

ARS □ ERS □ NASS □ NIFA

Policies and Procedures

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This P&P delineates premium pay rules and regulations applicable to REE employees. It addresses overtime, compensatory time, Sunday and night pay differential, holiday pay, travel, training, and attendance at conferences.

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1. Purpose

When employees are required to work more time on the job than is normally required by the job, those employees must be compensated, either through additional pay or through time off. This is also sometimes true in situations when employees are asked to work, to travel, or be trained at night, on Sundays, or on holidays. While the concepts are simple enough, the rules governing their implementation are not. This Policy and Procedure (P&P) will explain those rules and resulting procedures to clarify premium pay administration for REE employees.

2. Background

The management of premium pay and even the discussion of premium pay issues are difficult for two main reasons: (1) there are two sets of rules--two laws--operating in the premium pay environment, and (2) the existence of these two laws has encouraged the adoption of some rather awkward terminology, which has fostered some confusion. This was not always the case. Prior to 1974, all Federal employees were gathered under the same umbrella, Title 5 of the United States Code. In that year, however, Congress amended the Fair Labor Standards Act (FLSA), which also addressed premium pay, to include Federal employees, but the FLSA would not cover everyone.

Although the terms "exempt"(employees not covered by FLSA) and "nonexempt" (employees covered by FLSA) are frequently used to describe the employee in the position, these designations technically attach only to the position. The status of a given position may be learned by checking Block 35 of the most current form SF-50, Notification of Personnel Action, or Block 32 of form AD-332, Position Description Cover Sheet. FLSA determinations are made by the agency and questions regarding coverage should be directed to the servicing Human Resources Specialist.

Fortunately, the gap between the two laws governing these two groups of employees is not great, but it is wide enough to require some awareness on the part of both employees and managers. While most of the following guidance applies to both FLSA covered and non-covered employees, at certain junctures their two paths diverge.

3. Policy

3.1 Overtime Work Determinations

To qualify as overtime (OT), the hours worked must: exceed 8 hours in a day or 40 hours in a week and be in addition to the normal daily (e.g., more than 9 hours on a scheduled 9 hour day) or weekly (e.g., more than 44 hours on a weekly flexible work schedule of 44 hours) work requirement; be officially ordered or approved; be performed by an employee; be documented in writing and attached to the Time and Attendance (T&A) Log. This definition applies to all

employees, those who are covered by FLSA and those who are not covered by FLSA. There are two types of overtime: “regularly scheduled” and “irregular or occasional”. For more information on regular or occasional overtime, see Section 2.1 on Call-Back Time Overtime and the Glossary.

Employees cannot order or approve their own overtime. Officials in charge of field offices or one-person stations may certify that they, in fact, worked overtime, providing the overtime had been previously approved by an individual authorized to do so.

GS employees who are not covered by FLSA, earning above the rate of a GS-10, step 1, earn overtime based on the hourly overtime rate of a GS-10, step 1 or at the rate of their basic hourly pay, whichever is greater. GS employees who are not covered by FLSA and earn at or below the rate of a GS 10, step 1, GS employees who are FLSA covered, and all Federal Wage System employees (e.g., Wage Grade) earn overtime based on the rate of one and a half times their regular hourly rate.

In addition to overtime, employees on flexible schedules may also earn credit hours. **Credit hours differ from overtime/compensatory time in that credit hours are voluntary, while overtime/compensatory time is not. Employees choose and supervisors approve the working of credit hours; however, they are directed to work overtime/compensatory time.** Supervisors may, of course, offer employees the option of working credit hours. However, employees must not be coerced into volunteering to work credit hours, or to request compensatory time off “in lieu of” payment for overtime hours. (For more information on credit hours see P&P 402.1 Flexible Work Schedules.)

All Federal employees, except for members of the Senior Executive Service, experts and consultants employed on a temporary basis, and employees whose basic pay in any pay period or calendar year equals or exceeds the rate of a grade GS-15, step 10 (or Executive Level V whichever is higher), may earn overtime (either overtime pay or compensatory time off “in lieu of” overtime). When approving overtime for employees who earn near the maximum bi-weekly pay limitation (GS-15, step 10, or Executive Schedule Level V, whichever is higher), supervisors should first consult with the Pay and Leave Staff to make sure that the pay does not exceed the aforementioned limit.

Overtime is credited in quarter hour increments. Any odd minutes worked (e.g., time worked which is less than a full quarter hour) are either "rounded up" or "rounded down" to the nearest quarter hour; employees who work 8 minutes are credited with a quarter hour of overtime (e.g., the 8 minutes are rounded up to a quarter hour); employees who work 7 minutes are not credited with a quarter hour of overtime (e.g., the 7 minutes are rounded down to zero). This rule of rounding only applies to overtime.

Hours worked in excess of 8 hours per day are not included in computing hours of work in excess of 40 hours per week. This means that employees who have already received overtime credit for extra hours worked in a day cannot also use those hours to earn additional credits for the week. Only regular hours (this includes paid leave) not a combination of regular hours plus overtime or credit hours count toward meeting the 40 hours per week standard.

T&A Transaction Code 19 is used for overtime when an employee works more than their tour of duty (hereafter referred to as TOD) for that day, which also exceeds 8 hours, but does not work over 40 hours for the week. T&A Transaction Code 21 is used when an employee's work hours exceeds their weekly TOD.

3.1.1 Call Back Time Overtime

Irregular or occasional overtime work performed by an employee on a day when work was not originally scheduled, or completes a regular workday schedule and departs, or for which s/he is required to return to the office or other place of employment, is deemed at least 2 hours in duration for the purpose of premium pay, either in money or compensatory time. If the employee works more than 2 hours, the actual time worked is credited; if the employee works less than 2 hours, 2 hours are credited.

At the crux of the matter on call-back overtime is whether the overtime is “**regularly scheduled**” or “**irregular or occasional**”. Regularly scheduled means work that is scheduled in advance of an administrative workweek. Irregular or occasional means overtime work that is not part of an employee's regularly scheduled administrative workweek. If regularly scheduled, the employee is only paid for the time they are scheduled to work (e.g., an employee who is regularly scheduled to work 1 hour on Saturday, which is in excess of the 40 hours scheduled to work Monday thru Friday, is only entitled to 1 hour of overtime for working on that Saturday). If it is irregular or occasional overtime, then what would qualify as call-back overtime would result in a minimum of 2 hours of overtime even if the time worked is less than 2 hours.

The administrative workweek for ARS begins on Sunday and ends on the following Saturday. Therefore, any overtime scheduled before the beginning of the administrative workweek (Sunday) would be deemed regularly scheduled overtime and would not be considered call-back overtime. Only irregular and occasional overtime qualifies as call-back overtime.

3.2 Compensatory Time

An agency may grant compensatory time (hereafter referred to as comp time) off “in lieu of” overtime pay at the request of all employees (including prevailing rate or Wage Grade employees and FLSA covered employees) under a flexible work schedule. Employees, whether FLSA covered, or not covered by FLSA whose rate of basic pay is equal to or less than the rate for GS-10, step 10, **may not** be required to take comp time off “in lieu of” overtime pay, though they may chose to do so.

If an employee who is covered by FLSA or who is non-covered but earns below a GS/10 chooses comp time in lieu of overtime, it must be documented and approved via webTA or indicated in writing using a statement such as the following:

“I request comp time in lieu of overtime” _____ employee initials _____ supervisor initials

If using webTA to approve comp time worked and the employee has chosen comp time in lieu of overtime, the above statement can be typed into the remarks block of the Edit T&A screen where

daily time is entered.

However, employees not covered by FLSA, and earning more than the basic pay of a GS-10, step 10, may be required to take comp time off “in lieu of” overtime pay for irregular or occasional overtime work under the same circumstances. The rate of basic pay for GS-10, step 10, includes an applicable locality-based comparability payment and any applicable special rate of pay.

Employees **must** use comp time off before using credit time, time off award hours, comp-time for travel, restored annual leave, or annual leave. Supervisors have the authority to disapprove requests for annual leave (and other types of non-sick leave) until comp time is used up. Exceptions to this policy are when employees are in a “use or lose” or “leave forfeiture” situation (approximately end of November or December); and when the Family Medical Leave Act (FMLA) is invoked and annual or other leave is being substituted for Leave Without Pay (LWOP).

An employee must use accrued compensatory within 26 pay periods after the pay period in which it was credited to the employee. Comp time not used by the end of its expiration period will be paid at the overtime rate that was in effect at the time the comp time was earned. See paragraph 3 of **Section 2. Overtime Work Determinations** for an explanation of the overtime rate of pay. Comp-time must be paid out in a lump sum if the employee transfers out of USDA or leaves Federal government service. Generally, employees transferring between REE agencies or within USDA take their leave balances to the gaining agency. If the gaining agency will not accept transferred compensatory time, the losing agency will pay in a lump sum the outstanding comp-time balance at the rate of pay that was assigned at the time it was earned.

As with overtime, when approving comp time (which is a form of premium pay) for employees who earn near the maximum bi-weekly pay limitation (GS-15, step 10, or Executive Schedule Level V, whichever is higher), supervisors should first consult with the Pay and Leave Staff to make sure that the pay does not exceed the aforementioned limit. See the Administrative and Financial Management (AFM) website for the formula on how to calculate the biweekly pay limit. When an employee’s T&A is submitted with comp time that exceeds the biweekly pay limit, the National Finance Center (NFC) will edit the comp time entry and reduce the amount of comp time accrued so that it does not exceed the pay limit—NFC will not allow employees to earn more than their biweekly maximum. After payroll runs, the bidirectional feed from NFC will automatically overwrite what was submitted on the T&A and update webTA with **the corrected amount of comp time.**

3.2.1 Compensatory Time Off For Religious Observances

Religious compensatory time is not intended to give federal employees additional holidays or annual leave. It is intended to provide an added option for an employee whose personal religious beliefs require their absence from work during certain periods of time.

To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of an agency's mission, the agency shall, in each instance, afford the employee

the opportunity to work religious compensatory overtime. The agency shall also, in each instance, grant religious compensatory time off to an employee requesting such time off when the employee's religious beliefs require that the employee abstain from work. Religious compensatory time is not used to attend religious conferences, but for a specific religious observance.

At least 2 weeks in advance, the employee should submit to the supervisor a request specifying dates and times for the desired time off, along with a proposed make-up schedule. If the employee's proposed make-up schedule is not suitable, the supervisor and employee will try to find one that is mutually accommodating. For planning purposes, employees should inform their supervisors of time off anticipated over the course of a year. Final arrangements may be made closer to when the time off is actually used. Supervisors should not question the nature or validity of an employee's personal religious beliefs.

Religious compensatory time is the only type of leave that can be used before it's actually earned. Advanced religious compensatory time off should be repaid by the appropriate amount of compensatory overtime work normally within three pay periods. **Employees may not earn credit hours, regular compensatory time or be compensated for overtime until any outstanding balance owed for religious compensatory time is repaid.**

If an employee is separated or transferred before using the time set aside for religious observances, any hours not used must be paid at the employee's rate of basic pay in effect when the extra hours of work were performed. Conversely, any religious compensatory time used and not repaid will be charged to the employee at the same rate.

3.3 Compensatory Time Off for Travel

Comp time off for travel may be 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*. Employees may not receive credit hours for time spent in transit. Travel for the purpose of this provision is travel that is for work purposes and must be approved by an authorized agency official. For situations that are not addressed in this section, contact your servicing Human Resources Specialist on the Pay and Leave staff of the Human Resources Division.

Intermittent and SES employees are not entitled to comp time off for travel.

An employee can receive comp time off for travel only for those hours spent in a travel status outside their regular TOD. Travel status includes only the time actually spent 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. Usual waiting times allowed are as follows:

NIFA and ERS: *Domestic Travel* - Waiting time allowed, pre-departure: up to 1 hour before scheduled departure time; connecting flight(s): up to 1 hour beginning immediately after landing. *Foreign Travel* - Waiting time allowed, pre-departure: up to 2 hours before scheduled departure time; connecting flight(s): up to 2 hours beginning immediately after landing

ARS and NASS: Domestic Travel - Waiting time allowed, pre-departure: up to 2 hours before scheduled departure time; connecting flight(s): up to 2 hours beginning immediately after landing. *Foreign Travel* - Waiting time allowed, pre-departure: up to 3 hours before scheduled departure time; connecting flight(s): up to 3 hours beginning immediately after landing.

3.3.1 Extended Waiting Periods

If an employee experiences an unusually long wait prior to his or her initial departure or 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, the extended waiting time that is outside the employee's regular working hours is not creditable time in a travel status. (Exception: If an employee has boarded the aircraft and is delayed on the Tarmac, that time spent on the plane would also be creditable.) An extended waiting period that occurs during an employee's regular working hours is compensable as part of the employee's regularly scheduled administrative workweek. For guidance regarding what is creditable time see Appendix A.

3.3.2 Meal Breaks

For the purpose of earning comp time off for travel, meal periods are not subtracted when taken while in transit and as part of the usual waiting time at a terminal. However, meal times taken in transit while not on a carrier or waiting at a terminal would not qualify as compensable for comp time off for travel (e.g., stopping for a meal when traveling in a rental vehicle from a transportation terminal to a temporary duty station would not count as comp time off for travel).

3.3.3 Permanent Change in Station (PCS)

Although Permanent Change in Station (PCS) travel is officially authorized travel, it is not travel between an official duty station and a temporary duty station or between two temporary duty stations. Therefore, it is not considered time in a travel status for the purpose of earning compensatory time off for travel.

