

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.

[33 FR 12458, Sept. 4, 1968, as amended at 48 FR 3934, Jan. 28, 1983]

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.

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

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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

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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: