

these regulations of all the required information, the Provider may proceed with the training, upon establishing the candidate's identity in accordance with paragraph (c) of this section.

(c) Providers must ascertain the identity of each candidate. For candidates who are not citizens or nationals of the United States designated by the Under Secretary of Transportation for Security, a Provider must inspect the candidate's passport and visa to verify the candidate's identity before providing training. Candidates who are citizens or nationals of the United States must present the documentation described in §105.11(a) of this part. If the candidate's identity cannot be verified, then the Provider cannot proceed with training.

(d) If, at any time after training has begun, the Department determines that a candidate subject to this section being trained by a Provider presents a risk to aviation or national security, the Department shall notify the Provider to cease training. A Provider so notified shall immediately cease providing any training to the person, regardless of whether or in what manner such training commenced or had been authorized. The Provider who submitted the candidate's identifying information will be responsible for ensuring that the training is promptly halted, regardless of whether another Provider is currently training the candidate.

(e) With regard to any determination as to an alien candidate's eligibility for training, when appropriate, the Department will inform the Secretary of State and the Secretary of Homeland Security as to the identity of the alien and the determination made.

PART 200—ALIEN TERRORIST REMOVAL PROCEDURES

AUTHORITY: Pub. L. 105-277, 112 Stat. 2681.

SOURCE: 64 FR 8496, Feb. 19, 1999, unless otherwise noted. Redesignated by Order No. 2662-2003, 68 FR 9846, Feb. 28, 2003.

§ 200.1 Eligibility for Protection under the Convention Against Torture.

A removal order under Title V of the Act shall not be executed in circumstances that would violate Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention, as implemented by section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105-277. Convention-based claims by aliens subject to removal under this Title shall be determined by the Attorney General, in consultation with the Secretary of State.

CHAPTER III—FEDERAL PRISON INDUSTRIES,
INC., DEPARTMENT OF JUSTICE

<i>Part</i>		<i>Page</i>
301	Inmate accident compensation	497
302	Comments on UNICOR business operations	505
345	Federal Prison Industries (FPI) inmate work programs	505

PART 301—INMATE ACCIDENT COMPENSATION

Subpart A—General

- Sec.
- 301.101 Purpose and scope.
 - 301.102 Definitions.
 - 301.103 Inmate work assignments.
 - 301.104 Medical attention.
 - 301.105 Investigation and report of injury.
 - 301.106 Repetitious accidents.

Subpart B—Lost-Time Wages

- 301.201 Applicability.
- 301.202 Determination of work-relatedness.
- 301.203 Payment of lost-time wages.
- 301.204 Continuation of lost-time wages.
- 301.205 Appeal of determination.

Subpart C—Compensation for Work-Related Physical Impairment or Death

- 301.301 Compensable and noncompensable injuries.
- 301.302 Work-related death.
- 301.303 Time parameters for filing a claim.
- 301.304 Representation of claimant.
- 301.305 Initial determination.
- 301.306 Appeal of determination.
- 301.307 Notice, time and place of committee action.
- 301.308 Committee reconsideration.
- 301.309 In-person hearing before the committee.
- 301.310 Witnesses.
- 301.311 Expenses associated with appearance at committee hearing.
- 301.312 Notice of committee determination.
- 301.313 Chief Operating Officer review.
- 301.314 Establishing the amount of award.
- 301.315 Review of entitlement.
- 301.316 Subsequent incarceration of compensation recipient.
- 301.317 Medical treatment following release.
- 301.318 Civilian compensation laws distinguished.
- 301.319 Exclusiveness of remedy.

AUTHORITY: 18 U.S.C. 4126, 28 CFR 0.99, and by resolution of the Board of Directors of Federal Prison Industries, Inc.

SOURCE: 55 FR 9296, Mar. 12, 1990, unless otherwise noted.

Subpart A—General

§ 301.101 Purpose and scope.

Pursuant to the authority granted at 18 U.S.C. 4126, the procedures set forth in this part govern the payment of accident compensation, necessitated as the result of work-related injuries, to federal prison inmates or their depend-

ents. Compensation may be awarded via two separate and distinct programs:

(a) Inmate Accident Compensation may be awarded to former federal inmates or their dependents for physical impairment or death resultant from injuries sustained while performing work assignments in Federal Prison Industries, Inc., in institutional work assignments involving the operation or maintenance of a federal correctional facility, or in approved work assignments for other federal entities; or,

(b) Lost-time wages may be awarded to inmates assigned to Federal Prison Industries, Inc., to paid institutional work assignments involving the operation or maintenance of a federal correctional facility, or in approved work assignments for other federal entities for work-related injuries resulting in time lost from the work assignment.

[55 FR 9296, Mar. 12, 1990, as amended at 59 FR 2666, Jan. 18, 1994]

§ 301.102 Definitions.

(a) For purposes of this part, the term *work-related injury* shall be defined to include any injury, including occupational disease or illness, proximately caused by the actual performance of the inmate's work assignment.

(b)(1) For purposes of this part, the term *release* is defined as the removal of an inmate from a Bureau of Prisons correctional facility upon expiration of sentence, parole, final discharge from incarceration of a pretrial inmate, or transfer to a community corrections center or other non-federal facility, at the conclusion of the period of confinement in which the injury occurred.

(2) In the case of an inmate who suffers a work-related injury while housed at a community corrections center, *release* is defined as the removal of the inmate from the community corrections center upon expiration of sentence, parole, or transfer to any non-federal facility, at the conclusion of the period of confinement in which the injury occurred.

(3) In the case of an inmate who suffers a work-related injury while housed at a community corrections center and is subsequently transferred to a Bureau of Prisons facility, *release* is defined as

§ 301.103

the removal of the inmate from the Bureau of Prisons facility upon expiration of sentence, parole, or transfer to a community corrections center or other non-federal facility.

(c) For purposes of this part, the term *dependent* is defined as the legally recognized spouse or child of an inmate for whose support the inmate is legally responsible in whole or part.

(d) For purposes of this part, the term *work detail supervisor* may refer to either a Bureau of Prisons or a non-Bureau of Prisons supervisor.

(e) For the purposes of this part, the phrase *housed at* or *based at* a "Bureau of Prisons institution" shall refer to an inmate that has a work assignment with a Bureau of Prisons institution or with another federal entity and is incarcerated at a Bureau of Prisons institution. For the purposes of this part, the phrase *based at* or *housed at* a "community corrections center" shall refer to an inmate who has a work assignment for a non-Bureau of Prisons federal entity and is incarcerated at a community corrections center.

[55 FR 9296, Mar. 12, 1990, as amended at 59 FR 2666, Jan. 18, 1994]

§ 301.103 Inmate work assignments.

The unit team of each inmate, which ordinarily designates work assignments, or whoever makes work assignments, shall review appropriate medical records, presentence reports, admission summaries, and all other available information prior to the designation of an inmate to a work assignment in an effort to preclude the assignment of an inmate to a work assignment not compatible with the inmate's physical ability or condition.

[55 FR 9296, Mar. 12, 1990, as amended at 59 FR 2667, Jan. 18, 1994]

§ 301.104 Medical attention.

Whenever an inmate worker is injured while in the performance of assigned duty, regardless of the extent of the injury, the inmate shall immediately report the injury to his official work detail supervisor. In the case of injuries on work details for other federal entities, the inmate shall also report the injury as soon as possible to community corrections or institution

28 CFR Ch. III (7-1-05 Edition)

staff, as appropriate. The work detail supervisor shall immediately secure such first aid, medical, or hospital treatment as may be necessary for the proper treatment of the injured inmate. First aid treatment may be provided by any knowledgeable individual. Medical, surgical, and hospital care shall be rendered under the direction of institution medical staff for all inmates based at Bureau of Prisons institutions. In the case of inmates based at community corrections centers, medical care shall be arranged by the work supervisor or by community corrections center staff in accordance with the medical needs of the inmate. Refusal by an inmate worker to accept such medical, surgical, hospital, or first aid treatment recommended by medical staff or by other medical professionals may result in denial of any claim for compensation for any impairment resulting from the injury.

[59 FR 2667, Jan. 18, 1994]

§ 301.105 Investigation and report of injury.

(a) After initiating necessary action for medical attention, the work detail supervisor shall immediately secure a record of the cause, nature, and exact extent of the injury. The work detail supervisor shall complete a BP-140, Injury Report (Inmate), on all injuries reported by the inmate, as well as injuries observed by staff. In the case of injuries on work details for other federal entities, the work supervisor shall also immediately inform community corrections or institution staff, as appropriate, of the injury. The injury report shall contain a signed statement from the inmate on how the accident occurred. The names and statements of all witnesses (e.g., staff, inmates, or others) shall be included in the report. If the injury resulted from the operation of mechanical equipment, an identifying description or photograph of the machine or instrument causing the injury shall be obtained, to include a description of all safety equipment used by the injured inmate at the time of the injury. Staff shall provide the inmate with a copy of the injury report. Staff shall then forward the original

and remaining copies of the injury report to the Institutional Safety Manager for review. In the case of inmates based at community corrections centers, the work detail supervisor shall provide the inmate with a copy of the injury report and shall forward the original and remaining copies of the injury report to the Community Corrections Manager responsible for the particular community corrections center where the inmate is housed.

(b) The Institution Safety Manager or Community Corrections Manager shall ensure that a medical description of the injury is included on the BP-140 whenever the injury requires medical attention. The Institution Safety Manager or Community Corrections Manager shall also ensure that the appropriate sections of BP-140, Page 2, Injury—Lost-Time Follow-Up Report, are completed and that all reported work injuries are properly documented.

[59 FR 2667, Jan. 18, 1994]

§ 301.106 Repetitious accidents.

If an inmate worker is involved in successive accidents on a particular work site in a comparatively short period of time, regardless of whether injury occurs, and the circumstances of the accidents indicate an awkwardness or ineptitude that, in the opinion of the inmate's work supervisor, implies a danger of further accidents in the task assigned, the inmate shall be assigned to another task more suitable to the inmate's ability.

Subpart B—Lost-Time Wages

§ 301.201 Applicability.

Lost-time wages shall be available only for inmates based at Bureau of Prisons institutions.

[59 FR 2667, Jan. 18, 1994]

§ 301.202 Determination of work-relatedness.

(a) When the institution safety manager receives notice, or has reason to believe, a work-related injury may result in time lost from the work assignment, he or she shall present BP-140, Pages 1 and 2 (with the appropriate sections completed) to the Institution Safety Committee at the Committee's

next regularly scheduled meeting. The Safety Committee shall make a determination of the injury's work-relatedness based on the available evidence and testimony. The determination shall be recorded on BP-140, Page 2, a copy of which shall be provided to the inmate.

(b) A determination of work-relatedness for purposes of awarding lost-time wages is not confirmation on the validity of any subsequent claim to receive compensation for work-related physical impairment or death.

[55 FR 9296, Mar. 12, 1990. Redesignated at 59 FR 2667, Jan. 18, 1994]

§ 301.203 Payment of lost-time wages.

(a) An inmate worker may receive lost-time wages for the number of regular work hours absent from work due to injury sustained in the performance of the assigned work.

(b) Lost-time wages are paid for time lost in excess of three consecutively scheduled workdays. The day of injury is considered to be the first workday regardless of the time of injury.

(c) An inmate may receive lost-time wages at the rate of 75% of the standard hourly rate of the inmate's regular work assignment at the time of the injury.

[55 FR 9296, Mar. 12, 1990. Redesignated at 59 FR 2667, Jan. 18, 1994]

§ 301.204 Continuation of lost-time wages.

(a) Once approved, the inmate shall receive lost-time wages until the inmate:

- (1) Is released;
- (2) Is transferred to another institution for reasons unrelated to the work injury;
- (3) Returns to the pre-injury work assignment;
- (4) Is reassigned to another work area or program for reasons unrelated to the sustained work injury, or is placed into Disciplinary Segregation; or,
- (5) Refuses to return to a regular work assignment or to a lighter duty work assignment after medical certification of fitness for such duty.

(b) An inmate medically certified as fit for return to work shall sustain no monetary loss due to a required change in work assignment. Where there is no

§ 301.205

light duty or regular work assignment available at the same rate of pay as the inmate's pre-injury work assignment, the difference shall be paid in lost-time wages. Lost-time wages are paid until a light duty or regular work assignment at the same pay rate as the inmate's pre-injury work assignment is available.

[55 FR 9296, Mar. 12, 1990. Redesignated at 59 FR 2667, Jan. 18, 1994]

§ 301.205 Appeal of determination.

An inmate who disagrees with the decision regarding payment of lost-time wages may appeal that decision exclusively through the Administrative Remedy Procedure. (See 28 CFR part 542.)

[55 FR 9296, Mar. 12, 1990. Redesignated at 59 FR 2667, Jan. 18, 1994]

Subpart C—Compensation for Work-Related Physical Impairment or Death

§ 301.301 Compensable and non-compensable injuries.

(a) No compensation for work-related injuries resulting in physical impairment shall be paid prior to an inmate's release.

(b) Compensation may only be paid for work-related injuries or claims alleging improper medical treatment of a work-related injury. This ordinarily includes only those injuries suffered during the performance of an inmate's regular work assignment. However, injuries suffered during the performance of voluntary work in the operation or maintenance of the institution, when such work has been approved by staff, may also be compensable.

(c) Compensation is not paid for injuries sustained during participation in institutional programs (such as programs of a social, recreational, or community relations nature) or from maintenance of one's own living quarters. Furthermore, compensation shall not be paid for injuries suffered away from the work location (e.g., while the claimant is going to or leaving work, or going to or coming from lunch outside of the work station or area).

(d) Injuries sustained by inmate workers willfully or with intent to in-

28 CFR Ch. III (7-1-05 Edition)

jure someone else, or injuries suffered in any activity not related to the actual performance of the work assignment are not compensable, and no claim for compensation for such injuries will be approved. Willful violation of rules and regulations may result in denial of compensation for any resulting injury.

§ 301.302 Work-related death.

A claim for compensation as the result of work-related death may be filed by a dependent of the deceased inmate up to one year after the inmate's work-related death. The claim shall be submitted directly to the Claims Examiner, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534.

§ 301.303 Time parameters for filing a claim.

(a) No more than 45 days prior to the date of an inmate's release, but no less than 15 days prior to this date, each inmate who feels that a residual physical impairment exists as a result of an industrial, institution, or other work-related injury shall submit a FPI Form 43, Inmate Claim for Compensation on Account of Work Injury. Assistance will be given the inmate to properly prepare the claim, if the inmate wishes to file. In each case a definite statement shall be made by the claimant as to the impairment caused by the alleged injury. The completed claim form shall be submitted to the Institution Safety Manager or Community Corrections Manager for processing.

(b) In the case of an inmate based at a community corrections center who is being transferred to a Bureau of Prisons institution, the Community Corrections Manager shall forward all materials relating to an inmate's work-related injury to the Institution Safety Manager at the particular institution where an inmate is being transferred, for eventual processing by the Safety Manager prior to the inmate's release from that institution.

(c) Each claimant shall submit to a medical examination to determine the degree of physical impairment. Refusal, or failure, to submit to such a medical examination shall result in the

forfeiture of all rights to compensation. In each case of visible impairment, disfigurement, or loss of member, photographs shall be taken to show the actual condition and shall be transmitted with FPI Form 43.

(d) The claim, after completion by the physician conducting the impairment examination, shall be returned to the Institution Safety Manager or Community Corrections Manager for final processing. It shall then be forwarded promptly to the Claims Examiner, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534.