3.3.4 Union Activities

Time spent in connection with union activities is not creditable for the purpose of earning comp time off for travel.

3.3.5 Travel Beginning from Home

The trip from home to a TDY or terminal is not considered “outside the limits of the duty station” and creditable as comp travel unless the trip is more than 50 miles from *the duty station*. If an employee travels directly between his or her home and a temporary duty station outside the limits of the employee's official duty station and outside their regular work schedule (e.g., driving to and from a 3-day conference), the employee must deduct their normal home-to-work/work-to-home commuting time from the creditable travel time. A deduction of an employee's normal commuting

time from the creditable travel time must also be made if the employee is required—outside of regular working hours—to travel between home and a transportation terminal (e.g., an airport or train station) outside the limits of the employee's official duty station. If the drive is within the limits of the duty station (less than 50 miles), there is no comp travel.

3.3.6 Travel on a Holiday

Employees may not earn comp time off for travel during hours they would normally work as their TOD on a holiday because they are entitled to their rate of basic pay (in the form of administrative leave) for those hours. Comp time off for travel may be earned by an employee only for time spent in a travel status away from the employee's official duty station when such time *is not otherwise compensable* (e.g., outside of their TOD hours).

3.3.7 Commuting During a Multiple-Day Travel Assignment

In the case of an employee who is on a multiple-day travel assignment and who chooses, for personal reasons, not to use temporary lodgings at the temporary duty station (TDS), but to return home (or some other non-TDS site) at night or on a weekend, the following applies:

Creditable Time includes:

- Travel from home to the TDS on the first day of the assignment and
- Travel from the TDS to home on the last day of the assignment.

Note: Travel time must qualify as time in a travel status and is subject to the deduction of normal home to work commuting time.

Non-Creditable Time includes:

- Travel to and from home (or some other non-TDS site) on days other than the first and last day of the assignment.

3.3.8 Limitations, Reporting and Usage Procedures

There is no limitation on the amount of comp time off for travel an employee may earn. However, if it is not used within 26 pay periods after the pay period in which it was credited to the employee, it will be forfeited. Except for military leave or on-the-job injury status, a voluntary separation from Federal service will result in forfeiture of unused comp time off for travel. When an employee returns to duty from military leave or from on-the-job injury, the employee must use all of the comp time off by the end of the 26th pay period following the pay period in which the employee returns to duty, or it will be forfeited. If an employee voluntarily transfers to another Executive agency outside USDA, or moves to a Federal position not covered by this provision (e.g., as a Senior Executive Service member or in the U.S. Postal Service), the employee's unused comp time off will be forfeited.

Compensatory time must be used by an employee before he or she may use annual leave, provided this shall not result in the employee losing any accumulated annual leave. If an

employee fails to use his or her comp time off for travel within 26 pay periods due to an exigency of service beyond the employee's control, an authorized agency official may extend the time limit for the use of the leave for up to an additional 26 pay periods. The authorized agency officials for this decision are the Director of NIFA, Administrators, ERS, and NASS and the managers reporting directly to the Administrator in ARS. In the event the Agency Head grants the extension, notify the Pay and Leave Staff, Human Resources Division.

Upon return from official travel, an employee must submit a request for approval to be credited with comp time for travel. The request from the employee must be made before the transmission of the sixth pay period after the pay period in which the comp time was earned. A fifteen minute increment is the smallest measurement that will be used to record the comp time off for travel earned. This request is made on the employee's time and attendance worksheet (electronic or hard copy) and is subject to supervisory approval via the (electronic signature or hard copy) signed time and attendance system's final print-out. Employees will be credited comp time for travel for the pay period in which it was earned.

3.4 Overtime/Comp time Travel

It is important to distinguish time at the temporary duty station from transit time. Time at the temporary duty station is treated the same as time at the official duty station. Supervisors will determine whether employees at the temporary duty station in travel or training status will remain on a maxiflex schedule, convert to ten 8-hour days for pay periods in which travel or training occurs, or require the employees to conform to operations at the temporary work site. Employees will remain on their existing schedule if the training or work to be performed at the remote site can accommodate this schedule.

All time actually spent traveling during an employee's TOD is counted as regular work time. When employees are traveling **outside their TOD** and their official duty station, a major factor in determining their hours of work is whether the employees are FLSA covered or non-covered.

