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U. S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT

DIRECTIVES SYSTEM

Subject Number: PER-2

Transmittal Number: 774

Date: MAR 16 1993

Subject: Compensation for Overtime

Approval: [signature]

Title: Acting Director

1. Purpose. This Directive supplements provisions of the Departmental Manual, Part 370 DM 550, 1, concerning overtime and is subject to the general provisions stated therein. It provides guidance to the Office of Surface Mining Reclamation and Enforcement (OSM) managers and employees concerning procedures for the proper use of overtime.

2. Summary of Changes. This directive is being updated to incorporate changes in how overtime is to be computed for employees covered by the Fair Labor Standards Act (FLSA). Section 210 of the Federal Employees Pay Comparability Act of 1990 has eliminated the requirement that overtime pay for non-exempt employees be calculated under both Title 5, United States Code (USC) and FLSA. Overtime work for non-exempt employees will now be computed and paid only under FLSA.

3. Definitions. The following definitions are provided for clarification:

a. Nonexempt Employees - The determination of employee coverage or exemption from provisions of the FLSA is based on definitions provided in 5 CFR Part 551. Essentially, the CFR provides that employees whose positions are primarily concerned with Executive, Administrative, or Professional work are exempt from the Act. Such positions typically involve managerial or supervisory responsibility, formulation or execution of management policies, or any other professional work which is intellectual in nature, requires specialized training, and requires significant exercise of independent judgment. All positions not qualifying for exemption are covered by the Act and are accordingly designated nonexempt.

b. Overtime Work - Work that is officially ordered or approved and is performed by an employee in excess of eight (8) hours in a day or in excess of 40 hours in a work week. For employees on alternative work schedules, overtime work means work assigned and worked outside the employee's approved alternative schedule (daily work requirement) or in excess of 80 hours a bi-weekly pay period.

CHANGE NOTICE

4. Policy/Implementation.

a. Policy. The purpose of overtime is to perform work which cannot be accomplished during the normal tour of duty with available staff.

b. Responsibility. Supervisors and managers have the responsibility for determining the need for overtime; and when and who will perform the overtime. If a supervisor determines that more than one (1) employee is equally qualified to perform required overtime work (e,g., three (3) employees are assigned to identical positions in the same organization, in positions in the same series and at the same grade level) and overtime work is only available on a particular occasion for one (1) employee, he/she should attempt to distribute overtime as equitably as possible among all qualified employees who are interested in working overtime. Supervisors and managers are responsible for maintaining a close and continuing review of overtime work for the purpose of restricting premium compensation to the minimum required to carry out the work efficiently and economically. Special care must be taken to assure that employees assigned to overtime work make a full contribution during regular working hours. Overtime work will not be performed at an employee's home except under unusual or emergency conditions. Approval of such overtime must be documented on the "Overtime Request and Authorization Form" and signed by the appropriate official (per OSM Directive OPM-5, dated 10/5/90).

c. Authorization for Overtime.

(1) All overtime must be officially approved in writing using the attached "Overtime Request and Authorization" (OSM-6) form. Occasional or irregular overtime may be approved by all supervisors. Except for emergency or uncontrollable circumstances, approval is required before the overtime is actually worked.

(2) Regularly scheduled overtime not to exceed three (3) months must be approved through the appropriate channels. Approval of such overtime must be documented on the "Overtime Request and Authorization Form" and signed by the appropriate official (per OSM Directive OPM-5, dated 10/5/90).

d. Procedures.

(1) All OSM employees who are nonexempt under the provisions of FLSA shall be compensated for overtime which has been actually performed. Such compensation will be in the form of additional pay, unless the employee elects to have

compensatory time off, subject to FLSA limitations and requirements. In accordance with the provisions of the Federal Employees Pay Comparability Act of 1990, as discussed in Section 2 above, overtime for nonexempt employees is no longer required to be computed under both FLSA and Title 5 U.S.C. Such compensation will be computed and paid only under FLSA.

(2) Non-exempt employees who earn compensatory time and do not use this compensatory time within six (6) months will be paid for the time using FLSA overtime calculations.

(3) Overtime pay for employees who are exempt from the FLSA is subject to Title 5, U.S.C. Chapter 51. Those employees whose rates of basic pay are at or below the maximum schedule rate of basic pay for grade GS-10, step 1, shall also be paid for overtime worked, unless they specifically request that in lieu of paid overtime they be granted compensatory time off from duty.

(4) Those employees who are exempt from FLSA and whose rate of basic pay exceeds GS-10, step 1, shall be granted compensatory time off in lieu of being paid for overtime, which has been officially ordered and approved and is actually performed.

(5) In all cases, compensatory time shall be credited on the basis of one hour for each hour of overtime performed, and shall be charged in increments of 15 minutes. Compensatory time off should normally be taken within two pay periods following that in which overtime work was performed. If this cannot be done without detriment to the work, compensatory time off may be granted within six months of the date overtime work was performed. If employees fail to take it within the prescribed limit, the nonexempt employees will be paid for the unused compensatory time; whereas, the exempt employees shall lose the right to compensatory time off and to overtime pay, unless the failure is due to an exigency of the service beyond control of the employees. In such cases, the circumstances shall be documented and presented to the Deputy Director, OSM, who shall determine if exemption from the prescribed limitations is warranted and thereby authorize payment of overtime.

(6) The authority to approve overtime pay is reserved to the Director for nonemergency situations whenever the overtime pay exceeds 600 hours in a calendar year for an employee at any grade level. Overtime pay requests meeting this criteria must be submitted through appropriate channels to the Director for approval.

