

§ 551.201

5 CFR Ch. I (1–1–05 Edition)

such as standby time, sleep time, meal periods, and paid leave.

Worktime in a representative workweek means the average percentages of worktime over a period long enough to even out normal fluctuations in workloads and be representative of the job as a whole.

Workweek means a fixed and recurring period of 168 hours—seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of a day. For employees subject to part 610 of this chapter, the workweek shall be the same as the administrative workweek defined in § 610.102 of this chapter.

Workweek basis means the unit of time used as the basis for applying overtime standards under the Act and, for employees under flexible or compressed work schedules, under 5 U.S.C. 6121(6) or (7). The Act takes a single workweek as its standard and does not permit averaging of hours over two or more weeks, except for employees engaged in fire protection or law enforcement activities under section 7(k) of the Act.

[62 FR 67244, Dec. 23, 1997; 63 FR 2304, Jan. 14, 1998]

Subpart B—Exemptions and Exclusions

SOURCE: 62 FR 67247, Dec. 23, 1997, unless otherwise noted.

§ 551.201 Agency authority.

The employing agency may designate an employee FLSA exempt only when the agency correctly determines that the employee meets one or more of the exemption criteria of this subpart and such supplemental interpretations or instructions issued by OPM.

§ 551.202 General principles governing exemptions.

In all exemption determinations, the agency must observe the following principles:

(a) Each employee is presumed to be FLSA nonexempt unless the employing agency correctly determines that the employee clearly meets one or more of the exemption criteria of this subpart

and such supplemental interpretations or instructions issued by OPM.

(b) Exemption criteria must be narrowly construed to apply only to those employees who are clearly within the terms and spirit of the exemption.

(c) The burden of proof rests with the agency that asserts the exemption.

(d) An employee who clearly meets the criteria for exemption must be designated FLSA exempt. If there is a reasonable doubt as to whether an employee meets the criteria for exemption, the employee should be designated FLSA nonexempt.

(e) There are groups of General Schedule employees who are FLSA nonexempt because they do not fit any of the exemption categories. These groups include the following:

(1) Nonsupervisory General Schedule employees in equipment operating and protective occupations, and most clerical occupations (see the definition of *participation in the executive or administrative functions of a management official* in subpart A of this part);

(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