

Presidential Documents

Title 3—

Proclamation 4831 of April 8, 1981

The President

Victims Rights Week, 1981

By the President of the United States of America

A Proclamation

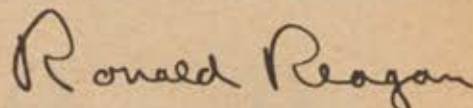
For too long, the victims of crime have been the forgotten persons of our criminal justice system. Rarely do we give victims the help they need or the attention they deserve. Yet the protection of our citizens—to guard them from becoming victims—is the primary purpose of our penal laws. Thus, each new victim personally represents an instance in which our system has failed to prevent crime. Lack of concern for victims compounds that failure.

Statistics reported by the Federal Bureau of Investigation and other law enforcement agencies indicate that crime continues to be a very serious national problem. But statistics cannot express the human tragedy of crime felt by those who are its victims. Only victims truly know the trauma crime can produce. They have lived it and will not soon forget it. At times, whole families are entirely disrupted—physically, financially and emotionally. Lengthy and complex judicial processes add to the victim's burden. Such experiences foster disillusionment and, ultimately, the belief that our system cannot protect us. As a Nation, we can ill afford this loss of faith on the part of innocent citizens who have been victimized by crimes.

We need a renewed emphasis on, and an enhanced sensitivity to, the rights of victims. These rights should be a central concern of those who participate in the criminal justice system, and it is time all of us paid greater heed to the plight of victims.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning April 19, 1981, as Victims Rights Week. I urge all Federal, state and local officials involved in the criminal justice system to devote special attention to the needs of victims of crime, and to redouble their efforts to make our system responsive to those needs. I urge all other elected and appointed officials to join in this effort to make our justice system more helpful to those whom it was designed to protect. And I urge all citizens, from all walks of life, to remember that the personal tragedy of the victim is their own tragedy as well.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord nineteen hundred and eighty-one, and of the Independence of the United States of America the two-hundred and fifth.



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Executive Order 12303 of April 8, 1981

Presidential Advisory Committee on Federalism

By the authority vested in me as President by the Constitution of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), an advisory committee on federalism policy of the United States, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the Presidential Advisory Committee on Federalism. The Committee shall be composed of members from among private citizens of the United States, public officials from State and local governments, and members of the Legislative and Executive branches of the Federal government who shall be appointed by the President. The members shall serve at the pleasure of the President.

(b) The President shall designate a Chairman from among the members of the Committee.

Sec. 2. *Functions.* The Committee shall advise the President with respect to the objectives and conduct of the overall federalism policy of the United States.

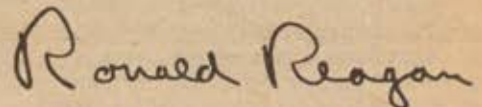
Sec. 3. *Administration.* (a) The heads of Executive agencies shall, to the extent permitted by law, provide the Committee such information with respect to federalism issues as it may require for the purpose of carrying out its functions.

(b) Members of the Committee shall serve without any compensation for their work on the Committee. However, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701-5707), to the extent funds are available therefor.

(c) Any administrative support expenses of the Committee shall be paid from funds available to the White House Office.

Sec. 4. *General.* (a) Notwithstanding any other Executive order, the responsibilities of the President under the Federal Advisory Committee Act, as amended, shall be performed by the President, except that, the Administrator of General Services shall, on a reimbursable basis, provide such administrative services as may be requested.

(b) The Committee shall terminate on December 31, 1982, unless sooner extended.



THE WHITE HOUSE,

April 8, 1981.

[FR Doc. 11069
Filed 4-8-81; 4:29 p.m.]
Billing code 3195-01-M

Editorial Note: The President's statement on signing Executive Order 12303 and the announcement of the Committee membership, both dated April 8, 1981, will be printed in the Weekly Compilation of Presidential Documents (vol. 17, no. 15).

RECEIVED JULY 1917

PROBATION DEPARTMENT

The following report was received from the Probation Department of the State of New York, dated July 1917:

The Probation Department of the State of New York, during the year ending June 30, 1917, has been engaged in the study of the problem of the probation of offenders.

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Rules and Regulations

Federal Register

Vol. 46, No. 69

Friday, April 10, 1981

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing these regulations to carry out its responsibility for the overall administration of the Prevailing Rate Systems.

EFFECTIVE DATE: May 11, 1981.

FOR FURTHER INFORMATION CONTACT: Richard W. Newbold, 202-632-5454.

SUPPLEMENTARY INFORMATION: On May 13, 1980, the Office of Personnel Management published proposed regulations (45 FR 31382) to carry out its responsibility for the overall administration of the Prevailing Rate Systems under sections 5343 and 5346 of title 5, United States Code, as amended by Pub. L. 92-392, August 19, 1972.

Analysis of Comments

The proposed regulations provided a 60 day period for public comment. The Office of Personnel Management received comments from nine agencies, three labor organization headquarters, six labor organization locals, and two individuals. A few of the comments suggested significant changes be made to the proposed regulations. These suggestions have not been adopted. As emphasized in the proposed regulations, the prevailing rate systems have been administered under guidelines and instructions published in the FPM Supplements 532-1 (Federal Wage System) and 532-2 (Federal Wage System—Nonappropriated Fund Employees). The supplements, recommended by the Federal Prevailing Rate Advisory Committee (FPRAC), were prepared and issued by the OPM. In accordance with agreement reached

at the FPRAC, which includes management and labor organizations, these regulations reflect the policies established for the Federal Wage System (FWS) and require no system changes or departures from the guidelines and instructions published in the FPM Supplements. Except those changes mandated by law, policy changes are made only after consideration by the FPRAC.

A number of suggestions, made in the interest of clarification, were adopted, and the final regulations modified as indicated below. One agency suggested that the headings in this document are confusing. We do not agree and have made no changes.

Section 532.205—The use of Federal, State, and local minimum wage requirements in determining prevailing rates. It was suggested that special schedules be included. This change was made. Two agencies felt that subpart (c) of this section could be made clearer. We agree and have clarified this part accordingly.

Section 532.213—Preparation for full-scale wage surveys. One agency had the impression that the responsibility for providing lead agencies with a list of establishments to survey had been decentralized from the Bureau of Labor Statistics (BLS) to the lead agencies. This is not the case; no change has been made in this responsibility. The same agency wanted more specific instructions on the selection of data collectors. We believe that leave, work priorities, and similar matters and responsibilities are normal management functions and need not be addressed in this forum.

Section 532.401—Definitions. One agency suggested that more detailed information be given on "equivalent increase." We did not adopt this suggestion since this type of information is already contained in FPM Supplement 532-1. Two agencies suggested that the definition of "highest previous rate" be broadened to conform more closely with FPM Supplement 532-1. This change was made.

Section 532.411—Details. One agency suggested that it be made clear that this section does not apply to Nonappropriated Fund employees. We agree and have made this change. Another agency felt that this part should be changed to conform with FPM Bulletin 300-48 (Decentralization of

Personnel Authorities, February 28, 1979). Inasmuch as detailed information on this subject has already been published in the FPM by OPM, we have deleted part (b) of this section.

Section 532.415—Application of new or revised wage schedules. One agency suggested that the lead agency mail wage schedules directly to all agency offices in wage areas. We feel that this method of distributing wage schedules would cause more problems than it would solve. Small organizations or isolated locations might well be unknown and completely escape the attention of the lead agency. No change was made in this section.

Section 532.417—Within-grade increases. One agency suggested that more details be given on what constitutes satisfactory performance. No change was made in this section since it was not within the scope of these regulations. Another agency recommended the deletion of the last sentence of § 532.417(c)(3). We did not make this change since all NAF employees, with the exception of VA, are excluded from Chapter 81 of title 5, Compensation for Work Injuries, by 5 U.S.C. 2105.

Section 532.501—Definitions. One agency suggested that the definition of "regularly scheduled" and "irregular or occasional" overtime work be clarified. We did not make any change because we feel the meaning is sufficiently clear.

Section 532.503—Overtime pay. One agency suggested that subpart (a) be clarified to indicate it applied only to title 5 entitlements and not Fair Labor Standards Act entitlements. We agree and have changed this part accordingly. Another agency suggested that subpart (c), "Callback overtime work" be modified along the lines indicated in 45 Comptroller General 53. We feel that these regulations are not the appropriate place for this kind of detail. We will consider this suggestion again when next modifying FPM Supplement 532-1. Another suggestion was to increase minimum callback time from two to four hours. This was not adopted since it would be contrary to Comptroller General Decision B-175452 dated May 1, 1972.

Section 532.507—Pay for holiday work. The same agency as above had the same suggestion for subpart (c) here as for callback overtime work above. This suggestion also will be considered

when next modifying FPM Supplement 532-1.

Section 532.511—Environmental differential. One agency suggested that paragraph (b)(3) be clarified in terms of hours in a pay status. We agree and have made this change.

