event to occur which will require his/her attention. The pay covers both nonwork and work times. In contrast, employees who are "on call" are paid only when they perform work; if called to work, they receive call-back overtime (see 550-1-60 above) .
- B. Standby duty is associated with an employee's regularly assigned duties. Because of this, the employees tour of duty is changed in conformance with 5 CFR 610.111(C). The result is that standby pay becomes basic pay and the extra pay earned is creditable for retirement and life insurance purposes only; it is not basic pay for overtime purposes. Because of this effect, servicing personnel offices must issue an SF-50 (Notification of Personnel Action) for every employee authorized standby pay.
- C. Premium pay for standby duty is in lieu of all other premium pay, including regularly scheduled overtime, holiday pay, night pay differential, and Sunday premium pay. However, standby duty pay is not in lieu of irregular or occasional overtime, that is otherwise authorized and ordered, in excess of the regularly scheduled standby duty. Employees on standby duty may be paid overtime or receive compensatory time for irregular or occasional overtime work.
- D. In keeping with 56 Comp. Gen. 551, an employee whose standby duty includes a holiday is still on standby duty during the holiday. The employee must be excused from work on the holiday when he/she is not needed that day. If the employee is absent during the holiday and not given excused absence, the employee must be charged annual leave, sick leave, leave without pay, or absent without leave.

#### 550-1-80 PAY FOR ADMINISTRATIVELY UNCONTROLLABLE WORK

Administratively uncontrollable work (AUW) is work for which the employee has the responsibility for recognizing, without supervisory direction, circumstances that require him/her to remain on duty or to return to duty. AUW is paid on an annual premium pay basis determined by a percentage of the employees annual salary and the average number of hours worked and is in lieu of irregular or occasional overtime. For employees covered by FLSA, any annual premium pay must be factored into the FLSA calculations.

#### 550-1-90 NIGHT PAY DIFFERENTIAL

- A. Night pay differential for GS employees is 10 percent of their scheduled pay rate regardless of grade. This differential is paid for any regularly scheduled work performed between 6:00 p.m. and 6:00 a.m.
- B. Employees who are ordered to work (overtime included) at night within the administrative workweek are not entitled to night differential pay.
- C. A night differential is paid for irregular or occasional overtime when employees habitually and recurrently perform overtime at night because the nature of their employment requires them to remain on duty until their tasks are completed or until they are relieved from duty (see Comp. Gen. B-181237, April 15, 1975).
- D. A person substituting at night (6:00 p.m. to 6:00 a.m.) on another employees shift is not entitled to a night differential, unless such substitution was ordered in advance of the administrative workweek (Sunday through Saturday) .
- E. Care must be taken to distinguish between irregular or occasional overtime work at night and a temporary change in a daily tour of duty. An employee may be temporarily assigned to a daily tour of duty that includes night work. In this circumstance, the employee is entitled to a night differential, even when the scheduling of the assignment occurs within the administrative workweek.
- F. First-shift employees (midnight to 8:00 a.m.) on a three-shift daily operation who are scheduled to perform overtime on the third shift (4:00 p.m. to midnight) are entitled to a night differential (for the hours between 6:00 p.m. and midnight) provided they are scheduled before the beginning of the administrative workweek. This is in addition to their night differential entitlement for the first shift. A break between shifts has no effect on the entitlement.
- G. An intermittent employee who is scheduled before the beginning of the administrative workweek to work at night is entitled to a night differential for work performed between 6:00 p.m. and 6:00 a.m. An intermittent employee who is scheduled after the beginning of the administrative workweek to work at night is not entitled to a night differential. (It is very rare for an intermittent employee to have scheduled work periods; otherwise, the employee would not be intermittent).
- H. An employee who is regularly scheduled to work 5 hours overtime but works 6 hours because the estimate of time it would take to perform the job was in error is entitled to a night differential for any part of the 5 hours that is performed between the hours of 6:00 p.m. and 6:00 a.m. The extra hour is irregular or occasional overtime with no entitlement to a night differential. However, if the employee works only 4 hours rather than 5, the

employee is entitled to only 4 hours of regularly scheduled overtime, plus up to 4 hours night differential. This is because the overtime work must be performed before any compensation is paid (see 55 Comp. Gen.629) .

