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§ 515.5 Additional requirements.

(a) The State Agency shall follow the procedure set forth in the Inspection Manual for the enforcement of the act and such supplements to or provisions thereof as may be issued from time to time by the Division or the Secretary of Labor; use official forms for recording findings; make reports as required; and carry on the work connected with the administration of the Acts in conformity with the plans and budget agreed upon and with the instructions and policies of the Division and the Secretary of Labor.

(b) Representatives of the Division and the Secretary of Labor may at any time, upon notifying the State agency, make such inspections and investigations and secure such information as may be necessary for the administration of the Acts.

§ 515.6 Audits.

The accounting records and the supporting data pertaining to expenditures for investigations and inspections under the Acts shall be subject to audit by the Division and the Secretary of Labor, annually, or so often as the Administrator and the Secretary of Labor, may require.

§ 515.7 Transmission of official mail.

Subject to the requirements of law and of the regulations of the Post Office Department, franked self-addressed envelopes may be used for communications from the field staff to a State official designated by the Division and the Secretary of Labor, and for communication from the State agency to the Division or the Secretary of Labor.

§ 515.8 Enforcement.

All litigation relating to the enforcement of the Acts, other than civil actions for the recovery of wages due instituted pursuant to section 16(b) of the Fair Labor Standards Act of 1938 and all administrative proceedings instituted pursuant to section 5 of the Public Contracts Act shall be undertaken by and be under the direction and control of the Federal Government. Any State agency intending to institute a civil action in behalf of an

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employee or employees for the recovery of wages due, pursuant to section 16(b) of the Fair Labor Standards Act of 1938 shall notify the Division and the Secretary of Labor prior to the institution of such action.

§ 515.9 Agreements and approved plans.

Agreements and approved plans incorporated therein may be amended upon the consent of the parties thereto.

§ 515.10 Amendments and repeal.

This part may be amended or repealed by appropriate joint regulations issued by the Secretary of Labor and the Administrator: *Provided, however*, That no such amendment or repeal shall be effective as to any agreement previously entered into by a State agency without its consent thereto.

PART 516—RECORDS TO BE KEPT BY EMPLOYERS

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- 516.12 Employees exempt from overtime pay requirements pursuant to section 13(b) (1), (2), (3), (5), (9), (10), (15), (16), (17), (20), (21), (24), (27) or (28) of the Act.
- 516.13 Livestock auction employees exempt from overtime pay requirements under section 13(b)(13) of the Act.
- 516.14 Country elevator employees exempt from overtime pay requirements under section 13(b)(14) of the Act.
- 516.15 Local delivery employees exempt from overtime pay requirements pursuant to section 13(b)(11) of the Act.
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- 516.18 Employees employed in certain tobacco, cotton, sugar cane or sugar beet services, who are partially exempt from overtime pay requirements pursuant to section 7(m), 13(h), 13(i) or 13(j) of the Act.
- 516.19 [Reserved]
- 516.20 Employees under certain collective bargaining agreements who are partially exempt from overtime pay requirements as provided in section 7(b)(l) or section 7(b)(2) of the Act.
- 516.21 Bulk petroleum employees partially exempt from overtime pay requirements pursuant to section 7(b)(3) of the Act.
- 516.22 Employees engaged in charter activities of carriers pursuant to section 7(n) of the Act.
- 516.23 Employees of hospitals and residential care facilities compensated for overtime work on the basis of a 14-day work period pursuant to section 7(j) of the Act.
- 516.24 Employees employed under section 7(f) "Belo" contracts.
- 516.25 Employees paid for overtime on the basis of "applicable" rates provided in sections 7(g)(1) and 7(g)(2) of the Act.
- 516.26 Employees paid for overtime at premium rates computed on a "basic" rate authorized in accordance with section 7(g)(3) of the Act.
- 516.27 "Board, lodging, or other facilities" under section 3(m) of the Act.
- 516.28 Tipped employees.
- 516.29 Employees employed by a private entity operating an amusement or rec-

reational establishment located in a national park or national forest or on land in the National Wildlife Refuge System who are partially exempt from overtime pay requirements pursuant to section 13(b)(29) of the Act.

- 516.30 Learners, apprentices, messengers, students, or handicapped workers employed under special certificates as provided in section 14 of the Act.
- 516.31 Industrial homeworkers.
- 516.32 [Reserved]
- 516.33 Employees employed in agriculture pursuant to section 13(a)(6) or 13(b)(12) of the Act.
- 516.34 Exemption from overtime pay for time spent by certain employees receiving remedial education pursuant to section 7(q) of the Act.

AUTHORITY: Sec. 11, 52 Stat. 1066, as amended, 29 U.S.C. 211. Section 516.33 also issued under 52 Stat. 1060, as amended; 29 U.S.C. 201 *et seq.* Section 516.34 also issued under Sec. 7, 103 Stat. 944, 29 U.S.C. 207(q).

SOURCE: 52 FR 24896, July 1, 1987, unless otherwise noted.

INTRODUCTORY

§516.0 Display of OMB control numbers.