Subpart G—Job Grading Reviews and Appeals. Two agencies suggested that this part be changed to correspond to the General Schedule regulations. While this suggestion deserves further study, it is not within the scope of these regulations and therefore has not been adopted. One agency suggested a change in the wording on what an employee may appeal to include occupational series or title. This change has been made.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule for the purposes of E.O. 12291 Federal Regulation, because it will not result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Director, Office of Personnel Management, certifies that this regulation will not have a significant economic impact on a substantial number of small entities, including small business, small organizational units and small governmental jurisdictions.

Office of Personnel Management.
Beverly McCain Jones,
Issuance System Manager.

Accordingly, the Office of Personnel Management is revising Part 532 of Title 5 of the Code of Federal Regulations to read as follows:

PART 532—PREVAILING RATE SYSTEMS

Subpart A—General Provisions

- Sec.
- 532.101 Scope.
- 532.103 Coverage.
- 532.105 Pay-fixing authority.

Subpart B—Prevailing Rate Determinations

- 532.201 Definitions.
- 532.203 Structure of regular wage schedules.
- 532.205 The use of Federal, State, and local minimum wage requirements in determining prevailing rates.

Sec.

- 532.207 Agency wage committee.
- 532.209 Local wage survey committee.
- 532.211 Responsibilities of participating organizations.
- 532.213 Preparation for full-scale wage surveys.
- 532.215 Conduct of full-scale wage survey.
- 532.217 Review by the local wage survey committee.
- 532.219 Review by the lead agency.
- 532.221 Statistical analysis of usable wage survey data.
- 532.223 Consultation with the agency wage committee.
- 532.225 Selection of payline and issuance of wage schedules.
- 532.227 Wage change surveys.
- 532.229 Minimum rates for hard-to-fill positions.
- 532.231 Special rates and special schedules.

Subpart C—Determining Rates for Principal Types of Federal Positions

- 532.301 Definitions.
- 532.303 Specialized industry.
- 532.305 Dominant industry.
- 532.307 Determining whether a dominant industry exists in a wage area.
- 532.309 Determining adequacy of specialized private industry.
- 532.311 Survey of specialized private industry related to a dominant industry.
- 532.313 Use of data from the nearest similar area.

Subpart D—Pay Administration

- 532.401 Definitions.
- 532.403 New appointments.
- 532.405 Use of highest previous rate.
- 532.407 Promotion.
- 532.409 Grading or regrading of positions.
- 532.411 Details.
- 532.413 Simultaneous action.
- 532.415 Application of new or revised wage schedules.
- 532.417 Within-grade increases.
- 532.419 Grade and pay retention.

Subpart E—Premium Pay and Differentials

- 532.501 Definitions.
- 532.503 Overtime pay.
- 532.505 Night shift differentials.
- 532.507 Pay for holiday work.
- 532.509 Pay for Sunday work.
- 532.511 Environmental differentials.

Subpart F—Job Grading System

- 532.601 General.

Subpart G—Job Grading Reviews and Appeals

- 532.701 General.
- 532.703 Agency review.
- 532.705 Appeal to the Office of Personnel Management.

Authority: 5 U.S.C. 5343, 5346.

Subpart A—General Provisions

§ 532.101 Scope.

This part provides common policies, systems, and practices for uniform application by all agencies subject to section 5342 of title 5, United States Code, in fixing pay for prevailing rate employees as nearly as is consistent

with the public interest in accordance with prevailing rates.

§ 532.103 Coverage.

The provisions of this part shall apply to prevailing rate employees and agencies covered by section 5342 of title 5, United States Code.

§ 532.105 Pay-fixing authority.

The head of each agency shall authorize application of the rates established by the lead agency or the Office of Personnel Management (OPM) to prevailing rate employees within the appropriate wage area, in accordance with the provisions of this part.

Subpart B—Prevailing Rate Determinations

§ 532.201 Definitions.

For the purposes of this part:

"Full-scale survey" means a survey conducted at least every 2 years in which data are collected from a current sampling of establishments in the private sector by personal visit of data collectors.

"Host activity" is the local Federal activity designated by the lead agency to obtain employment statistics from other Federal activities in the wage area and to provide support facilities and clerical assistance for the wage survey.

"Lead agency" means the agency designated by the Office of Personnel Management to plan and conduct wage surveys, analyze wage survey data, and determine and issue required wage schedules for a wage area.

"Survey area" means that part of the wage area where the private enterprise establishments included in the wage survey are located.

"Wage area" means that geographic area within which a single set of regular wage schedules is applied uniformly by Federal installations to covered occupations.

"Wage change survey" means a survey in which rate change data are collected from the same establishments and for the same establishment occupations represented in the full-scale survey. These data may be collected by telephone, mail, or personal visit.

§ 532.203 Structure of regular wage schedules.

(a) Each nonsupervisory and leader regular wage schedule shall have 15 grades, which shall be designated as follows:

- (1) "WG" means an appropriated fund nonsupervisory grade;
- (2) "WL" means an appropriated fund leader grade;

(3) "NA" means a nonappropriated fund nonsupervisory grade; and
 (4) "NL" means a nonappropriated fund leader grade.

(b) Each supervisory regular wage schedule shall have 19 grades, which shall be designated as follows:

(1) "WS" means an appropriated fund supervisory grade; and

(2) "NS" means a nonappropriated fund supervisory grade.

(c) The step 2 or payline rate for each grade of a leader regular wage schedule shall be equal to 110 percent of the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the area.

(d) The step 2 or payline rate for each grade of an appropriated fund supervisory regular wage schedule shall be:

(1) For grades WS-1 through WS-10, equal to the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the area, plus 30 percent of the rate for step 2 of WS-10;

(2) For grades WS-11 through WS-19, based on a parabolic curve linking the WS-10 rate to the WS-19 rate, which latter rate is equal to the minimum rate in effect for General Schedule grade GS-14 at the time of the area wage schedule adjustment.

(e) The step 2 or payline rate for each grade of a nonappropriated fund supervisory regular wage schedule shall be:

(1) For grades NS-1 through NS-8, equal to the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the area, plus 20 percent of the rate for step 2 of NA-8;

(2) For grades NS-9 through NS-15, equal to 120 percent of the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the area;

(3) For grades NS-16 through NS-19, the rates will be 25, 30, 35 and 40 percent, respectively, above the step 2 rate of NA-15;

(f) The number of within-grade steps and the differentials between steps for each nonsupervisory grade on a regular wage schedule shall be established in accordance with 5 U.S.C. 5343(e)(1). Each grade on a leader and supervisory regular wage schedule shall have 5 within-grade steps with step 2 set according to paragraphs (c), (d), or (e) of this section, as appropriate, and—

(1) Step 1 set at 96 percent of the step 2 rate;

(2) Step 3 set at 104 percent of the step 2 rate;

(3) Step 4 set at 108 percent of the step 2 rate; and

(4) Step 5 set at 112 percent of the step 2 rate.

§ 532.205 The use of Federal, State, and local minimum wage requirements in determining prevailing rates.

(a) Wage schedules, including special schedules, shall not include any rates of pay less than the higher of:

(1) The minimum rate prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, or

(2) The highest State or local minimum wage rate in the local wage area which is applicable to the private industry counterparts of the single largest Federal industry/occupation in the wage area.

(b) Wage data below the minimum wage rates prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, shall not be used in determining prevailing rates.

(c) Adjustments to regular wage schedules to comply with the minimum wage rate determined to be applicable under subsection (a) of this section shall be computed as follows:

(1) The step 2 rate of grade 1 of the nonsupervisory wage schedule shall be set at a rate which, upon application of the 4 percent step-rate differential, provides a step 1 rate which is equal to the applicable minimum wage rate.

(2) An intergrade differential shall be determined as 5 percent of the rate established as the step 2 rate of grade 1, rounded to the nearest whole cent. This intergrade differential shall be added to the step 2 rate of each grade, beginning with grade 1, to determine the step 2 rate for the succeeding grade until the grade is reached at which the step 2 rate established through the wage survey process equals or exceeds the rate determined under this procedure. Rates of all grades above that point shall be computed in accordance with paragraph 532.221(b) of this subpart.

(3) Steps 1, 3, 4, and 5 of each grade adjusted under paragraph (c) of this section shall be set at 96, 104, 108, and 112 percent of the step 2 rate, respectively.

(4) The leader and supervisory wage schedule grades corresponding to each nonsupervisory grade adjusted under paragraph (c) of this section shall be constructed in accordance with the procedures of § 532.203 of this subpart, on the basis of the step 2 rates established under this paragraph for the nonsupervisory wage schedule grades.

(d) All wage schedule adjustments made under this section shall be effective on the effective date of the applicable minimum wage rate.

§ 532.207 Agency wage committee.

