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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 410, 550, 551, and 630

RIN 3206-AI50

#### Firefighter Pay

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is issuing final regulations on computing pay for Federal firefighters. These regulations implement a 1998 law that established a new approach for calculating basic pay, overtime pay, and other entitlements for Federal employees whose positions are classified in the Fire Protection and Prevention Series, GS-0081, and who have regular tours of duty averaging at least 53 hours per week.

**EFFECTIVE DATE:** May 2, 2002.

**FOR FURTHER INFORMATION CONTACT:** Bryce Baker by telephone at (202) 606-2858; by fax at (202) 606-0824; or by e-mail to [payleave@opm.gov](mailto:payleave@opm.gov).

**SUPPLEMENTARY INFORMATION:** On November, 23, 1998, the Office of Personnel Management (OPM) issued interim regulations implementing new firefighter pay provisions established by the Federal Firefighters Overtime Pay Reform Act (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, October 21, 1998). The law provided that these provisions became effective on the first day of the first pay period beginning on or after October 1, 1998. The intent of this legislation was to address concerns about the complexity of firefighter pay

computations by establishing a more rational and equitable method of compensation.

#### Review of Comments on Interim Regulations

OPM received a number of comments from individuals and agencies regarding the interim regulations. A summary of the substantive comments received and a description of the revisions made in the regulations as a result of the comments are presented below.

##### *Section 410.402(b)(6)—Pay During Training*

An agency requested clarification regarding firefighter pay entitlements during training when firefighters continue performing work during their regular tour of duty but, in addition, participate in agency-sanctioned training on what would normally be nonwork days. The firefighter pay reform law added a new provision, 5 U.S.C. 4109(d), which states that firefighters covered by 5 U.S.C. 5545b are entitled to pay for their regular tour of duty during training. This provision was intended to establish a guaranteed floor for pay during training. It does not block payment of a higher amount of pay if the employee is entitled to that higher amount based on actual hours of work (using the appropriate pay computation method based on the work schedule actually in effect).

The interim regulation at § 410.402(b)(6) requires that the guaranteed pay provision be applied on a weekly basis. Thus, the agency must compare the employee's pay for the regular weekly tour of duty to the pay to which the employee would be entitled based on actual hours of work in that week. (We note that title 5 premium pay during training is generally prohibited, subject to specific exceptions, as provided in § 410.402. These restrictions do not apply to FLSA overtime pay; however, that pay is payable only for qualifying training hours as described in § 551.423.)

Accordingly, we have revised § 410.402(b)(6) to clarify that a firefighter remains entitled to pay for actual hours of work if that amount is higher than the guaranteed floor. Finally, as an aid to users of the regulations, we are also adding a new paragraph (d) to § 550.1306 to provide a direct cross reference to the pay

protection provision in the training regulations in part 410.

An agency asked for clarification regarding the treatment of newly hired firefighters who go through initial basic training with a 40-hour basic workweek. The pay-protection-during-training provision applies only to employees who are covered by 5 U.S.C. 5545b when the training starts. If the agency has not yet established a regular tour of duty of 53 hours or more per week, the firefighters are not yet covered by section 5545b. Furthermore, the pay protection provision applies only when hours in the regular tour of duty (as in effect immediately before the training) are reduced. (See § 410.402(b)(6).) We conclude, therefore, that there is no need for additional changes in this paragraph.

##### *Section 550.1302—Definition of Firefighter/Coverage*

Firefighters who are part of the "China Lake" permanent personnel demonstration project at the Department of Defense inquired about whether they are covered by the new firefighter pay provisions. The Department of Defense also requested that we expand the definition of *firefighter* to clarify whether coverage applies to General Schedule equivalent positions such as those covered by a demonstration project. The interim regulations state that subpart M applies to General Schedule firefighters (based on the fact that the law makes reference to the employees classified under the GS-0081 series). Employees at the "China Lake" permanent demonstration project are not covered by the General Schedule pay system, since the project waived application of that system under 5 U.S.C. 4703. However, the project does use the Fire Protection and Prevention Series, GS-0081.