3.4.1 Employees Not Covered by FLSA:

Time spent in transit is hours of work (overtime or comp time) when it meets one of the following requirements:

- The travel involves the performance of work while traveling (such as transporting animals on a truck),
- The travel is incident to travel that involves the performance of work while traveling (such as driving an empty truck back to the point of origin),
- The travel is carried out under arduous conditions (e.g., travel on rough terrain or under extremely severe weather conditions), or
- The travel results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of the employee to his or her official-duty station (such as training scheduled solely by a private

firm or a job-related court appearance required by a court subpoena).

3.4.2 FLSA Covered Employees:

(The criteria in section 6.1 also apply in this section for FLSA covered employees.)

Time spent in transit status is considered hours of work (overtime, or comp time) when it meets one of the following requirements:

- Required to drive a vehicle or perform other work while traveling;
- Required to travel as a passenger on a one-day assignment;
- Required to travel as a passenger on an overnight assignment away from the official duty station during hours on non-workdays that correspond to the employees' regular working hours; e.g., Employee's regular TOD is Monday through Friday, 8 am to 4:30 pm. If the employee has to travel in this situation on a Saturday between 8 am and 4:30 pm, any time that would normally be considered comp time for travel is treated as overtime or comp time. Any time outside of the regular TOD (before 8 am or after 4:30 pm) would be treated as comp time for travel.

NOTE: When traveling directly from home to a temporary duty location outside the limits of their official duty station, the commuting time to the temporary duty station will count as hours of work, after deducting the time the employee would have spent in normal home to work travel.

Caution: Some have felt that if an employee is a participant of the Flexible Work Schedule program, their supervisor may change their schedule to ensure that transit time originally not compensable will now fall within their new schedule and be compensable. OPM has advised that schedules must not be changed for the purpose of circumventing the intent of the law. In fact, the following statement is on the OPM Web site: "Note: An agency may not adjust an employee's normal regularly scheduled administrative workweek solely to include travel hours that would not otherwise be considered hours of work."

3.5 Sunday Pay and Differential

Due to a court decision (Fathauer v U.S.), part-time employees are now entitled to Sunday pay differential (a 25% differential) for scheduled work on Sundays. Employees and former employees may also make claims for Sundays worked going back 6 years from the date of their claim. The responsibility to file a claim resides with the affected employees and can be filed at any time.

This change went into effect in pay period 4, 2010. Sundays worked prior to pay period 4 will be covered by back pay claim procedures. While the employee is responsible for making the claim and providing documentation to support their claim, available agency records that support the claim are also to be made available. Any back pay will be made with interest.

Claims must include the employees name, dates Sunday work was performed, and the number of

hours worked by date, along with supporting documentation. Appropriate documentation could include applicable REE-331's with signed STAR T&A system printout, WebTA printouts or other agency T&A documentation. Provide your work phone number and the name and phone number of your immediate supervisor.

Claims are to be sent to the Pay and Leave Staff. Documents can be faxed, emailed or sent by regular mail.

Sunday pay is a 25 percent differential for the entire daily TOD, up to 8 hours. It is for fulltime and part-time employees who are scheduled in advance of the workweek to perform non-overtime work regardless of when the 8 hour shift begins or ends on Sunday. Thus, it is possible for an employee to have two daily tours of duty that begin or end on the same Sunday; e.g., 1st shift begins at 6:30 pm on Saturday and ends at 2:30 am on Sunday; 2nd shift begins at 6:30 pm on Sunday and ends at 2:30 am on Monday.

Intermittent, and SES employees are not entitled to premium pay for Sunday work.

An employee may not be paid Sunday premium pay for credit hours.

Full-time and part-time employees, who are regularly scheduled to work non-overtime hours on Sunday, but do not work during their Sunday TOD because they are on paid leave (e.g., annual leave, sick leave, etc.), excused absence, or because Sunday is a holiday, are **not** entitled to Sunday premium pay. Sunday premium pay may be paid only for periods when an employee **performs** work on Sunday.

3.6 Night Pay and Differential

GS employees: Night pay is a 10 percent differential for only those quarter hours that GS employees are officially scheduled to work between 1800 hours (6 p.m.) and 0600 hours (6 a.m.)

A GS employee is entitled to night pay differential for paid leave only when the total amount of that leave in the pay period, including both night and day hours, is less than 8 hours; e.g., an employee who uses 8 [or more] hours of sick (or any other form of) leave during a pay period would not receive night differential for the 8 hours of leave taken; if the employee uses 7 hours [or less] of any type of leave, s/he would receive night differential for the leave taken.

