

Rules and Regulations

Federal Register

Vol. 63, No. 225

Monday, November 23, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 410, 550, 551, 591, 630,
and 870

RIN 3206-A150

Firefighter Pay

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to change the method of computing pay for Federal firefighters. These regulations implement a recent law that established a new approach for calculating basic pay, overtime pay, and other entitlements for Federal employees whose positions are classified in the GS-081 classification series (Fire Protection and Prevention) and who have regular tours of duty averaging at least 53 hours per week.

DATES: *Effective Date:* The regulations are effective on October 4, 1998.

Applicability Dates: The regulations apply on the first day of the first pay period beginning on or after October 1, 1998.

Comments Date: Comments must be received on or before January 22, 1999.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, FAX: (202) 606-0824, or email: payleave@opm.gov.

FOR FURTHER INFORMATION CONTACT: Bryce Baker, (202) 606-2858, FAX: (202) 606-0824, or email: payleave@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing interim regulations to

implement the new firefighter pay provisions established by section 628 of the Treasury and General Government Appropriations Act, 1999, as incorporated in section 101(h) of Public Law 105-277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, which was approved on October 21, 1998. The law provides that these provisions are effective on the first day of the first pay period beginning on or after October 1, 1998. This legislation is intended to address concerns about the complexity of firefighter pay computations by establishing a more rational and equitable method of compensation. The law adds a new section 5545b to subchapter V (Premium Pay) of chapter 55 of title 5 of the United States Code. OPM has general authority to issue regulations necessary to administer the premium pay provisions in subchapter V and was also given certain specific regulatory responsibilities in section 5545b.

Federal Firefighters

There are over 9,000 Federal employees covered by the General Schedule (GS) pay system who are classified in the GS-081 Fire Protection and Prevention job classification series, which includes line firefighters, supervisory firefighters, and fire inspectors. Approximately 94 percent of these firefighters are employed by the Department of Defense. Most of these firefighters have extended tours of duty—most commonly, a 72-hour workweek consisting of three 24-hour shifts. These 24-hour shifts include periods of actual work time and substantial periods of time during which firefighters are in “standby status.” While in standby status, firefighters are free to eat, sleep, and engage in other personal activities, but are confined to the worksite and must remain in a state of readiness to perform actual work as required. Some firefighters (most commonly supervisors) have a regular 40-hour workweek consisting of five 8-hour days plus regularly scheduled standby duty (e.g., an extra 16-hour standby shift).

Former Pay Computation Method

Under the law and regulations formerly in effect, firefighters were entitled to the same rate of basic pay that applied to General Schedule

employees with a 40-hour workweek. In addition, they generally received standby duty pay under 5 U.S.C. 5545(c)(1) to compensate them for their extended tours of duty. Standby duty pay is a special form of premium pay designed to compensate employees who have regularly scheduled workweeks that are much longer than the normal 40-hour workweek and include substantial time during which employees are in a standby status. Standby duty pay is paid as a percentage of basic pay not to exceed 25 percent of the employee's rate of basic pay (but not more than the rate of basic pay for GS-10, step 1). The percentage rate depends on the number of hours in the employee's regularly scheduled tour, hours of Sunday work, type of shift, and various other factors. (See 5 CFR 550.141-550.144.) Standby duty pay is basic pay for retirement purposes (5 U.S.C. 8331(3)(C)).

Firefighters covered by the Fair Labor Standards Act (FLSA) overtime provisions also received additional pay under that Act. Under the FLSA, the overtime standard for firefighters is 53 hours per week (or 106 hours biweekly), instead of 40 hours. For overtime hours within their regularly scheduled workweek, firefighters received a supplemental half-rate premium (in addition to the basic pay and standby pay received for regularly scheduled hours). For irregular overtime hours, firefighters received time-and-one-half overtime pay. FLSA computations used the firefighter's “hourly regular rate” (consistent with FLSA rules), which was less than the firefighter's rate of basic pay because the hourly regular rate was derived by dividing the firefighter's total remuneration (including standby duty pay) by the total number of hours worked.

Summary of New Law

The new law makes significant changes in how firefighter pay is computed. These changes apply to GS-081 firefighters whose regularly established workweeks average 53 hours or more. In summary, the new law—

1. Eliminates standby duty pay and pays firefighters on an hourly rate basis. Paying firefighters on an hourly rate basis simplifies the pay computation. It also corrects disproportionality problems in the former pay computation method. (Under the former pay

computation method, employees at the same grade and step and with the same type of shifts received different effective hourly rates—taking standby duty pay into account—depending on the number of hours in the regular tour. In fact, the more hours worked, the smaller the effective hourly rate.)