The intent of the "China Lake" demonstration project plan (45 FR 26504, April 18, 1980) was to treat employees as General schedule employees except where otherwise stated in the plan. Furthermore, the "China Lake" demonstration project did not waive the premium pay subchapter of title 5, where the firefighter pay provisions are located. We have concluded that firefighters covered by demonstration projects established under 5 U.S.C. 4703 and other similar alternative personnel systems are

covered by 5 U.S.C. 5545b if they meet three conditions. First, the employees must be classified in the Fire Protection and Prevention Series, GS-0081, consistent with OPM standards. Second, but for the demonstration project or other similar alternative personnel system, the employees otherwise would be covered by the General Schedule. Third, application of section 5545b (and related provisions) has not been waived. Therefore, we have revised the definition of *firefighter* in § 550.1302 to make clear that such employees are covered by subpart M of part 550.

An agency also raised the question as to whether the firefighter pay law and regulations apply to student trainees. OPM requires that student trainees under the Student Career Experience Program be officially classified in an occupational series ending in "99" for the appropriate occupational group. (See 5 CFR 213.3202(b)(14).) For example, the GS-0099 series would be used for student trainees who would otherwise be classified in the Fire Protection and Prevention Series, GS-0081. It is OPM's longstanding position that student trainees are entitled to any pay entitlements attached to the GS occupational series in which they would otherwise be classified. For example, since 1988, OPM's policy has been that qualified student trainees are entitled to any special rates established for the occupational series in which they would be classified but for the use of the "99" series. Accordingly, we are revising the definition of *firefighter* in § 550.1302 to include student trainees who would otherwise be classified in the Fire Protection and Prevention Series, GS-0081.

#### *Section 550.1302—Regular Tour of Duty*

An agency suggested that we clarify the definition of *regular tour of duty*. The agency was concerned that the definition might be interpreted to mean that a firefighter will not experience a reduction in pay in cases where a temporary change in work schedule occurs (e.g., because of a temporary detail). The agency pointed out that when firefighters were receiving standby duty premium pay, the provisions of 5 CFR 550.162(c)(1) precluded the payment of the annual premium pay beyond a prescribed number of days if the recipient of the annual premium pay was on temporary assignment to other duties. The agency was concerned that the definition in the interim rule might be interpreted to allow an employee to continue firefighter pay indefinitely while the employee is detailed to a non-firefighter position.

The law and regulations provide no authority to continue pay for a firefighter's regular tour when he or she is moved to a work schedule with lesser hours, except in the case of training assignments as provided in § 410.402(b)(6). In all other temporary assignments, pay is based on actual hours of work (applying the appropriate pay methodology based on the work schedule). If the temporary work schedule includes fewer than 53 hours per week, section 5545b would no longer be applicable and pay would be computed using the normal GS rules. If the temporary work schedule includes at least 53 hours per week, the employee would continue to be compensated under the section 5545b firefighter pay rules. In that case, the temporary tour of duty would be treated as a regular tour of duty for pay and benefit computation purposes. The definition of *regular tour of duty* clearly states that the term encompasses a tour of duty established on a temporary basis when that temporary tour results in a reduction in regular work hours. We conclude, therefore, that there is no need for a change in this definition.

#### *Section 550.1303(d)—Substitution of Irregular Hours for Leave Without Pay*

An agency requested clarification regarding the treatment of a firefighter who takes leave without pay for which irregular hours are substituted and receives a promotion during the same pay period. 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 week or biweekly pay period (as applicable) for those hours of leave without pay. Section 550.1303(d) provides that each substituted hour will be paid at the rate applicable to the hour in the regular tour for which substitution is made—i.e., the basic or overtime rate based on the 2756 divisor or, for firefighters paid under under § 550.1303(b), the basic rate based on the 2087 divisor.

Section 550.1303(d) does not currently address the possibility of a pay change in the middle of a pay period (e.g., a promotion). We are amending § 550.1303(d) to provide that, if a pay change occurs during the pay period, the substituted hour must be paid at the appropriate hourly rate based on the annual rate in effect at the time the hours were actually worked. In other words, two considerations must be made when substituting irregular hours for hours within the regular schedule. Each substituted hour will be paid using the type of rate applicable to the hour in the regular tour for which

substitution is made—i.e., the rate based on the 2087 divisor or the rate based on the 2756 divisor (using the basic or the overtime rate, as applicable). If a change in the amount of the annual rate of pay occurs during the pay period, the substituted hour must be paid at an applicable hourly rate based on the annual rate in effect when the hours were actually worked.

