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	U· S· DEPARTMENT OF THE INTERIOR **OFFICE OF SURFACE MINING** **RECLAMATION AND ENFORCEMENT** **DIRECTIVES SYSTEM**	**Subject Number:** PER-4 **Transmittal Number:** 274 **Date:** 08/28/86

Subject: Application of Fair Labor Standards Act (FLSA) to Positions in the Office of Surface Mining Reclamation and Enforcement (OSMRE)

Approval: Ted O. Christensen **Title:** Director

1. Purpose. This Directive provides policy guidance to all OSMRE employees with respect to the application of the Fair Labor Standards Act (FLSA) to OSMRE positions.

2. Definitions. None.

3. Policy/Procedure.

a. This Directive establishes agency policy with respect to the application of FLSA criteria to OSMRE positions and the coding of position descriptions to reflect FLSA determinations. The primary importance of the FLSA determination relates to employee eligibility for overtime pay under the Act, and the application of the Federal minimum wage to Civil Service employees.

b. All positions in the Office of Surface Mining Reclamation and Enforcement shall be designated as Exempt or Nonexempt in accordance with the criteria set forth in Federal Personnel Manual Bulletin No. 551-18, dated March 13, 1986, which sets forth instructions for applying the exemption provisions of the Act.

c. The Fair Labor Standards Act provides that all positions which do not meet specific exclusion criteria set forth in the Act are deemed to be covered by the Act and are designated nonexempt. Positions meeting the exclusion criteria are not covered by the Act and are designated Exempt. Exempt positions are primarily concerned with Executive, Administrative, or Professional work. Such positions typically involve managerial or supervisory responsibility, the formulation or execution of management policies, or any other professional work which is intellectual in nature, requires specialized training, and requires significant exercise of independent judgement. For employees at GS-5 and GS-6, the exemption for executive, administrative and professional positions must include, in addition to the primary duty criterion, the expenditure of 80% or more of the worktime in a representative workweek on supervisory, administrative, or professional functions, respectively, and work that is an essential part of those functions. Examples of the application of these criteria to specific OSMRE positions are provided on the attachment.

d. The potential effect of an erroneous determination under FLSA is the unlawful payment of compensation for overtime, or the creation of an entitlement to backpay and penalty in the event an employee should be Nonexempt. Given the broad nature of the exclusion criteria, it is essential that all factors bearing on FLSA determinations be disclosed in position descriptions and that classification authorities fully evaluate those factors before making a determination.

e. All positions classified in the Office of Surface Mining Reclamation and Enforcement shall be appropriately designated Exempt or Nonexempt in Item 7 of Optional Form 8.

f. Specific criteria are applicable for executive, administrative, and professional exemption determinations, for periods of temporary duty. See 5 CFR 551.209(b) and (c) (copy attached).

4. Reporting Requirements. None.

5. References. Federal Personnel Manual - OPM, Chapter 551; FPM Bulletin No 551-18, dated March 13, 1986.

6. Effect on Other Documents. OSMRE Directives - First 40 Hours Workweek Schedule (PER-1) and Compensation for Overtime (PER-2).

7. Effective Date. Upon Issuance.

8. Contact. Chief, Branch of Policy and Evaluation, Division of Personnel (202) 343-4656.

Attachments

SPECIFIC EXAMPLES OF EXEMPT/NONEXEMPT
POSITIONS WITHIN OSMRE

EXEMPT

Administrative Officer	GS-341-9/11/12
Program Analyst	GS-345-11/12/13/14
Budget Analyst	GS-560-11/12
Management Analyst	GS-343-11/12
Operating Accountant	GS-510-11/12
Mining Engineer	GS-880-11/12/13
Computer Specialist	GS-334-9/11/12/13
Collection Specialist	GS-501-9/11/12
Auditor	GS-511-11/12
Natural Resource Specialist	GS-401-11/12/13
Surface Mining Rec. Specialist	GS-1801-9/11/12
State Program Specialist	GS-301-11/12/13
Physical Scientist	GS-1301-11/12/13/14
Hydrologist	GS-1315-11/12/13
Regulatory Program Specialist	GS-301-11/12/13
Program Specialist (AML)	GS-301-11/12/13
Mining Engineering Technician	GS-802-8/9/10/11
Construction Inspector	GS-809-8
All Supervisory/Managerial Positions	

Nonexempt

Secretary	GS-318-4/5/6/7/8
Clerk Typist	GS-322-2/3/4
Clerk Stenographer	GS-312-3/4/5
Computer Clerk	GS-335-3/4/5
Supply Technician	GS-2005-4/5
Program Assistant	GS-303-4/5/6
Voucher Examiner	GS-540-3/4/5/6
Accounting Technician	GS-525-5/6
Audit Assistant	GS-503-5/6
Clerical Assistant	GS-303-4/5
Field Office Admin. Supp. Clerk	GS-303-4/5
Procurement Clerk	GS-1106-5

Federal Personnel Manual System
FPM Bulletin

Bulletin No. 551-18

Washington, D. C. 20415
March 13, 1986

SUBJECT: Final Regulations Modifying Exemption Regulations Under the Fair Labor Standards Act

Heads of Departments and Independent Establishments:

An Information Notice on Changes to Federal Personnel Regulations Is Attached to This Bulletin

This Notice Must Be Posted in a Prominent Place

1. The Director of the Office of Personnel Management (OPM) is required to take steps to ensure that OPM regulations that apply to individuals or organizations outside OPM are posted in offices of Federal agencies maintaining copies of Federal personnel regulations [5 USC 1103(b)(2)(A)].
2. To carry out this responsibility, OPM issued regulations under Part 110 of 5 CFR that require agencies to (a) make available for review on request the regulatory material that appears as attachment 1 to this bulletin; and (b) complete and post the notice (attachment 2) in a prominent place.
3. Completion of the notice requires insertion of the room number where the regulations are available for review.
4. Individuals who wish to make comments on regulations or notices should address them to the OPM official whose mailing address is listed on the reprint of *Federal Register* material in attachment 1 of this bulletin.
5. The public comment period on proposed regulations begins when they are published in the *Federal Register* or made available for public inspection at the Office of the Federal Register in Washington, D.C. Sometimes delays in distribution may result in posting notices on proposed regulations being received at agency field offices near the end of the comment period of a regulation. In other cases, the attached posting notice may convey information about a final regulation and no comments will be sought. **In either case, the attached notice must still be posted. The purpose of the material is to provide notice rather than to solicit comment.**
6. There is no maximum number of days that the attached notice must remain posted; each agency or office is free to make this determination. However, we suggest 10 working days as a minimum. The basic requirement is that there be sufficient opportunity for interested individuals to receive adequate notice of changes in the Federal personnel regulations.

Constance Horner

Constance Horner
Director

Attachments (2)

Inquiries: Compliance Division, Agency Compliance and Evaluation, Compliance and Investigations Group, (202) 632-5691

Code: 551, Fair Labor Standards Act

Distribution: Basic FPM and FPM Supplement 990-2

Bulletin Expires: April 20, 1987

Rules and Regulations

Federal Register
Vol. 51, No. 42
Tuesday, March 4, 1986

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 551

Pay Administration Under the Fair Labor Standards Act; Exemptions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting its proposed regulations providing modified, clarified criteria for determining a Federal employee's exemption status under the Fair Labor Standards Act (FLSA). These regulations were first published as final rules at 48 FR 49494 on October 25, 1983, and were involved in judicial and Congressional action, which delayed implementation until July 3, 1985. The exemption regulations were republished at 50 FR 35529 on August 30, 1985, for readers' convenience, to reiterate that a 120-day implementation period started on July 3, 1985, and to allow for additional comments which may not have been previously considered. The modifications are intended to facilitate FLSA administration in the Federal sector and to alleviate the discrepancy between OPM's exemption criteria and the exemption criteria that are applicable to employees in the private sector. They also provide criteria for applying the FLSA to employees on temporary duty and to employees who travel to and from foreign areas.

EFFECTIVE DATE: April 3, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Clogston, (202) 632-5691.

SUPPLEMENTARY INFORMATION:

Background

Regulations published as final rules on October 25, 1983, at 48 FR 49462, *et seq.*, concerning reduction-in-force (RIF), performance management, and the application of the Fair Labor Standards Act (FLSA) to the Federal work force became effective on July 3, 1985. They were republished as a proposed regulation at 50 FR 35529 on August 30, 1985, to allow interested parties the opportunity to consider substantive changes to parts of the regulations and to comment on the proposed implementation schedule. Comments have been received and considered, and are addressed later.

As stated in the August 30, 1985, republication, the regulations have been in effect since July 3, 1985. We again provided a 120-day period starting July 3, 1985, to permit agencies time to integrate the changes into their current operational structure. This meant that with the 120-day delay, the full and final effective date was the first pay period on or after November 1, 1985.

We also provided the first 90 days of this period, until October 1, 1985, for agency headquarters to submit requests for an OPM advisory opinion on exceptions to the presumption of exemption. On August 2, 1985, a memorandum was provided to Directors of Personnel notifying them that these regulations are now effective, providing the 120-day delay from July 3, 1985, and outlining procedures for requesting exceptions to the presumption of exemption.

Under these new regulations, it is assumed that if a position is properly classified at the GS-11 or above level (or equivalent level in other white collar salary systems), the position would properly be exempt under the provisions of the FLSA. However, we do recognize that there could exist rare occasions when there might be an exception to this presumption. For those unusual situations when an agency feels that an exception might exist, we proposed a regulatory procedure for requesting a waiver (see § 551.207). We proposed that these requests be made as soon as possible within the first 90 days of the 120-day implementation period so that we can provide our advisory opinion to the agency headquarters before the expiration of the 120-day implementation period. We have acted on all agency headquarters requests received by October 1, 1985.

Discussion of Comments

Most of the comments received in response to the proposed regulations republished at 50 FR 35529 on August 30, 1985, are similar to those received when these regulations were previously published. We have already addressed these issues in previous Federal Register notices; and we feel that our explanation is still valid. However, in order to be totally responsive to all concerns, we will again summarize those comments along with our explanation.

Two unions commented that OPM does not have the authority to change FLSA regulations, or that OPM's changes are not consistent with FLSA regulations or Federal case law. OPM was given the authority to administer the FLSA so that it could reconcile differences between the FLSA and existing Federal pay and classification statutes. This responsibility necessarily carries with it the authority to regulate. Indeed, it is the purpose of OPM's FLSA regulations to provide a framework for FLSA administration within the Federal sector. A direct application of Department of Labor (DOL) regulations to Federal employees is not feasible because DOL regulations do not take into account existing, sometimes conflicting, pay and classification statutes.

Several labor organizations objected to the use of the classification system for determining presumed exemption. One of those organizations recommended a cut-off salary of $21,798 for determining presumed exemption. OPM believes that defining the FLSA minimum grade levels for exemption, and the cutoff points for applying the "short test" in terms of the classification system makes more sense than using only absolute dollar figures. Otherwise, such routine actions as within-grade increases and yearly comparability increases could affect an employee's exemption status. Furthermore, as we repeatedly have emphasized, the position classification system is a *job evaluation* process which is a more logical system for defining exemption for Federal employees than gross weekly salary.

An agency and one union objected to setting the presumed exemption grade level at GS-11. The agency recommended that the grade level at

which exemption is presumed should be lowered. Since the cutoff in the General Schedule for time and a half is GS-10, we do not believe that exemptions should be presumed at levels in the General Schedule where exemption begins to become problematic. It must be noted that title 5 of the U.S. Code divides the General Schedule into two distinct categories. Those employees paid at less than the rate of GS-10, step 1, are entitled to time-and-a-half of their basic rate for overtime work. Those employees paid at the GS-10, step 1, rate or above are paid at the overtime rate of GS-10, step 1, regardless of grade level. In effect, title 5 provides a statutory division point above which employees are entitled to overtime compensation, but not to time-and-a-half. To determine that employees paid above the statutory break point are nonexempt creates pay distortions which frustrate the distinctions made by the General Schedule. Consequently, OPM believes that a presumption that employees above GS-10 are exempt is an appropriate reconciliation of title 5 and the FLSA and gives the fullest effect to both statutes while preserving the protective features of the FLSA for the segment of the workforce it was designed to protect.

The union further argues that using GS-11 for exemption determination purposes misallocates the burden of proof to salary levels rather than job duties. We must emphasize the fact that this presumption would be made only after the agency fulfills the burden of proper classification of a position at a high grade level pursuant to a formal evaluation procedure. OPM in its dual role as administrator of the FLSA and the position classification system believes that proper classification at these grade levels justifies the presumption of exemption. OPM still recognizes that certain positions may not be exempt at these higher grade levels and has provided a regulatory procedure for exceptions. Also, employees still retain the right to appeal their individual determination to the appropriate OPM office.

In addition to the above, we received the following comments that have not been previously addressed:

One agency recommends that 5 CFR 551.209 dealing with the application of the executive, administrative, and professional exemption criteria for temporary duty be rewritten for clarification purposes. We will address this point in future changes as appropriate.

One union argues that supervisory determinations outlined in 5 CFR 551.204(a) of the proposed regulations concerning executive exemptions are not proper in that the "Supervisory Grade Evaluation Guide for General Schedule employees and Job Grading Standard for Supervisors for Wage Grade employees are contained in the Federal Personnel manual and are not published subject to the provision of the Administrative Procedures Act (APA)." Since the Supervisory Grade Evaluation Guide (SGEG) was already in effect prior to the application of the APA's requirements regarding agency practices and procedures adopted by OPM (see 5 U.S.C. 1103(b), 1105), there is no need for it to be republished in accordance with the APA (see section 902(a), Pub. L. 95-454).

One agency stated that it would like to see clearer criteria for administrative and professional exemptions and coverage of trainee positions (§§ 551.205 and 551.206 respectively). In addition, the agency believes it would be helpful to have guidelines relating to occupational series. The regulations are expanded by FPM material. Therefore, there is no need for additional clarification in these regulations. Exemption criteria are applied to all positions including trainee positions. If the exemption criteria apply, the position is exempted. Exemption determinations cannot be made on the basis of occupational series, but must be made on the basis of actual duties performed.

One union stated that the proposed regulations do not protect the narrow construction of exemptions intended under FLSA. To the contrary, the proposed regulations clearly affirm the intended FLSA policy.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it provides procedures for applying the exemption criteria of the Fair Labor Standards Act to Federal employees.

List of Subjects in 5 CFR Part 551

Administrative practice and procedure, Fair Labor Standards Act, Government employees, Manpower training programs, Travel, Wages.

Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is adopting its proposed rules as published on August 30, 1985 (50 FR 35529), as final rules without change to read as follows:

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

1. The authority for Part 551 is revised to read as follows:

Authority: Sec. 4(f) of the Fair Labor Standards Act as amended by Pub. L. 93-259 enacted April 8, 1974, 88 Stat. 55; 29 USC 204f.

2. Paragraph (h) section 551.102 continues to read as follows:

§ 551.102 Definitions.

* * * * *

(h) "Exempt area" means any foreign country, or any territory within the jurisdiction of the United States other than the following locations:

(1) A State of the United States;

(2) The District of Columbia;

(3) Puerto Rico;

(4) The Virgin Islands;

(5) Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (67 Stat. 462);

(6) American Samoa;

(7) Guam;

(8) Wake Island;

(9) Eniwetok Atoll;

(10) Kwajalein Atoll; and

(11) Johnston Island.

2. Subpart B of Part 551 continues to read with the exception of Section 551.207, which is revised, as follows:

Subpart B—Exemptions

Sec.
551.201 Agency authority.
551.202 General principles governing exemptions.
551.203 Exemption of General Schedule employees.
551.204 Executive exemption criteria.
551.205 Administrative exemption criteria
551.206 Professional exemption criteria.
551.207 Exceptions by OPM.
551.208 Foreign exemption.
551.209 Application of the executive, administrative, and professional exemption criteria for periods of temporary duty.

Subpart B—Exemptions

§ 551.201 Agency authority.

The employing agency shall exempt from the overtime provisions of the Act any employee who meets the exemption criteria of this subpart and such supplemental interpretations or instructions as shall be issued by the Office of Personnel Management.

§ 551.202 General principles governing exemptions.

In all exemption determinations, the agency shall observe the principles that—

(a) Exemption criteria shall be narrowly construed to apply only to those employees who are clearly within the terms and spirit of the exemption.

(b) The burden of proof rests with the agency that asserts the exemption.

(c) All employees who clearly meet the criteria for exemption must be exempted.

§ 551.203 Exemption of General Schedule employees.