- I. An employee with a total amount of paid leave of 8 hours or more during a pay period, day or night, cannot earn a night differential for that leave period.

#### 550-1-100 PAY FOR WORK ON A HOLIDAY

- A. Pay for work performed on a holiday during hours which correspond to regularly scheduled hours of duty is double time. Double time as defined by law for Federal employees is the basic pay normally received for the holiday, plus a premium equal to the employee's basic rate of pay. Work performed in excess of 8 hours on a holiday is paid on the basis of time and one-half for full-time employees. Pay for work on a holiday is applicable only to the time within the regularly scheduled duty hours. Employees on fixed compressed schedules receive pay for work on a holiday not to exceed the number of hours of the compressed work schedule for that day. Hours in excess of scheduled work requirements for that day are paid at the overtime pay rate and in accordance with overtime pay rules. Employees on flexible schedules may not receive holiday pay for more than 8 hours.
- B. Pay for work on a holiday for part-time employees is applicable only to their regularly scheduled tour of duty for the day on which the holiday occurs, provided that day is one of their scheduled work days (see Comp. Gen. B-194821, April 24, 1980) . Work in excess of the employees scheduled tour of duty is paid at the basic rate, not to exceed 8 hours. Work in excess of 8 hours is paid at the overtime rate of pay.

#### 550-1-110 SUNDAY DIFFERENTIAL

5 U.S. Code 5546 provides a 25 percent differential for full-time employees regularly scheduled for non-overtime work on a Sunday. This differential is not authorized for part-time employees (see 46 Comp. Gen 337 and 63 Comp. Gen. 316).

#### 550-1-120 HAZARDOUS DUTY PAY

Hazardous duty pay may be paid to GS employees for certain irregular and occasional hazards. For conditions and circumstances qualifying for hazardous duty pay, see 5 CFR 550.904. Requests to consider conditions other than those specified in the regulations must be sent to the Office of Personnel Management through the Office of the Deputy Assistant Secretary for Human Resources, OASMB .



#### 550-1-130 PRESIFT AND POSTSHIFT ACTIVITY

Preshift activity is a preparatory activity performed prior to the commencement of the principal activities. Postshift activity is a concluding activity performed after the completion of the principal activities. Employees who perform preshift or postshift activities outside their daily scheduled tour of duty must be compensated for irregular or occasional overtime, if all of the following criteria are met:

1. The preshift or postshift activity is closely related to the employees' principal activities and is indispensable to performance of the principal activities.
2. The preshift or postshift activity occupies a time of more than 10 minutes (i.e., at least 11 minutes) a day.
3. The time period for the preshift or postshift activity has to be scheduled by an official with authority to approve irregular or occasional overtime. The overtime credited must not exceed the time scheduled.

Preshift and postshift work are distinguished from preliminary or postliminary work which do not meet the criteria described above and are not compensated. For example, if an employee has a preference for showering after work, that is postliminary, and he or she would not be compensated.

## DELEGATION OF AUTHORITY TO APPROVE PREMIUM PAY

### A. Authority Delegated

1. I hereby delegate to the Heads of OPDIVs (including AHCPR, ATSDR, CDC, FDA, HRSA, IHS, NIH, SAMHSA, the Program Support Center, HCFA, ACF, and AOA), the Assistant Secretary for Management and Budget for employees of the Office of the Secretary (OS), and the Inspector General (for OIG) the authority to:
  - a. Approve irregular and occasional or regularly scheduled overtime payment for work performed at the work site, at home, or at other alternate work sites;
  - b. Approve additional annual compensation as authorized under 5 CFR 550.141, 550.151, and 550.181 (standby and administratively uncontrollable work (AUW) and availability pay for criminal investigators;
  - c. Approve other premium pay authorized by 5 U.S. Code, Chapter 55 and 5 CFR Part 550; and
  - d. Determine that an emergency situation exists for the purpose of permitting pay limits in 5 U.S. Code 5547 to be exceeded.
2. These authorities may be redelegate with further redelegations authorized.

### B. Prior Delegations

This delegation supersedes all prior delegations. To the extent that previous delegations of authority covering the above subjects are consistent with the provisions of this delegation, they may remain in effect until new redelegations are made under the authority of this delegation.

### C. Effective Date

This delegation is effective on the date of this transmittal.