2. Requires that the applicable GS annual rate of basic pay be divided by a 2756-hour factor to derive the “firefighter hourly rate” instead of using the 2087-hour factor applicable to other Federal employees. (The 2756-hour factor is derived by multiplying the number of weeks in a year (52) by the FLSA weekly overtime standard (53 hours), which yields the number of nonovertime hours in a year for the typical full-time firefighter.)

3. Provides time-and-one-half overtime pay for both FLSA-covered (nonexempt) and FLSA-exempt firefighters for all overtime hours. (For FLSA-exempt firefighters, the overtime rate is capped at 1½ times the GS–10, step 1, rate (2087-hour basis), but cannot be less than the individual’s firefighter rate of basic pay.)

4. Provides special pay computations for firefighters whose regular tour of duty includes a basic 40-hour workweek.

5. Bars payment of any other premium pay, including night pay, Sunday pay, holiday pay, and hazardous duty pay.

6. Guarantees no loss in regular pay during employer-sanctioned training. (Previously, the move to a training schedule with fewer hours (e.g., 40) could result in a reduction in a firefighter’s normal paycheck.)

7. Treats the straight-rate portion of overtime pay for overtime hours in the firefighter’s regular tour of duty as basic pay for retirement and certain other purposes. (The extra half-rate premium for those overtime hours is not basic pay for these purposes.)

For the typical FLSA-covered firefighter with a 72-hour workweek, the new law results in a total pay increase of about 9 percent. For example, under the former pay computation rules, a GS–6, step 5, firefighter in the Washington, DC, area in 1998 with 144 hours in a biweekly pay period would receive a regular biweekly paycheck of \$1,468.38 (\$38,177.88 annually), consisting of the following:

- Basic pay of \$1,037.60 (GS–6, step 5, annual locality rate of \$27,060 divided by 2087 = \$12.97, and \$12.97 times 80 hours = \$1,037.60);
- Standby duty pay of \$259.40 (\$1,037.60 times 25 percent); and
- Supplemental FLSA overtime pay of \$171.38 (38 overtime hours times

\$4.51, which is one-half of the hourly regular rate of \$9.01).

Under the new law, the same firefighter would receive a regular biweekly paycheck of \$1,600.66 (\$41,617.16 annually), consisting of the following:

- Basic pay of \$1,040.92 (106 nonovertime hours times the firefighter rate of \$9.82, which is equal to \$27,060 divided by 2756 hours); and
- Overtime pay of \$559.74 (1½ times \$9.82 = \$14.73, and \$14.73 times 38 overtime hours = \$559.74).

Retirement-creditable basic pay is also 9 percent higher—\$1,414.08 biweekly (144 hours times the firefighter rate of \$9.82 equals \$1,414.08), compared to the old amount of \$1,297.00 (basic pay of \$1,037.60 plus standby duty pay of \$259.40).

The change in pay for other categories of firefighters varies depending on the number of hours in the workweek, whether the firefighter is covered by the FLSA, the former standby duty pay rate, and the type of schedule (24-hour shift or not). In a small number of cases, the new compensation formula would result in a reduction in pay; however, the law provides special pay protection provisions that either increase affected firefighters’ pay or at least prevent any reduction upon conversion to the new system.

Description of Regulatory Provisions

We are adding a new subpart M—Firefighter Pay—to part 550 of title 5, Code of Federal Regulations, that implements 5 U.S.C. 5545b and related statutory provisions. In addition, we are making conforming changes in part 410; subparts A, B, and G of part 550; part 551; part 591; part 630; and part 870. A summary description of each new or revised section follows:

Section 410.402—We are adding a new paragraph in OPM’s training regulations that provides that firefighters compensated under subpart M of part 550 (as added by these regulations) continue to receive their regular pay during agency-sanctioned training, consistent with 5 U.S.C. 4109(d). This provision is triggered only when the hours in a firefighter’s regular tour of duty for any week are reduced due to a temporary training assignment. It does not affect firefighters who voluntarily participate in education or training during non-duty hours, leave hours, or periods of excused absence.

