

PART 2051 - HOURS AND PAY

Subpart H - Overtime Pay

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PART 2051 - HOURS AND PAY

Subpart H - Overtime Pay

§ 2051.351 General.

There are two basic laws that cover overtime entitlement for Federal employees: Title 5 of the United States Code and the Fair Labor Standards Act (FLSA). This instruction supplements these two laws; Office of Personnel Management (OPM) overtime regulations, rules, and policies; and the United States Department of Agriculture (USDA) overtime policies. This instruction describes Rural Development policy and procedures for selected overtime issues and is intended to be read and applied within the context of all applicable overtime laws and regulations. OPM's regulations for Title 5 overtime are found in Part 550 of Title 5 of the Code of Federal Regulations (CFR). OPM's regulations for FLSA overtime are found in Part 551 of Title 5 of the CFR. In addition, OPM includes many Fact Sheets and other relevant explanatory material on overtime pay at www.opm.gov/oca/pay/index.asp.

§ 2051.352 Coverage Determinations.(a) Types of Coverage Determinations.

(1) All Rural Development employees are designated as either FLSA nonexempt, which means covered by the overtime provisions of the FLSA, or FLSA exempt, which means not covered by the overtime provisions of the FLSA. FLSA exempt employees are eligible for overtime pay only under Title 5.

(2) The appropriate designation of employees for overtime coverage is important because there are key differences in overtime pay between the two laws. There are differences in what time and activities are considered hours of work, how overtime pay is computed, and how compensatory time off is granted.

(b) General Principles and Practices.

(1) Each Rural Development employee is presumed to be covered by FLSA, i.e., FLSA nonexempt, unless the individual with delegated classification authority determines that the employee clearly meets one or more of the exemption criteria defined in 5 CFR 551, Subpart B.

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(2) Classification delegates must narrowly apply exemption criteria. If there is a reasonable doubt as to whether an employee meets the criteria for exemption, the employee should be designated FLSA nonexempt.

(3) The designation of an employee as FLSA exempt or nonexempt ultimately rests on the duties actually performed by the employee. Classification delegates must not base coverage determinations on inaccurate position descriptions.

(4) Classification delegates must make a coverage determination for a position at the time the position is classified. This determination should be reviewed any time there is a significant change in duties and responsibilities.

(c) Record of Coverage Determinations.

(1) The FLSA status determination should be clearly marked on the position description, and on Optional Form (OF) 8, "Position Description." (Revised 08-23-06, PN 401.)

(2) Classification delegates should include a justification for any exempt determination, as well as any nonexempt determination that is not readily apparent, in the classification evaluation statement.

(3) The FLSA status determination is included on an employee's SF 50-B, "Notification of Personnel Action", under Block 35, FLSA Category.

§ 2051.353 Authority to Order or Approve Overtime Work.

The Under Secretary, Rural Development, has the authority to order or approve overtime work. The Under Secretary relegates this authority to Agency Administrators and other National Office officials through the level of Division Directors, as well as to State Directors. National Office Officials and State Directors may redelegate authority to order or approve overtime to the lowest supervisory level within their respective organizations. These additional re delegations should be issued in writing.

§ 2051.354 Use of Overtime.

(a) Supervisory Responsibilities. Managers and supervisors with delegated overtime approval authority are responsible for controlling the use of overtime. Overtime should be kept to a minimum and approved within budgetary limitations.

§ 2051.354 (Con.)

(b) Overtime Situations. Following are examples of work situations when it may be appropriate to order or approve overtime:

- (1) Respond to emergencies.
- (2) Accomplish mission-essential work.
- (3) Meet peak workload requirements.
- (4) Complete priority assignments with critical deadlines.
- (5) Address nonroutine work requirements when no other option is available.

§ 2051.355 Procedures for Request and Approval of Overtime.

It is necessary to document the order/request for and approval of overtime. Approving officials may use Form RD 2051-6, "Request for Overtime," or an alternative form of written documentation for the purpose of requesting and approving overtime. Each request should include justification for the overtime work and should be submitted and approved prior to the overtime being worked. If the requested overtime covers more than one pay period, separate requests should be made.

§ 2051.356 Definition of Overtime Hours.(a) Compressed Work Schedules (CWS).

- (1) For full-time employees under a CWS who are FLSA exempt, overtime hours are all officially ordered and approved hours of work in excess of the compressed work schedule (for a day or biweekly pay period).
- (2) For full-time employees under a CWS who are FLSA nonexempt, overtime hours are all officially ordered and approved hours of work in excess of the compressed work schedule AND any hours worked outside the CWS that are suffered or permitted. (Refer to (d) of this section.)

(b) Flexible Work Schedules (FWS).

- (1) For full-time employees under a FWS (e.g., Maxiflex or Flexitour) who are either FLSA exempt or FLSA nonexempt, overtime hours are all hours of work officially ordered in advance in excess of the approved flexible work schedule (for a day or biweekly pay period).

(2) FLSA nonexempt employees under a FWS may not earn overtime pay as a result of including suffered or permitted hours under FLSA as hours of work.

(3) Credit hours under a FWS are not overtime hours. Credit hours are worked voluntarily and are not officially ordered in advance by management.

(c) Traditional Work Schedules.

(1) For full-time employees under a traditional (i.e., 8 hours per day, 5 days per week) work schedule who are FLSA exempt, overtime hours are all officially ordered or approved hours of work in excess of 8 hours in a day or 40 hours in a week.

(2) For full-time employees under a traditional work schedule who are FLSA nonexempt, overtime hours are all officially ordered or approved hours of work in excess of 8 hours in a day or 40 hours in a week AND any hours worked outside the traditional work schedule that are suffered or permitted. (Refer to (d) of this section.)

(d) Suffered or Permitted Work.

(1) Suffered or permitted work means any work performed by an employee for the benefit of an agency, whether requested or not, provided the employee's supervisor knows or has reason to believe that the work is being performed, and has an opportunity to prevent the work from being performed.

(2) It is Rural Development policy that FLSA nonexempt employees should not work hours in excess of their approved work schedules unless the time has been ordered or approved in advance. This includes starting work earlier or ending work later than approved, or working through lunch.

(3) Supervisors must regularly remind FLSA nonexempt employees of the policy on suffered or permitted work. Supervisors must monitor work situations to ensure employees are in compliance with Rural Development policy. Supervisors who fail to comply with the policy on suffered or permitted work may be subject to disciplinary action.

(4) Employees who fail to comply with the policy and supervisory instructions on suffered or permitted work may be subject to disciplinary action.

§ 2051.357 Travel as Hours of Work.

(a) Overall Policy. Whenever possible, an employee's travel should be scheduled within regular work hours. This policy applies to both FLSA nonexempt and FLSA exempt employees.

(b) Supervisory Responsibilities. Supervisors are responsible to schedule work, including travel, for subordinate employees. When an employee must travel, it is the supervisor who should select the mode of transportation, e.g., automobile or airplane, and the general time of travel. Supervisors must make these decisions within budgetary limitations and in recognition of the overall policy to schedule travel within an employee's regular work hours.

(c) Travel Rules. The rules on travel as hours of work depend on whether an employee is nonexempt or exempt from FLSA. Determination of travel time as hours of work can be difficult and must be based on the circumstances of each individual travel situation.

(1) For FLSA exempt employees, travel time is credited as hours of work under Title 5 rules. Specific references include 5 CFR 550.112(g) and (j).

(2) For FLSA nonexempt employees, travel time is credited as hours of work under the Title 5 rules listed in (1) and under OPM's FLSA regulations. Specific references include 5 CFR 551.401(h) and 551.422.

(d) Official Duty Station. Rural Development defines a mileage radius of 50 miles to determine whether an employee's travel is within or outside the limits of the employee's official duty station (ODS). This is a key factor in determining entitlement to overtime compensation for travel for both FLSA exempt and nonexempt employees.

(e) Alternative Mode or Time of Travel. If an employee requests, and is permitted, to use an alternative mode of transportation (e.g., an employee prefers to drive rather than fly), or travel at a different time than selected by the supervisor, the employee will be credited with the lesser of:

(1) the actual travel time which is hours of work; or

(2) the estimated travel time which would have been considered hours of work if the employee would have followed the supervisor's selected travel mode and time.

(f) Multiple Time Zones. When an employee's travel involves two or more time zones, the time zone at the point of first departure for the day is used to determine whether, or how much, travel is credited as hours of work. For example, if an employee begins travel in Washington, D.C., and ends travel that day in St. Louis, MO, all times are converted to the Eastern time zone to determine if any of the travel is hours of work. When the employee returns a later day from St. Louis, MO, to Washington, D.C., all times are converted to the Central time zone to determine if any of the travel is hours of work.