(e) It is the responsibility of each claimant to advise the Claims Examiner of his or her current address, in writing, at all times during the pendency of a claim for Inmate Accident Compensation.

(f) When circumstances preclude submission in accordance with the provisions of paragraph (a) of this section, a claim may be accepted up to 60 days following release. Additionally, a claim for impairment may be accepted up to one year after release, for good cause shown. In such cases the claim shall be submitted directly to the Claims Examiner, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534.

[55 FR 9296, Mar. 12, 1990, as amended at 59 FR 2667, Jan. 18, 1994]

§ 301.304 Representation of claimant.

(a) Any person may represent the claimant's interest in any proceeding for determination of a claim under this part, so long as that person is not confined in any federal, state or local correctional facility. Written appointment of a representative, signed by the claimant, must be submitted before the representative's authority to act on behalf of the claimant may be acknowledged.

(b) It is not necessary that a claimant employ an attorney or other person to assert a claim or effect collection of an award. Under no circumstances will the assignment of any award be recognized, nor will attorney fees be paid by Federal Prison Industries, Inc.

§ 301.305 Initial determination.

A claim for inmate accident compensation shall be determined by a Claims Examiner under authority delegated by the Board of Directors of Federal Prison Industries, Inc., pursuant to 28 CFR 0.99. In determining the claim, the Claims Examiner will consider all available evidence. Written notice of the determination, including the reasons therefore, together with notification of the right to appeal the determination, shall be mailed to the claimant at the claimant's last known address, or to the claimant's duly appointed representative.

§ 301.306 Appeal of determination.

(a) An Inmate Accident Compensation Committee (hereafter referred to as the "Committee") shall be appointed by the Chief Operating Officer, Federal Prison Industries, Inc., under authority delegated by the Board of Directors of Federal Prison Industries, Inc., pursuant to 28 CFR 0.99. The Committee shall consist of four members and four alternate members, with any three thereof required to form a quorum for decision-making purposes.

(b) Any claimant not satisfied with any decision of the Claims Examiner concerning the amount or right to compensation shall, upon written request made within 30 days after the date of issuance of such determination, or up to 30 days thereafter upon a showing of reasonable cause, be afforded an opportunity for either an in-person hearing before the Committee, or Committee reconsideration of the decision. A claimant may request an in-person hearing or reconsideration by writing to the Inmate Accident Compensation Committee, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534.

(c) Upon receipt of claimant's request, a determination will be made regarding the timeliness of the filing. If the request is timely filed, or if reasonable cause exists to accept the request filed in an untimely manner, the request shall be accepted. Once accepted, a copy of the information upon which the Claims Examiner's initial determination was based shall be mailed to the claimant at the claimant's last known address, or to claimant's duly

§ 301.307

appointed representative, provided the release of such information is not determined to pose a threat to the safety of the claimant, any other inmate, or staff.

§ 301.307 Notice, time and place of committee action.

(a) Committee action shall ordinarily occur within 60 days of the receipt of claimant's request, except as provided in this section. Notice of the date set for Committee action shall be mailed to the claimant at the claimant's last known address, or to claimant's duly appointed representative. All Committee action shall be conducted at the Central Office of the Bureau of Prisons, 320 First Street NW., Washington, DC 20534.

(b) A hearing or reconsideration may be postponed at the option of the Committee, or, if good cause is shown, upon request of the claimant. A claimant may change the request from either hearing to reconsideration or reconsideration to hearing, provided notice of such change is received at least 10 days prior to the previously scheduled action.

§ 301.308 Committee reconsideration.

If the claimant elects to have the Committee reconsider any decision of the Claims Examiner, the claimant may submit documentary evidence which the Committee shall consider in addition to the original record. The Committee must receive evidence no less than 10 days prior to the date of reconsideration, and may request additional documentary evidence from the claimant or any other source.

§ 301.309 In-person hearing before the committee.

(a) The appeal shall be considered to have been abandoned if the claimant fails to appear at the time and place set for the hearing and does not, within 10 days after the time set for that hearing, show good cause for failure to appear.

(b) In conducting the hearing, the Committee is not bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, but may conduct the hearing in such manner as to best ascertain the

28 CFR Ch. III (7-1-05 Edition)

rights and obligations of the claimant and the government. At such hearing, the claimant shall be afforded an opportunity to present evidence in support of the claim under review.

(c) The Committee shall consider all evidence presented by the claimant, and shall, in addition, consider any other evidence as the Committee may determine to be useful in evaluating the claim. Evidence may be presented orally and/or in the form of written statements and exhibits.

(d) A representative appointed in accordance with the provisions of this section may make or give, on behalf of the claimant, any request or notice relative to any proceeding before the Committee. A representative shall be entitled to present or elicit evidence or make allegations as to fact and law in any proceeding affecting the claimant and to request information with respect to the claim. Likewise, any request for additional information, or notice to any claimant of any administrative action, determination, or decision, may be sent to the representative of such claimant, and shall have the same force and effect as if it had been sent to the claimant.

(e) In order to fully evaluate the claim, the Committee may question the claimant and any witness(es) appearing before the Committee on behalf of the claimant or government.

(f) Claimant, or claimant's representative, may question the Committee or any witness(es) appearing before the Committee on behalf of the government, but only on matters determined by the Committee to be relevant to its evaluation of the claim.

(g) The hearing shall be recorded, and a copy of the recording or, at the discretion of the Committee, a transcript thereof shall be made available to the claimant upon request, provided such request is made not later than 90 days following the date of the hearing.

§ 301.310 Witnesses.

(a) If a claimant wishes to present witnesses at the hearing, the claimant must provide the Committee, no less than 10 days before the scheduled hearing date, the name and address of each proposed witness, along with an outline

Federal Prison Industries, Justice

§ 301.314

of each witness' testimony. The Committee may limit the number of witnesses who may appear at a hearing, however, the Committee has no authority to compel the attendance of any witness.

(b) Any person confined in a Federal, State, or local penal or correctional institution at the time of the hearing may not appear as a witness, but that person's testimony may be submitted in the form of a written statement.

§ 301.311 Expenses associated with appearance at committee hearing.

Federal Prison Industries, Inc., may not assume responsibility for any expenses incurred by the claimant, claimant's representative, or any witness appearing on behalf of the claimant in connection with attendance at the hearing, as well as any other costs relating to any representative, witnesses, or evidence associated with a hearing before the Committee.

§ 301.312 Notice of committee determination.

The Committee shall mail written notice of its decision to affirm, reverse, or amend the Claims Examiner's initial determination, with the reasons for its decision, to the claimant at the claimant's last known address, or to claimant's duly appointed representative, no later than 30 days after the date of the hearing unless the Committee needs to make a further investigation as a result of information received at the hearing. If the Committee conducts further investigation subsequent to the hearing, the decision notice shall be mailed no later than 30 days after the conclusion of the Committee's investigation.

§ 301.313 Chief Operating Officer review.

Any claimant not satisfied with the Committee's reconsidered decision or decision after a hearing may appeal such decision to the Chief Operating Officer, Federal Prison Industries, Inc., 320 First Street NW., Washington, DC 20534. A written request for such an appeal must be received no later than 90 days after the date of notice of the Committee's decision. The Chief Operating Officer shall review the record

and affirm, reverse or amend the Committee's decision no later than 90 days after receipt of claimant's notice of appeal. Written notice of the Chief Operating Officer's decision shall be mailed to the claimant's last known address, or to the claimant's representative.

§ 301.314 Establishing the amount of award.

(a) If a claim for Inmate Accident Compensation is approved, the amount of compensation shall be based upon the degree of physical impairment existent at the time of the claimant's release regardless of when during the claimant's period of confinement the injury was sustained. No claim for compensation will be approved if full recovery occurs while the inmate is in custody and no impairment remains at the time of release.

