



Deputy Chief Management Officer
of the Department of Defense

ADMINISTRATIVE INSTRUCTION

NUMBER 28

January 5, 2011

Incorporating Change 1, Effective December 16, 2016

HRD, WHS

SUBJECT: Overtime, Prescribed Hours of Duty, and Alternative Work Schedules for Civilian Employees

References: See Enclosure 1

1. PURPOSE. This Administrative Instruction (AI):

a. Reissues AI 28 (Reference (a)) in accordance with the authority in DoD Directive 5110.04 (Reference (b)) and DoD Instruction 5025.01 (Reference (c)).

b. Incorporates and cancels Director of Washington Headquarters Services Memorandum (Reference (d)) and Director of Administration and Management Memorandum (Reference (e)).

c. Implements policies and updates responsibilities and procedures regarding civilian hours of duty and overtime pay administration in accordance with chapter 8 of title 29, United States Code (U.S.C.) (also known and hereafter referred to as "The Fair Labor Standards Act (FLSA) of 1938, as amended" (Reference (f))) and sections 5550b, 6101, 6103, 6122, 6124, 6126, and 6127 of title 5, U.S.C. (Reference (g)).

2. APPLICABILITY

a. This AI applies to OSD, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Defense Agencies, and the DoD Field Activities in the National Capital Region that are serviced by Washington Headquarters Services (WHS) (hereafter referred to collectively as the "WHS-Serviced Components"). This AI shall be used in conjunction with any applicable labor agreements.

b. This AI does NOT apply to:

(1) Members of the Senior Executive Service (SES) for accumulation of credit hours in accordance with part 610 of title 5, Code of Federal Regulations (Reference (h)).

(2) Physicians and dentists (in occupational series 0602 and 0680, respectively) who are members of the SES for overtime and compensatory time off (excluding compensatory time off for religious observances).

3. DEFINITIONS. See Glossary.

4. POLICY. It is DoD policy in accordance with DoD Directive 1400.25 (Reference (i)) to provide civilian personnel policies and procedures that are consistent with and support merit system principles, equal compensation and employment opportunities, and workforce diversity goals and objectives, and that permit flexible work arrangements that allow employees to better balance their work and other (e.g., family) responsibilities.

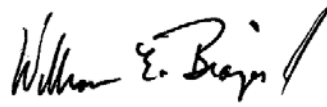
5. RESPONSIBILITIES. See Enclosure 2.

6. PROCEDURES. Enclosures 3 through 10 provide overarching procedures and requirements for changes in administrative workweek or prescribed hours of duty, establishment of alternative work schedules (AWS), and requesting and authorizing overtime and compensatory time off.

7. RELEASABILITY. **Cleared for public release.** This AI is available on the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

8. SUMMARY OF CHANGE 1. The changes to this issuance amend the language, removing all National Security Personnel System verbiage in accordance with the repeal of the National Security Personnel System in Fiscal Year 2010.

9. EFFECTIVE DATE. This AI is effective January 5, 2011.



William E. Brazis
Director, Washington Headquarters Services

Enclosures

1. References
2. Responsibilities
3. Procedures
4. AWSs
5. In Lieu of Holidays
6. Guidance For Overtime Pay Under the FLSA (FLSA Nonexempt)
7. Guidance For Overtime Pay Under Title 5, U.S.C. (FLSA Exempt)
8. Guidance For Compensatory Time Off in Lieu of Overtime Payment
9. Guidance For Compensatory Time Off for Religious Observances
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Glossary

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ENCLOSURE 1

REFERENCES

- (a) Administrative Instruction No. 28, "Overtime, Administrative Workweek, and Prescribed Hours of Duty for Civilian Employees," June 27, 1984 (hereby cancelled)
- (b) DoD Directive 5110.04, "Washington Headquarters Services (WHS)," March 27, 2013
- (c) DoD Instruction 5025.01, "DoD Issuances Program," August 1, 2016
- (d) Director of Washington Headquarters Services Memorandum, "Delegation of Authorities for Hours of Duty, Alternative Work Schedules, and Alternative Workplace Arrangements," July 20, 1999 (hereby cancelled)
- (e) Director of Administration and Management Memorandum, "Delegation of Authority for Changing Employee's Administrative Workweek or Official Hours of Duty," September 28, 2001 (hereby cancelled)
- (f) Chapter 8 of title 29, United States Code (also known as "The Fair Labor Standards Act of 1938, as amended")
- (g) Title 5, United States Code
- (h) Parts 353, 532, 550, 551, 610, and 9901 of title 5, Code of Federal Regulations
- (i) DoD Directive 1400.25, "DoD Civilian Personnel Management System," November 25, 1996
- (j) DoD 7000.14-R, "DoD Financial Management Regulation," varies by volume
- (k) Executive Order 11582, "Observance of Holidays by Government Agencies," February 11, 1971
- (l) Part 1605 of title 29, Code of Federal Regulations

ENCLOSURE 2

RESPONSIBILITIES

1. DIRECTOR, WHS. The Director, WHS, under the authority, direction, and control of the Deputy Chief Management Officer of the Department of Defense (DCMO), and through the Director of Administration, Office of the DCMO, shall oversee implementation of this AI.

2. DIRECTOR OF HUMAN RESOURCES DIRECTORATE (HRD), WHS. The Director of HRD, under the authority, direction, and control of the Director, WHS, shall:

a. Provide advice and guidance for civilian employees of the WHS-Serviced Components regarding administrative work weeks, official hours of duty, AWS, and overtime.

b. Review statutory and regulatory changes in Federal compensation policies that may impact the Department of Defense and implement changes if necessary.

c. Provide advice and guidance regarding FLSA designations based on Reference (d).

3. ASSISTANT DIRECTOR, LABOR AND MANAGEMENT EMPLOYEE RELATIONS (LMER) DIVISION, HRD, WHS. The Assistant Director of the LMER Division, under the authority, direction, and control of the Director, HRD, shall:

a. Approve or disapprove requests to change an organization's administrative workweek or tours of duty for more than 30 minutes before and 30 minutes after the prescribed hours of duty, for WHS-Serviced Components.

b. Review employee requests and supporting information for establishment of a compressed work schedule (CWS) or flexible work schedule (FWS) that states the number of hours, excluding overtime hours, that an employee is required to work (or account for by leave or otherwise) and respond within 10 days of initial employee request.

c. Approve or disapprove WHS-Serviced Component AWS program plans and procedures for compliance with this AI and References (f) and (g).