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

§516.1 Form of records; scope of regulations.

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

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by this part are made available upon request.

(b) *Scope of regulations.* The regulations in this part are divided into two subparts.

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

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

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

Subpart A—General Requirements

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

(a) *Items required.* Every employer shall maintain and preserve payroll or other records containing the following

information and data with respect to each employee to whom section 6 or both sections 6 and 7(a) of the Act apply:

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

(2) Home address, including zip code,

(3) Date of birth, if under 19,

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

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

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

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

(8) Total daily or weekly straight-time earnings or wages due for hours

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worked during the workday or workweek, exclusive of premium overtime compensation,

(9) Total premium pay for overtime hours. This amount excludes the straight-time earnings for overtime hours recorded under paragraph (a)(8) of this section.

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

(11) Total wages paid each pay period,

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

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

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

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

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

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

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

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

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

§516.4 Posting of notices.

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

Overtime Provisions Not Applicable to Taxicab Drivers (section 13(b)(17)).

§516.5 Records to be preserved 3 years.

Each employer shall preserve for at least 3 years:

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

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

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

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

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

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

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

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

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

§516.6 Records to be preserved 2 years.

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

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

period earnings or wages of those employees.

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

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

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

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

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

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

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

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

§516.8 Computations and reports.

Each employer required to maintain records under this part shall make such extension, recomputation, or transcription of the records and shall

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submit to the Wage and Hour Division such reports concerning persons employed and the wages, hours, and other conditions and practices of employment set forth in the records as the Administrator or a duly authorized and designated representative may request in writing.

§ 516.9 Petitions for exceptions.

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

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

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

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

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

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

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

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

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

With respect to each employee exempt from the overtime pay requirements of the Act pursuant to section 13(b)(13), the employer shall maintain and preserve records containing the information and data required by § 516.2(a) except paragraphs (a) (6) and (9) and, in addition, for each workweek in which the employee is employed both in agriculture and in connection with livestock auction operations:

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(a) The total number of hours worked by each such employee,

(b) The total number of hours in which the employee was employed in agriculture and the total number of hours employed in connection with livestock auction operations, and

(c) The total straight-time earnings for employment in livestock auction operations.

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

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

(b) Information demonstrating that the “area of production” requirements of part 536 of this chapter are met.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Pursuant to an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no

employees shall be employed more than 1,040 hours during any period of 26 consecutive weeks as provided in section 7(b)(1) of the Act, or

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) The records required by §516.2 except paragraphs (a) (5) and (7) through (9), and in addition:
 - (1) Time of day and day of week on which the employee's 14-day work period begins,
 - (2) Hours worked each workday and total hours worked each 14-day work period,
 - (3) Total straight-time wages paid for hours worked during the 14-day period,
 - (4) Total overtime excess compensation paid for hours worked in excess of 8 in a workday and 80 in the work period.
- (b) A copy of the agreement or understanding with respect to using the 14-day period for overtime pay computations or, if such agreement or understanding is not in writing, a memo-

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randum summarizing its terms and showing the date it was entered into and how long it remains in effect.

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

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

- (a) Total weekly guaranteed earnings,
- (b) Total weekly compensation in excess of weekly guaranty,
- (c) A copy of the bona fide individual contract or the agreement made as a result of collective bargaining by representatives of employees, or where such contract or agreement is not in writing, a written memorandum summarizing its terms.

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

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

- (a)(1) Each hourly or piece rate at which the employee is employed, (2) basis on which wages are paid, and (3) the amount and nature of each payment which, pursuant to section 7(e) of the Act, is excluded from the "regular rate,"
- (b) The number of overtime hours worked in the workweek at each applicable hourly rate or the number of units of work performed in the workweek at each applicable piece rate during the overtime hours,
- (c) Total weekly overtime compensation at each applicable rate which is over and above all straight-time earnings or wages earned during overtime worked,
- (d) The date of the agreement or understanding to use this method of compensation and the period covered. If the

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

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

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

(a)(1) The hourly rates, piece rates, or commission rates applicable to each type of work performed by the employee,

(2) The computation establishing the basic rate at which the employee is compensated for overtime hours (if the employee is part of a workforce or employed in or by an establishment all of whose workers have agreed to accept this method of compensation, a single entry of this computation will suffice),

(3) The amount and nature of each payment which, pursuant to section 7(e) of the Act, is excluded from the "regular rate."

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

(c) A copy of the written agreement or, if there is no such agreement, a memorandum summarizing the terms

of and showing the date and period covered by the oral agreement or understanding to use this method of computation. If the employee is one of a group, all of whom have agreed to use this method of computation, a single memorandum will suffice.

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

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

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

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

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

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

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

§516.28 Tipped employees.

(a) With respect to each tipped employee whose wages are determined

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pursuant to section 3(m) of the Act, the employer shall maintain and preserve payroll or other records containing all the information and data required in §516.2(a) and, in addition, the following:

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

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

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

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

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

(b) [Reserved]

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

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

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

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

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

§ 516.31 Industrial homeworkers.