(a) Each lead agency shall establish an agency wage committee for the purpose of considering matters relating to the conduct of wage surveys, the establishment of wage schedules and making recommendations thereon to the lead agency.

(b) The Agency Wage Committee shall consist of five members, with the chairperson and two members designated by the head of the lead agency, and the remaining two members designated as follows:

(1) For the Department of Defense Wage Committee, one member shall be designated by each of the two labor organizations having the largest number of wage employees covered by exclusive recognition in the Department of Defense; and

(2) For other lead agencies, two members shall be designated by the labor organization having the largest number of wage employees by exclusive recognition in the agency.

(c) Recommendations of agency wage committees shall be developed by majority vote. Any member of an agency wage committee may submit a minority report to the lead agency along with the recommendations of the committee.

§ 532.209 Local wage survey committee.

(a)(1) A lead agency shall establish a local wage survey committee in each wage area for which it has lead agency responsibility and in which a labor organization represents, by exclusive recognition, wage employees subject to the wage schedules for which the survey is conducted.

(2) The local wage survey committee shall assist the lead agency in the conduct of wage surveys and make recommendations to the lead agency thereon.

(b)(1) Local wage survey committees shall consist of three members, with the chairperson and one member designated by the lead agency, and one member recommended by the labor organization having the largest number of wage employees under the regular wage schedule who are under exclusive recognition in the wage area.

(2) All members of local wage survey committees for appropriated fund surveys shall be Federal employees appointed by their employing agencies.

(3) Members for nonappropriated fund surveys shall be nonappropriated fund employees appointed by their employing agencies.

(4) The member recommended by the labor organization must be an employee of a Federal activity for appropriated fund surveys or nonappropriated fund

activity for nonappropriated fund surveys who is covered by one of the regular wage schedules in the wage area in which the activity is located.

(c) A local wage survey committee shall be established before each full-scale wage survey. Responsibility for providing members shall remain with the same agency and the same labor organization until the next full-scale survey.

(d) Recommendations of local wage survey committees shall be developed by majority vote. Any member of a local wage survey committee may submit a minority report to the lead agency along with the recommendations of the committee.

(e) The lead agency shall establish the type of local wage survey organization it considers appropriate in a wage area which does not qualify for a local wage survey committee under paragraph (a) of this section.

§ 532.211 Responsibilities of participating organizations.

(a) The Office of Personnel Management:

- (1) Defines the boundaries of wage and survey areas;
- (2) Prescribes the required industries to be surveyed;
- (3) Prescribes the required job coverage for surveys;
- (4) Designates a lead agency for each wage area;
- (5) Establishes, jointly with lead agencies, a nationwide schedule of wage surveys;
- (6) Arranges for technical services with other Government agencies;
- (7) Considers recommendations of the national headquarters of any agency or labor organization relating to the Office of Personnel Management's responsibilities for the Federal Wage System; and

(8) Establishes wage schedules and rates for prevailing rate employees who are United States citizens outside of the United States, District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the Territories and Possessions of the United States, and the Trust Territory of the Pacific Islands.

(b) Federal Prevailing Rate Advisory Committee. This committee functions in accordance with the requirements set forth under section 5347 of title 5, United States Code.

(c) Employing agencies.

(1) Heads of agencies. The head of an agency is responsible, within the policies and procedures of the Federal Wage System, for authorizing application of wage schedules developed by a lead agency and fixing

and administering rates of pay for wage employees of his/her organization.

(2) Heads of local activities. The head of each activity in a wage area is responsible for providing employment information, wage survey committee members, data collectors, and any other assistance requested by the local wage survey committee.

(d) Lead agencies. In accordance with the practices and procedures prescribed by the Office of Personnel Management, each agency assigned lead agency responsibility for a designated wage area is responsible for:

- (1) Planning and conducting the wage survey for that area;
- (2) Developing survey specifications and providing or arranging for the identification of establishments to be surveyed;

(3) Officially ordering wage surveys;

(4) Establishing wage schedules, applying wage schedules authorized by the head of the agency; and

(5) Referring pertinent matters to the agency wage committee and the Office of Personnel Management.

(e) Agency wage committees. As appropriate, agency wage committees consider and make recommendations to the lead agency on wage schedules and any matters involving survey specifications for full-scale surveys if the lead agency chooses not to accept recommendations of the local wage survey committee or those in a minority report filed by a local wage survey committee member.

(f) Local wage survey committees. The local wage survey committee plans and conducts the wage survey in the designated wage area.

§ 532.213 Preparation for full-scale wage surveys.

(a) The local wage survey committee, prior to each full-scale survey:

- (1) Shall hold a public hearing to receive recommendations from interested parties concerning the area, industries, establishments and jobs to be covered in the wage survey.

(2) Shall prepare a summary of the hearings and submit it to the lead agency together with the committees' recommendations concerning the survey specifications prescribed in paragraph (c) of this section.

(3) May make any other recommendations concerning the local wage survey which it considers appropriate.

(b) The lead agency shall refer to the local wage survey committee's report to the agency wage committee for its consideration and recommendation if:

- (1) The lead agency proposes not to accept the recommendations of the local

wage survey committee concerning the specifications of the local wage survey; or

(2) The local wage survey committee's report is accompanied by a minority report.

(c) The lead agency shall develop survey specifications after taking into consideration the reports and recommendations received from the local wage survey committee and, if applicable, the agency wage committee. The survey specifications shall include:

- (1) The counties to be surveyed;
- (2) The industries to be surveyed;
- (3) The standard minimum size of establishments to be surveyed;

(4) Establishments to be surveyed with certainty; and

(5) The survey jobs.

(d) A list of establishments and alternative establishments to be surveyed shall be prepared through use of statistical sampling techniques in accordance with the specifications developed by the lead agency. A copy of this list shall be forwarded to the local wage survey committee.

(e) Selection and appointment of data collectors.

(1) Wage data for appropriated fund surveys shall be collected by teams consisting of one local Federal Wage System employee recommended by the committee member representing the qualifying labor organization and one Federal employee recommended by local government activities. The data collectors shall be selected and appointed by the head of their employing agency.

(2) Wage data for nonappropriated fund surveys shall be collected by teams, each consisting of one local nonappropriated fund employee recommended by the committee member representing the qualifying labor organization and one nonappropriated fund employee recommended by local nonappropriated fund activities. The data collectors shall be selected and appointed by the head of their employing activity.

(f)(1) Each member of a local wage survey committee, each data collector, and any other person having access to data collected must retain this information in confidence, and is subject to disciplinary action by the employing agency or activity if the employee violates the confidence of data secured from private employers.

(2) Any violation of the above provision by a Federal employee must be reported to the employing agency and, in the case of a participant designated by a labor organization, to the recognized labor organization and

its headquarters, and shall be cause for the lead agency immediately to remove the offending person from participation in the wage survey function.

§ 532.215 Conduct of full-scale wage survey.

(a) Wage survey data shall not be collected before the date the survey is ordered by the lead agency.

(b) Required data shall be obtained by personal visit.

(c) Alternate establishments shall be surveyed if data cannot be obtained from the primary establishments selected to be surveyed.

(d) The data collectors shall submit the data they collect to the local wage survey committee together with their recommendations about the use of the data.

§ 532.217 Review by the local wage survey committee.

(a) The local wage survey committee shall review all establishment information and survey job data collected in the wage survey for completeness and accuracy and forward all of the data collected to the lead agency together with a report of its recommendations concerning the use of the data. The local wage survey committee may make any other recommendations concerning the wage survey which it considers appropriate.

§ 532.219 Review by the lead agency.

(a) The lead agency shall review all material and wage survey data forwarded by the local wage survey committee to:

(1) Assure that the survey was conducted within the prescribed procedures and specifications;

(2) Consider matters included in the local wage survey committee report and recommendations;

(3) Exclude unusable data;

(4) Resolve questionable job matching and wage rate data; and

(5) Verify all computations reported on wage data collection forms.

(b) The lead agency shall determine whether the usable data collected in the wage survey are adequate for computing paylines, according to the following criteria:

(1) The wage survey data collected in an appropriated fund wage survey are adequate if the unweighted job matches include at least one survey job in the WG-01 through 04 range, one survey job in the WG-05 through 08 range, and two survey jobs in the WG-09 and above range, each providing at least 20 samples; and at least six other survey jobs, each providing at least 10 samples.

(2) The wage survey data collected in a nonappropriated fund wage survey are

adequate if the unweighted job matches include at least two survey jobs in the NA-01 through 04 range providing 10 samples each, one survey job in the NA-01 through 04 range and three survey jobs in the NA-05 through 15 range providing five samples each; two other survey jobs, each providing at least five samples, and at least 100 unweighted samples for all survey jobs combined are used in the computation of the final payline.