(g) Waiting Time.

(1) Waiting time at a common carrier is considered hours of work for FLSA exempt and nonexempt employees if it occurs during regular working hours.

(2) Waiting time also is considered hours of work for FLSA nonexempt employees if it occurs when the employee is required to travel as a passenger on:

(i) a one-day assignment away from the ODS; or

(ii) an overnight assignment away from the ODS during hours on nonworkdays that correspond to the employee's regular working hours.

(3) Waiting time includes predeparture waiting time, waiting time for connecting flights, and waiting time due to flight delays. The amount of predeparture waiting time that may be credited (often referred to as usual or normal waiting time) will be based on standards established by the applicable airline. The amount of waiting time, due to connecting flights or flight delays, that may be credited is actual waiting time (within the limitations of (b) and (e) of this section).

(h) Home to Work Travel.

(1) Normal commuting time from home to work and work to home is not hours of work for either FLSA exempt or nonexempt employees.

(2) Normal home to work travel also includes travel between an employee's home and a temporary duty location within the limits of the employee's ODS.

§ 2051.357(h) (Con.)

(3) For an employee assigned to a temporary duty station overnight, normal home to work travel includes travel between the employee's temporary place of lodging and a work site within the limits of the temporary duty station.

(4) When an employee travels directly from home to a temporary duty location outside the limits of the employee's ODS, the time the employee would have spent in normal home to work travel must be deducted from hours of work. Refer to (c) of this section for the applicable rules crediting travel time as hours of work.

(i) FLSA Travel Documentation. Every FLSA nonexempt employee who is required to travel must provide sufficient information to determine the number of hours in travel status, if any, that will be credited as hours of work. Approving officials may use Form RD 2051-5, "Record of FLSA Travel Time," or an alternative form of written documentation for the purpose of recording travel time and determining credit for hours of work.

§ 2051.358 Training as Hours of Work.

(a) During Regular Working Hours. For FLSA exempt and nonexempt employees, time spent in training during regular working hours on scheduled workdays is hours of work.

(b) Outside Regular Working Hours.

(1) Per 5 CFR 410.402, an agency may not pay premium pay to an employee engaged in training by, in, or through Government or nongovernment facilities. (A few exceptions to this general prohibition are provided in the regulation.) This general prohibition applies to overtime pay under Title 5; however, it does not apply to payment of FLSA overtime.

(2) Regulations governing overtime pay for FLSA nonexempt employees who spend time in training outside regular working hours are found in 5 CFR 551.423.

(3) Time spent in training outside regular working hours shall be considered hours of work for FLSA nonexempt employees if:

(i) the employee is directed to participate, i.e., Rural Development requires the training and the employee's performance or retention in the current position will be adversely affected by nonenrollment in the training; and

(ii) the purpose of the training is to improve the employee's performance in the current position, e.g., raise an employee's performance up to a fully successful or equivalent level, or provide knowledge or skills to perform new duties and responsibilities in the employee's current position.

(4) The fact that Rural Development pays for all or part of an employee's training expenses does not entitle the FLSA nonexempt employee to overtime hours of work unless Rural Development directs/requires participation in the training.

§ 2051.359 Overtime Compensation.

(a) Types of Overtime Compensation. There are two types of compensation for overtime work: overtime pay and compensatory time off.

(b) Overtime Pay Rules. The rules for computing overtime pay depend on whether an employee is nonexempt or exempt from FLSA. The National Finance Center computes overtime pay for all employees.

(c) Overtime Pay for FLSA Exempt Employees.

(1) For employees whose rate of basic pay is equal to or less than the rate of basic pay for GS-10, step 1, the overtime hourly rate is the employee's hourly rate of basic pay multiplied by 1.5.

(2) For employees whose rate of basic pay is greater than the rate of basic pay for GS-10, step 1, the overtime hourly rate is the greater of:

(i) the hourly rate of basic pay for GS-10, step 1, multiplied by 1.5; or

(ii) the employee's hourly rate of basic pay.

(3) There is a biweekly pay limitation under 5 U.S.C. 5547(a) and 5 CFR 550.105 that restricts the total of an employee's basic pay and premium pay for any biweekly pay period to the greater of the annual rate for GS-15/10 or level V of the Executive Schedule. A biweekly maximum earnings limitation applies to Title 5 overtime pay.