Work that is performed at the initiative of the employee, does not qualify as night pay. For example: An employee on a flexible work schedule who works four 10 hour days each week from 8:30 a.m. to 7 p.m. (1/2 hour for lunch) would not receive night differential for the period between 6 p.m. and 7 p.m. because the employee requested to work 10 hour days and a minimum of 8 scheduled hours fall between 6 a.m. and 6 p.m.

FWS (WG) employees: It is a 7.5 percent differential for the entire shift for wage grade, wage leaders, and wage supervisors, when a **majority of scheduled hours** fall between 1500 hours (3 p.m.) and 2400 hours (12 a.m.). It is a 10 percent differential for the entire shift for

wage grade, wage leaders, and wage supervisors, **when a majority of scheduled hours** fall between 2300 hours (11 p.m.) and 0800 hours (8 a.m.). Majority of hours means a number of whole hours greater than one-half of the shift, e.g., 5 hours of a scheduled 8-hour shift.

Night differential does not apply to overtime, comp-time or credit time.

3.7 Holiday Pay

Holidays include the set Federal holidays of the Fourth of July, Christmas, New Year's, and Veterans Day, as well as the movable Federal holidays such as Martin Luther King Jr.'s Birthday, President's Day, Memorial Day, Labor Day, Columbus Day, and Thanksgiving Day. "In-lieu-of" holidays include those Mondays or Fridays that are treated as holidays when the set holidays fall on a Saturday or Sunday.

Employees must be in pay status either their scheduled workday before or after the holiday to be compensated for the holiday. When the Government is closed for the entire day adjacent to the holiday due to an emergency, the closed day will not be counted as a day in pay status for those employees who were in a non-pay status for the period surrounding the holiday and day of closure. In this case, the employee would not receive compensation for the holiday or the day of closure.

All full-time employees, including those on flexible work schedules, are entitled to an "in lieu of" holiday when a holiday falls on a non-workday. Non-workdays include any regular days off on a maxiflex work schedule. In such cases, the employee's holiday is the basic workday immediately **preceding** the non-workday. A basic workday for this purpose includes a day when part of the basic work requirement for an employee under a flexible work schedule is planned or scheduled to be performed.

An exception to this is if the non-workday is Sunday or an "in lieu of" Sunday. In these cases, the **next** basic workday is the "in lieu of" holiday. An "in lieu of" Sunday is when an employee whose basic workweek includes Sunday and must be given an alternate scheduled off day. That day will be considered as the employee's "in lieu of" Sunday for holiday purposes. For example: If an employee was scheduled to work on Saturdays and Sundays, and was scheduled off on Tuesdays and Wednesdays, then management would need to designate whether Tuesday or Wednesday would be the employee's "in lieu of" Sunday.

An employee is not entitled to another day off as an "in lieu of" holiday if a Federal office or facility is closed on a holiday because of weather or other type of emergency, or when employees are furloughed on a holiday.

Credit hours may not be earned on a holiday unless the credit hours worked are outside the employee's regular TOD. Refer to Section 9.3 which details compensation when work is performed during an employee's TOD on a holiday.

3.8 Employees Overseas

Employees who are stationed (working) overseas where U.S. Federal holidays are not observed will be granted holiday premium pay when they work on those days. If work must be performed during the scheduled basic work requirement on the holiday, it will be considered holiday premium pay. If a foreign holiday occurs during the basic work requirement, and it is not possible to work because the site is closed down, (e.g., utilities shut off, or access is denied) administrative leave will be granted for the period of the basic work requirement. If a foreign holiday falls on an employee's off day, the employee would not get an in-lieu-of day off.

3.9 When No Work Is Performed (Administrative Leave)

Full-time employees who are relieved or prevented from working on a day designated as a holiday (or an "in lieu of" holiday) by Federal statute or Executive Order, are entitled to their rate of basic pay on that day for 8 hours. Those employees on flexible work schedules when **other than 8 hours** (e.g., 4, 5, 9, 10, etc. hours) are scheduled for the holiday will still receive 8 hours of paid administrative leave for the holiday. Leave may be taken, or other hours can be worked to fulfill an employee's 80 hour biweekly work requirement.

If a holiday falls on a day during the part-time employee's TOD, the employee **is entitled to** his or her rate of basic pay for the scheduled number of hours of work for that day (not to exceed 8 hours). If an "in-lieu of" holiday falls on a day during the part-time employee's TOD and s/he is relieved or prevented from working on that day, the employee **may** be compensated at the basic rate of pay by granting administrative leave for the scheduled number of hours of work for that day (not to exceed 8 hours).