(b) In determining the amount of accident compensation to be paid, the permanency and severity of the injury in terms of functional impairment shall be considered. The provisions of the Federal Employees' Compensation Act (FECA) (5 U.S.C. 8101, *et seq.*) shall be followed when practicable. The FECA establishes a set number of weeks of compensation applicable for injuries to specific body members or organs (section 8107).

(c) All awards of Inmate Accident Compensation shall be based upon the minimum wage (as prescribed by the Fair Labor Standards Act).

(1) For body members or organs covered under section 8107, the minimum wage applicable at the time of the award shall be used as the basis for determining the amount of compensation. Awards regarding injury to body members or organs covered under section 8107 shall be paid in a lump sum. Acceptance of such an award shall constitute full and final settlement of the claim for compensation.

(2) For body members or organs not covered under section 8107, awards will be paid on a monthly basis because such awards are subject to periodic review of entitlement. The minimum wage applicable at the time of each monthly payment shall be used in determining the amount of each monthly payment. Monthly payments are ordinarily mailed the first day of the

§ 301.315

month following the month in which the award is effective.

§ 301.315 Review of entitlement.

(a) Each monthly compensation recipient shall be required, upon request of the Claims Examiner, to submit to a medical examination, by a physician specified or approved by the Claims Examiner, to determine the current status of his physical impairment. Any reduction in the degree of physical impairment revealed by this examination shall result in a commensurate reduction in the amount of monthly compensation provided. Failure to submit to this physical examination shall be deemed refusal, and shall ordinarily result in denial of future compensation. The costs associated with this examination shall be borne by Federal Prison Industries, Inc.

(b) Inasmuch as compensation awards are based upon the minimum wage, any income received by a compensation recipient which exceeds the annual income available at the minimum wage (based upon a 40 hour work week), including Social Security or veterans benefits received as the result of the work-related injury for which Inmate Accident Compensation has been awarded, shall be deemed excessive. The amount of compensation payable to a claimant with an income deemed excessive shall be reduced at the rate of one dollar for each two dollars of earned and benefit income which exceeds the annual income available at minimum wage. Each monthly compensation recipient shall be required to provide a statement of earnings on an annual basis, or as otherwise requested. Failure to provide this statement shall result in the suspension or denial of all Inmate Accident Compensation benefits until such time as satisfactory evidence of continued eligibility is provided.

§ 301.316 Subsequent incarceration of compensation recipient.

If a claimant, who has been awarded compensation on a monthly basis, is or becomes incarcerated at any federal, state, or local correctional facility, monthly compensation payments payable to the claimant shall ordinarily be suspended until such time as the claim-

28 CFR Ch. III (7-1-05 Edition)

ant is released from the correctional facility.

[59 FR 2667, Jan. 18, 1994]

§ 301.317 Medical treatment following release.

Federal Prison Industries, Inc., may not pay the cost of medical, hospital treatment, or any other related expense incurred after release from confinement unless such cost is authorized by the Claims Examiner in advance, or the Claims Examiner determines that circumstances warrant the waiver of this requirement. Generally, the payment of such costs is limited to impairment evaluations, or treatments intended to reduce the degree of physical impairment, conducted at the direction of the Claims Examiner. The amount of a payment for medical treatment is limited to reasonable expenses incurred, such as those amounts authorized under the applicable fee schedule established pursuant to 42 U.S.C. 1395w-4 for the Department of Health and Human Services Medicare program.

[55 FR 9296, Mar. 12, 1990, as amended at 59 FR 2667, Jan. 18, 1994]

§ 301.318 Civilian compensation laws distinguished.

The Inmate Accident Compensation system is not obligated to comply with the provisions of any other system of worker's compensation except where stated in this part. Awards made under the provisions of the Inmate Accident Compensation procedure differ from awards made under civilian workmen's compensation laws in that hospitalization is usually completed prior to the inmate's release from the institution and, except for a three-day waiting period, the inmate receives wages while absent from work. Other factors necessarily must be considered that do not enter into the administration of civilian workmen's compensation laws. As in the case of federal employees who allege they have sustained work-related injuries, the burden of proof lies with the claimant to establish that the claimed impairment is causally related to the claimant's work assignment.

§ 301.319 Exclusiveness of remedy.

Inmates who are subject to the provisions of these Inmate Accident Compensation regulations are barred from recovery under the Federal Tort Claims Act (28 U.S.C. 2671 *et seq.*). Recovery under the Inmate Accident Compensation procedure was declared by the U.S. Supreme Court to be the exclusive remedy in the case of work-related injury. *U.S. v. Demko*, 385 U.S. 149 (1966).

[55 FR 9296, Mar. 12, 1990, as amended at 59 FR 2667, Jan. 18, 1994]

PART 302—COMMENTS ON UNICOR BUSINESS OPERATIONS

AUTHORITY: 18 U.S.C. 4126, and by resolution of the Board of Directors of Federal Prison Industries, Inc.

§ 302.1 Public and private sector comment procedures.

(a) Any interested party having any comment concerning the business operations of Federal Prison Industries, Inc. (UNICOR) may write to the Chief Operating Officer of UNICOR, or to the Chairman of the Board of Directors of UNICOR, and bring such matters to the attention of either or both officials. Where appropriate, a response shall promptly be made. The Board shall be kept advised of all comments and responses.

(b) Address correspondence as follows:

(1) Chief Operating Officer, Federal Prison Industries, Inc., 320 First Street, NW., Washington, DC 20534, Attn: Comment Procedures; or

(2) Board of Directors, Federal Prison Industries, Inc., 320 First Street, NW., Washington, DC 20534, Attn: Comment Procedures.

(c) This section does not apply to inmate complaints which are properly raised through the procedures provided in the Bureau of Prisons' rule on Administrative Remedy (28 CFR part 42).

[55 FR 30668, July 26, 1990, as amended at 69 FR 1524, Jan. 9, 2004]

PART 345—FEDERAL PRISON INDUSTRIES (FPI) INMATE WORK PROGRAMS

Subpart A—Purpose and Scope

Sec.

345.10 Purpose and scope.

Subpart B—Definitions

345.11 Definitions.

Subpart C—Position Classification

345.20 Position classification.

Subpart D—Recruitment and Hiring Practices

345.31 Recruitment.

345.32 Hiring.

345.33 Waiting list hiring exceptions.

345.34 Refusal to employ.

345.35 Assignments to FPI.

Subpart E—Inmate Worker Standards and Performance Appraisal

345.40 General.

345.41 Performance appraisal for inmate workers.

345.42 Inmate worker dismissal.

Subpart F—Inmate Pay and Benefits

345.50 General.

345.51 Inmate pay.

345.52 Premium pay.

345.53 Piecework rates.

345.54 Overtime compensation.

345.55 Longevity pay.

345.56 Vacation pay.

345.57 Administrative pay.

345.58 Holiday pay.

345.59 Inmate performance pay.

345.60 Training pay.

345.61 Inmate earnings statement.

345.62 Inmate accident compensation.

345.63 Funds due deceased inmates.

345.64 Referral of releasable medical data to FPI staff.

345.65 Inmate medical work limitation.

345.66 Claims limitation.

345.67 Retention of benefits.

Subpart G—Awards Program

345.70 General.

345.71 Official commendations.

345.72 Cash bonus or cash award.

345.73 Procedures for granting awards for suggestions or inventions.

345.74 Awards for special achievements for inmate workers.

§ 345.10

Subpart H—FPI Inmate Training and Scholarship Programs

- 345.80 General.
- 345.81 Pre-industrial training.
- 345.82 Apprenticeship training.
- 345.83 Job safety training.
- 345.84 The FPI scholarship fund.

AUTHORITY: 18 U.S.C. 4126, 28 CFR 0.99, and by resolution of the Board of Directors of Federal Prison Industries, Inc.

SOURCE: 60 FR 15827, Mar. 27, 1995, unless otherwise noted.

Subpart A—Purpose and Scope

§ 345.10 Purpose and scope.

It is the policy of the Bureau of Prisons to provide work to all inmates (including inmates with a disability who, with or without reasonable accommodations, can perform the essential tasks of the work assignment) confined in a federal institution. Federal Prison Industries, Inc. (FPI) was established as a program to provide meaningful work for inmates. This work is designed to allow inmates the opportunity to acquire the knowledge, skills, and work habits which will be useful when released from the institution. There is no statutory requirement that inmates be paid for work in an industrial assignment. 18 U.S.C. 4126, however, provides for discretionary compensation to inmates working in Industries. Under this authority, inmates of the same grade jobs, regardless of the basis of pay (hourly, group piece, or individual piece rates) shall receive approximately the same compensation. All pay rates under this part are established at the discretion of Federal Prison Industries, Inc. Any alteration or termination of the rates shall require the approval of the Federal Prison Industries' Board of Directors. While the Warden is responsible for the local administration of Inmate Industrial Payroll regulations, no pay system is initiated or changed without prior approval of the Assistant Director, Industries, Education and Vocational Training (Assistant Director).

28 CFR Ch. III (7-1-05 Edition)

Subpart B—Definitions

§ 345.11 Definitions.

(a) *Federal Prison Industries, Inc. (FPI)*— A government corporation organizationally within the Bureau of Prisons whose mission is to provide work simulation programs and training opportunities for inmates confined in Federal correctional facilities. The commercial or “trade” name of Federal Prison Industries, Inc. is UNICOR. Most factories or shops of Federal Prison Industries, Inc. are commonly referred to as “UNICOR” or as “Industries”. Where these terms are used, they refer to FPI production locations and to the corporation as a whole. UNICOR, FPI, and Industries are used interchangeably in this manner. For these purposes, Federal Prison Industries, Inc. will hereinafter be referred to as FPI.

(b) *Superintendent of Industries (SOI)*— The Superintendent of Industries, also referred to as Associate Warden/Industries and Education, is responsible for the efficient management and operation of an FPI factory. Hereinafter, referred to as SOI.

(c) *FPI work status*— Assignment to an Industries work detail.

(1) An inmate is in FPI work status if on the job, on sick call during the inmate's assigned hours, on furlough, on vacation, for the first thirty days on writ, for the first 30 days in administrative detention, or for the first 30 days on medical idle for FPI work-related injury so long as the injury did not result from an intentional violation by the inmate of work safety standards.

(2) *Full-time work status*. A work schedule for an inmate consisting of 90% or more of the normal FPI factory work week.

(3) *Part-time work status*. A work schedule of less than 90% of the normal FPI factory work week.

(d) *Unit Team*— Bureau of Prisons staff responsible for the management of inmates and the delivery of programs and services. The Unit Team may consist of a unit manager, case manager, correctional counselor, unit secretary, unit officer, education representative, and psychologist.

(e) *Unit Discipline Committee (UDC)*—The term *Unit Discipline Committee* refers to one or more institution staff members delegated by the Warden with the authority and duty to hold an initial hearing upon completion of the investigation concerning alleged charge(s) of inmate misconduct (see 28 CFR 541.15). The Warden shall authorize these staff members to impose minor sanctions for violation of prohibited act(s).

(f) *Discipline hearing officer (DHO)*—This term refers to an independent discipline hearing officer who is responsible for conducting Institution Discipline Hearings and who imposes appropriate sanctions for incidents of inmate misconduct referred for disposition following the hearing required by 28 CFR 541.15 before the UDC.

(g) *Pretrial inmate*—The definition of pretrial inmate in 28 CFR 551.101(a) is applicable to this part.

[60 FR 15827, Mar. 27, 1995, as amended at 61 FR 59168, Nov. 20, 1996; 64 FR 32169, June 15, 1999]

Subpart C—Position Classification

§ 345.20 Position classification.

(a) Inmate worker positions must be assigned an appropriate level of pay. All inmate workers shall be informed of the objectives and principles of pay classification as a part of the routine orientation of new FPI inmate workers.

(b) The Warden and SOI have the responsibility for position classification at each location.

Subpart D—Recruitment and Hiring Practices

§ 345.31 Recruitment.

Inmate workers for FPI locations may be recruited through admission and orientation lectures or through direct recruiting.

§ 345.32 Hiring.

(a) Inmate workers are ordinarily hired through waiting lists. Except as noted in § 345.33, inmates are to be placed on the waiting lists in order of receipt of applications for work with

Industries, and are to be hired in the same sequence.

(b) Waiting lists are to be maintained and kept available for scrutiny by auditors and other staff with a need to know. SOI's are encouraged to maintain a waiting list for each FPI factory.

§ 345.33 Waiting list hiring exceptions.

(a) *Needed skills.* An inmate may be hired ahead of other inmates on the waiting list if the inmate possesses needed skills and the SOI documents the reasons for the action in the position classification files.

(b) *Prior FPI work assignment.* An inmate with prior FPI work experience during the inmate's current commitment and with no break in custody will ordinarily be placed within the top ten percent of the waiting lists unless the inmate was transferred for disciplinary reasons, was placed in segregation, or voluntarily left the FPI work assignment for non-program reasons (i.e. for some reason other than formal education, vocational training, drug abuse or similar formal programs). For example, an inmate transferred administratively for nondisciplinary reasons, and who has documented credit as a prior worker, is covered under the provisions of this paragraph.

(c) *Industry closing and relocation.* When an FPI factory closes in a location with two or more FPI factories, an inmate worker affected may be transferred to remaining FPI factories ahead of the top portion of the inmates on the waiting lists, so there is no break in active duty with FPI. Such actions are also in order where the work force of an industry is reduced to meet institution or FPI needs. An inmate transferred under the provisions of this part will have the same benefits as any intra-industry transfer.

(d) *Disciplinary transfers.* An inmate who is a disciplinary transfer from the last institution designated and who wishes re-assignment in FPI at the receiving institution may be hired on a case-by-case basis at the discretion of the SOI, who should consider the security level and reasons for the misconduct. Such an inmate, despite prior experience, is not due special placement on the waiting list, is not given

§ 345.34

advance hiring preference, and does not receive consideration for accelerated promotion back to the grade held at time of transfer.

(e) *Special needs.* For special needs, such as Inmate Financial Responsibility assignment to assist in paying a significant financial obligation or for release preparation, the unit team may recommend an inmate for priority placement on the waiting list. Such placement must be documented and include the reason for the exception.

§ 345.34 Refusal to employ.

(a) The SOI has authority to refuse an FPI assignment to an inmate who, in the judgment of the SOI, would constitute a serious threat to the orderly and safe operation of the FPI factory. A refusal to assign must be documented by a memorandum to the unit team listing reasons for the refusal, with a copy to the position classification files in FPI. Typically, the reasons should include other earlier (ordinarily within the past twelve months) documented violations of the FPI inmate worker standards or institution disciplinary regulations.

(b) The refusal to assign is to be rescinded when, in the judgment of the SOI, the worker no longer constitutes a serious threat to the FPI industrial operation.

§ 345.35 Assignments to FPI.

(a) An inmate or detainee may be considered for assignment with FPI unless the inmate is a pretrial inmate or is currently under an order of deportation, exclusion, or removal. However, an inmate or detainee who is currently under an order of deportation, exclusion, or removal may be considered for assignment with FPI if the Attorney General has determined that the inmate or detainee cannot be removed from the United States because the designated country of removal will not accept his/her return. Any request by an inmate for consideration must be made through the unit team. FPI does not discriminate on the bases of race, color, religion, ethnic origin, age, or disability.

(b) The SOI ordinarily makes assignments based on the recommendation of the unit team.

28 CFR Ch. III (7-1-05 Edition)

(1) New workers are ordinarily assigned at pay grade five. All first-time inmate workers shall enter at pay grade five and may be required to successfully complete a course in pre-industrial training or on-the-job training (as available) before promotion to pay grade four.

(2) An inmate who has not successfully completed pre-industrial or on-the-job training remains at pay grade five for at least 30 days.

(3) An inmate hired after having resigned voluntarily from FPI may be excused from pre-industrial training and may be hired at a pay grade based on previous training and experience.

[60 FR 15827, Mar. 27, 1995, as amended at 64 FR 32169, June 15, 1999]

Subpart E—Inmate Worker Standards and Performance Appraisal

§ 345.40 General.

This subpart authorizes the establishment of minimum work standards for inmate workers assigned to the Industries program at all field locations. The SOI may reproduce these standards and may also develop additional local guidelines to augment these standards and to adapt them to local needs and conditions. Local Industries shall place these standards and any additional local guidelines on display at appropriate locations within the industrial sites. Inmates shall be provided with a copy of these standards and local guidelines, and shall sign receipts acknowledging they have received and understand them before beginning work in the Industries program. In the case of a disabled inmate, alternate media or means of communicating this information and indicating the inmate's receipt may be provided, if necessary as a reasonable accommodation.

(a) At a minimum, each industrial location is to have work standards for each of the following areas:

(1) Safety—ensuring the promotion of workplace safety and the avoidance of activities that could result in injury to self or others.

(2) Quality assurance—ensuring that work is done as directed by the supervisor in an attentive manner so as to minimize the chance of error.

(3) Personal conduct and hygiene—ensuring the promotion of harmony and sanitary conditions in the workplace through observation of good hygiene and full cooperation with other inmate workers, work supervisors, and training staff.

(4) Punctuality and productivity—ensuring the productive and efficient use of time while the inmate is on work assignment or in training.

(b) *Compliance with work standards.* Each inmate assigned to FPI shall comply with all work standards pertaining to his or her work assignment. Adherence to the standards should be considered in evaluating the inmate's work performance and documented in individual hiring, retention, and promotion/demotion situations.

§ 345.41 Performance appraisal for inmate workers.

Work supervisors should complete a performance appraisal form for each inmate semi-annually, by March 31 and September 30, or upon termination or transfer from the industrial work assignment. Copies shall be sent to the unit team. Inmate workers should discuss their appraisals with their supervisors at a mutually agreeable time in order to improve their performance. Satisfactory and unsatisfactory performance ratings shall be based on the standards in § 345.40(a).

(a) The SOI is to ensure that evaluations are done and are submitted to unit teams in a timely manner.

(b) The SOI or a designee may promote an inmate to a higher grade level if an opening exists when the inmate's skills, abilities, qualifications, and work performance are sufficiently developed to enable the inmate to carry out a more complex FPI factory assignment successfully, when the inmate has met the institution's time-in-grade (unless waived by the SOI), and when the inmate has abided by the inmate worker standards. Conversely, the SOI or SOI designee may demote an inmate worker for failing to abide by the inmate worker standards. Such demotions shall be fully documented.

§ 345.42 Inmate worker dismissal.

The SOI may remove an inmate from Industries work status in cooperation with the unit team.

(a) The SOI may remove an inmate from FPI work status according to the conditions outlined in the pay and benefits section of this policy and in cooperation with the unit team.

(b) An inmate may be removed from FPI work status for failure to comply with any court-mandated financial responsibility. (See 28 CFR 545.11(d)).

(c) An inmate found to have committed a prohibited act (whether or not it is FPI related) resulting in segregation or disciplinary transfer is also to be dismissed from Industries based on an unsatisfactory performance rating for failure to be at work.

(d) Any inmate or detainee who is a pretrial inmate or who is currently under an order of deportation, exclusion, or removal shall be removed from any FPI work assignment and reassigned to a non-FPI work assignment for which the inmate is eligible. However, an inmate or detainee who is currently under an order of deportation, exclusion, or removal may be retained in the FPI assignment if the Attorney General has determined that the inmate or detainee cannot be removed from the United States because the designated country of removal will not accept his/her return.

[60 FR 15827, Mar. 27, 1995, as amended at 64 FR 32170, June 15, 1999]

Subpart F—Inmate Pay and Benefits

§ 345.50 General.

Title 18 U. S. Code section 4126 authorizes FPI to compensate inmates under rules and regulations promulgated by the Attorney General. It is the policy of FPI to provide compensation to FPI inmate workers through various conditions of pay and benefits, except as otherwise provided in these regulations.

§ 345.51 Inmate pay.

(a) *Grade levels.* Inmate workers in FPI locations receive pay at five levels ranging from 5th grade pay (lowest) to 1st grade pay (highest).

§ 345.52

(b) *Eligibility.* (1) An inmate shall accrue vacation time, longevity service credit, and shall receive holiday pay for the period of time the inmate is officially assigned to the Industries work detail. For limitations on claims, refer to § 345.66.

(2) Inmate workers may be eligible for premium pay as specified in § 345.52. Eligibility for other pay and benefits are described separately in this subpart.

(3) FPI pay and benefits are lost in cases of disciplinary transfer and segregation.

(4) An inmate returned to the institution due to program failure at a Community Corrections Center or while on parole or escape is not entitled to credit for time spent in Industries prior to said program failure. This rule also applies to any other program failure which results in a break in confinement status.

§ 345.52 Premium pay.

Payment of premium pay to selected inmates is authorized. The total number of qualifying inmates may not exceed 15% of first grade inmates at a location.

(a) *Eligibility.* Inmates in first grade pay status may be considered for premium pay.

(b) *The selection process.* Candidates for premium pay must be nominated by a foreman on the FPI staff, and recommended on the basis of specific posted criteria by a selection committee assigned by the SOI.

(1) The SOI, as the chief selecting official, must sign approval for all premium pay inmate selections. This authority may not be delegated below the level of Acting SOI.

(2) The selected candidate(s) are notified by the FPI Manager or by a posted list on the FPI bulletin board. A record of the selection and who was on the selection board is kept for documentation purposes. An inmate nominated to be a premium pay inmate may refuse the appointment without prejudice.

(c) [Reserved]

(d) *Pay rate.* Premium pay inmates receive a specified amount over and above all other pay and benefits to which they may be entitled (e.g., longevity pay, overtime, piecework rates,

28 CFR Ch. III (7-1-05 Edition)

etc.). Premium pay is also paid for vacation, holiday, and administrative hours.

(e) *Duties of premium pay inmates.* Premium pay is a means of recognizing the value of those traits supportive of morale and good institutional adjustment. It is not a form of bonus or incentive pay for highly productive inmates.

(f) *Transfer status of premium pay inmates.* Premium pay status may not be transferred from institution to institution with the inmate worker. Premium pay status must be earned at each location.

(g) *Removals from premium pay status.* Removal from premium pay status may occur for failure to demonstrate the premium pay selection traits or for failure to abide by the inmate worker standards set forth in this policy. All removals from premium pay status shall be documented on the inmate's evaluation form. The following conditions also may result in removal from premium pay status:

(1) Any premium pay inmate found to have committed any level 100 or 200 series offense by the DHO is automatically removed from premium pay status whether or not the offense was FPI-related.

(2) Inmates absent from work for more than 30 consecutive calendar days may be removed from premium pay status by the SOI.

§ 345.53 Piecework rates.

Piecework rates are incentives for workers to strive for higher pay and production benefiting both the worker and FPI. Piecework rates may be of two major types: individual piecework (in which an individual's pay goes up or down depending upon his/her own output) or Group Wage Fund (in which all members of a group strive for higher rates or production output as a unit, and all share in a pool of funds distributed among work group members equally).

§ 345.54 Overtime compensation.

An inmate worker is entitled to overtime pay at a rate of two times the hourly or unit rate for hourly, individual, and group piecework rate workers, when the total hours worked (including administrative pay) exceed the

Federal Prison Industries, Justice

§ 345.57

FPI factory's regularly scheduled workday. Hours worked on days other than the scheduled work week (e.g., Saturday) shall be compensated at the overtime rate.

§ 345.55 Longevity pay.

(a) Except as provided in paragraph (b) of this section, an inmate earns longevity pay raises after 18 months spent in FPI work status regardless of whether or not the work was continuous. The service may have occurred in one or more FPI factories or shops. An inmate qualifies for longevity pay raises as provided in the table below:

Length of Service With FPI

- After 18 months of service and payable in the 19th month
- After 30 months of service and payable in the 31st month
- After 42 months of service and payable in the 43rd month
- After 60 months of service and payable in the 61st month
- After 84 months of service (& more) and payable in the 85th month

Longevity pay allowances shall be added after the wages for each actual hour in pay status have been properly computed.

(b) *Exceptions.* (1) FPI work status during service of a previous sentence with a subsequent break in custody may not be considered in determining longevity pay.

(2) An inmate in segregation or who is given a disciplinary transfer loses any longevity status previously achieved.

(3) An inmate who voluntarily transfers to a non-FPI work assignment loses any longevity status previously achieved. An inmate who leaves FPI to enter education, vocational training, or drug abuse treatment programs, however, generally retains longevity and pay grade status upon return to FPI, unless the inmate withdraws from those programs without a good faith effort to complete them. The decision on whether there was a good faith effort is to be made by the SOI in concert with the staff member in charge of the program.

§ 345.56 Vacation pay.

Inmate workers are granted FPI vacation pay by the SOI when their con-

tinued good work performance justifies such pay, based on such criteria as quality of work, attendance and punctuality, attentiveness, and adherence to industry operating regulations. The inmate must submit a written request for vacation time, ordinarily two weeks in advance of the requested vacation time. The work supervisor must recommend to the SOI the vacation time to be taken or paid. Eligibility for vacation pay must be verified by the Business Office prior to approval by the SOI. The SOI may declare an inmate ineligible for vacation credit because of an inmate's unsatisfactory work performance during the month in which such credit was to occur.

(a) An inmate may take accrued vacation time for visits, participation in institution programs or for other good reasons at the discretion of the SOI. Industrial managers should make every reasonable attempt to schedule an inmate worker's vacations so as not to conflict with the workforce requirements of FPI factory production schedules and Inmate Systems Management requirements.

(b) An inmate temporarily assigned to the Industrial detail, e.g., on construction details, also earns vacation credit which he or she must take or be paid for at the end of the temporary assignment.

(c) An inmate must take and/or be paid for vacation credit within sixty days after each annual eligibility date of the inmate's most recent date of assignment to FPI. An inmate who elects not to take vacation time must indicate this in writing. That inmate shall receive pay for the annual vacation credit in a lump sum on the regular monthly payroll. This amount is ordinarily paid within sixty days after the annual eligibility date of the inmate's most recent date of assignment to FPI. An inmate whose employment is terminated by release, reassignment, transfer, or other reasons, and who has unused vacation credit shall be paid for this credit on the monthly payroll.

§ 345.57 Administrative pay.

An inmate excused from a job assignment may receive administrative pay for such circumstances as a general recall for an institution, power outages,

§ 345.58

blood donations, or other situations at the discretion of the SOI. Such pay may not exceed an aggregate of three hours per month.

§ 345.58 Holiday pay.

An inmate worker in FPI work status shall receive pay at the standard hourly rate, plus longevity where applicable, for all Federal holidays provided the inmate is in work status on the day before and the day after the holiday occurs. Full-time workers receive one full day's pay. Part-time workers receive one-half day's pay.

§ 345.59 Inmate performance pay.

Inmate workers for FPI may also receive Inmate Performance Pay for participation in programs where this award is made. However, inmate workers may not receive both Industries Pay and Performance Pay for the same program activity. For example, an inmate assigned to a pre-industrial class may not receive FPI pay as well as inmate performance pay for participation in the class.

§ 345.60 Training pay.

Inmates directed by the SOI to take a particular type of training in connection with a FPI job are to receive FPI pay if the training time occurs during routine FPI factory hours of operation. This does not include ABE/GED or pre-industrial training.

§ 345.61 Inmate earnings statement.

Each inmate worker in FPI shall be given a monthly earnings statement while actively working for FPI.

§ 345.62 Inmate accident compensation.

An inmate worker shall be paid lost-time wages while hospitalized or confined to quarters due to work-related injuries (including occupational disease or illnesses directly caused by the worker's job assignments) as specified by the Inmate Accident Compensation Program (28 CFR part 301).

§ 345.63 Funds due deceased inmates.

Funds due a deceased inmate for work performed for FPI are payable to a legal representative of the inmate's estate or in accordance with the law of

28 CFR Ch. III (7-1-05 Edition)

descent and distribution of the state of domicile.

§ 345.64 Referral of releasable medical data to FPI staff.

The SOI is responsible for ensuring that appropriate releasable information pertaining to an inmate's medical limitation (e.g., back injury) is made available to the FPI staff member who directly supervises the assignment.

§ 345.65 Inmate medical work limitation.

In addition to any prior illnesses or injuries, medical limitations also include any illness or injury sustained by an inmate which necessitates removing the ill worker from an FPI work assignment. If an inmate worker is injured more than once in a comparatively short time, and the circumstances of the injury suggest an awkwardness or ineptitude which in turn indicates that further danger exists, the inmate may be removed to another FPI detail or to a non-FPI detail.

§ 345.66 Claims limitation.

Claims relating to pay and/or benefits must occur within one calendar year of the period of time for which the claim is made. Inmate claims submitted more than one year after the time in question require the approval of the Assistant Director before an inmate may receive such pay and/or benefit.

§ 345.67 Retention of benefits.

(a) *Job retention.* Ordinarily, when an inmate is absent from the job for a significant period of time, the SOI will fill that position with another inmate, and the first inmate will have no entitlement to continued FPI employment.

(1) For up to the first 30 days when an inmate is in medical idle status, that inmate will retain FPI pay grade status, with suspension of actual pay, and will be able to return to FPI when medically able, provided the absence was not because of a FPI work-related injury resulting from the inmate's violation of safety standards. If the medical idle lasts longer than 30 days, was not caused by a violation of safety standards, and the unit team approves the inmate's return to FPI, the SOI

shall place that inmate within the top ten percent of the FPI waiting list.

(2) Likewise, for up to the first 30 days when an inmate is in Administrative Detention, that inmate may retain FPI pay grade status, with actual pay suspended, and will be able to return to FPI, provided the inmate is not found to have committed a prohibited act. If Administrative Detention lasts longer than 30 days, and the inmate is not found to have committed a prohibited act, and the unit team approves the inmate's return to FPI, the SOI shall place that inmate within the top ten percent of the FPI waiting list.

(3) An inmate in Administrative Detention, and found to have committed a prohibited act, may return to FPI work status at the discretion of the SOI.

(4) If an inmate is injured and absent from the job because of a violation of FPI safety standards, the SOI may reassign the inmate within FPI or recommend that the unit team reassign the inmate to a non-FPI work assignment.

(5) If an inmate is transferred from one institution to another for administrative (not disciplinary) reasons, and the unit team approves the inmate's return to FPI, the SOI shall place that inmate within the top ten percent of the FPI waiting list.

(b) *Longevity and vacation credit.* Ordinarily, when an inmate's FPI employment is interrupted, the inmate loses all accumulated longevity and vacation credit with the following exceptions:

(1) The inmate retains longevity and vacation credit when placed in medical idle status, provided the medical idle is not because of a FPI work-related injury resulting from the inmate's violation of safety standards. If the medical idle results from a FPI work-related injury where the inmate was not at fault, the inmate also continues to earn longevity and vacation credit.

(2) Likewise, the inmate retains, and continues earning for up to 30 days, longevity and vacation credit if placed in Administrative Detention, provided the inmate is not found to have committed a prohibited act.

(3) The inmate retains, but does not continue earning, longevity and vaca-

tion credit when transferring from one institution to another for administrative (not disciplinary) reasons, when absent from the institution on writ, or when placed in administrative detention and found to have committed a prohibited act.

(c) *Pay grade retention.* Ordinarily, when an inmate's FPI employment is interrupted, that inmate is not entitled to retain his or her pay grade, with the following exceptions.

(1) An inmate retains pay grade status, with actual pay suspended, for up to 30 days in Administrative Detention. However, the inmate is not reimbursed for the time spent in detention.

(2) Likewise, an inmate retains pay grade status for up to 30 days while absent from the institution on writ, with actual pay suspended. The SOI may approve pay grade retention when an inmate is on writ for longer than 30 days on a case-by-case basis.

(3) If an inmate is absent because of a FPI work-related injury where the inmate was not at fault, the inmate retains his or her pay grade, with actual pay suspended.

Subpart G—Awards Program

§ 345.70 General.

FPI provides incentive awards of various types to inmate workers for special achievements in their work, scholarship, suggestions, for inventions which improve industry processes or safety or which conserve energy or materials consumed in FPI operations, and for outstanding levels of self-development.

§ 345.71 Official commendations.

An inmate worker may receive an official written commendation for any suggestion or invention adopted by FPI, or for any special achievement, as determined by the SOI, related to the inmate's industrial work assignment. A copy of the commendation is to be placed in the inmate's central file.

§ 345.72 Cash bonus or cash award.

An inmate worker may receive a cash bonus or cash award for any suggestion or invention which is adopted by FPI and produces a net savings to FPI of at least \$250.00. Cash awards shall be one

§ 345.73

percent of the net estimated savings during the first year, with the minimum award being \$25.00, and the maximum award being \$1,000.00.

§ 345.73 Procedures for granting awards for suggestions or inventions.

Inmate suggestions for improvements in operations or safety, or for conservation of energy or material, must be submitted in writing.

(a) The inmate's immediate supervisor shall review the suggestion and forward it with comments and award recommendation to the SOI.

(b) The SOI shall ensure that all inmate suggestions and/or inventions formally submitted are considered for incentive awards by a committee comprised of Industries personnel designated by the SOI.

(1) The committee is authorized to award a cash award of up to \$100.00 or an equivalent gift not to exceed \$100.00 in value to an inmate whose suggestion has been adopted. A recommendation for an award in excess of \$100.00 shall be forwarded to the Assistant Director for a final decision.

(2) The committee shall forward all recommendations for awards for inventions through the SOI to the Warden. The Warden may choose to add his or her comments before forwarding to the Assistant Director for a final decision.

(3) Incentive awards are the exclusive methods for recognizing inmates for suggestions or inventions.

§ 345.74 Awards for special achievements for inmate workers.

While recognition of inmate worker special achievements may originate from any FPI staff member, the achievement ordinarily will be submitted in writing by the inmate's immediate supervisor.

(a) The SOI shall appoint a local institution committee to consider inmates for special achievement awards.

(b) The committee shall forward its recommendations to the SOI, who is authorized to approve individual awards (cash or gifts) not to exceed \$100 in value. A recommendation for an award in excess of \$100 (cash or gifts) shall be forwarded, with the Superintendent's recommendation and the

28 CFR Ch. III (7-1-05 Edition)

justification for it, through the Warden to the Assistant Director. The Warden may submit comments on the recommendation.

Subpart H—FPI Inmate Training and Scholarship Programs

§ 345.80 General.

As earnings permit, FPI provides appropriate training for inmates which is directly related to the inmate worker's job assignment. Additionally, FPI administers a scholarship program to provide inmates with an opportunity to begin, or to continue with business and industry courses or vocational training.

(a) An applicant for FPI-funded training programs should be evaluated to determine sufficient interest and preparation to successfully complete the course content. The evaluation may be done by the Education Department, unit team, or other qualified personnel.

(b) An inmate selected to participate in FPI-funded training programs ordinarily must have enough sentence time remaining to serve to complete the training.

§ 345.81 Pre-industrial training.

FPI encourages the development and use of pre-industrial training programs. Such training ordinarily provides benefits to the inmate and to the FPI factory. Pre-industrial training also provides an additional management tool for replacing inmate idleness with constructive activity. Accordingly, each FPI factory location may provide a pre-industrial training program.

(a) Pre-industrial program trainees shall ordinarily begin at the entry level pay grade (grade 5). Positions for pre-industrial training programs are filled in the same manner as other grade five positions.

(b) Pre-industrial training is not a prerequisite for work placement if the inmate already possesses the needed skill.

(c) If pre-industrial training is available and the worker has not completed both the skill training and orientation phases of pre-industrial training, the

Federal Prison Industries, Justice

§ 345.84

inmate should be put into the first available training class.

(d) When pre-industrial training is not available, new FPI assignees will receive on-the-job training in pre-industrial pay status for a period of at least 30 days before being promoted into available fourth grade jobs.

§ 345.82 Apprenticeship training.

FPI provides inmate workers with an opportunity to participate in apprenticeship training programs to the extent practicable. Such programs help prepare workers for post-release employment in a variety of trades. Apprentices are given related trades classroom instruction in addition to the skill training during work hours, where necessary.

§ 345.83 Job safety training.

FPI provides inmates with regular job safety training which is developed and scheduled in coordination with the institution Safety Manager. Participation in the training shall be documented in a safety training record signed by the inmate.

§ 345.84 The FPI scholarship fund.

FPI shall award post-secondary school scholarships to selected, qualified inmate workers. These scholarships provide an inmate with the opportunity to begin or continue with business and industry courses or vocational training as approved and deemed appropriate by the Supervisor of Education.

(a) *Eligibility requirements.* The SOI and the Supervisor of Education at each institution shall develop application procedures to include, at a minimum, the following criteria:

(1) The inmate shall be a full-time FPI worker.

(2) The inmate has a favorable recommendation for participation from his or her work supervisor.

(3) The inmate meets all relevant institution requirements for participation (e.g. disciplinary record, custody level).

(4) The inmate is accepted by the institution of higher learning offering the course or program which is requested.

(5) The inmate must maintain a verifiable average of "C" or better to continue program eligibility.

(6) Before beginning the course of study, the inmate must sign an agreement to provide the SOI with an unaltered, original copy of his or her grades.

(b) *Scholarship selection procedures.* FPI scholarship awards shall be made by a three member Selection Committee comprised of the SOI, the Supervisor of Education, and one other person designated by the SOI.

(c) *Scholarship program operation.* (1) Ordinarily, one scholarship may be awarded per school period for every fifty workers assigned. At least one scholarship may be awarded at each institution location, regardless of the number of inmates assigned.

(2) Individual scholarships ordinarily should not exceed the cost of tuition and books for one course. Where several courses may be taken for the same cost as one, the inmate worker may be allowed to take more than one course.

(3) Scholarship monies are to be paid only to the institution providing instruction, or to the Education Department for transfer of funds to the college, university, or technical institution providing instruction.

(4) An inmate may not receive more than one scholarship per school period.

(5) An inmate must maintain at least a "C" average to be continued as eligible for further assistance. An inmate earning less than "C" must wait one school period of eligibility before re-applying for further assistance. Where a course grade is based on a "pass/fail" system, the course must be "passed" to be eligible for further assistance.

(6) An inmate awarded a correspondence course must successfully complete the course during a school year (e.g., 2 semesters, 3 quarters).

(7) An inmate receiving scholarship aid must have approval from the SOI and the Supervisor of Education before withdrawing from classes for good reason. An inmate withdrawing or "dropping" courses without permission shall wait one school year before applying for further scholarship assistance. An inmate may withdraw from courses without penalty for medical or non-disciplinary administrative reasons such

§ 345.84

28 CFR Ch. III (7-1-05 Edition)

as transfer, writ, release, etc., without first securing permission, although withdrawals for medical reasons must

be certified in writing by the Hospital Administrator.