

4551.1 Provisions of FLSA 11/09/82

4551.1

OPI: PD - Classification and Organization Branch

PART 1 OF 3

PROVISIONS OF THE FAIR LABOR STANDARDS ACT (FLSA)
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PROVISIONS OF THE FAIR LABOR STANDARDS ACT (FLSA)
PART ONE--BASIC PROVISIONS

I. PURPOSE

This Directive sets forth:

- A. The provisions of the Fair Labor Standards Act affecting employees of the Food Safety and Inspection Service (FSIS).
- B. The criteria for determining eligibility for overtime pay and regular rate of pay under FLSA.
- C. The procedures for determining entitlement to retroactive pay under FLSA.

II. CANCELLATION

Cancel FSQS Directive 4551.1, dated 10/1/80.

III. APPLICABILITY OF FLSA TO FEDERAL EMPLOYEES

A. Effective Date. Federal employees became subject to the FLSA effective May 1, 1974. Provisions of this Directive are also effective from May 1, 1974.

(### B. Relationship of FLSA to Other Pay Laws. The FLSA does not repeal

or modify other pay laws; rather, it provides a minimum standard to which covered employees (i.e., those not meeting one of the exemption categories established in the law) are entitled. Federal employees remain covered as before by Title 5 of the United States Code and continue to receive all pay benefits under Title 5, such as night differential, Sunday differential, or holiday premium pay, even though overtime may be paid under FLSA. With regard to overtime, the provisions of each law must be applied separately and the results compared. To the extent that the FLSA would provide a greater pay benefit (e.g., a higher overtime rate) than is payable under other existing pay rules, the nonexempt employee is entitled to the FLSA benefit. ### 11/9/82)

IV. EMPLOYEES COVERED (NONEXEMPT)

A. By Type of Employment. Employees covered in subparagraphs 1. and 2. below are subject to FLSA, regardless of the nature or length of their appointments and regardless of whether they are full-time, part-time, or intermittent. Questions regarding coverage should be referred to the Servicing Personnel Office, through supervisory channels.

1. General Categories. Employees in the following general categories are covered (i.e., nonexempt) under FLSA:

a. Positions at Grade 4 and below of the General Schedule (GS).

b. Positions comparable to GS positions at grade 4 and below.

c. Wage Grade (WG), Wage Leader (WL), and Wage Printer (WP) positions.

d. Positions comparable to WG, WL, and WP positions.

e. Supervisory positions at grades GS-5 through GS-9 when more than 20 percent of the employee's worktime is spent on nonsupervisory work that is not closely related to the supervisory function. ### 11/9/82)

2. Specific Occupations. The specific occupations covered under FLSA in FSIS are shown in Attachment 1-1.

B. By Location. Overtime provisions of FLSA apply in the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, the Canal Zone, and other U.S. territories, but generally do not apply in foreign areas.

V. EMPLOYEES EXEMPTED

Employees in bona fide executive, administrative, and professional positions are generally exempt from FLSA coverage. Personnel Division is responsible for determining which specific positions and grade levels are exempt. (Exempt employees continue to be compensated under Title 5, U.S.Code, for both regular hours worked and overtime.) FSIS employees in

the following positions are exempt from FLSA coverage:

- A. GS positions properly classified at grade 11 and above (with certain exceptions).
- B. Positions which are comparable to GS positions at grade 11 and above.
- C. Full foreman and higher-level positions under the Federal Wage System.
- D. Other wage system positions comparable to full foreman or higher-level Federal Wage System positions.

VI. RESTRICTION

Written issuances concerning the policy or interpretation of this Directive must be coordinated through the Chief, Classification and Organization Branch, Personnel Division. This is to assure that any proposed issuances reflect the input of Agency officials charged with the responsibility for proper pay policy under applicable statutes.

ATTACHMENT 1-1

EMPLOYEES COVERED (NONEXEMPT) UNDER FLSA-PREMIUM PAY ENTITLEMENT
Employees in the series and grades listed below are subject to the Fair Labor Standards Act (FLSA) regardless of the nature or length of their appointments or whether they are full-time, part-time, or intermittent. Employees in these positions must be paid under the FLSA if their overtime entitlement is greater under that Act than it is under statutory or regulatory pay provisions otherwise applicable. Questions regarding coverage should be referred to the Servicing Personnel Office or the Classification and Organization Branch, Personnel Division.

Certain specific occupations are covered under FLSA. The following are covered occupations in the FSIS at and below the grade levels indicated:

GS-018 Safety Management	GS-7	GS-019 Safety Technician	GS-9
GS-099 General Student Trainee		all grades	
GS-110 Economist		GS-7	
GS-201 Personnel Management Specialist		GS-7 (###	
GS-203 Personnel Clerk and Assistant		all grades ### 11/9/82)	
GS-212 Personnel Staffing		GS-7	
GS-221 Position Classification		GS-7	
GS-223 Salary and Wage Administration		GS-7	
GS-230 Employee Relations		GS-7	
GS-233 Labor Relations		GS-7	
GS-235 Employee Development		GS-7 (###	
GS-260 Equal Employment Opportunity		GS-7	
GS-301 General Administration		GS-9	

GS-303 Miscellaneous Clerk and Assistant	all grades
GS-305 Mail and/or File Clerk and Assistant	all grades ### 11/9/82)
GS-312 Clerk Stenographer	all grades
GS-318 Secretary	all grades
GS-322 Clerk Typist	all grades
GS-334 Computer Specialist	GS-7
GS-335 Computer Aid/Technician	GS-9
GS-341 Administrative Assistant/Officer	GS-7 (####
GS-342 Support Services Administration	GS-9 ### 11/9/82)
GS-343 Management Analysis	GS-7
GS-344 Management Clerical & Assistance	GS-7
GS-345 Program Analysis	GS-7 (###
GS-350 Equipment Operator	all grades ### 11/9/82)
GS-351 Printing Clerical	all grades
GS-401 General Biological Science	GS-7
GS-403 Microbiology	GS-7
GS-404 Biological Aid/Technician	all grades (###
GS-405 Pharmacology	GS-7 ### 11/9/82)
GS-414 Entomology	GS-7
GS-493 Home Economics	GS-7
GS-501 General Accounting	GS-7
GS-504 Budget and Accounting	GS-7
GS-505 Financial Management	GS-7
GS-510 Accounting	GS-7
GS-525 Accounting Technician	all grades (###
GS-540 Voucher Examining	all grades ### 11/9/82)
GS-560 Budget Analysis	GS-7
GS-799 Veterinary Trainee	GS-7 (###
GS-801 General Engineering	GS-7 ### 11/9/82)
GS-802 Engineering Technician	all grades
GS-819 Environmental Engineering	GS-7
GS-830 Mechanical Engineering	GS-7
GS-890 Agricultural Engineering	GS-7
GS-896 Industrial Engineering	GS-7
GS-963 Legal Instruments Examining	all grades
GS-1020 Illustrating	GS-7 (###
GS-1035 Public Affairs	GS-7### 11/9/82)
GS-1071 Audio-Visual Production	GS-7
GS-1082 Writer/Editor	GS-5
GS-1084 Visual Information	GS-5 (###
GS-1087 Editorial Assistant	all grades ### 11/9/82)
GS-1101 General Business & Industry	GS-7
GS-1102 Contract & Procurement	GS-7
GS-1104 Property Disposal	GS-7
GS-1105 Purchasing Agent	GS-9
GS-1106 Procurement Clerk & Assistant	GS-9
GS-1107 Property Disposal Clerk & Technician	GS-9

GS-1146 Agricultural Marketing Specialist	GS-7
GS-1150 Industrial Specialist	GS-7
GS-1170 Realty	GS-7 (###
GS-1301 General Physical Science	GS-7 ### 11/9/82)
GS-1311 Physical Science Aid/Technician	all grades
GS-1320 Chemistry	GS-7
GS-1382 Food Technology	GS-7
GS-1399 Physical Science Student Trainee	all grades (###
GS-1515 Operations Research	GS-7 ### 11/9/82)
GS-1520 Mathematics	GS-7
GS-1529 Mathematical Statistician	GS-7 (###
GS-1530 Statistician	GS-7 ### 11/9/82)
GS-1531 Statistical Assistant	all grades
GS-1654 Printing Management	GS-5
GS-1702 Education & Training Technician	GS-9 (###
GS-1801 General Inspection, Investigation, Compliance	GS-9
GS-1802 Compliance Inspection and Support	all grades
GS-1863 Food Inspection	GS-9*
GS-1910 Quality Assurance	GS-7 ### 11/9/82)
GS-2001 General Supply	GS-9
GS-2005 Supply Clerk/Technician	all grades

* Inplant nonsupervisory Food Inspector positions at GS-10 and GS-11 are also nonexempt.

PART TWO--DETERMINING HOURS OF
WORK AND OVERTIME

(###

I. WHAT CONSTITUTES HOURS OF WORK

A. All time during which employees are required to be on duty and all time during which they are "suffered or permitted" to work is counted as time worked. Under FLSA, only actual time worked over 40 hours in each week is counted as overtime. However, authorized rest periods (excluding lunch breaks) during the basic workday are considered worktime. Hours actually worked over 8 in a day are counted toward the basic 40 hours only and are not overtime under FLSA.

B. When an employee is completely relieved from duty for the purpose of a meal break, the break time is not counted as "hours of work" under FLSA. So long as the employee is completely freed from duty, it is not necessary that he or she leave the worksite.

C. Also not counted as "hours of work" under FLSA are periods of excused or unexcused absence, with or without pay. This includes holidays

not worked; annual, sick, official, or other paid leave (e.g., court leave); leave without pay; and absence without leave.

II. MANAGEMENT RESPONSIBILITY FOR OVERTIME WORK

A. Under FLSA, management cannot knowingly accept the benefits of an employee's work without paying for that work. Covered employees are thus entitled to overtime pay for all hours of actual work (excluding leave time) over 40 hours in a week which management "suffers or permits" to be performed for its benefit. Supervisors must make sure, therefore, that covered employees do not work outside normal work hours unless they have been ordered to do so, or have been clearly advised that overtime will be approved after the fact. Overtime shall be ordered and approved in increments of no less than 15 minutes whenever possible.

B. In general, a quarter hour will be the lowest fraction of an hour used to schedule and record overtime under FLSA. However, there are instances where management cannot or does not fully control the work situation and may permit employees to work overtime in smaller fractions than a quarter hour. In these instances, the time will be credited and recorded under the daily practice of "rounding up" or "rounding down" to the nearest quarter hour as follows:

1. If the minutes total 7 or less, then the total shall be rounded down to the preceding quarter hour. EXAMPLE: Employee works 35 minutes overtime. Only one half hour would be recorded as hours of work on the T&A. If the employee worked only 5 minutes of overtime for the day, no overtime would be recorded on the T&A.

