



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

E-179186

40103
October 24, 1973

The Honorable
The Secretary of the Interior

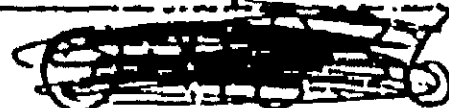
Dear Mr. Secretary:

Reference is made to letter of July 11, 1973, reference MEM-ADM-Fin, from Miss Hyldred N. Jones, Authorized Certifying Officer, Bureau of Mines, Denver, Colorado, requesting a decision from our Office relating to certain problems her office has encountered during a current review of overtime pay to employees in travel status.]

The authority of this Office to issue advance decisions to certifying officers is limited to questions involved in a specific voucher presented to them for certification. 31 U.S.C. 82d; 26 Comp. Gen. 797 (1947). Accordingly we are treating the instant submission as a request for a decision from you under 31 U.S.C. 74. See 51 Comp. Gen. 701 (1972) and 47 id. 70 (1967).

It is stated in the letter of July 11, 1973, that a review of overtime payments made by the Bureau of Mines during calendar years 1970, 1971, and 1972 has highlighted some payments which may be in violation of the regulations in the Federal Personnel Manual Supplement 990-1, Book III, section 550.112(e). These regulations specify conditions under which an employee in a travel status away from his official duty station may receive overtime pay because the travel is considered as hours of employment.

The Bureau's mission in mine health and safety has necessitated many employees affiliated with health and safety enforcement working long and unusual hours. Subsequently the Bureau of Mines Manual was revised to include provisions for identifying certain travel as being an inherent part of and inseparable from the work performed by certain employees, and therefore compensable. Part 370 of the Bureau of Mines Manual, Chapter 610, 1.11A, specifies that to the extent feasible travel time shall be scheduled within the regularly scheduled administrative workweek. To minimize travel during nonduty time work schedules have been varied



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for certain categories of employees in the Bureau of Mines. Specifically, the first 40-hour work schedule was authorized for certain employees. Subsequently, employees who work on the first 40-hour schedule, in many cases may not be paid overtime for specific hours traveled but will be paid overtime for excess hours over 40 per week, which may occur because travel was recorded on duty hours earlier in the week. Indirectly, travel is compensated for at overtime rates for those employees. There is not always a judicious use of the first 40-hour schedule because employees who are so scheduled receive training, attend meetings, and perform travel not always identifiable to the specifically assigned work which is authorized or scheduled.

The payment of all overtime in the Bureau of Mines is based on approval by supervisors delegated that specific authority. However, no specific justification was required prior to the reissue of the payroll portion of the Bureau of Mines Manual on November 16, 1972. During the period of the review, overtime was approved on the time and attendance by a signature but no justification. The following 6 case histories are submitted as being representative of the payment of overtime for time spent in a travel status:

Case 1 - Michael Evanto

<u>Work Schedule</u>	<u>Date</u>	<u>Purpose of Travel</u>	<u>Hours and Rate</u>
8 AM to 4:30 PM	6/23/70	Demonstrations	3 OT at \$7.40=\$ 22.20
8 AM to 4:30 PM	6/24/70	Demonstrations	2 OT at 7.40= 14.80
8 AM to 4:30 PM	6/25/70	Demonstrations	3 OT at 7.40= 22.20
First 40 hours	2/1/71	Conduct classes	2 OT at 8.31= 16.62
First 40 hours	2/22/71	Conduct classes	1.5 OT at 8.31= 12.47
First 40 hours	8/29/71	Instruct	4 OT at 8.31= 33.24
First 40 hours	12/12/71	Travel to training	8 OT at 8.31= 66.48
First 40 hours	12/17/71	Travel from training	8 OT at 8.31= 66.48
First 40 hours	3/5/72	Travel to training	6 OT at 8.76= 52.56
First 40 hours	5/11/72	Travel to contest	1 OT at 8.76= 8.76
First 40 hours	5/13/72	Travel from contest	2.5 OT at 8.76= 21.90
First 40 hours	9/25/72	Conduct classes	4 OT at 8.76= 35.04
First 40 hours	9/29/72	Conduct classes	4 OT at 8.76= 35.04
First 40 hours	9/30/72	Conduct classes	8 OT at 8.76= 70.08
First 40 hours	10/19/72	Meeting	2 CR at 8.39= 16.78
			<u>\$494.65</u>