§ 2051.359 (Con.)

(4) If the Under Secretary, under 5 CFR 550.106, determines that an emergency exists or that an employee is needed to perform work that is critical to the mission of Rural Development, the maximum earnings limitation will be based on calendar year, instead of biweekly, earnings. An annual maximum earnings limitation applies to Title 5 overtime pay.

(d) Overtime Pay for FLSA Nonexempt Employees.

(1) In most instances in Rural Development, the FLSA overtime hourly rate is equal to the employee's hourly rate of basic pay multiplied by 1.5.

(2) In some instances in Rural Development, the computation of overtime pay is more complicated. This occurs in situations where the employee receives additional pay, such as night pay, pay for holiday work, or cost of living adjustment (COLA). Detailed guidance on FLSA overtime pay computations may be found in 5 CFR 551.511 and 551.512 and in OPM Fact Sheets.

(3) The limitation on an hourly rate of overtime pay under Title 5 for FLSA exempt employees does not apply to FLSA overtime. The maximum biweekly or annual earnings limitations on Title 5 premium pay do not apply to FLSA overtime pay. The absence of limitations is a strong reason for supervisors and managers to closely monitor overtime obligations.

(e) Compensatory Time Off Rules.

(1) Compensatory time off is time off with pay from an employee's tour of duty in lieu of overtime pay. One hour of compensatory time off is granted for each hour of overtime work.

(2) There must be an entitlement to overtime compensation before compensatory time off can be granted.

(3) It is Rural Development policy that all compensatory time off must be officially recorded when earned and used. Unofficial compensatory time off is not authorized.

(4) Requests to earn compensatory time off in lieu of overtime pay must be made before the end of the pay period in which the overtime is worked.

(5) Employees may request to use compensatory time off in increments of 15 minutes.

(6) It is Rural Development and USDA policy to require employees to take compensatory time off before annual leave, unless this would result in forfeiture of annual leave.

(7) Supervisors and managers must monitor compensatory time off. It is Rural Development's goal to limit an employee's balance of compensatory time off to a maximum of 40 hours.

(8) It is Rural Development and USDA policy that an employee must use the compensatory time off no later than the end of the leave year following the year in which it is earned. If an employee fails to use the compensatory time off within this established time limit, the employee will be paid for the compensatory time off hours at the overtime rate in effect at the time the overtime was worked.

(9) It is USDA policy that Rural Development must liquidate an employee's compensatory time off balance if an employee leaves Rural Development. This includes separation from Federal service, transfer to an agency outside USDA, or movement (e.g., reassignment or promotion) to another USDA agency. If the employee has not used the compensatory time off before service in Rural Development ends, the employee will be paid for the compensatory time off hours at the overtime rate in effect at the time the overtime was worked.

(10) The rules for granting compensatory time off depend on a number of factors, including FLSA status, type of work schedule (flexible or fixed), and type of overtime work (regularly scheduled or irregular or occasional).

(11) Regularly scheduled overtime work is overtime work that is scheduled in advance of an employee's workweek. Irregular or occasional overtime work is overtime work that is not scheduled in advance of an employee's workweek.

(f) Compensatory Time Off for FLSA Exempt Employees.

(1) An exempt employee on a fixed work schedule (e.g., compressed or traditional) may request compensatory time off in lieu of overtime pay only for an equal amount of irregular or occasional overtime work.

§ 2051.359(f) (Con.)

(2) An exempt employee on a flexible work schedule (e.g., maxiflex or flexitour) may request compensatory time off in lieu of overtime pay for an equal amount of overtime work, whether or not irregular or occasional in nature.

(3) Overtime approval officials may require that an FLSA exempt employee whose rate of basic pay exceeds GS-10, step 10, be compensated for irregular or occasional overtime work with compensatory time off instead of overtime payment.

(4) Overtime approval officials may not require that an FLSA exempt employee whose rate of basic pay is GS-10, step 10, or less be compensated for overtime work with compensatory time off.

(5) Overtime approval officials retain final approval for compensatory time off. Approval officials are not obligated to approve every request. There must, however, be a rational, job-related, nondiscriminatory basis for denial of an employee's request for compensatory time off.