4. HEADS OF THE WHS-SERVICED COMPONENTS. The Heads of the WHS-Serviced Components shall:

a. Implement the provisions contained in this AI, including delegating relevant authorities, as appropriate.

- b. Approve requests for changes in employee administrative workweek and/or hours of duty or designate an official to perform this function.
- c. Ensure that records of approved changes in administrative workweeks or prescribed hours of duty are appropriately maintained.
- d. Manage the AWS program within the context of the guidelines in this AI and establish controls to ensure staff accountability for hours worked and assure adequate staff and supervisory coverage to provide essential services during designated core hours.
- e. Ensure fiscal responsibility by verifying availability of funds to cover overtime costs and limiting the amount of overtime to what is necessary to perform the work.
- f. Approve or disapprove requests for overtime work or designate an official to perform this function, ensuring that the amount of overtime or compensatory time in lieu of overtime payment does not exceed any applicable premium pay limitations before approval.

5. MANAGERS AND SUPERVISORS. Managers and supervisors shall:

- a. Plan, assign, and schedule the work of employees under their supervision within each employee's basic workweek and consider alternatives to the assignment of overtime work whenever practicable.
- b. Establish a basic work requirement for each employee on a CWS or FWS that states the number of hours, excluding overtime hours, that an employee is required to work (or account for by leave or otherwise).
- c. Plan and approve or disapprove travel for their employees. To the maximum extent practicable, the supervisor shall schedule the time to be spent by an employee in travel status within the basic workweek of the employee.
- d. Determine if employees wish to be compensated by overtime pay or compensatory time off before overtime work is performed.
- e. Approve or disapprove requests to use compensatory time off and, when disapproved, furnish an explanatory statement to the employee in writing.
- f. Determine whether the approval of compensatory time off for religious observances will cause an undue hardship for the agency on a case-by-case basis.
- g. Approve or disapprove requests for crediting compensatory time off for travel, if otherwise authorized to direct travel or approve time and attendance.

6. CUSTOMER SERVICE REPRESENTATIVES (CSR) OR TIME-AND-ATTENDANCE CLERKS. CSR or time-and-attendance clerks shall:

- a. Ensure the timely and accurate recording of all exceptions to an employee's normal tour of duty in accordance with DoD 7000.14-R (Reference (j)).
- b. Ensure that all entries for overtime and compensatory time earned have been approved and totals are correct before certification.
- c. Submit certified time and attendance to the Civilian Payroll Office or HRD, WHS, before the close of the pay period, if possible.

ENCLOSURE 3

PROCEDURES

1. CHANGES TO AN INDIVIDUAL EMPLOYEE'S ADMINISTRATIVE WORKWEEK OR OFFICIAL HOURS OF DUTY

a. Changes to an employee's regularly scheduled administrative workweek or official hours of duty shall be approved only when unusual work requirements of the office warrant the change, the efficiency or productivity of the office may improve, overtime requirements may be reduced, or some other benefit may be achieved by the office. Supervisors shall prepare and submit a written request to change an individual employee's administrative workweek or official hours of duty to the Head of their respective WHS-Serviced Component or designated authorizing official in advance of implementing any change. The written request shall include:

- (1) Name, grade, organization, and duty location of the employee.
- (2) Justification of the change, including a description of the work requirements that warrant the need for the change and a statement that the change will not adversely affect the work of the organization.
- (3) Statement that the employee will be adequately supervised when the hours of duty for employee and supervisor differs.
- (4) Statement that the employee's basic work requirement will remain unchanged.
- (5) Proposed effective date of the change in administrative workweek or official hours of duty.

b. The Heads of the WHS-Serviced Components or their designated authorizing official must give advance approval for changes to an individual employee's administrative workweek or official hours of duty outside of the standard workweek or hours of duty approved for the employing organization. Changes in individual employees' administrative workweeks or official hours of duty shall be approved only when there is no adverse impact on the agency.

2. CHANGES TO AN ORGANIZATION'S ADMINISTRATIVE WORKWEEK OR OFFICIAL HOURS OF DUTY

a. Changes to an organization's administrative workweek or official hours of duty for more than 30 minutes before or after the prescribed hours of duty (i.e., Monday through Friday, 8:30 a.m. to 5:00 p.m., including a 30 minute lunch break) shall be approved only when unusual work requirements of the office warrant the change, the efficiency or productivity of the office may improve, overtime requirements may be reduced, or some other benefit may be achieved by the office. The Heads of the WHS-Serviced Components shall prepare and submit a written request to change an organization's administrative workweeks or official hours of duty to the Assistant

Director, LMER Division, in advance of implementing any change. The written request shall include:

- (1) Name of the organization.
- (2) Justification of the change, including an explanation of actual and anticipated impact on the work of the organization and a statement that the change will not adversely affect the work of the organization.
- (3) Proposed effective date of the change in administrative workweek or official hours of duty.

b. The Assistant Director of the LMER Division must give advance approval of any organizational changes to the administrative workweek or official hours of duty for more than 30 minutes before or after the prescribed hours of duty. Changes to an organization's administrative workweek or official hours of duty shall be approved only when there is no adverse impact on the agency.

3. ESTABLISHING AN AWS PROGRAM

a. The Heads of the WHS-Serviced Components shall prepare and submit a written request to establish an AWS program to the Assistant Director of the LMER Division, in advance of granting any such schedule. The written request shall include:

- (1) Name of the organization.
- (2) Designated hours and days during which employees on flexible schedules must be present for work (i.e., core hours).
- (3) Designated hours during which an employee on a flexible schedule may elect his or her time of arrival to and departure from work (i.e., flexible hours).
- (4) Types of flexible and compressed schedules permitted under the program and the corresponding basic work requirement for each schedule.
- (5) Provision for prior supervisory approval of individual employee's flexible hours to ensure adequate office coverage and to ensure that the duties and requirements of the employees participating in the program are fulfilled.
- (6) Provision for the accumulation and use of credit hours for employees on a flexible schedule.
- (7) Proposed effective date of the establishment of the AWS program.

b. The Assistant Director of the LMER Division, shall approve or disapprove the implementation of an AWS program. For those WHS-Serviced Components where a labor organization holds exclusive recognition, the AWS program shall be subject to terms of the collective bargaining agreement. (See Enclosure 4 for more guidance regarding AWS.)