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Case 2 - Gary R. Milton

<u>Work Schedule</u>	<u>Date</u>	<u>Purpose of Overtime</u>	<u>Hours and Rate</u>	
7:45 AM to 4:15 PM	9/18/71	Training	8	OT at \$5.01=\$ 40.08
First 40 hours	9/20/71	Training	1.5	OT at 5.01= 7.52
First 40 hours	9/21/71	Training	3	OT at 5.01= 15.03
First 40 hours	9/22/71	Training	3	OT at 5.01= 15.03
First 40 hours	9/23/71	Training	3	OT at 5.01= 15.03
First 40 hours	9/24/71	Training	3	OT at 5.01= 15.03
First 40 hours	9/27/71	Training	5	OT at 5.01= 25.05
First 40 hours	9/28/71	Training	1	OT at 5.01= 5.01
First 40 hours	9/29/71	Training	1	OT at 5.01= 5.01
First 40 hours	9/30/71	Training	1	OT at 5.01= 5.01
First 40 hours	10/4/71	Training	2	OT at 5.01= 10.02
First 40 hours	10/5/71	Training	1	OT at 5.01= 5.01
First 40 hours	10/6/71	Training	3	OT at 5.01= 15.03
First 40 hours	10/7/71	Training	2	OT at 5.01= 10.02
7:45 AM to 4:15 PM	1/11/72	Training	2	OT at 5.28= 10.56
7:45 AM to 4:15 PM	1/13/72	Training	4	OT at 5.28= 21.12
7:45 AM to 4:15 PM	1/14/72	Training	3	OT at 5.28= 15.84
7:45 AM to 4:15 PM	1/17/72	Training	5	OT at 5.28= 26.40
7:45 AM to 4:15 PM	1/18/72	Training	5	OT at 5.28= 26.40
7:45 AM to 4:15 PM	1/19/72	Training	5	OT at 5.28= 26.40
7:45 AM to 4:15 PM	1/20/72	Training	4	OT at 5.28= 21.12
7:45 AM to 4:15 PM	1/21/72	Training	4	OT at 5.28= 21.12
7:45 AM to 4:15 PM	1/27/72	Training	1	OT at 5.28= 5.28
7:45 AM to 4:15 PM	1/29/72	Training	1	OT at 5.28= 5.28
7:45 AM to 4:15 PM	1/31/72	Training	3	OT at 5.28= 15.84
7:45 AM to 4:15 PM	2/1/72	Training	3	OT at 5.28= 15.84
7:45 AM to 4:15 PM	2/2/72	Training	1	OT at 5.28= 5.28
7:45 AM to 4:15 PM	2/3/72	Training	1	OT at 5.28= 5.28
7:45 AM to 4:15 PM	2/4/72	Training	1	OT at 5.28= 5.28
7:45 AM to 4:15 PM	4/16/72	Training	6	OT at 5.28= 31.68
				<u>\$446.60</u>

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Case 3 - Melvin J. Daugherty

<u>Work Schedule</u>	<u>Date</u>	<u>Purpose of Travel</u>	<u>Hours and Rate</u>	
8 AM to 4:30 PM	5/22/70	Dust survey	2.5 OT at \$6.62=	\$ 16.55
8 AM to 4:30 PM	5/28/70	Dust survey	2 OT at 6.62=	13.24
8 AM to 4:30 PM	6/5/70	Dust survey	2.5 OT at 6.62=	16.55
8 AM to 4:30 PM	6/19/70	Dust survey	2 OT at 6.62=	13.24
8 AM to 4:30 PM	6/26/70	Dust survey	2.2 OT at 6.62=	14.50
8 AM to 4:30 PM	7/2/70	Dust survey	2.5 OT at 6.62=	16.55
8 AM to 4:30 PM	7/11/70	Dust survey	6 OT at 6.62=	39.72
8 AM to 4:30 PM	7/20/70	Dust survey	1 OT at 6.62=	6.62
8 AM to 4:30 PM	7/25/70	Dust survey	7 OT at 6.62=	46.34
8 AM to 4:30 PM	8/8/70	Dust survey	7 OT at 6.62=	46.34
8 AM to 4:30 PM	9/21/70	Conduct noise survey.	3 OT at 6.62=	19.86
8 AM to 4:30 PM	10/1/70	Conduct noise survey	3 OT at 6.62=	19.86
8 AM to 4:30 PM	2/5/71	Dust survey	2.5 OT at 7.02=	17.55
8 AM to 4:30 PM	3/14/71	Dust survey	3 OT at 7.02=	21.06
8 AM to 4:30 PM	3/20/71	Dust survey	3 OT at 7.02=	21.06
8 AM to 4:30 PM	3/21/71	Dust survey	3 OT at 7.02=	21.06
8 AM to 4:30 PM	4/24/71	Dust survey	3 OT at 7.02=	21.06
8 AM to 4:30 PM	4/25/71	Dust survey	3 OT at 7.02=	21.06
8 AM to 4:30 PM	5/1/71	Dust survey	6 OT at 7.02=	42.12
8 AM to 4:30 PM	5/2/71	Dust survey	6 OT at 7.02=	42.12
8 AM to 4:30 PM	5/15/71	Dust survey	6 OT at 7.02=	42.12
8 AM to 4:30 PM	5/16/71	Dust survey	6 OT at 7.02=	42.12
8 AM to 4:30 PM	6/14/71	Dust survey	1.5 OT at 7.02=	10.53
8 AM to 4:30 PM	6/25/71	Dust survey	1.5 OT at 7.02=	10.53
8 AM to 4:30 PM	8/8/71	Dust survey	7 OT at 7.02=	49.14
8 AM to 4:30 PM	8/16/71	Dust survey	3 OT at 7.02=	21.06
8 AM to 4:30 PM	9/18/71	Dust survey	2 OT at 7.02=	14.04
8 AM to 4:30 PM	11/13/71	Dust survey	3.2 OT at 7.02=	22.46
8 AM to 4:30 PM	12/18/71	Dust survey	9 OT at 7.02=	63.18
8 AM to 4:30 PM	1/9/72	Dust survey	12 OT at 7.40=	88.80
8 AM to 4:30 PM	1/22/72	Dust survey	12 OT at 7.40=	88.80
8 AM to 4:30 PM	1/30/72	Dust survey	12 OT at 7.40=	88.80
8 AM to 4:30 PM	2/12/72	Dust survey	12 OT at 7.62=	91.44
8 AM to 4:30 PM	2/13/72	Dust survey	3 OT at 7.62=	22.86
8 AM to 4:30 PM	4/9/72	Dust survey	2 OT at 7.62=	15.24
8 AM to 4:30 PM	4/14/72	Dust survey	3 OT at 7.62=	22.86
8 AM to 4:30 PM	4/21/72	Dust survey	3 OT at 7.62=	22.86
8 AM to 4:30 PM	5/5/72	Dust survey	3 OT at 7.62=	22.86
8 AM to 4:30 PM	5/12/72	Dust survey	3 OT at 7.62=	22.86
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Case 4 - Harold F. Carden

<u>Work Schedule</u>	<u>Date</u>	<u>Purpose of Travel</u>	<u>Hours and Rate</u>
8 AM to 4:30 PM	8/31/70	Institute	1 OT at \$7.40=\$ 7.40
8 AM to 4:30 PM	9/3/70	Institute	1 OT at 7.40= 7.40
8 AM to 4:30 PM	5/11/71	Check equipment in District A offices	1 OT at 7.98= 7.98
8 AM to 4:30 PM	5/21/71	Check equipment in District A offices	6 OT at 7.98= 47.88
8 AM to 4:30 PM	6/11/71	Check equipment in District A offices	3 OT at 7.98= 23.94
8 AM to 4:30 PM	9/28/71	Check equipment in District A offices	2 OT at 8.31= 16.62
8 AM to 4:30 PM	10/26/71	Check equipment in District A offices	2 OT at 8.31= 16.62
8 AM to 4:30 PM	10/30/71	Check equipment in District A offices	4 OT at 8.31= 33.24
8 AM to 4:30 PM	11/8/71	Check equipment in District A offices	2 OT at 8.31= 16.62
8 AM to 4:30 PM	11/12/71	Check equipment in District A offices	2 OT at 8.31= 16.62
			<u>\$194.32</u>

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Case 5 - James A. Greer

<u>Work Schedule</u>	<u>Date</u>	<u>Purpose of Travel</u>	<u>Hours and Rate</u>	
8 AM to 4:30 PM	12/19/69	Conduct lectures	3	OT at \$7.40= \$ 22.20
8 AM to 4:30 PM	2/15/70	Demonstrations	4.5	OT at 7.40= 33.30
8 AM to 4:30 PM	3/7/70	Conduct lectures	3.5	OT at 7.40= 25.90
8 AM to 4:30 PM	3/17/70	Conduct lectures	1.5	OT at 7.40= 11.10
8 AM to 4:30 PM	4/12/70	Conduct lectures	7	OT at 7.40= 51.80
8 AM to 4:30 PM	4/16/70	Conduct lectures	2	OT at 7.40= 14.80
8 AM to 4:30 PM	6/23/70	Demonstrations	3	OT at 7.40= 22.20
8 AM to 4:30 PM	6/24/70	Demonstrations	1.5	OT at 7.40= 11.10
8 AM to 4:30 PM	6/25/70	Demonstrations	3	OT at 7.40= 22.20
First 40 hours	10/8/70	Demonstrations	2	OT at 7.40= 14.80
First 40 hours	10/10/70	Demonstrations	2	OT at 7.40= 14.80
First 40 hours	10/12/70	Demonstrations	4	OT at 7.40= 29.60
First 40 hours	10/13/70	Demonstrations	2	OT at 7.40= 14.80
First 40 hours	10/17/70	Demonstrations	8	OT at 7.40= 59.20
First 40 hours	10/21/70	Demonstrations	2	OT at 7.40= 14.80
First 40 hours	11/18/70	Not specified	3	OT at 7.40= 22.20
First 40 hours	11/24/70	Demonstrations	3	OT at 7.40= 22.20
First 40 hours	1/31/71	Conduct classes	3	OT at 8.31= 24.93
First 40 hours	2/1/71	Conduct classes	2	OT at 8.31= 16.62
First 40 hours	2/7/71	Conduct classes	3	OT at 8.31= 24.93
First 40 hours	2/12/71	Conduct classes	2	OT at 8.31= 16.62
First 40 hours	2/22/71	Conduct classes	2	OT at 8.31= 16.62
First 40 hours	1/15/72	Instruct classes	5	OT at 8.76= 43.80
First 40 hours	1/26/72	Instruct classes	.5	OT at 8.76= 4.38
First 40 hours	1/29/72	Instruct classes	2.5	OT at 8.76= 21.90
First 40 hours	4/21/72	Instruct classes	2	OT at 8.76= 17.52
First 40 hours	7/22/72	Instruct classes	8	OT at 8.76= 70.08
First 40 hours	7/23/72	Instruct classes	7	OT at 8.76= 61.32
First 40 hours	7/29/72	Instruct classes	14	OT at 8.76= 122.64
First 40 hours	8/6/72	Instruct classes	7	OT at 8.76= 61.32
First 40 hours	8/11/72	Instruct classes	4	OT at 8.76= 35.04
First 40 hours	8/12/72	Instruct classes	2.5	OT at 8.76= 21.90
				<u>\$966.62</u>

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Case 6 - Bobby E. Hill

<u>Work Schedule</u>	<u>Date</u>	<u>Purpose of Travel</u>	<u>Hours and Rate</u>
7:45 AM to 4:30 PM	1/28/70	Travel to meeting	1.3 OT at \$7.40=\$ 9.62
7:45 AM to 4:30 PM	2/4/70	Travel to meeting	1.5 OT at 7.40= 11.10
7:45 AM to 4:30 PM	2/16/70	Travel to school	4 OT at 7.40= 29.60
7:45 AM to 4:30 PM	3/22/70	Travel from meeting	3 OT at 7.28= 21.84
7:45 AM to 4:30 PM	3/28/70	Travel from staff meeting	2.5 OT at 7.40= 18.50
7:45 AM to 4:30 PM	3/30/70	Travel to staff meeting	1.3 OT at 7.40= 9.62
7:45 AM to 4:30 PM	10/17/70	Travel to contest	16 OT at 7.40= 118.40
7:45 AM to 4:30 PM	1/17/71	Travel to meeting	3 OT at 8.31= 24.93
7:45 AM to 4:30 PM	1/22/71	Travel from meeting	2 OT at 8.31= 16.62
7:45 AM to 4:30 PM	4/28/71	Travel to meeting	4 OT at 8.31= 33.24
First 40 hours	7/26/71	Travel to meeting	4 OT at 8.31= 33.24
First 40 hours	7/28/71	Travel from meeting	4 OT at 8.31= 33.24
First 40 hours	8/2/71	Travel to meeting	4 OT at 8.31= 33.24
First 40 hours	8/3/71	Travel from meeting	3.5 OT at 8.31= 29.08
First 40 hours	10/3/71	Travel to contest	3 OT at 8.31= 24.93
First 40 hours	11/12/71	Travel to school	5 OT at 8.31= 41.55
First 40 hours	11/12/71	Attending school	3 OT at 8.31= 24.93
			<u>\$513.68</u>

The following questions are submitted for a decision from our Office:

- "1. Whether payments such as those in the enclosed cases were proper within the regulations of the Civil Service Commission and the Bureau of Mines.
- "2. If all payments were not proper, were any of them proper and which ones must be recovered?
- "3. If payments were not proper, are they subject to waivers as administrative errors under the provisions of 5 U.S.C. 5584, as amended?
- "4. If waivers are applicable, can a group waiver be obtained for all such employees for the offensive period, or must each one be handled individually?"

The authority for the payment of time in a travel status away from the official duty station of an employee is provided for in 5 U.S.C. 5542(b)(2)(B) and provides as follows:

"(b) For the purpose of this subchapter—

* * * * *

"(2) time spent in a travel status away from the official-duty station of an employee is not hours of employment unless—

* * * * *

"(B) the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively."

The conditions set forth at 5 U.S.C. 5542(b)(2)(B)(i)-(iv) are explained in Federal Personnel Manual Supplement 990-2, Book 550, subchapter S1-3b(2)(c)(iv) as follows:

"—Travel which occurs within the employee's regularly scheduled hours of work, and travel which involves the performance of work or which is carried out under such arduous and unusual conditions that it is inseparable from work, are not new conditions under which travel is considered hours of employment. Generally, the travel or transportation conditions must be viewed in the light of particular circumstances under which the travel is required. However, the Comptroller General, in a number of decisions, has established certain guides.

"—Thus, travel under arduous conditions would include travel over unusually adverse terrain, during severe weather conditions, or to remote, barely accessible facilities by foot, horseback, or a truck. Travel by automobile over a hard surfaced road when no unusually adverse weather conditions are encountered, or travel by rail would not normally constitute travel under arduous conditions. In addition, the time of travel (whether to be performed during day or night) or distance traveled, is not ordinarily considered in determining whether the travel is performed under arduous conditions. A distinction should also be drawn between arduous conditions and hazardous conditions, keeping in mind that the latter may contribute to the former. (See 28 Comp. Gen. 547; 41 id 82.)

"—Travel which involves the performance of work while traveling generally means, within the statute and the Commission's regulations, work which can only be performed while traveling; (such as coaling; communications or signal devices used in air or rail traffic or escorting a prisoner to a distant prison). On the other hand, when an agency requires an employee to perform work while traveling, the time spent performing the work is work even though it is the kind of work that would ordinarily be performed at the employee's place of business. In this latter situation, the criteria used in determining whether or not the work was required to be performed while traveling will be that which is used in determining whether or not overtime work is officially ordered or approved. Pay, if warranted, will be limited to time actually spent working.

"--Travel which 'is incident to travel that involves the performance or work while traveling' is a new condition under which travel is considered to be hours of employment. An employee generally will be in this situation when he is on a 'deadhead' trip, either traveling to a destination to board a means of transportation upon which he will be performing work while traveling, or, having performed work while traveling, returning to his official duty station. Entitlement under this condition is limited to the situation where the work performed while traveling is work which can only be performed while traveling. It should be noted that the travel still must meet the requirement of being 'away from the official duty station' to be considered hours of employment. (See Comptroller General decision B-163608, April 29, 1968.) An example of travel of this type is a truck driver deadheading to a point of pickup of a truck to be driven to another destination. An example of travel not meeting this condition would be travel by an employee to a point to hold a hearing even though he is required to review the transcript during his return trip (which would be payable as overtime work) since this is not the kind of work which can only be performed while traveling.

"--Travel which results from an event which cannot be scheduled or controlled administratively is also a new condition under which travel is considered hours of work. The phrase 'could not be scheduled or controlled administratively' refers to the ability of an executive agency (as defined in section 105 of title 5, United States Code) and the government of the District of Columbia to control the event which necessitates an employee's travel. The control is assumed to be the agency's whether the agency has sole control, or the control is achieved through a group of agencies acting in concert, such as a training program or conference sponsored by a group of Federal agencies, or sponsored by one in the interest of all, or through several agencies participating in an activity of mutual concern, such as an agency hearing on an aircraft accident.

"--For example, training courses throughout the country generally are scheduled to start at the beginning of the workweek, and usually start at 9 a.m. daily. Attendance at training centers

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located away from an employee's duty station, therefore, usually will require the employee to travel outside his normal work hours. Since the agency which is conducting the training course can schedule the hours of training, the training course is an event which can be scheduled or controlled administratively; and employees who attend the course will not be paid for time in travel status regardless of whether employed by the agency conducting the training course or another agency.

"—On the other hand, travel will be considered hours of work when it results from unforeseen circumstances (e.g., a breakdown of equipment) or from an event which is scheduled or controlled by someone or some organization outside of Government. (See Comptroller General decision 6-163634, April 19, 1968.)"

The information furnished shows that the travel involved was performed mostly by Government owned vehicles outside of the regular tour of duty of the employees involved to attend meetings, conduct lectures, check equipment, make dust and noise surveys, training, and to put on demonstrations. In some instances it is indicated that the employees transported mine inspection equipment to one or more worksites in Government owned vehicles where they performed mine inspection work. In this connection we have held that the fact that, incident to the purpose of travel, files, documents, supplies, etc., are transported does not change the character of travel. 51 Comp. Gen. 727 (1972), 40 id. 439 (1961), 31 id. 142 (1958).

It is noted that one of the employees, Mr. Gary R. Milton, was a trainee and was paid a total of \$446.60 overtime compensation while engaged in training. The authority for training of civilian employees is provided by 5 U.S.C. 4101-4118 and such training may be either through the use of Government or non-Government facilities. Under the regulations of the Civil Service Commission issued pursuant thereto, overtime compensation is precluded except under specified circumstances which do not appear applicable here. 5 CFR 410.602.

