



# Handbook on



# overtime

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Office of Human Capital Management  
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## INTRODUCTION

**Purpose** - The purpose of this reference material is to assist servicing personnel office and financial management staffs and time and attendance clerks understand the different forms of compensation for overtime work and to assist in advising and training supervisors and managers about overtime and compensatory time.

**Document Structure** - The following pages describe the forms of compensation for each category of employee covered by FLSA status, work schedule, and type of overtime work. Each scenario describes applicable statutory and regulatory provisions, guidance issued by the Office of Personnel Management (OPM), and Departmental policy issued in DOE O 322.1, PAY AND LEAVE ADMINISTRATION AND HOURS OF DUTY. This information should be supplemented with any local policy and/or collective bargaining agreement provisions that may exist.

**Factors** - There are several factors that determine an employee's entitlement and form of compensation for work performed beyond the employee's normal work schedule.

1. **FLSA Status** - The Fair Labor Standards Act (FLSA) established a basis and rules for compensating employees equitably. It also identified categories of positions which are exempt from the provisions of the act (5 CFR, Part 551, Subpart B describes the exemptions). Thus, positions are identified as either non-exempt (covered) or exempt (not covered). This determination can be found on the coversheet of an employee's position description or in block 35 on the employee's latest SF-50, Notification of Personnel Action.

2. **Categories of Employees** - The handbook has been organized by: a) all wage board, including non-supervisory (non-exempt) and supervisory (exempt); b) non-exempt general schedule employees; c) exempt general schedule employees whose rate of basic pay is at or below grade GS-10 step 1; d) exempt general schedule employees whose rate of basic pay is above, or equivalent to, grade 10 step 1 through step 10; e) exempt general schedule (and former merit pay) employees whose rate of basic pay exceeds grade 10 step 10; and f) SES employees and Presidential appointees. (Note: Schedule C employees are exempt and treated the same as other general schedule employees.)

3. **Work Schedule** - Employees work either a basic (five 8-hour days/40-hour week) or alternative (compressed or flexible) work schedule. See 5 U.S.C. Chapter 61 and the OPM "Handbook on Alternative Work Schedules" (which is being incorporated in 5 CFR 610) for definitions of work schedules, as well as the different structures for flexible work schedules. Compensation for employees on a basic or compressed work schedule is essentially the same, whereas compensation for a flexible work schedule is significantly different.

**4. Type of Overtime Work** - There are two types of overtime work: *regular or irregular*. These terms are based on whether overtime work requirements are planned and worked within the same administrative workweek. Overtime which is specifically scheduled for the following workweek is regarded as “regular overtime.” “Irregular overtime” work is work which is performed during the same administrative workweek in which it is specifically scheduled.

**5. Management Orders Overtime vs. An Employee Voluntarily Performs It** - These situations reflect the reason overtime work is performed. Both situations normally reflect a need to get work done, but one is mandatory, while the other is discretionary. In both situations, management must approve the overtime; however, when a non-exempt employee performs overtime work prior to approval, the work may be regarded as “suffered or permitted” (see the definition at 5 CFR 551.103). When an employee under a flexible work schedule voluntarily works more than 40 hours in a week, such work is not “overtime,” *per se*, and, thus, is not eligible for overtime pay or compensatory time off; instead, the employee earns up to 24 credit hours.

**6. Form of Compensation** – This factor describes the payment, compensatory time off, and/or credit hours that is available for each situation and whether the form of compensation is required because it is an entitlement or discretionary on the part of the employee or management. “Basic pay” for overtime payment purposes includes locality pay and special rate schedules.

**7. Outcome** - This factor addresses the impact of not using earned compensatory time off or credit hours.

Attached as Appendix A is an example of a briefing chart for managers. It is recommended that similar charts be prepared based on local policies and work schedules available. Attached as Appendix B is a list of common questions and answers regarding overtime. Attached as Appendix C is a list of strategies for managing overtime to ensure eligibility for compensatory time or avoid payment. Attached as Appendix D are frequently asked questions and answers regarding travel, particularly international travel, and associated special events, such as conferences. Attached as Appendix E is a legal opinion from OPM regarding payment of credit hours when changing from a flexible work schedule.

**Labor Relations Implications** - Organizations with unions should review their bargaining agreements to ensure that any existing provisions regarding overtime are consistent with the information contained in this Handbook. If there are any inconsistencies, then they should be renegotiated at the earliest date possible; however, existing provisions do prevail until they are changed.

**CHAPTER I: WAGE BOARD**

**PART I: NON-EXEMPT POSITIONS**

**FLSA Status:** *Non-Exempt*

**Category of Employees:** *All non-supervisory grade levels and pay schedules and supervisory wage board which do not satisfy the executive exemption criteria*

**Work Schedule:** *Basic*

**Type of Overtime Work:** *Regular*

**Form of Compensation:** The employee must be paid at the rate of 1.5 times the employee's hourly rate for all time, including that time which is "suffered or permitted."

**FLSA Status:** *Non-Exempt*

**Category of Employees:** *All non-supervisory grade levels and pay schedules and supervisory wage board which do not satisfy the executive exemption criteria*

**Work Schedule:** *Basic*

**Type of Overtime Work:** *Irregular*

**Form of Compensation:** The Department allows an employee to choose to:

1. Be paid at the rate of 1.5 times his/her regular hourly rate;
2. Earn compensatory time off at the rate of one hour for each hour earned; or
3. A combination of 1 and 2.

**Outcome:** If compensatory time is chosen, but not taken within 26 pay periods, then the employee must be paid for the work at the rate that was in effect at the time the overtime was earned.

**Note(s):** Management cannot require that compensatory time be taken.

**FLSA Status:** *Non-Exempt*

**Category of Employees:** *All non-supervisory grade levels and pay schedules and supervisory wage board which do not satisfy the executive exemption criteria*

**Work Schedule:** *Compressed*

**Type of Overtime Work:** *Regular*

**Form of Compensation:** For any overtime in excess of the employee's compressed work schedule, the employee must be paid at the rate of 1.5 times the employee's hourly rate for all time, including that time which is "suffered or permitted."



**FLSA Status:** *Non-Exempt*

**Category of Employees:** *All non-supervisory grade levels and pay schedules and supervisory wage board which do not satisfy the executive exemption criteria*

**Work Schedule:** *Compressed*

**Type of Overtime Work:** *Irregular*

**Form of Compensation:** The Department allows an employee to choose to:

1. Be paid at the rate of 1.5 times his/her regular hourly rate;
2. Earn compensatory time off at the rate of one hour for each hour earned; or
3. A combination of 1 and 2.

**Outcome:** If compensatory time is chosen, but not taken within 26 pay periods, then the employee must be paid for the work at the rate that was in effect at the time the overtime was earned.