(c)(1) If the wage survey data do not meet the adequacy criteria in paragraph (b) of this section, the lead agency shall analyze the data, construct lines and wage schedules, submit them to the agency wage committee for its review and recommendations and issue wage schedules, in accordance with the requirements of this subpart, as if the adequacy criteria were met.

(2) The lead agency may determine such a wage area to be adequate if the quantity of data obtained is large enough to construct paylines even though it was obtained for fewer than the prescribed number of jobs, or at different grade levels, or in different combinations than prescribed in paragraph (b) of this section.

(3) The lead agency may not determine a nonappropriated fund wage area to be adequate if fewer than 100 usable unweighted job matches were used in the final payline computation.

(d) If the lead agency determines a wage area to be inadequate under paragraph (c) of this section, it shall promptly refer the problem to the Office of Personnel Management for resolution.

§ 532.221 Statistical analysis of usable wage survey data.

(a)(1) The lead agency shall compute a weighted average rate, in accordance with the instructions issued by the Office of Personnel Management, for each appropriated fund survey job having at least 10 usable matches and for each nonappropriated fund survey job having at least five usable matches before establishment weights are applied.

(2) Incentive and piece-work rates shall be excluded when computing weighted average rates if, after establishment weights have been applied, 90 percent or more of the total usable wage survey data reflect rates paid on a straight-time basis only.

(b) The lead agency shall compute paylines from the weighted average rates computed under paragraph (a) of this section, as follows:

(1) Linear unit and frequency lines shall be computed according to the least squares statistical formula, based on all of the weighted average rates.

(2) Under the appropriated fund wage system a key point line shall be computed using the computed average rates for wage grades 3, 5, 10, and 13.

(3) Either or both of the lines computed according to paragraph (b)(1) of this subsection may be recomputed after eliminating data which cause distortion in the lines. If data for any of the grade points used under paragraph (b)(2) of this subsection are eliminated under this provision, the line computed under paragraph (b)(2) shall be recomputed with the same data eliminated.

(c) Usable data obtained from a particular establishment may not be modified or deleted in order to reduce the effect of an establishment's rates on survey findings, i.e., data will not be deleted or modified to avoid establishment domination.

§ 532.223 Consultation with the agency wage committee.

(a) The lead agency shall submit to the agency wage committee:

(1) The data collected in the wage survey;

(2) The report and recommendations of the local wage survey committee concerning the use of data;

(3) The lead agency's analysis of the data; and

(4) The lines computed from the data.

(b) After considering the information available to it, the agency wage committee shall report to the lead agency its recommendation for a proposed wage schedule derived from the data.

§ 532.225 Selection of payline and issuance of wage schedules.

(a) The lead agency shall select a payline and construct wage schedules therefrom for issuance as the regular wage schedules for the wage area, after considering all of the information, analysis, and recommendations made available to it pursuant to this subpart.

(b)(1) The lead agency shall prepare and maintain a record of all of the analysis and deliberations made under this subpart, documenting fully the basis for its determination under paragraph (a) of this section.

(2) The lead agency shall include in the record all of the wage survey data obtained and the recommendations and reports received from the local wage survey committee and the agency wage committee.

(c)(1) The lead agency shall issue the nonsupervisory, leader, and supervisory regular wage schedules for the local wage area, showing the rates of pay for all grades and steps.

(2) The wage schedules shall have a single effective date for all employees in the wage area, determined by the lead agency in accordance with 5 U.S.C. 5344.

(d) The head of each agency having employees in the local wage area to whom the regular wage schedules apply shall authorize the application of the wage schedules issued under paragraph (c) of this section to those employees, effective on the date specified by the lead agency.

§ 532.227 Wage change surveys.

(a) Wage change surveys shall be conducted in each wage area in years during which full-scale wage surveys are not conducted.

(b) Data shall be collected in wage change surveys only from establishments which participated in the preceding full-scale survey. Information concerning pay adjustments of general application in effect for jobs matched in each establishment which participated in the preceding full-scale survey shall be obtained.

(c) Data may be obtained in wage change surveys by telephone, mail, or personal visit. The chairperson of the local wage survey committee shall determine the manner in which establishments will be contacted for collection of data. Data may be collected by the local wage survey committee members or by data collectors appointed and assigned to two member teams in accordance with § 532.213(e) of this subpart.

(d) Wage change survey data may not be collected before the date ordered by the lead agency.

(e) The local wage survey committee shall review all wage change survey data collected and forward the data to the lead agency. Where appropriate, the committee shall also forward to the lead agency a report of unusual circumstances surrounding the survey.

(f) The lead agency shall review the wage change survey data and, if applicable, the report filed by the local wage survey committee.

(g)(1) The lead agency shall recompute the line selected under § 532.225(a) of this subpart in the preceding full-scale survey using the wage change survey data and shall construct wage schedules therefrom in accordance with § 532.203 and, if appropriate, § 532.205 of this subpart.

(2) The lead agency shall consult with the agency wage committee in accordance with § 532.223 of this subpart.

(3) Records of this process shall be maintained in accordance with § 532.225(b) of this subpart.

(h) The wage schedules shall be issued and authorized in accordance with § 532.225 (c) and (d) of this subpart.

§ 532.229 Minimum rates for hard-to-fill positions.

(a) The lead agency for a wage area may establish the rate of the second, third, fourth, or fifth step of one or more grades of an occupation as the mandatory minimum rate or rates payable by any agency for the occupation at one or more locations within a wage area based on findings that:

(1) The hiring rates prevailing for an occupation in private sector establishments in the wage area are higher than the rate of the first step of the grade or grades of the occupation; and

(2) Federal installations and activities in the wage area are unable to recruit qualified employees at the rate of the first step of the grade or grades of the occupation.

(b) Any authorizations made under paragraph (a) of this section shall be indicated on the regular wage schedule for the wage area.

(c) Any authorizations made under paragraph (a) of this section shall be terminated with the issuance of a new regular wage schedule unless the conditions that warrant the authorizations continue and the new regular wage schedule continues that authorization.

(d) The lead agency, prior to terminating any authorization made under paragraph (a) of this section, shall require the appropriate official or officials at all installations or activities to which the authorization applies to discuss the termination with the appropriate official or officials of exclusively recognized employee organizations representing employees in the affected occupation. The agency officials shall report the results of these discussions to the lead agency.

(e) No employee shall have his/her pay reduced because of cancellation of an authorization made under paragraph (a) of this section.

§ 532.231 Special rates and special schedules.

(a) A lead agency, with the approval of the Office of Personnel Management, may establish special rates or special schedules for use within an area for specific occupations which are critical to the mission of a Federal activity based on findings that:

(1) Serious recruitment and retention problems exist;

(2) Rates on the authorized regular schedule are inadequate for the

recruitment and retention of qualified employees; and

(3) Authorization of increased minimum rates under § 532.229 of this subpart will not solve the problems.

(b) Special rates shall be based on industry wage data for the specific occupations. A single rate shall be used when this represents industry practice; five rates with intervals of four percent between successive rates shall be used when rate ranges are used by industry, with the rate of the second step representing the weighted average of the industry rates.

(c) Any special rates established under paragraph (b) of this section shall be shown on the regular schedule which shall indicate each occupation and grade for which the rates are authorized. These rates shall be paid by all agencies having these occupations within the wage area.

(d)(1) Special schedules will ordinarily have the same grade, job ranking, and step-rate structure as regular schedules; only the wage rates will differ.

(2) If the use of grades is not appropriate, rates only shall be specified for each individual job.

(3) In other situations which require departure from regular schedule practices, the Office of Personnel Management authorization for the special schedule shall include instructions for its construction, application, and administration.

(4) Unless otherwise specified, positions covered by special wage schedules shall be subject to the general provisions of this part and to other applicable rules and regulations of the Office of Personnel Management.

Subpart C—Determining Rates for Principal Types of Positions

§ 532.301 Definitions.

For purposes of this subpart:

"Nearest similar wage area" means the nearest wage area which is most similar to the local wage area in terms of private employment, population, relative numbers of private employers in major industry categories, and kinds and sizes of industry establishments and in which adequate private establishments exist in the survey area whose activities are similar to those in the dominant industry.

"Principal types of appropriated or nonappropriated fund positions" means those groups of occupations which require work of a specialized nature and which are peculiar to a specific Government industry which is the dominant industry among the total wage employment in the wage area.

"Specialized private industry" means private industry establishments in those industry groups, comparable to the specialized Government industries listed in § 532.303 of this section, which must be included in a wage survey in order to obtain data comparable to a dominant industry.

§ 532.303 Specialized industry.

(a)(1) Under the appropriated fund wage system, a "specialized industry" is a Federal activity engaged in the production or repair of aircraft, ammunition, artillery and combat vehicles, communication equipment, electronic equipment, guided missiles, heavy duty equipment, shipbuilding, sighting and fire control equipment, or small arms.

(2) Under the nonappropriated fund wage system a "specialized industry" includes only nonappropriated fund operated eating and drinking places. Additional industries may be considered as specialized industries upon approval of the Office of Personnel Management.