(6) The maximum earnings limitations under (c) of this section also apply to compensatory time off. The dollar value of compensatory time off is the amount of overtime pay the employee otherwise would have received. Compensatory time off is merely an alternative form of payment for overtime work. An employee may not exceed the pay limitations by requesting compensatory time off as a substitute for monetary overtime compensation.

(g) Compensatory Time Off for FLSA Nonexempt Employees.

(1) A nonexempt employee on a fixed work schedule (e.g., compressed or traditional) may request compensatory time off in lieu of overtime pay only for an equal amount of irregular or occasional overtime work.

(2) A nonexempt employee on a flexible work schedule (e.g., maxiflex or flexitour) may request compensatory time off in lieu of pay for an equal amount of overtime work, whether or not irregular or occasional in nature.

(3) Overtime approving officials may not require that an FLSA nonexempt employee be compensated for overtime work with compensatory time off in lieu of overtime pay. Management may not deny payment of overtime because of budget reasons for overtime that is either ordered, or suffered or permitted. Approving officials must not interfere with an FLSA nonexempt employee's right to request or not to request compensatory time off in lieu of overtime pay for overtime hours.

(4) Overtime approval officials retain final approval for compensatory time off. Approval officials are not obligated to approve every request. There must, however, be a rational, job-related, nondiscriminatory basis for denial of an employee's request for compensatory time off.

§ 2051.360 Title 5 Backpay Claims.

(a) Avenues of Review. An FLSA exempt employee may file a backpay claim with either the servicing Human Resources (HR) Office or OPM. If the employee initially files a backpay claim with the servicing HR Office and disagrees with the determination, the employee may elevate the claim to OPM. All claims to OPM are sent to: Claims Adjudication Unit, Office of the General Counsel, Office of Personnel Management, 1900 E Street, NW, Room 7353, Washington, D.C. 20415-0001.

(b) Time Limits. The claim must be filed within 6 years of the occurrence giving rise to the claim.

§ 2051.361 FLSA Backpay Claims.

(a) Avenues of Review. If an employee believes that he or she has not been properly compensated under the FLSA and is unable to resolve the matter, the employee may file an FLSA claim.

(1) Negotiated Grievance Procedure (NGP): This is the exclusive administrative remedy for any employee if, at any time during the claim period, the employee was a member of a bargaining unit covered by a collective bargaining agreement that did not specifically exclude FLSA matters. Employees should refer to the collective bargaining agreement for any terms and conditions on submission of FLSA backpay claims.

(2) Non-NGP Administrative Review by Rural Development, USDA or OPM: This is the remedy for any non-bargaining unit employee and any bargaining unit employee whose contract excludes FLSA matters.

§ 2051.361(a) (Con.)

(3) **Judicial review:** An employee has the right to bring an action in a U.S. Court. Neither USDA nor OPM will make a decision on any claim in litigation.

(b) Filing Procedures for Non-NGP Administrative Review.

(1) FLSA backpay claims filed for administrative review in Rural Development must be filed with the employee's servicing HR Office. If the employee initially files with the servicing HR Office and receives an unfavorable decision, the employee may file with either USDA or OPM, but not both simultaneously. If the employee initially files with USDA and receives an unfavorable decision, the employee may file with OPM. If the employee initially files with OPM and the employee receives an unfavorable decision, OPM's decision is final and the employee is not entitled to any further administrative review.

(2) The claim must be filed within 2 years of the occurrence giving rise to the claim. In cases of willful violations, the statute of limitation is 3 years.

(3) An employee establishes the period of potential entitlement, otherwise called "preserving the claim period," by filing a written claim. The date received by the servicing HR Office, USDA or OPM, whichever is earlier, is the date that determines the period of possible entitlement to backpay.

(4) Claims must be in writing and must contain the following information:

(i) The claimant's name, mailing address, and daytime telephone number;

(ii) The claimant's position title, series, and grade during the claim period;

(iii) A detailed description of the claim including dates claimed, hours claimed, and incidents giving rise to the claim;

(iv) Evidence supporting the claim (e.g., entries on daily calendars and building sign-in/out sheets or statements from coworkers and/or supervisors);

§ 2051.361(b)(4) (Con.)

(v) A statement certifying the claimant is not a member of a collective bargaining unit at any time during the claim period, or if a member, a statement certifying the collective bargaining agreement specifically excludes FLSA matters; and

(vi) A statement certifying that the claim is not being pursued simultaneously with USDA, OPM, or an appropriate United States court.

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