2. If the minutes total 8 or more, then the total shall be rounded up to the next quarter hour. EXAMPLE: Employee works 9 minutes of overtime for the day. One quarter hour of overtime would be recorded for the day on the T&A. ### 11/9/82)

EXAMPLE: John Smith regularly is scheduled to work 8 hours a day, Monday through Friday. His actual work and leave status during a pay period (not counting meal breaks as hours worked) and appropriate totals for each week are shown below:

DAY	FIRST WEEK	SECOND WEEK
Monday	10 hours worked	12 hours worked
Tuesday	8 hours worked	7 hours worked
Wednesday	8 hours annual leave	1 hour voting leave 12 hours worked
Thursday	10 hours worked	8 hours sick leave
Friday	8 hours worked	8 hours sick leave
Saturday	8 hours worked	0 hours worked
	52 Total hours in pay status	48 Total hours in pay status
	44 Total hours worked 1/	31 Total hours worked 1/

4 Total hours overtime 0 Total hours overtime
under FLSA 2/ under FLSA 2/

1_/ These figures do not include the hours of leave taken.

2_/ Hours worked over 8 in a day are not overtime under FLSA. Overtime entitlement under FLSA does not start to accrue until an employee has completed 40 hours of actual work in a week.

III. TIME SPENT IN AUTHORIZED TRAVEL

(###Determining when authorized travel constitutes compensable "hours of work" is one of the most difficult pay provisions to apply under FLSA. The problem is compounded by the fact that the rules for compensable travel time under Title 5, U.S. Code, differ considerably from those applicable under FLSA. The rules must be applied separately under each law, Title 5 and FLSA, and nonexempt employees are to be paid under whichever law provides them the greater overtime pay benefit. The three attachments to this Part provide tables to assist in determining when specific travel activities and conditions are counted as "work" under FLSA. Attachments 2-1 and 2-2 cover travel outside the official duty station, on one-day assignment and on overnight assignment, respectively. Attachment 2-3 covers travel within the official duty station. The FLSA regulations upon which Attachments 2-1 through 2-3 are based are set forth in the remainder of this Part. (For Title 5 regulations on travel pay, see FSQS Directive 4550.1, Travel Time Entitlements Under Title 5, U.S. Code. For information on travel allowances not related to pay, such as for per diem and transportation, see FSQS Directive 3800.1, Allowances for Temporary Duty Travel.) ### 11/9/82)

A. Definitions of Terms Used.

1. Authorized Travel. Travel directed or controlled by a responsible official of FSIS for the benefit of the Agency.

2. Actual Duty Point. The street address of a single location within the official duty station where the employee regularly performs duties or which the employee uses as headquarters. The actual duty point is designated by the local officer in charge for all employees under his/her jurisdiction. This could be the local FSIS office, the plant where work is regularly performed, or the employee's home address.

3. Official Duty Station. The corporate limits of the city or town or other established area with definite boundaries in which an employee is stationed. It is the policy of FSIS in cities whose corporate limits are totally within the corporate limits of a larger city that the corporate limits of the larger city form the boundaries of the official duty station.

4. Temporary Duty Station. A duty location to which an employee is temporarily assigned outside the official duty station area.

5. Job Site. A duty location within the limits of the official duty station other than the employee's actual duty point.

6. Normal Waiting Time Which Interrupts Travel. Waiting time involved when an employee is required by common carrier rules to arrive at a terminal at a designated predeparture time (e.g., 30 minutes prior to scheduled departure time), or when an employee has to wait for a connecting flight to continue travel to a temporary duty station.

7. Regular Working Hours. The clock hours of an employee's workday, scheduled in advance over periods of not less than 1 week, during which he/she is expected to be on duty regularly, including regularly scheduled overtime hours. For a first-8-hour indefinite employee, it means the first 8 hours of work performed in a day following the employee's reporting for duty. An intermittent employee does not have regular working hours.

(### 8. Travel Status. For the purpose of determining hours of work, only that time which the employee actually spends traveling away from his or her official duty station, plus normal waiting time which interrupts such travel. ### 11/9/82)

B. Time Spent in Travel Status or in Actual Travel Outside Scheduled Work Hours. Time spent in "travel status" when not actually traveling (except for normal waiting time which interrupts travel) is not counted as "hours worked" under FLSA. Likewise, time spent actually traveling is not "hours worked" if:

1. The travel is performed outside regular work hours; and
2. The travel does not meet the criteria set forth under this paragraph for being counted as "hours of work."

C. Travel Within the Official Duty Station Limits. Time spent by an employee in authorized travel as part of a job assignment during the workday shall be counted as hours worked. Furthermore, time spent traveling by an employee within the official duty station before or after regular working hours, which is directly associated with the performance of a given job assignment and which serves to extend the employee's regular workday, is also considered hours worked. Normal travel between work and home and bona fide meal periods are not included as hours worked. (See Attachment 2-3 for determinations on application of these criteria to specific travel cases.)

D. Travel Outside the Official Duty Station. Time spent in work related travel outside the official duty station during regular working hours is counted as work, except for excess waiting time and bona fide meal breaks. The following criteria apply in determining when travel outside regular working hours is counted as time worked under FLSA:

1. Work Performed While Traveling. All duties which employees are required to perform while traveling shall be counted as time worked. Employees required to operate or to assist in the operation of a conveyance (car, truck, boat, airplane, etc.) are working while traveling. When an

employee is a passenger, however, and is not required to assist in the operation of a conveyance, time spent riding as a passenger is not counted as work unless it is performed during regular work hours or under some other condition that would render the travel time compensable as work. Outside of the regular hours mentioned above, during any time the designated driver allows the passenger to drive, the passenger's time will be counted as hours worked and the designated driver's time will not be counted as work. (See Attachments 2-1 and 2-2 for examples of work performed while traveling away from official duty station being counted as "hours of work".)