**FLSA Status:** *Non-Exempt*

**Category of Employees:** *All non-supervisory grade levels and pay schedules and supervisory wage board which do not satisfy the executive exemption criteria*

**Work Schedule:** *Flexible*

**Type of Overtime Work:** *In excess of the number of hours the employee planned to work on a specific day, but not in excess of 8 hours in a day or 40 hours in a week*

**Form of Compensation:** The Department allows an employee to choose to:

1. Take time off on a subsequent workday(s) equal to the number of hours worked;
2. Complete his/her basic work requirement (i.e., the number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award) and count the extra hours as credit hours, if available;
3. Be paid at the rate of his/her hourly rate (not 1.5 times the rate) for each hour worked;  
or
4. Any combination of 1, 2, and 3.

**Outcome:** If earned credit hours have not been used at the time an employee is no longer subject to a flexible work schedule, then the employee is paid at his/her current rate of pay at the time of the change.

**Note(s):**

1. Management cannot require that time off or credit hours be taken.
2. “No longer subject to a flexible work schedule” means that an employee is not able to change between a flexible and nonflexible work schedule under the employee’s existing work schedule plan, i.e., local options available (see Appendix E).

**FLSA Status:** *Non-Exempt*

**Category of Employees:** *All non-supervisory grade levels and pay schedules and supervisory wage board which do not satisfy the executive exemption criteria*

**Work Schedule:** *Flexible*

**Type of Overtime Work:** *In excess of 8 hours in a day or 40 hours in a week - when an employee voluntarily performs the work*

**Form of Compensation:** If available, the employee may earn, and carry forward to another pay period, up to 24 credit hours (a part-time employee may earn up to one-quarter of the number of hours in his/her biweekly work schedule).

**Outcome:** If earned credit hours have not been used at the time an employee is no longer subject to a flexible work schedule, then the employee is paid at his/her current rate of pay at the time of the change.

**Note(s):**

1. This is not “overtime” *per se*.
2. “No longer subject to a flexible work schedule” means that an employee is not able to change between a flexible and nonflexible work schedule under the employee’s existing work schedule plan, i.e., local options available (see Appendix E).

**FLSA Status:** *Non-Exempt*

**Category of Employees:** *All non-supervisory grade levels and pay schedules and supervisory wage board which do not satisfy the executive exemption criteria*

**Work Schedules:** *Flexible*

**Type of Overtime Work:** *In excess of 8 hours in a day or 40 hours in a week - when management orders the work and work is regular*

**Form of Compensation:** The employee must be paid at the rate of 1.5 times his/her hourly rate.

**Note(s):** The Department does not allow an employee to choose between being paid and earning compensatory time, even though that option is available by statute.

**FLSA Status:** *Non-Exempt*

**Category of Employees:** *All non-supervisory grade levels and pay schedules and supervisory wage board which do not satisfy the executive exemption criteria*

**Work Schedule:** *Flexible*

**Type of Overtime Work:** *In excess of 8 hours in a day or 40 hours in a week - when management orders the work and the work is irregular*

**Form of Compensation:** The Department allows an employee to choose to:

1. Be paid at the rate of 1.5 times his/her hourly rate (note: an employee may not be paid for time which is “suffered or permitted;” such time is regarded as an employee choice subject to credit hours, if available);
2. Earn compensatory time off at the rate of one hour for each hour earned: or
3. A combination of 1 and 2.

**Outcome:** If compensatory time is not taken within 26 pay periods, then the employee must be paid at the rate that was in effect at the time the overtime was earned.

**PART II: EXEMPT POSITIONS**

**FLSA Status:** *Exempt*

**Category of Employees:** *Supervisory wage board grade levels and pay schedules*

**Work Schedule:** *Basic*

**Type of Overtime Work:** *Regular*

**Form of Compensation:** The employee must be paid at the rate of 1.5 times the employee's hourly rate for all time.

**FLSA Status:** *Exempt*

**Category of Employees:** *Supervisory wage board grade levels and pay schedules*

**Work Schedule:** *Basic*

**Type of Overtime Work:** *Irregular*

**Form of Compensation:** The Department allows an employee to choose to:

1. Be paid at the rate of 1.5 times his/her regular hourly rate;
2. Earn compensatory time off at the rate of one hour for each hour earned; or
3. A combination of 1 and 2.

**Outcome:** If compensatory time is chosen, but not taken within 26 pay periods, then the employee must be paid for the work at the rate that was in effect at the time the overtime was earned.

**Note(s):** The law prohibits mandatory compensatory time off for all wage employees.

**FLSA Status:** *Exempt*

**Category of Employees:** *Supervisory wage board grade levels and pay schedules*

**Work Schedule:** *Compressed*

**Type of Overtime Work:** *Regular*

**Form of Compensation:** For any overtime in excess of the employee's compressed work schedule, the employee must be paid at the rate of 1.5 times the employee's hourly rate for all time.



**FLSA Status:** *Exempt*

**Category of Employees:** *Supervisory wage board grade levels and pay schedules*

**Work Schedule:** *Compressed*

**Type of Overtime Work:** *Irregular*

**Form of Compensation:** The Department allows an employee to choose to:

1. Be paid at the rate of 1.5 times his/her regular hourly rate;
2. Earn compensatory time off at the rate of one hour for each hour earned; or
3. A combination of 1 and 2.

**Outcome:** If compensatory time is chosen, but not taken within 26 pay periods, then the employee must be paid for the work at the rate that was in effect at the time the overtime was earned.

**Note(s):** Management cannot require that compensatory time be taken.

**FLSA Status:** *Exempt*

**Category of Employees:** *Supervisory wage board grade levels and pay schedules*

**Work Schedule:** *Flexible*

**Type of Overtime Work:** *In excess of the number of hours the employee planned to work on a specific day, but not in excess of 8 hours in a day or 40 hours in a week*

**Form of Compensation:** The Department allows an employee to choose to:

1. Take time off on a subsequent workday(s) equal to the number of hours worked;
2. Complete his/her basic work requirement (i.e., the number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award) and count the extra hours as credit hours, if available;
3. Be paid at the rate of his/her hourly rate (not 1.5 times the rate) for each hour worked;  
or
4. Any combination of 1, 2, and 3.

**Outcome:** If earned credit hours have not been used at the time an employee is no longer subject to a flexible work schedule, then the employee is paid at his/her current rate of pay at the time of the change.

**Note(s):**

1. Management cannot require that time off or credit hours be taken.
2. “No longer subject to a flexible work schedule” means that an employee is not able to change between a flexible and nonflexible work schedule under the employee’s existing work schedule plan, i.e., local options available (see Appendix E).

**FLSA Status:** *Exempt*

**Category of Employees:** *Supervisory wage board grade levels and pay schedules*

**Work Schedule:** *Flexible*

**Type of Overtime Work:** *In excess of 8 hours in a day or 40 hours in a week - when an employee voluntarily performs the work*

**Form of Compensation:** If available, the employee may earn, and carry forward to another pay period, up to 24 credit hours (a part-time employee may earn up to one-quarter of the number of hours in his/her biweekly work schedule).