#### *Section 550.1305—Treatment as Basic Pay*

An agency asked that OPM clarify that the basic pay identified in § 550.1305 is not basic pay for all purposes. The agency was specifically concerned that we clarify that the pay in question is not basic pay for pay retention purposes and asked that we also consider amending the pay retention regulations.

Section 550.1305(a) provides that the sum of pay for regular nonovertime hours and the straight-time portion of regular overtime pay is considered basic pay for specific listed purposes. Pay retention is not one of the listed purposes. Thus, any firefighter pay for overtime hours is not considered in applying pay retention rules. Similarly, for firefighters whose regular tour of duty includes a basic 40-hour workweek, pay for nonovertime hours beyond 40 in a week (or 80 in a biweekly pay period) is not basic pay for pay retention purposes. (See § 550.1305(d).) For GS employees, the pay retention provisions are applied using the employee's annual rate of pay, which is not affected by the type of work schedule in effect.

We have made a minor change in § 550.1305(a) by adding the word "only" to emphasize that this definition of basic pay is to be used solely for the listed purposes. We do not believe it is necessary to amend the pay retention regulations.

#### *Section 550.1306(a)—Holiday Pay*

Several individuals inquired about the holiday pay entitlements for firefighters compensated under 5 U.S.C. 5545b. Section 5545b firefighters are not covered by the normal holiday pay rules. By law, they are expressly barred from receiving holiday premium pay for working on a holiday; instead, they are paid at their normal rate. (See 5 U.S.C. 5545b(d)(1) and 5 CFR 550.1306(a).) The law reflects a determination by Congress that pay under the special firefighter rules is considered to be full compensation for all hours of work, taking into account the fact that firefighters may work at night and on Sundays and holidays due to the nature of their work. Thus, a firefighter covered by section 5545b is not entitled to paid

holiday time off when not working on a holiday. To receive pay for hours during a regular tour of duty that fall on a holiday, the firefighter must (1) perform work, (2) use accrued annual or sick leave (as appropriate), or (3) be granted paid excused absence (without charge to leave) at the agency's discretion.

The 1998 firefighter pay law did not change the status quo with respect to pay for holidays. Under the pre-1998 law, firefighters with extended work schedules received a special type of premium pay called standby duty pay and, as now, were barred from receiving holiday premium pay for working on a holiday. (See 5 U.S.C. 5545(c)(1) and 5 CFR 550.163(a).) They were also barred from receiving pay for holiday hours not worked unless they used annual or sick leave or were granted excused absence at the agency's discretion. (See 56 Comp. Gen. 551 and former Federal Personnel Manual Supplement 990-2, section S1-8b(2)(a) of book 550 and section S2-6b(1) of book 630.)

We are adding a sentence to § 550.1306(a) to clarify that firefighters compensated under subpart M are not entitled to pay for not working on a holiday unless the agency approves appropriate paid leave or grants excused absence.

#### *Section 550.1306(e)—Compensatory Time Off*

An agency asked how to apply the compensatory time off provisions to firefighters compensated under 5 U.S.C. 5545b. Under 5 U.S.C. 5543(a)(2) and 5 CFR 550.114(c), an agency may require that an FLSA-exempt employee be compensated for irregular overtime work by compensatory time off, instead of overtime pay, if the employee's rate of basic pay exceeds the maximum (step 10) rate for grade GS-10. The agency asked what types of rates—hourly or annual—should be used in applying the GS-10, step 10, rule.