(a) Any employee properly classified at GS-4 or below (or the equivalent level in other white collar pay systems) shall be nonexempt;

(b) Any employee properly classified at GS-5 through GS-10 (or the equivalent level in other white collar pay systems) shall be exempt only if the employee is an executive, administrative, or professional employee as defined in §§ 551.204, 551.205, and 551.206 of this subpart;

(c) Except as provided in § 551.207 of this subpart, any employee properly classified at GS-11 or above (or the equivalent level in other white collar pay systems) shall be presumed to be exempt under this subpart. An agency that properly classifies an employee at GS-11 or above shall be deemed to have satisfied the burden of proof for asserting exemption.

§ 551.204 Executive exemption criteria.

An "executive" employee is a supervisor, foreman, or manager who supervises at least three subordinate employees and who meets all the following criteria:

(a) The employee's primary duty consist of management or supervision. This primary duty requirement is met if—

(1) The employee is a General Schedule employee whose position is determined to be "Supervisory" or "Managerial" under the Supervisory Grade-Evaluation Guide;

(2) The employee is a Federal Wage System employee whose position fully meets or exceeds the "Foreman range of responsibility" as defined in the Job Grading Standard for Supervisors; or

(3) The employee is subject to a pay system other than the General Schedule or the Federal Wage System and the employee's position meets or exceeds the definition of Supervisor in the Supervisory Grade-Evaluation Guide or the employee's position fully meets or exceeds the "Foreman range or responsibility" as defined in the Job Grading Standard for Supervisors.

(b) In addition to the primary duty criterion that applies to all employees, Foreman level supervisors in the Federal Wage System (or the equivalent in other wage systems) and employees classified at GS-5 or GS-6 (or the equivalent in other white collar pay systems) must spend 80 percent or more of the worktime in a representative workweek on supervisory and closely related work.

§ 551.205 Administrative exemption criteria.

An administrative employee is an advisor, assistance, or representative of management, or a specialist in a management or general business function or supporting service who meets all of the following criteria:

(a) The employee's primary duty consists of work that—

(1) Significantly affects the formulation or execution of management policies or programs; or

(2) Involves general management or business functions or supporting services of substantial importance to the organization serviced; or

(3) Involves substantial participation in the executive or administrative functions of a mangement official.

(b) The employee performs office or other predominantly nonmanual work which is—

(1) Intellectual and varied in nature; or

(2) Of a specialized or technical nature that requires considerable special training, experience, and knowledge.

(c) The employee must frequently exercise discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) In addition to the primary duty criterion that applies to all employees, General Schedule employees classified at GS-5 or GS-6 (or the equivalent in other white collar systems) must spend 80 percent or more of the worktime in a representative workweek on administrative functions and work that is an essential part of those functions.

§ 551.206 Professional exemption criteria.

A professional employee is an employee who meets all of the following criteria, or any teacher who is engaged in the imparting of knowledge or in the administration of an academic program in a school system or educational establishment.

(a) The employee's primary duty consists of—

(1) Work that requires knowledge in a field of science or learning customarily and characteristically acquired through education or training that meets the requirements for a bachelor's or higher degree, with major study in or pertinent to the specialized field as distinguished from general education; or is performing work, comparable to that performed by professional employees, on the basis of specialized education or training and experience which has provided both theoretical and practical knowledge of the specialty, including knowledge of related disciplines and of new developments in the field; or

(2) Work in a recognized field of artistic endeavor that is original or creative in nature (as distinguished from work which can be produced by a person endowed with general manual or intellectual ability and training) and the result of which depends on the invention, imagination, or talent of the employee.

(b) The employee's work is predominantly intellectual and varied in nature, requiring creative, analytical, evaluative, or interpretative thought process for satisfactory performance.

(c) The employee frequently exercises discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) In addition to the primary duty criterion that applies to all employees, General Schedule exployees classified at GS-5 or GS-6 (or the equivalent in other systems), must spend 80 percent or more of the worktime in a representative workweek in professional functions and work that is an essential part of those functions.

§ 551.207 Exceptions by OPM.

The Office of Personnel Management will provide advisory opinions on agency-proposed exceptions to the presumption of exemption for specific occupations at GS-11 or above (or the equivalent level in other white collar pay systems) which is specified in § 551.203(c) of this subpart. Exceptions may not be made before OPM consideration. Requests for advisory opinions from agencies shoud be sent to the Office of Personnel Management, Agency Compliance and Evaluation, 1900 E Street, NW., Washington, DC 20415.

§ 551.208 Foreign exemption.