§ 532.305 Dominant industry.

(a)(1) A specialized industry is a "dominant industry" if the number of wage employees in the wage area who are subject to the wage schedule for which the survey is made and employed in occupations which comprise the principal types of appropriated or nonappropriated fund positions in the specialized industry comprise:

(i) For appropriated fund activities,

(A) At least 25 percent of the total wage employment or

(B) 1,000 or more employees in a wage area having more than 4,000 wage employees; and

(ii) For nonappropriated fund activities

(A) At least 25 percent of the total wage employment or

(B) 100 or more wage employees in a wage area having 400 or more wage employees.

(2) If two or more specialized industries in a wage area qualify as dominant industries, the two specialized industries having the largest number of wage employees shall be the dominant industries for purposes of applying the requirements of this subpart.

§ 532.307 Determining whether a dominant industry exists in a wage area.

(a) The chairperson of the local wage survey committee shall, before a full-scale wage survey is scheduled to begin, notify all appropriated or nonappropriated fund activities having employees subject to the wage schedules for which the survey is conducted so that organizations and

individuals may submit written recommendations and supporting evidence to the local wage survey committee concerning principal types of appropriated or nonappropriated fund positions in the area. Each appropriated or nonappropriated fund activity shall publicize the opportunity to make such recommendations in accordance with the instructions issued by the Office of Personnel Management.

(b)(1) Before conducting a full-scale wage survey an occupational inventory of employees subject to the wage schedules for which the survey is conducted shall be obtained from each appropriated or nonappropriated fund activity in the area having such employees.

(2) After reviewing the occupational inventory and considering the recommendations received pursuant to paragraph (a) of this section, the local wage survey committee shall formulate its recommendations and prepare a written report concerning the existence of specialized industries within the wage area.

(3) The report of the recommendations, the occupational inventory, and the recommendations and supporting evidence received pursuant to paragraph (a) of this section shall be forwarded to the lead agency.

(c) The lead agency shall refer the occupational inventory and the reports received pursuant to paragraph (b) of this section to the agency wage committee for its consideration and recommendation if:

(1) The lead agency proposes not to accept the recommendation of the local wage survey committee concerning the specifications of the local wage survey; or

(2) The local wage survey committee's report is accompanied by a minority report.

(d) The lead agency shall determine, in writing, after taking into consideration the reports and recommendations received under paragraphs (b) and (c) of this section, and prior to ordering a full-scale wage survey to begin, whether the principal types of appropriated or nonappropriated fund positions in a local wage area comprise a dominant industry. The determination shall remain in effect until the next full-scale wage survey in the area.

§ 532.309 Determining adequacy of specialized private industry.

(a) Specialized private industry comparable to an appropriated fund dominant industry is adequate when:

(1) The survey area is one of the 25 largest Standard Metropolitan

Statistical Areas, or the total number of employees of private industry establishments in the specialized private industry located in the survey area is at least equal to the total number of appropriated fund wage employees in occupations which comprise the principal types of appropriated positions in the dominant industry who are subject to the wage schedules for which the survey is made; or

(2) For any dominant industry except "ammunition," the job matches obtained from the specialized private industry include one regular survey job in the WG-01 through 04 range, one regular survey job in the WG-05 through 08 range, one regular survey job in the WG-09 and above range, and one special survey job in the WG-09 and above range all providing at least 20 unweighted samples each; and three other regular or special survey jobs, each providing at least 10 unweighted samples.

(3) For the dominant industry "ammunition," the job matches obtained from the specialized survey industries include one regular survey job in the WG-01 through 04 range, one special survey job in the WG-05 through 08 range, and one regular survey job in the WG-09 through 15 range, all providing at least 20 unweighted samples each; and three other regular or special survey jobs, each providing at least 10 unweighted samples.

(b) Specialized private industry comparable to a nonappropriated fund dominant industry is adequate when:

(1) The total number of employees of private industry establishments similar to the dominant industry located in the survey area is at least equal to the number of nonappropriated fund wage employees in positions which comprise the principal types of nonappropriated fund positions in the dominant industry who are subject to the wage schedules for which the survey is made; and

(2) The job matches obtained from all industries surveyed for regular survey jobs related to the dominant industry include one regular survey job in the NA-01 through 04 range providing at least 10 samples; and one regular survey job in the NA-05 through 15 range and one other regular survey job, each providing at least five samples.

§ 532.311 Survey of specialized private industry related to a dominant industry.

If it is determined that there are one or more dominant industries within a wage area, the lead agency shall insure that the survey includes the industries and survey jobs related to the dominant industries, in accordance with

instructions in the Federal Personnel Manual. When the related industry within the local wage survey area fails to meet the criteria in § 532.309 of this subpart, the lead agency shall obtain data related to the dominant industry from the survey area of the wage area which is determined to be the nearest similar area which will provide adequate data under the criteria in § 532.309 of this subpart.

§ 532.313 Use of data from the nearest similar area.

(a)(1) The lead agency shall, in establishing the regular schedule under the provisions of this subpart, analyze and use the acceptable data from the nearest similar wage area together with the data obtained from inside the local wage survey area.

(2) The total number of job matches obtained from the nearest similar wage area to be used in establishing the regular wage schedule shall not exceed the number of job matches used which were obtained from inside the local wage survey area.

(3) If there are two dominant industries for which data are obtained from nearest similar areas, the total number of outside area job matches used for both specialized industries may not exceed the total number of job matches obtained in the local wage survey area.

(b)(1) The wage rates established for a grade by using data from the nearest similar area may not exceed the wage rates for the same grade in the nearest similar area.

(2) If data are obtained from two nearest similar areas for two dominant industries, the wage rates established for a grade by using these data may not exceed the higher of the wage rates for the same grade in the two nearest similar areas.

(c) The wage data obtained from the nearest similar area or areas may not be used to reduce the wage rates for any grade in the local area below the rates that would be established for that grade without the use of the data from the nearest similar area or areas.

Subpart D—Pay Administration

§ 532.401 Definitions.

In this subpart:

"Change to a lower grade" means a change of an employee, while continuously employed, to a job or grade level with a lower representative rate.

"Equivalent increase" means an increase or increases in an employee's scheduled rate of pay, equal to or greater than the amount of a within-grade increase in the grade in which the

employee is serving except in certain situations specified by the Office of Personnel Management.

"Existing scheduled rate of pay" means the scheduled rate of pay received immediately before the effective date of a transfer, reassignment, promotion, change to a lower grade, within-grade increase, or revision of a wage schedule.

"Highest previous rate" means the highest scheduled rate of pay previously paid to a person while employed in a job in any branch of the Federal Government, a mixed-ownership corporation, or the government of the District of Columbia. It is based on a regular tour of duty under an appointment not limited to 90 days or less, or for a continuous period of no less than 90 days under one or more appointments without a break in service.

"Promotion" means a change of an employee, while continuously employed, to a job or grade level with a higher representative rate than his/her current grade; or retained grade, if applicable.

"Rate of basic pay" means the scheduled rate of pay plus any night or environmental differential.

"Reassignment" means a change of an employee, while serving continuously in the same agency, from one job to another without promotion or change to a lower grade.

"Representative rate" means the going rate, i.e., the rate or step keyed to the prevailing rate determination. For example:

(1) The established rate on a single rate schedule;

(2) The second rate on a five-rate regular wage schedule;

(3) The fourth rate on the General Schedule; or

(4) The fourth rate of a class under the Foreign Service Officer and Foreign Service Staff schedule.

"Retained rate" means the rate of pay an employee is receiving which is higher than the maximum scheduled rate of pay of the Federal Wage System grade or pay level to which the employee is assigned.

"Scheduled rate of pay" means the rate of pay fixed by law or administrative action, including a retained rate of pay, for the job held by an employee before any deductions and exclusive of additional pay of any kind.

§ 532.403 New appointments.

(a) Except as provided in paragraphs (b) and (c) of this section, a new appointment to a position shall be made at the minimum rate of the appropriate grade.

(b) An agency may make a new appointment at a rate above the minimum rate of the appropriate grade in recognition of an appointee's special qualifications.

(c) An agency shall make a new appointment at a step-rate above the minimum rate of a grade if the lead agency for the wage area has designated, in accordance with § 532.229, a step-rate above the first step-rate of a grade as the minimum step-rate at which a position may be filled.

§ 532.405 Use of highest previous rate.

(a)(1) Subject to the provisions of § 532.407 of this subpart and Part 536 of this chapter, when an employee is reemployed, reassigned, transferred, promoted, or changed to a lower grade, the agency may fix the pay at any rate of the new grade which does not exceed the employee's highest previous rate.

(2) However, if the employee's highest previous rate falls between two step-rates of the new grade, the agency may fix the pay at the higher of the two.