We note that several employees were assigned regular hours of duty each day and later their tour of duty was established as the first 8 hours of duty performed. The authority for establishing the first

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40 hours of duty performed as the regularly scheduled administrative workweek is provided for in 5 CFR 610.111(b) which provides as follows:

"(b) When it is impracticable to prescribe a regular schedule of definite hours of duty for each workday of a regularly scheduled administrative workweek, the head of an agency may establish the first 40 hours of duty performed within a period of not more than 6 days of the administrative workweek as the basic workweek, and additional hours of officially ordered or approved duty within the administrative workweek are overtime work." (Underscoring supplied.)

The regulation does not define the phrase "first 40 hours of duty." In cases such as presented here when the employee's workweek is the first 40 hours of duty and the employee is required to travel frequently we consider the phrase "first 40 hours of duty" to be used in a sense of time or hours devoted to actual work rather than in a sense of duty of employees during portions of tours of duty that they were not engaged in actual work but were in a travel status. See Conn v. United States, 68 B. Supp. 966 (1946); Bumpus v. Remington Arms Co., 74 F. Supp. 788 (1947). Thus we conclude that the hours of duty or the hours worked to include all time during which an employee is required to be on duty at his headquarters or to be at a prescribed work place and time spent in travel to and from a prescribed place of duty will not be considered hours of duty unless such travel qualifies under one of the four conditions specified in 5 U.S.C. 5542(b)(2)(B).

Under 5 U.S.C. 6101(b)(2) the Congress stated that as a general practice travel should not be scheduled at times outside of an employee's regularly scheduled workweek, but at the same time it left to the discretion of the employing agency authority to determine when it is impracticable to schedule official travel within the scheduled workweek of an employee. Moreover, the Congress did not provide a remedy in a case where an agency fails to adhere to the policy enunciated in 5 U.S.C. 6101(b)(2), there being nothing in that section requiring or permitting the payment of compensation for travel outside an employee's regularly scheduled workweek.

When the Congress enacted the provisions contained in 5 U.S.C. 5542(b)(2)(B), it specifically limited the conditions under which time spent in a travel status outside of an employee's regularly scheduled administrative workweek could be regarded as hours of employment. Unless

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such travel qualifies under one of the four conditions specified in section 5542(b)(2)(D), there is no basis for paying an employee for the time spent in travel outside of his regularly scheduled administrative workweek.

We agree with the guidelines set forth in Federal Personnel Manual Supplement 990-2, quoted above, for payment of travel time outside of an employee's regularly scheduled administrative workweek and we consider these guidelines correctly interpret the controlling statutory provision.

In light of the above payment for time spent in a travel status under the conditions outlined in the letter of July 11, 1973, would not be authorized. Therefore question number 1 is answered in the negative.

In view of the answer to question number 1, wherein we considered the payment of overtime compensation to the employees for time spent in a travel status under the conditions outlined to be improper, all of the overpayments are for recovery. Question number 2 is answered accordingly.

The erroneous payments involved are overpayments of pay resulting from administrative error. Therefore, they are subject to waiver under 5 U.S.C. 5584 and the implementing regulations in 4 CFR 21 et seq. Question number 3 is answered accordingly.

Concerning your last question, there is no authority under the various statutes or implementing regulations for waiving unknown debts owed by unknown individuals. However, in cases where a number of identified employees of an agency are erroneously paid due to the same administrative misconstruction of the governing statutes or regulations there seems to be little need for conducting a separate investigation and preparing a separate report of such investigation in each individual case. Rather it will suffice if a single investigative report is made listing the names of the employees involved and the amounts owing by each (including references to applicable payment vouchers) and identifying the administrative error in construction of the controlling law or regulation giving rise to the improper payments. A certification also should be made that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of any of the employees involved or other persons having an interest in obtaining waivers of the claims.

In order to avoid the possibility of conflicting waiver determinations being made by the employing agency and the General Accounting

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Office in cases where the same report covers individual debts some of which are \$500 or less while others are in excess of \$500, all such cases should be forwarded to the General Accounting Office for waiver determinations. Question number 4 is answered accordingly.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States