NOTE: When an employee is completely relieved from duty for a period long enough to enable him/her to use the time effectively for his/her own purposes, this off-duty period is not counted as hours worked. EXAMPLE: The driver of an automobile terminates travel at 6 p.m. to obtain lodging for the night and resumes travel at 8 a.m. the next morning. The period between 6 p.m. and 8 a.m. is not counted as hours worked.

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PART 2 OF 3

III. TIME SPENT IN AUTHORIZED TRAVEL (CONTINUED)

D. Travel Outside the Official Duty Station. Time spent in work related travel outside the official duty station during regular working hours is counted as work, except for excess waiting time and bona fide meal breaks. The following criteria apply in determining when travel outside regular working hours is counted as time worked under FLSA: (CONTINUED)

2. Travel as a Passenger on a One-Day Assignment. Travel as a passenger to a temporary duty station and return to the official duty station during the same day is part of the employee's principal duties for that particular day, and such travel is considered working time. Bona fide meal periods are deducted from hours worked. Normal home-to-work or work-to-home travel and time spent waiting at a common carrier terminal in excess of normal waiting time which occur outside regular working hours are not included in hours worked. (See Attachment 2-2 for examples of travel as a passenger on a 1-day assignment away from official duty station being counted as "hours of work".)

3. Travel as a Passenger That Keeps Employee Away From Official Duty Station Overnight. When authorized travel as a passenger requires an employee to remain one or more nights at a point outside the official duty station, such travel is considered "hours of work" only if it is performed:

- a. During regular working hours on a regular workday.
- b. During hours on a nonworkday which correspond to the employee's scheduled clock hours of work on regular workdays.

EXAMPLE: If an employee's regular working hours are from 7:00 a.m. to 3:30 p.m. (with a 30-minute meal break), Monday through Friday, actual travel time during these hours on any of the 7 days of the week (including Saturday, Sunday, or a holiday) is counted as "hours of work." Bona fide meal periods, as well as waiting time at a terminal which exceeds normal waiting time, are deducted from the hours counted. (See Attachment 2-2 for other examples of travel as a passenger on an overnight assignment being counted as "hours of work.")

NOTE: If, while at a temporary duty station, an employee is required to travel to another temporary duty station and return to the original temporary duty station within a single workday, this trip becomes a "one-day assignment" and travel time is counted as hours worked in accordance with subparagraph 2 above.

4. Home to Work Travel at a Temporary Duty Station.

a. Since one of the principles under FLSA travel rules is that an employee shall not be compensated for normal home to work travel, this same principle applies to the commuting time of Federal employees while assigned to a temporary duty station overnight. For this purpose, the employee's temporary duty station is considered to be the equivalent of the official duty station during the period of the temporary duty assignment. Therefore, the time spent by the employee commuting from his/her temporary lodgings (hotel, motel, etc.) to the normal duty location or to a job site within the limits of the temporary duty station shall be considered home-to-work travel, and, as such, it shall not be considered working time (### under the FLSA unless it meets one of the specific conditions listed in Attachment 2-3. It makes no difference whether the employee's temporary lodgings are within or outside the corporate limits of the temporary duty station. ### 11/9/82)

b. Furthermore, when an employee, for personal reasons, does not use temporary lodgings provided at a temporary duty station and commutes daily from his/her home (or from temporary lodgings other than those specified at the temporary duty station), the daily home-to-work travel (commuting time) is not worktime under the FLSA. However, in this specific case, the employee's travel time in excess of normal home-to-work travel to the temporary duty station on the first day of the temporary duty assignment, and from the temporary duty station to his/her home on the last day of temporary duty assignment, is considered hours worked under the FLSA. Of course, such travel must meet the rules for compensable travel time listed in Attachment 2-2.

5. Home-to-Work Travel While Driving a Passenger Vehicle.

a. If an employee drives a passenger vehicle outside regular working hours (including outside corresponding hours on a nonworkday) directly from home to a temporary duty station, the employee shall only have counted as "hours of work" the time spent driving which is in excess of normal home-to-work travel. This deduction of normal home-to-work travel is also appropriate when a driver of a passenger vehicle picks

up and drives another employee or group of employees directly to a temporary duty station, provided, of course, that the driver was not specifically required to do so (### by the employing agency. (If the employee was required to pick up and drive other employees directly to a temporary duty station, the employee can count as "hours of work" under FLSA all time spent driving from home to the temporary duty station minus either normal home to work travel time or travel time from home to designated pick-up point, whichever is less.) ### 11/9/82)

b. On the other hand, if the employee drives from his/her home directly to temporary lodgings at the temporary duty station (or between lodgings at one temporary duty station and another temporary duty station), this is not considered home to work travel and, therefore, it should not be deducted from compensable travel time.

6. Special Situations.

a. Travel by Mode of Transportation Other Than That Selected by the Employing Agency. When an employee, for personal reasons (such as an aversion to flying), does not use the mode of transportation selected by the Agency, he/she shall be credited with the lesser of:

(1) That portion of the actual travel time which is to be considered working time under this Directive.

(2) That portion of the estimated travel time which would have been considered working time under this Directive had the employee used the mode of transportation selected by the Agency.

b. Travel at a Time Other Than That Selected by the Employing Agency. Officials ordering travel are responsible for specifying, within reasonable limits, the time during which authorized travel will be performed by employees. To the maximum extent practicable, travel away from an employee's official duty station shall be scheduled within the employee's regularly scheduled workweek. When an employee, for personal reasons, travels at a time other than the time selected by the supervisor or, for personal convenience, travels by an indirect route or interrupts such travel, he/she shall be credited with the lesser of:

(1) That portion of the actual travel time which is to be considered working time under this Directive.

