



## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

### RIN 3206-AO15

### Prevailing Rate Systems; Conduct of Local Wage Surveys

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The Office of Personnel Management is issuing an interim final rule to amend regulations to allow for additional options to collect wage data during Federal Wage System full-scale and wage change surveys, namely, by personal visit, telephone, mail, or electronic means. This change is based on a majority recommendation of the Federal Prevailing Rate Advisory Committee and was initiated by a Department of Defense request for greater flexibility to obtain accurate and timely prevailing wage data in local labor markets during and after the national emergency caused by the COVID-19 health crisis.

**DATES:** The interim final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Mark Allen, by telephone at (202) 606-2858 or by email at [pay-leave-policy@opm.gov](mailto:pay-leave-policy@opm.gov).

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management (OPM) received a request from the Department of Defense (DOD) to amend the regulatory provisions in part 532 of title 5, Code of Federal Regulations (CFR), which require in-person visits by data collectors to private industrial establishments for Federal Wage System (FWS) full-scale wage surveys. This interim final rule amends sections 5 CFR 532.201, 532.207, 532.235, and 532.247.

Under sections 5343(a)(2) and (3) of title 5, United States Code, OPM designates a lead agency for each wage area to conduct wage surveys, analyze wage survey data, and develop and establish appropriate wage schedules and rates for prevailing rate employees. DOD is the designated lead agency for all FWS wage areas.

Wage surveys are conducted every year. A full-scale wage survey is conducted one year, with data collectors required to make in-person visits to local private sector employers to collect wage data. The next year a wage change survey is conducted, with data collectors contacting participants from the prior full-scale wage survey to collect wage data on previously collected jobs.

The overall objective of FWS wage surveys is to obtain the most accurate information possible to measure prevailing wage levels in each wage area and establish wage schedules in accordance with prevailing rate systems law. The preferred method for collecting wage data from private sector establishments during full-scale wage surveys is by personal visit to such establishments. Even though the preferred method continues to be personal visits, technological advances now provide new tools for data collection that were not available when the FWS pay system was established. There are now electronic tools, systems, devices, and resources that assist in gathering information in cost effective and reliable ways. Use of these new tools would provide DOD staff with opportunities to innovate and improve data collection methods.

Labor participation at all levels is a requirement within the FWS, including for the

collection and the analysis of the survey data. In all wage areas, local labor-management teams participate in the collection of data from private sector establishments. This will not change. As the lead agency for all wage areas, DOD will continue to work together with labor organizations during the data collection process even when in-person visits cannot be conducted. Labor participation will be facilitated through alternative data collection processes to include telephone, mail, and electronic means.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended this change by majority vote.

### **Waiver of Notice of Proposed Rule Making**

OPM is issuing this rulemaking as an interim final rule and has determined that, under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), it would be impracticable and contrary to the public interest to delay a final regulation until a public notice and comment process has been completed. OPM also is waiving general notice of proposed rulemaking under the Civil Service Reform Act's parallel rulemaking provision, 5 U.S.C. 1103(b)(3), because the interim final rule is temporary in nature and necessary to be implemented expeditiously as a result of an emergency.

The United States is experiencing a national emergency caused by the spread of the novel coronavirus SARS-CoV-2 and the respiratory disease it causes (COVID-19). OPM has established in regulation a timetable for when a local wage survey must begin in each FWS wage area. Due to this national emergency, DOD staff responsible for local wage survey activities have not been able to travel and collect local wage survey data. In addition, many private sector establishments where DOD wage survey staff normally collect wage data are not operating with human resources staff on site to meet in person. The current pandemic was not envisioned when the wage survey timetable was originally established and OPM does not have the ability under the law or regulation to waive the annual wage survey requirements.

This regulation will provide new tools for data collection that will assist DOD to gather information in cost effective and reliable ways even during a national or local emergency. The conclusion of a public notice and comment period before the rule is finalized would be impracticable because it would impede DOD from obtaining timely and accurate information to measure prevailing wage levels and establish wage schedules in accordance with prevailing rate systems law in those wage areas where a full-scale wage survey is required.