**Outcome:** If earned credit hours have not been used at the time an employee is no longer subject to a flexible work schedule, then the employee is paid at his/her current rate of pay at the time of the change.

**Note(s):**

1. This is not “overtime” *per se*.
2. “No longer subject to a flexible work schedule” means that an employee is not able to change between a flexible and nonflexible work schedule under the employee’s existing work schedule plan, i.e., local options available (see Appendix E).

**FLSA Status:** *Exempt*

**Category of Employees:** *Supervisory wage board grade levels and pay schedules*

**Work Schedules:** *Flexible*

**Type of Overtime Work:** *In excess of 8 hours in a day or 40 hours in a week - when management orders the work and work is regular*

**Form of Compensation:** The employee must be paid at the rate of 1.5 times his/her hourly rate.

**FLSA Status:** *Exempt*

**Category of Employees:** *Supervisory wage board grade levels and pay schedules*

**Work Schedule:** *Flexible*

**Type of Overtime Work:** *In excess of 8 hours in a day or 40 hours in a week - when management orders the work and the work is irregular*

**Form of Compensation:** The Department allows an employee to choose to:

1. Be paid at the rate of 1.5 times his/her hourly rate (note: an employee may not be paid for time which is “suffered or permitted;” such time is regarded as an employee choice subject to credit hours, if available);
2. Earn compensatory time off at the rate of one hour for each hour earned: or
3. A combination of 1 and 2.

**Outcome:** If compensatory time is not taken within 26 pay periods, then the employee must be paid at the rate that was in effect at the time the overtime was earned.

**Note(s):** Management cannot require that compensatory time be taken.

**CHAPTER II: GENERAL SCHEDULE**

**PART I: NON-EXEMPT POSITIONS**

**FLSA Status:** *Non-Exempt*

**Category of Employees:** *All grade levels and pay schedules*

**Work Schedule:** *Basic*

**Type of Overtime Work:** *Regular* - in excess of 8 hours in a workday or 40 hours in a workweek

**Form of Compensation:** For an employee at or below GS-10 step 1, the employee must be paid at the rate of 1.5 times the employee's hourly rate of basic pay for all time, including that time which is "suffered or permitted;" for an employee whose basic pay exceeds GS-10 step 1, the employee must be paid the greater of:

1. 1.5 times the employee's hourly rate or
2. the employee's actual rate.

**FLSA Status:** *Non-Exempt*

**Category of Employees:** *All grade levels and pay schedules*

**Work Schedule:** *Basic*

**Type of Overtime Work:** *Irregular*

**Form of Compensation:** The Department allows an employee to choose to:

1. Be paid; for an employee at or below GS-10 step 1, at the rate of 1.5 times his/her regular hourly rate of basic pay; for an employee whose basic pay exceeds GS-10 step 1, the employee must be paid the greater of:

- a. 1.5 times the employee's hourly rate or
- b. the employee's actual rate.

2. Earn compensatory time off at the rate of one hour for each hour earned; or

3. A combination of 1 and 2.

**Outcome:** If compensatory time is chosen, but not taken within 26 pay periods, then the employee must be paid for the work at the rate that was in effect at the time the overtime was earned.



**FLSA Status:** *Non-Exempt*

**Category of Employees:** *All grade levels and pay schedules*

**Work Schedule:** *Compressed*

**Type of Overtime Work:** *Regular*

**Form of Compensation:** For any overtime in excess of the employee's compressed work schedule, for an employee at or below GS-10 step 1, the employee must be paid at the rate of 1.5 times the employee's hourly rate of basic pay for all time, including that time which is "suffered or permitted;" for an employee whose basic pay exceeds GS-10 step 1, the employee must be paid the greater of:

1. 1.5 times the employee's hourly rate or
2. the employee's actual rate.

**FLSA Status:** *Non-Exempt*

**Category of Employees:** *All grade levels and pay schedules*

**Work Schedule:** *Flexible*

**Type of Overtime Work:** *In excess of the number of hours the employee planned to work on a specific day, but not in excess of 8 hours in a day or 40 hours in a week*

**Form of Compensation:** The Department allows an employee to choose to:

1. Take time off on a subsequent workday(s) equal to the number of hours worked;
2. Complete his/her basic work requirement (i.e., the number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award) and count the extra hours as credit hours, if available;
3. Be paid at the rate of his/her hourly rate (not 1.5 times the rate) for each hour worked;  
or
4. Any combination of 1, 2, and 3.

**Outcome:** If earned credit hours have not been used at the time an employee is no longer subject to a flexible work schedule, then the employee is paid at his/her current rate of pay at the time of the change.

**Note(s):**

1. Management cannot require that time off or credit hours be taken.
2. “No longer subject to a flexible work schedule” means that an employee is not able to change between a flexible and nonflexible work schedule under the employee’s existing work schedule plan, i.e., local options available (see Appendix E).

**FLSA Status:** *Non-Exempt*

**Category of Employees:** *All grade levels and pay schedules*

**Work Schedule:** *Flexible*

**Type of Overtime Work:** *In excess of 8 hours in a day or 40 hours in a week - when an employee voluntarily performs the work*

**Form of Compensation:** If available, the employee may earn, and carry forward to another pay period, up to 24 credit hours (a part-time employee may earn up to one-quarter of the number of hours in his/her biweekly work schedule).

**Outcome:** If earned credit hours have not been used at the time an employee is no longer subject to a flexible work schedule, then the employee is paid at his/her current rate of pay at the time of the change.

**Note(s):** “No longer subject to a flexible work schedule” means that an employee is not able to change between a flexible and nonflexible work schedule under the employee’s existing work schedule plan, i.e., local options available (see Appendix E).

**FLSA Status:** *Non-Exempt*

**Category of Employees:** *All grade levels and pay schedules*

**Work Schedules:** *Flexible*

**Type of Overtime Work:** *In excess of 8 hours in a day or 40 hours in a week - when management orders the work and work is regular*

**Form of Compensation:** The employee must be paid at the rate of 1.5 times his/her hourly rate of basic pay; for an employee whose basic pay exceeds GS-10 step 1, the employee must be paid the greater of:

1. 1.5 times the employee's hourly rate or
2. the employee's actual rate.

**Note(s):** The Department does not allow an employee to choose between being paid and earning compensatory time, even though that option is available by statute.

**FLSA Status:** *Non-Exempt*

**Category of Employees:** *All grade levels and pay schedules*

**Work Schedule:** *Flexible*

**Type of Overtime Work:** *In excess of 8 hours in a day or 40 hours in a week - when management orders the work and the work is irregular*

**Form of Compensation:** The Department allows an employee to choose to:

1. Be paid; for an employee at or below GS-10 step 1, at the rate of 1.5 times his/her hourly rate of basic pay (note: an employee may not be paid for time which is “suffered or permitted;” such time is regarded as an employee choice subject to credit hours, if available); for an employee whose basic pay exceeds GS-10 step 1, the employee must be paid at the greater of:
  - a. 1.5 times the employee’s hourly rate or
  - b. the employee’s actual rate.
2. Earn compensatory time off at the rate of one hour for each hour earned: or
3. A combination of 1 and 2.