Sections 550.103 and 550.111—We are adding a new paragraph (g) in § 550.111 to provide a special definition of “overtime work” performed by firefighters compensated under subpart

M. The definition of “overtime work” in § 550.103 is revised accordingly.

Section 550.113—We are adding a new paragraph (e) that describes how the firefighter overtime hourly rate is computed using a 2756-hour factor. For FLSA-exempt firefighters whose firefighter hourly rate of basic pay exceeds the minimum hourly rate of basic pay for GS–10 (computed using a 2087-hour factor), the overtime hourly rate is capped at 1½ times that GS–10 minimum rate, but may not fall below the firefighter’s own firefighter hourly rate of basic pay. (See 5 U.S.C. 5542(f).)

Section 550.202—We are including firefighter straight-time pay for regular overtime hours in the definition of “basic pay” for purposes of advances in pay, consistent with § 550.1305(b).

Sections 550.703 and 550.707(b)—We are including firefighter straight-time pay for regular overtime hours in the definition of “basic pay” for severance pay purposes, consistent with § 550.1305(b). We are also providing that an average weekly rate of basic pay be used in computing severance pay for firefighters whose regular tour of duty consists of a cycle of variable workweeks.

Section 550.1301—This section describes the purpose, applicability, and administration of the new subpart M in part 550. Applicability is linked to the definition of “firefighter” in § 550.1302.

Section 550.1302—This section defines various terms used in subpart M. The term “basic 40-hour workweek” is defined to distinguish between firefighters who generally work on a 24-hour shift basis and those who have a regular workweek of 40 actual work hours (consisting of five 8-hour days or an equivalent schedule such as a flexible schedule containing 80 actual work hours in a biweekly pay period). Consistent with 5 U.S.C. 5545b(a), the term “firefighter” is defined to cover General Schedule employees classified in the GS–081 Fire Protection and Prevention classification series whose regular tour of duty averages at least 106 hours per biweekly pay period.

The term “regular tour of duty” is defined as a firefighter’s officially established work schedule, including any overtime hours in that schedule. Generally, a tour of duty must be established on a regular (nontemporary) and recurring basis to be considered a regular tour of duty; however, a regular tour of duty also includes a temporary tour that, when assigned, results in a reduction in the firefighter’s regular work hours or a change in the pay computation method used under § 550.1303. The regular tour of duty concept is used in determining—

- The appropriate pay computation method for a firefighter (see definition of "firefighter" and § 550.1303);

- A firefighter's basic pay for retirement and other purposes (see § 550.1305);

- The hours in an uncommon tour of duty established for leave purposes, including lump-sum payments for annual leave (see §§ 550.1306(c), 630.201, and 630.210); and

- The applicability of certain transitional provisions (see § 550.1308).

The term "regular tour of duty" is not equivalent to the term "regularly scheduled administrative workweek" (as defined in § 550.103) because "regularly scheduled" encompasses overtime hours that are scheduled in advance of the workweek, regardless of whether or not those overtime hours are part of a fixed, regularly recurring schedule. Since the "regular tour of duty" concept is used to determine what pay is used in computing retirement and other benefits, it is appropriate that the overtime hours included in the regular tour of duty are generally only those that are part of a firefighter's regular fixed schedule. In addition, we note that it is possible to have irregular nonovertime hours that are not part of the firefighter's regular tour of duty in the case of firefighters with variable workweeks (e.g., a 48-48-72-hour workweek cycle).

Section 550.1303—This section describes how to compute basic pay for (1) 24-hour shift firefighters and (2) firefighters whose regular tour of duty includes a basic 40-hour workweek. The firefighter hourly rate of basic pay (computed by dividing the annual rate of basic pay by 2756 hours) is used for all nonovertime hours for 24-hour shift firefighters. For firefighters with a basic 40-hour workweek, the normal General Schedule hourly rate (using a 2087-hour factor), is used to compute pay for hours in the basic 40-hour workweek, and then the firefighter (2756-basis) hourly rate of basic pay is used to compute pay for nonovertime hours beyond the basic 40-hour workweek (or 80-hour biweekly pay period). This section also addresses the substitution of irregular hours for leave-without-pay hours in a firefighter's regular tour of duty. Such substituted hours are deemed to be part of the firefighter's regular tour of duty. (See the definition of "regular tour of duty" in § 550.1302.)

Section 550.1304—This section provides that the overtime hourly rate of pay for FLSA-covered firefighters is 1½ times the firefighter (2756-basis) hourly rate of basic pay, regardless of the type of work schedule. (See 5 U.S.C. 5545b(d)(2).)