4. REQUESTING AND AUTHORIZING OVERTIME AND COMPENSATORY TIME OFF IN LIEU OF OVERTIME

a. A written request for overtime work shall be submitted to and approved by the Head of the WHS-Serviced Component. However, this approval authority may be delegated to an authorized management official at the lowest practical level, as defined by the Heads of the WHS-Serviced Components. The written request may be submitted on a WHS Form 10 or in accordance with any other established guidelines. When circumstances preclude written advance request, the request may be oral, but must be followed by an e-mail or written verification as soon as possible.

b. A separate request shall be prepared for each work situation requiring authorization of overtime work. No request shall extend beyond the close of a single pay period. When a particular work situation extends beyond the close of a single pay period, separate requests shall be prepared for each pay period involved. Each request shall:

- (1) Describe the work to be performed on overtime.
- (2) Explain why such work cannot or could not be performed during regular working hours.
- (3) List the employee required to work overtime.
- (4) Include an estimate or statement of the total number of overtime hours required and the dates that the overtime is to be or was performed.
- (5) Describe why compensatory time cannot be used instead of paid overtime, if applicable.

c. The approving official shall verify the availability of funding to cover the required overtime. If approved, the authorized overtime shall be documented in writing and signed by the designated authorizing official. (See Enclosures 6, 7, and 8 for more guidance regarding overtime and compensatory time off in lieu of overtime.)

5. REQUESTING COMPENSATORY TIME OFF FOR RELIGIOUS OBSERVANCES

a. Employees shall submit a written request for compensatory time off for religious observances as far in advance as possible. The written request may be submitted on a WHS

Form 10 or in accordance with any other established guidelines. Employees shall specifically state that the request for compensatory time off is for religious purposes.

b. When deciding whether an employee's request for an adjusted work schedule (i.e., compensatory time off) should be approved, a supervisor should not make any judgment about the employee's religious beliefs or his or her affiliation with a religious organization. A supervisor may disapprove an employee's request if modifications of an employee's work schedule would cause an undue hardship to the component.

c. If an employee's request is approved, his or her supervisor may determine whether the compensatory time off will be scheduled before or after the religious observance. (See Enclosure 9 for more guidance regarding adjustments for religious observances.)

6. CREDITING COMPENSATORY TIME OFF FOR TRAVEL

a. Employees must submit requests for credit of compensatory time off for travel within 5 workdays after returning to the official duty station by submitting a travel itinerary, or any other supporting documentation of the time spent in official travel status, including any meal periods to the respective approving official. In accordance with Reference (j) and part 9901 of Reference (h), an employee forfeits his or her claim to the compensatory time off for travel if not submitted within the prescribed time limits.

b. Upon receipt of a timely and complete request from the employee, the approving official must credit the employee with compensatory time off for creditable time in travel status. Approving officials may authorize credit in increments of 6 minutes or 15 minutes in accordance with the WHS-Serviced Component's internal standard for crediting time.

c. Once the approving official has approved the employee's request, the appropriate timekeeper shall credit the employee with earned compensatory time off for travel. (See Enclosure 10 for more guidance regarding compensatory time off for travel.)

7. USING COMPENSATORY TIME OFF

a. An employee must request permission from his or her supervisor to schedule the use of accrued compensatory time off. Compensatory time off may be used when the employee is granted time off from his or her scheduled tour of duty for leave purposes. The employee may submit the request on an Office of Personnel Management (OPM) Form 71 or in accordance with any other established guidelines.

b. Once the supervisor has approved the employee's request for use of the compensatory time off, the appropriate timekeeper shall charge the employee for its use through normal time and attendance procedures. Compensatory time off should be granted before annual leave is approved except when annual leave would otherwise be forfeited. If the use of earned compensatory time off or credit hours that are about to expire results in the forfeiture of excess

annual leave, the forfeited leave cannot be restored. (See Enclosures 8, 9, or 10 for more guidance regarding compensatory time off.)

ENCLOSURE 4

AWSs

1. FWS

a. Description. FWS are voluntary work schedules approved by supervisors that enable employees to select and alter their work schedules to better fit personal needs and help balance work, personal, and family responsibilities. FWS consist of workdays with core hours and flexible hours. Core hours are the designated period of the day when all employees must be at work (e.g., 10:00 a.m. to 3:00 p.m.). Flexible hours are the part of the workday when employees may, within limits, choose their arrival and departure times (e.g., start no earlier than 6:00 a.m. and end no later than 7:00 p.m.).

b. Types of FWS. There are various models of FWS arrangements that provide different degrees of flexibility. The most common models include:

(1) Flexitour. An FWS in which an employee is allowed to select his or her arrival and departure times within the established flexible hours. Once selected, the hours are fixed until a designated approving official provides an opportunity to select different starting and stopping times.

(2) Gliding. An FWS in which a full-time employee has a basic work requirement of 8 hours in each day and 40 hours in each week, may select an arrival and departure time each day, and may change starting and stopping times daily within the established flexible hours.

(3) Maxiflex. An FWS that contains fewer than 10 workdays in the biweekly pay period and in which an employee has a basic work requirement of 80 hours, including core hours each day worked, for the biweekly pay period. However, an employee may vary the number of hours worked on a given workday or the number of hours each week within the limits established for the organization.

c. Credit Hours. Credit hours are any hours within an FWS that are in excess of an employee's basic work requirement (e.g., 40 hours a week) that the employee elects to work to vary the length of a workweek or a workday. Credit hours are different from overtime hours in that they are not officially ordered in advance by management and must be worked within an employee's non-overtime tour of duty. The tour of duty defines the limits within which an employee on an FWS must complete his or her basic work requirement (e.g., Monday through Friday, 6 a.m. to 7 p.m.). For example, if an employee's tour of duty does not include weekends, then he or she may not earn credit hours for work performed on the weekend. Part 610 of Reference (h) prohibits SES members participating in FWS programs from accumulating credit hours.

