reflect changing costs and market values.

Where it is not considered feasible to collect charges at a level specified in Section 6, charges should be set as close to that level as is practical.

c. Excise taxes are another means of charging specific beneficiaries for the Government services they receive. New user charges should not be proposed in cases where an excise tax currently finances the Government services that benefits specific individuals. Where appropriate, agencies may consider proposing new excise taxes rather than user fees. This should be considered where a tax would be significantly cheaper to administer and its burden would rest almost entirely on the user population (e.g., gasoline tax to finance highway construction). Excise taxes cannot be imposed through administrative action but rather require legislation. Legislation should meet the same criteria as in 7(b), except that the level of the tax must be explicitly stated. Agency review of these taxes must be performed periodically and new legislation should be proposed, as appropriate, to update the tax based on changes in cost.

d. In proposing new charges or modifications to existing ones, managers of other programs that provide special benefits to the same or similar user populations should be consulted. Joint legislative proposals should be made and joint collection efforts designed to ease the burden on the users should be used whenever possible.

e. Every effort should be made to keep the costs of collection to a minimum. The principles embodied in Circular No. A–76 (Performance of Commercial Activities) should be considered in designing the collection effort.

f. Legislative proposals will be submitted to the Office of Management and Budget in accordance with the requirements of Circular No. A–19. To ensure the proper placement of user fee initiatives in the budget account structure, agencies are encouraged to inform OMB of proposals at an early stage of development.

8. *Agency responsibility.* Agencies are responsible for the initiation and adoption of user charges schedules consistent with the policies in this Circular. Each agency will:

a. Identify the services and activities covered by this Circular;

b. Determine the extent of the special benefits provided;

c. Apply the principles specified in paragraph 6 in determining full cost or market price, as appropriate;

d. Apply the guidance in section 7 either to implement charges administratively or submit legislation as appropriate;

e. Review charges annually and adjust them to reflect changing costs or market values;

f. Ensure that the requirements of OMB Circular No. A–123 (Internal Control Systems) and appropriate audit standards are applied to collection.

g. Maintain readily accessible records of:

(1) The services or activities covered by this Circular;

(2) The extent of special benefits provided;

(3) The exceptions to the general policy of this Circular;

(4) The information used to establish charges and the specific method(s) used to determine them; and

(5) The receipts from each user charge imposed.

h. Maintain adequate records of the information used to establish charges and provide them upon request to OMB for the evaluation of the schedules.

9. *Disposition of receipts.* a. If user fees are implemented solely under the authority of this Circular, collections will be credited to the general fund of the Treasury as miscellaneous receipts, as required by 31 U.S.C. 9701.

b. Legislative proposals to permit the collections to be retained by the agency may be appropriate in certain circumstances. Proposals should meet the guidelines in Section 7b.

(1) Proposals that allow agency retention of receipts may be appropriate when:

(a) The fee charged recovers the outlays of the agency in providing the special benefit in the period in which the service is provided. (For example, a fee calculated as the overtime pay of inspectors charged for after regular duty hour inspections). In these cases, use of the receipts need not be controlled directly through the appropriations process. Generally, the use of receipts credited to an agency's appropriation should, however, be subject to limits set in the annual appropriations language.

(b) The fee charged is tied to the full cost of providing the special benefits. In these cases, the agency's outlays in a given fiscal year to provide the benefit may be less than the full-cost recovery fee charged. Under these circumstances, agency use of the receipts should be subject to control through the appropriations process.

(2) Legislative proposals should always credit collections above the level of full-cost recovery to the general fund.

10. *New activities.* Whenever agencies prepare legislative proposals for new or expanded Federal activities that would provide special benefits, the policies and criteria set forth in this Circular will apply.

11. *Inquiries.* For information concerning this Circular, consult the Office of Management and Budget examiner responsible for the agency's budget estimates.

By direction of the President:

James C. Miller III,

Director.

[FR Doc. 87–14265; Filed 6–30–87; 8:45 am]

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Wednesday
July 1, 1987

Part VI

Department of Labor

Wage and Hour Division, Employment Standards Administration

29 CFR Part 516

Fair Labor Standards Act; Records To Be Kept by Employers; Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division

Employment Standards Administration

29 CFR Part 516

Fair Labor Standards Act; Records to be Kept by Employers

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final text of revised recordkeeping regulations for employers subject to the Fair Labor Standards Act, including special recordkeeping rules that apply to employers whose employees fall within various minimum wage and/or overtime pay exemptions in the Act. This action conforms the regulations to statutory amendments which revised, repealed or added certain exemptions. In addition, various editorial changes have been made to simplify the language of the regulations.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. Phone: (202) 523–8305. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 15, 1986, the Department of Labor published in the **Federal Register** (51 FR 32744) proposed changes to 29 CFR Part 516. These regulations set forth the recordkeeping rules applicable to employers under the FLSA, including special recordkeeping requirements for employers whose employees fall within various statutory minimum wage and/or overtime pay exemptions. For the most part, the records that are required would be kept as a matter of customary or usual business practice.

Background

Section 11(c) of the Fair Labor Standards Act (FLSA) (29 U.S.C. 201 *et seq.*), provides for the issuance of regulations governing the records employers must maintain and preserve to enable the Secretary of Labor to effectively enforce the FLSA's minimum wage and overtime provisions and the regulations issued thereunder.

Part 516 was last revised on February 20, 1975 (40 FR 7405) to add recordkeeping requirements for domestic service employees. In 1974 and 1977, the FLSA was amended by repealing, revising or adding certain minimum wage and/or overtime pay exemptions which necessitated special recordkeeping requirements under Part 516. For example, the exemptions from minimum wage compensation for motion picture theater employees, telegraph agency employees, small logging crews and employees employed in growing and harvesting shade grown tobacco were repealed by the 1974 Amendments. Such employees, however, continued to be exempt from the overtime pay requirements. The 1977 Amendments repealed the overtime pay exemption for employees employed in growing and harvesting shade grown tobacco and the partial overtime pay exemption for certain employees of hotels, motels and restaurants. Also, a new complete exemption for minimum wage and overtime pay requirements for casual baby sitters and those who provide companionship services for the aged or infirm was enacted in 1974. Thus it was necessary to amend Part 516 to take account of these amendments.

The regulatory changes to Part 516 also clarify the recordkeeping requirements for State and local government police and firefighters employed on a work period basis under the partial overtime exemption in section 7(k) of the Act. However, other special recordkeeping requirements unique to State and local governments in section 7(o) of the Act regarding the use of compensatory time added by the Fair Labor Standards Amendments of 1985 are contained in 29 CFR Part 553, Application of the Fair Labor Standards Act to Employees of State and Local Governments.

In addition, certain housekeeping changes have been made, such as simplification of language, elimination of gender specific terminology, deletion of repetitive references, etc., to streamline and update the recordkeeping requirements for all employers covered by the Act and particularly for those employers whose employees are subject to specific statutory exemptions.

Discussion of Comments

A total of eleven comments were received. Several of these commenters expressed general approval of the proposed regulations without suggesting any particular changes.

The American Nurses' Association, Inc., commented that where records are maintained on microfilm or automatic word or data processing memory, a provision for safeguarding against unauthorized alteration of previously entered data should be required. While the FLSA requires that employers maintain accurate records, the statute contains no specific requirement of special safeguards applicable to employers who automate their payroll systems. To impose such a requirement by regulation would, in the Department's view, place an unreasonable and unnecessary burden on those employers who use such systems. The association also argued that employees or their unions should be given an opportunity to challenge the veracity of any proposed changes to recorded data. The Department believes the FLSA contains sufficient safeguards to deter the falsification of records and to remedy such violations, and that employers should not be required under the Act to obtain employee approval of corrections. Accordingly, the suggested revisions have not been adopted. Finally, the association suggested that where the prior agreement or understanding required under section 7(j) of the FLSA is not in writing, copies of memoranda summarizing its terms should be furnished each employee. As provided in § 516.23 of the proposal, and the prior existing rule, employers are required to maintain a copy of the memorandum. While the Department intends that such memoranda should be available for inspection by employees, the suggested requirement to furnish a copy to each employee is an unwarranted burden on employers. For these reasons, this change has not been made in the final rule.

The New Jersey Department of Labor and the Kentucky Department for Employment Services argued that Part 516 should contain a statement that where other Federal or State regulations impose more restrictive requirements, the more restrictive rules are applicable. The Department agrees and has added a new paragraph (c) in § 516.1 for this purpose.

One commenter argued that the requirement in § 516.2(a)(5) to maintain a notation of the starting and ending points of the work periods for employees hired under section 7(k) presents a large volume of work in light of shift changes, particularly if such notations must be recorded in personnel files at a central location. Nothing in the regulations require that records be maintained at a central location, although employers generally find it useful to do so for their own purposes. However, it is clear that the commenter incorrectly believed this requirement pertained to "shift schedules" (for example, "M—8:15 AM–4:45 PM; T—10:00 AM–6:00 PM; etc.) rather than "work periods" under section 7(k) (for example, "14-day work period beginning Sunday 12:01 AM and ending Saturday

12:00 midnight). No changes have been made to this section of the regulations.

The Montana Department of Labor and Industry argued that all employers should be required to maintain the basic records in § 516.2, even those employers exempt under the FLSA, in order to insure that the records are available for inspection under State laws. The Department believes Part 516 cannot be used as a vehicle to provide for the many variations of recordkeeping requirements under State laws. However, as noted above, a new paragraph (c) has been added to § 516.1 to address this issue.

The United Bus Owners of America commented that while they recognize that certain of the basic recordkeeping requirements (namely, § 516.2(a)(6) and (9)) do not apply to employees exempt from overtime pay under FLSA section 13(b)(1), the remaining basic requirements in § 516.2 should be reduced for such employees. No specific requirements were proposed for deletion. The Department has reviewed these requirements and believes they are necessary to insure records of compliance with the minimum wage and child labor provisions of the Act. Accordingly, no changes have been made in the final rule.

The West Virginia Legal Services Plan, Inc., commented that § 516.33(a) should be revised to delete the brief discussion, which was carried over from the prior existing rule, concerning the circumstances under which a joint employment relationship is established between farmers and farm labor contractors for purposes of including or excluding workers supplied by crew leaders in the 500 man-day test. They argued that the tests indicated in the proposal were too narrow and did not conform with certain court decisions on this matter. The Department agrees that Part 516 is not the proper vehicle to provide comprehensive guidance on this issue and has deleted the discussion of the conditions under which a joint employment relationship is established. Also, this commenter suggested that 516.33(c), concerning records for agricultural employers, include cross-references to the records retention requirements in §§ 516.5 and 516.6. The Department agrees and has incorporated such cross-references in the final rule.

The National Automobile Dealers Association (NADA) argued that the regulatory language in § 516.4 concerning the posting of notices would preclude their membership from modifying the posters to note that the overtime provisions do not apply to most of the employees pursuant to section 13(b)(10) of the FLSA. The changes to § 516.4 in the prior existing rule were intended to permit employers to modify the poster by including a notation concerning a particular overtime exemption that has broad application to the employees of the establishment. Further changes have been made in the final rule to clarify this matter.

The NADA also suggested that §§ 516.6 and 516.32 of the prior existing rule concerning equal pay recordkeeping requirements be restored in the final rule. However, as indicated in the proposal, the same regulatory language contained in the prior existing rule has been incorporated into regulations issued by the Equal Employment Opportunity Commission (EEOC) which has responsibility for enforcement and administration of the equal pay provisions of the FLSA. (See 29 CFR 1620.32 (b) and (c), formerly 29 CFR 1620.21 (b) and (c). In the Department's view, it is not appropriate to duplicate these requirements in Part 516. However, in order to clarify this matter, § 516.2 has been revised to include a cross reference to the EEOC rules.

Finally, the NADA questioned the reasons for certain deletions of requirements in the prior existing rule. Specifically, former § 516.6 contained a retention requirement for worktime schedules; former § 516.16 contained a recordkeeping requirement concerning the regular rate of pay of commission salespersons; and former § 516.10 contained a procedure for petitions to amend the recordkeeping regulations. All of these items were deleted in the proposal. The first two items were deleted as unnecessary to ensure compliance with the Act. The latter was deleted to eliminate the incorrect impression that special steps were necessary to seek a change in this particular regulation, and to avoid any possible confusion about the application of the Administrative Procedures Act. No further changes with respect to these items have been made in the final rule.

In addition to the changes discussed above, a number of minor editorial and punctuation changes have been made to the final regulatory text.

Classification—Executive Order 12291

The Department has conducted an analysis under the Paperwork Reduction Act of the estimated cost impact of these recordkeeping regulations on covered establishments. Based on that analysis, it is believed that this action is not a "major rule" under Executive Order 12291 on Federal Regulations because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost 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. No comments were received on this determination.

Final Regulatory Flexibility Analysis

(1) Reasons Why Action by Agency is Being Considered

Part 516 contains the recordkeeping requirements applicable to all employers covered by the Fair Labor Standards Act (FLSA), including special requirements for employers whose employees are within the scope of various minimum wage and/or overtime pay exemptions to the Act. Since the last major revision of the regulations, the FLSA has been amended in 1974, 1977 and 1985. Further amendments in 1986 did not affect Part 516. These revisions are being issued to conform the recordkeeping regulations to the amended statute. Additional editorial changes are being made to simplify the rules.

(2) Objectives of and Legal Basis for Rule

The regulations are issued pursuant to section 11(c) of the FLSA which provides for the issuance of rules governing the types of records employers must maintain and preserve to enable the Secretary of Labor to effectively enforce the FLSA's provisions and any regulations issued thereunder. The objective of these revised rules is to provide employers with recordkeeping regulations which not only take into account the amended statute but which also simplify the regulatory requirements, to the extent possible, and the regulatory language in order to enable employers to more easily comply with the requirements of the Act.

(3) Number of Small Entities Covered Under Rule

These regulations apply to all employers (approximately 4.2 million) covered by the provisions of the Fair Labor Standards Act (29 U.S.C. 201 *et seq.*). The majority of such employers would be classified as small entities. In addition, these regulations apply to approximately 83,000 State and local government agencies. It is estimated that 50,000 of thsee agencies would be classified as small entities.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

The revised rules decrease the recordkeeping burdens for employers who previously had special recordkeeping requirements for employees subject to various exemptions in the FLSA. When a particular exemption is applicable, specific information, in addition to the basic recordkeeping requirements, is necessary to properly enforce the Act. Once an exemption has been repealed or revised, as occurred with the 1974 and 1977 Amendments, only certain basic information is necessary for enforcement. Therefore, changes have been made to the rules to conform the regulations to the amended statute. Also, changes have been made to simplify and clarify the language and to delete repetitiveness. As a result, the revised rules will provide employers with a better understanding of their recordkeeping obligation and will generally require employers to maintain information which they would normally keep as a matter of customary or usual business practice regardless of the size of the entity.

(5) Relevant Federal Rules Duplicating, Overlapping or Conflicting With the Rule

There is no duplication of existing Wage-Hour requirements. Certain similar information is required by the Internal Revenue Service (IRS) in 26 CFR Part 31. However, while the FLSA and IRS recordkeeping rules require similar information, the FLSA regulations do not require duplication of those records required by IRS.

(6) Differing Compliance or Reporting Requirements

As an alternative to the proposed approach, consideration was given to requiring a standard format for the collection of information. In that way, all records would be kept in the same form and order. This would arguably provide an easier method for enforcement, since all records would identically present the required information. However, it was determined that requiring a standard format for recordkeeping would be an unnecessary burden, particularly on small entities. Employers who are required to maintain and preserve records under the FLSA have varying capabilities and differing methods of recordkeeping which are most cost efficient and effective for their respective business organizations. By not requiring a standard format, employers can determine the method of recordkeeping which will have the smallest economic impact. This is of particular benefit to small entities which, in most cases, would be unable to expend the same resources as large entities for recordkeeping. Under these rules, small entities can maintain the required information in any order or form which they consider appropriate to their needs.

(7) Clarification, Consolidation and Simplification of Compliance and Reporting Requirements

As noted above, the updated and streamlined rules will simplify compliance and reporting requirements for all employers covered by the Act, including small entities, by providing regulations that conform to the amended statute in language more easily understandable than the prior existing rule.

(8) Use of Other Standards

Appropriate alternative standards that would impose less burdensome regulations are not available.

(9) Exemptions of Small Entities From Coverage of the Rule

An exemption from recordkeeping for small entities covered by the FLSA is not possible since records are necessary for the enforcement of the Act regardless of the size of the entity. However, there are exemptions in the FLSA itself, reflected in the regulations, which take small entities into account. For example, section 13(a)(2) of the Act exempts from both minimum wage and overtime pay all employees of any retail or service establishment with an annual dollar volume of sales made or business done of less than $362,500 (exclusive of excise taxes at the retail level which are separately stated). This small business exemption is reflected in § 516.11 of the regulations where most of the basic recordkeeping requirements for such small entities have been waived. Thus, the regulations reflect a concern for the burden of recordkeeping on small entities.

As a result of the above analysis, it has been determined that the proposed rule will not have a significant detrimental economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the recordkeeping or reporting provisions that are included in these regulations have been approved by the Office of Management and Budget (OMB). OMB has assigned control numbers to the information collection requirements in this part: At the headings for Subpart A and Subpart B, OMB Control No. 1215-0017 for the recordkeeping requirements therein; at § 516.31, OMB Control No. 1215-0013 for the recordkeeping requirements of the homeworker handbook; and, OMB Control No. 1215-0006 for the reporting requirements of § 516.8.

Conclusion

The Department has determined in accordance with Executive Order 12291 that this regulation falls within the authority delegated to the Secretary of Labor by the Fair Labor Standards Act (FLSA) (29 U.S.C. 201 *et seq.*). The Department has also determined that this regulation is consistent with the congressional intent of the application of the FLSA to covered employers. Finally, it has been determined that the factual conclusions upon which the rule is based have substantial support in the agency record, viewed as a whole, with full attention given to the comments.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 516

Minimum wage, Reporting and recordkeeping requirements.

For the reasons set forth above, 29 CFR Part 516 is revised as set forth below:

Signed at Washington, DC, on this 26th day of June, 1987.

William E. Brock,

Secretary of Labor.

Paula V. Smith,

Administrator, Wage and Hour Division.

PART 516—RECORDS TO BE KEPT BY EMPLOYERS

Introductory

Sec.

516.0 Display of OMB control Numbers.
516.1 Form of records; scope of regulations.

Subpart A—General Requirements

516.2 Employees subject to minumum wage or minimum wage and overtime provisions pursuant to section 6 or sections 6 and 7(a) of the Act.
516.3 Bona fide executive, administrative, and professional employees (including academic administrative personnel and teachers in elementary or secondary schools), and outside sales employees employed pursuant to section 13(a)(1) of the Act.

516.4 Posting of notices.
516.5 Records to be preserved 3 years.
516.6 Records to be preserved 2 years.
516.7 Place for keeping records and their availability for inspection.
516.8 Computations and reports.
516.9 Petitions for exceptions.
516.10 [Reserved]

Subpart B—Records Pertaining to Employees Subject to Miscellaneous Exemptions Under the Act; Other Special Requirements

516.11 Employees exempt from both minimum wage and overtime pay requirements under section 13(a) (2), (3), (4), (5), (8), (10), (12) pr 13(d) of the Act.
516.12 Employees exempt from overtime pay requirements pursuant to section 13(b) (1), (2), (3), (9), (10), (15), (16), (17), (20), (21), (24), (27) or (28) of the Act.
516.13 Livestock auction employees exempt from overtime pay requirements under section 13(b)(13) of the Act.
516.14 Country elevator employees exempt from overtime pay requirements under section 13(b)(14) of the Act.
516.15 Local delivery employees exempt from overtime pay requirements pursuant to section 13(b)(11) of the Act.
516.16 Commission employees of a retail or service establishment exempt from overtime pay requirements pursuant to section 7(i) of the Act.
516.17 Seamen exempt from overtime pay requirements pursuant to section 13(b)(6) of the Act.
516.18 Employees employed in certain tobacco, cotton, sugar cane or sugar beet service, who are partially exempt from overtime pay requirements pursuant to section 7(m), 13(h), 13(i) or 13(j) of the Act.
516.19 [Reserved]
516.20 Employees under certain collective bargaining agreements who are partially exempt from overtime pay requirements as provided in section 7(b)(1) or section 7(b)(2) of the Act.
516.21 Bulk petroleum employees partially exempt from overtime pay requirements pursuant to section 7(b)(3) of the Act.
516.22 Employees engaged in charter activities of carriers pursuant to section 7(n) of the Act.
516.23 Employees of hospitals and residential care facilities compensated for overtime work on the basis of a 14-day work period pursuant to section 7(j) of the Act.
516.24 Employees employed under section 7(f) "Belo" contracts.
516.25 Employees paid for overtime on the basis of "applicable" rates provided in sections 7(g)(1) and 7(g)(2) of the Act.
516.26 Employees paid for overtime at premium rates computed on a "basic" rate authorized in accordance with section 7(g)(3) of the Act.
516.27 "Board, lodging, or other facilities" under section 3(m) of the Act.
516.28 Tipped employees.
516.29 Employees employed by a private entity operating an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System who are partially exempt from overtime pay requirements pursuant to section 13(b)(29) of the Act.
516.30 Learners, apprentices, messengers, students, or handicapped workers employed under special certificates as provided in section 14 of the Act.
516.31 Industrial homeworkers.
516.32 [Reserved]
516.33 Employees employed in agriculture under section 13(a)(6) or 13(b)(12) of the Act.

Authority: Sec. 11, 52 Stat. 1066, as amended, 29 U.S.C. 211. Section 516.33 also issued under 52 Stat. 1060, as amended; 29 U.S.C. 201 et seq.

Introductory

§ 516.0 Display of OMB control Numbers.

Subpart or section where information collection requirement is located	Currently assigned OMB control No.
Subpart A (except 516.8)	1215.0017
516.8	1215.0006
Subpart B (except 516.31)	1215.0017
516.31	1215.0013

§ 516.1 Form of records; scope of regulations.

(a) *Form of records.* No particular order or form of records is prescribed by the regulations in this part. However, every employer subject to any provisions of the Fair Labor Standards Act of 1938, as amended (hereinafter referred to as the "Act"), is required to maintain records containing the information and data required by the specific sections of this part. The records may be maintained and preserved on microfilm or other basic source document of an automatic word or data processing memory provided that adequate projection or viewing equipment is available, that the reproductions are clear and identifiable by date or pay period and that extensions or transcriptions of the information required by this part are made available upon request.

(b) *Scope of regulations.* The regulations in this part are divided into two subparts. (1) Subpart A of this part contains the requirements generally applicable to all employers employing covered employees, including the requirements relating to the posting of notices, the preservation and location of records, and the recordkeeping requirements for employers of employees to whom both the minimum wage provisions of section 6 or the minimum wage provisions of section 6 and the overtime pay provisions of section 7(a) of the Act apply. In addition, section 516.3 contains the requirements relating to executive, administrative, and professional employees (including academic administrative personnel or teachers in elementary or secondary schools), and outside sales employees.

(2) Subpart B of this part deals with the information and data which must be kept for employees (other than executive, administrative, etc., employees) who are subject to any of the exemptions provided in the Act. This section also specifies the records needed for deductions from and additions to wages for "board, lodging, or other facilities," industrial homeworkers and employees whose tips are credited toward wages. The sections in Subpart B of this part require the recording of more, less, or different items of information or data than required under the generally applicable recordkeeping requirements of Subpart A.

(c) *Relationship to other recordkeeping and reporting requirements.* Nothing in 29 CFR Part 516 shall excuse any party from complying with any recordkeeping or reporting requirement imposed by any other Federal, State or local law, ordinance, regulation or rule.

Subpart A—General Requirements

§ 516.2 Employees subject to minimum wage or minimum wage and overtime provisions pursuant to section 6 or sections 6 and 7(a) of the Act.

(a) *Items required.* Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom section 6 or both sections 6 and 7(a) of the Act apply:

(1) Name in full, as used for Social Security recordkeeping purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records,

(2) Home address, including zip code,

(3) Date of birth, if under 19,

(4) Sex and occupation in which employed (sex may be indicated by use of the prefixes Mr., Mrs., Miss., or Ms.) (Employee's sex identification is related to the equal pay provisions of the Act which are administered by the Equal Employment Opportunity Commission. Other equal pay recordkeeping requirements are contained in 29 CFR Part 1620.)

(5) Time of day and day of week on which the employee's workweek begins (or for employees employed under section 7(k) of the Act, the starting time and length of each employee's work period). If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment will suffice,

(6)(i) Regular hourly rate of pay for any workweek in which overtime compensation is due under section 7(a) of the Act, (ii) explain basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, and (iii) the amount and nature of each payment which, pursuant to section 7(e) of the Act, is excluded from the "regular rate" (these records may be in the form of vouchers or other payment data),

(7) Hours worked each workday and total hours worked each workweek (for purposes of this section, a "workday" is any fixed period of 24 consecutive hours and a "workweek" is any fixed and regularly recurring period of 7 consecutive workdays),

(8) Total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation,

(9) Total premium pay for overtime hours. This amount excludes the straight-time earnings for overtime hours recorded under item (8) above,

(10) Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments. Also, in individual employee records, the dates, amounts, and nature of the items which make up the total additions and deductions,

(11) Total wages paid each pay period,

(12) Date of payment and the pay period covered by payment.

(b) *Records of retroactive payment of wages.* Every employer who makes retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division pursuant to section 16(c) and/or section 17 of the Act, shall:

(1) Record and preserve, as an entry on the pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment.

(2) Prepare a report of each such payment on a receipt form provided by or authorized by the Wage and Hour Division, and (i) preserve a copy as part of the records, (ii) deliver a copy to the employee, and (iii) file the original, as evidence of payment by the employer and receipt by the employee, with the Administrator or an authorized representative within 10 days after payment is made.

(c) *Employees working on fixed schedules.* With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required by paragraph (a)(7) of this section, the schedule of daily and weekly hours the employee normally works. Also,

(1) In weeks in which an employee adheres to this schedule, indicates by check mark, statement or other method that such hours were in fact actually worked by him, and

(2) In weeks in which more or less than the scheduled hours are worked, shows that exact number of hours worked each day and each week.

§ 516.3 Bona fide executive, administrative, and professional employees (including academic administrative personnel and teachers in elementary or secondary schools), and outside sales employees employed pursuant to section 13(a)(1) of the Act.

With respect to each employee in a bona fide executive, administrative, or professional capacity (including employees employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools), or in outside sales, as defined in Part 541 of this chapter (pertaining to so-called "white collar" employee exemptions), employers shall maintain and preserve records containing all the information and data required by § 516.2(a) except paragraphs (a) (6) through (10) and, in addition, the basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites. (This may be shown as the dollar amount of earnings per month, per week, per month plus commissions, etc. with appropriate addenda such as "plus hospitalization and insurance plan A," "benefit package B," "2 weeks paid vacation," etc.)

§ 516.4 Posting of notices.

Every employer employing any employees subject to the Act's minimum wage provisions shall post and keep posted a notice explaining the Act, as prescribed by the Wage and Hour Division, in conspicuous places in every establishment where such employees are employed so as to permit them to observe readily a copy. Any employer of employees to whom section 7 of the Act does not apply because of an exemption of broad application to an establishment may alter or modify the poster with a legible notation to show that the overtime provisions do not apply. For example: "Overtime Provisions Not Applicable to Taxicab Drivers (Sec. 13(b)(17))".

§ 516.5 Records to be preserved 3 years.

Each employer shall preserve for at least 3 years:

(a) *Payroll records.* From the last date of entry, all payroll or other records containing the employee information and data required under any of the applicable sections of this part, and

(b) *Certificates, agreements, plans, notices, etc.* From their last effective date, all written:

(1) Collective bargaining agreements relied upon for the exclusion of certain costs under section 3(m) of the Act,

(2) Collective bargaining agreements, under section 7(b)(1) or 7(b)(2) of the Act, and any amendments or additions thereto,

(3) Plans, trusts, employment contracts, and collective bargaining agreements under section 7(e) of the Act,

(4) Individual contracts or collective bargaining agreements under section 7(f) of the Act. Where such contracts or agreements are not in writing, a written memorandum summarizing the terms of each such contract or agreement,

(5) Written agreements or memoranda summarizing the terms of oral agreements or understandings under section 7(g) or 7(j) of the Act, and

(6) Certificates and notices listed or named in any applicable section of this part.

(c) *Sales and purchase records.* A record of (1) total dollar volume of sales or business, and (2) total volume of goods purchased or received during such periods (weekly, monthly, quarterly, etc.), in such form as the employer maintains records in the ordinary course of business.

§ 516.6 Records to be preserved 2 years.

(a) Supplementary basic records: Each employer required to maintain records under this part shall preserve for a period of at least 2 years.

(1) *Basic employment and earnings records.* From the date of last entry, all basic time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay period basis (for example, units produced) when those

amounts determine in whole or in part the pay period earnings or wages of those employees.

(2) *Wage rate tables.* From their last effective date, all tables or schedules of the employer which provide the piece rates or other rates used in computing straight-time earnings, wages, or salary, or overtime pay computation.

(b) Order, shipping, and billing records: From the last date of entry, the originals or true copies of all customer orders or invoices received, incoming or outgoing shipping or delivery records, as well as all bills of lading and all billings to customers (not including individual sales slips, cash register tapes or the like) which the employer retains or makes in the usual course of business operations.

(c) Records of additions to or deductions from wages paid:

(1) Those records relating to individual employees referred to in § 516.2(a)(10) and

(2) All records used by the employer in determining the original cost, operating and maintenance cost, and depreciation and interest charges, if such costs and charges are involved in the additions to or deductions from wages paid.

§ 516.7 Place for keeping records and their availability for inspection.

(a) *Place of records.* Each employer shall keep the records required by this part safe and accessible at the place or places of employment, or at one or more established central recordkeeping offices where such records are customarily maintained. Where the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records shall be made available within 72 hours following notice from the Administrator or a duly authorized and designated representative.

(b) *Inspection of records.* All records shall be available for inspection and transcription by the Administrator or a duly authorized and designated representative.

§ 516.8 Computations and reports.

Each employer required to maintain records under this part shall make such extension, recomputation, or transcription of the records and shall submit to the Wage and Hour Division such reports concerning persons employed and the wages, hours, and other conditions and practices of employment set forth in the records as the Administrator or a duly authorized and designated representative may request in writing.

§ 516.9 Petitions for exceptions.

(a) *Submission of petitions for relief.* Any employer or group of employers who, due to peculiar conditions under which they must operate, desire authority to maintain records in a manner other than required in this part, or to be relieved of preserving certain records for the period specified in this part, may submit a written petition to the Administrator requesting such authority, setting forth the reasons therefor.

(b) *Action on petitions.* If, after review of the petition, the Administrator finds that the authority requested will not hinder enforcement of the Act, the Administrator may grant such authority limited by any conditions determined necessary and subject to subsequent revocation. Prior to revocation of such authority because of noncompliance with any of the prescribed conditions, the employer will be notified of the reasons and given an opportunity to come into compliance.

(c) *Compliance after submission of petitions.* The submission of a petition or the delay of the Administrator in acting upon such petition will not relieve any employer or group of employers from any obligations to comply with all the applicable requirements of the regulations in this part. However, the Administrator will provide a response to all petitions as soon as possible.

§ 516.10 [Reserved]

Subpart B—Records Pertaining to Employees Subject to Miscellaneous Exemptions Under the Act; Other Special Requirements

§ 516.11 Employees exempt from both minimum wage and overtime pay requirements under section 13(a) (2), (3), (4), (5), (8), (10), (12), or 13(d) of the Act.

With respect to each and every employee exempt from both the minimum wage and overtime pay requirements of the Act pursuant to the provisions of section 13(a) (2), (3), (4), (5), (8), (10), (12), or 13(d) of the Act, employers shall maintain and preserve records containing the information and data required by § 516.2(a) (1) through (4).

§ 516.12 Employees exempt from overtime pay requirements pursuant to section 13(b) (1), (2), (3), (5), (9), (10), (15), (16), (17), (20), (21), (24), (27), or (28) of the Act.

With respect to each employee exempt from the overtime pay requirements of the Act pursuant to the provisions of section 13(b) (1), (2), (3), (5), (9), (10), (15), (16), (17), (20), (21), (24), (27), or (28) of the Act, shall maintain and preserve payroll or other records, containing all the information and data required by § 516.2(a) except paragraphs (a) (6) and (9) and, in addition, information and data regarding the basis on which wages are paid (such as the monetary amount paid, expressed as earnings per hour, per day, per week, etc.).

§ 516.13 Livestock auction employees exempt from overtime pay requirements under section 13(b)(13) of the Act.

With respect to each employee exempt from the overtime pay requirements of the Act pursuant to section 13(b)(13), the employer shall maintain and preserve records containing the information and data required by § 516.2(a) except paragraphs (a) (6) and (9) and, in addition, for each workweek in which the employee is employed both in agriculture and in connection with livestock auction operations: (a) the total numbers of hours worked by each such employee, (b) the total number of hours in which the employee was employed in agriculture and the total number of hours employed in connection with livestock auction operations, and (c) the total straight-time earnings for employment in livestock auction operations.

§ 516.14 Country elevator employees exempt from overtime pay requirements under section 13(b)(14) of the Act.

(a) With respect to each employee exempt from the overtime pay requirements of the Act pursuant to section 13(b)(14), the employer shall maintain and preserve records containing the information and data required by § 516.2(a) except paragraphs (a) (6) and (9) and, in addition, for each workweek, the names and occupations of all persons employed in the country elevator, whether or not covered by the Act, and

(b) Information demonstrating that the "area of production" requirements of Part 536 of this chapter are met.

§ 516.15 Local delivery employees exempt from overtime pay requirements pursuant to section 13(b)(11) of the Act.

With respect to each employee exempt from the overtime pay requirements of the Act pursuant to section 13(b)(11), the employer shall maintain and preserve payroll or other records, containing all the information and data required by § 516.2(a) except paragraphs (a) (6) and (9) and, in addition, information and data regarding the basis on which wages are paid (such as the dollar amount paid per trip; the dollar amount of earnings per week plus 3 percent commission on all cases

delivered). Records shall also contain the following information:

(a) A copy of the Administrator's finding under Part 551 of this chapter with respect to the plan under which such employees are compensated;

(b) A statement or description of any changes made in the trip rate or other delivery payment plan of compensation for such employees since its submission for such finding;

(c) Identification of each employee employed pursuant to such plan and the work assignments and duties; and

(d) A computation for each quarter-year of the average weekly hours of full-time employees employed under the plan during the most recent representative annual period as described in § 551.8(g) (1) and (2) of this chapter.

§ 516.16 Commission employees of a retail or service establishment exempt from overtime pay requirements pursuant to section 7(i) of the Act.

With respect to each employee of a retail or service establishment exempt from the overtime pay requirements of the Act pursuant to the provisions of section 7(i), employers shall maintain and preserve payroll and other records containing all the information and data required by § 516.2(a) except paragraphs (a) (6), (8), (9), and (11), and in addition:

(a) A symbol, letter or other notation placed on the payroll records identifying each employee who is paid pursuant to section 7(i).

(b) A copy of the agreement or understanding under which section 7(i) is utilized or, if such agreement or understanding is not in writing, a memorandum summarizing its terms including the basis of compensation, the applicable representative period and the date the agreement was entered into and how long it remains in effect. Such agreements or understandings, or summaries may be individually or collectively drawn up.

(c) Total compensation paid to each employee each pay period (showing separately the amount of commissions and the amount of noncommission straight-time earnings).

§ 516.17 Seamen exempt from overtime pay requirements pursuant to section 13(b)(6) of the Act.

With respect to each employee employed as a seaman and exempt from the overtime pay requirements of the Act pursuant to section 13(b)(6), the employer shall maintain and preserve payroll or other records, containing all the information required by § 516.2(a) except paragraphs (a) (5) through (9) and, in addition, the following:

(a) Basis on which wages are paid (such as the dollar amount paid per hour, per day, per month, etc.)

(b) Hours worked each workday and total hours worked each pay period (for purposes of this section, a "workday" shall be any fixed period of 24 consecutive hours; the "payperiod" shall be the period covered by the wage payment, as provided in section 6(a)(4) of the Act),

(c) Total straight-time earnings or wages for each such pay period, and

(d) The name, type, and documentation, registry number, or other identification of the vessel or vessels upon which employed.

§ 516.18 Employees employed in certain tobacco, cotton, sugar cane or sugar beet services who are partially exempt from overtime pay requirements pursuant to section 7(m), 13(h), 13(i) or 13(j) of the Act.

With respect to each employee providing services in connection with certain types of green leaf or cigar leaf tobacco, cotton, cottonseed, cotton ginning, sugar cane, sugar processing or sugar beets who are partially exempt from the overtime pay requirements of the Act pursuant to 7(m), 13(h), 13(i) or 13(j), the employer shall, in addition to the records required in § 516.2, maintain and preserve a record of the daily and weekly overtime compensation paid. Also, the employer shall note in the payroll records the beginning date of each workweek during which the establishment operates under the particular exemption.

§ 516.19 [Reserved]

§ 516.20 Employees under certain collective bargaining agreements who are partially exempt from overtime pay requirements as provided in section 7(b)(1) or section 7(b)(2) of the Act.

(a) The employer shall maintain and preserve all the information and data required by § 516.2 and shall record daily as well as weekly overtime compensation for each employee employed:

(1) Pursuant to an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employees shall be employed more than 1,040 hours during any period of 26 consecutive weeks as provided in section 7(b)(1) of the Act, or

(2) Pursuant to an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that the employee shall be employed not more than 2,240 hours during a specified period of 52 consecutive weeks and shall be guranteed employment as provided in section 7(b)(2) of the Act.

(b) The employer shall also keep copies of such collective bargaining agreement and such National Labor Relations Board certification as part of the records and shall keep a copy of each amendment or addition thereto.

(c) The employer shall also make, and preserve a record, either separately or as a part of the payroll:

(1) Listing each employee employed pursuant to each such collective bargaining agreement and each amendment and addition thereto.

(2) Indicating the period or periods during which the employee has been or is employed pursuant to an agreement under section 7(b)(1) or 7(b)(2) of the Act, and

(3) Showing the total hours worked during any period of 26 consecutive weeks, if the employee is employed in accordance with section 7(b)(1) of the Act, or during the specified period of 52 consecutive weeks, if employed in accordance with section 7(b)(2) of the Act.

§ 516.21 Bulk petroleum employees partially exempt from overtime pay requirements pursuant to section 7(b)(3) of the Act.

With respect to each employee partially exempt from the overtime provisions of the Act pursuant to section 7(b)(3), the employer shall maintain and preserve records containing all the information and data required by § 516.2(a), and, in addition, shall record the daily as well as the weekly overtime compensation paid to the employees, the rate per hour and the total pay for time worked between the 40th and 56th hour of the workweek.

§ 516.22 Employees engaged in charter activities of carriers pursuant to section 7(n) of the Act.

With respect to each employee employed in charter activities for a street, suburban or interurban electric railway or local trolley or motorbus carrier pursuant to section 7(n) of the Act, the employer shall maintain and preserve records containing all the information and data required by § 516.2(a) and, in addition, the following:

(a) Hours worked each workweek in charter activities; and

(b) A copy of the employment agreement or understanding stating that in determining the hours of employment for overtime pay purposes, the hours spent by the employee in charter activities will be excluded and, also, the date this agreement or understanding was entered into.

§ 516.23 Employees of hospitals and residential care facilities compensated for overtime work on the basis of a 14-day work period pursuant to section 7(j) of the Act.

With respect to each employee of hospitals and institutions primarily engaged in the care of the sick, the aged, or mentally ill or defective who reside on the premises compensated for overtime work on the basis of a work period of 14 consecutive days pursuant to an agreement or understanding under section 7(j) of the Act, employers shall maintain and preserve.

(a) The records required by § 516.2 except paragraphs (a) (5) and (7) through (9), and in addition:

(1) Time of day and day of week on which the employee's 14-day work period begins,

(2) Hours worked each workday and total hours worked each 14-day work period,

(3) Total straight-time wages paid for hours worked during the 14-day period,

(4) Total overtime excess compensation paid for hours worked in excess of 8 in a workday and 80 in the work period.

(b) A copy of the agreement or understanding with respect to using the 14-day period for overtime pay computations or, if such agreement or understanding is not in writing, a memorandum summarizing its terms and showing the date it was entered into and how long it remains in effect.

§ 516.24 Employees employed under section 7(f) "Belo" contracts.

With respect to each employee to whom both sections 6 and 7(f) of the Act apply, the employer shall maintain and preserve payroll or other records containing all the information and data required by § 516.2(a) except paragraphs (a) (8) and (9), and, in addition, the following:

(a) Total weekly guaranteed earnings,

(b) Total weekly compensation in excess of weekly guaranty,

(c) A copy of the bona fide individual contract or the agreement made as a result of collective bargaining by representatives of employees, or where such contract or agreement is not in writing, a written memorandum summarizing its terms.

§ 516.25 Employees paid for overtime on the basis of "applicable" rates provided in sections 7(g)(1) and 7(g)(2) of the Act.

With respect to each employee compensated for overtime work in accordance with section 7(g)(1) or 7(f)(2) of the Act, employers shall maintain and preserve records containing all the information and data required by § 516.2(a) except paragraphs (a), (6) and (9) and, in addition, the following:

(a)(1) Each hourly or piece rate at which the employee is employed, (2) basis on which wages are paid, and (3) the amount and nature of each payment which, pursuant to section 7(e) of the Act, is excluded from the "regular rate,"

(b) The number of overtime hours worked in the workweek at each applicable hourly rate or the number of units of work performed in the workweek at each applicable piece rate during the overtime hours,

(c) Total weekly overtime compensation at each applicable rate which is over and above all straight-time earnings or wages earned during overtime worked,

(d) The date of the agreement or understanding to use this method of compensation and the period covered. If the employee is part of a workforce or employed in or by an establishment all of whose workers have agreed to use this method of compensation a single notation of the date of the agreement or understanding and the period covered will suffice.

§ 516.26 Employees paid for overtime at premium rates computed on a "basic" rate authorized in accordance with section 7(g)(3) of the Act.

With respect to each employee compensated for overtime hours at a "basic" rate which is substantially equivalent to the employee's average hourly earnings, as authorized in accordance with section 7(g)(3) of the Act and Part 548 of this chapter, employers shall maintain and preserve records containing all the information and data required by § 516.2 except paragraph (a)(6) thereof and, in addition, the following:

(a)(1) The hourly rates, piece rates, or commission rates applicable to each type of work performed by the employee, (2) the computation establishing the basic rate at which the employee is compensated for overtime hours (if the employee is part of a workforce or employed in or by an establishment all of whose workers have agreed to accept this method of compensation, a single entry of this computation will suffice), (3) the amount and nature of each payment which, pursuant to section 7(e) of the Act, is excluded from the "regular rate."

(b)(1) Identity of representative period for computing the basic rate, (2) the period during which the established basic rate is to be used for computing overtime compensation, (3) information which establishes that there is no significant difference between the pertinent terms, conditions and circumstances of employment in the period selected for the computation of the basic rate and those in the period for which the basic rate is used for computing overtime compensation, which could affect the representative character of the period from which the basic rate is derived.

(c) A copy of the written agreement or, if there is no such agreement, a memorandum summarizing the terms of and showing the date and period covered by the oral agreement or understanding to use this method of computation. If the employee is one of a group, all of whom have agreed to use this method of computation, a single memorandum will suffice.

§ 516.27 "Board, lodging, or other facilities" under section 3(m) of the Act.

(a) In addition to keeping other records required by this part, an employer who makes deductions from the wages of employees for "board, lodging, or other facilities" (as these terms are used in sec. 3(m) of the Act) furnished to them by the employer or by an affiliated person, or who furnishes such "board, lodging, or other facilities" to employees as an addition to wages, shall maintain and preserve records substantiating the cost of furnishing each class of facility except as noted in paragraph (c) of this section. Separate records of the cost of each item furnished to an employee need not be kept. The requirements may be met by keeping combined records of the costs incurred in furnishing each class of facility, such as housing, fuel, or merchandise furnished through a company store or commissary. Thus, in the case of an employer who furnishes housing, separate cost records need not be kept for each house. The cost of maintenance, utilities, and repairs for all the houses may be shown together. Original cost and depreciation records may be kept for groups of houses acquired at the same time. Costs incurred in furnishing similar or closely related facilities, moreover, may be shown in combined records. Where cost records are kept for a "class" of facility rather than for each individual article furnished to employees, the records must also show the gross income derived from each such class of facility; e.g., gross rentals in the case of houses, total sales through the store or commissary, total receipts from sales of fuel, etc.

(1) Such records shall include itemized accounts showing the nature and amount of any expenditures entering into the computation of the reasonable cost, as defined in Part 531 of this

chapter, and shall contain the data required to compute the amount of the depreciated investment in any assets allocable to the furnishing of the facilities, including the date of acquisition or construction, the original cost, the rate of depreciation and the total amount of accumulated depreciation on such assets. If the assets include merchandise held for sale to employees, the records should contain data from which the average net investment in inventory can be determined.

(2) No particular degree of itemization is prescribed. However, the amount of detail shown in these accounts should be consistent with good accounting practices, and should be sufficient to enable the Administrator or authorized representative to verify the nature of the expenditure and the amount by reference to the basic records which must be preserved pursuant to § 516.6(c)(2).

(b) If additions to or deductions from wages paid (1) so affect the total cash wages due in any workweek (even though the employee actually is paid on other than a workweek basis) as to result in the employee receiving less in cash than the applicable minimum hourly wage, or (2) if the employee works in excess of the applicable maximum hours standard and (i) any additions to the wages paid are a part of wages, or (ii) any deductions made are claimed as allowable deductions under sec. 3(m) of the Act, the employer shall maintain records showing on a workweek basis those additions to or deductions from wages. (For legal deductions not claimed under sec. 3(m) and which need not be maintained on a workweek basis, see Part 531 of this chapter.)

(c) The records specified in this § 516.27 are not required with respect to an employee in any workweek in which the employee is not subject to the overtime provisions of the Act and receives not less than the applicable statutory minimum wage in cash for all hours worked in that workweek. (The application of section 3(m) of the Act in nonovertime weeks is discussed in Part 531 of this chapter.)

§ 516.28 Tipped employees.

(a) With respect to each tipped employee whose wages are determined pursuant to section 3(m) of the Act, the employer shall maintain and preserve payroll or other records containing all the information and data required in § 516.2(a) and, in addition, the following:

(1) A symbol, letter or other notation placed on the pay records identifying each employee whose wage is determined in part by tips.

(2) Weekly or monthly amount reported by the employee, to the employer, of tips received (this may consist of reports made by the employees to the employer on IRS Form 4070).

(3) Amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of 40 percent of the applicable statutory minimum wage). The amount per hour which the employer takes as a tip credit shall be reported to the employee in writing each time it is changed from the amount per hour taken in the preceding week.

(4) Hours worked each workday in any occupation in which the employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours.

(5) Hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earning for such hours.

§ 516.29 Employees employed by a private entity operating an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System who are partially exempt from overtime pay requirements pursuant to section 13(b)(29) of the Act.

With respect to each employee who is partially exempt from the overtime pay requirements of the Act pursuant to section 13(b)(29), the employer shall maintain and preserve the records required in § 516.2, except that the record of the regular hourly rate of pay in § 516.2(a)(6) shall be required only in a workweek when overtime compensation is due under section 13(b)(29).

§ 516.30 Learners, apprentices, messengers, students, or handicapped workers employed under special certificates as provided in section 14 of the Act.

(a) With respect to persons employed as learners, apprentices, messengers or full-time students employed outside of their school hours in any retail or service establishment in agriculture, or in institutions of higher education, or handicapped workers employed at special minimum hourly rates under Special Certificates pursuant to section 14 of the Act, employers shall maintain and preserve records containing the same information and data required with respect to other employees employed in the same occupations.

(b) In addition, each employer shall segregate on the payroll or pay records the names and required information and data with respect to those learners, apprentices, messengers, handicapped workers and students, employed under Special Certificates. A symbol or letter may be placed before each such name on the payroll or pay records indicating that that person is a "learner," "apprentice," "messenger," "student," or "handicapped worker," employed under a Special Certificate.

§ 516.31 Industrial homeworkers.

(a) *Definitions.* (1) "Industrial homeworker" and "homeworker," as used in this section, mean any employee employed or suffered or permitted to perform industrial homework for an employer.

(2) "Industrial homework," as used in this section, means the production by any person in or about a home, apartment, tenement, or room in a residential establishment of goods for an employer who suffers or permits such production, regardless of the source (whether obtained from an employer or elsewhere) of the materials used by the homeworker in such production.

(3) The meaning of the terms "person," "employ," "employer," "employee," "goods," and "production" as used in this section is the same as in the Act.

(b) *Items required.* Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each and every industrial homeworker employed (excepting those homeworkers to whom section 13(d) of the Act applies and those homeworkers in Puerto Rico to whom Part 545 of this chapter apply, or in the Virgin Islands to whom Part 695 of this chapter applies):

(1) Name in full, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records. This shall be the same as that used for Social Security purposes.

(2) House address, including zip code,

(3) Date of birth if under 19,

(4) With respect to each lot of work:

(i) Date on which work is given out to worker, or begun by worker, and amount of such work given out or begun.

(ii) Date on which work is turned in by worker, and amount of such work,

(iii) Kind of articles worked on and operations performed,

(iv) Piece rates paid,

(v) Hours worked on each lot of work turned in,

(vi) Wages paid for each lot of work turned in,

(vii) Deductions for Social Security taxes,

(viii) Date of wage payment and pay period covered by payment,

(5) With respect to each week:

(i) Hours worked each week,

(ii) Wages earned for each week at regular piece rates,

(iii) Extra pay due each week for overtime worked,

(iv) Total wages earned each week,

(v) Deductions for Social Security taxes,

(6) With respect to any agent, distributor, or contractor: The name and address of each such agent, distributor, or contractor through whom homework is distributed or collected and name and address of each homeworker to whom homework is distributed or from whom it is collected by each such agent, distributor, or contractor.

(7) Record of retroactive payment of wages. Every employer who makes retroactive payment of wages or compensation under the supervision of the Administrator pursuant to section 16(c) of the Act, shall:

(i) Record and preserve, as an entry on the payroll or other pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment.

(ii) Prepare a report of each such payment on the receipt form provided or authorized by the Wage and Hour Division, and *(a)* preserve a copy as part of the employer's records, *(b)* deliver a copy to the employee, and *(c)* file the original, which shall evidence payment by the employer and receipt by the employee, with the Administrator or an authorized representative within 10 days after payment is made.

(c) Homework handbook. In addition to the information and data required in paragraph (b) of this section, a separate handbook (to be obtained by the employer from the Wage and Hour Division and supplied by the employer to each worker) shall be kept for each homeworker. The information required therein shall be entered by the employer or the person distributing or collecting homework on behalf of such employer each time work is given out to or received from a homeworker. Except for the time necessary for the making of entries by the employer, the handbook must remain in the possession of the homeworker until such time as the Wage and Hour Division may request it. Upon completion of the handbook (that is, no space remains for additional entries) or termination of the homeworker's services, the handbook shall be returned to the employer for preservation in accordance with the regulations in this part. A separate record and a separate handbook shall be kept for each person performing homework.

(d) *Preservation of industrial homework certificates.* Certificates issued to permit homework in the restricted industries (as set forth in Part 530 of this chapter) shall be preserved in accordance with the regulations § 530.8 and in § 516.5(b).

§ 516.32 [Reserved]

§ 516.33 Employees employed in agriculture pursuant to section 13(a)(6) or 13(b)(12) of the Act.

(a) No records, except as required under paragraph (f) of this section, need be maintained by an employer who did not use more than 500 man-days [1] of agricultural labor in any quarter of the preceding calendar year, unless it can reasonably be anticipated that more than 500 man-days of agricultural labor will be used in at least one calendar quarter of the current calendar year. The 500 man-day test includes the work of agricultural workers supplied by crew leaders, or farm labor contractors, if the farmer is an employer of such workers, or a joint employer of such workers with the crew leader or farm labor contractor. However, members of the employer's immediate family are not included. (A "man-day" is any day during which an employee does agricultural work for 1 hour or more.)

(b) If it can reasonably be anticipated that the employer will use more than 500 man-days of agricultural labor in at least one calendar quarter of the current calendar year, the employer shall maintain and preserve for each employee records containing all the information and data required by § 516.2(a) (1), (2) and (4) and, in addition, the following:

(1) Symbols or other identifications separately designating those employees who are (i) members of the employer's immediate family as defined in section 13(a)(6)(B) of the Act, (ii) hand harvest laborers as defined in section 13(a)(6)(C) or (D), and (iii) employees principally engaged in the range production of livestock as defined in section 13(a)(6)(E).

(2) For each employee, other than members of the employer's immediate family, the number of man-days worked each week or each month.

(c) For the entire year following a year in which the employer used more than 500 man-days of agricultural labor in any calendar quarter, the employer shall maintain, and preserve in accordance with §§ 516.5 and 516.6, for each covered employee (other than members of the employer's immediate family, hand harvest laborers and livestock range employees as defined in sections 13(a)(6)(B), (C), (D), and (E) of the Act) records containing all the information and data required by § 516.2(a) except paragraphs (a) (3) and (8).

(d) In addition to other required items, the employer shall keep on file with respect to each hand harvest laborer as defined in section 13(a)(6)(C) of the Act for whom exemption is taken, a statement from each such employee showing the number of weeks employed in agriculture during the preceding calendar year.

(e) With respect to hand harvest laborers as defined in section 13(a)(6)(D), for whom exemption is taken, the employer shall maintain in addition to paragraph (b) of this section, the minor's date of birth and name of the minor's parent or person standing in place of the parent.

(f) Every employer (other than parents or guardians standing in the place of parents employing their own child or a child in their custody) who employs in agriculture any minor under 18 years of age on days when school is in session or on any day if the minor is employed in an occupation found to be hazardous by the Secretary shall maintain and preserve records containing the following data with respect to each and every such minor so employed:

(1) Name in full,

(2) Place where minor lives while employed. If the minor's permanent address is elsewhere, give both addresses,

(3) Date of birth.

(g) Where a farmer and a bona fide independent contractor or crew leader are joint employers of agricultural laborers, each employer is responsible for maintaining and preserving the records required by this section. Duplicate records of hours and earnings are not required. The requirements will be considered met if the employer who actually pays the employees maintains and preserves the records specified in paragraphs (c) and (f) of this section.

[1] Sections 3(u) and 13(a)(6) of the Fair Labor Standards Act (29 U.S.C. 201 et seq.) set forth and define the term "man-day."

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Part VII

Office of Personnel Management

Proposed Demonstration Project: To Demonstrate an Alternative Personnel Management System at the National Bureau of Standards; Notice

OFFICE OF PERSONNEL MANAGEMENT

Proposed Demonstration Project: To Demonstrate an Alternative Personnel Management System at the National Bureau of Standards

AGENCY: Office of Personnel Management.

ACTION: Notice of a proposed demonstration project plan.

SUMMARY: The National Bureau of Standards Authorization Act for Fiscal Year 1987 (Pub. L. 99–574) directed the Office of Personnel Management (OPM) and the National Bureau of Standards (NBS) to "jointly design a demonstration project which shall be conducted by the Director of the National Bureau of Standards." Section 10 of the Act, which covers the project, further provides that "The demonstration project shall, except as otherwise provided in this section, be conducted in accordance with section 4703 of title 5, United States Code. . ." Section 4703 requires the Office of Personnel Management to publish the proposed project plan in the **Federal Register.** This notice meets that requirement.

DATES: Comment date: Written comments will be considered if received no later than August 31, 1987. Hearing dates: Public hearings will be held on the proposed project plan on: (1) August 10, 1987 in Gaithersburg, Maryland, from 9:00 a.m. to 1:00 p.m. or until testimony is completed, if earlier; (2) August 18, 1987 in Boulder, Colorado, from 9:00 a.m. to 1:00 p.m. or until testimony is completed, if earlier.

ADDRESSES: Comment address: Send written comments to Donna Beecher, Assistant Director for Systems Innovation and Simplification, U.S. Office of Personnel Management, Room 7615, 1900 E Street, NW., Washington, DC 20415. Public hearing addresses: (1) National Bureau of Standards, Administration Building 101, Green Auditorium, Gaithersburg, Maryland; (2) National Bureau of Standards, Radio Building Auditorium, 325 Broadway, Boulder, Colorado.

FOR FURTHER INFORMATION CONTACT: (1) On proposed demonstration project: Allen Cassady, (301) 975–3031; (2) on public hearings in Gaithersburg, Maryland: Paul Thompson, (202) 632–6164; (3) on public hearings in Boulder, Colorado: Fred McGehan, (303) 497–3246.

SUPPLEMENTARY INFORMATION: Public hearings will be held by the Office of Personnel Management at Gaithersburg, Maryland, and at Boulder, Colorado, during which interested persons or organizations may present their written or oral views concerning the proposed demonstration project plan. So that we may regulate the course of the hearings and provide time for all who wish to present comments, parties who want to testify at one of the hearings are asked to contact one of the persons listed under "For Further Information Contact" for a specific scheduled time. Priority will be given to scheduled parties; others will be heard in the remaining available time. Each speaker's presentation will be limited to 10 minutes. In other respects, the hearings will be informal. The hearing record will be left open until September 1, 1987, to allow additional written data, views, and arguments from the parties participating in the hearings.

Office of Personnel Management.

Constance Horner,

Director.

Many elements of the proposed demonstration plan are required by section 10 of Pub. L. 99–574, National Bureau of Standards Authorization Act for Fiscal Year 1987. The complete text of section 10 is presented here.

Section 10, "Demonstration Project Relating to Personnel Management

Sec. 10. (a)(1) The Office of Personnel Management and the National Bureau of Standards shall jointly design a demonstration project which shall be conducted by the Director of the National Bureau of Standards.

(2) The demonstration project shall, except as otherwise provided in this section, be conducted in accordance with section 4703 of title 5, United States Code, and shall be counted as a single project for purposes of subsection (d)(2) of such section.

(3) Subject to subsections (f) and (g) of section 4703 of title 5, United States Code, the demonstration project shall cover any position within the National Bureau of Standards which would otherwise be subject to—

(A) Subchapter III of chapter 53 of title 5, United States Code, relating to the General Schedule;

(B) Subchapter VIII of chapter 53 of title 5, United States Code, relating to the Senior Executive Service; or

(C) Chapter 54 of title 5, United States Code, relating to the Performance Management and Recognition System.

(b) Under the demonstration project, the Director of the National Bureau of Standards shall provide that—

(1) The rate of basic pay for a position may not be less than the minimum rate of basic pay, nor more than the maximum rate of basic pay, payable for the pay band (as referred to in paragraph (3)) within which such position has been placed;

(2) The minimum and maximum rates of basic pay for each pay band shall be adjusted at the times, and by the amounts, provided for under subsection (c);

(3) Positions shall be classifed under a system using pay bands which shall be established by combining or otherwise modifying the classes, grades, or other units which would otherwise be used in classifying the positions involved;

(4) Employees shall be evaluated under a performance appraisal system which—

(A) Uses peer comparison and ranking wherever appropriate; and

(B) Affords appeal rights comparable to those afforded under Chapter 43 of title 5, United States Code;

(5)(A) The rate of basic pay of each participating employee will be reviewed annually, and shall be adjusted on the basis of the appraised performance of the employee; and

(B) Subject to subsection (c)(4)(A)(i), the adjustment under subparagraph (A) in any year in the case of any employee whose performance is rated at the fully successful level or higher shall be at least the percentage adjustment taking effect under subsection (c)(3) in such year;

(6) Appropriate supervisory and managerial pay differentials (which shall be considered a part of basic pay) shall be provided;

(7) Performance-recognition bonuses, and recruitment and retention allowances, shall be awarded in appropriate circumstances, (but shall not be considered a part of basic pay);

(8) There shall be an employee development program which includes provisions under which employees may, in appropriate circumstances, be granted sabbaticals, the terms and conditions of which shall be consistent with those applicable for members of the Senior Executive Service under section 3396(c) of title 5, United States Code (excluding paragraph (2)(B) thereof);

(9) Payment of travel expenses shall be provided for personnel to their first post of duty in the same manner as is authorized for members of the Senior Executive Service under section 5723 of title 5, United States Code, at the discretion of the Director; and

(10) The methods of establishing qualification requirements for, recruitment for, and appointment to positions shall, at the discretion of the Director, include methods involving direct examination and hiring.

(c)(1) For the purpose of this subsection, the term "compensation" means the total value of the various forms of compensation provided, including—

(A) Basic pay;
(B) Bonuses;
(C) Allowances;
(D) Retirement benefits;
(E) Health insurance benefits;
(F) Life insurance benefits; and
(G) Leave benefits.

(2) The director of the National Bureau of Standards shall, by contract or otherwise, provide for the preparation of reports which, based on appropriate surveys—

(A) Shall include findings as to— (i) The extent to which, as of the commencement of the demonstration project, the overall average level of compensation provided with respect to positions under the demonstration project is deficient in comparison to the overall average level of compensation generally provided with respect to positions involving the same types and levels of work in the private sector; and

(ii) With respect to each year thereafter, any net increase occurring during such year in the extent of the deficiency in the overall average level of compensation provided with respect to positions under the demonstration project, as compared to the overall average level of compensation generally provided with respect to positions involving the same types and levels of work in the private sector; and

(B) Shall recommend a single percentage by which basic pay for all positions under the demonstration project must be increased to that, when considered in conjunction with the other forms of compensation generally provided, any net increase determined under subparagraph (A)(ii) will be eliminated.

(3) Whenever the Director of the National Bureau of Standards receives a recommendation under paragraph (2)(B), the Director—

(A) Shall increase the minimum and maximum rates of basic pay for each such pay band by the lesser of—

(i) The percentage recommended; or

(ii) The overall average percentage of the adjustment in the rates of pay under the General Schedule under section 5305 of title 5, United States Code, for the period involved; and

(B) if and to the extent that funds are available for that purpose, may further increase those minimum and maximum rates—

(i) To make up for any part of the difference between the respective percentages under subparagraph (A), if the percentage under subparagraph (A)(ii) is the lesser; and

(ii) After making up for the entirety of any difference determined under clause (i) (including from any previous year), to eliminate any part of any remaining deficiency as originally determined under paragraph (2)(A)(i).

(4)(A) Notwithstanding any other provision of this section—

(i) The maximum rate of basic pay payable under any pay band may not exceed the rate of basic pay payable for level IV of the Executive Schedule; and

(ii) The amount of basic pay, bonuses, and allowances paid during any fiscal year to any employee participating in the demonstration project may not, in the aggregate, exceed the annual rate of basic pay payable for level I of the Executive Schedule.

(B)(i) Any amount which is not paid to an employee during a fiscal year because of the limitation under subparagraph (A)(ii) shall be paid in a lump sum at the beginning of the following fiscal year.

(ii) Any amount paid under this subparagraph during a fiscal year shall be taken into account for purposes of applying the limitation under subparagraph (A)(ii) with respect to such fiscal year.

(5) Notwithstanding any other provision of this section, the demonstration project shall be conducted in such a way so that, with respect to the 12-month period beginning on October 1, 1986, the total cost to the Government relating to providing compensation to participating employees shall not exceed the total cost which would have resulted if this section had not been enacted.

(6)(A) If the minimum rate of basic pay for a pay band, after an increase under paragraph (3)(A), exceeds the rate of basic pay payable to an employee whose position would otherwise be within such pay band, the employee's position may, notwithstanding subsection (b)(1), be placed in the next lower pay band.

(B) Placement of a position in a lower pay band under subparagraph (A) shall not be considered a reduction in grade or pay for purposes of subchapter II of chapter 75 of title 5, United States Code, or a comparable provision under the project.

(d)(1) The rate of basic pay for an employee serving in a position at the time it is converted to a position covered by the demonstration project may not be reduced by reason of the establishment of such project.

(2)(A) Each employee referred to in paragraph (1) shall be paid—

(i) In the case of an employee serving in a position under the General Schedule on the date the position becomes covered by the demonstration project, a lump-sum pro rata share of the equivalent of any within-grade increase which would have been due the employee under section 5335 of title 5, United States Code, computed as provided in subparagraph (B), and

(ii) In the case of an employee serving in a position subject to chapter 54 of title 5, United States Code, on such date, a lump sum pro rata share of the equivalent of the employee's merit increase which would have been due under such chapter, computed as provided in subparagraph (B), taking into account the performance requirements applicable to such increase.