(2) That portion of the estimated travel time which would have been considered working time under this Directive had the employee traveled at the time and by the route selected by the ordering official.

c. Travel Which Involves Two or More Time Zones. When travel involves two or more time zones, the time zone at the point of first departure for the workday shall be used to determine whether travel was performed during regular working hours (or during corresponding hours on nonworkdays). EXAMPLE: If an employee commences travel on Monday in

Washington, D.C., with a short stopover in Denver, Colorado, and then travels to Los Angeles, California, later that same day, the Eastern time zone (point of first departure for that workday) shall be used to determine whether the travel was performed during the employee's regular working hours. If the same employee later returns from Los Angeles, California, to Washington, D.C., on Saturday (a nonworkday), the Pacific time zone shall be used to determine whether the travel was performed by the employee during hours which correspond to regular working hours.

d. Determining Nonworkday Hours Which Correspond to Regular Work Hours for First-8-Hour Indefinite Employees. For employees who work on a first-8-hour indefinite basis, the clock hours of the first 8 hours of pay status on the workday preceding the nonworkday shall be used to determine "regular work hours."

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IV. TIME SPENT IN TRAINING OR ATTENDING A LECTURE, MEETING, OR CONFERENCE

A. Under Title 5, U.S. Code, premium pay (including overtime) is prohibited for training performed under the Government Employee Training Act. The same prohibition applies under FLSA except where the specific criteria described in subparagraph B. below are met.

B. In general, an employee is paid for all time spent learning the duties and responsibilities of his or her current position. This includes any time spent by an employee in either remedial training or training in revised procedures, products, or processes that is required for the continued performance of the duties of his or her current position. Therefore, if an employee is directed to participate in such training, the training is primarily for the benefit of the Agency. The time spent in training is "hours of work" under FLSA (unless the employee's attendance is during a period of paid leave or leave without pay).

C. On the other hand, if an employee voluntarily attends a training program to improve his or her performance, or attends a training program to enhance his or her opportunity for reassignment to another position or advancement to a higher grade, such training is primarily for the benefit of the employee. Time spent in this type of training is not "hours of work" under FLSA.

NOTE: Whether time spent in training shall be considered "hours of work" under FLSA is a separate and independent determination from any other. The fact that the Agency will be paying for an employee's attendance at such training and travel to and from the training has no bearing on the hours-of-work determination.

D. Time spent attending a lecture, meeting, or conference during regular working hours is hours of work unless an employee's attendance at such an activity is during a period of paid leave or leave without pay.

Under the latter circumstances such time is not hours of work under FLSA. For time spent in attendance at such an activity outside regular working hours to be considered hours of work, the same conditions described in subparagraph B. must be met.

E. FLSA travel time attributable solely to training activities is compensable at overtime rates provided all other required conditions for compensable travel are met.

V. TIME SPENT ADJUSTING GRIEVANCES OR PERFORMING REPRESENTATIONAL FUNCTIONS

A. Time spent by an employee adjusting his or her grievance (or any appealable action) with the Agency during the time the employee is required to be on the Agency's premises or duty station shall be considered "hours of work."

B. "Official time" granted by the Agency and used by an employee to perform representational functions during those hours when the employee is otherwise in a duty status shall also be considered "hours of work." This includes time spent by an employee performing such functions during regular working hours (including regularly scheduled overtime hours), or during a period of irregular, unscheduled overtime work, provided an event arises incident to representational functions that must be dealt with during the irregular, unscheduled overtime period. (That is, the employee representative must already have been in an overtime duty status at the direction of the supervisor at the time that an event arises which calls for the performance of representational functions.) The employee representative cannot extend his or her duty hours (including overtime hours) solely for the purpose of extending representational functions into overtime hours.

VI. TIME SPENT RECEIVING MEDICAL ATTENTION

A. An employee who incurs an injury or becomes ill while in a duty status and who is sent to a health unit or first aid room for treatment is expected to return to duty within an hour unless unusual circumstances dictate otherwise. If not able to return to duty, the employee will be sent home by the supervising nurse (where one is available or by the appropriate official where there are no nurses) after the employee's supervisor has been notified.

B. Under FLSA, time spent waiting for and receiving medical attention for illness or injury shall be considered hours of work if:

1. The medical attention is required on a workday on which an employee reported for duty and subsequently became ill or was injured;
2. The time spent receiving medical attention occurs during the employee's regular working hours; and
3. The employee receives the medical attention on the Agency's premises or, at the direction of the supervisor, at a medical facility away from the Agency's premises.

C. Time spent taking a physical examination that is required for the employee's continued employment with the Agency shall also be considered hours of work. ### 11/9/82)

ATTACHMENTS 2-1, 2-2, AND 2-3

(Refer to FSIS Directive 4551-1 for Attachments 2-1, 2-2, and 2-3.)
PART THREE--PAY ADMINISTRATION

I. DETERMINING REGULAR RATE OF PAY

Except as otherwise provided below, a nonexempt employee is to be compensated for all hours of work in excess of 40 in a week by an amount equal to the straight time (i.e., basic) rate of pay times all overtime hours worked, plus one-half times the employee's hourly regular rate of pay times all overtime hours worked. The "regular rate" is derived by adding payments for all includable items (see subparagraph A.) for all actual hours of work each week, and dividing the sum by the total hours actually worked. The Act specifies the pay items which are to be included in and excluded from the regular rate. The National Finance Center (NFC) computes the regular rate of pay for FLSA-covered employees from information recorded on the Time and Attendance (T&A) Reports. ### 11/9/82)

A. Items Included in Regular Rate. The following items are included in determining the regular rate:

1. Scheduled rate (e.g., GS base rate, Wage System rate, administratively determined pay plan rate).
2. Night differential or shift differential.
3. Hazard pay or environmental differential.
4. Sunday premium pay.
5. Cost-of-living allowance.
6. Post differential.
7. Holiday pay for hours actually worked at straight time rate only up to a maximum of 8 hours (i.e., only that portion of the employee's pay which was received because he/she worked is counted).

