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PAYMENT OF OVERTIME TO CERTAIN AGRICULTURE DEPARTMENT EMPLOYEES

DOCUMENTS

HEARING

BEFORE THE

SUBCOMMITTEE ON

MENT AND EMPLOYEE BENEFITS

OF THE

COMMITTEE ON

OFFICE AND CIVIL SERVICE

HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

H.R. 11245

A BILL TO AMEND TITLE 5, UNITED STATES CODE, TO PROVIDE
FOR THE PAYMENT OF OVERTIME TO CERTAIN PERSONNEL
EMPLOYED IN THE DEPARTMENT OF AGRICULTURE, ANIMAL
AND PLANT HEALTH INSPECTION SERVICE

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(II)

CONTENTS

	Page
Statement of—	
Damgard, John, Deputy Assistant Secretary, Agriculture, for Consumer and Marketing Affairs, U.S. Department of Agriculture, accompanied by Marian Quick, Personnel Management Specialist, Animal Health Inspection Service.....	8
Decker, Dr. Max, assistant executive vice president, American Veterinary Medical Association.....	21
Hughes, William G., general counsel, National Association of Federal Veterinarians, accompanied by Dr. Clarence H. Pals, DVM.....	14
Kistler, Frederick, Deputy Director, Bureau of Policies and Standards, U.S. Civil Service Commission, accompanied by Seymour Gettman, Chief, Pay and Leave Operation.....	2
Sargent, Harvey, National Association of Plant Protection and Quarantine Supervisors.....	26
Taylor, Hon. Gene, a Representative in Congress from the State of Missouri.....	1
Prepared statement by—	
Sebelius, Hon. Keith G., a Member of Congress from the State of Kansas.....	27
Communication from—	
Todd, Frank A., Washington representative, American Veterinary Medical Association.....	27
Additional material—	
Tabulation of federally employed veterinarians.....	29
Tabulation showing a comparison of overtime costs under present legislation with proposed legislation.....	12
Copy of H.R. 11245.....	32
Summary of recommendations.....	iv
Administration report from—	
U.S. Civil Service Commission.....	30

SUMMARY OF RECOMMENDATIONS

STATEMENTS AND RECOMMENDATION OF

Mr. Frederick Kistler, Deputy Director, Bureau of Policies and Standards, Civil Service Commission

Commission opposes enactment of this bill, because it would afford preferential treatment to a particular group of employees and create inequities between these employees and professional and other exempt employees in the Federal Government.

Of primary concern in consideration of this bill should be what is reasonable and equitable compensation for the work performed and whether work performed by the employees to be covered by H.R. 11245 is significantly different from other occupations to warrant this preferential treatment.

Marian Quick, Personnel Management, Specialist in Animal Health Inspection Service

The Department does not recommend enactment of this bill because legislation enacted over a long period of time which largely provides for special treatment for certain agencies or for special categories of employees, enactment would only add to the present problem; and enactment, due to surrounding circumstances, would only entail additional costs.

Mr. William C. Hughes, general counsel, National Association of Federal Veterinarians

On behalf of the National Association of Federal Veterinarians, urges passage of legislation; legislation will not require more than a minimum of Federal funds; it will correct a serious inequity evident in the rate of overtime pay for professionals performing vital services for the American public; and will cost little, and will greatly increase the morale of these valuable professionals.

Dr. Max Decker, assistant executive vice president, American Veterinary Medical Association

Due to all the circumstances and inequities surrounding the veterinarians today, on behalf of the AVMA, we support this legislation and hope that the committee will report it favorably.

PAYMENT OF OVERTIME TO CERTAIN AGRICULTURE DEPARTMENT EMPLOYEES

TUESDAY, APRIL 13, 1976

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON RETIREMENT AND EMPLOYEE BENEFITS,
Washington, D.C.

The subcommittee met at 9:20 a.m. in room 304, Cannon House Office Building, Hon. Norman Y. Mineta (acting chairman), presiding.

Mr. MINETA. The meeting of the Retirement and Employee Benefits Subcommittee will please come to order.

This subcommittee has convened this morning to begin hearings and deliberations on H.R. 11245, a bill introduced by Congressman Gene Taylor of Missouri.

This bill would provide for payment of overtime to nonmanagerial personnel in grades GS-14 and lower within the Department of Agriculture, Animal and Plant Health Inspection Service, divisions of Meat and Poultry, Plant Protection and Quarantine, and Veterinary Services, who, this subcommittee has been told, presently do not receive true time and one-half salary for their overtime work.

The Inspection Service has advised this subcommittee that while employees are designated to work overtime, they have little control over their overtime requirements, and are expected to work at salary rates incomparable to and often less than that of subordinates whom they supervise. I further understand that this bill should cost very little money as most agencies or companies requesting overtime work by this agency are required to reimburse the Government.

Our first witness would have been Hon. Gene Taylor, Congressman from the State of Missouri; however, Mr. Taylor is unable to be with us this morning. His statement will appear in the record as though presented in full.

STATEMENT OF HON. GENE TAYLOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. TAYLOR. Mr. Chairman, I appreciate this opportunity to speak in support of this bill (H.R. 11245) to amend title 5, U.S. Code, to adjust overtime pay for certain personnel in the Department of Agriculture, Animal and Plant Health Inspection Service.

The purpose of this bill, which is bipartisan, is to correct inequities in the overtime payment of certain professional persons employed in the Animal and Plant Health Inspection Service.

Under title 5, section 5542 of the code, which this bill would amend, nonmanagerial personnel in grades GS-14 and lower do not receive

true overtime pay for overtime. As "professionals" they are exempt from the Fair Labor Standards Act Amendments of 1974.

Instead, they are limited to one and one-half times the minimum rate of basic pay for GS-10. Thus, there are occasions when professionals, when working overtime, find themselves overseeing the work of subordinates, but receiving less pay. This is clearly unfair.

Moreover, unlike other Federal employees, these personnel rarely can be granted compensatory time off because the Inspection Service, due to the nature of its responsibilities, cannot spare them. Nor can these professionals control the length of overtime they must work. Federal veterinarians must necessarily be present during the often lengthy schedules of packing plants to which they are assigned. Similarly during emergency epidemics of disease, animal and plant quarantine inspectors must work long hours to bring these problems under control.

The action we propose to correct this inequity will cost the Federal Government little if anything. That is because most of the overtime services required are paid by the industry concerned. The Department of Agriculture sets the fees for each program, and the fees are uniform. This bill would not change this practice.

It should be made clear that the present premium pay ceiling would not be operative when the duties are critical to the inspection services provided by the Department to insure the wholesomeness of food, humane treatment of animals, and to the control and eradication of animal and plant diseases; overtime is reimbursable under appropriate statutory authority, and hence represents no cost to the Government; and operating requirements cannot be met without substantial overtime work which is done at a time not under control of the Department of the employee, or when the overtime is required by emergency needs due to disease outbreaks.

I thank the subcommittee for the opportunity to present these remarks.

Mr. MINETA. At this time, I would like to call forward Mr. Frederick Kistler, Deputy Director, Bureau of Policies and Standards, Civil Service Commission; accompanied by Mr. Seymour Gettman.

Welcome, Mr. Kistler, and please proceed with your presentation.

STATEMENT OF FREDERICK KISTLER, DEPUTY DIRECTOR, BUREAU OF POLICIES AND STANDARDS, CIVIL SERVICE COMMISSION; ACCOMPANIED BY MR. SEYMOUR GETTMAN

Mr. KISTLER. Thank you, Mr. Chairman.

I have with me Seymour Gettman who is Chief of our Pay and Leave Administration Section in the Civil Service Commission. I appreciate this opportunity to explain our views on H.R. 11245.

The Commission is opposed to the enactment of the bill because it would afford preferential treatment to a particular group of employees and create inequities between these employees and professional and other exempt employees in the Federal Government.

It has, moreover, all the marks of one of those situations where where you fix one thing and then you only have to fix the next with an ever spreading problem.

I would like to take a moment to place this matter in context. For more than 30 years, the overtime pay of Federal white-collar workers in general has been governed by a law specifically applicable to them. It was enacted as the Federal Employees Pay Act of 1945 and now is codified as section 5542 of title 5 of the United States Code.

At the lower grades, a rate of one and one-half times the basic rate of pay is the mandatory rate for overtime work. At the higher grades, however, not only is the amount of the overtime premium limited—so that employees paid above the minimum rate of GS-10 receive overtime compensation only at one and one-half times the basic hourly rate for that salary level, no matter how higher their grade—but the policy is such that overtime pay is not even mandatory. Compensatory time off may be authorized instead for higher grade employees as a matter of agency policy.

A limitation of this kind was provided in recognition of the fact that, for the most part, employees in the private sector at similar salary levels would fall within one of the groups—that is, professional, administrative, or executive—that are not subject to the Fair Labor Standards Act overtime pay requirement.

At the middle steps of GS-11, for example, we are talking about an employee earning \$18,000 a year.

At the middle steps of GS-13, the salaries are over \$25,000.

These categories of employees are employed and paid for a task to be accomplished, not for the hours it takes to perform it. Their salaries presumably are fixed at a level which will appropriately recognize their skills, knowledge, and abilities, as well as the longer hours they may be required to give to their employer.

In 1974, on top of this long-established law governing overtime for Federal salaried employees, there came the Fair Labor Standards Amendments which extended the coverage of the FLSA to the Federal service.

This required making distinctions not previously made between Federal employees; it required the application of new rules and concepts simultaneously with the old. It meant, specifically, that employees would be paid the full time and one-half overtime rate, no matter what their salary rate or grade level, if they were not exempt as professional, administrative, or executive employees.

In the Federal service, and I think we can assume in the private sector, relatively few employees at GS-11 or equivalent salary levels are nonexempt, but there are some.

While H.R. 11245 would serve to equate the overtime compensation of certain Department of Agriculture professional employees to that of nonprofessionals who work with them and are entitled to the full time and one-half overtime rate under the FLSA, its enactment would result in nonuniform overtime pay treatment among professional and other exempt employees of the Federal Government.

Although there are some 2,000 veterinarians in the program to which the bill applies, the Federal Government has more than 100,000 professional employees in grades GS-11 through GS-14.

If an attempt were made to achieve uniformity by the extension of this benefit to cover all professional personnel, very substantial costs would be generated. The existence of a number of employees

at these higher grade levels receiving the full time and one-half premium for overtime does not, in our judgment, justify the abandonment of the reduced overtime provision for those employees who are not subject to the Fair Labor Standards Act.

One must make some kind of logical distinctions. If a special provision is made for the employees covered by this bill, how does one reasonably contend that all other professional employees are not entitled to the same treatment? And if, indeed, the Congress saw fit to enact legislation granting all professional employees overtime compensation of this kind, how would one justify the difference between the Federal practice and the general practice in the private sector?

Until the Fair Labor Standards Amendments of 1974 were enacted, General Schedule employees at the same salary level were entitled to the same overtime pay rate. The FLSA introduced distinctions so that a Federal employee who is covered by that act receives a different overtime rate than another at the same salary level, who is exempt from it.

We should not make the patchwork kind of adjustment proposed in this bill since in our opinion, it will only lead to further inequities, which the Congress would surely be called upon to deal with. Further, enactment of premium pay liberalization such as proposed by H.R. 11245 would be inconsistent with the report of the President's Panel on Federal Compensation.

That report recommended that a systematic review of premium pay administration be conducted to determine what premium pay practices are currently justified in the light of practices in the non-Federal sector and any special requirements of the Federal service. While enactment of this bill would not immediately increase Federal outlays substantially, the consumer would suffer in the marketplace through increased prices for meat and poultry products.

Moreover, if this exception were extended to all higher grade Federal employees, the magnitude of its impact on the Federal budget would be significant.

Of primary concern in consideration of this bill should be what is reasonable and equitable compensation for the work performed and whether the work performed by the employees to be covered by H.R. 11245 is significantly different from other occupations to warrant this preferential treatment.

Thank you, Mr. Chairman, for this opportunity to appear today. I would be happy to answer any questions you may have.

Mr. MINETA. Thank you very much, Mr. Kistler. Is it correct to say that in some cases an employee gets less hourly rate of pay for overtime work than he does for his regular working hours?

Mr. KISTLER. That is correct. The maximum overtime rate is one and half times the GS-10 step 1 rate.

That would apply regardless of one's basic hourly rate. So that some high-paid employees who had hourly rates, let's say \$12 an hour would nevertheless receive one and half times the GS-10, step 1, or \$10.70 at present for his overtime pay, assuming that he was exempted from the provisions of FLSA.

Mr. MINETA. Just in terms of equity, shouldn't that employee at least receive what he gets during his regular working hours as a minimum?

Mr. KISTLER. He has not done so, since the statute——

Mr. MINETA. I recognize he hasn't done so. Just in terms of equity, the application of that rule, wouldn't it seem just fair that he get at least what he gets during his working hours?

Mr. GETTMAN. Well, Mr. Chairman, as a personal comment only, I would say it is not an unreasonable consideration. I would think, though, that if it were going to be applied, it should be applied uniformly across the board.

Mr. MINETA. Employees are putting in overtime hours above and beyond what would be within their regular working hours, or what's required for them to do during their regular working hours. So it just seems to me from the equity viewpoint it would sound like if you're going to ask them to do more than that, they would at least get in terms of overtime what they normally would be getting during regular work hours.

Mr. KISTLER. As a general principle, Mr. Chairman, that would make sense, and, indeed, as a general principle, I think it in fact does apply.

There are a large number of employees in grades 4, 5, 6, 7, 8 and 9 who are, in fact, treated just as you have described it.

However, the law makes a distinction, and I think it's not an unreasonable distinction, where the basic salary rates are sufficiently high that the expectation becomes one of personal performance, rather than a matter of an hourly rate of pay.

Higher grade employees should be viewed as salaried employees; indeed, they are on an annual salary; not an hourly rate. They are the kind of employees who I think by and large in the industrial setting would not receive their hourly rate for additional hours of overtime, but rather be on some kind of monthly or annual salary for carrying out assigned responsibilities.

While equity may suggest one thing, I think comparability with the private sector suggests something else.

Mr. MINETA. But basic pay is based on their professional experience and everything else.

Mr. KISTLER. That's correct. It is really based on salary data obtained through the survey conducted by the Bureau of Labor Statistics, the so-called PATC Survey, which show what industry is paying for comparable levels of work.

Mr. MINETA. But that experience doesn't end at the time that he starts putting in overtime. He is still bringing the same experience, the same qualifications at that point.

Mr. KISTLER. Certainly they ought to.

Mr. MINETA. It seems to me they ought to be compensated if equity is to be a consideration.

This subcommittee has been led to believe that the cost of the bill would be relatively minimal since a majority of the overtime hours paid to the Animal and Plant Health Inspection personnel, whether professional or nonprofessional, is reimbursed to the Government by the private firms for which overtime work is done. Is that correct?

Mr. KISTLER. This is my understanding, Mr. Chairman. We're probably talking about increased payroll costs in about the \$1 million area, and it's my understanding that the large bulk of that, although perhaps not 100 percent of it, is recoverable from the private firms that are receiving this service.

Mr. MINETA. What percentage would you say is recoverable?

Mr. KISTLER. I would prefer, I think, to defer to the Department of Agriculture.

Mr. MINETA. Could you submit that for the record, possibly? Is there a way of coming up with a figure?

Mr. KISTLER. I think perhaps the Department will have a precise figure.

Mr. MINETA. All right.

Mr. KISTLER. My understanding, if I could just speak in general terms, is probably in the \$800,000 to \$900,000 area or about \$1 million to \$1,100,000 in increased cost.

Mr. MINETA. All right. Let me ask, then, you say that overtime is paid on the basis of the grade, GS-10.

Mr. GETTMAN. Step 1.

Mr. MINETA. Step 1, and amounts to \$10.45.

Mr. KISTLER. \$10.70; that is the rate of time and a half; the current rate under the current salary schedules of time and a half, step 1, GS-10.

Mr. MINETA. Following up on the question, do I sense—is it that the private firms that are requesting that this overtime be performed, that they are being assessed \$12.40 per hour for each Federal employee regardless of the rate?

So where does the “cost” come in, if you’re assessing the private firm that is asking that the work be done, assessing them \$12.40, and the employee is receiving \$10.70?

Mr. KISTLER. The Civil Service does not have responsibility for the reimbursable aspect of the program, and I would need to defer, with all due respect, to the Department of Agriculture as to just what the nature of the billing system is, or how it works, or its rationale.

Mr. MINETA. OK. Who determines, then, that the employee will be compensated on the basis of a step 1, GS-10?

Mr. KISTLER. That is in the statute. That’s the current provision of the Federal Employees Pay Act of 1945.

Mr. MINETA. And determining of the \$12.40 is also—is that done on the other hand by USDA?

Mr. KISTLER. I would assume so, yes, sir; or perhaps it’s built into the statutes that govern the Meat Inspection and Animal Health Inspection process.

Mr. MINETA. On page 4 of your testimony, the last page, you say that the President’s Panel on Federal Compensation recommended that a systematic review of premium pay administration be conducted. First of all, is this review being conducted and in terms of systematic, how often?

Mr. KISTLER. I’ll be pleased to answer that.

The Panel made a preliminary review and inquiries into the premium pay area, and found a very complex program with conflicting and contradictory results.

They recommended to the President that the Civil Service Commission do a systematic study that would be a one-time study, the

results of which presumably would be the basis for legislative proposals; administration proposals for fundamental new legislation in the premium pay area, generally; and certainly not excluding consideration of FLSA, as I alluded to earlier.

We had initiated some premium pay studies; however, they are receiving somewhat less priority than some other recommendations of the Rockefeller Panel.

The Rockefeller Panel included some recommendations for basic improvement in the blue-collar pay system. We have completed that effort, and it has resulted in an administration proposal being introduced urging some changes in the Federal wage system law.

The Panel also recommended basic changes in the white-collar pay system; in the basic structure itself. For example, it recommended locality rates for certain portions of the work force now covered by the general schedule, and that is currently receiving our principal attention.

Once we have wrapped up our work on that, we'll be in a position then to devote resources to some other recommendations of the panel, including this one.

In short, we're working on it, but it's not receiving our principal attention right now because of the need to devote resources to higher priority concerns.

Mr. MINETA. When do you contemplate getting to this aspect of it and completing that report?

Mr. KISTLER. We certainly hope to be able to commence work on it during the next fiscal year.

Our ability to devote time to it depends somewhat on the legislative success of our proposals for white-collar reform. It would be my fond hope, we would have one or more legislative proposals to Congress in the premium pay area possibly starting in fiscal year 1977.

Mr. MINETA. Before you get to the legislative proposal aspect, though, you will have completed the study itself?

Mr. KISTLER. That's correct.

Mr. MINETA. When do you contemplate having the study, itself?

Is there any way of maybe affixing a date to that so that we're under notice as to when that would be completed, and at the same time, you would also be under a deadline as to your hopes and mine to get it completed?

Mr. KISTLER. If the chairman pleases, I would like to submit a timetable to you by separate communication.

Mr. MINETA. I appreciate that. One of the things I find is that things tend to drag unless we put a date on it. I'll be happy to receive that.

Well, Mr. Kistler, thank you very, very much for your presentation this morning, for your testimony; and Mr. Gettman, thank you very, very much.

Mr. KISTLER. Thank you, Mr. Chairman.

Mr. MINETA. At this time, I ask the Honorable John M. Damgard, Deputy Assistant Secretary of Agriculture for Consumer and Marketing Affairs of the U.S. Department of Agriculture to come forward.

**STATEMENT OF JOHN DAMGARD, DEPUTY ASSISTANT SECRETARY
OF AGRICULTURE FOR CONSUMER AND MARKETING AFFAIRS,
U.S. DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY MARIAN
QUICK, PERSONNEL MANAGEMENT SPECIALIST IN ANIMAL
HEALTH INSPECTION SERVICE**

Mr. MINETA. Would you introduce, first, the person accompanying you?

Mr. DAMGARD. Thank you.

I have Ms. Marian Quick, Personnel Management Specialist in the Animal Health Inspection Service accompanying me.

Mr. MINETA. It is nice to have you this morning.

Mr. DAMGARD. My statement is fairly brief. With your permission, Mr. Chairman, I'd like to read it.

Mr. MINETA. Please go ahead, Mr. Secretary.

Mr. DAMGARD. I appreciate the opportunity to appear before the committee to express the views of the Department of Agriculture on H.R. 11245.

The bill would amend the provisions of title 5, United States Code, governing overtime pay so as to authorize the payment of overtime at 1½ times the basic hourly rate of pay for selected employees of the Department who work for the Animal and Plant Health Inspection Service. The Department does not recommend enactment of the bill.

On December 2, 1975, the Vice President submitted the report of the President's Panel on Federal Compensation. The Panel's report describes the area of premium pay, including overtime as "one of the most complicated areas of Federal compensation."

The current situation is a badly fragmented and complex system of inequities and inconsistencies resulting from legislation enacted over a long period of time which largely provided special treatment for certain agencies or for special categories of employees. The enactment of H.R. 11245 would add to the present problem.

Instead of continuing the existing practices, the Panel concluded that there is a need for a systematic review of the voluminous collection of laws, regulations, and administrative practices in order to determine what premium pay practices are currently justified in relation to non-Federal workers and any special requirements of the Federal workers.

The Panel recommended to the President that—

The Civil Service Commission complete, as soon as possible, its current comprehensive studies of Federal premium pay practices, and that it develop, in consultation with other agencies and labor organizations, appropriate legislative and regulatory proposals to establish a comprehensive program that will eliminate conflicting or contradictory requirements, and provide equitable premium compensation to all Federal employees working under similar circumstances.

The recommendation of the Panel identifies specific areas for study which include overtime pay, including inconsistencies and conflicts among current laws, and the existing special provisions for specific agencies and groups of employees. We realize that other studies have been made on the subject of premium pay laws and regulations and recommendations have been made, but without final action.

These include studies by the General Accounting Office, The Civil Service Commission, and the Job Evaluation and Pay Review Task

Force. The GAO report to the Congress in February 1975 is replete with examples of the wide divergence of overtime rates of pay among employees of USDA, the Bureau of Customs, the Immigration and Naturalization Service and U.S. Public Health Service.

We think it is important to note that the various recommendations of these several studies have consistently pointed to the need for a uniform approach for resolving the inequities and inconsistencies of current premium pay laws and regulations.

The Department has and continues to support solutions which will treat all employees in an equitable manner, consistent with current practice in the non-Federal section with respect to premium pay distinctions for professional and production workers.

H.R. 11245 would ignore such distinctions. Further, enactment of the bill would entail additional costs. The increased costs resulting from higher rates of overtime compensation would be approximately \$1.1 million. Of this amount, \$854,000 would be recovered by industry reimbursements for the cost of services rendered primarily in the inspection of meat and poultry products, adding to the cost of production which would probably be passed on to the consumer.

This would leave \$225,000 to be absorbed from funds appropriated to the Animal and Plant Health Inspection Service. We base these estimates on data for the actual cost of paid overtime in fiscal year 1975.

The estimated added costs are considered as the minimum additional cost. We cannot anticipate many of the overtime work situations which could arise.

For example, emergency animal disease outbreaks are not predictable, but would increase nonreimbursable overtime costs over those projected from the 1975 data.

Mr. Chairman, that concludes my statement. I will do my best to respond to questions which you may have.

Mr. MINETA. Thank you very, very much, Mr. Damgard.

[The analysis of costs follows:]

ANALYSIS OF THE ESTIMATED COST OF OVERTIME PAY UNDER PRESENT LEGISLATION AND PROPOSED LEGISLATION

The estimated increased cost in overtime compensation resultant from the enactment of proposed legislation on an annual basis would be \$1.1 million. Of this, an estimated \$854 thousand would be recovered through reimbursements and trust fund operations. Significant conclusions are:

The estimated net increased cost to the appropriation would be \$227 thousand.

The cost of overtime inspection services to the meat slaughter and processing industry would increase an estimated 4.5%. This cost could be passed to the consumer, but would result in only a minimal increase in the cost of meat.

The cost to animal importers and other users of trust fund facilities and services would increase an estimated 6.8%.

The following table shows the cost of present and proposed legislation by account. The worksheets support this table. They detail the data by grade and type of overtime compensation within organization unit. Considerations that users of the analysis should bear in mind are:

The present legislation data reflects the actual cost of paid overtime for FY 1975; it excludes overtime worked for which the employee made no claim for compensation and excludes overtime worked on a "comp time" basis.

The proposed legislation data projects the increased cost on the same volume of paid overtime hours as 1975.

It was not calculated on an employee by employee basis. The average step for each of grades GS-10, 11, 12, 13 and 14 for each major organizational unit (FO, STS, VS, PPQ, AM) was used as the basis for the calculations.

The proposed legislation would exclude people in managerial positions from the provisions of the bill. This was not taken into account in the calculations because of lack of data. If accounted for the estimated cost of the proposed legislation would decrease.

Depending on the degree of professionalism in managing organizational units there could be employees who would under the proposed legislation be willing to work overtime because of better compensation rates that will not work overtime presently. This would increase the volume of overtime work and the estimated cost.

Under the proposed legislation there may be people who will prefer payment rather than comp time. This would increase the estimated costs.

If 1975 was not a typical year the estimated cost of the proposed legislation would change accordingly.

ANIMAL AND PLANT HEALTH INSPECTION SERVICE, COMPARISON OF ANNUAL OVERTIME—COSTS BY FUND
(Under present legislation and proposed legislation (S. 1808, H.R. 10786, H.R. 11245))

	Actual, present legislation	Estimate, proposed legislation	Estimated increase
Salaries and expenses.....	\$5,003,379	\$5,230,061	+\$226,682
Allocation from Forest Service.....	1,154	1,190	+36
Subtotal, appropriated.....	5,004,533	5,231,251	+226,718
Reimbursements.....	18,948,046	19,794,304	+846,258
Trust funds:			
Feed and attendants.....	24,675	28,960	+4,285
Inspection and grading.....	81,916	82,729	+813
Miscellaneous contributed funds.....	8,673	11,459	+2,786
Total, APHIS.....	24,067,843	25,148,703	+1,080,860

Mr. MINETA. I'd like to go back to the question which I asked of Mr. Kistler, but in reference to your testimony, pages 3 and 4.

That is the whole question of the cost of this program—\$1.1 million—for which we get reimbursed approximately \$854,000. Now, since this reimbursement is regulated by title 9, and established at \$12.40 per hour, regardless of the grade of the individual, and at the same time, we're paying on the basis of title 5, at \$10.40; I fail to see where the difference is and I'm just wondering why this disparity between \$1.1 million and \$854,000. If just doesn't seem to make sense.

Mr. DAMGARD. OK, Mr. Chairman. I'm not an expert in the field; let me say this.

Mr. MINETA. It seems to me, just looking at the \$12.40—I'm charging you \$12.40 for overtime that Mr. McCluskey is putting in, but only paying him \$10.40. I don't believe you have to have a Ph. D. in math.

Mr. DAMGARD. That's right. It includes balancing administrative cost, and it includes billing and recordkeeping that we're required to do and collection procedures from the industry.

And that figure, as I understand, is the Department of Agriculture's figure, not the Civil Service Commission. And we compute it to include all costs in addition to salary.

Mr. MINETA. You're saying that administrative costs are in excess of say roughly 17, 18 percent for this program?

Mr. DAMGARD. That's correct.

Mr. MINETA. How many other employees within your department would you say are affected by this kind of a system? Are there any others other than animal and plant health?

Mr. DAMGARD. There are some. In addition to the meat inspectors there are some in the plant protection area, but outside of the four agencies for which I have direct responsibility for, Mr. Chairman, I'm afraid that I'll have to submit that to you for the record.

Mr. MINETA. If you would, I'd appreciate it.

Mr. DAMGARD. OK.

Mr. MINETA. Everyone recognizes that there's a problem here, but no one really is willing to really tackle it, it seems, because of dollars that may be involved.

Maybe the only hope is for Mr. Kistler's report to be completed as soon as possible.

I have no further questions, Mr. Secretary.

Let me ask if counsel has.

Mr. McCLUSKEY. Just for the record, Mr. Damgard stated the added cost to the production, but obviously this must be a mistake. It wouldn't be really added cost on production of private industry, because that \$12.40 is set in law, and that wouldn't rise; something you're already paying.

You say that added cost in production would be passed on to the consumer.

Ms. QUICK. It could rise.

Mr. McCLUSKEY. It could rise, but it can't rise unless Congress changes the law.

Ms. QUICK. No; it can rise as costs rise. It's set by the agency administratively to cover the cost of the overtime; to cover the cost of overtime, the maintenance, and any other items.

Mr. McCLUSKEY. But that can rise without paying overtime?

Ms. QUICK. Yes, it can; it has, in fact.

Mr. DAMGARD. Well, it seems to me it would rise with what is being contemplated; it would certainly rise.

I've got a breakdown that I'd be delighted to submit for the record, which shows computation, that led us to arrive at the million figure, and 854,000.

Mr. MINETA. That would be fine, Mr. Secretary, if you would submit this for the record I'd appreciate it.

[The tabulation follows:]

U.S. DEPARTMENT OF AGRICULTURE, ANIMAL AND PLANT HEALTH INSPECTION SERVICE
COMPARISON OF OVERTIME COSTS UNDER PRESENT LEGISLATION WITH PROPOSED LEGISLATION (S. 1808, H.R. 10785, H.R. 11245)

Source of funds	Overtime (over 40 hr)		Holiday		Sunday		Other		Total	
	Actual	Estimate	Actual	Estimate ¹	Actual	Estimate ¹	Actual	Estimate ¹	Actual	Estimate
Animal and Plant Health Inspection Service:										
Nonreimbursable:										
Meat and poultry inspection.....	\$3,024,715	\$3,200,692	+\$175,914						\$3,151,217	\$3,327,131
Plant protection and quarantine.....	423,790	441,171	+17,381						1,391,996	1,409,377
Veterinary services.....	278,454	307,613	+29,159						427,707	456,866
Administrative management.....	31,150	35,378	+4,228						32,459	36,687
Total.....	3,758,109	3,984,791	+226,686						5,003,379	5,230,061
Reimbursable:										
Meat and poultry inspection.....	15,356,621	16,007,418	+650,797						16,126,470	16,777,267
Plant protection and quarantine.....	2,039,428	2,183,520	+144,092						2,611,415	2,755,507
Veterinary services.....	178,700	230,069	+51,369						210,161	261,530
Administrative management.....										
Total.....	17,574,749	18,421,007	+846,258						18,948,046	19,794,304
Miscellaneous trust funds and allocations from other accounts.....	107,035	114,955	+7,920						116,418	124,338
Total agency.....	21,439,893	22,520,753	10,080,860						24,067,843	25,148,703
										+1,080,860

¹ No additional costs.

Mr. MINETA. Let me ask one quick question. Is all of the overtime that is performed by the employee billed to the requesting agency? In other words, if they put in 8 hours of overtime, is all 8 hours billed to the requesting agency?

Mr. DAMGARD. To the industry.

Ms. QUICK. To the industry, yes.

Mr. MINETA. So, you're not having the employee put in 8 hours of overtime and just charging the industry 6 hours back. You're getting full reimbursement in terms of hours?

Mr. DAMGARD. That's correct.

Mr. McCLUSKEY. One last question, and of course, this would be personal, as it was to the Commission. What do you think of the equity itself of paying an individual at least the same hourly rate he draws during regular working hours?

Mr. DAMGARD. One point I think the Commission might have made, and said it in their statement, is that at that rate, or at that level, a person is—it is envisioned that the person is being paid for a task to accomplish, not so much on an hourly basis.

If in fact, it takes more than 8 hours to accomplish the task—I'm sure the chairman has worked many time longer than 8 hours; I certainly work on a consistent basis longer than 8 hours.

Mr. McCLUSKEY. What concerns me about the whole thing, you and I know that the law was passed back in 1940, and at that time, we weren't talking about the number of people we're talking about now.

In fact, most of the people during those times were well covered by the GS-10; and I think part of the whole problem with the Civil Service law or the act is that it's never really been changed from the time it was written. They never contemplated that we would have such a large bureaucracy of professionals, people as college graduates, when in effect, it was probably built up for the working class.

Mr. DAMGARD. You make an excellent point, and I'm not an expert in the civil service law by any means.

Mr. McCLUSKEY. Right. So there is a problem here that the law, as written in the 1940's doesn't really speak to, it seems to me. It's true that the law was written in the Seventy's and Sixty's, what you're saying, but it wasn't.

Mr. DAMGARD. But I think the other point that civil service made, and of course, my knowledge on this subject is almost limited to what I heard the civil service say at this hearing, was that in 1974, Congress did mandate that professional employees in the Government be treated like that counterpart to the private sector. So, it's been recent that Congress has reinforced it.

Mr. McCLUSKEY. But we're talking here about nonmanagerial people, and FLSA is speaking to managerial people, primarily.

Mr. DAMGARD. Which excluded managerial.

Mr. McCLUSKEY. Right. So, we're speaking of nonmanagerial here.

Mr. DAMGARD. I don't think there's any argument of any inconsistencies. Essentially the point we're trying to make is probably it ought to be done on a broad brush, a very uniform fashion rather than a small, specific group, even though they are my employees.

Mr. McCLOSKEY. Thank you.

Mr. MINETA. Thank you, very much, Mr. Secretary.

At this time, I'd like to call Mr. William G. Hughes, General Counsel, National Association of Federal Veterinarians; accompanied by Dr. Clarence H. Pals, doctor of veterinary medicine.

**STATEMENT OF WILLIAM G. HUGHES, GENERAL COUNSEL,
NATIONAL ASSOCIATION OF FEDERAL VETERINARIANS; AC-
COMPANIED BY DR. CLARENCE H. PALS, DVM**

Mr. HUGHES. Good morning.

I'm representing the National Association of Federal Veterinarians; Dr. Pals is the recently retired executive vice president of NAFV, and before that, Director of Federal Meat Inspection for the United States.

We are very pleased to be able to offer testimony on H.R. 11245. The NAFV represents the majority of the federally employed professionals who will benefit from the passage of this legislation; that is, those veterinarians in the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture. It is these often unknown, often forgotten, professionals who are responsible for the high quality of meat and poultry products in the United States.

They are also responsible for the high degree of health of the country's animal herds and poultry flocks through comprehensive disease control and border inspection. These veterinarians are unknown largely because they are so successful in maintaining such high standards through dedication and hard work.

This work often involves long hours, often over 8 hours a day, and over 40 hours a week. As the law now reads, these individuals receive a maximum of $1\frac{1}{2}$ times the base rate of pay for a GS-10 step 1 for overtime work.

This minimum pay limitation was not equitable for professionals when it was enacted years ago, and is even less equitable now. Because these individuals are professionals, they are exempt from the benefits granted other employees under the Fair Labor Standards Act, especially the requirement of true time and one-half overtime pay.

Because of this, Federal professionals in APHIS often receive less than their regular hourly rate of pay when they work overtime. For example, a GS-12, step 6, receives \$10.87 per hour when working regular rates, but only \$10.70 per hour when on overtime, because the rate of overtime pay is limited to $1\frac{1}{2}$ times step 1 of GS-10.

GS-10, Step 1 is \$7.13. Take that at one and one half times and you get \$10.70. The disparity increases as step in grade and grade increases.

Most professional employees in APHIS are in the GS-12 bracket. Not one veterinarian in APHIS/USDA receives true time and one-half pay for overtime work. These valuable professionals work in close contact with nonprofessional support personnel who are covered by the Fair Labor Standards Act.

When on overtime, some of the nonprofessionals who are at a lower GS grade receive more pay per hour than their professional supervisors, because the FLSA requires pay at the rate of $1\frac{1}{2}$ times the actual rate of pay for the individual working.

The FLSA specifically excluded from its coverage several classes of employees including professionals. It is our belief that this was done because in the private sector professionals generally control their own

hours of work. This is not the case for the Federal personnel involved in USDA/APHIS.

The hours of work of these professionals are beyond their own control and usually even beyond the control of the agency. If a plant which is covered by Federal meat or poultry inspection chooses to operate, the inspection staff is required to work to continue to assure wholesome and unadulterated product and to protect the consuming public from the health hazards associated with meat and poultry products which are diseased, adulterated, or contaminated.

When there is an outbreak of a dangerous disease among the American animal herds or poultry flocks, APHIS professionals and supporting personnel must work long hours often under adverse conditions to stop the spread of these potentially catastrophic diseases.

In the last 5 years, the United States has had national emergencies involving, for example, Venezuelan equine encephalomyelitis among horses, exotic Newcastle disease among poultry, and outbreaks of hog cholera.

In addition, there is always the possibility of invasion of other diseases. Foot-and-mouth disease, for example, could destroy our livestock industry if not prevented and quickly eradicated if it arises.

Where such emergencies are declared, veterinarians and supporting staff are required to work long hours with often weeks without a day off. Likewise is true of border control stations. It is proper that these professionals be adequately compensated for their overtime work.

Through these combined efforts, the United States had been spared from the devastations which have swept the animal populations of other nations. This saves the American animal industry and the consumer inestimable amounts of money, and more importantly, protects the health of Americans from not only the deleterious effects of animal diseases, but also from the diseases common to both animals and humans.

Compensatory time off does not work for employees who are in short supply and does not begin to provide just compensation for the hardships which are routinely endured under these circumstances.

This legislation will not require more than a minimum of Federal funds. The vast majority of overtime hours paid to APHIS personnel, whether professional or nonprofessional, is money reimbursed to the Government by the private packers for overtime which is at their discretion. They are assessed for overtime at a flat rate of \$12.40 per hour for each Federal employee who is required to work regardless of grade.

Since professionals are greatly outnumbered by nonprofessionals, it is not anticipated that this rate would increase significantly. This \$12.40, if I may make a correction on some of the previous statements, includes among the overhead cost a portion of the salaries of top-level, APHIS personnel which are not considered in the regular budget.

So \$12.40 is being assessed to private packers to pay overtime of people not actually providing inspection services. Even at that, it is not anticipated that the rate would increase significantly.

When emergencies threaten the animal herds or poultry flocks, the necessary funds are appropriated after the fact to cover the cost of the emergency.

This usually involves only a few, though highly dedicated individuals for relatively short periods and only occurs on rare occasions. The amount of administrative overtime required for special training sessions is fairly insignificant.

One point made by the Civil Service Commission which I'm going to have to comment upon is that they said individuals are not paid for a task, but are paid for the number of hours they put in. If a packing plant would operate 12 hours a day or 24 hours a day, these individuals are responsible for giving inspection.

The United States Department of Agriculture is required to provide inspection service for these plants.

They are paid, and have been since 1919 on essentially an hourly rate, even though salaried schedules are set on a yearly basis. We are told that the Civil Service Commission is studying the premium pay question and the inequities in the present system.

A study has also been urged by the Rockefeller Commission which studied the premium pay question and by the Comptroller General.

Studies such as this are valuable especially in recognizing a problem, and it is hoped that reforms will be made, but this matter deserves correction as quickly as possible.

We have had acknowledged by the Commission that this matter now has lower priority than some other matters.

The Commission has had considerable time to deal with this matter and has not acted. The contention that this is only one of several inequities, should not sway Congress from taking the requested action to correct this particular and glaring inequity. CSC acknowledges that legislation will be necessary, and they acknowledge that the matter is very complex and years have passed since it was recognized that there was a problem.

Over 20 years ago, a serious attempt was made to enact legislation to correct inequities in the payment of premium pay. Draft legislation was developed jointly by the Civil Service Commission and the Bureau of the Budget.

Dr. Clarence H. Pals of the NAFV served on that committee at that time as a representative of the Department of Agriculture. The draft bill had the dual purpose of providing better inspection service to the public and providing a uniform premium pay system for all Federal employees performing such services.

This was a good bill and would have corrected many of the inequities still being experienced by APHIS employees if it had become law.

In summary, the National Association of Federal Veterinarians strongly urges passage of this legislation. We believe this is the first time in 20 years that the Congress has had before it a proposal to correct some of the premium pay inequities for APHIS employees. We are asking for the addition of a paragraph to the existing law which will provide coverage for certain APHIS employees similar to that given Air Traffic Controllers in 1968.

It will correct a serious inequity evident in the rate of overtime pay for professionals performing vital services for the American public. It will cost little and will greatly increase the morale of these valuable professionals. Your consideration of this legislation and of our position is greatly appreciated and the NAFV thanks each of you.

If I may deal for a few moments with some of the comments made by the department in the Civil Service Commission, I already mentioned about how the work is not really a task work, but hourly work. These professionals cannot be properly equated with professionals in the private sector.

The private sector professionals do in fact set their own hours of work. In this situation they are directed to work either by the agency or more likely by the private packer, which is not answerable to the Federal Government for the number of hours the employees puts in.

These people are placed in a somewhat industrial situation where they are working in packing plants as a factory type of situation, and are being forced to work without due pay and for even less pay than they normally receive. To correct this inequity it's argued that this would open the door to correct others.

We think Congress should correct the inequity now and the reason is because of the vital role that these particular professionals play for the health of the American public, and welfare of the American animal herds and poultry flocks.

So we urge you to vote in favor of amending the law as it now reads. This would greatly increase the morale of the Federal professionals, limiting itself to the U.S. Agriculture, Animal and Plant Health Inspection Service, not to the large number of other professionals alluded to earlier. If I may answer any question, Dr. Pals and I are prepared to do so.

Ms. SPELLMAN. Thank you very much. I wanted to point out that Mr. Mineta had to rush off to a markup of a bill. I, too, am due there.

However, I did have one question. You did attempt to counter allegations made by the Civil Service Commission that enactment of the bill would afford preferential treatment for this particular group of employees and create inequities?

Mr. HUGHES. That's correct.

Ms. SPELLMAN. Are there any other points that you would care to make on that score?

Mr. HUGHES. In that regard, the veterinarians in the Animal and Plant Health Inspection Service do have more of a problem than any other professionals, because they are called upon to work by private industry.

They are called upon to work special emergencies which is similar to a problem the airline traffic controllers suffered a few years back.

We are referring to what is a great inequity in regard to pay. They recognized the vital role these people play in the protecting the health of Americans, and it was given top priority and legislation to correct this inequity.

What we're asking for now is to correct the inequity as regards the professional in APHIS, primarily veterinarians. They are in a different overtime category than the average Federal professional; and by far in a different category than the professional in the private sector.

Ms. SPELLMAN. Thank you very much. Did counsel have any questions?

Mr. McCLUSKEY. Dr. Pals, you worked on a previous bill, you stated?

Dr. PALS. Yes; this was in 1955 and 1956. We talk about the activity being taken in the civil service to correct these inequities.

At that time the public health inspectors who were boarding ships and planes along with immigration customs inspectors were not re-

ceiving overtime pay. These were physicians and other professionals working in this area.

A bill passed the Congress and it was vetoed by President Eisenhower. He said he would not perpetuate such an unfair system and directed that a study should be made by CSC and the Bureau of the Budget to come back with corrective legislation. I was pleased to operate—I mean to be one of the representatives from the Department of Agriculture that served on that committee.

We did prepare legislation which, if enacted, would have corrected even some of the situations we're talking about now, at that time.

Twenty years ago, GS-11 was a grade which had been determined by the administration as being the proper grade, and we didn't have any 11's at that time.

This bill was forwarded by the Bureau of the Budget's Director, Mr. Brundidge in June of 1956, and that's when it stopped. We don't know exactly what happened to it, but we have pretty strong feelings, because it would have corrected some inequities. It just was not enacted. As a result of this, the Department of Agriculture employees continued to suffer all these years.

Mr. McCLUSKEY. Do you have a copy of that bill and the report of that committee which you served on?

Dr. PALS. There is a copy of the report—a copy of the bill available.

Mr. McCLUSKEY. Would you submit it?

Dr. PALS. We have the bill and also the letter for referral.

Ms. SPELLMAN. It will be made a part of the record.

[The information follows:]

THE NATIONAL ASSOCIATION OF FEDERAL VETERINARIANS,
Washington, D.C., April 14, 1976.

Mr. RONALD P. McCLUSKEY,
Staff Director and Counsel, Sub-committee on Retirement and Employee Benefits,
Rayburn House Office Building, Washington, D.C.

DEAR Mr. McCLUSKEY: This information is supplied pursuant to your request to Dr. C. H. Pals yesterday at the Sub-committee hearing on H.R. 11245. We appreciate your interest. I am available at your convenience to discuss any facets of this proposed legislation which may not have been made clear.

Sincerely yours,

WILLIAM G. HUGHES,
General Counsel.

Enclosure.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., June 4, 1956.

Hon. SAM RAYBURN,
Speaker of the House of Representatives,
Washington, D.C.

MY DEAR Mr. SPEAKER: There is submitted herewith for consideration of the Congress a draft bill "To provide a uniform premium pay system for Federal employees engaged in inspectional services, to authorize a uniform system of fees and charges for such services, and for other purposes."

The draft bill has been developed jointly by the Civil Service Commission, as to premium pay matters, and the Bureau of the Budget, as to fees and charges. It has the dual purpose of providing better inspectional service to the public and providing a uniform premium pay system for all Federal employees performing such services. It has been developed in response to the President's Memorandum of Disapproval of H.R. 6253, 83rd Congress, and grows out of the studies which were made as a result of that Memorandum.

Accordingly, early and favorable consideration of this draft bill is recommended.

Sincerely yours,

PERCIVAL F. BRUNDAGE,
Director.

A BILL To provide a uniform premium pay system for Federal employees engaged in inspectional services, to authorize a uniform system of fees and charges for such services, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Employees Pay Act of 1945, as amended, is amended by adding after Title VI a new title to read as follows:

"TITLE VII—OVERTIME AND HOLIDAY PAY FOR CERTAIN INSPECTIONAL ACTIVITIES

"Sec. 701. This title shall apply to all civilian employees in or under the executive branch of the Government while performing any of the following functions in the field service:

"(a) Agricultural Research Service, Department of Agriculture—Meat inspection work under the Meat Inspection Act of 1906, as amended and extended, or section 306 of the Tariff Act of 1930, related specification inspection work, or inspection work with respect to products under the Virus-Serum-Toxin Act of 1913; inspection, treatment, quarantine, or other supervision, or certification with respect to plants, animals, persons, means of conveyance, products, or articles moving or moved into or from the United States, or from any Territory or possession of the United States into another such Territory or possession, or into or from the continental United States respectively from or into any other part of the United States, under the plant or animal quarantine laws or related laws intended to prevent the introduction into or dissemination from or within the United States of plant or animal pests or diseases (except functions which are primarily of a border patrolling nature).

"(b) Federal Communications Commission—Inspection of ship radio equipment and apparatus for the purposes of Part II of Title III of the Communications Act of 1934, as amended, or the Great Lakes Agreement.

"(c) Public Health Service, Department of Health, Education, and Welfare—Medical examination or inspection or sanitary inspection of conveyances, persons, or goods, arriving in the United States or any place subject to the jurisdiction thereof.

"(d) Immigration and Naturalization Service, Department of Justice—Examination of persons seeking admission or readmission to or passage through the United States at Ports of Entry.

"(e) United States Coast Guard, Department of the Treasury—Inspection of vessels or their equipment, or the signing on or discharging of crews of merchant vessels.

"(f) Bureau of Customs, Department of the Treasury—Services in connection with the movements of vessels, vehicles, or aircraft, or persons or merchandise (including baggage) thereon, or the inspection, examination, receipt, or release of persons or merchandise (including baggage) as required or authorized by the customs laws or other laws administered or enforced by the Bureau of Customs.

"Sec. 702. Except as provided in section 703, all hours of work officially ordered or approved, and performed by employees to whom this title applies, in excess of the scheduled basic hours on a scheduled workday within the basic workweek, or on a day outside the basic workweek, or in excess of forty hours during an administrative workweek, or on a holiday regardless of whether it is within the basic workweek, shall be considered to be overtime work, and in addition to basic compensation shall be paid at the following rates:

"(a) For employees whose basic compensation is at a rate which does not exceed the maximum scheduled rate of basic compensation provided for grade GS-11 in the Classification Act of 1949, as amended:

"(1) The hourly rate of compensation for overtime work on a day other than Sunday or a holiday or the employee's day off in lieu of Sunday shall be one and one-half times the hourly rate of basic compensation of such employee;

"(2) The hourly rate of compensation for overtime work on a Sunday or on such other day of the week as is established administratively as the employee's day off in lieu of Sunday shall be twice the hourly rate of basic compensation;

"(3) The hourly rate of compensation for work on a holiday designated by Federal statute or Executive order, in addition to any basic pay for that day, shall be twice the hourly rate of basic compensation.

"(b) For employees whose basic compensation is at a rate which exceeds the maximum scheduled rate of basic compensation provided for grade GS-11 in the Classification Act of 1949, as amended, the premium hourly rate of compensation shall be the appropriate premium rate provided for employees paid at that maximum scheduled rate of basic compensation.

"SEC. 703. Notwithstanding section 702, compensation for scheduled overtime work which is the result of a general extension of the workweek for Federal employees, as during a national emergency, shall be at the overtime rates provided in section 201 of this Act.

"CALL-BACK TIME

"SEC. 704. (a) Whenever an employee subject to this title is required to return to his place of employment or to duty at another location (1) for unscheduled overtime duty, either on a regular workday or on a day when he is not scheduled to work, or (2) for any duty on a holiday, he shall be paid for at least three hours of duty.

"(b) An employee shall be paid for call-back time as provided by this section if he is ordered to report for duty and does so, regardless of whether he performs actual work, and shall be paid at the premium rates provided by this title for all such time, including any required waiting time.

"MISCELLANEOUS PROVISIONS

"SEC. 705. Except as provided in section 703, sections 201, 203, and 302 of this Act shall not be applicable to the employees covered by this title. All other provisions of this Act, including sections 202 and 605, shall be applicable to such employees."

SEC. 2(a) It shall be the duty of the head of each department or independent establishment performing inspections or other functions described in Section 701 of the Federal Employees Pay Act of 1945, as amended by this Act, to establish regular hours of service and to assign personnel for the performance of such inspections and functions, to the extent that available funds will permit and commensurate with reasonable need, whenever he determines that there is sufficient regular and substantially continuous demand therefor. The departments or establishments concerned shall cooperate, to the greatest extent practicable, in establishing uniform hours of service at each inspection point.

(b) The head of each department or independent establishment whose activities are covered under section 2a is authorized to provide special inspection or other service outside of the regularly scheduled hours for performing such service are at placed where regularly scheduled inspections or other services are not performed, and is authorized to collect from the person requesting such service, and to deposit to the credit of the applicable appropriation or other fund, such fees as may be established pursuant to the provisions of this title.

(c) The head of each department or independent establishment which is subject to the provisions of this title may establish schedules of fees for special inspection or other service provided pursuant to section 2b of this Act. Such schedules shall provide standard rates to be charged per man-hour, based on average costs or providing the special service, and shall provide for recovery of the cost to the agencies of such special inspections to the maximum extent practicable.

(d) Fee schedules established by a department or independent establishment pursuant to the provisions of this title shall be reviewed at least once every two years, and if necessary, revised to reflect changing conditions and costs.

SEC. 3. The following laws and parts of laws are repealed, effective on the respective dates of any pay revisions made pursuant to this act, for the employees otherwise receiving pay in accordance with such laws and parts of laws:

The second paragraph under the heading "Meat Inspection, Bureau of Animal Industry" of the act of July 24, 1919, 41 Stat. 241 (7 U.S.C. 394).

The act of August 4, 1949, 63 Stat. 495 (7 U.S.C. 394a).

The act of August 28, 1950, 64 Stat. 561 (5 U.S.C. 576).

The act of March 23, 1941, 55 Stat. 46, as amended by section 2 of the act of August 13, 1954, 68 Stat. 729 (47 U.S.C. 154 (f) (3)).

The act of March 2, 1931, 46 Stat. 1467, as amended by section 402 (i) (1) of the act of June 27, 1952, 66 Stat. 278 (5 U.S.C. 342(c) and (d)).

Section 6 of the act of May 27, 1936, 49 Stat. 1385, as amended by the act of May 11, 1938, 52 Stat. 345 (46 U.S.C. 382(b)).

Section 5 of the act of February 13, 1911, 36 Stat. 901, as amended by the act of February 7, 1920, 41 Stat. 402, and as further amended by the act of September 21, 1922, 42 Stat. 989 (19 U.S.C. 261, 267).

Section 451 of the act of June 17, 1930, 46 Stat. 715, as amended by section 9 of the act of June 25, 1938, 52 Stat. 1082, and as further amended by section 1 of the act of June 3, 1944, 58 Stat. 269, and section 503 of the act of September 1, 1954, 68 Stat. 1141 (19 U.S.C. 1451).

Section 601 of the Federal Employees Pay Act of 1945, 59 Stat. 302 (5 U.S.C. 941).

Sec. 4. This act shall take effect at the beginning of the first pay period which begins more than 60 days after its enactment. With the approval of the Civil Service Commission, the head of a department or agency may defer for not more than one year the application of title VII of the Federal Employees Pay Act to any group of employees and Sections 2 and 3 of this act shall not apply for a similar period with respect to inspections performed by such employees.

Dr. PALS. Also, more recently, the GAO report has been referred to. It referred to only the inspection at the border point, again dealing entirely with international trade. It did not in any way address itself to the problems of the meat and poultry inspection and veterinary services, plant protection and quarantine or other departments of Agriculture.

The only one included were the ones working on border points, and on all cases, employees of the Department of Agriculture have always been a low-paid people.

Ms. SPELLMAN. You certainly do point out that the wheels of justice grind slowly; 20 years ago?

Dr. PALS. Well, we must not forget those.

Ms. SPELLMAN. Indeed; thank you very much. Are there any other questions?

Mr. McCLUSKEY. No.

Ms. SPELLMAN. Thank you very much for your testimony.

The next witness is Dr. Max Decker, assistant executive vice president, American Veterinary Medical Association.

Dr. Decker, I have an important amendment to introduce in another subcommittee markup session this morning, and if you don't mind, I will ask our counsel to continue the hearing.

All the members of the Subcommittee will read your testimony. I'm sorry that I won't be able to hear it.

STATEMENT OF DR. MAX DECKER, ASSISTANT EXECUTIVE VICE PRESIDENT, AMERICAN VETERINARY MEDICAL ASSOCIATION

Dr. DECKER. Madam Chairman, we have a statement which I'd like to submit just for the record, and I would like to comment briefly, if I may, somewhat parallel to the statement. My statement is very similar to that made by the National Association of Federal Veterinarians. A few points have been made this morning that I would like to comment on, also, if I may.

Ms. SPELLMAN. Your prepared statement will appear in the record at this point.

[The complete statement follows:]

PREPARED STATEMENT OF W. M. DECKER, DVM

Mr. Chairman and members of the committee, the American Veterinary Medical Association appreciates this opportunity to express its support of H.R. 10786 and H.R. 11245. These bills would provide for an equitable system of payment for overtime work for certain professional personnel employed by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service.

Veterinarians hold critical positions in the animal disease control and meat and poultry inspection programs of the federal government. These veterinarians are responsible for activities which are essential to the ability of the livestock industries to supply the foods of animal origin upon which the people of the nation depend. They are also providing public health and consumer protection services, which assure the safety and wholesomeness of meat and poultry.

During the last few years, the nation's veterinarians, under the guidance of those employed by the USDA, have responded swiftly and decisively to control outbreaks of Venezuelan equine encephalomyelitis and exotic Newcastle disease, foreign animal diseases which suddenly appeared in this country and could quickly have created a national disaster among our nation's horse population and multi-million dollar poultry industry.

Veterinarians who inspect meat and poultry do not control their hours of work but are required to work during the hours when the meat and poultry packers decide to perform slaughter and other operations which require their services. The cost of providing the overtime service is borne by the packer or other user of the service who is billed by the Department of Agriculture at a flat rate sufficient to cover the cost of providing such overtime service.

The Animal and Plant Health Inspection Service has issued regulations covering the payment of overtime. A good example is found in Title 9—Section 307.6, which has established the current overtime rate effective October 12, 1975, at \$12.40 per hour. This is a flat rate paid by the packer and is the same whether the work was actually performed by a GS-7 food inspector or a GS-12 veterinary-medical officer.

The changes sought by these bills would not require additional appropriations for meat inspection, poultry inspection, and border inspection. The legislation would correct a glaring inequity which was further exaggerated with the implementation of the Amendment to the Fair Labor Standards Act (FLSA) in May 1964. Since that time, veterinarians supervising the work of non-professional food inspectors may be paid at a rate less than that paid the employees they supervise.

Since overtime pay is currently limited to the first step of GS-10, \$7.13 x 1½) \$10.70 per hour, no veterinarians in the federal service receive true time-and-one-half for their overtime service. Veterinarians above GS-12, Step 5, when working overtime receive less than straight time pay and there are no fringe benefits on their earnings.

In 1968 Congress and the Administration recognized the problems of air traffic controllers who must at times work overtime and provided that they be paid at overtime rates through GS-14. This was accomplished by adding paragraph 3 to Title 5, United States, Code, Chapter V, Section 5542 (a). The proposed paragraph (4) would do the same for APHIS employees.

From time to time devastating animal and poultry diseases gain entrance to this country and threaten the livestock and poultry industry. It is the United States' policy to eradicate these diseases as soon as possible. Veterinarians are then required to work long hours and every day of the week until the battle has been won. An equitable system of payment for work beyond the normal is generally accepted as a valuable means of maintaining employee work morale. We believe that it is in the best interests of the nation to provide for equitable overtime payment for the work of veterinarians through grade GS-14.

The American Veterinary Medical Association encourages your favorable consideration of this proposed legislation.

Dr. DECKER. The American Veterinary Medical Association is pleased to have the opportunity to comment on this legislation which we feel is important to correct an inequity that has existed much too long with respect to veterinarians who provide real leadership in public health protection, and animal disease control in this country.

The American Veterinary Medical Association, incidentally has a membership of about 26,000 veterinarians from a total of about 30,000 veterinarians in the country who are professionally active. The 2,000-plus veterinarians who would be affected by this legislation are a part of the membership of the American Veterinary Medical Association.

I would like to emphasize though the important role I think they play in animal disease control in this country, and in holding down the cost of food. Now, someone suggested this morning that there would be increased cost involved in this proposal, and that's certainly true.

They are minor, apparently, but I'd like to emphasize the point of the increased cost we would have in this country if we had an outbreak of foot-and-mouth disease in the cattle population that would cause a very significant increase in food costs.

We would lose a great part of the livestock population of this country, and it's due to these people that we're talking about here, that we've been able to keep out many of the exotic diseases of other parts of the world that would cause us very serious damage.

In the event of an outbreak of animal disease, the entire veterinary medical population of the country can be called on to bring that disease under control. I have mentioned in the statement a couple of situations, Newcastle disease, an exotic form of viral disease of birds that got into the poultry population in California some 2 or 3 years ago threatened to seriously damage the poultry industry.

It was brought under control and contained on a regional basis through the leadership that was provided by the veterinarians of the Animal and Plant Health Inspection Service when they gave leadership to the veterinary medical profession across the country. Prior to that we had an outbreak of Venezuelan equine encephalomyelitis in the horse population. It came through Central America and Mexico, entered the horse population of Texas, and would have gone a great deal of damage to the economy of this country had it progressed widely throughout the country.

It was contained and again, the leadership came from these people that we're talking about right here.

Mr. McCLUSKEY. What was the year of this outbreak?

Dr. DECKER. That was 1970, I believe. The Newcastle disease outbreak was about 2 years later than that. Now, these are unusual episodes. I'd emphasize that all the time there is a continuous battle going on against some of the diseases, and brucellosis in swine is a typical example of that.

Veterinarians in private practice are called upon to work extraordinary time frequently, but they're free to set their fees somewhat in accord with the time they work.

When they work at night or when they work long, long hours as is the case in many of the situations where they're trying to contain a disease episode, their fees can be increased. That's not the case with these people.

The very people who are providing the leadership in this kind of effort are seriously cut in their pay; not even being paid at the normal hourly level if they're above the GS-12, step 5 level. And a great many of these people certainly are above that level.

One can make this sound like a rather high level of pay, but I would assure you that the responsibilities that go along with it are relatively high responsibilities.

These people should certainly be paid at a level that adequately compensates them for the extra duty that they provide. Now, I would only comment further that it has been more than 20 years since the previous effort was made to correct this irregular situation.

There have been promises made, certainly not kept, to correct this situation. It would seem to us very, very important that corrective action be taken now to remedy this situation that's been going on much too long. For that reason, the American Veterinary Medical Association supports this legislation and hopes that the committee will give it favorable consideration.

Thank you.

Mr. McCLUSKEY. Thank you, Doctor. How many veterinarians are employed by the Government today?

Dr. DECKER. The total number employed by the Government I can't give you exactly. I believe it's in the range of 3,000 now, by the U.S. Department of Agriculture; the Department of Health, Education, and Welfare; the Department of the Interior; and the Department of Defense, with some in other agencies, also.

So, I would attempt to provide that for the record.

Mr. McCLUSKEY. If you would, that would be very much appreciated. And you bring up another question, pointing out there are veterinarians in many different agencies, yet this bill speaks primarily to the Department of Agriculture. Do you think this bill ought to be amended to include these veterinarians in other agencies?

Dr. DECKER. No; the situation we're talking about is unique to the Department of Agriculture, wherein it applies to primarily those veterinarians employed in the Meat and Poultry Inspection Service, where the hours of work are set by someone else.

Now, veterinarians generally throughout the Government are somewhat in control of their own time, and as was suggested by representatives of the Civil Service Commission, have duties to perform that are fairly well specified duties. If it takes those veterinarians more than 8 hours per day to do that work, there's probably little reason to suggest paying overtime for that.

But in the USDA situation, the hours are set by others. The time that a plant may operate determines the hours of work for the veterinarian. He must be on duty during the time that that plant is in operation, and products need to be inspected. So, I think it's a vastly different situation there.

I would emphasize, too, the importance of the meat and poultry inspection as a part of the system of disease control of this country.

You've heard this morning about it as an important public health protection measure, but it's also a way of determining when unusual situations are developing with respect to animal disease. It's a sensing system, generally, and it must be operated by veterinarians to make it effective; and it must be operated at any time that the plants are processing meat and poultry.

Mr. McCLUSKEY. In your personal opinion, would you be satisfied if the bill were amended to at least give the same hourly wage that a person earns rather than true time and a half?

Dr. DECKER. No; I don't think so. In this case, I don't really think that would be equitable. The meat and poultry inspection work is a stressful kind of a work. It has many aspects of an assembly line kind of work.

The veterinarian is in a position of applying professional judgment as material goes by him; and he can do that effectively up to a point, some point of hours of work.

Beyond that, it's added stress and I think he should be compensated beyond the normal level when he has to work more than approximately 8 hours a day or 40 hours a week. He certainly is doing more than is expected of him. It's extraordinary duty, and we've become quite accustomed in this country to expecting to be paid somewhat extra for that kind of work.

Mr. McCLUSKEY. Well, Doctor, if this bill does go through, and compensatory time is given, do you think it is just, equitable to change the law and do away with compensatory time, which is now supposedly given in lieu of the money?

Dr. DECKER. Well, compensatory time is a useful device in many agencies, and I am a former Federal employee, not in the U.S. Department of Agriculture, but another agency, and in that case, compensatory time was useful.

It's useful, I think, when the overtime work is not an extensive kind of thing; when just occasionally one is required to work overtime, this gives you an opportunity then to compensate in a way, in a different way for that.

It's relatively useless to the individual when overtime work is required of him week after week, or many, many times during the year, or for a long period of time where the amount of extra duty is extensive; say 12, 14 hours a day for several weeks because of an unusual incident occurring.

Compensatory time is really useless to the individual in that kind of situation.

Mr. McCLUSKEY. One last question. Do you have the average of overtime that is worked by veterinarians in the Government?

Dr. DECKER. No, sir; I have no access to that kind of specific information. I couldn't provide it to you, even. I have been advised by individuals of the nature of their own experiences, and that's the basis from which I speak.

Mr. McCLUSKEY. Well, from your own experience, what would you guess the average would be?

Dr. DECKER. I couldn't imagine a reasonable guess on an average. I just couldn't. I know that there are numbers of individuals who are called upon to work extra time, week after week, and that this can amount to 10 or more hours in many situations; but I couldn't speak to the average.

Mr. McCLUSKEY. Thank you very much, Doctor, for your testimony.

Dr. Pals, do you have that sort of information?

Dr. PALS. No, this would vary considerably; vary between sections of the country.

Mr. McCLUSKEY. Do you have any documentation that has it all accumulated and averaged out?

Dr. PALS. No; we do not.

Mr. McCLUSKEY. Do you have that available to your staff?

Dr. PALS. This could be obtained through the Department of Agriculture. They do have it on their time records. They do know how much they are paying in the overtime categories of people.

Mr. McCLUSKEY. Thank you, Doctor.

Dr. PALS. But it's very spotty. It does total up to a figure of something over \$18 million a year, but that is not broken up by categories of people.

Mr. McCLUSKEY. Thank you very much.

We have one last witness, Mr. John W. Kennedy, National Association of Plant Protection and Quarantine Supervisors.

Mr. SARGENT. Mr. McCluskey, Mr. Kennedy couldn't be here today. I am Harvey Sargent, and I will represent the National

Association of Plant Protection and Quarantine Supervisors, if I may.

Mr. McCLUSKEY. You may, Mr. Sargent.

STATEMENT OF HARVEY SARGENT, NATIONAL ASSOCIATION OF PLANT PROTECTION AND QUARANTINE SUPERVISORS

Mr. SARGENT. Mr. Chairman, members of the subcommittee, the National Association of Plant Protection and Quarantine Supervisors greatly appreciates this opportunity to voice our opinions on the subject of overtime payments to APHIS, USDA personnel employed as inspectors and supervisory personnel.

Plant protection and quarantine programs, APHIS and USDA are conducted at ports of entry to prevent the entrance of plant pests, such as insects, diseases, nematodes, snails, and other pests which are harmful to the plant and animal life in this Nation. The Department inspectors also certify plants and plant products for export. These inspections are made 24 hours a day, 7 days a week, many times under adverse conditions existing in seaports of our large metropolitan areas and our major airports.

Federal employees have been asked to lead the war on inflation by serving as models to industry when pay increases of 5 percent "comparability" are imposed upon them. The cost-of-living has increased more than 10 percent yearly during the same period. Health insurance prices have also been increasing. However, one of the greatest injustices facing USDA, APHIS employees is to be subjected to an overtime system which is unfair.

As "professionals" they are being exempted from provisions of the Fair Labor Standards Act Amendment of 1974. When performing duties on docks, cargo areas, major airport ramps, and other locations on 24-hour call, inspectors can receive less than true time-and-one-half salary. Under the provisions of title 5, United States Code, section 542, our inspectors are limited to only 1½ times the minimum rate of base pay for a GS-10. Our GS-12, step 6 and higher employees receive less than their base salary, a situation which cannot be justified.

The cost for plant protection and quarantine program inclusion under these provisions would be minimal. In most cases, overtime is performed by our PPQP inspectors under reimbursement by airlines and the shipping industry. The cost to these private interests should not appear unreasonable, since their own employees are subject to the Fair Labor Standards Act of 1974.

Our inspectors are dedicated employees who are highly trained, competent, and face their 24-hour, 7-day-a-week profession with vigor. It is demoralizing for them to work side by side with other inspectional agencies who are adequately compensated. They deserve a right to a pay rate equal to the Fair Labor Standards Act of 1974. They have asked for no more than what Congress has deemed just compensation for other Americans.

Mr. McCLUSKEY. I think we've pretty well exhausted all the questions.

Would you like to address the Civil Service's and the Department of Agriculture's comment that this bill would be inequitable and that it would create further inequities of professionals in different agencies with respect to premium pay for overtime?

Mr. SARGENT. Yes; I would. The National Association of Plant Protection and Quarantine Supervisors represent people that work at ports and airports; and we're charged with the duty of inspecting all airplanes and ships when they come in to make sure that stores are sealed and that there's no possibility of outbreak of animal disease or plant disease.

We have to board ships at all hours of the day and night, 7 days a week, 365 days a year. In the Plant Protection, Quarantine Service, we have roughly, 1,675 employees, and we have been informed that for the next 4 or 5 years, we will not be able to get any additional employees.

It is necessary for many of our inspectors and supervisors to put in extra hours every day, every night, Saturdays, Sundays, holidays, they have to do this.

Mr. McCLUSKEY. I see.

Well, thank you very much, Mr. Sargent, for your testimony and addressing yourself to that question; and you can be assured as all the witnesses can be assured, that all members will receive your testimony, and will scrutinize that testimony.

Thank you very much.

There being no further business, the subcommittee is adjourned.

[Whereupon, at 10:30 a.m., the hearing was adjourned.]

[The statements which follow were received for the record:]

STATEMENT OF HON. KEITH G. SEBELIUS, A MEMBER OF CONGRESS FROM THE
STATE OF KANSAS

Mr. Chairman, I appreciate this opportunity to urge prompt action on HR 10876.

This legislation was proposed to eliminate discriminatory pay practices affecting certain professional personnel employed by the Animal and Plant Health Inspection Service of the Department of Agriculture.

Due to job requirements limiting the use of compensatory time off and statutory limitations on overtime pay, these professional personnel are paid less than their regular hourly rate and often less than subordinates whom they supervise.

In current practice, most of the overtime services required of APHIS professionals are reimbursable from the meat or poultry packers, importers, or exporters requesting the service. These fees cover actual costs of reimbursement to employees plus overhead charges necessary for providing inspection service. So the budget impact of my proposal to remove this obvious inequity would be minimal.

Also, this proposal covers only non-managerial professionals—those employees whose duties are critical to insure the wholesomeness of our food products, the humane treatment of animals, or the proper control of animal and plant diseases.

This proposal does have precedent. In 1968, Public Law 90-556 established true time-and-one-half pay for overtime ordered and worked by air traffic controllers through GS-14. Like APHIS personnel, the air controllers were responsible for substantial overtime duties at reduced rates, yet were seldom given compensatory benefits.

I hope that you will take prompt and favorable action on this proposal.

Your consideration of these comments is most appreciated.

AMERICAN VETERINARY MEDICAL ASSOCIATION,
Washington, D.C., April 30, 1976.

CHAIRMAN OF THE SUBCOMMITTEE ON RETIREMENT AND EMPLOYEE BENEFITS
OF THE COMMITTEE ON POST OFFICE AND CIVIL SERVICES
U.S. House of Representatives, Washington, D.C.

DEAR SIR: The enclosed is submitted to provide information on the number of veterinarians employed in the federal government. This information was requested by your Subcommittee at the time of the hearings on H.R. 11245 conducted on

April 13, 1976. The request was made to Dr. W. M. Decker, Assistant Executive Vice President, American Veterinary Medical Association at the time of his testimony.

Sincerely,

FRANK A. TODD, D.V.M.,
Washington Representative.

10-15
The Committee on the Status of the Horse in the United States has been organized to study the status of the horse in the United States and to make recommendations to the Congress and the Executive Branch of the Government. The Committee is composed of representatives of the horse industry, the horse community, and the general public. The Committee is currently conducting a study of the status of the horse in the United States and will report its findings to the Congress and the Executive Branch of the Government in the near future. The Committee is also conducting a study of the status of the horse in the United States and will report its findings to the Congress and the Executive Branch of the Government in the near future. The Committee is also conducting a study of the status of the horse in the United States and will report its findings to the Congress and the Executive Branch of the Government in the near future.

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FEDERALLY EMPLOYED VETERINARIANS
POSITIONS HELD BY 3140 VETERINARIANS JUNE 30, 1975
GRADE LEVEL OR EQUIVALENT.