(B) For purposes of subparagraph (A), the pro rata share of an equivalent increase referred to in such subparagraph shall be computed through the day before the date referred to in such subparagraph.

(e)(1)(A) In carrying out section 4703(h) of title 5, United States Code, with respect to the demonstration project, the Office of Personnel Management shall provide that such project will be evaluated on an annual basis by a contractor. Such contractor shall be especially qualified to perform the evaluation based on its expertise in matters relating to personnel management and compensation.

(B) The contractor shall report its findings to the Office in writing. After considering the report, the Office shall transmit a copy of the report, together with any comments of the Office and any comments submitted by the National Bureau of Standards, to—

(i) The Committee on Post Office and Civil Service, and the Committee on Science and Technology, of the House of Representatives; and

(ii) The Committee on Governmental Affairs, and the Committee on Commerce, Science, and Transportation, of the Senate.

(2) The Comptroller General shall, not later than 4 years after the date on which the demonstration project commences, submit to each of the committees referred to in paragraph (1)(B) a final report concerning such project. Such report shall include any recommendations for legislation or other action which the Comptroller General considers appropriate.

(f) The authority to enter into any contract under this section may be exercised only to such extent or in such amounts as are provided in advance in appropriation Acts.

(g) The demonstration project shall commence not later than January 1, 1988.

The proposed demonstration project plan reads as follows:

An Alternative Personnel Management System to Improve the Ability of the National Bureau of Standards to Attract Highly Qualified Candidates, Motivate Employees, and Retain Successful Performers. Prepared by the National Bureau of Standards, U.S. Department of Commerce, Gaithersburg, Maryland 20899.

Executive Summary

The project was designed by the National Bureau of Standards, with participation of and review by the U.S. Department of Commerce (DoC) and the Office of Personnel Management (OPM). The Bureau will conduct the project over a 5-year period beginning January 1, 1988. The Office of Personnel Management will evaluate the project annually through contract; the Comptroller General will make a final report to Congress that will make any recommendations for legislation or other action which the Comptroller General considers appropriate.

The project will be built upon the concepts of (1) Total compensation comparability rather than pay comparability only; (2) market sensitivity, by surveying compensation for private sector positions similar to NBS positions, linking entry salary to market forces by occupation, and selectively granting recruiting and retention allowances; (3) performance, by linking performance to pay for all covered positions; (4) administrative simplicity, by simplifying paperwork and processing in classification and other personnel systems; (5) management flexibility and accountability, through the delegation of classification and other authorities to line managers; and (6) Government-wide applicability, by designing an alternative system not just for NBS but for use by any agency.

The demonstration system was designed to (1) improve hiring and allow NBS to compete more effectively for high-quality researchers, through direct hiring, selective use of higher entry salaries, and selective use of recruiting allowances; (2) motivate and retain staff, through higher pay potential, pay-for-performance, more responsive personnel systems, and selective use of retention allowances; (3) strengthen the manager's role as personnel manager, through delegation of personnel authorities; and (4) increase the efficiency of personnel systems, through installation of a simpler and more flexible classification system based on pay banding, through reduction of guidelines, steps, and paperwork in classification, hiring, and other personnel systems, and through automation.

The Director of the National Bureau of Standards will initiate the project through a Steering Committee of the directors of the six NBS major organizational units (MOUs) under the chairmanship of the NBS Deputy Director. The NBS Personnel Officer, the NBS EEO Officer, the DoC Personnel Director, and a representative of the DoC Office of the General Counsel will also be on the Steering Committee. Each MOU director will also chair a task force with responsibility for a major segment of the project. A Project Office will provide administrative support to the Steering Committee and task forces. An Employee Advisory Committee with broad employee representation will provide employee views to the Steering Committee. One or more external advisory groups will be established to represent outside views.

Purpose

In presenting the FY 1987 NBS Authorization bill to the Senate, Senator Slade Gorton stated that the bill "creates a National Bureau of Standards demonstration project relating to personnel compensation and management. The demonstration project enhances the Bureau's ability to recruit and retain capable employees by giving the Bureau flexibility in setting salaries competitive with those available outside the Government and in adjusting compensation on the basis of merit. The project addresses the Government's problem attracting and keeping qualified personnel, especially in high-technology fields."

Participating Organizations

Both sites of the National Bureau of Standards will participate in the project. The two sites are located at Gaithersburg, Maryland, which is also the headquarters of NBS, and at Boulder, Colorado. The two sites are similar in employment profiles, with the following exceptions: (1) Of the approximately 3050 positions covered by the project, about 85 percent are in Gaithersburg; (2) all heads of major organizational units and all but one center head are located in Gaithersburg; and (3) certain administrative services at the Boulder facility, such as personnel administration and procurement, are handled by the DoC administrative support center in Boulder, which is not covered by the project and which services other DoC organizations also not covered by the project; in Gaithersburg those services are provided by NBS positions under the coverage of the project.

Types and Numbers of Participating Employees

The project will cover approximately 3050 NBS employees. By pay category, the coverage is 87.5 percent General Schedule (GS), 9 percent Performance Management and Recognition System (PMRS), .5 percent 5 U.S.C. 3104 positions, and 3 percent Senior Executive Service (SES). Under the PATCO categories, the coverage is 51 percent "professional," 12 percent "administrative," 18 percent "technician," 16 percent "clerical," and 3 percent "other." The professional category is 98 percent scientists, engineers, and mathematicians.

The ten most populous occupations are Physicist (427), Chemist (258), Secretary (249), Engineering Technician (170), Electronics Engineer (155), Physical Science Technician (152), General Physical Scientist (146), Computer Scientist (134), Computer Specialist (110), and Mechanical Engineer (93).

Of the approximately 3050 covered employees, 78 percent are full-time permanent (FTP), 5 percent are part-time permanent (PTP) and 17 percent are "other" than FTP or PTP. The "other" category, made up of such categories as student, post-doctoral, temporary, and intermittent, shifts significantly during the year, particularly in the summer when many students are hired.

Labor Participation

A few employees covered by the project are represented by labor unions. These employees at the Gaithersburg site are represented by the International Association of Firefighters (IAFF), and at the Boulder site by the American Federation of Government Employees (AFGE). Union representatives will be separately notified about the project and will be given the opportunity to negotiate or comment, as appropriate, under 5 U.S.C. 4703(f).

Project Implementation Date

January 1, 1988.

Project Ending Date

In accordance with section 4703 of title 5, United States Code, the project shall terminate before the end of the 5-year period beginning on the date on which the project takes effect, except that the project may continue beyond that period to the extent necessary to validate the results of the project. The

Comptroller General is required to submit a final report to Congress not later than 4 years after the date on which the project commences, including any recommendations for legislation or other action.

Methodology

This proposal explains the methodology for introducing the following innovations in personnel management and demonstrating their results over a 5-year period: (1) Simplified position classification through pay banding, occupational groupings by career paths, and delegation of classification authority to managers; (2) compensation comparability based on total compensation; (3) improved staffing through direct examination and hiring, extended probation, qualification standards more in line with private sector practice, more flexible use of recruiting tools, such as paid advertising and retention allowances, travel expenses, and competitive areas based on career paths; (4) pay-for-performance, supervisory and managerial pay differentials, and market-based entry salaries; and (5) sabbaticals.

Senior Executive Service and 5 U.S.C. 3104 Positions

The Personnel systems for SES positions will not change for the project. SES classifications, staffing, compensation, performance appraisal, awards, and reduction in force will be based on current methods.

The personnel systems for 5 U.S.C. 3104 positions will change only to the extent that 3104 positions are in the same performance appraisal, awards, and reduction in force systems as General Schedule positions. Classification, staffing, and compensation, however, will not change.

Neither SES nor 5 U.S.C. 3104 employees will be subject to the pro rata share payouts upon conversion to the demonstration system. Pay adjustments for their positions under the project will be carried out in accordance with existing Federal rules pertaining to SES and 3104 pay adjustments.

Performance Management and Recognition System (PMRS) and General Schedule (GS) Positions

The PMRS and GS categories will no longer exist as identified categories under the project. Both will be incorporated in the new career path/pay band system. Laws and regulations pertaining to the GS that have not been waived for this project, however, such as those pertaining to leave and overtime pay, will continue in force for all covered positions to which they now apply.

Position Classification

Introduction

The objectives of the new classification system are to simplify the classification process, make the process more understandable, and place more decision-making authority with line managers. The goal is to develop a system for which NBS managers will accept responsibility, which employees can more readily understand, and which can be used to increase the quality and productivity of the NBS staff.

Coverage

All positions listed under "Types and Numbers of Participating Employees" above will be accounted for in the classification structure. All General Schedule occupations currently represented at NBS will be included. Provisions will be made for including others as employment requirements change in response to changing technical programs.

Career Paths

Occupations at NBS which can be treated in a similar fashion will be aggregated into career paths. Occupations will be grouped according to similarities in type of work and in customary requirements for formal training or credentials. Consideration will also be given to the common patterns of advancement within the occupations as practiced at NBS and in the private sector. The current occupations and grades at NBS have been examined, and their characteristics and distribution have served as guidelines to the development of career paths.

Four career paths will be established:

(a) *Scientific and Engineering.* This path will include all technical professional positions, such as physical, biological, and social scientists, engineers, computer scientists, mathematicians, and computer specialists. Ordinarily, specific course work or educational degrees are required for these occupations.

(b) *Scientific and Engineering Technician.* This path consists of the jobs that support the various scientific and engineering activities. Employees in these jobs are not required to have college course work. However, training and skills in the various electrical, mechanical, chemical, or computer crafts and techniques are required.

(c) *Administrative.* This career path contains the specialized support functions in such fields as finance, procurement, personnel, public information, technical information, library science, accounting, administrative computing, and management analysis. Special degrees or skills are involved.

(d) *Support.* This career path is composed of positions for which a minimal formal education is required, but for which special skills and knowledge, such as typing or shorthand, are usually required. The duties of a majority of the positions in this path are a function of the manner in which tasks are assigned and responsibilities delegated by the supervisor. Clerical work usually involves the processing and maintenance of records. Assistant work requires knowledge of methods and procedures within a specific administrative area. Other support functions include the work of secretaries, guards, firefighters, and mail clerks.

Pay Bands

Each career path will be composed of discrete pay bands (levels) corresponding to recognized advancement within the occupations. These pay bands will replace grades. They will not be the same for all career paths. Each career path will be divided into either five or six pay bands, each pay band covering the same pay range now covered by one or more grades. The maximum rate of a pay band will be the maximum rate among positions within that career path and band, including any position with a special pay rate. A salary overlap, similar to the current overlap between grades, will be maintained.

Ordinarily an individual will be hired at the lowest salary in a pay band. Superior qualifications may lead to a higher entrance level within a band.

The proposed pay bands for the four career paths appear in Chart I. The General Schedule (GS) grades being replaced appear at the bottom of the figure. The salary overlap is not represented here.

The pay band concept has the following advantages:

—Reduces the number of classification decisions required during an employee's career: In the current system a classification action is required for each promotion to a higher grade, while in the new system a classification action is required for promotion to a higher band. Because there will be fewer bands than grades, there will be fewer classification decisions.

—Simplifies the classification decision-making process and paperwork. A pay band is a larger target than a grade, and thus may be defined in shorter and simpler language. At the same time, the definition for one band can be made more distinct from the definition for adjacent bands, reducing the potential for disagreement.
—Supports delegation of classification authority to line managers with review or post-audit by personnel specialists.
—Provides a broader range of performance-related pay for each level: In many cases, employees whose pay would have been frozen at the top step of a grade will now have more potential for upward movement in the broader pay band.

The chart below shows all four proposed career paths and how they relate to the current General Schedule grades.

Chart I: Career Paths and Pay Bands

Career Path	Levels (or Bands)														
Scientific and Engineering	I					II			III		IV		V	3104/ SES	
Scientific and Engineering Technician	I				II			III	IV		V				
Administrative	I					II			III		IV		V	3104/ SES	
Support	I			II		III		IV	V						
GS Grade	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	3104/ SES

Occupational Series

The present General Schedule classification system has 434 occupations (also called series) which are divided into 22 groups. NBS has positions in 115 occupations and in 16 groups. The occupational series, which frequently provide well-recognized disciplines with which employees wish to be identified, will be maintained. New series may be added as physical, chemical, and biological sciences, engineering, and computer science change. Chart II lists the occupations currently represented at NBS by career path. This arrangement may be modified from time to time as experience is gained in applying it.

Classification Standards

The present system of classification standards will be simplified for routine use by NBS managers. The objective is to record the essential criteria for each pay level within each career path by stating the general duties and responsibilities and the knowledge, skills, and abilities required.

Position Descriptions

Now position descriptions will emphasize the knowledges, skills, and abilities required. Line managers will follow an automated menu-driven process to classify positions and produce position descriptions. The objectives in developing these new descriptions are to:

—Simplify the description by using short standard-format descriptors rather than long narrative descriptions and by holding the length of a position description to no more than two pages:
—Allow supervisors to prepare descriptions on a personal computer; and
—Make the position description a more useful and accurate tool for other functions of personnel management, such as recruiting, reduction in force, performance appraisal, and employee development.

Promotion

A promotion is a move from one pay level to another within a career path, or a move from one career path to a higher level in another career path. Promotions will follow basic Federal merit promotion practices, and will be linked to performance ratings. In the scientific, engineering and computer science fields the qualifications for promotion will rest largely upon the qualifications of the individual. Some of this emphasis on individual knowledge, skills and abilities will be applied to other career paths. Each position will have promotion potential to a specific level within a career path, but not all positions in a career path will have promotion potential to the same level. Movement from one career path to another will depend upon individual knowledges, skills and abilities and upon the availability of positions requiring them.

Delegation of Classification Authority

Line managers will have classification authority. Supervisors at the lowest levels will have recommendation authority only. Higher-level managers will have approval authority, the level of approval depending on the proposed career path and pay band. The current system of approval of SES and 5 U.S.C. 3104 positions will be maintained. Each classification action will receive a post audit by the personnel office. Periodic audit reports will be made to the NBS Director. Errors in classification will be corrected when discovered.

Chart II: Occupational Series by Career Path

I. Scientific and Engineering

101—Social Scientist
110—Economist
180—Psychologist
185—Social Worker
334—Computer Specialist
401—Biologist
403—Microbiologist
690—Industrial Hygienist
801—General Engineer
804—Fire Prevention Engineer
806—Materials Engineer
808—Architect
810—Civil Engineer
830—Mechanical Engineer
840—Nuclear Engineer
850—Electrical Engineer
855—Electronics Engineer

858—Biomedical Engineer
892—Ceramic Engineer
893—Chemical Engineer
896—Industrial Engineer
899—Engineering Student
1301—General Physical Scientist
1306—Health Physicist
1310—Physicist
1320—Chemist
1321—Metallurgist
1330—Astronomer
1360—Oceanographer
1372—Geodesist
1384—Textile Technologist
1399—Physical Science Student
1515—Operations Research Analyst
1520—Mathematician
1529—Mathematical Statistician
1530—Statistician
1550—Computer Scientist
1599—Mathematics Student

II. Scientific and Engineering Technicians

332—Computer Operator
404—Biology Technician
462—Forestry Technician
802—Engineering Technician
809—Construction Inspector
856—Electronics Technician
1311—Physical Science Technician
1521—Mathematics Technician

III. Administration

018—Safety Specialist
080—Security Officer
201—Personnel Management Specialist
221—Position Classification Specialist
230—Employee Relations Specialist
235—Employee Development Specialist
260—Equal Employment Specialist
301—Miscellaneous Administration and Program
340—Program Manager
341—Administrative Officer
343—Management Analyst
345—Program Analyst
393—Communication Specialist
501—Financial Administrator
510—Accountant
511—Auditor
560—Budget Analyst
1001—General Arts and Information
1020—Illustrator
1035—Public Affairs Specialist
1060—Photographer
1071—Audio-Visual Production Specialist
1082—Writer/Editor
1083—Technical Writer/Editor
1084—Visual Information Specialist
1101—General Business Specialist
1102—Contracts Specialist
1410—Librarian
1412—Technical Information Specialist
1420—Archivist
1601—General Facilities Manager
1640—Facility Manager
1654—Printing Manager
2003—Supply Manager
2010—Inventory Manager
2050—Supply Cataloger
2130—Traffic Manager
2150—Transportation Operator

V. Administrative Support

081—Firefighter
085—Guard
099—Student Trainee
203—Personnel Clerk/Assistant
303—Miscellaneous Clerk/Assistant
304—Information Receptionist
305—Mail and File Clerk
309—Correspondence Clerk
312—Clerk-Stenographer
318—Secretary
322—Clerk-Typist
335—Computer Clerk/Assistant
344—Management Clerk/Assistant
350—Equipment Operator
351—Printing Clerk
357—Coding Clerk
382—Telephone Operator
392—General Communications Assistant
394—Communications Clerk
525—Accounting Technician
544—Payroll Clerk/Technician
561—Budget Clerk/Assistant
1021—Office Draftsman
1087—Editorial Clerk/Assistant
1105—Purchasing Agent
1106—Procurement Clerk/Assistant
1152—Production Controller
1411—Library Technician
2001—General Supply Assistant
2005—Supply Clerk/Assistant
2102—Transportation Clerk/Assistant
2132—Travel Clerk/Assistant

Total Compensation Comparability

Introduction

An objective of the demonstration project is to improve the quality of NBS by making compensation more competitive. The Bureau will provide for the preparation of reports, by contract or otherwise, that include findings as to the extent to which the overall average level of total compensation for covered NBS positions is deficient in comparison with the overall average level of total compensation for similar positions in the private sector. Annually thereafter during the project, the Bureau will determine the change in the deficiency.

Definition of Total Compensation

The legislation defines compensation as the total value of the various forms of compensation, including:

(A) Basic pay;
(B) Bonuses;
(C) Allowances;
(D) Retirement benefits;
(E) Health insurance benefits;
(F) Life insurance benefits; and
(G) Leave benefits.

NBS will develop a comparability measurement system, with contractor assistance, based on calculations and comparisons of the costs of compensation to the private sector and to the Federal Government.

Process To Determine Overall Deficiency and Net Changes in the Deficiency

The NBS Director is authorized to adjust the ranges of pay bands based on surveys conducted of total compensation paid to individuals in positions in private sector firms and universities that are similar in levels of work and responsibility to NBS positions. The Director will determine the criteria for selecting private sector organizations to be surveyed. The first survey will establish the extent to which compensation for covered NBS positions is deficient in comparison with compensation for comparable positions in the private sector prior to the start of the project, thus setting a baseline. Additional surveys will be conducted annually to determine the change occurring from year to year in private sector total compensation.

NBS will select a representative sample of private sector firms to be used in the surveys on the following basis:

(A) National coverage for scientists and engineers based on peer groups of private sector firms and universities that perform R&D work similar to that performed at the NBS;

(B) National coverage for senior administrative positions; and

(C) Local coverage (Gaithersburg, Maryland and Boulder, Colorado) for science and engineering technicians, junior administrative and administrative support positions.

To the extent possible NBS will use available data and will participate in existing compensation surveys. As an example, NBS is participating in the Department of Energy's National Compensation Survey of Research and Development Scientists and Engineers. NBS, using contractor support, will devise ways to build hybrid queries to access various compensation data bases in order to match the pay and benefits components of compensation of individual private sector positions in a mix of occupations similar to those at NBS. The nation's leading actuarial and compensation consulting firms and the Office of Personnel Management have developed and tested costing models for the various benefit plans. NBS will use one or more of these models to generate total compensation values.

Comparability Decision by the Director

Each year, the NBS Director will receive three comparability figures: (1) The annual percentage pay increase for General Schedule employees (General Federal Increase); (2) the net percentage by which the overall average level of compensation for NBS positions covered by the project has fallen behind the overall average level of compensation for similar private sector positions over the past year (Net Increase in the Deficiency); and (3) the overall percentage by which the average level of compensation for NBS positions covered by the project was deficient, as of the commencement of the project, as compared with the average level of compensation for similar private sector positions (Overall Deficiency). The Director must select at least the lesser of the first two figures as the annual NBS comparability percentage increase. If the Net Increase in the Deficiency is larger than the General Federal Increase, the Director may increase the comparability by some or all of the difference, if budget considerations permit. If the Director makes up all of the Net Increase in the Deficiency, he may, if budget considerations permit, authorize an additional adjustment to further decrease the Overall Deficiency.

The percentage comparability increase selected by the Director will apply directly to: (1) The minimum and maximum rates of basic pay for each pay band (the same percentage increase will apply to all pay bands), and (2) the basic pay of each employee receiving a fully successful or higher performance rating. An employee receiving a rating of less than fully successful will not receive an increase in basic pay.

Staffing

Introduction

Bureau-based examining and hiring procedures coupled with simplified classification procedures will shorten the hiring process. Other features, such as payment of recruiting allowances, can help attract candidates in essential occupations. Retention allowances will be used to retain highly skilled and productive employees. Line managers will work with the personnel offices to develop hiring strategies. Priority placement, reeemployment priority, and the merit assignment process will be addressed in developing these strategies. The personnel offices will assure that proper procedures are followed. Line managers will participate actively in the examining and hiring process.

Direct Examination and Hiring

NBS may expand current Bureau-controlled hiring to cover all occupations. Personnel office staff will maintain records, provide monthly reports, and be trained as examiners. Selected line managers will also be trained as examiners.

Probation Period

The hiring system will include a flexible probation period for all scientific and engineering career path hires. A formal process will be developed and put in place under which the probation period may be extended up to 3 years for employees on career conditional appointments in this career path. Employees appointed prior to the implementation of the project will not be affected.

Qualification Standards

The qualifications required for placement within a pay band and within a career path will be based on present qualifications found in *OPM Handbook X-118: Qualification Standards for Positions Under the General Schedule.* The minimum qualifications for the occupation and for the General Schedule grade corresponding to the lowest grade incorporated in the pay band will apply. In a few cases these standards will be updated to reflect current practices in the scientific, engineering, and computer science fields and to reflect modern curricula in recognized degree programs. Where new occupation series are defined, new minimum qualification standards will be written following the pattern of *OPM Handbook X-118.*

Recruitment

NBS will make greater use of paid advertisements in journals, professional magazines, and newspapers to expand recruiting sources and attract the best candidates. Advertising will become one of the first steps in recruitment. Procedures will also be developed for using private sector employment services.

Recruitment Allowances

Recruitment allowances will be available for selective use in recruiting candidates for scientific and engineering positions.

Travel Expenses

Funds to cover travel expenses associated with entering employment at NBS will be made available at the discretion of the NBS Director.

Affirmative Action/Equal Employment Opportunity

NBS is committed to positive affirmative action/equal employment opportunity goals. Line managers will be accountable for understanding and implementing polices designed to meet these goals.

Reduction in Force

Introduction

The current NBS process for reduction in force will be essentially maintained. Current reduction-in-force procedures will be adjusted in the context of the career path and pay band classification system. Retention registers will maintain the elements of career status, veteran preference, length of service, and service computation date adjustments based on performance ratings. Position descriptions will become a better tool for reduction in force by focusing on specific knowledges, skills, and abilities required.

Competitive Areas

Each of the four career paths will be a competitive area. Although not included in the Demonstration Project, Wage Grade positions will constitute a fifth competitive area. This will place employees with similar knowledges, skills, abilities and in similar occupations together. It will also eliminate the disruption caused by scientists or engineers displacing administration or support staff. Displacements, bumps, and retreats will occur only within career paths. Current reduction-in-force regulations will be modified by substituting "same level" for "same grade" and "one level lower" for "three grades lower". Whereas in the current system an employee may bump another employee in a lower retention subgroup and at the same grade or up to three grades below the bumping employee, in the demonstration system an employee may bump another employee in a lower retention subgroup and at the same level or up to one level below the bumping employee.

Saved Grade and Pay

Saved grade and pay will follow current regulations, except that career path "level" will substitute for "grade."

Pay Administration

Introduction

The objective is to establish a pay system that will improve the ability of NBS to attract and retain quality employees. The new system will be a pay-for-performance system and, when implemented, will result in a

redistribution of current pay resources based upon individual performance. The authorizing legislation states that "the rate of basic pay of each participating employee will be reviewed annually, and shall be adjusted on the basis of the appraised performance of the employee."

The first decision in the annual pay-setting process is the Director's selection of the percentage comparability increase that must be given to all covered employees rated fully successful or higher (see "Comparability Decision by the Director" above). The minimum and maximum rates of each pay band must also be increased by this percentage.

Pay for Performance

Pay increases will be allocated to employees through organizational pay pools. These pools will have three components: (A) Comparability increases; (B) performance increases; and (C) bonuses and awards. The first component, comparability increases, will consist of the percentages selected by the Director in the comparability process, and will be given as a minimum pay increase to all covered employees rated fully successful or higher. The second component, performance increases, will be made up of money previously available for within-grade increases, quality step increases, merit pay increases, and promotion from one grade to another, where both grades will now be in the same pay band. Decisions on these pay increases will take into account all of the following: (A) performance of the employee; (B) maximum salary range of the employee; and (C) employee's current salary on that range. The third and final component will be bonuses and awards, and will be composed of former cash awards.

Placement in a Lower Pay Band

An employee whose performance rating is less than fully successful will not receive the comparability increase. Because the minimum pay rate for each pay band will be increased each year by at least the amount of the comparability increase, it is possible that the new minimum rate of a pay band will exceed the basic pay of an employee in that pay band who did not receive the comparability increase. When this happens, the employee will be placed in the next lower pay band. The legislation specifically allows for this and provides that it will not be considered a reduction in grade or pay.