(1) Use. Credit hours may be used in lieu of leave and with supervisory approval as credit to the basic work requirement. However, credit hours must be earned before they can be used.

(2) Accrual Limitations. Section 6126 of Reference (g) prohibits full-time employees from carrying over more than 24 credit hours (one quarter of the biweekly work requirement for part-time employees) from one pay period to the next.

(3) Compensation for Unused Credit Hours. Credit hours shall be paid out at the employee's current rate of pay when an employee is no longer subject to an FWS program, transfers to another agency or upon separation from Federal service. Payment for accumulated credit hours is limited to a maximum of 24 hours for a full-time employee. For a part-time employee, the limit is one quarter of the employee's biweekly work requirement. Section 6123 of Reference (g) prohibits compensating an employee for credit hours for any other reason (e.g., excess, unused credit hours that cannot be carried forward into the next pay period).

d. Overtime. For employees under FWS programs, overtime hours are all hours of work in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance by management. The requirement that overtime hours be officially ordered in advance also applies to FLSA nonexempt employees. Employees on FWS may not earn overtime pay as a result of including suffered or permitted hours as hours of work.

e. Holiday Pay. If excused from work on a holiday, full-time FWS employees are limited to 8 hours of basic pay. A part-time FWS employee is entitled to basic pay for the number of hours scheduled for the holiday, not to exceed 8 hours, in accordance with section 6124 of Reference (g). In the event the President issues an Executive order granting a half-day holiday, full-time FWS employees are entitled to basic pay for the last half of their basic work requirement (i.e., non-overtime hours) on that day, not to exceed 4 hours. If, however, an employee is required to work on a holiday that is a regularly scheduled workday, he or she is entitled to holiday premium pay for up to 8 hours of holiday work.

f. Temporary Duty. When an employee covered by an FWS program is assigned to a temporary duty station using another schedule, either traditional or AWS, the agency may permit the employee to continue to work his or her approved FWS schedule (if suitable) or require the employee to change the schedule to conform to operations at the temporary work site.

2. CWS

a. Description. CWS are fixed work schedules that permit employees to complete their basic biweekly work requirement in less than 10 workdays. Although designated authorizing officials may change or stagger the arrival and departure times of employees, there are no provisions for employee flexibility in daily reporting or quitting times under a CWS program. Normally, CWS are voluntary arrangements. In accordance with section 6127 of Reference (g), management cannot mandate employees in an organization (for which no labor organization has been designated exclusive representative) to participate in a CWS unless a majority of the employees have voted to be included.

b. Types of CWS. The two most common types of CWS arrangements include:

(1) 4-Day Workweek. Type of CWS in which a full-time employee has a basic work requirement of 10 hours per day, 40 hours per week, and 80 hours per biweekly pay period. The Head of the WHS-Serviced Component determines the number of hours a part-time employee must work in a 4-day workweek and the number of hours in a biweekly pay period.

(2) 5/4-9 Compressed Plan. Type of CWS in which a full-time employee has a basic work requirement of eight 9-hour days and one 8-hour day for a total of 80 hours in a biweekly pay period. The Head of the WHS-Serviced Components determines the number of hours a part-time employee must work in a 9-day biweekly pay period.

c. Credit Hours. There is no legal authority for credit hours under a CWS program. Section 6121 of Reference (g) provides for credit hours only for FWS.

d. Overtime. For full-time employees, all hours worked in excess of the established compressed work schedule are overtime hours. For a part-time employee, overtime hours are hours in excess of the compressed work schedule for a day (but must be more than 8 hours) or for a week (but must be more than 40 hours).

e. Holiday Pay. If excused from work on a holiday, an employee is entitled to basic pay for the number of hours of his or her CWS on that day under part 610 of Reference (h). For example, if a holiday falls on a 9- or 10-hour basic workday, the employee's holiday is 9 or 10 hours, respectively. A part-time CWS employee is entitled to basic pay for the number of hours he or she normally would have been scheduled to work that day. In the event the President issues an executive order granting a half-day holiday, full-time CWS employees are normally excused from work during the last half of their basic work requirement (i.e., non-overtime hours) on that day. If, however, an employee is required to work on a holiday that is a regularly scheduled workday, the employee is entitled to holiday premium pay for the number of hours he or she is scheduled to work during his regularly scheduled tour of duty.

f. Temporary Duty. When an employee covered by a CWS program is assigned to a temporary duty station using another work schedule, either traditional or AWS, the agency may permit the employee to continue to work the approved CWS schedule (if suitable) or require the employee to change the schedule to conform to operations at the temporary work site.

ENCLOSURE 5

IN LIEU OF HOLIDAYS

1. BACKGROUND

a. Description. All full-time employees, including those on an AWS, are entitled to an in lieu of holiday when a holiday falls on a nonworkday. In such cases, the employee's holiday is the basic workday immediately preceding the nonworkday.

b. Exceptions. There are three exceptions to the in lieu of holiday provision:

(1) If the nonworkday is Sunday (or an in lieu of Sunday), the next basic workday is the in lieu of holiday, as prescribed in Executive Order 11582 (Reference (k)).

(2) If Inauguration Day falls on a nonworkday, there is no provision for an in lieu of holiday.

(3) If the agency head determines that a different in lieu of holiday is necessary to prevent an adverse agency impact, he or she may designate a different in lieu of holiday for full-time employees under CWSs in accordance with section 6103 of Reference (g).

c. Office Closures. An employee is not entitled to another day off as an in lieu of holiday if a Federal office or facility is closed because of a weather emergency or when employees are furloughed.

2. IN LIEU OF HOLIDAY DETERMINATION FOR CWS. When a holiday falls on a nonworkday and is a Sunday, the employee's in lieu of holiday is the first regularly scheduled workday following the Sunday holiday. However, if a holiday falls on a nonworkday and is not a Sunday, the employee's in lieu of holiday is the last regularly scheduled workday preceding the holiday.

3. IN LIEU OF HOLIDAY DETERMINATION FOR FWS. When a holiday falls on a nonworkday and is a Sunday, the employee's in lieu of holiday is the first regularly scheduled workday following the Sunday holiday. If, however, a holiday falls on a nonworkday and is not a Sunday, the employee's in lieu of holiday is the last regularly scheduled workday preceding the holiday. If the holiday falls on a nonworkday and is a day the employee has chosen as a nonworkday that day remains the holiday and the employee must select another nonworkday.

ENCLOSURE 6

GUIDANCE FOR OVERTIME PAY UNDER THE FLSA (FLSA NONEXEMPT)

1. GENERAL INFORMATION

a. Description. The FLSA grants overtime whenever a full-time, part-time, or intermittent Federal employee performs hours of work in excess of 8 hours in a daily tour of duty or in excess of 40 hours in a weekly tour of duty. Employees receiving annual premium pay for standby duty or administratively uncontrollable overtime in accordance with section 5545 of Reference (g), or pay for firefighters in accordance with section 5545b of Reference (g) and part 551 of Reference (h) shall not be paid overtime for periods of duty in excess of 8 hours in a workday. Employees engaged in fire protection or law enforcement activities shall not be paid overtime on the basis of hours of work in excess of 40 hours in a workweek when the employee is receiving compensation under paragraphs (c)(1) or (2) of section 5545b of Reference (g).

b. FLSA Nonexempt Employee Coverage. The determination of whether an employee is nonexempt from FLSA coverage is made by WHS HRD based on the employee's position description. An employee's FLSA status is also listed in Box 35 of his or her Standard Form (SF) 50, "Notification of Personnel Action," available at <http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>. This includes any person who is:

- (1) Defined as an employee in section 2105 of Reference (g), which includes civil service workers.
- (2) A civilian employee appointed under other appropriate authority.
- (3) Suffered or permitted to work by an agency whether or not formally appointed.
- (4) Non-supervisory employees in the Federal Wage System.

c. Individuals Excluded from FLSA Nonexempt Coverage. It is assumed that all Federal employees are covered by the FLSA unless they fall under one of these exemptions or are otherwise specifically excluded by another statute:

(1) Federal employees who spend all hours of work in a given workweek in a foreign area.

(2) Federal employees with primarily executive duties. An executive is a supervisor or manager who manages a Federal agency or any subdivision, and who regularly directs two or more employees and has the authority to hire or fire other employees, or his or her recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees, are given particular weight.

(3) Federal employees with primarily administrative duties. An administrative employee is an employee whose primary duty is the performance of office or non-manual work directly related to the agency's management or general business operations, and whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

(4) Federal employees with primarily professional or learned professional duties. To qualify for a professional exemption, an employee's primary duty must be the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction or requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

(5) Federal employees with primarily creative professional duties. To qualify for the creative professional exemption, an employee's primary duty must be the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor. The work performed must be in a recognized field of artistic or creative endeavor, including such fields as music, writing, acting, and the graphic arts.

(6) Federal employees with primarily computer duties. To qualify for the computer employee exemption, an employee's primary duties must consist of the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications; the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or some combination thereof requiring the same level of skills.

2. OVERTIME COMPENSATION. All overtime work that is ordered, approved, or suffered or permitted must be compensated in accordance with part 551 of Reference (h).

a. Regular Overtime. Nonexempt employees shall be compensated for each minute of regular overtime work (i.e., overtime work that is scheduled and approved prior to the start of the administrative workweek in which the overtime is performed).

b. Irregular or Occasional Overtime. Irregular or occasional overtime work (i.e., overtime work that could not be scheduled and approved prior to the start of the administrative workweek) is paid in 15-minute increments, with odd minutes being rounded up or down to the nearest quarter hour used to credit overtime work. Therefore, an employee must work at least 8 minutes of irregular overtime before the employee may be compensated for that overtime.

3. OVERTIME PAY CALCULATIONS. Under the FLSA, overtime pay is determined by multiplying the employee's straight time rate of pay by all overtime hours worked plus one-half of the employee's hourly regular rate of pay times all overtime hours worked.

4. PAY LIMITATIONS. The maximum biweekly and aggregate limitations for premium pay, covered in part 550 of Reference (h) do not apply to overtime pay earned by employees who are nonexempt from the FLSA.

ENCLOSURE 7

GUIDANCE FOR OVERTIME PAY UNDER TITLE 5, U.S.C. (FLSA EXEMPT)

1. GENERAL INFORMATION

a. Description. Overtime work provided under section 5542 of Reference (g) is time worked in excess of 8 hours in a day or 40 hours in an administrative workweek. This work must be officially ordered or approved by the authorized management official, in writing, and performed by the employee.

b. FLSA Exempt Employee Coverage. Exempt Federal employees typically occupy executive, administrative, or professional positions at the General Schedule (GS)-7 level (or equivalent) and above. However, the determination of whether an employee is exempt from FLSA coverage is made by WHS HRD based on the employee's position description (an employee's grade alone does not dictate the FLSA designation). An employee's FLSA status is also listed in Box 35 of his or her SF 50. FLSA exempt employees, as defined in section 5541 of Reference (g), who work full-time, part-time, or intermittent tours of duty, are eligible for title 5 overtime pay. Employees in senior-level and scientific or professional positions who are paid under section 5376 of Reference (g) are also covered by the premium pay provisions of Reference (g).

2. OVERTIME COMPENSATION. In order to receive compensation, overtime work must be officially ordered or approved by the authorized management official, in writing, and performed by the employee.

a. Regular Overtime. Exempt employees shall be compensated for each minute of regular overtime work (i.e., overtime work that is scheduled and approved prior to the start of the administrative workweek in which the overtime is performed). Any employee covered under an FWS program may request compensatory time off in lieu of overtime pay for regular overtime work as prescribed in part 550 of Reference (h). However, employees not covered by an FWS program must receive overtime pay for regular overtime work and cannot receive compensatory time.

b. Irregular or Occasional Overtime. Irregular or occasional overtime work (i.e., overtime work that could not be scheduled and approved prior to the start of the administrative workweek) is paid in 15-minute increments, with odd minutes being rounded up or down to the nearest quarter hour. At the employee's option, the employee may receive compensatory time off in lieu of overtime pay under section 5543 of Reference (g). Employees earning more than the maximum applicable rate for a GS-10 (i.e., GS-10, step 10) may be required to accept compensatory time off in lieu of overtime premium pay for irregular or occasional overtime work under section 5543 of Reference (g).

3. OVERTIME PAY CALCULATIONS.

For GS employees whose rate of basic pay (including any applicable locality payment or special rate supplement) does not exceed a minimum applicable rate for a GS-10 (i.e., GS-10, step 1), the overtime hourly rate is 1.5 times the employee's hourly rate of pay. Under section 5542 of Reference (g), the overtime hourly rate of GS employees whose rate of basic pay (including any applicable locality payment or special rate supplement) exceeds the GS-10, step 1, is the greater of:

- a. 1.5 times the hourly rate of basic pay for GS-10, step 1; or
- b. The employee's hourly rate of basic pay.

4. PAY LIMITATIONS.

a. There is a pay limitation that limits the amount of overtime pay that can be paid during a biweekly pay period. Under section 5547 of Reference (g) and part 550 of Reference (h), premium pay cannot be paid to employees (including law enforcement officers and other covered employees) to the extent that doing so would cause an employee's basic pay, overtime pay, dollar value of compensatory time off, night pay, annual premium pay, Sunday premium pay, and holiday premium pay to exceed the greater of the biweekly rate for GS-15, step 10 (including any applicable special salary rate or locality rate of pay), or level V of the Executive Schedule.

The biweekly pay limitation does not apply to employees performing emergency work (as determined by the agency head or the OPM), or mission-critical work (as determined by the agency head). In such situations, premium pay cannot be paid which causes the total of basic pay and premium pay to exceed the greater of the annual rate for GS-15, step 10 (including any applicable special salary rate or locality rate of pay) or level V of the Executive Schedule.

ENCLOSURE 8

GUIDANCE FOR COMPENSATORY TIME OFF IN LIEU OF OVERTIME PAYMENT

1. GENERAL INFORMATION

a. Description. Compensatory time off is time off granted in lieu of payment for an equal amount of time spent in overtime work.

b. Employee Coverage. At the request of an employee, compensatory time off may be approved in lieu of overtime pay for irregular or occasional overtime work (i.e., overtime work that could not be scheduled and approved prior to the start of the administrative workweek) for both FLSA exempt and nonexempt employees as defined in section 5541 of Reference (g).

(1) Prevailing Rate Employees. Compensatory time off may also be approved for a prevailing rate employee (as defined in section 5342 of Reference (g)) for an equal amount of irregular or occasional overtime work at his or her request.

(2) Employees on an FWS. Upon request, compensatory time off may be approved in lieu of regularly scheduled overtime work (i.e., overtime work that is scheduled and approved prior to the start of the administrative workweek in which the overtime is performed) only for employees who are ordered to work overtime hours under an FWS.

2. MANDATORY COMPENSATORY TIME OFF. An FLSA exempt employee whose rate of basic pay is greater than the rate for GS-10, step 10 may be required to receive compensatory time off in lieu of overtime pay for irregular or occasional overtime work. FLSA nonexempt employees, prevailing rate employees, or employees on an FWS may not be required to take compensatory time off instead of being paid overtime pay, unless they request compensatory time.

3. USAGE. Compensatory time off must be used by the end of the 26th pay period after which it was earned. Compensatory time off not used during the established time period shall be paid at the overtime rate at which it was earned.

4. SEPARATIONS OR TRANSFERS. When a DoD employee separates or transfers to another WHS-Serviced Component or other Federal agency, the losing Component shall pay for any unused compensatory time balances. The compensatory time off balance shall be paid at the overtime rate at which it was earned.

5. PREMIUM PAY LIMITATION. The premium pay limitation in section 5547 of Reference (g) also applies to compensatory time off. The value of an hour of compensatory time off is

equal to the overtime hourly rate that is payable in dollars. Therefore, the number of hours for which an employee may receive overtime pay is also the number of hours of compensatory time off that may be credited in a pay period. An employee may not exceed the biweekly or annual premium pay limitation by choosing compensatory time off as a substitute for monetary overtime pay, except for compensatory time earned and used for religious observances as set forth in section 5550 of Reference (g).

ENCLOSURE 9

GUIDANCE FOR COMPENSATORY TIME OFF FOR RELIGIOUS OBSERVANCES

1. GENERAL INFORMATION

a. Description. To the extent that modifications in work schedules do not cause the agency an undue hardship, an employee whose personal religious beliefs require that he or she abstain from work at certain times of the workday or workweek shall be permitted to work compensatory overtime so that the employee can meet the religious obligation. The hours worked in lieu of the normal work schedule do not create any entitlement to premium pay (including overtime pay). Employees may request to work such compensatory overtime before or after the period of time off. Advanced compensatory time off should be repaid by the appropriate amount of compensatory overtime work within a reasonable amount of time.

b. Employee Coverage. Adjustments of work schedules for religious observances may be approved for any employee in the agency.

2. APPROVAL. When deciding whether to approve an employee's request for an adjusted work schedule, a supervisor (or appropriate approving official) should not make any judgment about the employee's religious beliefs or his or her affiliation with a religious organization. A supervisor may disapprove an employee's request if modifications of an employee's work schedule would interfere with the efficient accomplishment of the mission.

3. DOCUMENTING AN ADJUSTED WORK SCHEDULE. An employee's request for time off should not be granted without simultaneously scheduling the hours during which the employee will work to make up the time. This provides a clear record of the employee's adjusted work schedule. An employee should be allowed to accumulate only the number of hours of work needed to make up for previous or anticipated absences from work for religious observances. If an employee is absent when he or she is scheduled to perform work to make up for a planned absence for a religious observance, the employee must request paid leave or leave without pay, or be charged absence without leave, if appropriate.

4. IMPACT ON PAY. The premium pay provisions for overtime work of part 550 of Reference (h) and the FLSA, do not apply to employees who work different hours or days because of religious observances, even if an employee voluntarily works in excess of 40 hours per week or 8 hours per day for this purpose.

5. SETTLEMENT OF EMPLOYEE ACCOUNTS UPON SEPARATION. When an employee separates, dies, or transfers to another agency, any unused religious compensatory time shall be paid at the basic hourly rate in effect when the time was worked, as prescribed in part 550 of

Reference (h). If the employee has an unliquidated advanced time-off balance at the time of separation, death, or transfer, this creates an indebtedness to the agency in which the employee was last employed.