**Outcome:** If compensatory time is not taken within 26 pay periods, then the employee must be paid at the rate that was in effect at the time the overtime was earned.

**Note(s):** Management cannot require that compensatory time be taken.

**PART II: EXEMPT POSITIONS**

**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule at or below GS-10 step 1, or equivalent*

**Work Schedule:** *Basic*

**Type of Overtime Work:** *Regular*

**Form of Compensation:** The employee is paid at the rate of 1.5 times his/her hourly rate of basic pay.

**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule at or below GS-10 step 1, or equivalent*

**Work Schedule:** *Basic*

**Type of Overtime Work:** *Irregular*

**Form of Compensation:** The Department allows an employee to choose to:

1. Be paid at the rate of 1.5 times his/her hourly rate of basic pay;
2. Earn compensatory time off at the rate of one hour for each hour earned; or
3. A combination of 1 and 2.

**Outcome:** If compensatory time off is chosen, but not taken within 26 pay periods, then the employee is paid at the rate that was in effect at the time the overtime was earned.

**Note(s):** Management cannot require compensatory time be taken.

**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule at or below GS-10 step 1, or equivalent*

**Work Schedule:** *Compressed*

**Type of Overtime Work:** *Regular*

**Form of Compensation:** For any overtime in excess of the employee's compressed work schedule, the employee must be paid at the rate of 1.5 times the employee's hourly.



**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule at or below GS-10 step 1, or equivalent*

**Work Schedule:** *Compressed*

**Type of Overtime Work:** *Irregular*

**Form of Compensation:** For any overtime in excess of the employee's compressed work schedule, the Department allows an employee to choose to:

1. Be paid at the rate of 1.5 times his/her hourly rate of basic pay;
2. Earn compensatory time off at the rate of one hour for each hour earned; or
3. A combination of 1 and 2.

**Outcome:** If compensatory time off is chosen, but not taken within 26 pay periods, then the employee is paid at the rate that was in effect at the time the overtime was earned.

**Note(s):** Management cannot require compensatory time be taken.

**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule at or below GS-10 step 1, or equivalent*

**Work Schedule:** *Flexible*

**Type of Overtime Work:** *In excess of the number of hours the employee planned to work on a specific day, but not in excess of 8 hours in a day or 40 hours in a week*

**Form of Compensation:** The Department allows an employee to choose to:

1. Take time off on a subsequent workday(s) equal to the number of hours worked;
2. Complete his/her basic work requirement (i.e., the number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award) and count the extra hours as credit hours, if available;
3. Be paid at the rate of his/her hourly rate (not 1.5 times the rate) for each hour worked;  
or
4. Any combination of 1, 2, and 3.

**Outcome:** If earned credit hours have not been used at the time an employee is no longer subject to a flexible work schedule, then the employee is paid at his/her current rate of pay at the time of the change.

**Note(s):**

1. Management cannot require that time off or credit hours be taken.
2. “No longer subject to a flexible work schedule” means that an employee is not able to change between a flexible and nonflexible work schedule under the employee’s existing work schedule plan, i.e., local options available (see Appendix E).

**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule at or below GS-10 step 1, or equivalent*

**Work Schedule:** *Flexible*

**Type of Overtime:** *In excess of 8 hours in a day or 40 hours in a week - when an employee voluntarily performs the work*

**Form of Compensation:** If available, the employee may earn, and carry forward to another pay period, up to 24 credit hours (a part-time employee may earn up to one-quarter of the number of hours in his/her biweekly work schedule).

**Outcome:** If earned credit hours have not been used at the time an employee is no longer subject to a flexible work schedule, then the employee is paid at his/her current rate of pay at the time of the change.

**Note(s):**

1. This is not “overtime” *per se*.
2. “No longer subject to a flexible work schedule” means that an employee is not able to change between a flexible and nonflexible work schedule under the employee’s existing work schedule plan, i.e., local options available (see Appendix E).

**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule at or below GS-10 step 1, or equivalent*

**Work Schedules:** *Flexible*

**Type of Overtime Work:** *In excess of 8 hours in a day or 40 hours in a week - when management orders the work and work is regular*

**Form of Compensation:** The employee must be paid at the rate of 1.5 times his/her hourly rate of basic pay.

**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule at or below GS-10 step 1, or equivalent*

**Work Schedule:** *Flexible*

**Type of Overtime Work:** *In excess of 8 hours in a day or 40 hours in a week - when management orders the work and the work is irregular*

**Form of Compensation:** The Department allows an employee to choose to:

1. Be paid at the rate of 1.5 times his/her hourly rate;
2. Earn compensatory time off at the rate of one hour for each hour earned: or
3. A combination of 1 and 2.

**Outcome:** If compensatory time is chosen, but not taken within 26 pay periods, then the employee is paid for the work at the rate that was in effect at the time the overtime was earned.

**Note(s):** Management cannot require that compensatory time be taken.

**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule above GS-10 step 1 through step10, or equivalent*

**Work Schedule:** *Basic*

**Type of Overtime Work:** *Regular*

**Form of Compensation:** The employee is paid the greater of:

1. 1.5 times the rate of grade 10 step 1 of the employee's rate of basic pay or
2. the employee's actual rate.

**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule above GS-10 step 1 through step10, or equivalent*

**Work Schedule:** *Basic*

**Type of Overtime Work:** *Irregular*

**Form of Compensation:** The Department allows an employee to choose to:

1. Be paid the greater of:
  - a. 1.5 times the rate of grade 10 step 1 of the employee's rate of basic pay or
  - b. the employee's actual rate;
2. Earn compensatory time off at the rate of one hour for each hour earned; or
3. A combination of 1 and 2.

**Outcome:** If compensatory time off is chosen, but not taken within 26 pay periods, then the employee is paid for the work at the rate that was in effect at the time the overtime was earned.

**Note(s):** Management cannot require compensatory time be taken.

**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule above GS-10 step 1 through step10, or equivalent*

**Work Schedule:** *Compressed*

**Type of Overtime Work:** *Regular*

**Form of Compensation:** For any overtime in excess of the employee's compressed work schedule, the employee must be paid the greater of:

1. 1.5 times the rate of grade 10 step 1 of the employee's rate of basic pay or
2. the employee's actual rate.



**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule above GS-10 step 1 through step10, or equivalent*

**Work Schedule:** *Compressed*

**Type of Overtime Work:** *Irregular*

**Form of Compensation:** For any overtime in excess of the employee's compressed work schedule, the Department allows an employee to choose to:

1. Be paid the greater of:
  - a. 1.5 times the rate of grade 10 step 1 of the employee's rate of basic pay or
  - b. the employee's actual rate;
2. Earn compensatory time off at the rate of one hour for each hour earned; or
3. A combination of 1 and 2.