Section 550.1305—This section addresses what pay is considered basic pay for various purposes. The sum of pay for regular nonovertime hours and the straight-rate portion of regular overtime pay (excluding the half-rate overtime premium) is treated as basic pay for purposes of retirement, life insurance, severance pay, nonforeign area cost-of-living allowances and post differentials, and advances in pay. (See 5 U.S.C. 5545b(b)(2) and (c)(2).) Also, the section makes clear that, while locality pay is considered part of basic pay in applying the provisions of this subpart (except § 550.1308), locality pay for firefighters is basic pay for other purposes only to the extent expressly provided in § 531.606(b) or other law.

For firefighters with a basic 40-hour workweek, basic pay consists of three components: (1) 40 hours of basic pay computed using the regular GS rate (2087 factor); (2) 13 hours of basic pay computed using the firefighter rate (2756 factor); and (3) the straight-rate portion of pay for overtime hours in the firefighter's regular tour computed using the firefighter rate. However, for these firefighters, any basic pay for nonovertime hours outside the basic 40-hour workweek is basic pay only for purposes of subpart M and the listed benefits. It is not basic pay for other purposes, such as pay retention.

Section 550.1306—This section addresses the relationship of various other entitlements to firefighter pay under subpart M. Firefighters compensated under subpart M are not entitled to any other premium pay, including night pay, Sunday pay, holiday pay, and hazardous duty pay. (See 5 U.S.C. 5545b(d)(1).) All FLSA overtime pay requirements are satisfied by compliance with subpart M. (See 5 U.S.C. 5545b(d)(2).) Overtime pay for overtime hours in a firefighter's regular tour of duty (including the half-rate overtime premium) is used in computing a lump-sum payment for annual leave when a firefighter separates from Federal service if the firefighter's regular tour of duty is established as an uncommon tour of duty for purposes of leave accrual and usage at the time of separation. (OPM's regulations require agencies to establish such an uncommon tour of duty for 24-hour shift firefighters. See § 630.210.)

Section 550.1307—This section provides a procedure for agencies to establish methods of reducing or eliminating variation in the amounts of firefighter paychecks for firefighters whose regular tour of duty includes variable workweeks.

Section 550.1308—This section establishes certain transitional

provisions designed to protect the pay of a relatively small number of firefighters who have shorter workweeks, some of whom would otherwise suffer a reduction in regular pay due to the change in the pay computation method. This implements subsections (f) and (g) of section 628 of section 101(h) of Public Law 105-277. Affected firefighters are employed primarily by the Department of Veterans Affairs (VA). A number of VA firefighters have 24-hour shifts, but generally work only 56 or 60 hours per week, on average. These firefighters would receive a one-time pay increase equal to two GS step increments of their grade at the time of conversion to the new pay computation method. (See paragraph (a).) Using the new boosted rate in the new pay computation method will result in small pay increases for almost all of these firefighters.

For any firefighter who might still face a small reduction in his or her regular pay, that regular pay will be protected under the special rules in paragraph (b). The employing agency will be required to calculate a "protected rate of basic pay" that, when used in the new pay computation method, produces approximately the same amount of "annualized regular pay" the firefighter would have received under the old computation method. (The term "annualized regular pay" is defined to mean total pay for hours in a firefighter's regular tour of duty. Since some firefighters have a cycle of variable workweeks within their regular tour of duty, it is necessary to make comparisons on an annualized basis.) This comparison is made as of the effective date of the new pay computation method, based on the firefighter's regular tour of duty in effect at that time. For comparison purposes, the annualized regular pay under the old method is based on the rates of pay that would otherwise be in effect at that time, including any changes in rates of pay (e.g., due to within-grade increases or promotions) taking effect on the effective date of the new method, but excluding the two-step adjustment made under § 550.1308(a).

The protected rate is not aligned to a step on the pay schedule, but is a special saved rate. Once established, the protected rate of basic of pay is a frozen dollar rate that is not subject to adjustment. Locality pay, as applicable, is paid on top of the protected rate. The protected rate will be terminated when the firefighter's actual rate is increased (e.g., due to a promotion or annual pay adjustment) to the point where it equals or exceeds the protected rate, or when

the employee ceases to be covered by subpart M.

Sections 551.501 and 551.541—We are making conforming changes in part 551, which deals with FLSA overtime pay entitlements.