(a) This section provides criteria for applying the "foreign exemption" contained in section 13(f) of the Act. An employee who is exempt under the foreign exemption is not subject to the minimum wage and overtime provisions of the Act. The exemption status of an employee to whom the foreign exemption is not applicable shall be

determined under the general criteria contained in this subpart.

(b) Except as provided in § 551.208(d), an agency shall apply the foreign exemption to any employee who is permanently stationed in an "exempt area" as defined in § 551.102(h).

(c) An agency shall also apply the foreign exemption on a workweek basis to an employee on temporary duty who is not permanently stationed in an exempt area, but who performs *all* hours of work in a given workweek in an exempt area.

(d) The foreign exemption is not applicable to an employee permanently stationed in an exempt area for any given workweek in which the employee performs *any* hours of work in the United States or in a territory under the jurisdiction of the United States.

§ 551.209 Application of the executive, administrative, and professional exemption criteria for periods of temporary duty.

(a) This section is not applicable when an employee is detailed to an identical additional position or to a position of the same grade, series code, and basic duties as the employee is regularly assigned to. This section applies only when an employee is assigned to perform duties which are not included in the employee's representative workweek. For the period of any such temporary duty, the exemption criteria contained in §§ 551.202 through 551.207 of this subpart shall be applied using the procedures specified in this section.

(b) A nonexempt employee who is assigned to perform duties which are not included in the employee's permanent position shall remain nonexempt for the entire period of the termporary duty unless the following three conditions apply:

(1) The temporary duty exceeds 30 days;

(2) The employee occupies a permanent position, or is temporarily promoted to a position which is either—

(i) Classified at GS–7 or above (or the equivalent level in other white collar pay systems); or

(ii) Classified as a General Foreman (or the equivalent level in other age systems);

(3) The employee's primary duty for the period of temporary duty is exempt duty as defined in this subpart.

(c) Except as provided in § 551.209(e), an exempt employee who is assigned to perform duties which are not included in the employee's permanent position shall remain exempt for the entire period of the temporary duty unless the following three conditions apply:

(1) The temporary duty exceeds 30 days;

(2) The employee occupies a permanent position, or is temporarily promoted to a position which is either—

(i) Classified at GS–7 or above (or the equivalent level in other white collar pay systems); or

(ii) Classified as a General Foreman (or the equivalent level in other wage systems);

(3) The employee's primary duty for the period of temporary duty is *not* exempt duty as defined in this subpart.

(d) An employee who becomes exempt under the criteria contained in § 551.209(b) shall be considered exempt for the entire period of temporary duty. An employee who becomes nonexempt under the criteria contained in § 551.209(c) shall be considered nonexempt for the entire period of temporary duty.

(e) An exempt employee who is classified at GS–5 or GS–6 (or the equivalent level in other white collar pay systems), or who is classified below General Foreman (or the equivalent level in other wage systems) who is assigned to perform duties which are not included in the employee's permanent position shall remain exempt *only* if the employee spends more than 80 percent of a given workweek performing exempt duties, in which case the employee is exempt for that workweek.

(f) Notwithstanding any other provision of this section, and regardless of an employee's grade level, the agency may determine that an emergency situation exists which threatens the life or safety of people, or serious damage to property, or serious disruption to the operations of an activity, and there is no recourse other than to assign qualified employees to perform emergency duties. In such a designated emergency the exemption status of an employee shall be determined on a workweek basis and the employee shall be nonexempt for any workweek in which the employee performs more than 20 percent nonexempt work.

[FR Doc. 86–4677 Filed 3–3–86; 8:45 am]
BILLING CODE 6325–01–M

United States
Office of
Personnel
Management

Notice of Changes to Title 5 of the Code of Federal Regulations

The Office of Personnel Management has issued final regulations on the Fair Labor Standards Act (FLSA).

These regulations alleviate the discrepancy between OPM's exemption criteria under the FLSA and the exemption criteria which are applicable to employees in the private sector. They also provide criteria for applying the FLSA to employees on temporary duty and to employees who travel to or from foreign areas.

You can read a complete copy of the text at:	This notice expires on:

The Director of the Office of Personnel Management (OPM) is required to take steps to ensure that OPM regulations which apply to individuals or organizations outside OPM are posted in Federal agencies maintaining copies of the Federal personnel regulations [5 USC 1103(b)(2)(A)]. This notice, which should be posted in a prominent place, carries out that requirement.