

5 April 1999

CECW-OE/CEHR-E

MEMORANDUM FOR Commanders, Major Subordinate Commands

SUBJECT: Overtime Rate for Employees Performing Work in Response to Emergencies

1. References:

a. CECW-OE memorandum dated 22 February 1999, subject: Overtime Rate for Employees Performing Work for the Federal Emergency Management Agency

b. 5 Code of Federal Regulations (CFR) 551.208.

2. The policy determination outlined in the 22 Feb 99 memo dealt specifically with work the Corps does for the Federal Emergency Management Agency (FEMA). This policy also applies to work done for Other Federal Agencies (OFAs) who request support from the Corps in similar situations. It was made clear that there will be few instances in which Corps employees will work under conditions that meet the criteria for emergency situations under 5 CFR551.208(d). Since the 22 Feb 99 memo was issued, we have been asked to clarify a number of issues. This memorandum will address these issues and provide additional guidance regarding employees performing temporary work for FEMA. We are particularly concerned with the payment of overtime under the provisions of the Fair Labor Standards Act (FLSA).

3. Corps employees providing assistance at FEMA's request are more likely to perform temporary work that meets the provisions of 5 CFR551.208(a) – (c). This criteria is applicable when an employee must *temporarily perform work or duties that are not consistent with the primary or grade-controlling duty of the employee's official position description*. Exempt employees at GS-7 or above who perform the temporary work described above remain exempt for the entire period of temporary work or duties unless all three of the following conditions are met:

a. The period of temporary work or duties exceeds 30 calendar days; and

b. The employee's primary duty for the period of temporary work or duties is *not* exempt work or duty as defined above; and

c. The employee's position (including a position to which the employee is temporarily promoted) is properly classified in the General Schedule at GS-7 or above or properly classified

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in the Federal Wage System as a supervisor at situation 3 or 4 of Factor 1 of the *Federal Wage System Job Grading Standard for Supervisors*, or the equivalent level in other comparable wage systems.

Criteria for nonexempt employees and exempt employees at GS-5 or GS-6 are also addressed in the CFR.

4. Requests for volunteers will clearly identify the duties to be performed and an assessment of whether or not the duties are exempt or nonexempt. Human Resources personnel are available to assist in making these assessments which will assist in insuring the right grades/categories of people are sent in response to the request. Commanders and on-site managers are responsible for assuring that work performed in conjunction with a disaster is consistent with the information provided in the temporary duty support request.

5. All managers are reminded that the Corps is responsible for any FLSA overtime incurred under either the emergency criteria or the 30-day criteria, whether the work performed was under its own authority or in support of FEMA or OFAs. Since FEMA and OFAs will not reimburse the Corps for overtime exceeding the status assigned to their position of record, the Corps will be liable for any nonexempt overtime performed by employees whose position of record is exempt. Since the Flood Control and Coastal Emergencies (FC&CE) Appropriation, 96X3125, is not available for this purpose, each commander will be responsible for assuring funds exist in either the General Expense or the District Overhead account to cover these expenses. While it is appropriate to fund overtime work dealing with flood fighting and related duties under FC&CE (Public Law 84-99), prudent management of our fiscal resources dictates that commanders should ensure the same process applies as indicated above.

6. Extensions for more than 30 days of an exempt employee performing nonexempt work for more than 25 percent of the time must be approved by the Commander, Deputy Commander, or Resource Management representative with fiscal responsibility. This will assure that funds are available for overtime in excess of that reimbursed by FEMA or OFAs. If you need nonexempt work performed in excess of these limits and there are not a sufficient number of nonexempt employees available to perform such duties, other options, such as contracting out nonexempt work should be considered.

7. Changes reflected in reference 1.a and this memorandum will be provided in the update to Engineer Regulation 11-1-320, Civil Works Emergency Management Programs.

FOR THE COMMANDER:

/s/

RUSSELL L. FUHRMAN  
Major General, USA  
Director of Civil Works