

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

Philadelphia Oversight Division
600 Arch Street, Room 3400
Philadelphia, PA 19106-1596

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

Appellant: [appellant's name]

Agency classification: Investigator
GS-1810-12

Organization: Resource Management Cost
Recovery Section
Program Support Branch
Emergency and Remedial Response
Division
Region [number]
U.S. Environmental Protection Agency
[location]

OPM decision: Investigator
GS-1810-12

OPM decision number: C-1810-12-01

/s/ Robert D. Hendler

Robert D. Hendler
Classification Appeals Officer

5/4/01

Date

As provided in section 511.612 of title 5, Code of Federal Regulations (CFR), 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* (PCS's), appendix 4, section G (address provided in appendix 4, section H).

Decision sent to:

[appellant's name]
[address]
[location]

[name]
Chief, Human Resources Branch
Region [number]
U.S. Environmental Protection Agency
[address]
[location]

Ms. Daiva Balkus
Director
Office of Human Resources and
Organizational Services
U.S. Environmental Protection Agency
(3610A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Introduction

On December 19, 2000, the Philadelphia Oversight Division of the U.S. Office of Personnel Management (OPM) accepted a classification appeal from [appellant's name]. His position is currently classified as Investigator, GS-1810-12. He believes the position should be classified as Investigator, GS-1810-13. The appellant works in the Resource Management Cost Recovery Section, Program Support Branch, Emergency and Remedial Response Division, Region [number], U.S. Environmental Protection Agency (EPA), [location]. We have accepted and decided this appeal under section 5112(b) of title 5, United States Code (U.S.C.).

General issues

The appellant occupies position description (PD) #2-7-203, initially classified on July 1, 1997. The PD was redescribed and reclassified on January 31, 2001. In his December 13, 2000, appeal letter, the appellant states that he believes his position should be upgraded because he is performing investigative work almost identical to that of a higher-graded investigator. The appellant says that his cost analysis of a shopping center by evaluating the contractor's cost proposal, projected construction costs, profit objectives, and economic benefits exceeds the difficulty and complexity of the financial reviews contained in his 1997 PD. He points to the GS-13 through GS-15 grade levels of the remedial project managers (RPM's) and site attorneys whom he assists in planning the enforcement strategy for hazardous waste sites as work supporting an accretion of duties promotion. He says that he is the only regional employee performing financial review work and believes that it supports the GS-13 grade level.

In a January 18, 2001, letter, the appellant states that he also is the regional work assignment manager (WAM) for a major remedial enforcement contract. He points to the cost-saving effect of his performing financial reviews instead of sending them to the National Enforcement Investigative Center (NEIC) in Denver, CO. He states that NEIC GS-13 and GS-14 grade level financial analysts have called him for advice and suggestions. The appellant says that he is the only one of four regional employees associated with the enforcement investigative process who has not been elevated to the GS-13 grade level. He believes that his agency erroneously considers another regional investigator as senior to him in terms of experience. The appellant cites his previous cost recovery investigative experience with [agency name]. He also disagrees with his agency's delay in reviewing his position.

These statements raise procedural issues that must be addressed. OPM is required by law to classify positions on the basis of their duties, responsibilities, and qualification requirements by comparison to the criteria specified in the appropriate PCS or guide (5 U.S.C. 5106, 5107, and 5112). The law does not authorize use of other methods or factors of evaluation, such as comparison to other positions that may or may not have been classified correctly, the cost-effectiveness of his work, or the grade levels of the employees with whom he works. Our decision sets aside all previous agency actions on or decisions about the classification of the position in question.

Like OPM, the appellant's agency must classify positions based on comparison to OPM's PCS's and guidelines. Agencies are obligated to review their own classification decisions for identical, similar or related positions to insure consistency with OPM appeal certificates (5 CFR 511.612). The agency has primary responsibility for ensuring that its positions are classified consistently with OPM appeal decisions. If the appellant considers the appealed position so similar to others that they warrant the same classification, he may pursue this matter by writing to his agency's human resources management headquarters. He should specify the precise organizational location, classification, duties and responsibilities of the positions in question. If the positions are found to be basically the same as the appealed position, or warrant similar application of the controlling PCS's, the agency must correct their classification to be consistent with this appeal decision. Otherwise, the agency should explain to them the differences between the appealed position and the others.

A PD is the official record of the major duties and responsibilities assigned to a position by a responsible management official; i.e., a person with authority to assign work to a position. A **position** is the duties and responsibilities that make up the work performed by an employee. Title 5, U.S.C. 5106 prescribes the duties, responsibilities and qualifications required as the basis for determining the classification of a position. The *Introduction to the Position Classification Standards* (Introduction) states that "As a rule, a position is classified on the basis of the duties actually performed." Additionally, 5 CFR 511.607(a)(1), in discussing PD accuracy issues, says that OPM will decide classification appeals on the basis of the actual duties and responsibilities assigned by management **and** performed by the employee. We classify a real operating position, and not simply the PD. The Introduction recognizes that a PD must be supplemented by other information about the organization's structure, mission, and procedures for a proper classification to be made. We will consider the appellant's statements about his attempts to revise his PD and the advice he gives to other people only insofar as they are relevant to establishing the actual duties and responsibilities that are assigned to and performed by him.

Position Information

The appellant based his appeal on the description of work in the redescribed PD. He and his supervisor certified the PD's accuracy on January 9, 2001. To help decide this appeal, we conducted an onsite audit with the appellant on April 23, 2001, and telephone interviews on April 26 and 27, 2001, with his immediate supervisor, [name], and telephone interviews with EPA site attorneys and other Region [number] employees familiar with the appellant's work. In reaching our decision, we reviewed the audit findings and all information of record furnished by the appellant and his agency, including his official PD and work examples that he provided at our request. Our audit confirmed that the PD of record contains the major duties and responsibilities of the appellant's position and we incorporate it by reference into this decision.

The appellant plans and conducts investigations to identify and locate potentially responsible parties (PRP's) for performing or paying for response actions (site cleanups) under The Comprehensive Environmental Response Compensation and Liability Act (CERCLA), known as Superfund. PRP's include past and present owners/operators of Superfund sites, generators, and transporters of the hazardous wastes that must be remediated at the sites. The appellant is

responsible for ascertaining PRP financial viability to pay for the cost of cleaning up Superfund sites. He provides oversight of EPA contractors who perform investigations to identify PRP's. The appellant trains and consults with other EPA and State enforcement staff about techniques and approaches for information gathering, fact-finding, and investigation. The appellant performs similar functions for the Water and Air programs that respond to immediate term removal actions, e.g., roadside spills.

Series, title, and standard determination

The agency has placed the appellant's position in the General Investigating Series, GS-1810, for which there is a published PCS, and titled it Investigator. The agency applied the Grade-Level Guides for Classifying Investigator Positions (Guide), GS-1810/1811, to evaluate his investigative work and the Financial Analysis Series, GS-1160, to evaluate his financial analysis work. The appellant has not disagreed. Based on our audit and review of the record, we concur.

Grade Determination

Evaluation using the GS-1810/1811 Guide

The Guide uses two factors to distinguish between grade levels: Complexity of Assignments and Level of Responsibility. It provides for classifying positions based on assignments that are typical and representative of the cases for which the investigator has primary responsibility over a period of time, i.e., only the case agent position may be credited with performing the full grade level of the cases.

The Guide recognizes that besides work individually assigned to investigators at any grade level, from time to time they work on particular investigative tasks associated with cases assigned to other investigators. They may lead or coordinate the work of other investigators who are temporarily assigned to work on cases for which they have primary responsibility. These temporary conditions have no particular impact on the grade level worth of an investigator's position. Similarly, there is no particular relationship between the grade level of the investigator who has primary responsibility for a case and the grade levels of the positions of the other investigators who are temporarily called upon to help with particular investigative tasks. The grade level worth of coordinative responsibilities is wholly dependent upon the grade level worth of the cases for which they are performed.

The appellant submitted cases for which he is the case agent as part of his appeal. The cases submitted include [five case names]. The appeal record contains descriptive information incorporated by reference into this decision.

Factor 1: Complexity of Assignments

This factor measures the scope, complexity and sensitivity of investigative assignments in terms of six elements. The classification standard notes that for this factor to be evaluated at a

particular grade level, most or all of the six elements must be at that particular grade level. We will apply the standards for each element to the entire appeal record.

Element 1 - The extreme complexity and scope of assigned cases

The appellant's rationale is that [case name] is of extreme complexity and scope because of the large number of PRP's previously identified through a PRP search that have not responded to 104(e) information requests, and many additional companies involved in the contamination than originally thought. He was able to link mercury and chromium contamination to nearby bridge construction, and to other companies involved in industrial operations that could have contributed to the contamination. The rationale points to his innovative use of the Westlaw corporate database, Moody's *Industrial Manual*, and *Thomas Register* to locate and determine the financial viability of PRP's. [Case name] is of extreme complexity and scope because of the large volume of industrial activity in the groundwater capture zone. Many of the companies dating back to 1950's and 1960's were defunct or had relocated, many of the companies were affiliates of parent companies, and several of the parent companies were located overseas.

