

provisions or to prohibit agencies from implementing a regulatory revision affecting nonbargaining unit positions.

G. Public Notice

Many individual commenters asked that we ensure proper dissemination of National Performance Review initiatives to all levels of the work force to allow greater input and commentary. Some commenters suggested that OPM's 60-day comment period on the initial proposal appeared to be designed to restrict the number of comments and commenters.

OPM's 60-day comment period is the standard open period for receiving comments on proposed regulatory changes. As is our usual practice required by law, OPM distributed the time-in-grade proposal to agencies with instructions for public posting. OPM also made the proposal available through its primary electronic bulletin board, Mainstreet, at 202-606-4800. OPM issued a press release on the proposal, and it was widely reported in the press. We are taking the same steps with this notice. Furthermore, the recommendations of the NPR and the National Partnership Council were widely reported in the press and in newsletters that reach employees.

Authority: 5 U.S.C. secs. 552, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. secs. 7201, 7204, 7701; E.O. 11478, 3 CFR, 1966-1970 Comp., page 803.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. secs. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 95-562 Filed 1-9-95; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 551

RIN 3206-AA40

Pay Administration Under the Fair Labor Standards Act

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is publishing a proposed rule to amend regulations on the Fair Labor Standards Act (FLSA or the "Act"). This rule supersedes instructions contained in Federal Personnel Manual Letter 551-9, *Civil Service Commission System for Administering the Fair Labor Standards*

Act (FLSA) Compliance and Complaint System (March 30, 1976), provisionally retained through December 31, 1994; and provides for OPM compliance authority regarding FLSA matters.

DATES: Comments must be received on or before February 9, 1995.

ADDRESSES: Written comments may be sent to Bruce Oland, Chief, Program Development Division, Office of Agency Compliance and Evaluation, Room 7661, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jeffery Miller, (202) 606-2530.

SUPPLEMENTARY INFORMATION: In 1974, Congress amended the FLSA to authorize the former Civil Service Commission (CSC) to administer the Act for Federal employees. OPM has since taken over this responsibility and issued substantive regulations at part 551 of title 5, Code of Federal Regulations, prescribing the criteria and conditions for administration of the Act. These regulations have, from time to time, been supplemented by issuances under the Federal Personnel Manual System (FPM). FPM Letter 551-9 describes the complaint and compliance system for FLSA complaints. One of the key features of this system is that OPM served as an adjudicator of individual (and group) FLSA complaints. This role remained essentially unchanged until 1990.

On March 30, 1990, a Federal court in *Carter v. Gibbs*, 909 F.2d 1452 (Fed. Cir. 1990), *cert. denied*, 111 S. Ct. 46 (1990), ruled that the rights of certain employees to seek review of FLSA complaints were limited by the *Civil Service Reform Act of 1978* (CSRA). In this regard, the court determined that employees covered by negotiated grievance procedures (NGP's) established under Section 7121 of title 5, United States Code, could not seek judicial review of matters under the Act and that their only forum in which to seek relief is through the NGP up to and including the arbitration process. A subsequent decision by the Federal Circuit in *Muniz v. U.S.*, 972 F.2d 1304 (Fed. Cir. 1992), expanded on *Carter* by holding that its principles also applied to former employees of agencies (including retirees) and employees promoted out of bargaining unit positions.

On October 1, 1990, the Supreme Court denied certiorari of the Federal Circuit's en banc decision in *Carter*. As a result, OPM informed agencies by memorandum dated November 29, 1990, that, in view of *Carter*, OPM would no longer adjudicate complaints

from employees covered by NGP's when those NGP's did not exclude grievances over FLSA matters, but would continue to accept complaints from other employees.

On April 23, 1992, the General Accounting Office (GAO), in *Cecil E. Riggs, et al.*, B-222926.3, announced that, in view of *Carter* and other judicial decisions, it too would no longer accept complaints from employees covered by NGP's. The GAO subsequently amended (57 FR 31272, July 14, 1992) its regulations at 4 CFR parts 22 and 30 to reflect this policy change. The GAO noted that it would continue to accept claims from Federal employees not subject to an NGP.

With judicial and GAO decisions placing most FLSA-covered employees under the exclusive jurisdiction of the NGP for the purpose of FLSA complaints, OPM has reviewed its FLSA compliance program to determine whether the program could be changed in a manner that would facilitate efficient governmentwide administration of the Act. Specifically, OPM believes that FLSA complaint adjudication at the agency level, now provided to most FLSA-covered employees under the above decisions, can and should be extended to all employees. In this event, OPM would no longer adjudicate FLSA complaints. In the case of bargaining unit employees, the procedure would be the NGP (unless FLSA complaints are excluded), with the possibility of invoking binding arbitration. All other employees would seek redress through and agency-based review or grievance system. Such employees also would have access to GAO and the courts if they are not satisfied with the agency decision, thus providing them with a third-party review opportunity. OPM believes this change, as well as other provisions of this proposed subpart, will make administration of the Act more efficient and consistent. The subpart more clearly defines the various FLSA complaint resolution forums and explains which employees have access to which forum at a particular time; i.e. negotiated grievance procedures, or other agency-based review or grievance systems, the GAO, and the judiciary.

OPM also believes that the complaints adjudication process is likely to work better if the parties to the dispute are better aware of their respective responsibilities. Therefore, the proposed rule contains sections discussing the responsibilities of both the employee and the agency. Another section describes the responsibilities of OPM. In this regard, while OPM proposes to discontinue accepting complaints, OPM