B. Items Excluded From Regular Rate. The following items are excluded in determining the regular rate:

1. Additional pay for overtime work in excess of 8 hours a day or 40 hours a week.

2. Pay for periods of nonwork (e.g., sick, annual, or other paid leave) and holiday pay for hours not worked. (If an employee does not work on a holiday, no holiday pay is included. If an employee does work on a holiday, pay at straight time rate only is included, as specified in subparagraph A.7. above.)

3. Cash awards under the Incentive Awards Program.
4. Travel and per diem expenses and mileage allowances.
5. Remote worksite allowance.

6. Clothing or uniform allowance.

7. Callback overtime pay for hours not actually worked. (Under Title 5, if an employee is called back and works only 1 hour, he/she is guaranteed 2 hours pay. For FLSA regular rate purposes, only straight time for the 1 hour actually worked is counted.)

DOCUMENT: 4551.1
11/09/82

OPI: PD - Classification and Organization Branch
PART 3 OF 3

ATTACHMENTS 2-1, 2-2, AND 2-3 (CONTINUED)

(Refer to FSIS Directive 4551-1 for Attachments 2-1, 2-2, and 2-3.)
PART THREE--PAY ADMINISTRATION (CONTINUED)

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II. DETERMINING OVERTIME RATE OF PAY

As noted above, the FLSA does not repeal or modify other pay laws. FLSA-covered Federal employees are still covered as before by Title 5 of the United States Code and continue to receive all pay benefits under Title 5, even though overtime may be paid under FLSA. A nonexempt employee entitled to overtime pay is paid under whichever authority (i.e., Title 5 or FLSA) provides the greater the overtime entitlement for the workweek. Attachment 3-1 provides some summary examples to assist in understanding the process used in determining and comparing employee overtime pay entitlements. Note that each week of the pay period must be figured separately. The process is as follows:

A. Computing the Title 5 Pay Entitlement.

1. Multiply the basic hourly rate of pay by the regular non-overtime hours in pay status to determine basic pay for the week.

2. Multiply the basic hourly rate of pay by 150 percent to determine the overtime hourly rate. (This rate cannot exceed one-and-one-half times the basic rate for GS-10, Step 1.) Multiply the total by the

number of overtime hours worked, excluding those hours coded under Transaction Code (T/C) 23.

3. Multiply the basic hourly rate by 10 percent to determine the night differential (ND) rate, and multiply that hourly rate by the number of ND hours.

4. Multiply the basic hourly rate by 25 percent to determine the Sunday differential (SD) rate, and multiply that hourly rate by the number of SD hours.

5. If a holiday was worked in the week, multiply the basic hourly rate by the number of hours actually worked.

6. Total the amounts derived from steps 1 through 5 to determine Title 5 pay for the week.

B. Computing FLSA Regular Rate/Overtime Pay Entitlement.

1. Multiply the basic hourly rate of pay by all FLSA compensable hours (i.e., all hours actually worked except those coded under T/C 24.)

2. Multiply the ND rate by the number of ND hours actually worked.

3. Multiply the SD rate by the number of SD hours.

4. Total the amounts derived in steps 1 through 3 and divide by the total number of hours actually worked to determine the "regular rate."

5. Multiply the basic hourly rate of pay by the number of hours over 40 that were actually worked in the week.

6. Divide by two the regular rate derived in step 4, and multiply the resulting figure by the number of hours over 40 that were actually worked in the week.

7. Add the final amounts derived in steps 5 and 6 to determine the amount of overtime pay under FLSA.

C. Overtime Comparison. Compare the amount of Title 5 overtime (i.e., the amount derived in step 2 of subparagraph A.) with the amount of FLSA overtime (i.e., the amount derived in step 7 of subparagraph B.).

1. If the Title 5 overtime is greater, overtime for the week will be paid under Title 5, and the total gross pay for week will be the amount derived in step 6 of subparagraph A. (This amount includes any of the items listed in subparagraph I.B. which were excluded from the regular rate determination.)

2. If the FLSA overtime is greater, subtract the amount of Title 5 overtime from the FLSA overtime, and add the difference to the total pay for the week due under Title 5 (i.e., the amount derived in step 6 of subparagraph A.). This final sum represents the total gross pay for

the week. ### 11/9/82)

D. Maximum Earning Limitation. There is no maximum limitation on overtime paid to employees under FLSA.

III. COMPENSATORY TIME

A. Earning Compensatory Time. During any week in which an employee's pay entitlement is greater under FLSA than under Title 5, neither management nor the employee has the option of electing compensatory time in lieu of overtime pay. However, the employee may earn compensatory time (to be used as time off in a subsequent workweek) during any week in which his or her pay entitlement under Title 5 is equal to or greater than that under FLSA. (The employee must make a written request to substitute compensatory time off for overtime payment.) An employee may also request and be allowed to take compensatory time off in lieu of overtime pay during the same workweek in (### which the overtime work was performed. (In effect, the compensatory time off constitutes an offset against all or part of the overtime earned in the workweek.)