(b)(1) When an employee's type of appointment is changed in the same job, an agency may continue to pay the existing scheduled rate or may pay any higher rate of the grade which does not exceed the employee's highest previous rate.

(2) However, if the highest previous rate falls between two step rates of the grade, the agency may pay the higher rate.

(c)(1) The highest previous rate, if earned in a wage job, is the current rate of the grade and step-rate of the former job on the same type of wage schedule in the wage area in which the employee is being employed, or the actual earned rate, whichever is higher.

(2) If earned on a General Schedule or another pay system other than the Federal Wage System, it is the current rate for the same grade and rate of that schedule.

§ 532.407 Promotion.

(a) An employee who is promoted is entitled to be paid at the lowest scheduled rate of the grade to which promoted which exceeds the employee's existing scheduled rate of pay by at least four percent of the representative rate of the grade from which promoted.

(b) If there is no rate in the grade to which an employee is promoted which meets the requirement of paragraph (a) of this section the employee shall be entitled to the higher of: (1) the existing scheduled rate of pay in accordance with Part 536 of this Chapter; or (2) the

maximum scheduled rate of the grade to which promoted.

(c) If the promotion is to a position in a different wage area, the agency shall determine the employee's pay entitlement as if there were two pay actions—a promotion and a reassignment—and shall process them in the order which gives the employee the maximum benefit.

§ 532.409 Grading or regarding of positions.

Except as provided in § 532.703(b)(10), a change in an employee's rate of basic pay as a result of the grading or regrading of the employee's position shall be effective on the date the grading or regrading action is finally approved by the agency or on a subsequent specifically stated date.

§ 532.411 Details.

An appropriated fund employee detailed to a position other than the position to which appointed shall be paid at the rate of the position to which appointed.

§ 532.413 Simultaneous action.

(a) If an employee becomes entitled to more than one pay change at the same time, the employing agency shall process the pay changes in the order which will provide the maximum benefit, except as required by paragraph (b) of this section.

(b) If an employee becomes entitled to an increase in pay and subject to a personnel or appointment change at the same time, the increased rate of pay is deemed to be the employee's existing scheduled rate of pay when the personnel or appointment change is processed.

§ 532.415 Application of new or revised wage schedules.

(a) The head of each installation or activity in a wage area shall place new or revised wage schedules into effect at the beginning of the first full shift on the date specified on the schedule by the lead agency.

(b) No agency may retroactively change any personnel or pay actions taken between the effective date of a new or revised wage schedule and the date it is actually put into effect if the personnel or pay actions taken during this period of time are more advantageous to an employee than the same personnel or pay action would have been had the new or revised wage schedule been placed into effect on the date specified by the lead agency.

(c) In applying a new or revised wage schedule, the scheduled rate of pay of an employee paid at one of the rates of the employee's grade on an old wage

schedule shall be adjusted to the rate of pay established on a new or revised wage schedule for the same grade and step, regardless of whether the adjustment results in an increase or a decrease in the employee's scheduled rate of pay.

§ 532.417 Within-grade increases.

(a) An employee paid under a regular Federal Wage System schedule with a work performance rating of satisfactory or better shall advance automatically to the next higher step within the grade in accordance with section 5343(e)(2) of title 5, United States Code.

(b) Waiting periods for within-grade increases shall begin:

(1) On the first day of a new appointment as an employee subject to this part;

(2) On the first day of a period of service after a break in service or time in a nonpay status in excess of 52 weeks; or

(3) On receipt of an equivalent increase.

(c) Creditable service. The following periods of time shall be considered creditable service for purposes of waiting periods for within-grade increases:

(1) Time during which an employee is in receipt of pay, including periods of leave with pay;

(2) Time during which an employee with a prearranged regular scheduled tour of duty is in a nonpay status to the extent that the time in a nonpay status does not exceed, in the aggregate:

(i) One workweek in the waiting period for step 2;

(ii) Three workweeks in the waiting period for step 3; or

(iii) Four workweeks in the waiting period for steps 4 and 5;

(3) Time during which an employee or former employee is on leave of absence or is separated from Federal service and is entitled to continuation of pay or compensation under subchapter I of chapter 81 of title 5, United States Code. This does not apply to prevailing rate employees within a Department of Defense or Coast Guard nonappropriated fund instrumentality;

(4) Time during which a former employee is serving with the armed forces during a period of war or national emergency if the former employee left a civilian position to enter the armed forces and:

(i) Is reemployed no later than 52 weeks after separation from active military duty, or

(ii) Is restored to the civilian position after separation from active military duty or release from hospitalization

following separation from active military duty;

(5) The time between an employee's separation from an earlier position and the date of the employee's return to a civilian position through the exercise of a reemployment right granted by law, Executive Order, or regulation;

(6) Essential non-government civilian employment in the public interest during a period of war or national emergency when it interrupts otherwise creditable service;

(7) The time during which an employee is detailed to a non-Federal position under subchapter VI of chapter 33 of title 5, United States Code; and

(8) Nonworkdays intervening between an employee's last regularly scheduled workday in one position and the first regularly scheduled workday in a new position.

(d) Effective date. A within-grade increase shall be effective at the beginning of the first applicable pay period following the day an employee becomes eligible for the increase.

§ 532.419 Grade and pay retention.

(a) In accordance with section 9(a)(1) of Pub. L. 92-392 (86 Stat. 564, 573), an employee's initial rate of pay on conversion to a wage schedule established under the provisions of subchapter IV of chapter 53, title 5, United States Code, shall be determined under conversion rules prescribed by the Office of Personnel Management.

(b) Except as provided in paragraph (a) of this section, an employee's eligibility for grade and/or pay retention shall be determined in accordance with the provisions of part 536 of this title.

Subpart E—Premium Pay and Differentials

§ 532.501 Definitions.

In this subpart:

"Administrative workweek" means a period of seven consecutive calendar days.

"Basic workweek" for full time employees means the days and hours within an administrative workweek which make up the employee's regularly scheduled 40-hour workweek.

"Environmental differential" means a differential paid for a duty involving unusually severe hazards or working conditions.

"Irregular or occasional overtime work" means overtime work which is not part of the regularly scheduled administrative workweek.

"Night shift differential" means the differential paid the employee when the majority of regularly scheduled

nonovertime hours worked fall between 3 p.m. and 8 a.m.

"Overtime work" means authorized and approved hours of work performed by an employee in excess of eight hours in a day or in excess of 40 hours in an administrative workweek, and includes irregular or occasional overtime work and regular overtime work.

"Premium pay" means additional compensation for overtime, or Sunday work, and standby duty.

"Sunday work" means work performed during a regularly scheduled tour of duty within a basic workweek when any part of that work which is not overtime work is performed on Sunday.

"Regular overtime work" means overtime work which is a part of the regularly scheduled administrative workweek.

"Regularly scheduled administrative workweek" means:

(1) For full-time employees, the period within an administrative workweek within which employees are scheduled to be on duty regularly.

(2) For part-time employees, it means the days and hours within an administrative workweek during which these employees are scheduled to be on duty regularly.

"Tour of duty" means the hours of a day, i.e., a daily tour of duty, and the days of an administrative workweek, i.e., a weekly tour of duty, that are scheduled in advance and during which an employee is required to perform on a regularly recurring basis.

§ 532.503 Overtime pay.

(a)(1) Employees shall be paid overtime pay in accordance with sections 5544 and 5550 of title 5, United States Code or, if eligible, under the provisions of the Fair Labor Standards Act of 1938, as amended, whichever provides the greater overtime benefit. The rules for hours of work determinations and overtime pay entitlements for nonexempt employees under the Fair Labor Standards Act are contained in Part 551 of this subchapter.

(2) Hours of work in excess of eight in a day are not included in computing hours of work in excess of 40 hours in an administrative workweek.

(b) Effect of leave on overtime pay.

(1) Hours during which an employee is absent from duty on paid leave during time when the employee otherwise would have been required to be on duty shall be considered hours of work in determining whether the employee is entitled to overtime pay for work performed in excess of eight hours a day or 40 hours a week.

(2) For the purposes of paragraph (b)(1) of this section paid leave includes but is not limited to:

- (i) Annual or sick leave;
 - (ii) Authorized absence on a day off from duty granted by Executive or administrative order; or
 - (iii) Authorized absence on a legal holiday;
- (3) Hours during which an employee is absent from duty on leave without pay during a time when he/she otherwise would have been required to be on duty shall not be considered hours of work in determining whether he/she is entitled to overtime pay for work performed in excess of eight hours in a day or 40 hours in a week.

(c) Callback overtime work. Irregular or occasional overtime work performed by an employee on a day when work was not regularly scheduled for the employee or for which the employee has been required to return to the place of employment shall be considered to be at least two hours in duration for the purpose of overtime pay, regardless of whether the employee performs work for two hours.