**Outcome:** If compensatory time off is chosen, but not taken within 26 pay periods, then the employee is paid for the work at the rate that was in effect at the time the overtime was earned.

**Note(s):** Management cannot require compensatory time be taken.

**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule above GS-10 step 1 through step10, or equivalent*

**Work Schedule:** *Flexible*

**Type of Overtime Work:** *In excess of the number of hours the employee planned to work on a specific day, but not in excess of 8 hours in a day or 40 hours in a week*

**Form of Compensation:** The Department allows an employee to choose to:

1. Take time off on a subsequent workday(s) equal to the number of hours worked;
2. Complete his/her basic work requirement (i.e., the number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award) and count the extra hours as credit hours, if available;
3. Be paid at his/her hourly rate for each hour worked; or
4. Any combination of 1, 2, and 3.

**Outcome:** If earned credit hours have not been used at the time an employee is no longer subject to a flexible work schedule, then the employee is paid at his/her current rate of pay at the time of the change.

**Note(s):**

1. Management cannot require that time off or credit hours be taken.
2. “No longer subject to a flexible work schedule” means that an employee is not able to change between a flexible and nonflexible work schedule under the employee’s existing work schedule plan, i.e., local options available (see Appendix E).

**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule above GS-10 step 1 through step10, or equivalent*

**Work Schedule:** *Flexible*

**Type of Overtime Work:** *In excess of 8 hours in a day or 40 hours in a week - when an employee voluntarily performs the work*

**Form of Compensation:** If available, the employee may earn, and carry forward to another pay period, up to 24 credit hours (a part-time employee may earn up to one-quarter of the number of hours in his/her biweekly work schedule).

**Outcome:** If earned credit hours have not been used at the time an employee is no longer subject to a flexible work schedule, then the employee is paid at his/her current rate of pay at the time of the change.

**Note(s):** “No longer subject to a flexible work schedule” means that an employee is not able to change between a flexible and nonflexible work schedule under the employee’s existing work schedule plan, i.e., local options available (see Appendix E).

**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule above GS-10 step 1 through step10, or equivalent*

**Work Schedules:** *Flexible*

**Type of Overtime Work:** *In excess of 8 hours in a day or 40 hours in a week - when management orders the work and work is regular*

**Form of Compensation:** The employee must be paid the greater of:

1. 1.5 times the rate of grade 10 step 1 of the employee's rate of basic pay or
2. the employee's actual rate.

**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule above GS-10 step 1 through step10, or equivalent*

**Work Schedule:** *Flexible*

**Type of Overtime Work:** *In excess of 8 hours in a day or 40 hours in a week - when management orders the work and the work is irregular*

**Form of Compensation:** The Department allows an employee to choose to:

1. Be paid the greater of:
  - a. 1.5 times the rate of grade 10 step 1 of the employee's rate of basic pay or
  - b. his/her hourly rate;
2. Earn compensatory time off at the rate of one hour for each hour earned: or
3. A combination of 1 and 2.

**Outcome:** If compensatory time is chosen, but not taken within 26 pay periods, then the employee is paid for the work at the rate that was in effect at the time the overtime was earned.

**Note(s):** Management cannot require that compensatory time be taken.

**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule (and former merit pay) above GS-10 step 10*

**Work Schedule:** *Basic*

**Type of Overtime Work:** *Regular*

**Form of Compensation:** The employee is paid the greater of:

1. 1.5 times the rate of grade 10 step 1 of the employee's rate of basic pay or
2. the employee's actual rate.

**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule (and former merit pay) above GS-10 step 10*

**Work Schedule:** *Basic*

**Type of Overtime Work:** *Irregular*

**Form of Compensation:** The Head of a Departmental Element has the authority to determine whether an employee:

1. Is required to take compensatory time off in lieu of overtime pay; or
2. Has the option to choose to:
  - a. Be paid the greater of:
    - 1) 1.5 times the rate of grade 10 step 1 of the employee's rate of basic pay  
or
    - 2) the employee's actual rate;
  - b. Earn compensatory time off at the rate of one hour for each hour earned; or
  - c. A combination of a and b.

**Outcome:** If compensatory time off is required or chosen, but not taken within 26 pay periods, then the employee is paid for the work at the rate that was in effect at the time the overtime was earned.

**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule (and former merit pay) above GS-10 step 10*

**Work Schedule:** *Compressed*

**Type of Overtime Work:** *Regular*

**Form of Compensation:** The employee is paid the greater of:

1. 1.5 times the rate of grade 10 step 1 of the employee's rate of basic pay or
2. the employee's actual rate.



**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule (and former merit pay) above GS-10 step 10*

**Work Schedule:** *Compressed*

**Type of Overtime Work:** *Irregular*

**Form of Compensation:** The Head of a Departmental Element has the authority to determine whether an employee:

1. Is required to take compensatory time off in lieu of overtime pay; or
2. Has the option to choose to:
  - a. Be paid the greater of:
    - 1) 1.5 times the rate of grade 10 step 1 of the employee's rate of basic pay  
or
    - 2) the employee's actual rate;
  - b. Earn compensatory time off at the rate of one hour for each hour earned; or
  - c. A combination of a and b.

**Outcome:** If compensatory time off is required or chosen, but not taken within 26 pay periods, then the employee is paid for the work at the rate that was in effect at the time the overtime was earned.

**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule (and former merit pay) above GS-10 step 10*

**Work Schedule:** *Flexible*

**Type of Overtime Work:** *In excess of the number of hours the employee planned to work on a specific day, but not in excess of 8 hours in a day or 40 hours in a week*

**Form of Compensation:** The Department allows an employee to choose to:

1. Take time off on a subsequent workday(s) equal to the number of hours worked;
2. Complete his/her basic work requirement (i.e., the number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award) and count the extra hours as credit hours, if available;
3. Be paid at his/her hourly rate for each hour worked; or
4. Any combination of 1, 2, and 3.

**Outcome:** If earned credit hours have not been used at the time an employee is no longer subject to a flexible work schedule, then the employee is paid at his/her current rate of pay at the time of the change.

**Note(s):**

1. Management cannot require that time off or credit hours be taken.
2. Mandatory compensatory time off in lieu of payment of overtime is not an issue since the extra time is not overtime *per se*.
3. “No longer subject to a flexible work schedule” means that an employee is not able to change between a flexible and nonflexible work schedule under the employee’s existing work schedule plan, i.e., local options available (see Appendix E).

**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule (and former merit pay) above GS-10 step 10*

**Work Schedule:** *Flexible*

**Type of Overtime Work:** *In excess of 8 hours in a day or 40 hours in a week - when an employee voluntarily performs the work*

**Form of Compensation:** If available, the employee may earn, and carry forward to another pay period, up to 24 credit hours (a part-time employee may earn up to one-quarter of the number of hours in his/her biweekly work schedule).

**Outcome:** If earned credit hours have not been used at the time an employee is no longer subject to a flexible work schedule, then the employee is paid at his/her current rate of pay at the time of the change.