GS-9 GS-11 GS-12 GS-13 GS-14 GS-15 GS-16 GS-17 GS-18 TOTAL

DEPARTMENT OF AGRICULTURE

Agricultural Research Service	2	14	25	17	13	4		75
Animal and Plant Health Inspection Service								
Office of the Administrator							2	2
Operations Review Staff				4				4
				4			2	6
Plant Protection & Quarantine			4		1			5
Veterinary Services								
Office of the Deputy Administrator ..				1	2		1	4
Emergency Program Staff			2	8	3	1		14
Professional Development Staff			1	1	1			3
Program Development &				1				
Application Staff	3	9	29	36	14	2		93
Latin American Programs			11	3	2	1		17
Northern Region		4	90	18	7	1		120
Southeast Region	1	8	92	12	5	1		119
South Central Region	2	4	73	17	3	1		100
North Central Region	2	4	77	14	5			102
Western Region	2	2	53	7	3	1		68
Total - Veterinary Services	7	25	394	111	72	26	4	640

Meat & Poultry Inspection Program

Field Operations								
Office of the Deputy Administrator ..				4	2	2	1	9
Western Region	4	75	111	36	7	1	1	235
Southwestern Region	1	61	172	34	7	1	1	277
North Central Region	1	91	197	55	8	1	1	354
Southeastern Region		32	174	34	10	1	1	252
Northeastern Region		36	115	40	7	1	1	200
Compliance Staff				7	1			8
Program Training Staff			4	9	1	1		15
Foreign Program Staff				16	5	1		22
Total - Field Operations	6	295	773	231	50	9	7	1372

Scientific & Technical Services

Office of the Deputy Administrator ..						1		1
Scientific Services			12	2	3			17
Technical Services			8	3	3	1		15
Total - STS			20	5	7	1		33
Total - MPIP	6	295	773	251	55	16	8	1405
Total - APHIS	13	320	1167	366	131	43	12	2056

Cooperative State Research Service

Federal Extension Service						1		1
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TOTAL - U.S. DEPARTMENT OF

AGRICULTURE	13	322	1181	391	149	58	16	2	2134
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Agency for International Development* ..						3			3
Commerce - Marine Fisheries Service ..			1	2					3
Interior - Sports Fisheries & Wildlife ..			2	2	1				5
Smithsonian Institution - National Zoo ..				1	2		1		4
National Aeronautics & Space Admin. ..				1	1	1			3
Veterans Administration*	1	2	2	9	1				15
Civilian Army Personnel	1			1	3	1			6
Civilian Air Force Personnel		1	2						3
Civilian Navy Personnel		1				1			2
Environmental Protection Agency (GS) ..				1	1	2	2		19
(CC) ..				(05) 4	(06) 9				7
Panama Canal Zone				6		1			7
Consumer Product Safety Commission* ..					1				1
Total - Various Agencies	2	7	18	22	19	2	1		71

* Based on previous information

U.S. House of Representatives

DEPARTMENT OF HEALTH, EDUCATION

& WELFARE

U.S. Public Health Service

Food & Drug Administration									
Office of the Commissioner						1			1
Bureau of Foods	1		5	2	1				9
Bureau of Drugs		1	1		1				3
Bureau of Veterinary Medicine (GS) ..	1	3	21	13	6	3		1	50
(CC) ..				(05) 1	(06) 1				1
Bureau of Radiological Health (CC) ..					(06) 1				2
Bureau of Biologics (GS)			1						2
(CC) ..				(05) 1					8
Regional Offices									74
Total - FDA	2	4	28	25	11	3			74
CENTER FOR DISEASE CONTROL (GS) ..			1	1	2				29
(CC) ..	(03) 3	(04) 7	(05) 6	(06) 9					29
NATIONAL INSTITUTES OF HEALTH (GS) ..			8	4	3	2			60
(CC) ..	(03) 1	(04) 3	(05) 14	(06) 24	1				4
Visiting Scientists								4	4
Staff Fellows								3	3
HEALTH SERVICES ADMINISTRATION (CC) ..			(04) 1	(06) 1					2
TOTAL - HEW	2	8	48	50	50	6		8	172

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D.C. 20415

April 12, 1976

Honorable David N. Henderson
Chairman, Committee on Post Office
and Civil Service
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is in further reply to your request for the Commission's views and comments on H.R. 10786, a bill "To amend title 5, United States Code, to provide for the payment of overtime to certain personnel employed in the Department of Agriculture, Animal and Plant Health Inspection Service." A similar bill, H.R. 11245, was introduced by Mr. Taylor of Missouri on December 18, 1975; therefore, the following comments are equally applicable to that bill.

The Civil Service Commission is vigorously opposed to enactment of this bill because it would inappropriately accord preferential treatment to a particular group of employees.

The purposes of the bill are two. First, it would provide that certain employees occupying nonmanagerial positions in the Animal and Plant Health Inspection Service (APHIS) at grade GS-14 or under would receive an hourly rate of overtime pay amounting to one and one-half times their hourly rate of basic pay. Such employees would not be subject to the provision in section 5542(a)(2) of title 5, United States Code, that limits overtime pay to one and one-half times the hourly rate of pay for grade GS-10, step 1. Secondly, the bill would exclude such employees from the coverage of 5 U.S.C. 5547 which provides that an employee's aggregate rate of pay for any pay period may not exceed the maximum rate for grade GS-15. The aforementioned limitations on overtime pay are applicable to salaried Federal employees who are in positions and at salary levels which exempt them, as in the private sector, from the overtime provisions of the Fair Labor Standards Act (FLSA).

For more than 30 years the overtime pay of Federal white-collar workers in general has been governed by a law specifically applicable to them. It was enacted as the Federal Employees Pay Act of 1945 and now is codified as section 5542 of title 5 of the United States Code. At the lower grades, a rate of one and one-half times the basic rate of pay is authorized as the rate for overtime work. At the higher grades, however,

the overtime premium is limited so that employees paid above the minimum rate of GS-10 receive overtime compensation at one and one-half times that rate of pay no matter how high their grade. A cut-off of this kind was provided because for the most part employees in the private sector at similar salary levels do not have to be paid time and one-half for overtime.

Without repealing this long established law governing overtime for Federal salaried employees, the Fair Labor Standards Amendments of 1974 extended the coverage of the FLSA to the Federal service. This required making distinctions between Federal employees not previously made; it required the application of new rules and concepts simultaneously with the old. It meant, specifically, that employees would be paid the full time and one-half overtime rate no matter what their salary rate or grade level if they were not exempt as professional, administrative, or executive employees.

While H.R. 10786 would serve to equate the overtime compensation of certain Department of Agriculture professional employees to that of nonprofessionals who work with them and who are entitled to the full time and one-half overtime rate under the FLSA, its enactment would, however, result in non-uniform overtime pay treatment among professional, as well as other exempt employees of the Federal Government. While there are some 2000 veterinarians in this program, the Federal Government has more than a hundred thousand professional employees in grades GS-11 through GS-14. If an attempt were made to achieve uniformity by the extension of this benefit to cover all professional personnel, very substantial costs would be generated.

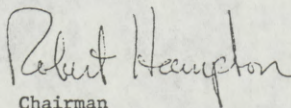
We recognize that the sponsors of this legislation wanted to provide overtime benefits similar to those provided for Air Traffic Controllers. In 1968, compelling reasons existed which provided the basis for legislation which gave to air traffic control personnel the kind of overtime pay benefit to be provided by H.R. 10786, except that air traffic control personnel continue to be subject to the aggregate pay limitation of 5 U.S.C. 5547. That legislation met the special and critical need for adequately staffing functions directly related to aviation safety. Although it was recognized that the enactment of that legislation would result in special treatment for a limited group of employees, it was considered fully justified by the urgency of the then existing and rapidly increasing needs of the Federal Aviation Administration. We believe that the Congress at that time was willing to provide special benefits in what was viewed as a unique situation in the Federal Service.

We stand strongly opposed to further consideration of H.R. 10786 or similar preferential legislation. The Commission is aware, however, of inequities which exist in the area of overtime pay administration, and we will be examining this subject area to determine what premium pay practices are currently justified in the light of practices in the non-Federal sector as recommended in the report of the President's Panel on Federal Compensation.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,


Chairman

94TH CONGRESS
1ST SESSION

H. R. 11245

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 18, 1975

Mr. TAYLOR of Missouri (for himself, Mr. McFALL, and Mr. WHITE) introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To amend title 5, United States Code, to provide for the payment of overtime to certain personnel employed in the Department of Agriculture, Animal and Plant Health Inspection Service.

1 *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 That section 5542 (a) of title 5, United States Code, relat-

4 ing to premium pay, is amended by adding at the end thereof

5 the following new paragraph:

6 “(4) Notwithstanding paragraph (1), or (2), of this

7 subsection for an employee of the Department of Agriculture,

8 Animal and Plant Health Inspection Service, who occupies

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1 a nonmanagement position in GS-14 or under and, as
 2 determined by the Secretary of Agriculture—

3 “(A) the duties of which are critical to the inspec-
 4 tion services provided by the Department of Agricul-
 5 ture to assure wholesome food products, humane treat-
 6 ment of animals, and to control and eradicate animal
 7 and plant diseases;

8 “(B) in which overtime work is reimbursable under
 9 appropriate statutory authority and, therefore, per-
 10 formed without cost to the Government;

11 “(C) in which the operating requirements cannot
 12 be met without substantial overtime work and in which
 13 the overtime work is (i) performed at a time not subject
 14 to the control of the Department of Agriculture or the
 15 employee; or (ii) required by emergency needs
 16 created by disease outbreaks;

17 the overtime hourly rate of pay is an amount equal to one
 18 and one-half times the hourly rate of basic pay of the
 19 employee, and all that amount is premium pay.”.

20 SEC. 2. Section 5547 of such title is amended by insert-
 21 ing after “An employee” the following: “(other than an
 22 employee to whom section 5542 (a) (4) applies)”.

23 SEC. 3. The amendments made by this Act shall take
 24 effect on the first day of the first pay period which begins on
 25 or after the thirtieth day after the date of enactment of this
 26 Act.

- 1 a nonmanagement position in GS-14 or higher and is
- 2 determined by the Secretary of Agriculture —
- 3 "(L) the series of which are critical to the inspec-
- 4 tion services provided by the Department of Agricul-
- 5 ture to its own, wholesale food products, domestic food-
- 6 meat or animal, and to control and eradicate animal
- 7 and plant diseases;
- 8 "(M) in which essential work is performed in any
- 9 nonmanagement position, including that of a person
- 10 serving in a position in which the employee
- 11 "(N) in which the employee performs essential
- 12 work without any essential services or work in which
- 13 the employee work is performed in a nonmanagement
- 14 position in the control of the Department of Agriculture for the
- 15 employee in (H) required by a management need
- 16 controlled by these conditions:
- 17 the employee must be of pay is an annual salary to one
- 18 and one-half times the basic salary of the
- 19 employee and all his annual is increasing pay;
- 20 Sec. 2.5. (a) 5517 of such title is amended by insert-
- 21 ing at the end thereof the following: "(b) but then an
- 22 employee is a nonmanagement position (L) (M) (N)";
- 23 Sec. 2. The amendments made by this Act shall take
- 24 effect on the first day of the first pay period which begins on
- 25 or after the third day after the date of enactment of this

