

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:

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; to the Committee on Veterans' Affairs.

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; to the Committee on 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; to the Committee on Veterans' Affairs.

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-1475. A communication from the Secretary of Agriculture, transmitting, the report on programs, policies, and initiatives which facilitate fathers' involvement in their children's lives; to the Committee on Agriculture, Nutrition, and Forestry.

EC-1476. A communication from the Under Secretary of Defense, transmitting, pursuant to law, the report of a violation of the Antideficiency Act, case number 93-08; to the Committee on Appropriations.

EC-1477. A communication from the Under Secretary of Defense, transmitting, pursuant to law, the report of a violation of the Antideficiency Act, case number 92-14; to the Committee on Appropriations.

EC-1478. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a description of the property to be transferred to the Republic of Panama in accordance with the Panama Canal Treaty of 1977 and its related agreements; to the Committee on Armed Services.

EC-1479. A communication from the Secretary of Housing and Urban Development, transmitting, the report summary entitled, "Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing"; to the Committee on Banking, Housing, and Urban Affairs.

EC-1480. A communication from the President and Chairman of the Export-Import Bank, transmitting, pursuant to law, a statement regarding transactions involving exports to Kuwait; to the Committee on Banking, Housing, and Urban Affairs.

EC-1481. A communication from the President and Chairman of the Export-Import Bank, transmitting, pursuant to law, a statement with respect to a transaction involving the combined-cycle power generation facility in Mexico; to the Committee on Banking, Housing and Urban Affairs.

EC-1482. A communication from the President and Chairman of the Export-Import Bank, transmitting, pursuant to law, a statement regarding transactions involving exports to Pakistan; to the Committee on Banking, Housing, and Urban Affairs.

EC-1483. A communication from the Chairman of Federal Finance Board, transmitting, pursuant to law, the report on low-income housing and community development activities of the federal home loan bank system for 1994; to the Committee on Banking, Housing, and Urban Affairs.

EC-1484. A communication from the Chairman of the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the report on the credit advertising rules under the Truth in Lending Act; to the Committee on Banking, Housing, and Urban Affairs.

#### PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-319. A resolution adopted by the Western States Land Commissioners Associations relative to federal royalty collections; to the Committee on Energy and Natural Resources.

POM-320. A joint resolution adopted by the Legislature of the State of Alaska; to the Committee on Energy and Natural Resources:

##### "HOUSE JOINT RESOLUTION NO. 13

"Whereas in Sec. 1002 of the Alaska National Interest Lands Conservation Act (ANILCA), the United States Congress reserved the right to permit further oil and gas exploration, development, and production within the coastal plain of the Arctic National Wildlife Refuge, Alaska; and

"Whereas the oil industry, the state, and the United States Department of the Interior consider the coastal plain to have the highest potential for discovery of very large oil and gas accumulations on the continent of North America, estimated to be as much as 10,000,000,000 barrels of recoverable oil; and

"Whereas the residents of the North Slope Borough, within which the coastal plain is located, are supportive of development in the '1002 study area'; and

"Whereas oil and gas exploration and development of the coastal plain of the refuge and adjacent land could result in major discoveries that would reduce our nation's future need for imported oil, help balance the nation's trade deficit, and significantly increase the nation's security; and

"Whereas, for the first year ever, more than one-half of the oil used in the United States has come from foreign sources as domestic crude oil production fell to 6,600,000 barrels per day, its lowest annual level since 1954; and

"Whereas development of oil at Prudhoe Bay, Kuparuk, Endicott, Lisburne, and Milne Point has resulted in thousands of jobs throughout the United States and projected job creation as a result of coastal plain oil development will have a positive effect in all 50 states; and

"Whereas Prudhoe Bay production is declining by approximately 10 percent a year; and

"Whereas opening the coastal plain of the Arctic National Wildlife Refuge now allows sufficient time for planning environmental safeguards, development, and national security review; and

"Whereas the oil and gas industry and related Alaskan employment have been severely affected by reduced oil and gas activity, and the reduction in industry investment and employment has broad implications for the Alaskan work force and the entire state economy; and

"Whereas the 1,500,000-acre coastal plain of the refuge comprises only eight percent of the 19,000,000-acre refuge, and the development of the oil and gas reserves in the refuge's coastal plain would affect an area of only 5,000 to 7,000 acres, which is one and one-half percent of the area of the coastal plain; and

"Whereas 8,000,000 of the 19,000,000 acres of the refuge have already been set aside as wilderness; and

"Whereas the oil industry has shown at Prudhoe Bay, as well as at other locations along the Arctic coastal plain, that it can safely conduct oil and gas activity without adversely affecting the environment or wildlife populations; be it

*"Resolved by the Alaska State Legislature,* That the Congress of the United States is urged to pass legislation to open the coastal plain of the Arctic National Wildlife Refuge, Alaska, to oil and gas exploration, development, and production; and be it further

*"Resolved,* That that activity be conducted in a manner that protects the environment and uses the state's work force to the maximum extent possible."

POM-321. A resolution adopted by the Council of the City of West Branch, Michigan relative to waste; to the Committee on Environment and Public Works.

POM-322. A resolution adopted by the Council of the City of Warren, Ohio relative to traffic control devices; to the Committee on Environment and Public Works.

POM-323. A joint resolution adopted by the Legislature of the State of California; to the Committee on Environment and Public Works:

##### "JOINT RESOLUTION NO. 15

"Whereas, due to chronic failures of the sewage system that serves the City of Tijuana, in Baja California, Mexico, large amounts of untreated wastewater flow into the Tijuana River and its tributaries and across the international border into the San Diego area of this state; and

"Whereas, the flows of untreated wastewater often contain toxic contaminants because Mexico does not require the pretreatment of industrial waste and thus pose a threat to both public health and the ecosystems of the Tijuana River estuary and beaches located near the mouth of the river; and

"Whereas, to address those issues, in July, 1990, the federal government and the Mexican government signed Minute 283, calling for a conceptual plan for an international solution to the border sanitation problem in San Diego, California and Tijuana, Baja California; and

"Whereas, the two governments agreed in Minute 283 to the creation of an international wastewater treatment plant, to be constructed on the southwest bank of the Tijuana River on the United States side of the border, that will be capable of treating twenty-five million gallons of untreated wastewater per day and is to be funded and supervised by both the United States and Mexico, through the United States section of the International Boundary and Water Commission; Now, therefore, be it

*"Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to move with all deliberate speed, and take all necessary steps, to complete the construction of the International Wastewater Treatment Plant on the Tijuana River near San Diego as soon as possible; and be it further

*"Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-324. A joint resolution adopted by the Legislature of the State of Nevada; to the