At the GS-12 grade level, cases typically involve several principals for whom suspicion is initially aroused by circumstantial evidence, e.g., word of mouth, tips, observations, rather than by directly verifiable evidence, e.g., paid bills, passports, licenses, or testimony. Evidence is fragmentary or cold. Improper development of the case could cause significant repercussions, e.g., cause public embarrassment for the agency involved or the principals under investigation.

In contrast, GS-13 grade level cases are of extreme complexity and scope. For example, the assignments involve investigations of legal or illegal organizations that are very complex in structure with a large number of primary and secondary activities, e.g., several principals of organized crime or subversive groups that are officially recognized in law enforcement as national threats to the peace and stability of the nation. Investigations are of major interregional dimensions or are nationwide in origin or coverage with occasional international implications. There are typically actual or potential threats or challenges to major segments of the national welfare or security. The results, effects, or consequences of the investigation, to a major degree, constitute deterrents to crimes or violations, and may often influence changes in laws or future court actions. Investigator typically must piece together evidence that comes from other investigators stationed throughout several States or the nation, and recognize the suspect's pattern of operation to anticipate or even influence events as they unfold by instructing separate investigators or units of investigators working on segments of the case. This complicates the case because the investigator must at the same time avoid entrapment of the suspects, who are prominent and numerous and engage in more complex and serious activities. Similarly, the investigator must be more aware of the implications of precedent court decisions over a broader area, i.e., in more judicial and law enforcement jurisdictions.

As at the GS-12 grade level, the appellant deals with fragmentary evidence that requires exhaustive searches of a wide variety of online business, personal finder, and public record data bases; business publications; public records; business operating records; and financial documents to identify PRP's. Typical of this grade level, the evidence frequently is fragmentary or cold

because PRP's have ceased operation, reorganized, or relocated. Tips in response to newspaper advertisements and historical information surface additional PRP's whose relationship to the site must be investigated and resolved. As at the GS-12 grade level, improper investigation could bring about public embarrassment of PRP's who are found to not be liable for site pollution.

Although these cases required the piecing together of evidence from a variety of sources, and the cooperation of other agencies and political jurisdictions, the record does not show in most cases the integrated network of investigative support typical of the GS-13 grade level. RPM's define overall site fact-finding requirements, review the appellant's reports, and frequently request the investigation of additional matters as cases unfold. Support provided by Region [number] and other public agencies is informational, and are not segments of integrated major interregional or nationwide cases found at the GS-13 grade level. These supplemental investigative activities do not anticipate or influence events typical of GS-13 grade level cases, influence changes in laws, future court actions, or deter violations. While some sites cover the operation of major corporations, the issues investigated are limited to corporate operations at that site. When corporate activities are tracked to other jurisdictions, e.g., [case name], the appellant does not manage investigations at those locations as part of an integrated interregional or nationwide corporate investigation found at the GS-13 grade level. Because of the site specific scope of investigation, the extreme complexity of the organization investigated at the GS-13 grade level is absent. These cases primarily involve the local activities businesses, and do not involve the prominence and larger number of suspects typical of GS-13 grade level cases. Therefore, this element is credited at the GS-12 grade level.

Element 2 - The interrelated activities that the subjects of the investigation are involved in

The appellant cites the [case name] site, proposed for Superfund status, that was turned over to EPA by the [name] State Department of Environmental Protection ([acronym]) in February 1995. It involves elevated levels of arsenic and lead in the soil, and elevated levels of antimony, barium, cadmium, chromium, copper and cyanide in the soil and groundwater. The title search surfaced overlapping boundaries with multiple owners for the industrial portion of the site. The appellant's rationale is based on one principal PRP denying any involvement in the contamination problem. After surveillance and an access agreement visit, the appellant gathered information showing that the PRP was engaged in paint industry activities likely to have contributed to the contamination. The other PRP's series of mergers made it extremely difficult to unravel the corporate successorship. The appellant had to initiate an investigation in another geographic area where the parent company was still doing business. The rationale states that the appellant's using of the Financial Crimes Enforcement Networks (FINCENS) in Vienna, VA to gather currency transaction data to assess financial viability was innovative, "pierced the corporate veil," and identified financially sound responsible parties (RP's) for possible enforcement action.

At the GS-12 grade level, difficulties or complexities imposed by the prominence or characteristics of the subjects investigated include: (1) a suspected or known racketeer, gambler, smuggler, etc., who is known through their associates, behavior or background as a prominent figure in organized crime or subversion; (2) the principal or financial backer in an organization

consisting of separate manufacturers, distributors, and transporters of illegal goods, drugs, alcohol, counterfeit money, fraudulent documents, explosives or weapons (normally the separate parties do not know each other or the overall backer); (3) a figure with financial interests overlapping several activities both legal and illegal, e.g., funds from a legal concern are diverted and used to finance illegal activity; and/or (4) the head of an organization involved in legitimate business who is suspected of fraudulent use of invoices, operating fraudulent marriage rings, etc., which are carried out under the cover of the legitimate organization, and the suspected violation requires assistance from several accomplices, e.g., attorneys or accountants who are themselves in positions of public trust.

In contrast, at the GS-13 grade level, subjects are involved in the range and variety of such interrelated activities as: (1) a suspected foreign agent who, with several associates, is planning acts extremely harmful to national security, e.g., theft of national defense documents for benefit of a foreign government, or compromise of persons who have access to highly classified information concerning national defense; and/or (2) the organization under investigation has an extremely complex structure with diversified interests, e.g., the manufacture, distribution and sale of legal or illegal goods in a national market involving a complex network of widespread distribution and sales outlets.

As at the GS-12 grade level, the appellant must establish PRP site responsibilities. In the [case name] case, the appellant gathered evidence through surveillance and inspection that a major PRP was engaged in paint operations despite earlier denial of such activity. Using a variety of methods, the appellant looks into industrial practices and gathers data to help determine each PRP's waste responsibility. This includes evaluating PRP business functions to establish whether the site contaminants can be associated with the PRP's, e.g., used in or produced by the manufacturing process. Equivalent to dealing with overlapping financial interests and separate organizational functions, the appellant routinely surfaces large numbers of PRP's from the site history which, in turn, frequently lead to many additional PRP's and the identification of RP's. The volume of the contaminant associated with each RP is used to determine financial cleanup responsibility. As at the GS-12 grade level, RP's frequently attempt to avoid responsibility for cleanup costs, e.g., the [case name] PRP who claimed he was not engaged in paint operations and PRP's who claim that they do not have the financial resources to pay.

Although these cases required unraveling complex site operations, they do not involve investigating the interrelated diversified national or equivalent networks found at the GS-13 grade level. The appellant's investigation of large national or multi-national corporations also does not require unraveling integrated corporate operations typical of the GS-13 grade level. While broader corporate practices may help establish manufacturing, storage and distribution practices, site cleanup responsibility is limited to site-specific facts. Therefore, this element is credited at the GS-12 grade level.

Element 3 - The wide number of separate investigative matters that grow from the original assignment.

The appellant cites the [case name] that operated in [location] from 1966 through 1973, and in [location] since April 1974. His search of PRP's found that some companies were defunct and other companies were still in business. Some companies had relocated to other states. The appellant contacted Region [number] for enforcement records since the main PRP originally incorporated in [state name], but relocated to [state name] in 1974. The rationale states that this represents concurrent investigations in several subject and geographic areas. Some of the PRP's located, e.g., haulers and producers, overlap into Superfund investigations underway at other sites, i.e., they are PRP's at other sites. The primary PRP had been indicted and fined for illegal dumping in [state name]. The rationale states this means that legitimate business entities may become involved in criminal matters under the Superfund. The rationale states that the appellant's use of an infoUSA, Inc., electronic database to locate parties, conduct asset locator checks, and check for bankruptcy filing, and the NEIC to perform corporate status research on the site and person locator checks were innovative measures to identify the RP's and establish their financial viability.

The rationale cites [case name] Superfund site where 137 homes and a strip mall were built over a former railroad tie creosoting facility in [location], that had been backfilled by a developer in 1957. Since site files were not available from databases, the appellant placed an advertisement in a local paper asking for information from people who had lived in the area from 1910 until 1955. Information from two people who responded, town officials, and library materials established that the facility shut down in 1955 and reopened in [location] in March 1956. This required coordination with Region [number] similar to the [case name] case. One of the PRP's, who owned the land, had been murdered by a disgruntled former employee, and was investigated to determine whether he was involved in the creosoting operation. The investigations surfaced other PRP's with out-of-state corporate affiliations, and other PRP's who has leased portions of the site in the 1950's. The rationale describes the site as complex since it crossed geographic boundaries, and many issues needed to be resolved concerning the period of contamination and those responsible for contamination.

At the GS-12 grade level, a substantial number of separate investigative matters typically grow from the original assignment. For example, an investigation beginning with the pusher or passer of stolen or illegal goods, e.g., drugs, counterfeit money, or fraudulent documents, is expanded by piecing together bits of evidence from interviews, surveillance, documentary examinations, informants, etc., proceeds through the intermediate distributor, and eventually involves the manufacturer, backer, organizer, importer, etc.

In contrast, at the GS-13 grade level, suspected violators are highly organized crime groups whose criminal activities are interwoven with legitimate business activities. For example, seemingly legitimate construction firms may have ostensibly legal contracts with States, and there is suspicion of bribery of State officials or fraud. The investigator develops leads from known criminal activities; finds that these leads cross to legitimate businesses, and that suspicion is finally cast on seemingly respected legitimate political, business or professional leaders. Cases at the GS-13 grade level also often unfold to involve large-scale raids and seizures throughout several states, which normally require the investigator to lead and coordinate several units of investigators from his own and other agencies in tracing leads and gathering information.

Typical of the GS-12 grade level, the appellant pieces together information from a wide variety of sources to establish a site history, including who operated at the site, the time period(s), and their relationship to site contaminants. This requires documenting specific site operations that can directly link RP's to environmental site impact. As in the [case name] case, the investigations extended into another region to distinguish operating periods in [state name] from those in [state name]. Typical of the GS-12 grade level, the primary PRP's site operations relationship had to be separated from other corporate operations. As a storage, transfer, and hazardous waste container-reconditioning site, the appellant had to establish clear links between the primary PRP's operations and those who generated the wastes and shared site cleanup responsibility. The appellant's other work examples involve similar surfacing of other PRP's that require complete investigation to establish site responsibility.

While companies that the appellant investigates frequently attempt to hide assets and income to avoid or reduce site cleanup liability, the appellant's cross regional work involves establishing facts specific to his assigned sites. These include the dates a company operated at the site, or confirming the origin of contaminants shipped to the site. These inquiries do not lead to significant separate investigations beyond the immediate investigation and the coordination of those investigative resources found at the GS-13 grade level. Therefore, this element is credited at the GS-12 level.

Element 4 - The exceptional difficulty encountered in establishing the interrelationship of facts or evidence

The rationale cites [case name], a former secondary lead smelting facility, that operated in [location] from 1972 to 1982. The site was sold to [company name], in 1983, which operated until 1984. Groundwater and soils are contaminated with heavy metals including lead and cadmium. A nearby marshy area and two streams have elevated levels of lead in the surface water and sediments. There were over 100 PRP's associated with the site. Many are defunct. In some instances, PRP's who said that they were out of business had actually relocated operations to other states. In other instances, tax returns and financial statements were suspect. Statements and documents provided by sources showed that some PRP's were financially viable and should be pursued. The rationale states that the appellant's using of the Choice point to check property records, tax records, and corporate records on PRP's was innovative.

At the GS-12 grade level, investigations involve subjects who are suspected of major and complex criminal activity who are separated from the overt violation by an intermediary or organization, requiring the use of such techniques as surveillance, radio communication, toll-call checks, and scientific identification and matching of various specimens to establish a direct link between the suspect and other violators. At this grade level, the development of defensible testimony is dependent upon such techniques as pitting one violator, criminal or witness against another, extensively checking the word of one against another, and the exercise of great care in establishing facts and evidence because of the prominence of the subject or the importance of the case.

In contrast, at the GS-13 grade level, the interrelationship between fact and evidence is extremely difficult to establish. For example, subjects use fictitious names or are otherwise clearly separate from each other and from the illegal activities under investigation. They deal exclusively through subsidiaries and holding companies that engage in diversified mixtures of legal and illegal activities throughout wide sections of the country, e.g., businesses throughout wide sections of the country run by Organized Crime families with subsidiaries engaged in a mixture of legal and illegal activities, e.g., legitimate enterprises that are multi-site in scope that obtain business through fraud or bribery. The work of other investigators or teams of investigators coordinated at the GS-13 grade level involves segments of cases that fully equate to cases themselves that are evaluable at the GS-12 grade level.

As at the GS-11 grade level, case facts typically come from a review of the business records, record searches of financial documents, e.g., title searches, liens, and shipping manifests. However, the need to determine the sources of contaminants and the difficulty involved in establishing the relationship of the facts to establish financial liability meet the GS-12 grade level. As at the GS-12 grade level, the appellant must piece together and verify facts that create the historic record. For example, the appellant needed to reconstruct over 40 years of operations at the [three case names] sites where direct relationships between site businesses and contamination required verification.

While RP's may attempt to minimize their cleanup responsibility, these investigations do not involve the complexity of untangling corporate subsidiary, holding company and similar structural relationships, or the scale of corporate operations throughout wide sections of the country found at the GS-13 grade level. The appellant also does not coordinate the work of other investigators or teams of investigators whose case segments fully equate to cases of GS-12 grade level difficulty, typical of the GS-13 grade level as discussed previously. Therefore, this element meets the threshold for crediting at the GS-12 grade level.

Element 5 - The extreme sensitivity of matters in the assigned cases

The appellant's rationale does not address this element. At the GS-12 grade level, cases involve subjects so prominent that after the first witness is interviewed, word of the interview precedes the investigator so that subsequent witnesses are evasive because of reluctance to or fear of becoming involved in giving information which witnesses view as exploding into an important Federal case. The subject and their peers are very often the subject of major news media and, therefore, any investigation is likely to result in publicity and would to some degree cast suspicion on the reputation of the subject, or prejudice the investigator's case in court, or implicate subsequent administrative decisions.

In contrast, at the GS-13 grade level investigations: (1) receive sustained and widespread coverage in the major news media because of the prominence of the suspects or victims of the crime or threat if the investigation became public knowledge prematurely which could, for example, severely hamper the speed of the investigator's progress and endanger lives of victims, e.g., investigation of a major member of an Organized Crime family that must be tightly controlled to prevent the elimination of witnesses, the protection of victims willing to testify,

etc.; (2) have suspects whose financial involvements extend to enterprises that have a significant impact on the national economy, e.g., the transportation or banking industry; and/or (3) have suspects who are principals in financial or other enterprises that reach into State and Local affairs, e.g., through attempted bribery, fraud, collusion or extortion of public officials.

As at the GS-11 grade level, cases typically involve local business operations and have the potential to embarrass otherwise respected individuals. However, Superfund sites typically generate the intensity of public interest typical of the GS-12 grade level because of their perceived impact on public health. These sites frequently pass from State to Federal jurisdiction when states determine that they lack cleanup capabilities, which also generates media attention. The appellant's investigative activities do not deal with the national impact, scope and impact of public officials' behavior, or media impact on investigation progress found at the GS-13 grade level. Therefore, this element meets the threshold for crediting at the GS-12 grade level.

Element 6 - The extensive and critical jurisdictional problems involved in completing investigations

The appellant's rationale does not address this element. At the GS-12 grade level, jurisdictional problems involve subjects engaged in activities that are the concern of several local, county, State and Federal agencies, e.g., drug use, traffic and smuggling; forgery; and alleged subversion. The cases involve a web of relationships that require a more extensive knowledge of the laws, rules and policies of these various jurisdictions because the investigator often plans and times raids and surveillance that involve use of local law enforcement agencies.

In contrast, GS-13 grade level, cases involve extremely difficult planning and coordination problems because of extensive jurisdictional problems. Evidence may warn the investigator that their contacts in other jurisdictions are themselves involved in wide-scale criminal conspiracies, which require the investigator to use such suspects in double or triple capacities without permitting such suspects to realize how they are being used. Undercover and surveillance work involves serving as a key person or coordinator in assignments with complex, dangerous or delicate elements, e.g., penetration of closely knit groups on assignments of GS-13 grade level complexity. Discovery on assignment would not only result in great injury or death to the investigator, but would cut off information linking the evidence together and thus jeopardize or destroy a critical case that the Federal government had been developing for months or years, involving a network of State, local, and other Federal agents and informers.

Similar to the GS-11 grade level, PRP actions overlap with matters of interest to local and State officials. Occasionally, PRP's may be the focus of EPA, State or local criminal investigative concern. The appellant's surveillance work also fails to meet round-the-clock observation of the range of activities and suspects found at the GS-12 grade level. PRP's may have engaged in criminal disposal of hazardous waste. While he must be aware of criminal investigations that relate to his sites, the appellant's work is limited to non-criminal matters and does not require the cross-jurisdictional coordinated investigations found at the GS-12 grade level. Tracking producers, haulers, and disposers of hazardous materials does not require dealing with the more extensive web of operational relationships, or use State and local resources as defined at the GS-

12 grade level. Because the work fails to meet the GS-12 grade level, it does not approach or meet the GS-13 grade level. Therefore, this element is credited at the GS-11 grade level.

With five elements credited at the GS-12 grade level and one element at the GS-11 grade level, this factor is credited at the GS-12 grade level.

Level of Responsibility

This factor measures the kind and extent of supervision given to investigators and the degree of resourcefulness required in finding and verifying information pertinent to the cases assigned.

At the GS-12 grade level, investigators receive or generate their own assignments. They receive few instructions on the technical aspects of the work, but are given mostly policy guidance, e.g., information on understanding of jurisdictional problems being worked out among agencies, or the fact that this is one of the first of a particular type of case since a new court decision, or authorization to follow a case into another district or region, if necessary. The GS-12 investigator is responsible for planning cases independently, and working out arrangements with other jurisdictions except in policy areas. For example, in setting up a joint raid involving Federal and local law enforcement, the investigator is responsible for planning and timing. However, they must work through supervisors in coordinating the commitment of resources and staff.

In contrast, at the GS-13 grade level, investigators receive assignments through program discussions, e.g., conferences or written directives that outline broad objectives, e.g., to stop smuggling of a particular commodity at a given port. The GS-13 investigator outlines the objectives and boundaries of the assignment, plans the resources needed, and includes plans for assuring coordination with other jurisdictions. Instructions are more generalized than at the GS-12 grade level. The review of work is typically in the form of discussions at certain critical points, e.g., suggestions on the commitment of resources in other domestic or foreign offices that are normally approved. Recommendations for extension, modification, or adoption of new lines of inquiry are normally accepted, although the sensitivity and importance of the cases must be cleared by the very highest individuals in the agency. GS-13 investigators devise methods, techniques and approaches to problems that often set patterns for subsequent investigations in similar areas and are often adopted for use by investigators at lower grades. GS-13 investigators are responsible for devising breakthroughs in investigative approaches, techniques, and policies. Investigations are planned and executed for the greatest possible deterrent impact. An extremely high degree of initiative and originality is required at the GS-13 grade level because of the various locations throughout a wide area under investigations, and suspected violators typically retain the best legal or accounting advice available; and investigations often establish important precedents, e.g., the first case of a particular type investigated under a new provision of law, the outcome of which may affect pending cases or influence the decision on such cases in the future.

The appellant states, and his supervisor confirmed, that he receives administrative supervision. His supervisor becomes involved on resource and timeframe issues. He deals directly with site attorneys and RPM's on site investigation parameters and direction. The appellant works with

the freedom from supervision approaching the GS-13 grade level in that he makes a preliminary study of the assignment, outlines the objectives and boundaries as he sees them, plans the resources that he needs, and anticipates coordinating requirements. However, the level of responsibility is closely linked to the level of complexity of assignments that we have evaluated at the GS-12 grade level. Increased independence and increased difficulty of assignments are not meaningful unless considered together. The appellant's cases do not meet the GS-13 grade level in scope or complexity. The resources for which he must plan, and the lines of inquiry that may flow from his cases fail to meet the GS-13 grade level. Tracking PRP factual information does not involve responsibility for dealing with the highly sensitive case issues, clearance requirements, or impact that are part of GS-13 grade level work. The PD of record states that the appellant conducts sensitive investigations involving current or former Government officials or employees who may have information or may have been involved in past disposal activities at a site or where disputes over jurisdiction could result in embarrassment to the programs or agency representatives. While these situations may occur, the record shows that they do not occur with sufficient frequency to affect the classification of the position (Introduction, section III.F.2.).

The appellant's rationale states that he has devised innovative methods for conducting investigations, including using Westlaw, Moody's *Industrial Manual*, *Thomas Register*, Choice point, the American Business Disc from infoUSA, Inc., Autotrack, Lexus, and similar databases and published data sources to locate and develop information about PRP's. The appellant emphasized that he was the first EPA investigator to use the American Business Disc for PRP searches and the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FINCENS) to gather currency transaction data. However, using these commercially available and Government sources are not equivalent to devising methods, techniques and approaches found at the GS-13 grade level.

Based on the above analysis, this factor is credited at the GS-12 grade level.

Summary

Our application of the Guide fully considers the appellant's WAM functions. The nature of that work does not exceed the complexity of or responsibility for the casework credited to the position. With both factors credited at the GS-12 grade level, the appellant's work covered by the Guide is classified properly at the GS-12 grade level.

Evaluation using the GS-1160 PCS

The GS-1160 PCS distinguishes between grade levels based on: Characteristics of the Level, Typical Assignments, Personal Work Contacts, and Supervision Received.

Characteristics of the Level

As at the GS-11 grade level, the appellant independently analyzes the full variety of financial and management problems that normally occur in corporate organizations of average size engaged in commonly-known kinds of commercial, industrial, construction, municipal, or other operations

of conventional types. They have financial and operational structures of moderate complexity, and engage in the financial operations and transactions normally used in the field involved. Questions or problems concerning the interpretation of regulatory or statutory provisions and the applicability of prescribed work methods and procedures in specific cases are a normal occurrence in the work. The work includes responsibility for recognizing such problems, suggesting appropriate action when such action appears to be clearly indicated, and referring the case to higher authority for review and decision. The appellant is responsible for completing all of the steps in the assignment including securing necessary information from standard reference works and source materials in resolving questions. He determines the need for and secures additional data information from related material in financial publications, reports on general financial and business operations, and similar material sources to perform the review.

Typical of the GS-11 grade level, the appellant's analyses determine the financial and management operations of commercial, industrial, and/or other corporate organizations to evaluate their financial condition. This includes (1) examining all pertinent financial statements, accounting records, operating reports, and similar material, (2) comparing the past, present and future financial and operating condition of the organization, and (3) identifying and evaluating all elements which affect the financial soundness, condition and/or capability of the corporation. He identifies deficiencies pertinent to the purpose of the financial evaluation, e.g., omissions of financial or operational information which create a distortion of the corporation's financial condition. As at this level, he prepares reports that identify unusual problems encountered, summarizes the analyses and evaluations made, and presents conclusions and recommendations based on the findings.

The appellant does not perform the more complex financial analyses or deal with problems or questions of a new or unprecedented nature found at the GS-12 grade level. GS-12 grade level work requires defining the problem, developing material suitable for the evaluation of unprecedented questions, and developing new methods and procedures to resolve new and unusual problems. While the appellant may deal with large, multi-national firms, their ability to pay frequently is not at issue. Information on their ability to pay also is available from the Securities and Exchange Commission, tax returns, and other readily available information. Therefore, the appellant does not routinely delve into the complicated financial and operational structures of large corporate entities, new commercial, industrial, municipal, or other operations or activities; complicated and interrelated financial and/or operating structures. The work also does not routinely require him to deal with questions that cannot be resolved through the application of standard analysis and evaluation methods, or questions concerning the interpretation or applicability of legislative or regulatory provisions for which there are few, if any, precedents. A contractor, Industrial Economics, typically is used to investigate ability to pay issues that cannot be resolved by reviewing readily available documents and those that entail more elaborate and time consuming analysis. Therefore, this factor is credited at the GS-11 grade level.

Typical Assignments

Typical of GS-11 grade level work, the appellant's analyses are made to determine the financial, operational, and economic soundness of corporate businesses, e.g., evaluating the accuracy and adequacy of statements concerning financial condition and business operations made by such businesses in connection with securities transactions. . As at this grade level, the appellant looked at the financial soundness, engineering feasibility, economic soundness, and developmental value of the [name] project.

The appellant's work does not normally involve questions or problems that are new, unusual, and/or of greater than average difficulty found at the GS-12 grade level such as the analysis of material submitted by large commercial corporations filing under the security disclosure requirements for the first time. This typically requires consideration of complicated financial and management operations and, in addition, correction of a substantial number of errors, omissions, and discrepancies resulting from the corporation's lack of familiarity with requirements. Therefore, this factor is credited at the GS-11 grade level.

Personal Work Contacts

As at the GS-11 grade level, work contacts require tact and diplomacy to develop information on the PRP's evaluated, and to develop material concerning general financial and business conditions within the specific commercial or other field involved. While most of the appellant's work is based on records review, contacts that may be necessary, e.g., reviewing [name], would be to insure engineering feasibility, legal validity, and economic soundness, and to maintain current information regarding economic or similar conditions affecting proposals for use in establishing feasibility or ability to pay.

The appellant deals with employees of other Federal agencies, e.g., FINCENS engaged in related activities to coordinate projects of mutual concern. His work contacts do not meet the GS-12 grade level since they do not involve the more complex matters of questionable, unusual, or unique nature handled at that grade level. Therefore, this factor is credited at the GS-11 grade level.

Supervision Received

As at the GS-11 grade level, the appellant receives work without instructions. The site attorney, rather than the appellant's immediate supervisor, reviews the work performed for adequacy of analysis, soundness of conclusions and recommendations, and conformance with established policies and procedures. Since he does not deal with cases of GS-12 grade level difficulty and complexity, he does not receive advice on issues that require a major departure from established policy or precedent typical of that grade level. Therefore, this factor is credited at the GS-11 grade level.

Summary

Based on the above analysis, the appellant's financial analysis work is evaluated at the GS-11 grade level.

Decision

We have credited the investigative work at the GS-12 grade level and the financial analysis work at the GS-11 grade level. Because the GS-12 grade level work is performed a sufficient amount of the time, the position is properly classified as Investigator, GS-1810-12.