Section 591.201—We are including firefighter straight-time pay for regular overtime hours in the definition of “basic pay” for the purpose of nonforeign area cost-of-living allowances and post differentials, consistent with § 550.1305(b).

Sections 630.201 and 630.210—In OPM’s leave regulations, we are revising the definition of “uncommon tour of duty” in § 630.201 to incorporate a reference to firefighters compensated under subpart M of part 550 and to make other clarifying changes. We are adding a requirement in § 630.210 that agencies must establish uncommon tours of duty for firefighters compensated under § 550.1303(a)—that is, firefighters with regular tours of duty that generally consist of 24-hour shifts.

Section 870.204—We are including firefighter straight-time pay for regular overtime hours in the definition of “annual pay” for life insurance purposes, consistent with § 550.1305(b).

Waiver of Notice of Proposed Rule Making and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this rule effective in less than 30 days. Section 628 of the Treasury and General Government Appropriations Act, 1999 (which is incorporated in section 101(h) of Public Law 105-277), which changed the method for computing firefighter pay, was approved on October 21, 1998, and applies on the first day of the first pay period beginning on or after October 1, 1998. These regulations are being made effective retroactively to ensure that the new firefighter pay provisions are uniformly implemented in a timely manner.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Parts 410, 550, 551, 591, 630, and 870

Administrative practice and procedure, Claims, Education, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management,

Janice R. Lachance, Director.

Accordingly, OPM is amending parts 410, 550, 551, 591, 630, and 870 of title 5 of the Code of Federal Regulations as follows:

PART 410—TRAINING

1. The authority citation for part 410 continues to read as follows:

Authority: 5 U.S.C. 4101, et seq.; E.O. 11348, 3 CFR, 1967 Comp., p. 275.

Subpart D—Paying for Training

2. In § 410.402, paragraph (b)(6) is redesignated as paragraph (b)(7), and a new paragraph (b)(6) is added to read as follows:

§ 410.402 Paying premium pay.

* * * * *

(b) * * *

(6) *Firefighter overtime pay.* A firefighter compensated under part 550, subpart M, of this chapter must be paid basic pay and overtime pay for the firefighter’s regular tour of duty (as defined in § 550.1302 of this chapter) in any week in which attendance at agency-sanctioned training reduces the hours in the firefighter’s regular tour of duty. This special pay protection does not apply to firefighters who voluntarily participate in training during non-duty hours, leave hours, or periods of excused absence.

* * * * *

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

3. The authority citation for subpart A of part 550 is revised to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5545b, 5548, 5553, and 6101(c); E.O. 12748, 3 CFR, 1992 Comp., p. 316.

4. In § 550.103, the definition of *overtime work* is revised to read as follows:

§ 550.103 Definitions.

* * * * *

Overtime work has the meaning given that term in § 550.111 and includes

irregular or occasional overtime work and regular overtime work.

* * * * *

5. In § 550.111, the introductory text of paragraph (a) is amended by removing the words “paragraphs (d) and (f)” and adding in their place “paragraphs (d), (f), and (g)”, and a new paragraph (g) is added to read as follows:

§ 550.111 Authorization of overtime pay.

* * * * *

(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.

6. In § 550.113, a new paragraph (e) is added to read as follows:

§ 550.113 Computation of overtime pay.

* * * * *

(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 are exempt 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.

Subpart B—Advances in Pay

7. The authority citation for part 550, subpart B, continues to read as follows:

Authority: 5 U.S.C. 5524a, 5545a(h)(2)(B); sections 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Public Law 101-509), 104 Stat. 1462 and 1466, respectively; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

§ 550.202 [Amended]

8. In § 550.202, the definition of *rate of basic pay* is amended by adding

“straight-time pay for regular overtime hours for firefighters under 5 U.S.C. 5545b (as provided in § 550.1305(b)),” immediately before the words “night differential”.

Subpart G—Severance Pay

9. The authority citation for subpart G of part 550 continues to read as follows:

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

§ 550.703 [Amended]

10. The definition of *rate of basic pay* in 550.703 is amended by adding “straight-time pay for regular overtime hours for firefighters under 5 U.S.C. 5545b (as provided in § 550.1305(b)),” before the words “night differential”.

11. Section 550.707 is amended by removing “or” at the end of paragraph (b)(2), by removing the period at the end of paragraph (b)(3) and adding a semicolon and the word “and” in its place, and by adding a new paragraph (b)(4) to read as follows:

§ 550.707 Computation of severance pay.

* * * * *

(b) * * *

(4) In which the employee's pay is computed under subpart M of this part (dealing with firefighter pay) when the employee has a recurring cycle of variable workweeks within his or her regular tour of duty (as defined in § 550.1302).

* * * * *

Subpart L—[Added and Reserved]

12. Subpart L is added and reserved, and a subpart M is added to read as follows:

Subpart M—Firefighter Pay

Sec.

550.1301 Purpose, applicability, and administration.

550.1302 Definitions.

550.1303 Hourly rates of basic pay.

550.1304 Overtime hourly rates of pay.

550.1305 Treatment as basic pay.

550.1306 Relationship to other entitlements.

550.1307 Authority to regularize paychecks.

550.1308 Transitional provisions.

Authority: 5 U.S.C. 5545b, 5548, 5553, and subsections (f) and (g) of section 628 as included in section 101(h) of Public Law 105–277.

Subpart M—Firefighter Pay

§ 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) Who is in a position covered by the General Schedule and classified in the GS–081 Fire Protection and Prevention classification series, consistent with standards published by the Office of Personnel Management; and

(2) Whose regular tour of duty, as in effect throughout the year, averages at least 106 hours per biweekly pay period.

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).

§ 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 must substitute any irregular hours worked in the same biweekly pay period for those hours of leave without pay. (If the 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, irregular hours must be substituted first for hours of leave without pay in the basic 40-hour workweek. Each substituted hour will be paid at the rate applicable to the hour in the regular tour for which substitution is made, consistent with this section and § 550.1304.

§ 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 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.

(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.

(e) Locality pay under 5 U.S.C. 5304 is basic pay for firefighters only to the extent provided in this subpart, § 531.606(b) of this chapter, or other specific provision of law.

§ 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.

(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 § 631.210 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.

§ 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.

§ 550.1308 Transitional provisions.

(a)(1) Effective on the first day of the first pay period beginning on or after October 1, 1998, a firefighter subject to this subpart who has a regular tour of duty that averages 60 hours or less per week during a year, and that does not include a basic 40-hour workweek, must be granted an increase in basic pay equal to two within-grade increases for the General Schedule grade applicable to the firefighter.

(2) An increase granted under paragraph (a)(1) of this section is not considered an equivalent increase in pay for within-grade increase purposes under 5 U.S.C. 5335 and subpart D of part 531 of this chapter.

(3) If an increase granted under paragraph (a)(1) of this section results in a longer waiting period for the

firefighter's next within-grade increase, the firefighter must be credited with 52 weeks of service for the purpose of that waiting period.

(4) If an increase granted under paragraph (a)(1) of this section results in a rate of basic pay that is above the maximum rate of basic pay for the applicable grade, that resulting pay rate must be treated as a retained rate of basic pay consistent with 5 U.S.C. 5363 and part 536 of this chapter.

(b)(1) Effective on the first day of the first pay period beginning on or after October 1, 1998, an employing agency must temporarily establish a protected annual rate of basic pay that exceeds a firefighter's actual annual rate of basic pay (including any adjustment under paragraph (a) of this section), if necessary to ensure that the firefighter's annualized regular pay is not reduced on that date. For this purpose, *annualized regular pay* means total pay for hours in the firefighter's regular tour of duty, expressed as an annual rate based on the cycle of schedules under the firefighter's regular tour of duty. The annualized regular pay resulting from using the protected rate in applying the pay computation rules under this subpart must approximately equal (but be no less than) the annualized regular pay to which the firefighter would have been entitled on the effective date of this paragraph under the former pay computation method.

(2) The protected rate of basic pay is fixed and not subject to further adjustments. The protected rate is a scheduled rate of basic pay for purposes of computing locality payments under 5 U.S.C. 5304 and part 531, subpart F of this chapter.

(3) The protected rate of basic pay is terminated when it is equal to or less than the firefighter's actual rate of basic pay or when the employee is no longer covered by this subpart.

(c) For purposes of this section, the term basic pay excludes locality pay under 5 U.S.C. 5304 and part 531, subpart F, of this chapter.

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

13. The authority citation for part 551 continues to read as follows:

Authority: 5 U.S.C. 5542(c); Sec. 4(f) of the Fair Labor Standards Act of 1938, as amended by Pub. L. 93-259, 88 Stat. 55 (29 U.S.C. 240f).