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

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

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

(b) *Items required*. In addition to all of the records required by § 516.2, every employer of homeworkers shall maintain and preserve payroll or other records containing the following infor-

mation and data with respect to each and every industrial homemaker employed (excepting those homeworkers to whom section 13(d) of the Act applies and those homeworkers in Puerto Rico to whom part 545 of this chapter applies, or in the Virgin Islands to whom part 695 of this chapter applies):

- (1) With respect to each lot of work:
 - (i) Date on which work is given out to worker, or begun by worker, and amount of such work given out or begun;
 - (ii) Date on which work is turned in by worker, and amount of such work;
 - (iii) Kind of articles worked on and operations performed;
 - (iv) Piece rates paid;
 - (v) Hours worked on each lot of work turned in;
 - (vi) Wages paid for each lot of work turned in.

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

(c) *Homeworker handbook*. In addition to the information and data required in paragraph (b) of this section, a separate handbook (to be obtained by the employer from the Wage and Hour Division and supplied by such employer to each worker) shall be kept for each homemaker. The employer is required to insure that the hours worked and other information required therein is entered by the homemaker when work is performed and/or business-related expenses are incurred. This handbook must remain in the possession of the homemaker except at the end of each pay period when it is to be submitted to the employer for transcription of the hours worked and other required information and for computation of wages to be paid. The handbooks shall include a provision for written verification by the employer attesting that the homemaker was instructed to accurately record all of the required information regarding such homemaker's employment, and that, to the best of his or her knowledge and belief, the information was recorded

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accurately. Once no space remains in the handbook for additional entries, or upon termination of the homeworke's employment, the handbook shall be returned to the employer. The employer shall then preserve this handbook for at least two years and make it available for inspection by the Wage and Hour Division on request.

[52 FR 24896, July 1, 1987, as amended at 53 FR 45726, Nov. 10, 1988]

§ 516.32 [Reserved]

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

(a) No records, except as required under paragraph (f) of this section, need be maintained by an employer who did not use more than 500 man-days¹ of agricultural labor in any quarter of the preceding calendar year, unless it can reasonably be anticipated that more than 500 man-days of agricultural labor will be used in at least one calendar quarter of the current calendar year. The 500 man-day test includes the work of agricultural workers supplied by crew leaders, or farm labor contractors, if the farmer is an employer of such workers, or a joint employer of such workers with the crew leader or farm labor contractor. However, members of the employer's immediate family are not included. (A "man-day" is any day during which an employee does agricultural work for 1 hour or more.)

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

(1) Symbols or other identifications separately designating those employees who are

(i) Members of the employer's immediate family as defined in section 13(a)(6)(B) of the Act,

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

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(ii) Hand harvest laborers as defined in section 13(a)(6) (C) or (D), and

(iii) Employees principally engaged in the range production of livestock as defined in section 13(a)(6)(E).

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

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

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

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

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

(1) Name in full,

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

(3) Date of birth.

(g) Where a farmer and a bona fide independent contractor or crew leader

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

§516.34 Exemption from overtime pay for time spent by certain employees receiving remedial education pursuant to section 7(q) of the Act.

With respect to each employee exempt from the overtime pay requirements of the Act for time spent receiving remedial education pursuant to section 7(q) of the Act and §778.603 of this title, the employer shall maintain and preserve records containing all the information and data required by §516.2 and, in addition, shall also make and preserve a record, either separately or as a notation on the payroll, showing the hours spent each workday and total hours each workweek that the employee is engaged in receiving such remedial education that does not include any job-specific training but that is designed to provide reading and other basic skills at or below the eighth-grade level or to fulfill the requirements for a high school diploma (or General Educational Development certificate), and the compensation (at not less than the employee's regular rate of pay) paid each pay period for the time so engaged.

[56 FR 61101, Nov. 29, 1991]

PART 519—EMPLOYMENT OF FULL-TIME STUDENTS AT SUBMINIMUM WAGES

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- 519.20 Amendment or revocation of the regulations in this subpart.

AUTHORITY: Secs. 11 and 14, 52 Stat. 1068; sec. 11, 75 Stat. 74; secs. 501 and 602, 80 Stat. 843, 844 (29 U.S.C. 211, 214).

SOURCE: 40 FR 6329, Feb. 11, 1975, unless otherwise noted.

Subpart A—Retail or Service Establishments, and Agriculture

§519.1 Applicability of the regulations in this subpart.

(a) *Statutory provisions.* Under section 14 of the Fair Labor Standards Act of 1938, as amended, and the authority and responsibility delegated to him/her by the Secretary of Labor (36 FR 8755) and by the Assistant Secretary for Employment Standards (39 FR 33841) the Administrator of the Wage and Hour Division is authorized and directed, to the extent necessary in order to prevent curtailment of opportunities for employment, to provide by regulation or order for the employment, under certificates, of full-time students in retail or service establishments, or in agriculture. That section contains provisions requiring a wage rate in such certificates of not less than 85 percent of the minimum wage applicable under section 6 of the Act, limiting weekly