We are adding a new § 550.1306(e) to provide that a firefighter's annual rate of basic pay must be compared to the annual rate of basic pay for GS-10, step 10. This will ensure that section 5545b firefighters are treated in a manner consistent with the treatment of other employees at the same grade and step. Since the issue here deals with when an agency may require an FLSA-exempt employee to receive compensatory time off as compensation for irregular overtime work, consistent treatment based on grade and step would seem appropriate. (In contrast, OPM regulations provide that an FLSA-exempt firefighter's hourly overtime rate, derived using the 2756-hour factor,

is compared to the GS-10, step 1, hourly overtime rate, derived using the 2087-hour factor. In this case, the law required the use of hourly rates. OPM used the 2087-hour factor to compute the GS-10, step 1, rate, since the intent of the law was to subject FLSA-exempt firefighters to the same dollar rate cap as other FLSA-exempt employees.)

#### **Other Regulatory Changes**

In addition to the above regulatory changes made based on comments, some additional changes are being made to address technical issues identified by OPM staff. Those changes are described below.

#### *Section 550.1305—Basic Pay Treatment*

We are revising § 550.1305(d) to clarify that additional nonovertime pay earned by “40+ firefighters” (*i.e.*, those compensated under § 550.1303(b) because they have a regular tour of duty that includes a basic 40-hour workweek) is basic pay for purposes of § 410.402(b)(6). These “40+ firefighters” receive the regular GS hourly rate for their basic 40-hour workweek and then are paid the firefighter hourly rate of basic pay for additional nonovertime hours below the 53-hour weekly (or 106-hour biweekly) overtime standard. Section 410.402(b)(6) protects a firefighter's regular basic pay and premium pay during periods of agency-sanctioned training.

We are also revising § 550.1305(d) to provide that additional nonovertime pay earned by “40+ firefighters” is basic pay for purposes of §§ 550.105 and 550.106. Those sections deal with the biweekly and annual caps on premium pay established by 5 U.S.C. 5547. These caps limit the amount of premium pay an employee may receive when the employee's “aggregate rate of pay” reaches the applicable GS-15, step 10 rate. OPM regulations translate “aggregate rate of pay” into “basic pay and premium pay.” Clearly, the additional nonovertime pay received by “40+ firefighters” (for the nonovertime hours beyond the basic 40-hour workweek) should be included in the aggregate rate of pay for purposes of applying these premium pay caps. Therefore, we are deeming this pay to be “basic pay” as that term is used in §§ 550.105 and 550.106. As basic pay, it would not be subject to reduction, but would be included in the aggregate pay used to determine whether a firefighter's overtime pay is capped.

In addition, there are cases where 24-hour shift firefighters have variable workweeks (*e.g.*, a cycle of 48–48–72 hours) and may have nonovertime hours outside their regular tour of duty. Pay

for such nonovertime hours should also be treated as basic pay for the purpose of applying the premium pay caps in §§ 550.105 and 550.106. We have revised § 550.1305(c) accordingly.

#### *Section 550.1306(c)—Regulatory Citation*

We are revising § 550.1306(c) to correct an erroneous regulatory citation. The correct citation is to § 630.210 instead of § 631.210.

#### *Section 550.1308—Transitional Provisions*

We are removing § 550.1308 because it dealt with transitional provisions that have no current application.

#### *Section 551.411(c)—Meal Periods*

We are amending § 551.411(c) to clarify that all on-duty meal periods are compensable hours of work for firefighters paid under 5 U.S.C. 5545b. Current regulations dealing with sleep time for employees covered by the FLSA already state this policy. (See § 551.432(f), which was promulgated in a final rule published at 64 FR 69165 on December 10, 1999. Also, a parallel change was made in § 550.112(m)(4).) This change makes § 551.411 consistent with § 551.432.

#### *Section 630.210(c)—Uncommon Tour of Duty for Leave Purposes*

We are revising § 630.210(c) to require that an uncommon tour of duty for purposes of leave accrual and usage be established for “40+ firefighters” (*i.e.*, those whose regular tour of duty includes a basic 40-hour workweek). The interim regulations already required that uncommon tours be established for 24-hour shift firefighters compensated under § 550.1303(a). This revision would extend the requirement to all firefighters compensated under 5 U.S.C. 5545b. This is consistent with agency practices. It will ensure that “40+ firefighters” are paid during periods of paid leave on the basis of their regular tour of duty.