Subpart E—Overtime Pay Provisions

14. In § 551.501, paragraphs (a)(1) and (a)(5) are revised to read as follows:

§ 551.501 Overtime pay.

(a) * * *

(1) On the basis of periods of duty in excess of 8 hours in a day when the employee receives compensation for that duty under 5 U.S.C. 5545(c)(1) or (2) or 5545b;

* * * * *

(5) On the basis of hours of work in excess of 40 hours in a workweek for an employee engaged in fire protection or law enforcement activities when the employee receives compensation for those hours of work under 5 U.S.C. 5545(c)(1) or (2) or 5545b;

* * * * *

15. In § 551.541, paragraph (a) is amended by adding "or 5545b" immediately before the period at the end of the paragraph, and a new paragraph (d) is added to read as follows:

§ 551.541 Employees engaged in fire protection activities or law enforcement activities.

* * * * *

(d) A firefighter subject to section 7(k) of the Act who is compensated under part 550, subpart M, of this chapter is deemed to be appropriately compensated under section 7(k) of the Act and this part if the requirements of § 550.1304(a) of this chapter are satisfied. (See 5 U.S.C. 5545b(d)(2).)

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

16. The authority citation for part 591, subpart B, continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; and E.O. 12510, 3 CFR, 1985 Comp., p. 338.

17. In § 591.201, the definition of *rate of basic pay* is revised to read as follows:

§ 591.201 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by statute for the position held by an individual before any deductions and exclusive of additional pay of any kind, such as overtime pay, night differential, extra pay for work on holidays, or allowances and differential, except that straight-time pay for regular overtime hours for firefighters under 5 U.S.C. 5545b (as provided in § 550.1305(b) of this chapter) is included as basic pay.

* * * * *

PART 630—ABSENCE AND LEAVE

18. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 102–25, 105 Stat. 92; and subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23.

Subpart B—Definitions and General Provisions for Annual and Sick Leave

19. In § 630.201, paragraph (b), the definition of *uncommon tour of duty* is revised to read as follows:

§ 630.201 Definitions.

* * * * *

(b) * * *

Uncommon tour of duty means an established tour of duty that exceeds 80 hours of work in a biweekly pay period, provided the tour—

(1) Includes hours for which the employee is compensated by standby duty pay under 5 U.S.C. 5545(c)(1) and § 550.141 of this chapter;

(2) Is a regular tour of duty (as defined in § 550.1302 of this chapter) established for firefighters compensated under 5 U.S.C. 5545b and part 550, subpart M, of this chapter; or

(3) Is authorized for a category of employees by the Office of Personnel Management.

20. In § 630.210, a new paragraph (c) is added to read as follows:

§ 630.210 Uncommon tours of duty.

* * * * *

(c) An agency must require that firefighters compensated under § 550.1303(a) of this chapter accrue and use leave on the basis of the applicable uncommon tour of duty.

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

21. The authority citation for part 870 continues to read as follows:

Authority: 5 U.S.C. 8716; subpart J also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 870.302 also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251.

Subpart B—Types and Amount of Insurance

22. Section 870.204 is amended by revising paragraph (a)(2)(ii), by removing the word "and" at the end of paragraph (a)(2)(ix), by removing the period at the end of paragraph (a)(2)(x) and adding ";" and" in its place, and by adding a new paragraph (a)(2)(xi) to read as follows:

§ 870.204 Annual rates of pay.

(a) * * *

(2) * * *

(ii) Premium pay for standby duty under 5 U.S.C. 5545(c)(1);

* * * * *

(xi) Straight-time pay for regular overtime hours for firefighters, as provided in 5 U.S.C. 5545b and part 550, subpart M, of this chapter.

* * * * *

[FR Doc. 98–31258 Filed 11–20–98; 8:45 am]

BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 97–062–2]

Tuberculosis Testing of Livestock Other than Cattle and Bison

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that amended the tuberculosis regulations to include species of livestock other than cattle and bison in the requirement for two annual herd tests for newly assembled herds on premises where a tuberculous herd has been depopulated. The interim rule was necessary because such livestock could become infected with tuberculosis and, without testing, could spread tuberculosis to the cattle or bison in the herd before the disease was detected in the herd. The testing of species of livestock other than cattle and bison in newly assembled herds on premises where a tuberculous herd has been depopulated will help ensure continued progress toward eradicating tuberculosis in the U.S. livestock population.

EFFECTIVE DATE: December 23, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. James P. Davis, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road