B. Determining When Employees May Earn Compensatory Time. Attachment 3-2 sets forth the conditions under which FLSA-covered employees must be paid overtime and when they may earn compensatory time. NOTE: It is MPIO policy that employees will not be granted compensatory time off in lieu of overtime pay, except as provided in FSIS Directive 9040.3, Use of Compensatory Time and Paid Overtime, or for purposes of religious observances.

C. Using Compensatory Time Earned as Time Off. Except for purposes of religious observances (see FSIS Directive 4630.2, Leave), compensatory time cannot be used before it is earned. Compensatory time off should be taken as soon as possible after overtime is worked. Compensatory time earned must be used by time off by the end of the leave year in which it was earned. Also, it must be used before annual leave is granted, provided the employee will not forfeit annual leave by using compensatory time first. Any compensatory time not used within the allowed period will be paid at the overtime rate of pay that applied at the time the overtime was worked. (For additional information on compensatory time, see FSIS Directive 4630.2, Leave.)

IV. REPORTING OVERTIME ON T&A REPORTS

Supervisors and timekeepers are responsible for proper T&A reporting.

A. To record overtime compensable under FLSA only, use Transaction Code 23. Using another overtime code for overtime which is compensable only under FLSA could result in an improper payment. (Transaction Code 23 is to be used only for nonexempt employees. Do NOT use for exempt employees.)

B. Any overtime payable under FLSA only should be entered on the T&A eventhough there may be no entitlement to payment when the week ends. EXAMPLE: An employee with a tour of duty of Monday through Friday travels on Sunday for 6 hours and this travel is compensable under FLSA, but not

under Title 5. These 6 hours should be entered on the T&A under Transaction Code 23. The employee then takes 8 hours of annual leave on the following Friday. Since the employee did not work more than 40 hours for the week, there is no entitlement to pay for the 6 hours traveled on Sunday. (That is, because the hours creditable for pay for the week are greater under Title 5, the employee would be paid under that law.) However, the hours should still be entered on the T&A under Transaction Code 23 so that all hours are properly recorded. ### 11/9/82)

V. RETROACTIVE PAY

A. Time Limit for Acceptance of Claims. The statute of limitations on claims under FLSA is 6 years retroactive from the date a claim is filed. In no case will claims be accepted for recovery of pay prior to May 1, 1974, because this is the date the law was enacted.

B. Entitlement. Application of the criteria in Parts Two and Three will determine whether or not an employee is entitled to retroactive pay. If an employee would have received a greater pay benefit under FLSA than he/she received under Title 5, the difference must be paid to the employee. Pay for hours actually worked over 40 in a week, not counting hours of leave as hours worked, usually will be greater under FLSA than Title 5 if:
(### 1. Overtime travel compensable as work under FLSA but not compensable under Title 5 was performed during the week.

2. Overtime hours compensable under both laws were worked and the FLSA-covered employee's hourly rate exceeded the hourly rate for GS-10, Step 1.

3. Overtime hours compensable under both laws were worked and the FLSA-covered employee was entitled to any of the differentials and other items specified in subparagraph I.A. above as included in determining the regular rate. Under Title 5, the overtime rate is calculated from the basic hourly rate, which does not include any premium pay items, such as night differential. Under FLSA, the overtime rate is calculated from the "regular rate" an employee is paid per hour, and this rate does include certain premium pay items. (See subparagraph I.A.). ### 11/9/82)

C. Retroactive Pay Claims. Employees wishing to file claims should contact the appropriate administrative officer or executive officer for procedures to be followed in requesting retroactive pay. Whenever a claim over 4 years old is received by the administrative or executive officer, he/she will immediately forward it to the Certifying Officer, Finance Division, for transmittal to the General Accounting Office for recording.

Joseph A. Powers
Deputy Administrator
Administrative Management

(### COMPUTING AND COMPARING PAY ENTITLEMENTS
 UNDER TITLE 5, U.S.C., AND FLSA

EXAMPLE #1

The employee's tour of duty is Sunday through Thursday, 1530 to 2400, with a meal break from 1930 to 2000. The employee worked an extra two hours preceding the regular shifts on Monday and Tuesday. The employee also worked overtime from 1530 to 2400 on Friday. All of this overtime work was scheduled in advance to occur as worked. A holiday occurs on Wednesday, and the employee is excused from duty. The employee's hourly rate of pay is \$10.92.

Transaction Codes	S	M	T	W	T	F	S	Total
01 Regular Time-Base Rate		2.5	2.5		2.5			7.5
04 Sunday Differential (SD)		2.5						2.5
05 SD with Night Differential (ND)					5.5			5.5
11 ND		5.5	5.5		5.5			16.5
21 Overtime Over 40 Hours/wk		2	2			2.5		6.5
25 Overtime Over 40 Hours/wk with Night Differential						5.5		5.5
66 Holiday				2.5				2.5
66-2 Holiday with Night Differential		5.5				5.5		

NOTE: For ease of reference, the overtime comparison points are marked with an asterisk (*) in the computation below.

Title 5 Pay Computation

Hrly Rate	x	Hrs.	=		T/C's Included in Hrs.	Total
\$10.92	x	40	=	\$430 Base Pay	01, 04, 05, 11, 66, 66-2	
15.47	x	12	=	185.64 *Overtime	21, 25	
1.09	x	33	=	35.97 ND (10%)	05, 11, 25, 66-2	2.73
	x	8	=	21.84 SD (25%)	04, 05	

Week's Total Due Under Title 5: \$680.25

FLSA Regular Rate/Pay Computation

Hrly Rate	x	Hrs.	=		T/C's Included in Hrs	Total
\$10.92	x	44	=	\$480.48 Base Rate for all hrs. wkd.	01, 04, 05, 11, 21, 25.	
1.09	x	27.5	=	29.98 ND (10%)	05, 11, 25	2.73
	x	8	=	21.84 SD (25%)	04, 05	

$\$532.30$ divided by 44 (all hrs. wkd.) = $\$12.10$ Regular Rate
 $\$10.92$ (Base Rate) x 4 (hrs. wkd. over 40) = $\$43.68$ \$ 6.05 (.5
Regular Rate) x 4 (hrs. wkd. over 40) = $\$24.20$ Total
Overtime Pay Under FLSA = $\$67.88^*$

Overtime Comparison

Title 5 overtime amounts to $\$185.64$ for the week. Overtime pay under FLSA amounts to $\$67.88$. Since the amount of overtime pay for the week is greater under Title 5, the employee would be paid for the week under that law. Total pay for the week would be $\$680.25$.

