

regular rate received by such employee during the last 3 years of the employee's employment, or (B) the final regular rate received by such employee, whichever is higher.

#### Method of Approval:

The Board recommends that these regulations be approved by concurrent resolution as neither the House of Representatives nor the Senate has exclusive responsibility for the employing offices covered by these regulations.

Signed at Washington, DC, on this 10th day of October, 1995.

GLEN D. NAGER,  
Chair of the Board,  
Office of Compliance.

### NOTICE OF PROPOSED RULEMAKING

Mr. THURMOND. Mr. President, pursuant to section 304(b) of the Congressional Accountability Act of 1995 (2 U.S.C. sec. 1384(b)), a notice of proposed rulemaking was submitted by the Office of Compliance, U.S. Congress. The notice relates to the Congressional Accountability Act and the Extension of Rights and Protections under the Fair Labor Standards Act of 1938, as applied to interns and irregular work schedules in the Senate.

Section 304(b) requires this notice to be printed in the CONGRESSIONAL RECORD, therefore I ask unanimous consent that the notice be printed in the RECORD.

There being no objection, the notice was ordered to be printed in the RECORD, as follows:

THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: EXTENSION OF RIGHTS AND PROTECTIONS UNDER THE FAIR LABOR STANDARDS ACT OF 1938 (INTERNS; IRREGULAR WORK SCHEDULES)

#### NOTICE OF PROPOSED RULEMAKING

Summary: The Board of Directors of the Office of Compliance is publishing proposed rules to implement section 203(a)(2) and 203(c)(3) of the Congressional Accountability Act (P.L. 104-1). The proposed regulations, which are to be applied to the Senate and employees of the Senate, set forth the recommendations of the Deputy Executive Director for the Senate, Office of Compliance, as approved by the Board of Directors, Office of Compliance.

Dates: Comments are due within 30 days after publication of this notice in the CONGRESSIONAL RECORD.

Addresses: Submit written comments to the Chair of the Board of Directors, Office of Compliance, Room LA 200, Library of Congress, Washington, DC 20540-1999. Those wishing to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. Comments may also be transmitted by facsimile ("FAX") machine to (202) 252-3115. This is not a toll-free call. Copies of comments submitted by the public will be available for review at the Law Library Reading Room, Room LM-201, Law Library of Congress, James Madison Memorial Building, Washington, DC, Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m.

For Further Information Contact: Deputy Executive Director for the Senate, Office of Compliance at (202) 252-3100. This notice is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this notice in an alternative format should be made to Mr.

Russell Jackson, Director, Service Department, Office of the Sergeant at Arms and Doorkeeper of the Senate, (202) 244-2705.

#### Supplementary Information:

Background—General: The Congressional Accountability Act of 1995 ("CAA"), PL 104-1, was enacted into law on January 23, 1995. In general, the CAA applies the rights and protections of eleven federal labor and employment law statutes to covered employees and employing offices within the legislative branch. Section 203(a) of the CAA applies the rights and protections of subsections (a)(1) and (d) of section 6, section 7, and section 12(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1) and (d), 207, 212(c) to covered employees and employing offices. Section 203(c) of the CAA directs the Board of Directors of the Office of Compliance established under the CAA to issue regulations to implement the section. Section 203(c)(2) further states that such regulations, with the exception of certain irregular work schedule regulations to be issued under section 203(a)(3), "shall be the same as substantive regulations issued by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section." Section 203(a)(2) of the CAA provides that "the term 'covered employee' [for the purpose of FLSA rights and protections] does not include an intern as defined in regulations. . . ." issued by the Board pursuant to section 203(c).

Background: Part A—Interns: Part A of the proposed regulations defines the term "intern."

While there appears to be no definitive interpretation of the term "intern" for FLSA purposes in current Senate usage, in formulating its definition, the Board has consulted several Senate sources that use and define the term. For example, Interpretive Ruling No. 442 issued by the Senate Select Committee on Ethics on April 15, 1992, states that intern programs designed for the educational benefit of the participants are deemed to be "officially connected" expenses that are related to the performance of a Senator's official responsibilities and that the supervising Senator is responsible for determining if such program "is primarily for the benefit of the intern." Similarly, the Senate Edition of the *Congressional Handbook* (1994) ("Senate Handbook") states that "Interns may be employed on a temporary basis for a few weeks to several months. . . ." (Senate Handbook at p. I-10) The proposed definition has drawn upon these sources. This proposed regulation is not intended to cover other similar job positions such as volunteers or fellows, nor does it cover pages.

Part A—Interns: Section 1. An intern is an individual who:

(a) is performing services in an employing office as part of the pursuit of the individual's educational objectives, and

(b) is appointed on a temporary basis for a period not to exceed one academic semester (including the period between semesters); provided that an intern may be reappointed for one succeeding temporary period.