ENCLOSURE 10

GUIDANCE FOR EARNING AND USING COMPENSATORY TIME OFF
FOR OFFICIAL TRAVEL

1. GENERAL INFORMATION

a. Description. Compensatory time off for travel is earned by an employee for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable. To qualify, the travel must be officially authorized for agency-related work purposes.

b. Employee Coverage. The compensatory time provision applies to most employees (including prevailing rate (wage) employees), without regard to the employee's FLSA designation. Coverage, however, does not include members of the SES assigned to the 602 Physician or 680 Dentist occupational series.

2. CREDITABLE TRAVEL TIME

a. Travel Status. Time in a travel status includes the time an employee actually spends traveling between the official duty station and a temporary duty station, or between two temporary duty stations, and the usual waiting time that precedes or interrupts such travel (e.g., waiting at an airport prior to departure). Time spent at a temporary duty station between arrival and departure is not time in a travel status. An extended delay between actual periods of travel during which the employee is free to rest, sleep, or otherwise use the time for his or her own purposes (e.g., when the employee's flight is cancelled and the employee must spend an additional night in the temporary duty station) is not creditable as time in a travel status.

b. Travel Between Home and a Temporary Duty Station. If an employee is required to travel directly between his or her home and a temporary duty station outside the limits of the employee's official duty station, the travel time is creditable as time in a travel status. However, the agency must deduct from such travel hours the time the employee would have spent in normal home-to-work or work-to-home commuting.

c. Alternate Form of Transportation. If the agency offers an employee one mode of transportation and he or she uses an approved alternate mode of transportation, or travels at a time or by a route other than that selected by the agency, the approving official must estimate the time in a travel status that would have been credited to the employee if he or she had used the mode of transportation offered by the agency or traveled at the time or used to route selected by the agency. The approving official shall credit the employee with whichever amount is less: the estimated time in a travel status or the actual time in a travel status.

d. Multiple-Day Travel. If an employee on a multiple-day travel assignment chooses to return home for personal reasons at night or on a weekend, only travel from home to the

temporary duty station on the first day and travel from the temporary duty station to home on the last day is creditable as time in a travel status (subject to the deduction of normal commuting time). Travel to and from home on other days is not creditable travel time unless the agency, at its discretion, determines that credit should be given based on the net savings to the Government from reduced lodging costs, considering the value of lost labor time attributable to compensatory time off. For comparison purposes, the dollar value of an hour of compensatory time off is equal to the employee's hourly rate of basic pay as defined in part 550 of Reference (h).

e. Time Spent Traveling To or From a Transportation Terminal. If an employee is required to travel between home and a transportation terminal (e.g., airport or train station) within the limits of his or her official duty station as part of travel away from that duty station, the travel time outside regular working hours to or from the terminal is equivalent to commuting time and is not creditable time in a travel status. If the transportation terminal is outside the limits of the employee's official duty station, the travel time to or from the terminal outside regular working hours is creditable as time in a travel status, but is subject to an offset for the time the employee would have spent in normal home-to-work or work-to-home commuting. If the employee travels between a worksite and a transportation terminal, the travel time outside regular working hours is creditable as time in a travel status, and no commuting time offset applies.

f. Travel Involving Two or More Time Zones. When an employee's travel involves two or more time zones, the time zone from the point of first departure must be used to determine how many hours the employee actually spent in a travel status for the purpose of accruing compensatory time off.

3. CREDITING AND USE. There is no limitation on the amount of compensatory time off for travel an employee may earn. However, an employee's request for credit for earned compensatory time off for travel must be filed within 5 workdays after returning to the official duty station. Requests not filed within these deadlines shall be denied. Compensatory time off for travel may be used when the employee is granted time off from his or her scheduled tour of duty for leave purposes. Compensatory time off for travel shall be tracked and managed separately from other forms of compensatory time off. Employees must be charged compensatory time off in the chronological order in which it was earned, with compensatory time off earned first being charged first.

4. FORFEITURE OF UNUSED COMPENSATORY TIME OFF

a. After 26 Pay Periods. Except as provided in paragraph 4.d of this enclosure, an employee must use accrued compensatory time off for travel by the end of the 26th pay period after the pay period during which it was earned. If an employee fails to use the compensatory time off within 26 pay periods after it was earned, then he or she must forfeit such compensatory time off.

b. Transfers and Separations. When an employee voluntarily transfers to another agency (as defined in section 105 of Reference (g)) or separates from Federal service (except as provided in paragraph 4.d of this enclosure), any unused compensatory time off is forfeited.

c. Movement to a Non-Covered Position. When an employee moves to a position not covered by this provision (e.g., members of SES), he or she forfeits any unused compensatory time off.

d. Exceptions. Employees with unused compensatory time off for travel in the following circumstances must use all of the compensatory time off by the prescribed deadlines; otherwise the compensatory time off is forfeited:

(1) An employee who separates from the Department of Defense or is placed in a leave without pay status to perform service in the uniformed services (as defined in part 353 of Reference (h)) and later returns to the Department through the exercise of re-employment rights provided by law, must use all compensatory time off by the end of the 26th pay period following the pay period in which the employee returns to duty.

(2) An employee who separates from the Department of Defense or is placed in a leave without pay status because of an on-the-job injury with entitlement to injury compensation under section 8102 of Reference (g), and later recovers sufficiently to return to work at the Department, must use all compensatory time off by the end of the 26th pay period following the pay period in which the employee returns to duty.

(3) An employee who fails to use compensatory time off earned by the end of the 26th pay period after the pay period during which it was earned due to an exigency of the service beyond the employee's control, may be granted an additional 26 pay periods for using such compensatory time off by an authorized management official, at the official's sole and exclusive discretion.

5. PAYMENT FOR UNUSED COMPENSATORY TIME OFF. Under no circumstances may an employee receive payment for unused compensatory time off for travel as provided by section 5550b of Reference (g). It is the employee's responsibility to ensure that his or her compensatory time off for travel is not forfeited.

6. PREMIUM PAY CAPS. Compensatory time off for travel may not be considered in applying the biweekly or annual premium pay caps established under section 5547 of Reference (g) or the aggregate limitation on pay established under section 5307 of Reference (g).