**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule (and former merit pay) above GS-10 step 10*

**Work Schedules:** *Flexible*

**Type of Overtime Work:** *In excess of 8 hours in a day or 40 hours in a week - when management orders the work and work is regular*

**Form of Compensation:** The employee must be paid the greater of:

1. 1.5 times the rate of grade 10 step 1 of the employee's rate of basic pay or
2. the employee's actual rate.

**FLSA Status:** *Exempt*

**Category of Employees:** *General schedule (and former merit pay) above GS-10 step 10*

**Work Schedule:** *Flexible*

**Type of Overtime Work:** *In excess of 8 hours in a day or 40 hours in a week - when management orders the work and the work is irregular*

**Form of Compensation:** The Head of a Departmental Element has the authority to determine whether an employee:

1. Is required to take compensatory time off in lieu of overtime pay; or
2. Has the option to choose to:
  - a. Be paid the greater of:
    - 1) 1.5 times his/her hourly rate or
    - 2) the employee's actual rate;
  - b. Earn compensatory time off at the rate of one hour for each hour earned: or
  - c. A combination of a and b.

**Outcome:** If compensatory time is required or chosen, but not taken within 26 pay periods, then the employee is paid for the work at the rate that was in effect at the time the overtime was earned.

**CHAPTER III: SENIOR EXECUTIVE SERVICE  
AND PRESIDENTIAL APPOINTMENTS**

**FLSA Status:** *Exempt*

**Category of Employees:** *SES and Presidential appointees*

**Work Schedule:** *All schedules*

**Type of Overtime Work:** *Any overtime*

**Form of Compensation:** An employee is not eligible for overtime pay, credit hours, or compensatory time off, except compensatory time for a religious observance.

## Overtime Compensation - *Non-Exempt*

<b><u>Category of Employees</u></b>	<b><u>Work Schedule</u></b>	<b>Type of Overtime</b>	
		<b><u>Regular</u></b>	<b><u>Irregular</u></b>
All grades & schedules (non-supervisory wage board & general schedule)	Basic (5 8-hour days/40-hour	Paid at 1.5 x hourly rate, including time “suffered or periods), then must be paid of 1.5 x hourly rate or actual rate	Employee may choose to be paid like regular overtime &/or earn compensatory time off at the rate of one hour workweek) permitted;” for employees for each hour worked; if not used by time limit set by above GS-10/1, the greater agency (26 pay
	Compressed (for time in excess of compressed work schedule)	Same as basic schedule	Same as basic schedule
	Flexible	See applicable pages in the Handbook	See applicable pages in the Handbook



## Overtime Compensation - *Exempt*

<b><u>Category of Employees</u></b>	<b><u>Work Schedule</u></b>	<b>Type of Overtime</b>	
		<b><u>Regular</u></b>	<b><u>Irregular</u></b>
Wage board supervisors (all grades & schedules)	Basic	Paid at 1.5 x hourly rate of employee's rate schedule (includes locality pay & special rate schedules)	Employee may choose to be paid 1.5 x hourly rate &/or earn compensatory time off at the rate of one hour for each hour worked; if not used within 26 pay periods, then paid
	Compressed (for time in excess of compressed work schedule)	Same as basic schedule	Same as basic schedule
	Flexible	See applicable pages in the Handbook	See applicable pages in the Handbook

GS: Rate of pay is <u>below</u> GS-10 step 1	Basic	Same as wage board supervisors	Same as wage board supervisors
	Compressed	Same as wage board Supervisors	Same as wage board supervisors
	Flexible	See applicable pages in the Handbook	See applicable pages in the Handbook
GS: Rate of pay <u>equates</u> to GS-10 steps 1-10	Basic	Paid 1.5 x GS-10 step 1 of employee's rate schedule or actual rate, whichever is greater	Employee may choose to be paid like regular &/or earn compensatory time off at the rate of 1 hour for each hour worked; if not used within 26 pay periods, then paid
	Compressed	Same as basic schedule	Same as basic schedule
	Flexible	See applicable pages in the Handbook	See applicable pages in the Handbook

<b><u>Category of Employees</u></b>	<b><u>Work Schedule</u></b>	<b>Type of Overtime</b>	
		<b><u>Regular</u></b>	<b><u>Irregular</u></b>
GS/GM: Rate of pay <u>exceeds</u> GS-10 step 10	Basic	Paid 1.5 x GS-10 step 1 lieu of payment; or actual rate, whichever is greater	Heads of Dept'l Elements may require, or allow employee to choose, compensatory time in lieu of payment; or actual rate, whichever is if not used within 26 pay periods, then paid
	Compressed	Same as basic schedule	Same as basic schedule
	Flexible	See applicable pages in the Handbook	See applicable pages in the Handbook
SES/Presidential appointees	All schedules	Not eligible for overtime (including compensatory time off, except for a religious observance) or credit hours	

**APPENDIX B****QUESTIONS AND ANSWERS REGARDING OVERTIME****1. When can compensatory time be given?**

Compensatory time is only authorized for work which is specifically scheduled and performed during the same administrative workweek (normally Sunday through Saturday). If the work requirement surfaces on a Friday and is to be performed the following Monday, then compensatory time is not authorized, as more than one workweek is involved.

**2. Can compensatory time off or credit hours be required when funds are not available to pay overtime?**

Compensatory time off may only be required (via a local policy) for exempt employees whose rate of pay exceeds grade 10 step 10. Credit hours cannot be required.

**3. Can an employee have more than the 80 hours of compensatory time off or 24 credit hours?**

There is no limit on the number of hours of compensatory time that may be earned. An employee may earn more than 24 credit hours; however, the excess amount must be used by the end of that pay period

**4. What are the consequences of having excess hours of compensatory time or credit hours?**

Supervisors are expected to ensure that compensatory time hours are used within 26 pay periods to avoid payment of overtime at the rate when earned. All credit hours in excess of the 24 credit hours are forfeited.

**5. When can an employee be paid for compensatory time and credit hours not used?**

All employees are paid for compensatory time not used by the end of the 26th pay period. However, it is the responsibility of each supervisor to ensure that compensatory time is taken prior to that time frame so the Department does not incur the expense.

The only time that an employee can be paid for earned credit hours is when s/he is no longer subject to the same flexible work schedule, e.g., upon retirement or change to a different organization with a new work schedule (see Appendix E).

**6. What is meant by “suffered or permitted?”**

These terms apply to a non-exempt employee who is not on a flexible work schedule in which the employee works overtime which was not ordered and approved in advance and the employee's supervisor was aware of the situation or condoned it.

### **7. When is overtime not regarded as overtime?**

When an employee:

- a. Is allowed to adjust his/her work schedule during a 40-hour week so s/he does not work over 40 hours;
- b. Is an exempt employee and overtime was not approved in advance (see question 8); such work is regarded as voluntarily performed.
- c. Is an exempt employee on a regular or compressed work schedule and chooses to do it in order to complete an assignment on time without requesting additional compensation or having the time approved in advance (this may be regarded as "professionalism," in which case additional compensation may be reflected in an appropriate performance award);
- d. Is on a flexible work schedule and chooses to work extra time during a day or week in order to work less time at a later date; such a situation may allow the employee to earn credit hours; or
- e. Is traveling and not performing regular duties during that time.

### **8. What is meant by "ordered and approved in advance?"**

Except for an emergency in which there is insufficient time to give notice, any employee who is directed to work overtime is to be given reasonable notice in writing. The supervisor and employee should discuss the situation in advance so that they can try to come up with a mutually agreed upon schedule for performing the work. However, if they cannot agree on a time frame and the work cannot be delayed, then the employee must perform the work or be subject to disciplinary action for insubordination. "Approved in advance" means that the local official authorized to approve overtime, usually a senior manager, must approve the work and expenditure of funds prior to the work being performed. Prior approval is required for all overtime work planned for the next workweek, as well as for all exempt employees.

**SUGGESTED WAYS TO MANAGE OVERTIME  
TO ENSURE ELIGIBILITY FOR COMPENSATORY TIME  
OR AVOID PAYMENT OF OVERTIME**

**Obtaining Approval for Overtime**

1. Obtain approval, to the extent feasible, on the first workday of a workweek (normally on a Monday).
2. Don't include specific work schedules (employees identified to work, work assignments, and hours of work) in requests for approval of overtime submitted prior to the workweek for which the overtime is scheduled.

**Planning and Scheduling**

1. Make weekly determinations of overtime needs; don't plan specific work schedules in advance for subsequent workweeks.
2. Give only a general notice to the staff or potentially affected employees when overtime needs are identified in one week, but the overtime is expected to be performed during the following week.
3. Avoid overtime work on Sundays when Sunday is the first day of the workweek, because such work will normally need to be approved and scheduled during the previous workweek.
4. Allow employees as much latitude as possible in establishing how and when the overtime will be accomplished and have them provide their plans for accomplishing it on the first workday of the workweek in which the work will be done.
5. If extra hours of work are needed, schedule them early in the workweek and attempt to balance them out by scheduling an equal amount of time off later in the week, to avoid working employees over 40 hours in any workweek.
6. Stagger employee work schedules when an office needs coverage for more than 8 hours daily.
7. Ensure that employees who have earned compensatory time use that time within 26 pay periods to avoid payment for overtime.

**While In A Travel Status**

1. Avoid approving overtime in advance for employees to work while traveling.
2. Don't approve overtime for an exempt employee who voluntarily performs work while traveling after returning from travel, as it is not authorized for this situation.
3. Schedule employees' travel during their normal work schedules and on their regular workdays. If this can't be accomplished, allow employees to take equivalent amounts of time off later in the same week to avoid working them more than 40 hours in a workweek.

## APPENDIX D

**Frequently Asked Questions  
Regarding  
Time Traveling and Special Events  
(4/30/03)**

**General****1. What are the rules and references for hours of work for travel?**

Title 5 U.S.C. 5542(b)(2) and 5544(a)(3), along with 5 CFR 550.112(g), 551.401(h) and 551.422 are the references. Those references cover both exempt and non-exempt employees. A summary of the rules from these references is available at the following Office of Personnel Management (OPM) web site: <http://www.opm.gov/oca/worksch/HTML/TRAVEL.asp>.

**2. Are Senior Executive Service (SES) and Presidential appointees covered by these rules?**

No, they are not covered since they do not get overtime.

**3. When does the travel time start and end?**

Official travel begins at the time when the employee leaves his/her office or residence and ends when s/he returns to his/her office or residence.

**4. Should an employee be compensated while traveling when a flight is delayed or cancelled?**

Delays that are uncontrollable by the employee, e.g., due to weather conditions, should be treated as excused absence (administrative leave) just as if weather conditions cause the closing of a facility. However, if an employee misses a flight because of negligence, e.g., overslept or lost his/her ticket, then the employee must accept the responsibility for any consequences that may result. No additional compensation is warranted in the latter situation.

**5. When does an employee have to report to his/her office or alternate work location when returning from travel on a regular workday?**

An employee should return to his/her designated work location when there is at least 1 hour left in the employee's workday after arriving at that work location, unless the employee is eligible for a rest period as a result of a long trip (see Q&A 6 under Exempt Employees).

**6. When is an employee expected to depart from a hotel when driving back to his/her office or residence?**



An employee should depart the hotel by the time the employee would normally begin his/her workday on a regular workday. If the employee does not depart by that time, then the time between the beginning of the normal workday and actual departure time should be charged as leave or leave without pay (LWOP).

**7. How should an employee's time be charged when the employee departs from his/her residence or hotel prior to the employee's normal work schedule?**

Consideration should first be given to adjusting the end time on that day so the total hours for the day do not exceed the normal hours for that work day. When the total hours for the day exceed the employee's normal hours, then the overtime provisions may apply depending on whether the employee is exempt or non-exempt (also see Q&A 1 under both Exempt and Non-Exempt Employees).

**8. An employee wants to get to a conference location a day or two in advance or stay an extra day or two longer in order to take in some activities that were not planned as part of the conference. When the personal time coincides with what would have been travel time during the employee's regular work schedule, how is the time charged?**

An employee's work schedule may be changed to accommodate this situation so that the employee travels on what would otherwise be a non-work day and his/her regular workday for travel becomes a non-workday. Any time beyond that authorized for travel that is used for personal purposes during a workday must be charged as leave or leave without pay.

**9. A DOE conference includes an evening reception on the first evening that begins after the employee's normal work schedule for the day. Is the time at the reception considered duty time and subject to overtime when the employee traveled during normal duty hours that day?**

No, as the purpose of the reception is to provide an opportunity to network and socialize, rather than an event that involves the performance of work. Also, the answer to the next question applies.

**10. A DOE conference includes an awards ceremony dinner following a full day of seminars. Is the dinner considered to be overtime when the employee is expected to attend?**

First of all, the conference is considered training. As such, activities associated with it are normally prohibited from the payment of premium pay (overtime is a form of premium pay) in accordance with 5 CFR 410.402(a) and the awards ceremony does not satisfy the exception for training at night described at 410.402(b)(2). Thus, the dinner is not considered additional duty hours eligible for overtime.

### **Exempt Employees**

- 1. An employee is required to attend a meeting or conference that begins on Monday morning, so the employee must travel on Sunday. Should the employee be compensated for the time traveling to the event?**

The answer depends on what organization controls the scheduling of the event and whether or not an “immediate official necessity” exists. If the organization is a Federal agency in the Executive Branch or a contractor of such agency, then the time traveling is not work hours for which the employee can be paid. Federal organizations should make every effort to arrange events so that exempt employees are able to travel during their normal work schedule since they are not compensated for the additional time it takes to travel. Also, when the necessity for the travel is not so urgent as to preclude proper scheduling of travel, then overtime may not be granted for the after-hours travel time (see 60 Comp. Gen. 681, supra, citing 51 Comp. Gen. 727 (1972) and Mark Burstein, B-172671, March 8, 1977).