Section 2. An intern for the purposes of section 203(a)(2) of the Act also includes an individual who is a senior citizen intern appointed under S.Res. 219 (May 5, 1978, as amended by S.Res. 96, April 9, 1991).

Background: Part B—Irrregular Work Schedules: Section 203(c)(3) of the Act directs the Board to issue regulations for employees "whose work schedules directly depend on the schedule of the House of Representatives or the Senate that shall be com-

parable to the provisions of the Fair Labor Standards Act of 1938 that apply to employees who have irregular work schedules."

Section 7(f) of the Fair Labor Standards Act (29 U.S.C. 207(f)) provides that "No employer shall be deemed to have violated subsection (a) [requiring overtime pay after an employee has worked 40 hours in a workweek] by employing any employee in a workweek in excess of the maximum workweek applicable [currently 40 hours] if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work and the contract or agreement (1) specifies a regular rate of pay not less than the minimum provided in . . . section 6 [currently set at \$4.25 per hour] . . . and compensation at not less than one and one-half times that rate for all hours worked in excess of such maximum workweek and (2) provides a weekly guarantee of pay for not more than sixty hours based on the rates so specified." Part B of the proposed regulations implements the provisions of section 203(a)(3) of the CAA by developing FLSA overtime pay requirements for employees of covered employing offices whose schedules directly depend on the schedule of the Senate.

The proposed regulation develops a standard for determining whether an individual's work schedule "directly depends" on the schedule of the Senate. In setting the remaining requirements for such employees, the proposed regulations adopt almost verbatim the requirements of sections 7(f) and 7(o) of the FLSA, (29 U.S.C. §§207(f) and (o)).

Section 203(a)(3) directs the Board to adopt regulations "comparable" to the irregular work provisions of the FLSA. Section 2 of the proposed regulation incorporates the provisions of section 7(f) of the FLSA. The Board has not proposed to vary the requirements of section 7(f) because the Board is not currently aware of any working conditions which would require modification of the requirements for covered employees who work irregular hours, as compared to employees who work irregular hours in the private sector. However, there may be aspects to the Senate's operations, such as very wide variations in weekly hours of work of some covered employees whose schedules directly depend on the schedule of the Senate or times when such employees may work a large number of overtime hours for extended periods, which commentators may believe would require a modification of the proposed regulation. Accordingly, the Board invites comments on whether the contracts or agreements referenced in Section 2 of the proposed regulation can or should be permitted to provide for a guaranty of pay for more than 60 hours and whether the terms and use of such contracts or agreements should differ in some other manner from those permitted in the private sector. The Board further invites comment on whether and to what extent the regulations in this subpart may and should vary in any other respect from the provisions of section 7(f) of the FLSA.

The Board also invites comment on whether this proposed regulation should be considered the sole irregular work schedule provision applicable to covered employees or whether, in addition, section 203 of the CAA applies the irregular hours provision of section 7(f) of the FLSA with respect to covered employees whose work schedules do not directly depend on the schedule of the House or Senate.

Pursuant to section 203(a)(3) of the CAA, the proposed regulation also authorizes employing offices to compensate covered employees with compensatory time off in lieu

of overtime compensation where such employees' work schedules meet the irregular schedule definition of Section 1 of the proposed regulation. The Secretary of Labor has not promulgated regulations regarding the receipt of compensatory time in lieu of overtime compensation by employees who work irregular work schedules and no comparable authority exists for employees covered by the FLSA in the private sector to accrue compensatory time in lieu of paid overtime. The proposed regulation's terms regarding compensatory time are derived from the provisions of section 7(o) of the FLSA which permits public employers to continue the practice of providing compensatory time in lieu of monetary payment for overtime worked. The Board is not currently aware of any working conditions in the Senate which would require a different approach to the accrual and use of compensatory time than that applied to public employers and employees under the FLSA. However, there may be aspects of the Senate's operations which commentators may believe warrant a different approach.

Section 7(o) was incorporated into the FLSA as part of the Fair Labor Standards Amendments of 1985. The legislative history of those amendments reflects that the amendments "respond[ed] to [concerns of state and local governments] by adjusting certain FLSA principles with respect to employees of states and their political subdivisions." S. Rep. No. 159, 99th Cong., 1st Sess. 4 (1985), *reprinted in* 1985 U.S.C.C.A.N. 651, 655. In this regard there was a recognition that "the financial costs of coming into compliance with the FLSA—particularly the overtime provisions of section 7—[were] a matter of grave concern" and that "many state and local government employers and their employees voluntarily [had] worked out arrangements providing for compensatory time off in lieu of pay for hours worked beyond the normally scheduled work week. These arrangements . . . reflect[ed] mutually satisfactory solutions that [were] both fiscally and socially responsible. To the extent practicable, [Congress sought] to accommodate such arrangements". *Id.* at 8-9. In arriving at the maximum number of hours that could be accrued, the original Senate bill provided for a cap of 480 hours of compensatory time for all employees. The House proposed a cap of 180 hours for all employees except public safety employees, who would be permitted to accrual 480 hours. The current provisions of section 7(o) were agreed to in conference. See H.R. CONF. Rep. No. 357, 99th Cong., 1st Sess. 8 (1985), *reprinted in* 1985 U.S.C.C.A.N. 669.