3.10 When Work Is Performed (Holiday Premium Pay)

Full-time employees who perform non-overtime work on a holiday (or a day designated as the "in lieu of" holiday) are entitled to their rate of basic pay (coded as administrative leave) plus holiday premium pay which is also equal to their rate of basic pay for that holiday work. Holiday premium pay is limited to a maximum of 8 hours.

Employees who work during non-overtime and non-holiday hours that are part of the employees' basic work requirement on a holiday are paid their rate of basic pay for those hours of work. For example, employees who work 10 hours on a holiday (including one hour of overtime work ordered by a supervisor) and who have a 9-hour basic work requirement on that day would earn holiday premium pay for the 8 holiday hours designated by the agency, their rate of basic pay for 1 hour (within the basic work requirement), and 1 hour of overtime pay.

Employees assigned to duty on a holiday are entitled to a minimum of 2 hours of premium pay.

Part-time employees are entitled to holiday premium pay only for work performed during their basic work requirement on a holiday (not to exceed 8 hours). If they are scheduled to work on a

day designated as an “in lieu of” holiday for full-time employees, they are not entitled to holiday premium pay for work performed on that day. Example: If Christmas falls on a Sunday, the “in lieu of” holiday would be the following Monday. If a part-time employee is scheduled to work 4 hours on Monday and does work, s/he is not entitled to holiday premium pay, but would however receive regular pay for the time worked.

Intermittent employees are entitled only to their rate of basic pay for hours worked on a holiday.

3.11 Training

Current law generally prohibits an employee not covered by the FLSA from receiving premium pay for time spent in training. However, an exception will be made if training scheduled outside the regular workday proves more cost effective. If the cost of after-hours training is less, even with premium pay factored in, than the cost of the same training held during regular work hours, an employee not covered by FLSA attending the training may earn premium pay. The regulations list a number of other rare exceptions having to deal with regularly scheduled overtime and night work. Contact a Pay and Leave Specialist if you think you may have an exception.

For FLSA covered employees, time spent in training outside regular working hours will be considered hours of work and, therefore, would qualify as overtime if the criterion for the employee not covered by FLSA as stated above is met, or if the employee is **directed to participate** in the training by his or her employing agency **and** the purpose of the training is **to improve the employee’s performance** of the duties and responsibilities of his or her current position. **Directed to participate** means that the training is required by the agency and the employee’s performance or continued retention in his or her current position will be adversely affected by non-enrollment in such training. Training “**to improve the employee’s performance**” of his or her current position is distinguished from upward mobility training or developmental training to provide an employee the knowledge or skills needed for a subsequent position in the same career field.

3.12 Conferences, Lectures, and Presentations

3.12.1 FLSA covered employees: Time spent attending a lecture, presentation, meeting, or conference outside the employees' regular working hours will be considered hours of work if:

- the agency directs the employee to attend the event (e.g., mandatory attendance for all employees or remedial required attendance for a specific employee), or
- while attending the event, the employee performs work that will benefit the agency.

3.12.2 Employees not covered by FLSA: Time spent outside the employees' regular working hours at professional society meetings delivering papers, making presentations, or further advancing the programs of the agency would be considered hours of work (e.g., overtime, comp time or regular time) when it is evaluated through the performance appraisal process. The creditable time would be limited to the actual time used to make the presentation or to meet with

other participants in order to advance the programs of the agency.

If an employee attends a specific event of the professional society, it would rest with the supervisors as to whether they would count their attendance as overtime, comp time, credit hours, or donated time.

An employee whose primary purpose at a conference is to work (not attend) and is directed to be at the conference by their supervisor would be entitled to either overtime or comp time.

4. Responsibilities

4.1 Approval/Disapproval of OT/Comp Time or Other Premium Pay Requests

Agency Heads

ARS

- Delegate the authority to each successive supervisory level.

NIFA

- Delegate the authority to the Assistant Directors and Staff Directors.

ERS

- Delegate the authority to Division Directors and Branch Chiefs.

NASS

- Delegate the authority to Division Directors and Branch Chiefs at Headquarters and State Directors and their Deputies in the field operations.

REE Supervisors

- Plan and organize work assignments to minimize the need for premium pay, including overtime and comp time.
- Order overtime work as necessary and acknowledge employees' written requests to substitute comp time off "in lieu of" overtime pay.

In addition, **ARS (Supervisors)**

- In writing, redelegates or does not redelegate the authority to the next supervisory level.
- Determine if successive supervisory levels have redelegation authority.

5. Authorities

ARS (Deputy Administrators/Area Directors/Managers reporting directly to the Administrator)

- In writing, may or may not choose to redelegate the authority to the next supervisory level.
- Determine if successive supervisory levels have redelegation authority.

NIFA (Assistant Directors/Staff Directors)

- Exercise the delegated authority by approving or disapproving overtime/comp time.

ERS (Division Directors)

- Exercise the delegated authority by approving or disapproving overtime, comp time and holiday premium pay.
- Have delegated authority to approve credit hours.

NASS (Division and State Directors)

- Exercise the delegated authority by approving or disapproving overtime, comp time and Holiday premium pay.
- Have delegated authority to approve credit hours.

6. Definitions

Administrative Workweek. A period of 7 consecutive calendar days set by the Secretary of Agriculture as beginning on Sunday at 0001 hours (12:01 a.m.) and ending the following Saturday at midnight (12 p.m.).

Basic Pay. The rate of pay fixed by law for employee positions, including locality pay, but excluding additional pay of any kind.

Basic Workweek. The basic work requirement for full-time employees under a Flexible Work Schedule is 80 non-overtime hours in a 2-week pay period which do not extend over more than 6

of any 7 consecutive days.

Credit Hours. Time off earned by an employee on a flexible work schedule in recompense for voluntarily working beyond the basic scheduled requirement. Credit hours differ from comp time off in that they are earned at the initiative of the employee and not directed by management.

FLSA Exempt. Positions not covered by the provisions of the Fair Labor Standards Act.

FLSA Nonexempt. Positions covered by the provisions of the Fair Labor Standards Act.

Fair Labor Standards Act (FLSA). A law designed to guarantee fair treatment for employees in junior level positions within the workforce. The law establishes a minimum wage and sets forth provisions for the handling of overtime.

“In lieu of”. In place of.

Irregular or Occasional Overtime. Overtime work that is not part of employees' regularly scheduled basic workweek.

Official Duty Station. The corporate limits of the city or town in which an employee is permanently assigned (for Washington, D.C. based employees, it is the Washington Metropolitan Area), or if not within an incorporated entity, a 50-mile radius.

Regular Overtime Work. Overtime work that is part of an employee's regularly scheduled administrative workweek.

Regularly Scheduled Administrative Workweek. The period within an administrative workweek, within which the employee is regularly scheduled to work.

Regularly scheduled work. Means work that is scheduled in advance of an administrative workweek.

Premium Pay. Includes overtime, comp time, Sunday and night pay, holiday pay, and various types of differentials.

Title 5, United States Code. The basic law addressing issues related to Government organization and employees.

Joon Park

Date

Director, Human Resources Division

7. Exhibits

COMPENSATORY TIME OFF FOR TRAVEL CHART

Time spent in official travel (transit) status by an employee away from the employee's official duty station when such time is not otherwise compensable.

| | |
|---------------------------------------|---|
| Eligibility | SES and Intermittent employees are not eligible |
| Creditable Time | <ul style="list-style-type: none"> • From home to the terminal or temporary duty station (if either one is outside a 50 mile radius), minus commuting time. • Flight/time in transit time • Any duty station to and from terminal • Official duty station to and from temporary duty station (if outside 50 mile radius) • Usual waiting time: pre-departure or connecting flight(s) NIFA/ERS: Up to 1 hour domestic, up to 2 hours international flight ARS/NASS: Up to 2 hours domestic, up to 3 hours international flight • Traveling between two temporary duty stations • The time stops when the employee reaches the temporary duty station or hotel |
| Non-creditable Time | <ul style="list-style-type: none"> • Extended waiting period: NIFA/ERS: time beyond 1 hour domestic, 2 hours international flight for pre-departure or connecting flight(s); ARS/NASS: time beyond 2 hours domestic, 3 hours international flight for pre-departure or connecting flight(s) • Meal periods which do not occur while traveling or during waiting time at a terminal • Time spent commuting home to and from work • Holiday – hours during their tour of duty |
| Limitation | Unlimited hours can be earned |
| Approval | Supervisor approves T&A's |
| Recording time earned and used | <ul style="list-style-type: none"> • Recorded in 15 minute increments • Record on T&A worksheet (REE 331) or in webTA |
| Forfeiture | <ul style="list-style-type: none"> • If not recorded before 6 pay periods after return to permanent duty station • 26 pay periods after the hours were earned • Voluntary transfer to another agency • Movement to a non-covered position • Separation from the Federal Government |
| 26 pay periods start over | <ul style="list-style-type: none"> • Return from Military Reserve (active duty) • Return from OWCP (on the job injury) |

NOTE: There is no monetary value. It is solely for the purpose of taking leave. Compensatory Time Off for Travel earned cannot be paid out; i.e., lump sum.