This same process would be used to determine the employee's pay entitlements for the second week of the pay period.

EXAMPLE #2

Same as Example #1 except that the employee-worked on the holiday.

Transaction Codes	S	M	T	W	T	F	S
Total							
01 Regular Time - Base Rate	2.5	2.5		2.5			
7.5 04 Sunday Differential (SD)		2					
2.5 05 SD with Night Differential		5.5					
5.5 11 Night Differential			5.5	5.5		5.5	
16.5 21 Overtime Over 40 hrs./wk			2	2			2.5
6.5 25 Overtime Over 40 hrs/wk with Night Differential						5.5	
5.5 31 Holiday Work					8		
8 66 Holiday					2.5		
2.5 66-2 Holiday with Night Differen tial					5.5		
5.5							

NOTE: Overtime comparison points are marked with an asterisk (*).

Title 5 Pay Computation

Hrly Rate	x	Hrs.	=	T/C's Included in Hrs.
Total				
$\$10.92$	x	40	=	$\$430$ Base Pay 01, 04, 05, 11, 66, 66-2
10.92	x	8	=	87.36 Holiday Pay 31
15.47	x	12	=	185.64^* Overtime 21, 25
1.09	x	33	=	35.97 ND (10%) 05, 11, 25, 66-2 2.73
	x	8	=	21.84 SD (25%) 04, 05

Week's Total Due Under Title 5: $\$767.61$

FLSA Regular Rate/Pay Computation

Hrly Rate	x	Hrs.		T/C's Included in Hrs. Total
\$10.92	x	52	=	\$567.84 Base Rate for all hrs. wkd. 01, 04, 05, 11, 21, 25, 31
1.09	x	33	=	35.97 ND (10%) 05, 11, 25, 66-2
2.73	x	8	=	21.84 SD (25%) 04, 05

\$10.92 (Base Rate) x 12 (hrs. wkd over 40)	=	\$131.04
\$ 6.02 (.5 Regular Rate) x 12 (hrs wkd over 40)	=	72.24
Total Overtime Pay Under FLSA:		\$203.28

Overtime Comparison

Title 5 overtime amounts to \$185.64 for the week. Overtime pay under FLSA amounts to \$203.28. The difference is \$17.64 which is to be added to the total pay for the week due under Title 5, which is \$767.61. The employee's total gross pay for the week is \$785.25. ### 11/9/82)

EXAMPLE #3

The employee's tour of duty is Monday through Friday, 0800 to 1630. Lunch break is from 1200 to 1230. Two hours of overtime were worked on Monday, Thursday, and Friday; the overtime was worked after the end of the regular shift and served to extend the workday. The employee was on sick leave for 8 hours on Tuesday and 8 hours on Wednesday. He was also in travel status for 6 hours Sunday and 8 hours on Saturday. For this example, assume that all of this travel occurred between 0800-1630 and is compensable as "hours of work" under FLSA but not under Title 5. The employee's hourly rate of pay is \$10.92.

Transaction Codes	S	M	T	W	T	F	S	Total
01 Regular Time - Base Rate		8			8	8		24
21 Overtime Over 40 hrs./wk		2			2	2		6
23 Overtime Under FLSA	6						8	14
62 Sick Leave Taken			8	8				16

NOTE: Overtime comparison points are marked with a single asterisk (*).
Title 5 Pay Computation

Hrly Rate	x	Hrs.		T/C's Included in Hrs. Total
\$10.92	x	40	=	\$436.80 Basic Pay 01, 62 15.47
	x	6	=	92.82 *Overtime 21

Week's Total Due Under Title 5: \$592.62

FLSA Regular Rate/Pay Computation

Hrly Rate	x	Hrs.		T/C's Included in Hrs. Total
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$\$10.92 \times 44 = 480.48$ Base Rate
 for all hrs wkd. 01, 21, 23
 $\$480.48$ divided by 44 (all hrs. wkd.) = $\$10.92$ Regular Rate
 $\$10.92$ (Base Rate) $\times 4$ (hrs. wkd. over 40) = 43.68
 5.46 (.5 Reg. Rate) $\times 4$ (hrs. wkd. over 40) = 21.84

Total Overtime Pay Under FLSA: \$65.52*

NOTE: Sick leave taken is not included as "hours of work" under FLSA and is therefore not creditable in the FLSA computation toward the minimum of 40 hours of work for the workweek.

Overtime Comparison

(### Title 5 overtime for the week amounts to \$92.82. Overtime pay under FLSA amounts to \$65.52. Since the Title 5 overtime benefit is greater, the employee's overtime for the week will be paid under Title 5. Total gross pay for the week will be \$529.62. The employee will lose any entitlement to pay for the 14 hours of travel time compensable only under FLSA. ### 11/9/82)

ATTACHMENT 3-2

(Refer to FSIS Directive 4551.1 for Attachment 3-1.)