(d)(1) An employee regularly assigned to a night shift, who performs overtime work which extends into or falls entirely within a day shift, shall be entitled to overtime pay computed on the night rate.

(2) When the overtime is performed on a nonworkday the employee shall be entitled to overtime pay computed on the rate of the employee's last previous regularly scheduled shift.

(e)(1) An employee regularly assigned to a rotating schedule involving work on both day and night shifts who performs overtime work which extends or falls entirely within the succeeding shift shall be entitled to overtime pay computed on the rate of the employee's regularly scheduled shift in effect for that calendar day.

(2) When the overtime is performed on a nonworkday, the employee shall be entitled to overtime pay computed on the average rate of basic pay for all regularly scheduled shifts worked by the employee during the basic workweek.

§ 532.505 Night shift differentials.

(a) Employees shall be entitled to receive night shift differentials in accordance with section 5343 of title 5, United States Code.

(b) Absence on holidays. An employee regularly assigned to a shift for which a night shift differential is payable shall be paid the night shift differential for a period of excused absence on a legal holiday or other day off from duty granted by Executive or administrative order.

(c) Travel status. An employee regularly assigned to a shift for which a night shift differential is payable shall be paid the night shift differential for hours of the employee's tour of duty while in official travel status, regardless of whether the employee is performing work.

(d) Temporary tour of duty.

(1) An employee regularly assigned to a night shift who is temporarily assigned to a day shift or to a night shift having a lower night shift differential shall continue to receive the regular night shift differential, a temporary detail for training purposes is also included—see 5 CFR 410.602.

(2) An employee regularly assigned to a night shift, who is temporarily assigned to another night shift having a higher differential, shall be paid the higher differential if a majority of the employee's regularly scheduled nonovertime hours of work on the temporary shift fall within hours having the higher differential.

(3) An employee regularly assigned to a day shift who is temporarily assigned to a night shift shall be paid a night shift differential.

(e) Leave with pay.

(1) An employee regularly assigned to a night shift shall be paid a night shift differential during a period of leave with pay.

(2) An employee regularly assigned to a day shift who is temporarily assigned to a night shift shall be paid a night shift differential for any leave with pay taken when scheduled to work night shifts.

(3) An employee assigned to a regular rotating schedule involving work on both day and night shifts shall be paid a night shift differential only for any leave with pay taken when scheduled to work night shifts.

(4) An employee who is not regularly assigned to a day shift or a night shift but whose shift is changed at irregular intervals shall be paid a night shift differential during leave with pay if the employee received a night shift differential for the last shift worked preceding leave with pay.

§ 532.507 Pay for holiday work.

(a) An employee who is entitled to holiday premium pay and who performs work on a holiday which is not overtime work shall be paid the employee's rate of basic pay plus premium pay at a rate equal to the rate of basic pay.

(b) An employee shall be paid for overtime work performed on a holiday at the same rate as for overtime on other workdays.

(c) An employee who is entitled to holiday premium pay and who is

required to report for work on a holiday shall be paid at least two hours of holiday pay whether or not work is actually performed.

§ 532.509 Pay for Sunday work.

A wage employee whose regular work schedule includes an 8-hour period of service which is not overtime work, a part of which is on Sunday, is entitled to additional pay under the provisions of sections 5544 and 5550 of title 5, United States Code.

§ 532.511 Environmental differentials.

(a) Entitlements to environmental differential pay

(1) In accordance with section 5343(c)(4) of title 5, United States Code, an employee shall be paid an environmental differential when exposed to a working condition or hazard that falls within one of the categories approved by the Office of Personnel Management.

(2) Each installation or activity must evaluate its situations against the guidelines issued by the Office of Personnel Management to determine whether the local situation is covered by one or more of the defined categories.

(b) Amount of environmental differential payable

(1) An employee entitled to an environmental differential shall be paid an amount equal to the percentage rate authorized by the Office of Personnel Management for the category in which the working condition or hazard falls, multiplied by the rate for the second step of WG-10 for the appropriated fund employees and NA-10 for the nonappropriated fund employees on the current regular non-supervisory wage schedule for the wage area for which the differential is payable, counting one-half cent and over as a whole cent.

(2) An employee entitled to an environmental differential on an actual exposure basis shall be paid a minimum of one hour's differential pay for the exposure. For exposure beyond one hour, the employee shall be paid in increments of one quarter hour for each 15 minutes or portion thereof in excess of 15 minutes. Entitlement begins with the first instance of exposure and ends one hour later, except that when exposure continues beyond the hour, it shall be considered ended at the end of the quarter hour in which exposure actually terminated.

(3) An employee entitled to an environmental differential on the basis of hours in a pay status shall be paid for all hours in a pay status on the day on which he/she is exposed to the situation.

(4) An employee may not be paid more than one environmental differential for a particular period of work.

(5) The payment of environmental differential pay is computed on the basis of the highest environmental differential rate authorized during the period of entitlement.

(6) The number of hours an employee is paid environmental differential shall not exceed the number of hours of duty performed by the employee on the day of exposure except as required by paragraph (b)(3) of this section.

(c) Basic pay. Environmental differential pay shall be considered basic pay for all purposes except for lump-sum annual leave payments and severance pay.

Subpart F—Job Grading System

§ 532.601 General.

The Office of Personnel Management shall establish a job grading system in accordance with section 5346 of title 5, United States Code. Appropriate instructions to agencies on the application of the job grading system shall be published by the Office of Personnel Management. Agencies are required to grade all jobs subject to this part in accordance with such instructions.

Subpart G—Job Grading Reviews and Appeals

§ 532.701 General.

A prevailing rate employee may at any time appeal the occupational series, grade, or title to which the employee's job is assigned, but may not appeal under this subpart the standards established for the job, nor other matters such as the accuracy of the job description, the rate of pay, or the propriety of a wage schedule rate.

§ 532.703 Agency review.

(a) Each agency shall establish a system processing an employee's application for review of the correctness of the series, grade or title of the employee's job.

Note.—Application for review will be hereafter referred to as an "application".

(b) In establishing the system required by this subpart, an agency, as a minimum, shall provide that the following requisites be met.

(1) The provisions of the system shall be published and the agency's employees shall be informed where a published copy is available for review.

(2) An application shall be in writing and contain the reasons the employee

believes the position is erroneously graded.

(3) An application may be filed at any time. However, when the application involves a downgrading or other job-grading action which resulted in a reduction in grade or loss of pay, in order to be entitled to retroactive corrective action:

(i) An employee not covered by Part 536 of this chapter who is covered by Subparts C and D of Part 752 of this chapter must appeal the change to lower grade under the provisions of § 752.405 of this chapter. An appeal under Subpart C and D of Part 752 of this chapter precludes the employee from filing an application under this section; or

(ii) An employee not covered by Subparts C and D of Part 752 of this chapter must request a review under the provisions of this subpart within 15 calendar days of the effective date of the change to lower grade in order to obtain any retroactive benefits. An employee receiving grade retention under Part 536 of this chapter has no appeal rights under Part 752 of this chapter, but is covered by the provisions of this subpart.

(4) An employee may select a representative, and the employee and the representative, when the representative is also employed by the same agency, shall be granted a reasonable time in presenting the application and shall be assured freedom from restraint, interference, coercion, or reprisal in presenting the application.

(5) An employee shall promptly furnish such facts as may be requested by the agency.

(6) An application shall be canceled and the employee so notified in the following circumstances:

(i) On receipt of a written request by the employee;

(ii) Failure of the employee to furnish required information or otherwise fail to proceed with the advancement of his application in a timely manner; however, instead of cancellation for failure by the employee to prosecute, the application may be adjudicated by the agency if the information is sufficient for that purpose; or

(iii) On notice that the employee has left the job, except when the employee would be entitled to the retroactive benefits including benefits allowable after the death of an employee appellant.

(7) The application shall be processed and decided promptly. No more than one level of review may be established within an agency before a final decision is issued, and that level of review, when

possible, must be above the level of classification authority which classified the position.

(8) When an employee not subject to Subparts C and D of Part 752 of this title applies for a review of a downgrading or other job-grading action that resulted in a reduction of pay, and the decision of an agency reverses in whole or in part the downgrading or other job-grading action, the effective date of that decision shall be retroactive to the effective date of the action being reviewed when the initial application to the agency was submitted in accordance with paragraph (b)(3)(ii) of this section. However, when the agency decision raises the grade or level of the job above its grade or level immediately preceding the downgrading, retroactivity shall apply only to the extent of restoration to the grade or level immediately preceding the downgrading.

(9) The right to a retroactive effective date is preserved when an agency finds that an employee was not notified of the applicable time limit for review and was not otherwise aware of the limit or that circumstances beyond the employee's control prevented filing the application within the prescribed time limit.