Requests from the field must include the endorsement of the Assistant Director, Field Operations, before being forwarded through appropriate channels.

The Director's decision on the overtime pay request will be returned to the requesting manager or supervisor through appropriate channels. Once the approval by the Director is received, the overtime pay can be authorized on the Time and Attendance (T & A) Report to the Payroll Office. The Director's approval should not accompany the T & A Report to Payroll; it must be retained as documentation with the local T & A file for a period of three (3) years.

e. Overtime for Training. When a training course is conducted by either a government agency or by a contracted source for the benefit of the Government, it is assumed that the Government has administrative control of the course scheduling. In this case, the time scheduled for the conduct of the training course should allow travel time within the employee's normal duty hours; thereby precluding the need for overtime. Administrative control is assumed to be the agency's whether the agency has sole control or the control is achieved through a group of agencies acting in concert. Thus, travel outside duty hours to attend training which is sponsored by a Government agency, a group of agencies, or a private institution for the benefit of the government, would not meet the conditions for overtime pay or compensatory time off since the event is administratively controllable. Therefore, overtime may not be paid to employees traveling to and from training unless one of the four conditions in paragraph f. below is met.

f. Compensation for Travel Outside Duty Hours. To be eligible for overtime for travel outside duty hours, the travel must meet one of the four conditions defined below. The travel:

(1) involves the performance of work while traveling, (an example would be an inspector traveling to an emergency project for inspection purposes);

(2) is incident to travel that involves the performance of work while traveling, (an example would be if an employee is either traveling to a destination to board a means of transportation upon which he/she will be performing work while traveling, or, having performed work while traveling, returning to his official duty station);

(3) is carried out under arduous conditions, (this would include travel over unusually adverse terrain, during severe weather conditions, or to remote, barely accessible facilities by foot, horseback, or a truck), or;

(4) results from an event which could not be scheduled or controlled administratively. (This includes natural disaster, emergency, unplanned situations, etc.). Examples are:

(a) Training courses throughout the country generally are scheduled to start at the beginning of the workweek, and usually start at 9 a.m. daily. Attendance at training centers located away from an employee's duty station, therefore, usually will require the employee to travel outside his/her normal work hours. Since the agency which is conducting the training course can schedule the hours of training, the training course is an event which can be scheduled or controlled administratively; and employees who attend the course will not be paid for time in travel status regardless of whether employed by the agency conducting the training course or another agency.

(b) On the other hand, when a training course is conducted by a private institution not for the benefit of the Government, it is an event which cannot be scheduled or controlled administratively and required travel outside the employee's regular work hours to attend the training course will be considered hours of employment. Also, when a training course is conducted by a private institution, but not solely for the benefit of the Government, if the course is completed on Thursday, and the employee returns that night, the hours spent traveling will be hours of employment only if he/she is ordered to return that night and his/her return is required by an event which could not be scheduled or controlled administratively. If he/she is permitted the option of returning during his/her regularly scheduled work hours on Friday, his/her return on Thursday night will not be payable since he/she is not officially ordered to return. On the other hand, if the employee (whose regular hours of work are 8 a.m. to 5 p.m., Monday through Friday) completes the course at 5 p.m. Friday, his/her travel on either Friday night or Saturday (depending on availability of transportation) will be payable, because he/she is not entitled to per diem if he/she should remain until Monday, and thus, his/her travel time cannot be controlled realistically.

g. Travel which is an Inherent Part of, and Inseparable from the Work Itself. In those work situations where a determination can be made that the travel represents an additional incidental duty directly connected with the performance of a given job, and is therefore considered to be an assigned duty, the time spent in travel is work time, compensable at regular or overtime rates, as appropriate. It has been administratively determined that travel is an incidental part of the officially assigned duties of employees in the following situations:

(1) Employees performing mine inspection or audit work. Employees in this group report to a headquarters office or other official duty station at the beginning of the workday or workweek to pick up Government vehicles. They then drive these vehicles to one or more worksites where they perform mine inspection/audit work. During or at the end of the workday or workweek, they return to their official duty station to turn in the Government vehicles. The time spent in traveling from the official duty station to the worksite and back, and between worksites, is worktime for pay purposes.

(2) If, after an employee completes his/her duties at a temporary worksite, he/she is required to return to his/her post of duty to perform additional tasks, such as cleaning or recharging equipment that must be ready for use the next day, or obtaining necessary supplies, the tour of duty for that day does not end until the employee has performed the required additional tasks. (Underscoring supplied). In such cases, the travel time between the temporary post of duty and the regular post of duty constitutes a part of the hours of duty of the employee for that day.

5. Reporting Requirements. OSM Overtime Request and Authorization (OSM-6 form).

6. References. Federal Personnel Manual - OPM, Chapter 550; Department of the Interior, Departmental Manual, Part 370 DM 550,1; FPM Letter 551-10, FPM Letter 551-11, FPM Supplement 990-2, and 5 CFR Part 551.

7. Effect on Other Documents.

a. OSM Directives relating to:

(1) Application of Fair Labor Standards Act (FLSA) to Positions in the Office of Surface Mining Reclamation and Enforcement, PER-4.

(2) Alternative Work Schedule (AWS), PER-6.

b. This document supersedes Directive PER-2, dated October 27, 1986 and Change Notices dated September 5, 1989 and May 1, 1990.

8. Effective Date. Upon issuance.

9. Contact. Chief, Branch of Employment and Classification, FTS\Commercial (202) 208-2953.