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

AI	Administrative Instruction
AWS	alternative work schedule
CSR	customer service representative
CWS	compressed work schedule
DCMO	Deputy Chief Management Officer of the Department of Defense
FLSA	Fair Labor Standards Act
FWS	flexible work schedule
GS	General Schedule
HRD	Human Resources Directorate
LMER	Labor and Management Employee Relations Division
OPM	Office of Personnel Management
SES	Senior Executive Service
SF	Standard Form
WHS	Washington Headquarters Services

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purpose of this AI.

administrative workweek. Any period of 7 consecutive 24-hour periods designated in advance by the head of the agency under section 6101 of Reference (g).

AWS. An arranged tour of duty that varies from the regular tour of duty. AWS includes both flexible and compressed work schedules.

basic workweek. The 40-hour workweek for full-time employees that includes the officially prescribed days and hours during which full-time employees are entitled to basic pay. Unless otherwise designated, the basic workweek for full-time employees consists of 5 8-hour days, Monday through Friday.

basic workweek requirement. The number of hours, excluding overtime hours, which an employee is required to work or is required to account for by leave or otherwise (that is, an 8-hour day, a 40-hour workweek, or an 80-hour pay period).

commuting time. Normal daily travel by an employee to and from work before and after the regular workdays.

compensable. Periods of time that are creditable as hours of work for the purpose of determining a specific pay entitlement, even when that work time may not actually generate additional compensation because of applicable pay limitations.

compensatory time off. Time off granted in lieu of payment for an equal amount of time spent in irregular or occasional overtime work.

core hours. The designated hours and days during which an employee covered by an FWS is required by the agency to be present for work.

credit hours. Hours that an employee elects to work with supervisory approval, in excess of the employee's basic work requirements under an FWS.

CWS. A work schedule in which a full-time employee elects to work an 80-hour biweekly basic work requirement in less than 10 workdays. In the case of a part-time employee, a biweekly basic work requirement of less than 80 hours that is scheduled for less than 10 workdays and that may require the employee to work more than 8 hours in a day.

exempt employee. An employee who is not covered by the minimum wage and overtime provisions of the FLSA. The exempt status is determined by the nature of the officially assigned duties performed by the employee.

flexible hours. The times during the workday, workweek, or pay period within the tour of duty during which an employee covered by an FWS may choose to vary his or her times of arrival to and departure from the work site consistent with the duties and requirements of the position.

FLSA. Establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting full-time and part-time workers in the private sector and in Federal, State, and local Governments.

FWS. A work schedule in which a full-time employee has an 80-hour biweekly basic work requirement that allows an employee to determine his or her own schedule within the limits set by the agency. In the case of a part-time employee, a biweekly basic work requirement of less than 80 hours that allows an employee to determine his or her own schedule within the limits set by the agency.

holiday pay. Pay for holidays on which no work is performed.

hourly regular rate of pay. Rate is computed by dividing the total remuneration paid to an employee in the workweek by the total number of hours of work in the workweek for which such compensation was paid.

hours of work. All time spent by an employee performing an activity for the benefit of the agency and under the control or direction of the agency.

irregular or occasional overtime work. Overtime work that could not be scheduled and approved prior to the start of the administrative workweek in which it is performed.

nonexempt employee. An employee who is covered by the minimum wage and overtime provisions of the FLSA. The nonexempt status is determined by the nature of the assigned duties performed by the employee.

normal waiting time. For purposes of determining time in travel status, the period between arrival at a plane, train, or bus terminal and scheduled departure time is dependent upon current requirements for travel (e.g., during heightened security risk, travelers are required to arrive 2 hours prior to departure time).

official duty station. The geographic area surrounding an employee's regular work site that is the same as the area designated by the agency as the "official work site" for the purpose of determining an employee's entitlement to compensatory time or overtime pay, consistent with parts 550, 551, and 9901 of Reference (h).

official work site. The location of an employee's position of record where the employee regularly performs his or her duties or, if the employee's work involves regular travel or the employee's work location varies on a daily basis, where his or her work activities are based, as determined by the Department of Defense.

organization. An entity within an agency that is headed by an official with the authority to establish tours of duty.

overtime work. Work, performed by an employee, in excess of 8 hours in a day or 40 hours in an administrative workweek that is officially ordered or approved in advance by management. It is work that is not part of an employee's regularly scheduled administrative workweek and for which an employee may be compensated.

personal religious belief. Defined in part 1605 of title 29, Code of Federal Regulations (Reference (l)).

premium pay. The dollar value of earned hours of compensatory time off and additional pay authorized by Reference (g) and parts 550 and 532 of Reference (h) for overtime, night, Sunday, or holiday work; or for standby duty, administratively uncontrollable overtime work, or availability duty. This excludes overtime pay paid to employees under the FLSA and compensatory time off earned in lieu of such overtime pay.

prevailing rate employee. An individual employed in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation, and any other individual, including a foreman and a supervisor, in a position having trade, craft, or laboring experience and knowledge as the paramount requirement.

rate of basic pay. The rate of pay fixed by law or administrative action for the position held by an employee for overtime pay purposes, including any applicable locality payment or special rate supplement.

regular overtime work. Overtime work that is scheduled and approved prior to the start of the administrative workweek in which the overtime is performed.

regularly scheduled work. Work that is scheduled in advance of an administrative workweek under an agency's procedures for establishing workweeks in accordance with part 610 of Reference (h).

straight time rate of pay. Employee's rate of pay for his or her position (exclusive of any premiums, differentials, or cash awards or bonuses) except for an employee who is authorized annual premium pay under part 550 of Reference (h). For an employee who is authorized annual premium pay, straight time rate of pay is equal to basic pay plus annual premium pay divided by the hours for which the basic pay plus annual premium pay are intended.

suffered or permitted work. Any work performed by an employee for the benefit of an agency, whether requested or not, provided the employee's supervisor knows or has reason to believe that the work is being performed and has an opportunity to prevent the work from being performed.

tour of duty. The hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek.

travel. Officially authorized travel for work purposes that is approved by an authorized agency official or otherwise authorized under established agency policies.

travel status. Travel time that is creditable in accruing compensatory time off for travel, excluding travel time that is otherwise compensable under other legal authority.