(10) The effective date of a change in the series, title or grade of a job shall be specified in the agency decision and, unless otherwise required by this subpart, may not be earlier than the date of the decision. However, in no case may it be later than the beginning of the first pay period which begins after the 60th calendar day from the date the application was filed. However, when the agency decision will result in a downgrading or other job-grading action that will reduce the pay of the incumbent of the job, the effective date may not be set earlier than the date on which the decision can be effected in accordance with procedures required by applicable law and regulation. The retroactive reclassification may be based only on duties and responsibilities existing at the time of downgrading or loss of pay and not on duties and responsibilities later assigned.

(11) When an application has been properly filed and the employee dies before the application has been processed, if a favorable decision would entitle the employee to retroactive corrective action, the application will be processed to completion after the employee's death and any appropriate corrective action made by amending the records of the agency.

(12) The decision on an application shall:

- (i) Be based on the record,
- (ii) Be in writing.

(iii) Inform the employee either in the decision or as an attachment to the decision of the reasons for the decision, including an analysis of the employee's job, i.e., comparing the job with the appropriate standard, and

(iv) Inform the employee of the right to appeal the decision to the Office of Personnel Management and of the time limits within which the application must be filed.

(c) The agency is responsible for compiling and maintaining a job-grading review file which will constitute the record and which will not contain any document or information which the employee has not been given an opportunity to review.

§ 532.705 Appeal to the Office of Personnel Management.

(a)(1) An employee may appeal the occupation series, grade or title of the job to the appropriate office of the Office of Personnel Management only (i) after the agency has issued a decision under the system established under § 532.703; and (ii) if the employee files the appeal with the Office of Personnel Management within 15 calendar days after receipt of the decision of the agency.

(2) The Office of Personnel Management may extend this time limit if it is shown that the employee was not notified of the applicable time limit and was not otherwise aware of the limit, or that circumstances beyond the employee's control prevented filing an appeal within the prescribed time limit.

(b) An employee shall make the appeal in writing and shall identify specifically the portions of the decision or job analysis of the agency with which the employee disagrees.

(c) The Office of Personnel Management shall base its decision on the record established in the agency, except that when the Office of Personnel Management investigates or audits the job it may take the results of the investigation or audit into consideration. In the event the Office of Personnel Management audits the job, the employee's representative may not be present.

(d) The Office of Personnel Management shall notify the employee and the agency in writing of its decision. The effective date of a change in the series, title and grade of a job directed by the Office of Personnel Management shall be specified in the decision of the Office of Personnel Management, computed from the date the employee filed the application with the agency, and determined under § 532.705(b)(10). However, when the agency decision will result in a downgrading or other job-

grading action that will reduce the pay of the incumbent of the job, the effective date may not be set earlier than the date on which the decision can be effected in accordance with procedures required by applicable law and regulation.

(e) The appeal of an employee shall be canceled and the employee so notified in the following circumstances:

(1) On receipt of the employee's written request;

(2) On failure to prosecute, when the employee does not furnish requested information and duly proceed with the advancement of the appeal; however, instead of cancellation for failure to prosecute, an appeal may be adjudicated if the information is sufficient for that purpose. The Office of Personnel Management may reopen a canceled appeal on a showing that circumstances beyond the control of the employee prevented the employee from prosecuting the appeal; or

(3) On notice that the employee has left the job, except when entitled to retroactive benefits, including benefits allowable after the death of an appellant.

(f) The Office of Personnel Management may, at its discretion, reopen and reconsider any job-grading decision made by a regional office when requested by an employee or an agency. This authority may be used under circumstances such as the following:

(1) An employee or an agency presents material facts not previously considered by the regional office involved;

(2) There is room for reasonable doubt as to the appropriateness of a regional office decision; or

(3) The potential impact of a regional office decision on similar jobs under other regional offices is sufficiently significant to make central office review of the decision desirable.

(g) The Director of the Office of Personnel Management, may, in his discretion, reopen and reconsider any previous decision when the party requesting reopening submits written argument or evidence which tends to establish that:

(1) New and material evidence is available that was not readily available when the previous decision was issued;

(2) The previous decision involves an erroneous interpretation of law or regulation or a misapplication of established policy; or

(3) The previous decision is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand, or is otherwise of such an exceptional nature as to merit the

personal attention of the Director of the Office of Personnel Management.

(h) A final decision by the Office of Personnel Management constitutes a certificate which is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government.

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BILLING CODE 5325-01-M

5 CFR Parts 870, 871, 872, and 873

Basic Life Insurance, Standard Optional Life Insurance, Additional Optional Life Insurance, and Family Optional Life Insurance

AGENCY: Office of Personnel Management.

SECTION: Interim regulations, with comments invited for consideration in final rulemaking.

SUMMARY: The Office of Personnel Management is correcting the interim regulations governing implementation of the Federal Employee's Group Life Insurance Act of 1980 (FEGLI), approved October 10, 1980. These regulations correct misstatements in interim regulations published in the *Federal Register* on December 5, 1980 (45 FR 80472), December 24, 1980 (45 FR 84955) and December 30, 1980, when the material which appeared on December 24th was republished (45 FR 85685). The corrections involve the participation requirement for continuation of life insurance during receipt of workers' compensation.

DATES: Effective date: The interim regulations are effective on December 24, 1980, unless otherwise specified.

COMMENT DATE: Comments must be received on or before June 9, 1981.

ADDRESS: Send comments to Craig B. Pettibone, Director, Office of Pay and Benefits Policy, Compensation Group, Office of Personnel Management, P.O. Box 57, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: John Landers (202) 632-4634.

SUPPLEMENTARY INFORMATION: Pursuant to section 553(d)(3) of title 5, United States Code, the Director finds that good cause exists for making this amendment effective in less than 30 days. The amendment is needed to make current interim regulations conform to the governing statute.

On December 5, 1980 and December 24th, 1980, OPM issued interim regulations governing implementation of the FEGLI Act of 1980, Pub. L. 96-427, which made major changes in the FEGLI program. One amendment changed the participation requirement for

continuation of basic life insurance during receipt of compensation for work injury under the Federal Employees Compensation Act. Under previous law, in order for a retiree or compensation recipient to qualify for continuation of basic life insurance during receipt of annuity or compensation the minimum participation in the FEGLI program was the lesser of (1) the full period(s) of service during which the coverage was available to the employee or (2) the 5 years of service immediately preceding the date on which that coverage would otherwise have stopped, that is, the date of completion of 12 months of leave without pay or separation from service. For optional coverage under the FEGLI program, the minimum participation requirement under both current and previous law is the same as stated above, except that in the case of a compensation recipient, the 5-year requirement is based only on the length of participation before the date of entitlement to compensation, rather than the date that the insurance coverage would stop as an employee, that is, at the end of 12 months of leave without pay or separation from service, whichever is earlier.

With enactment of Pub. L. 96-427, Congress amended section 8706(b) of title 5, United States Code, to eliminate this difference in the participation requirement for basic as opposed to optional coverage of compensation recipients. An insured employee must now meet the following participation requirement for continuation of basic life insurance (and any optional coverage) during receipt of workers' compensation: He/she must be enrolled for basic insurance during the 5 years of service immediately before entitlement to compensation, or for the full period(s) during which he/she was eligible to be enrolled, whichever is less.

The interim regulations published on December 5th and 24th misstated this statutory requirement by stating the 5-year requirement for compensation recipients (5 CFR 870.701(a)(1)) as the 5 years of service immediately preceding the date on which basic insurance would otherwise stop (which could include up to 12 months of leave without pay following the date of entitlement to workers' compensation). The interim regulations must be corrected to eliminate a contradiction between the FEGLI law and its implementing regulations. Corresponding changes in Parts 871, 872, and 873 (governing optional FEGLI coverages) must also be made to reflect the change in Part 870 for basic insurance.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies, or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Director, Office of Personnel Management, certifies that this regulation will not have a significant economic impact on a substantial number of small entities, including small business, small organizational units and small governmental jurisdictions.

Office of Personnel Management.

Beverly McCain Jones,

Issuance System Manager.

Accordingly, the Office of Personnel Management is amending Parts 870, 871, 872, and 873 of Title 5, Code of Federal Regulations, to read as follows:

PART 870—BASIC LIFE INSURANCE

1. In Part 870, paragraph (a)(1) of § 870.701 is revised, effective December 9, 1980, to read as follows:

Subpart G—Employees Compensation

§ 870.701 Eligibility for life insurance.

(a) * * *

(1) Has been insured for the 5 years of service immediately preceding the date of entitlement to compensation, or for the full period(s) of service during which he/she was entitled to be insured, and

PART 871—OPTIONAL LIFE INSURANCE

2. In Part 871, § 871.501(b) is revised to read as follows:

Subpart E—Termination and Conversion

§ 871.501 Termination and conversion of insurance.

* * *

(b) If, because of a declination or waiver, an insured employee has not had the standard optional insurance during the lesser of (1) the full period(s) of service during which it was available to him/her, or (2) the 5 years of service