

(2) Nonsupervisory General Schedule employees performing technician work in positions properly classified below GS-9 (or the equivalent level in other comparable white-collar pay systems) and many, but not all, of those positions properly classified at GS-9 or above (or the equivalent level in other comparable white-collar pay systems); and

(3) Nonsupervisory General Schedule employees at any grade level in occupations requiring highly specialized technical skills and knowledges that can be acquired only through prolonged job training and experience, such as the Air Traffic Control series, GS-2152, or the Aircraft Operations series, GS-2181, unless such employees are performing predominantly administrative functions rather than the technical work of the occupation.

(f) Although separate criteria are provided for the exemption of executive, administrative, and professional employees, those categories are not mutually exclusive. All exempt work, regardless of category, must be considered. The only restriction is that, when the requirements of one category are more stringent, the combination of exempt work must meet the more stringent requirements.

(g) Failure to meet the criteria for exemption under what might appear to be the most appropriate criteria does not preclude exemption under another category. For example, an engineering technician who fails to meet the professional exemption criteria may be performing exempt administrative work, or an administrative officer who fails to meet the administrative criteria may be performing exempt executive work.

(h) Although it is normally feasible and more convenient to identify the exemption category, this is not essential. An exemption may be based on a combination of functions, no one of which constitutes the primary duty, or the employee's primary duty may involve two categories which are intermingled and difficult to segregate. This does not preclude designating an employee FLSA exempt, provided the work as a whole clearly meets the other exemption criteria.

(i) The designation of an employee as FLSA exempt or nonexempt ultimately rests on the duties actually performed by the employee.

§ 551.203 Exemption of General Schedule employees.

(a) *GS-4 or below.* Any employee in a position properly classified at GS-4 or below (or the equivalent level in other comparable white-collar pay systems) is nonexempt, unless the employee is subject to the foreign exemption in § 551.209.

(b) *GS-5 or above.* Any employee in a position properly classified at GS-5 or above (or the equivalent level in other comparable white-collar pay systems) is exempt only if the employee is an executive, administrative, or professional employee as defined in this subpart, unless the employee is subject to § 551.208 (the effect of performing temporary work or duties on FLSA exemption status) or § 551.209 (the foreign exemption).

§ 551.204 Exemption of Federal Wage System employees.

(a) *Nonsupervisory.* A nonsupervisory employee in the Federal Wage System or in other comparable wage systems is nonexempt, unless the employee is subject to § 551.208 (the effect of performing temporary work or duties on FLSA exemption status) or § 551.209 (the foreign exemption).

(b) *Supervisory.* A supervisory employee in the Federal Wage System or in other comparable wage systems is exempt only if the employee is an executive employee as defined in § 551.205, unless the employee is subject to § 551.208 (the effect of performing temporary work or duties on FLSA exemption status) or § 551.209 (the foreign exemption).

§ 551.205 Executive exemption criteria.

An *executive employee* is a supervisor or manager who manages a Federal agency or any subdivision thereof (including the lowest recognized organizational unit with a continuing function) and customarily and regularly directs the work of subordinate employees and meets both of the following criteria:

(a) *Primary duty test.* The primary duty test is met if the employee—

§ 551.206

5 CFR Ch. I (1-1-01 Edition)

(1) Has authority to make personnel changes that include, but are not limited to, selecting, removing, advancing in pay, or promoting subordinate employees, or has authority to suggest or recommend such actions with particular consideration given to these suggestions and recommendations; and

(2) Customarily and regularly exercises discretion and independent judgment in such activities as work planning and organization; work assignment, direction, review, and evaluation; and other aspects of management of subordinates, including personnel administration.

(b) *80-percent test.* In addition to the primary duty test that applies to all employees, the following employees must spend 80 percent or more of the worktime in a representative workweek on supervisory and closely related work to meet the 80-percent test:

(1) Employees in positions properly classified in the General Schedule at GS-5 or GS-6 (or the equivalent level in other comparable white-collar pay systems);

(2) Firefighting or law enforcement employees in positions properly classified in the General Schedule at GS-7, GS-8, or GS-9 who are subject to section 207(k) of title 29, United States Code; and

(3) Supervisors in positions properly classified in the Federal Wage System below situation 3 of Factor I of the *Federal Wage System Job Grading Standard for Supervisors* (or the equivalent level in other comparable wage systems).

§ 551.206 Administrative exemption criteria.

An *administrative employee* is an advisor or assistant to management, a representative of management, or a specialist in a management or general business function or supporting service and meets all four of the following criteria:

(a) *Primary duty test.* The primary duty test is met if the employee's work—

(1) Significantly affects the formulation or execution of management programs or policies; or

(2) Involves management or general business functions or supporting serv-

ices of substantial importance to the organization serviced; or

(3) Involves substantial participation in the executive or administrative functions of a management official.

(b) *Nonmanual work test.* The employee performs office or other predominantly nonmanual work which is—

(1) Intellectual and varied in nature; or

(2) Of a specialized or technical nature that requires considerable special training, experience, and knowledge.

(c) *Discretion and independent judgment test.* The employee frequently exercises discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) *80-percent test.* In addition to the primary duty test that applies to all employees, General Schedule employees in positions properly classified at GS-5 or GS-6 (or the equivalent level in other comparable white-collar pay systems) must spend 80 percent or more of the worktime in a representative workweek on administrative functions and work that is an essential part of those functions to meet the 80-percent test.

[62 FR 67247, Dec. 23, 1997; 63 FR 2304, Jan. 14, 1998]

§ 551.207 Professional exemption criteria.

A *professional employee* is an employee who meets all of the following criteria, or any teacher who is engaged in the imparting of knowledge or in the administration of an academic program in a school system or educational establishment.

(a) *Primary duty test.* The primary duty test is met if the employee's work consists of—

(1) Work that requires knowledge in a field of science or learning customarily and characteristically acquired through education or training that meets the requirements for a bachelor's or higher degree, with major study in or pertinent to the specialized