The Board invites comment on whether and to what extent Section 7(o) is an appropriate model for the Board's regulations. The Board also invites comment, if Section 7(o) does provide an appropriate model, on whether and to what extent the regulations, including the accrual and use of compensatory time off and the limits on the maximum number of hours that can be accrued, should vary from the provisions of section 7(o) of the FLSA.

Part B—Irregular Work Schedules: Section 1. For the purposes of this Part, a covered employee's work schedule "directly depends" on the schedule of the Senate only if the employee's normal workweek arrangement requires that the employee be scheduled to work during the hours that the Senate is in session and the employee may not schedule vacation, personal or other leave or time off during those hours, absent emergencies and leaves mandated by law. A covered employee's schedule "directly depends" on the schedule of the Senate under the above definition regardless of the employee's schedule on days when the Senate is not in session.

Section 2. No employing office shall be deemed to have violated section 203(a)(1) of the CAA, which applies the protections of section 7(a)(1) of the Fair Labor Standards Act ("FLSA") to covered employees and employing offices, by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under section 7(a) of the FLSA if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the employee's work schedule directly depends on the schedule of the Senate within the meaning of Section 1, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in subsection (a) of section 6 of the FLSA and compensation at not less than one and one-half times such rate for all hours worked in excess of such maximum workweek [currently 40 hours], and (2) provides a weekly guaranty of pay for not more than sixty hours based on the rates of pay so specified.

Section 3. Covered employees whose work schedules directly depend on the schedule of the Senate within the meaning of Section 1 must be compensated for all hours worked in excess of the maximum workweek applicable to such employees at time-and-a-half either in pay or in time off, pursuant to the relevant collective bargaining agreement, employment agreement or understanding arrived at before the performance of the work. However, those employees employed under a contract or agreement under Section 2 may be compensated in time off only for hours worked in excess of the weekly guaranty. In the case of a covered employee hired prior to the effective date of this regulation, the regular practice in effect immediately prior to the effective date with respect to the grant of compensatory time off in lieu of the receipt of overtime compensation shall constitute an agreement or understanding for purposes of this section. A covered employee under this section may not accrue compensatory time in excess of 240 hours of compensatory time for hours worked, except that if the work of such employee for which compensatory time may be provided includes work in a public safety activity, an emergency response activity or seasonal activity, the employee may accrue not more than 480 hours of compensatory time. Any employee who has accrued the maximum hours of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation. If compensation is paid to an employee for accrued compensatory time, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment. The employee shall be permitted by the employing office to use compensatory time within a reasonable period after making the request if the use of such time does not unduly disrupt the operations of the employing office.

An employee who has accrued compensatory time authorized by this Section shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than (A) the average regular rate received by such employee during the last 3 years of the employee's employment, or (B) the final regular rate received by such employee, whichever is higher.

#### Method of Approval:

The Board recommends that these regulations be approved by resolution of the Senate.

Signed at Washington, DC, on this 10th day of October, 1995.

GLEN D. NAGER,  
Chair of the Board,  
Office of Compliance.

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States was communicated to the Senate by Mr. Thomas, one of his secretaries.

## EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

## REPORT ON HAZARDOUS MATERIALS TRANSPORTATION FOR CALENDAR YEARS 1992-93—MESSAGE FROM THE PRESIDENT—PM 87

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Commerce, Science, and Transportation.

*To the Congress of the United States:*

In accordance with Public Law 103-272, as amended (49 U.S.C. 5121(e)), I transmit herewith the Biennial Report on Hazardous Materials Transportation for Calendar Years 1992-1993 of the Department of Transportation.

WILLIAM J. CLINTON.

THE WHITE HOUSE, October 11, 1995.

## MESSAGES FROM THE HOUSE

At 4 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 436. An act to require the head of any Federal agency to differentiate between fats, oils, and greases of animal, marine, or vegetable origin, and other oils and greases, in issuing certain regulations, and for other purposes.

H.R. 1384. An act to amend title 38, United States Code, to exempt certain full-time health-care professionals of the Department of Veterans Affairs from restrictions on remunerated outside professional activities.

H.R. 1536. An act to amend title 38, United States Code, to extend for 2 years an expiring authority of the Secretary of Veterans Affairs with respect to determination of locality salaries for certain nurse anesthetist positions in the Department of Veterans Affairs.

H.R. 2394. An act to increase, effective as of December 1, 1995, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans.

## MEASURES REFERRED

The following bills were read the first and second times by unanimous consent and referred as indicated: