

**U.S. Office of Personnel Management
Office of Merit Systems Oversight and
Effectiveness
Classification Appeal and FLSA Programs**

Dallas Oversight Division
1100 Commerce Street, Room 4C22
Dallas, TX 75242-9968

**Classification Appeal Decision
Under section 5112 of title 5, United States Code**

Appellant: [appellant's name]

Agency classification: Legal Instruments Examiner
(Applications and Conveyances)
GS-963-7

Organization: [appellant's activity]
[name] National Forest
[name of Region]
U. S. Forest Service
U. S. Department of Agriculture
[location]

OPM decision: Legal Instruments Examiner
GS-963-7
(parenthetical specialty at the agency's
discretion)

OPM decision number: C-0963-07-01

/s/ Bonnie J. Brandon

Bonnie J. Brandon
Classification Appeals Officer

April 24, 2001

Date

As provided in section 511.612 of title 5, Code of Federal Regulations, this decision constitutes a certificate that is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the government. The agency is responsible for reviewing its classification decisions for identical, similar, or related positions to ensure consistency with this decision. There is no right of further appeal. This decision is subject to discretionary review only under conditions and time limits specified in the *Introduction to the Position Classification Standards*, appendix 4, section G (address provided in appendix 4, section H).

Decision sent to:

[appellant's name and address]

[servicing personnel office]

[appellant's representative]

Director
Office of Human Resources Management
U.S. Department of Agriculture
J. L. Whitten Building, Room 402W
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Introduction

On December 22, 2000, the Dallas Oversight Division of the U.S. Office of Personnel Management accepted a classification appeal from [the appellant]. The appellant's position is currently classified as Legal Instruments Examiner (Applications and Conveyances), GS-963-7. The appellant requests that her position be classified as Legal Instruments Examiner, GS-963-9, or Land Law Examiner, GS-965-9. The position is assigned to the [appellant's activity], [name] National Forest, [name of Region], U. S. Forest Service, U.S. Department of Agriculture, [location]. We have accepted and decided her appeal under section 5112 of title 5, United States Code.

To help decide the appeal, an Oversight Division representative conducted a telephone audit with the appellant. We also interviewed her immediate supervisor by telephone. Since the supervisor was relatively new to his position, the appellant's former supervisor also participated in the interview. In reaching our classification decision, we have reviewed the findings from the telephone discussions and all information of record furnished by the appellant and her agency.

In conjunction with a recent classification review completed by the agency, the appellant submitted handwritten changes to her current position description number [number]. The proposed changes amended the percentage of time the appellant spends performing the major duties of her position and described in greater detail certain aspects of her work. These changes were incorporated in a new draft position description that the agency applied in preparing the evaluation statement resulting from the internal audit. The appeal record also includes additional proposed revisions to the draft position description that the appellant believes are needed for accuracy.

Except for the percentages of time the appellant spends on her major duties, we found that the draft position description and the additional changes proposed by the appellant do not substantially affect the overall duties and responsibilities of the appellant's position. The agency will need to finalize classification of the position description, consistent with our decision.

Position information

The appellant performs technical duties involving the examination of legal instruments and documents relating to mineral lease applications, special use permits, and landownership within the [activity]. The [appellant's activity] is responsible for all special uses, minerals management, claims and occupancy trespass, right-of-way acquisitions, landline surveys, maintenance, location, land adjustments, and fire management. The appellant is under the immediate supervision of the Supervisory Forester who heads the Unit.

The appellant spends approximately 40 percent of her time on duties relating to oil and gas lease applications. To identify lands available for lease by the Bureau of Land Management (BLM), the appellant prepares oil and gas mineral title reports by township and range on both public domain and acquired lands administered by the Forest Service. The appellant calculates acreage and writes legal descriptions of lands that are available and unavailable for lease. From court records, she locates and reviews warranty deeds to determine the status of mineral ownership or other encumbrances on areas available for lease. She recommends whether to make specific

parcels of land available for lease and ensures special stipulations are included as required by the [name] Forest Plan. The appellant updates the mineral status atlas overlays to document the status of all leases, and she maintains mineral leases and maintenance transactions files. She reviews BLM's Notices of Competitive Sales to ensure that legal descriptions, acreage amounts, and stipulations included in leases of [name] Forest lands offered to the public are accurate. She ensures that all issued leases comply with the original Notice of Competitive Sales.

The appellant spends approximately 45 percent of her time on duties relating to the issuance of special use permits. She reviews and recommends approval of applications for permits for a variety of special uses, such as utility lines, pipelines, recreation activities, easements, and common variety. She obtains a report from District personnel on each application concerning the feasibility of the proposed activity, including proposed alternatives. Scientific staff (for example, archeologists, wildlife biologists, foresters) provide input on applications concerning any effects the proposed use may have on the environment. The appellant selects the proper forms and clauses applicable for the type of use requested. She computes the annual fee rates and prepares permits in final form. The appellant maintains payment records, including following up on and computing delinquent fees. The appellant utilizes the Special Use Data system, an electronic library of Forest Service land use information, to prepare permits, reports, and billings related to special use permits.

The appellant spends approximately 10 percent of her time on duties involving landownership and land exchanges. The appellant posts land atlases, verifies minerals and lease status, and prepares Source of Title and Publication of Notice to Exchange and Decision Documents for submission to the Regional Office. Once cases are completed, she finalizes the information into a permanent title file and submits the information for microfilming. She corresponds with [tax assessors] to advise of landownership changes and notifies the Regional Office to initiate payment on tax deposits withheld on purchases.

The appellant spends approximately 5 percent of her time providing clerical and administrative support to the Unit staff.

Series, title, and standard determination

The GS-965 Land Law Examining Series includes positions involved in processing and adjudicating applications and claims for rights, privileges, gratuities, or other benefits authorized under the various public land, mineral leasing, and mining laws. A claim is generally defined as a demand for one's rights, while applications involve acts of making requests. The appellant's work primarily is concerned with reviewing and recommending action on applications for special use permits and in recommending whether to make Forest Service land available for leasing. Neither of these responsibilities involve adjudicating claims or rights of individuals with respect to their interest in the public lands and resources. The GS-965 series standard specifically excludes positions involving the examination of legal documents other than claims. Accordingly, we find the GS-965 series is not appropriate for the appellant's position.

The GS-963 series covers positions that involve examining legal instruments and supporting documents to determine compliance with certain provisions of various laws. Work in the GS-963 series involves determining whether actions sought by parties correspond with

governing regulations, procedures, and other criteria. This may involve searching highly specialized records to ascertain if any conditions exist that might preclude approval. The appellant's work is analogous to the GS-963 occupational description in that she determines whether the requested special use permits comply with legal, regulatory, and internal policy. In addition, she researches land deeds to determine mineral ownership prior to recommending leasing and ensures any special stipulations are applied to leases. The appellant's position is properly allocated to the GS-963 series.

The title for positions classified in the GS-963 series is *Legal Instruments Examiner*. The agency may add a parenthetical title that identifies a particular specialty, e.g., (Applications) or (Conveyances), if further distinctions are necessary.

Grade determination

The GS-963 standard uses the Factor Evaluation System (FES), which employs nine evaluation factors. Under the FES, each factor level description describes the minimum characteristics needed to receive credit for the described level. Therefore, if a position fails to meet the criteria in a factor level description in any significant aspect, it must be credited at a lower level. Conversely, the position may exceed those criteria in some aspects and still not be credited at a higher level.

The appellant agrees with the agency's assignment of levels for Factors 1 and 4 through 9. Based on our review of the appeal record and information provided by telephone, we concur with the agency evaluation.

The appellant believes the agency did not properly evaluate Factor 2, Supervisory Controls, which covers the nature and extent of direct or indirect controls exercised by the supervisor, the employee's responsibility, and the review of completed work. The appellant also disagrees with the agency's evaluation of Factor 3, Guidelines, which covers the nature of the guidelines used and the judgment needed to apply them. Accordingly, our analysis focuses on the evaluation of these two factors.

Factor 2, Supervisory controls

At Level 2-3, the supervisor assigns work according to a standardized control system, such as batched work, case load level, geographic area, or some other defined structure. The supervisor provides standing general instructions about timeliness, objectives, and relative priorities. The supervisor assists the employee with unusual situations that do not have clear precedents. The employee independently performs complete examining functions and carries out the successive steps and handles problems and deviations in the work assignment in accordance with instructions, policies, previous training, or accepted work practices. Completed work is reviewed by a quality review sampling system and/or is spot checked by the supervisor or a senior worker for appropriateness of results and conformity to established requirements and deadlines. Work methods used in arriving at a product are not normally reviewed in detail.

At Level 2-4, the supervisor sets the overall objectives and resources available. The work is usually assigned according to a standardized control system or otherwise goes directly to the

employee. The employee participates in the development of standing general instructions about timeliness and relative priorities. In addition to performing all aspects of the work independently, the employee is also delegated commitment authority and takes final disposition action. The employee is responsible for resolving most of the conflicts that arise; coordinating the work with others as necessary; and, on own initiative, interpreting policy in keeping with established objectives. The employee keeps the supervisor informed of progress and potentially controversial matters. The employee's judgment is accepted as technically sound, and completed work is reviewed from an overall standpoint in terms of feasibility, compatibility with other work, or effectiveness in meeting requirements or achieving expected results. The standard includes a note that states that Level 2-4 is only appropriate for positions in which the employee is delegated authority to take final disposition action, not subject to further technical review.

The supervisory controls over the appellant's position meet many aspects of Level 2-4. Most of the appellant's work goes directly to her. She independently prepares title reports, ensuring mineral ownership, and determines whether to recommend leasing in accordance with regulatory requirements and Forest Service policy. She decides whether to recommend approval of requests for special use permits and prepares proposals for the Forest Supervisor's signature. Except for new or unusual situations for which her proposals may be reviewed more closely, her recommendations generally are accepted without technical review. However, the appellant is not delegated commitment authority to take final disposition action. This authority rests with the Forest Supervisor. For this reason, the appealed position does not fully meet Level 2-4. Accordingly, Level 2-3 and 275 points are assigned.

Factor 3, Guidelines

At Level 3-2, procedures for doing the work are well established, and written guidelines, such as straightforward regulatory and technical specifications or otherwise interpreted regulations and technical material, procedural manuals, and other instructions, are available for all aspects of the work. The employee selects the appropriate references and procedures for each phase of the examination process, question, or condition that develops. The employee selects the appropriate guidelines according to circumstances arising from the particular instrument being examined. Some portions of the guidelines may change from time to time, and the employee must adjust to such changing conditions or interpretations. Situations to which the existing guidelines cannot be applied or circumstances that require significant deviations from the guidelines are referred to the supervisor.

At Level 3-3, the guidelines are numerous and varied and consist of general and uninterpreted references, such as basic and unabridged laws or regulatory material, technical manuals, court or other legal decisions, and other precedents. These guidelines may contain frequent and extensive amendments or revisions or superseded laws that continue to have certain applicability. They may contain differing provisions of overlapping jurisdictions, i.e., requirements of Federal, State, county, municipal, and/or international or foreign laws that must be applied; or, they may contain legislative, regulatory, or administrative exceptions that possess certain unique and deviant requirements. Some guidelines may include technical or professional literature of a difficult and advanced level, or other similar complicating conditions. The employee chooses from among a variety of guidelines, selects those that are most appropriate, and interprets and/or adapts them in relation to specific problems encountered in the examination process. The employee searches

through complex and voluminous reference material and may encounter precedents that are incomplete or not specific to the situation and that require careful analysis and interpretation. The employee describes the problem conditions and recommends changes or additions to examining procedures that are inadequately covered or are missing from existing guidelines.

Guidelines used by the appellant meet some aspects of Level 3-3. The appellant's guidelines are numerous and varied. Numerous laws authorize and apply to her work and she uses the Code of Federal Regulations of two different titles. Nevertheless, the guidelines used in the appealed position do not meet the full intent of Level 3-3. The guidelines the appellant uses are most comparable to Level 3-2. The appellant's guidelines do not change frequently nor do superseded laws continue to apply to her work. The appellant indicated that she applies state laws in her position. However, this generally involves only water systems work for which permittees must submit proof they have obtained a proper state permit. While the appellant must use judgment in applying the guidelines to specific situations posed, applicable sections of the Forest Service Manual and Handbook used by the appellant are comprehensive and fully cover procedures for carrying out most aspects of her work. The guidelines used by the appellant do not involve technical or professional literature of a difficult or advanced nature. In processing special use permits, the appellant can rely on input provided by scientific or professional personnel. Although the guidelines of the appellant's position meet some aspects of Level 3-3, the full intent of that level is not met. Accordingly, Level 3-2 is credited and 125 points are assigned.

Summary

The following table summarizes the factors credited and points assigned to the appealed position.

Factor	Level	Points
1. Knowledge required by the position	1-5	750
2. Supervisory controls	2-3	275
3. Guidelines	3-2	125
4. Complexity	4-3	150
5. Scope and effect	5-3	150
6. and 7. Personal contacts and Purpose of contacts	2b	75
8. Physical demands	8-1	5
9. Work environment	9-1	5
Total		1,535

A total of 1,535 points falls within the range for GS-7 (1,355-1,600 points) according to the Grade Conversion Table in the GS-963 standard.

Decision

The appellant's position is properly classified as Legal Instruments Examiner, GS-963-7. A parenthetical specialty may be added at the discretion of the agency.