However, travel to an event when the scheduling is controlled by a non-Federal agency or contractor, e.g., a state agency or professional association, is creditable work hours that will result in either a change in work schedule or overtime. In the latter situation, the employee is entitled to overtime in the form of pay or compensatory time (if it is irregularly scheduled, i.e., during the same administrative workweek) for hours in excess of their regular 40-hour workweek and/or 80-hour pay period. Supervisors should make every effort to change the employee’s work schedule for the workweek or pay period to avoid payment of overtime.

- 2. In order to maintain a professional certification, an employee needs to attend a conference held by a professional association that begins on Saturday and ends several days later. Is the time over the weekend considered overtime?**

First of all, recognize that there are 2 administrative workweeks involved. Saturday is the end of one workweek and Sunday begins another one. This complicates efforts to change an employee’s work schedule over the 2 weeks, particularly if Sunday is the beginning of a new pay period. When the employee’s work schedule for each pay period (or if both weeks fall in the same pay period, the pay period) can be adjusted to accommodate the time involved with traveling to and from and participating in the conference, then there is no overtime. However, to the extent that the travel and attendance time are in addition to the employee’s biweekly 80 hours, then the employee must be compensated consistent with the overtime provisions in the other parts of this handbook for the grade level of the employee.

- 3. When an employee has a short-term overseas assignment, is the employee entitled to time off after s/he gets back to make up for all of the extra time that s/he had to put in each day, including the long travel time involved?**

If longer hours are anticipated in advance of the assignment, overtime should be requested and approved in advance. In addition, it may be necessary to change an employee's work schedule to accommodate the work schedule of the assignment, e.g., to 4 or 8 10-hour days. The travel time is determined consistent with the answer to Q&A 1 of this section. It would be appropriate to adjust the employee's work schedule for the remainder of the workweek or pay period as described in Q&A 2 of this section since the employee met the Department's needs by working long hours and may need some time off to meet the employee's needs upon returning from the assignment. When an employee has performed well on an exceptional assignment, it is also appropriate to consider a time-off award for that performance. The next Q&A addresses time off following a long trip.

- 4. When is an employee able to take a rest stop on an overseas trip? How is that time charged? Will the employee be paid for the rest stop time?**

In accordance with 41 CFR 301-11.20, for an employee to be eligible for a rest stop the scheduled flight, including stopovers, must exceed 14 hours and be the most direct or usually traveled route, and the employee cannot be flying "premium class," i.e., first class or business class. The rest stop time is charged as excused absence (administrative leave) for any part of the employee's regular schedule for that day; thus, the rest time may not exceed the total number of regularly scheduled work hours, including any regularly scheduled overtime. Any time beyond the employee's regularly scheduled work hours is not overtime. In the event that the employee is eligible for a rest stop but the flight is nonstop, the employee should be granted a reasonable rest period once the employee arrives at his/her place of lodging or home. The amount of time for a rest period should be determined on a case-by-case basis (see Comp. Gen. Decision B-164709, August 1, 1968).

- 5. When an employee is expected to utilize the travel time after normal duty hours to prepare for a conference or meeting, is that time considered duty hours that should be compensated?**

If the work was not approved for overtime in advance, then the employee is not compensated for it.

- 6. An employee's supervisor comes from the private sector and expects his/her exempt employees to travel on their own time and not be compensated. Why are exempt employees in the government treated differently?**

Federal employees are subject to title 5 U.S.C. which limits employees' regular work schedule to 80 hours per pay period. To state it another way, all Federal employees are hourly employees. In the private sector, exempt employees can work more or less than 80 hours per pay period and their salary and leave are not adjusted during the pay period, whereas Federal employees must account for all time in an 80-hour pay period. Thus, supervisors must be sensitive to the time involved for employees to travel and not place unreasonable expectations on them because of their experiences in the private sector.

### **Non-Exempt Employees**

- 1. A grade 7 career intern is required to attend a class at another DOE location that begins on Monday morning and ends on Friday afternoon so the intern is required to travel on Sunday and return late Friday afternoon or early evening. Should the intern be compensated for the extra time traveling?**

Non-exempt employees must be compensated for the time traveling that coincides with their normal work schedule for that workweek. For example, if the employee is on a 5-4-9 work schedule and would regularly work 9 hours each day that week from 7:30AM - 5:30 PM with a 1-hour lunch break, then any travel on Sunday between those hours are duty hours that must be compensated. If the travel extends beyond 5:30 in this example, then that time is not counted. Supervisors should review travel schedules to determine the most cost-effective ones available that involve the least amount of inconvenience and travel time for the employee.

- 2. An administrative assistant is required to ensure that all logistical arrangements are ready in time for a conference that begins on Monday evening, so the employee must travel on Sunday afternoon in order to begin setting up and working with the hotel on Monday morning. Is the time traveling on Sunday overtime?**

As described in the previous answer, the time traveling on a non-workday that coincides with the employee's work schedule for that week is treated as duty hours that must be compensated.

## APPENDIX E



United States  
Office of  
Personnel Management

Washington, DC 20415-0001

31 Employee for: JAN 5 2000 14:14:00

Mr. Frank DiCostanzo  
Assistant Director for Compensation  
and Performance Management  
Office of Personnel Policy,  
Programs and Assistance  
Department of Energy  
Washington, DC 20585

Dear Mr. DiCostanzo:

Thank you for your letter requesting written guidance from the Office of Personnel Management about compensation for unused credit hours. You ask whether the Department of Energy (DOE) policy requiring payment for unused credit hours when employees are no longer under a flexible work schedule is consistent with law.

Specifically, you ask for an interpretation of 5 U.S.C. 6126(b), which reads as follows:

(b) Any employee who is on a flexible schedule program under section 6122 of this title and who is no longer subject to such a program shall be paid at such employee's then current rate of basic pay for—

- (1) in the case of a full-time employee, not more than 24 credit hours accumulated by such employee, or
- (2) in the case of a part-time employee, the number of credit hours (not in excess of one-fourth of the hours in such employee's biweekly basic work requirement) accumulated by such employee. *[Emphasis added.]*

Section 6126(b) requires payment for unused credit hours when employees are no longer subject to a flexible work schedule program. We recognize that, in the absence of clarifying regulations or court decisions, this provision is subject to interpretation. However, we believe that, as a matter of policy, the best interpretation is that employees remain subject to the flexible work schedule program if they continue to be employed by the same agency and are in a position to resume working under a flexible work schedule at a later date.

We believe the intent of the law is to allow employees to earn and use credit hours. Thus, we believe cash payments for unused credit hours should be reserved for instances when employees permanently leave an agency's flexible work schedule program and will have no further opportunity to use accrued credit hours in that program. If an employee separates from an agency, cash payment for unused credit hours is clearly required. However, if an

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