Supervisory and Managerial Pay Differentials

The legislation provides that "appropriate supervisory and managerial pay differentials (which shall be considered a part of basic pay) shall be provided." This pay differential will be provided for those supervisory and managerial positions that do not now receive additional compensation for supervisory or managerial responsibility through the classification process. The differential will not apply to SES and 5 U.S.C. 3104 positions.

Pay and Compensation Ceilings

Each pay band will have its own pay ceiling, just as do grades in the current system. Pay rates for the various pay levels will be directly keyed to the General Schedule rates with consideration given to the special pay rates. The legislation specifies the following two overall pay ceilings: The basic pay under any pay band may not exceed the basic pay of Executive Level IV, and an employee's total monetary compensation for a fiscal year may not exceed the basic pay of Executive Level I. Any amount that cannot be paid to an employee in a given fiscal year because of the ceiling on total monetary compensation shall be paid in the following fiscal year.

Pay Setting for New Hires

The setting of initial salaries within pay bands for new appointees will be flexible, particularly for hard-to-fill positions in the scientific and engineering career path.

Pay Setting for Promotion

Promotions from one classification level to a higher level will follow basic merit promotion practices. The minimum basic pay increase upon promotion to a higher level will be 6 percent.

Conversion of Employees to the Demonstration System

Current grades will translate directly to the new career-path and pay-band structure. Employees will be converted at their current salaries at the time of conversion. No one's salary will be reduced or increased as a result of the conversion. At the time of conversion each converted employee will be given a lump sum cash payment for the time credited to the employee toward what would have been the employee's next within-grade (step) increase or PMRS merit increase.

Performance Evaluation

Introduction

The Performance Appraisal System will link pay to performance through annual performance evaluations, performance ratings, and pay decisions based on performance ratings. Individual performance objectives will be tied to organizational goals and objectives. The proposed performance appraisal system will use peer comparison and ranking wherever appropriate.

Process

The current Department of Commerce (DoC) Performance Management Recognition System (PMRS) will be the model for the project performance appraisal system.

Performance plans will be developed each year by the employee and supervisor to clarify NBS and DoC goals and objectives and identify individual accountability for their accomplishment. Critical elements for each position will be established and weighted on the basis of importance. Performance standards developed by DoC will be used along with specific supplemental performance standards developed by the supervisor to evaluate levels of accomplishment for each critical element. A mid-year review will determine whether objectives are being met and whether critical elements should be modified to reflect changes in planning, work-load, and resource allocation. Additional reviews may be held if needed. There are five rating categories: Outstanding, Commendable, Fully Successful, Marginal, and Unsatisfactory.

After the initial rating is given, an employee's performance will, if appropriate, be reviewed at higher levels and ranked in relation to his or her peers, i.e., all other employees in same pay band and career path. This peer ranking process may take place three times, at division, center, and MOU level, and will result in assignment of a final rating. Pay adjustments will be based on employee ratings. The performance appraisal cycle for all covered employees will begin October 1 and end September 30 of the following year.

All performance plans and appraisals will be reviewed by at least the next higher level of management. A written performance review at the end of the rating period will be required.

An employee who disagrees with the rating received may comment in writing to the approving official. The approving official makes the final decision and

must document any changes in the rating.

Senior Executive Service

Members of the Senior Executive Service will remain under the current DoC/NBS SES performance appraisal system. 5 U.S.C. 3104 employees will be under the structure of the project performance evaluation system, but will not be in the project pay-for-performance pay system.

Awards

Introduction

NBS currently has an extensive awards program consisting of both internal and external awards. Performance recognition bonuses will replace current performance recognition awards (Quality Step Increases, Superior Accomplishment Awards, and PMRS Performance Awards). The Special Act or Service Awards (SAS), internal NBS awards, suggestion awards, Department of Commerce Medal Awards, and other honorary non-cash awards will be retained.

Performance Bonuses

Bonuses are cash awards to recognize and encourage special contributions. Bonuses must be supported by a total summary rating of at least Fully Successful. They must be approved at a managerial level at least one level higher than the official who recommended the bonus. Cash bonuses will not become a part of employee base pay.

Senior Executive Service and 5 U.S.C. 3104 Employees

Members of the Senior Executive Service (SES) will remain under their current awards system and will not participate in the project performance recognition bonus awards program. SES members will continue to be eligible for the SES bonus awards and the Presidential Rank Awards.

5 U.S.C. 3104 employees will be eligible for cash awards.

Employee Development

Introduction

The objective of the NBS's Employee Development Program is to develop the competence of employees for maximum achievement of Bureau goals and objectives. The legislation mandates the continuation of an employee development program including, in appropriate circumstances, a sabbatical program. The legislation requires that any sabbatical program be consistent with the terms and conditions of the sabbatical program currently applicable to members of the Senior Executive Service.

Sabbaticals

The proposed NBS Sabbatical Program under the Project will cover all career appointees whose current performance is above the fully successful level. Employees will be eligible after completion of seven years of Federal service.

One sabbatical of 3 to 11 months may be granted to an employee in any 10-year period. Each sabbatical should benefit NBS, as well as increase the employee's individual effectiveness. Various learning or developmental experiences may be considered for purposes of granting a sabbatical, such as advanced academic teaching or research, or on-the-job work experience with public, private, or non-profit organizations.

Final approval authority for all training during the project will be the major organizational unit (MOU) director or designated management level. The personnel offices will provide policy guidance, information, scheduling, and administrative processing.

Employee relations

Introduction

The legislation mandates that employees covered by the project are to be evaluated under a performance evaluation system that affords appeal rights comparable to those provided currently under chapter 43 of title 5, United States Code. NBS will maintain, under the project, the substantive and procedural appeal rights that employees now have.

Placement in a Lower Pay Band

Employees whose ratings are marginal or unsatisfactory will receive no pay increase and may move to a lower pay band as the minimum rates of basic pay in a pay band increase (as the result of comparability increases). Such placement in a lower pay band, with no decrease in pay, and due to a failure to attain a performance rating of fully successful, will not be considered a reduction in grade or pay or an adverse action.

Safeguards for Employees

Employees may be removed from their positions or reduced to a lower level for unacceptable performance. These performance based actions will follow the same procedures and allow the same appeal rights as current performance-related removals and reductions in grade.

Evaluation

Introduction

The Demonstration Project enabling legislation mandates evaluations and reports by organizations external to NBS.

The Office of Personnel Management is to have the Project evaluated annually by a contractor. The contractor must be especially qualified to perform the evalution based on its expertise in matters relating to personnel management and compensation.

The contractor is to report its findings to OPM in writing. After reviewing the report, OPM is to transmit the report, along with comments by OPM, the Department of Commerce, and NBS, to Congress.

The Comptroller General must submit a final report to Congress no later than 4 years after the commencement of the project. This report is to include any recommendations for legislation or other action which the Comptroller General considers appropraite.

The Evaluation Plan incorporates both internal and external evaluation efforts. Elements of the plan are outlined below.

Evaluation Methodology

The evaluation effort will be carried out in four phases. The *design phase* is intended to aid in the structuring of the demonstration project and is primarily an internal NBS effort. Baseline data will be collected prior to implementation of the demonstration scheduled for January 1988. These data will be made available to the OPM contract evaluator.

Following the implementation of the project, the monitoring of the *implementation* phase begins. An evaluation of this phase is necessary to determine that the project is implemented as designed and that the stated processes are stable and operational.

The *formative evaluation phase* begins once it has been determined that the project is stable and operational. This phase will extend over the full 5-year experimental period. Data will be collected annually and periodic reports will be issued. The *summative phase* will assess the overall impact of the project upon conclusion of the experiment.

The evaluation will focus on overall personnel management issues and will be based on before-and-after comparisons of the personnel management data, using both quantitative and qualitative criteria. Personnel records and reports, as well as previously validated survey instruments, will be used to develop

appropriate measures. New data collection methods and measures or modifications to existing instruments may be required for some criteria. A private research firm will design, conduct and analyze the results of employee attitude surveys in order to assure the validity of results and to protect the confidentiality of individual employee responses. In addition to the specific requirements, as mandated by the legislation, the design of the survey will benefit from the experience of the Office of Personnel Management, the Department of Commerce, the National Bureau of Standards, and other organizations. The first survey is scheduled for the fall of 1987.

Evaluation criteria will be derived from the following Demonstration Project goal and objectives.

Goal: Demonstrate improved personnel management by tying pay more closely to the job market, linking pay increases to performance, and introducing efficient personnel structures and processes.

Objectives: Compete more effectively for high-quality staff; motivate staff and retain key employees; increase management responsibility and accountability; remain budget neutral; and create a model that could be adopted by other government agencies.

Project-training

One of the keys to the success or failure of the project will be the training provided to all participants. Training will not only provide the necessary knowledges and skills to carry out the proposed changes, but will also promote a commitment to the program on the part of all participants.

Training will be structured to meet the specific needs of:

1. Supervisors
2. Administrative Staff: generally personnel specialists, personnel assistants, and administrative officers
3. Employees

Training will also include orientation and periodic status updates. This training will focus on overviews and in-depth descriptions of all elements of the demonstration project, including:

1. Objectives
2. Implementation plan and timetable
3. Organization for the demonstration project
4. How employees will enter the project
5. Pay adjustment process
6. Position classification/position description preparation
7. Promotion
8. Staffing
9. Performance evaluation
10. Bonuses
11. Link between management accountability and personnel office oversight
12. Automation
13. Internal and external evaluation processes

Supervisors

The focus of the demonstration project on a management-centered personnel administration, with increased supervisory and managerial personnel management authority and accountability, demands thorough training of supervisors and managers in the knowledges and skills that will prepare them for their new responsibilities. Training will include detailed information on the policies and procedures of the demonstration project, skills training in classification, position description preparation, and performance evaluation using peer comparison and ranking.

Administrative Staff

The administrative staff, generally personnel specialists, technicians, and administrative officers, will play a key role in advising, training, and coaching supervisors and employees in implementing the demonstration project. This staff will also need training in the procedural and technical aspects of the project. They will undergo at least the same block of training provided to all supervisors.

Employees

NBS will train employees for the demonstration project. In the months leading up to the implementation date, meetings will be held for employees to fully inform them of all project decisions, procedures, and processes.

Costs

Allthough the enabling legislation for the project does not require budget neutrality, NBS has set for itself an objective to control total compensation costs associated with the project. NBS programs must have the flexibility to respond to emerging technologies and to industry and other agency demands. Nearly half of NBS resources come from government and private sector customers. The proposed measures will allow NBS to meet these demands and yet control total compensation costs.

NBS intends to maintain total compensation, during the course of the project, at the level it would have reached under the current Government-wide pay system. This would permit changes in NBS expenditures which result from legislatively mandated program changes and changes in Federal pay and benefits. NBS will measure its adherence to cost control by preparing budget estimates which are based on prescribed Federal Budget processes and monitor actual spending under the Demonstration Project against this budget estimate.

Implementation

NBS intends to strike an appropriate balance between supervisors' personnel management authority and accountability and personnel office oversight responsibility. Supervisors will be thoroughly trained for exercising their delegated authorities in accordance with demonstration procedures and safeguards.

Conversion to the Demonstration Project

Initial entry into the demonstration project for covered employees will be accomplished through a full employee protection approach that ensures each employee an initial place in the appropriate career path and pay band without loss of pay (see "Conversion of Employees to the New System" under "Pay Administration" above).

Personnel Administration

All personnel laws, regulations, and guidelines not superseded by Public Law 99–574 authorizing the project or waived by this plan will remain in effect. Basic employee rights will be safeguarded and merit principles will be maintained. The personnel offices will oversee the personnel management decisions made by supervisors, and will continue to process all personnel and payroll actions.

Automation

NBS will continue using the U.S. Department of Agriculture's National Finance Center's automated personnel/payroll processing system. NBS will automate internal personnel processes and systems associated with the demonstration project wherever proper and appropriate, and will design a personal computer system to handle the production of position descriptions.

Conversion Back to the Former System

In the event the project ends and the demonstration system is not made permanent, a conversion back to the former (regular) Federal civil service system will be required for positions equivalent to GS/GM–15 and below (SES and 3104 position classification will not change under the project).

Experimentation and Revision

Many aspects of a demonstration project are experimental. Modifications

must be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. The Bureau, with DoC and OPM approval, will make minor modifications, such as changes in the occupational series in a career path, without further notice. Major changes, such as a change in the number of career paths, will be published in the Federal Register.

Authorities and Waiver of Laws and Regulations Required

Public Law 99–574 gives the National Bureau of Standards the authority to experiment with several specific personnel system innovations which are otherwise prohibited by law and regulation. In addition to the authorities granted by that act, the following waivers of law and regulation are necessary:

Title 5, U.S. Code

Section 5333(a) Minimum rate for new appointments

Title 5, Code of Federal Regulations

Section 315.801 Requirement for one-year probationary period

Section 315.802 Length of probationary period

Section 351.401 Scope of competition in RIF

Section 351.402 Competitive area in RIF

Section 351.403 Competitive level in RIF

Section 351.701 Assignment involving displacement

Section 531.203 Minimum rate for new appointments

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