



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

April 30, 1979

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MEMORANDUM FOR: Office Directors

FROM: Lee V. Gossick, Executive Director for Operations

SUBJECT: THREE MILE ISLAND INCIDENT (TMI) RESPONSE

This memorandum will confirm my earlier verbal directive to you to take whatever steps are necessary to support fully the NRC response to the TMI incident.

The Controller and Director, Office of Administration are authorized to waive existing NRC restrictions on travel, overtime, and premium pay within the limits of our statutory authority. The requirement to grant compensatory time in lieu of approved irregular overtime pay to employees whose basic rate of pay exceeds GS-10/10 is waived for those employees supporting TMI efforts. The statutory maximum pay limit, however, remains fixed at \$1,827.20 per pay period, and cannot be exceeded either in dollars paid or in compensatory time credited.

Attached are several fact sheets which may be helpful in taking administrative actions. Specific questions on hours of work and compensation should be directed to Ms Huel Meadows, Division of Organization and Personnel, at 492-8210. Questions on travel should be directed to Mr. Robert Rakowski, Division of Accounting, at 492-7030. Questions on time and attendance cards should be directed to Ms Joyan Thompson, Division of Accounting, Employee Compensation Unit, at 492-7236.

Handwritten signature of Lee V. Gossick

Lee V. Gossick
Executive Director for Operations

Enclosures:

- Issue - Night Differential
- Issue - Sunday Differential
- Issue - Overtime Premium Pay

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

APR 6 1979

Issue:

Are professional and clerical employees of NRC entitled to night differential while working nights at the emergency centers dealing with Three Mile Island Nuclear Plant?

Response:

° Current Night Work:

Employees currently working at the emergency centers are not entitled to night differential since the work was not regularly scheduled night work.

° By Comptroller General decision, in order to be "regularly scheduled," night work must be duly authorized in advance by proper authority and must be scheduled to recur on successive days or after specified intervals. NRC Appendix 4136, Part IV B2 (copy attached), describes this in greater detail.

° Future Night Work:

If a duly authorized official can authorize the work in advance and schedule it to recur on successive days or at specified intervals, then it is bona fide regularly scheduled night work and employees working during those shifts between 6:00 p.m. and 6:00 a.m. would be entitled to night differential of 10% of base pay. The schedule is put into effect by processing a work schedule change (SF-181) for the appropriate employee.

° Once this bona fide night shift is established, different people may be rotated or assigned to work the shift with entitlement to night differential.

° The above information applies to both exempt and non-exempt employees (Title 5 and Fair Labor Standards Act). (See NRC Appendix 4136, Part IV A)

° We anticipate many additional questions on pay-related matters dealing with the emergency (stand-by duty, Sunday work, payment for travel, etc.). Please contact the Division of Organization and Personnel with all questions so that relevant laws, regulations and Comptroller General decisions may be consulted prior to payment.

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PART IV
NIGHT WORK

A. AUTHORITY AND APPLICABILITY

Section 5545 of Title 5, U.S.C., requires, with certain exceptions noted in B.1.a. and b., below, (1) that any regularly scheduled work between the hours of 6:00 p.m. on any day and 6:00 a.m. the following day is considered night work; and (2) that the employee will be paid for the time involved at the basic rate of pay, plus premium pay ("night differential") at 10 percent of the basic rate of pay. This statute applies to most salaried employees in NRC whether full-time or part-time (see Part VIII); the following types of NRC employees, however, are not covered under the above statutory provisions:

1. Locality rate employees (see D., below).
2. WAE (When Actually Employed) employees (see Part VIII).
3. Experts and consultants (see Chapter 4139).
4. Employees whose basic rate equals or exceeds the maximum rate for grade GS-15 (see Chapter 4136-0514).
5. Employees receiving additional annual pay in lieu of premium pay (see Part VII).
6. Certain employees being given training under 5 U.S.C. 4101-18 (formerly the Government Employees Training Act) (see Chapter 4136-0516).

B. REQUIREMENTS

1. Night Work. Night work is that which falls between 6:00 p.m. on any day and 6:00 a.m. the following day. Night differential is intended as payment for certain recognizable inconveniences resulting from "regularly scheduled" work at these abnormal

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clock hours. Extra pay authorized for services performed after 6:00 p.m. is computed on the basis of either standard or daylight saving time, depending upon which time is observed by law, custom, or practice where such services are performed.

2. Regularly Scheduled. To constitute "regularly scheduled" work, the night work, in accordance with relevant Comptroller General decisions must conform to either one of the standards below, as applicable.
 - a. the work must be duly authorized in advance by proper authority and must be scheduled to recur on successive days, or after specified intervals such as:
 - (1) on only 1 day of each successive workweek (25 Comp. Gen. 151);
 - (2) on at least 1 day of each of 2 or more successive workweeks (36 Comp. Gen. 657);
 - (3) on the first 3 days of every other workweek (39 Comp. Gen. 73); or
 - b. the work must have continued for a period of time sufficiently long to be regarded as "habitual" or "usual or customary." In cases where the "inherent requirement" of employment is that the employee must remain on duty until a task is completed, or until relieved by another employee, the "night work" must be performed on a substantial proportion of the days, over a period of time, even though the night work does not follow a fixed hours-of-work pattern (41 Comp. Gen. 8).
3. Absences on Holidays. Payment of a night differential is authorized during periods when an employee is excused from regularly scheduled night work on a holiday or other nonworkday.
4. Absence on Leave. Payment of a night differential is authorized for periods of paid leave only during pay periods in which the employee's total paid leave inclusive of both night and day work is less than 8 hours (5 U.S.C. 5545 (a)(2)). If an employee has 8 hours or more of paid leave (other than the noted exceptions), night differential will be paid only for the night differential hours actually worked. When an employee's tour of duty permits payment of night differential pay, he or



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April 20, 1979

Issue:

Are NRC employees entitled to Sunday premium pay while working at emergency centers dealing with Three Mile Island Nuclear Plant?

Response:

- ° Yes, in most cases, if the work does not constitute overtime. Work on Sunday is compensated at the rate of the employee's basic pay plus 25% for any regularly scheduled 8-hour period of service, which is not overtime work, any part of which falls into the period between Saturday midnight and Sunday midnight.
- ° If the employee's work on Sunday constitutes overtime for that employee, he/she is compensated under overtime pay provisions rather than Sunday premium pay provisions.
- ° Some employees are excluded from the Sunday premium provision, e.g., part-time employees and those whose basic rate of pay exceeds GS-15/10.

Further details can be found in NRC Appendix 4136, Part V, Sunday work.



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Issue:

Overtime pay for professional and clerical employees working at NRC emergency centers dealing with Three Mile Island Nuclear Plant

Response:

- ° Regularly Scheduled Overtime (Extended workweek, i.e. 44 or 50-hour workweek):

This may be approved for a predictable and continuing need for essential service which cannot be met feasibly or economically in other ways. Employees MUST be paid for regularly scheduled overtime (no comp time) but they may receive additional overtime entitlements for occasional and irregular overtime worked in addition to the extended workweek.

- ° Aggregate Pay Limitation:

Overtime pay may not exceed the maximum rate of GS-15, during any biweekly pay period.

- ° To Implement:

Work schedule change should be justified on Form 181.

- ° Irregular or Occasional Overtime:

Prior authorized by official specifically delegated authority to approve it. (Use Form 145)

- ° Professionals Covered by Title 5 U.S.C. (Exempt employees):

Overtime if over 8 hours in a day or over 40 hours in a week.
PAY if salary is at or below GS-10/10 (or comp time at request of employee and if approved by supervisor.)
PAY RATE is 1 1/2 times hourly rate of basic pay except that no overtime rate exceeds 1 1/2 times the basic hourly rate for GS-10/1.
COMP TIME if salary is over GS-10/10. Use or lose comp time in six pay periods, unless there is an exigency.

NOTE: Three Mile Island Nuclear Plant incident could be considered an exigency so the use of comp time could be extended beyond six pay periods for an additional six pay periods. Action needed: Office Directors must request extension under Chapter 4136.

NO EXCEPTIONS AUTHORIZED for pay in lieu of comp time for higher-graded employees, in current Chapter 4136. Chapter could be revised, with EDO concurrence and approval, to allow for exceptions so that pay in lieu of comp time for employees working under emergency conditions could be granted; or that, further extension be provided for use of comp time.

LIMITATION ON COMP TIME: No employee may receive pay (or comp time equivalent) which exceeds the maximum rate of GS-15, during any biweekly pay period. CAUTION: High-graded employees should be careful in use of comp time to be sure use of comp time will not exceed the amount creditable under this limitation. (See Appendix 4136 Part III, pp. 31 and 32.)

° Clerical Employees Covered by the Fair Labor Standards Act (nonexcept employees):

Overtime: After completing 40 hours in a work week whether or not it was prior approved. These employees earn overtime entitlements under both Title 5 and FLSA and must be compensated under whichever law yields greater benefits. These employees are generally PAID for their overtime work, but under certain specified conditions they may request and receive comp time.

Pay Rate: Pay rate is 1 1/2 time hourly rate of basic pay except that no overtime rate exceeds 1 1/2 times the basic hourly rate for GS-10/1.

° Overtime Charges - T&A Cards

Any overtime worked will be charged to the T&A unit of the Office requesting the support.