#### **Final Regulations Published Previously**

Certain regulatory changes related to firefighter pay were included in a final rule published on December 10, 1999 (64 FR 69165). Two of these changes revised provisions in the interim firefighter pay regulations published on November 23, 1998 (63 FR 64589). (See 64 FR 69171.) Since those changes have already been made final and are part of the current Code of Federal Regulations, this final rule does not include those changes. For the benefit of the reader, we provide below a summary description of the two previously

published changes made in the interim regulations:

1. We revised § 550.707 by adding a new paragraph (b)(5). This provided a rule for determining the weekly pay used in computing severance pay for firefighters with variable workweeks. (The interim firefighter pay regulations had made a similar change in § 550.707(b), which was revised as part of the December 10, 1999, final rule.)

2. We revised § 551.501(a)(5) to include a specific reference to firefighters compensated under 5 U.S.C. 5545b. This provision deals with the fact that section 5545b firefighters are not subject to a 40-hour weekly overtime standard. (The interim firefighter regulations had made a similar change in § 551.501(a)(5), but the December 10, 1999, final rule included some additional changes in this paragraph.)

#### Changes in Law

Since publication of the interim regulations on November 23, 1998, there have been two changes in law related to firefighter pay. These statutory changes do not require changes in the regulations; however, a brief description of each change is provided below for the reader's benefit.

#### Transitional Provisions

On May 21, 1999, the President signed legislation that included a technical amendment providing a special one-time pay adjustment for certain firefighters who were involuntarily changed to a workweek of 60 hours or less before December 31, 1999. (See section 3032 of Public Law 106–31.) This law amended the original Federal Firefighters Overtime Pay Reform Act enacted on October 21, 1998.

The 1998 firefighter pay law included a special transitional provision (section 628(f)) under which certain 24-hour shift firefighters with regular tours of duty averaging 60 hours or less per week would receive a one-time increase in basic pay equal to two GS step increases. As required by the law, this transitional provision was applied on the law's effective date to firefighters who had qualifying work schedules on that date. (See implementing regulation at § 550.1308(a) in the interim firefighter pay regulations.) The law became effective on the first day of the first pay period beginning on or after October 1, 1998.

The 1999 technical amendment provided that certain other firefighters could receive a two-step increase during an extended transition period ending on December 31, 1999. To qualify, a

firefighter had to (1) be subject to 5 U.S.C. 5545b on its effective date; (2) have a regular tour of duty averaging more than 60 hours per week on that effective date; and (3) be involuntarily moved without a break in service before December 31, 1999, to a regular tour of duty averaging 60 hours or less per week (and not containing a basic 40-hour workweek).

We are not issuing any regulations to implement the technical amendment. The technical amendment applied only during a transitional period that ended on December 31, 1999. Agencies were able to process affected cases under the clear terms of the amendment. As discussed earlier in this notice, we are also removing the section (§ 550.1308) containing the original regulatory transitional provisions, since those provisions have no current application.

#### Workers' Compensation Benefits

On December 21, 2000, the President signed legislation that included an amendment to 5 U.S.C. 5545b dealing with the computation of workers' compensation benefits for firefighters covered by the section. The amendment added a paragraph (4) to section 5545b(d). That paragraph reads as follows: "(d) Notwithstanding section 8114(e)(1), overtime pay for a firefighter subject to this section for hours in a regular tour of duty shall be included in any computation of pay under section 8114." The legislation further provided that this amendment was effective as if it had been enacted as part of the original Federal Firefighters Overtime Pay Reform Act, which was effective on the first day of the first pay period beginning on or after October 1, 1998.

This amendment means that section 5545b firefighters' overtime pay for hours in their regular tour of duty must be used in determining pay rates for purposes of workers' compensation benefits. The Department of Labor is responsible for regulating and administering the workers compensation program for Federal employees. Therefore, OPM is not issuing any regulations on this subject. (See FECA Bulletin No. 01–08, April 23, 2001. On the Internet, go to <http://www.dol.gov/dol/esa/public/regs/compliance/owcp/fecacont.htm>.)

#### E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule 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, and 630

Administrative practice and procedure, Claims, Education, Government employees, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, the Office of Personnel Management adopts the interim rule amending parts 410, 550, 551, 591, 630, and 870 of title 5 of the Code of Federal Regulations, which was published November 23, 1998, at 63 FR 64589, as a final rule with the following changes:

#### 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, revise paragraph (b)(6) to read as follows:

##### § 410.402 Paying premium pay.

\* \* \* \* \*

(b) \* \* \*

(6) *Firefighter overtime pay.* (i) A firefighter compensated under part 550, subpart M, of this chapter shall receive 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.

(ii) The special pay protection provided by paragraph (b)(6)(i) of this section does not apply to firefighters who voluntarily participate in training during non-duty hours, leave hours, or periods of excused absence. It also does not apply if the firefighter is entitled to a greater amount of pay based on actual work hours during the week in which training occurs.

\* \* \* \* \*

#### PART 550—PAY ADMINISTRATION (GENERAL)

#### Subpart M—Firefighter Pay

3. Revise the authority citation for subpart M of part 550 to read as follows:

**Authority:** 5 U.S.C. 5545b, 5548, and 5553.

4. In § 550.1302, revise the definition of *firefighter* to read as follows:

##### § 550.1302 Definitions.

\* \* \* \* \*

*Firefighter* means an employee—

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

(2) Who is in a position—

(i) Covered by the General Schedule and classified in the Fire Protection and Prevention Series, GS-0081, consistent with standards published by the Office of Personnel Management;

(ii) In a demonstration project established under chapter 47 of title 5, United States Code, or an alternative personnel system under a similar authority, which otherwise would be covered by the General Schedule, and which is classified in the Fire Protection and Prevention Series, GS-0081, consistent with standards published by the Office of Personnel Management, but only if application of 5 U.S.C. 5545b has not been waived; or

(iii) Covered by the General Schedule and classified in the GS-0099, General Student Trainee Series (as required by § 213.3202(b) of this chapter), if the position otherwise would be classified in the GS-0081 series.

\* \* \* \* \*

5. In § 550.1303, revise paragraph (d) to read as follows:

**§ 550.1303 Hourly rates of basic pay.**

\* \* \* \* \*

(d) If a firefighter takes leave without pay during his or her regular tour of duty, the agency shall substitute any irregular hours worked in the same biweekly pay period for those hours of leave without pay. (If a 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, the agency shall first substitute irregular hours for hours of leave without pay in the basic 40-hour workweek, which are paid at an hourly rate based on the 2087 divisor. All other substituted hours are paid at an hourly rate based on the 2756 divisor, using the applicable overtime rate for overtime hours. The annual rate used to compute any such hourly rate is the annual rate in effect at the time the hour was actually worked.

6. In § 550.1305, revise the paragraph (a) introductory text and paragraphs (c) and (d) to read as follows:

**§ 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 only for the following purposes:

\* \* \* \* \*

(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, except in applying §§ 550.105 and 550.106.

(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 and for the purpose of applying § 410.402(b)(6) of this chapter and §§ 550.105 and 550.106.

\* \* \* \* \*

7. In § 550.1306, amend paragraph (c) by removing "631.210" and adding in its place "630.210"; and revise paragraph (a) and add paragraphs (d) and (e) to read as follows:

**§ 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. A firefighter is not entitled to receive paid holiday time off when not working on a holiday, but may be allowed to use annual or sick leave, as appropriate, or may be granted excused absence at the agency's discretion.

\* \* \* \* \*

(d) A firefighter compensated under this subpart shall receive basic pay and overtime pay for his or her regular tour of duty in any week in which attendance at agency-sanctioned training reduces the hours in the firefighter's regular tour of duty, as provided in § 410.402(b)(6) of this chapter.

(e) In applying the compensatory time off provision in § 550.114(c), compare the firefighter's annual rate of basic pay to the annual rate of basic pay for GS-10, step 10.

**§ 550.1308 [Removed]**

8. Remove § 550.1308.

**PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT**

9. 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 D—Hours of Work**

10. In § 551.411, revise paragraph (c) to read as follows:

**§ 551.411 Workday.**

\* \* \* \* \*

(c) *Bona fide* meal periods are not considered hours of work, except for on-duty meal periods for employees engaged in fire protection or law enforcement activities who receive compensation for overtime hours of work under 5 U.S.C. 5545(c)(1) or (2) or 5545b. However, for employees engaged in fire protection or law enforcement activities who have periods of duty of more than 24 hours, on-duty meal periods may be excluded from hours of work by agreement between the employer and the employee, except as provided in § 551.432(e) and (f).

**PART 630—ABSENCE AND LEAVE**

11. 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. 105-18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103-3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102-25, 105 Stat. 92.

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

12. In § 630.210, revise paragraph (c) to read as follows:

**§ 630.210 Uncommon tours of duty.**

\* \* \* \* \*

(c) An agency shall establish an uncommon tour of duty for each firefighter compensated under part 550, subpart M, of this chapter. The

uncommon tour of duty shall correspond directly to the firefighter's regular tour of duty, as defined in § 550.1302 of this chapter, so that each firefighter accrues and uses leave on the basis of that tour.

[FR Doc. 02-7762 Filed 4-1-02; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002-NM-31-AD; Amendment 39-12694; AD 2002-06-16]

RIN 2120-AA64

#### **Airworthiness Directives; Boeing Model 767-300 Airplanes That Have Been Modified in Accordance With Supplemental Type Certificate STC00973WI-D**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767-300 airplanes. This action requires removing each sidewall-mounted reading light in the attendant crew rest compartment, installing cover plates in place of the existing reading lights, removing each reading light switch, and installing a new reading light in place of the existing light switch. This action is necessary to prevent contact between the occupant of the attendant crew rest compartment and the sidewall-mounted reading lights, which could result in possible injury to the occupant; and to prevent contact between various flammable materials and the sidewall-mounted reading lights, which could cause charring or melting of the heated material, and consequent emission of toxic or noxious gases. This action is intended to address the identified unsafe condition.

**DATES:** Effective April 17, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 17, 2002.

Comments for inclusion in the Rules Docket must be received on or before June 3, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114,

Attention: Rules Docket No. 2002-NM-31-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: [9-anm-iarcomment@faa.gov](mailto:9-anm-iarcomment@faa.gov). Comments sent via fax or the Internet must contain "Docket No. 2002-NM-31-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Gary D. Park, Aerospace Engineer, Airframe Branch, ACE-118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4123; fax (316) 946-4407.

**SUPPLEMENTARY INFORMATION:** The FAA has received information identifying an unsafe condition regarding certain Boeing Model 767-300 airplanes (specifically, certain Model 767-333 airplanes). The sidewall-mounted reading lights in the attendant crew rest compartment of those airplanes have been modified in accordance with Supplemental Type Certificate (STC) STC00973WI-D. A potential for contact between an occupant of the crew rest compartment and the sidewall-mounted reading lights exists. Sustained contact between the occupant and the reading lights could result in possible injury to the occupant. Additionally, inadvertent contact could also occur between various flammable materials (e.g., sheets, blankets, flightcrew clothing) and the sidewall-mounted reading lights. Such contact between the flammable materials and the reading lights could cause charring or melting of the heated material and consequent emission of toxic or noxious gases.

#### **Explanation of Relevant Service Information**

The FAA has reviewed and approved Boeing Service Bulletin 767-33-0093, dated December 20, 2001, which describes procedures for removing each sidewall-mounted reading light in the attendant crew rest compartment, installing cover plates in place of the existing reading lights, removing each reading light switch, and installing a new reading light in place of the existing light switch. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

#### **Explanation of Requirements of the Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to prevent contact between the occupant of the attendant crew rest compartment and the sidewall-mounted reading lights, which could result in possible injury to the occupant; and to prevent contact of flammable materials with the sidewall-mounted reading lights, which could cause charring or melting of heated material and result in the emission of toxic or noxious gases. This AD requires accomplishment of the actions specified in the service bulletin described previously.

#### **Determination of Compliance Time**

The Boeing service bulletin specified by this AD does not recommend a compliance time. The FAA has determined that a compliance time of 60 days is appropriate. We based this compliance time not only on the degree of urgency associated with addressing the identified unsafe condition, but on the practical aspect of installing the required modification, which is estimated to take only 6 work hours.

#### **Cost Impact**

None of the Model 767-300 airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require