President Trump declared a national emergency in response to the COVID-19 public health crisis on March 13, 2020. In efforts to limit spread of the disease and to protect employees' safety, DOD immediately implemented a travel ban, which made it impossible for data collectors to obtain survey data by personal visits to private sector establishments. The management members of FPRAC introduced a proposal at the Committee's July 16, 2020, meeting to amend the regulations in 5 CFR part 532 to allow for the collection of data by alternate means. A final recommendation was adopted at FPRAC's September 17, 2020, meeting. Because of the need to issue timely wage schedules for FWS employees in accordance with current law and the regulatory timetable for conducting local wage surveys, there is insufficient time for OPM to complete a notice and comment rulemaking without negatively impacting the accuracy and timeliness of local prevailing wage determinations. The conclusion of a public notice and comment period before the rule is finalized would also be contrary to the public interest because it would result in wage schedules being based only on the minimum pay increase applicable under separate appropriations law and not on current local wage survey data.

For these reasons, OPM has determined that the public notice and participation that the law ordinarily requires would, in this case, be impracticable and contrary to the public interest and that good cause exists to waive the general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b)(B) and delay its solicitation of comments from the public until after it issues an interim final rule. The interim final rule is temporary in nature, and expeditious timing is required because of the circumstances facing DOD during the COVID-19 emergency. OPM will

promulgate a final rule as soon as practical after receiving public comments on the interim final rule.

### **Regulatory Impact Analysis**

OPM has examined the impact of this rule as required by Executive Order 12866 and Executive Order 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of \$100 million or more in any 1 year. This rule has not been designated as a “significant regulatory action,” under Executive Order 12866.

### **Regulatory Flexibility Act**

OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities.

### **Federalism**

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

### **Civil Justice Reform**

This regulation meets the applicable standard set forth in Executive Order 12988.

### **Unfunded Mandates Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### **Congressional Review Act**

The Congressional Review Act (5 U.S.C. 801 et seq.) requires rules (as defined in 5

U.S.C. 804) to be submitted to Congress before taking effect. OPM will submit to Congress and the Comptroller General of the United States a report regarding the issuance of this action before its effective date, as required by 5 U.S.C. 801. This action is not major as defined by the Congressional Review Act (CRA) (5 U.S.C. 804).

### **Paperwork Reduction Act**

While this rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, the following collections will be affected:

Establishment Information Form (DD 1918), Wage Data Collection Form (DD 1919), and Wage Data Collection Continuation Form (DD 1919C)—OMB Control Number: 3206-0036.

The wage survey methodology required of DOD when using these forms is not being updated. The survey and burden times associated with this survey remain the same and, therefore, the forms do not need to be resubmitted for OMB review. We do not expect the respondent burden to increase or decrease through this change in procedure. In the long term, DOD may be able to save on some travel costs but given that the decision to use alternative data collection methods than in-person visits will reside with the local wage survey committee any cost savings are currently unknowable.

### **List of Subjects in 5 CFR Part 532**

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

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Alexys Stanley,  
Regulatory Affairs Analyst.

Accordingly, OPM is amending 5 CFR part 532 as follows:

### **PART 532--PREVAILING RATE SYSTEMS**

1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

**PART 532—PREVAILING RATE SYSTEMS**

2. Amend § 532.201 by revising the definitions of “Full-scale survey” and “Wage change survey” to read as follows:

**§ 532.201 Definitions.**

\* \* \* \* \*

*Full-scale survey* means a survey conducted at least every 2 years in which data are collected from a current sampling of establishments in the private sector by personal visit of data collectors. With the unanimous consent of the members of a Local Wage Survey Committee, data may also be obtained from a private sector establishment or establishments during a full-scale wage survey by telephone, mail, or electronic means.

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*Wage change survey* means a survey in which rate change data are collected from the same establishments and for the same establishment occupations represented in the full-scale survey. These data may be collected by telephone, mail, electronic means, or personal visit.

3. Amend § 532.207 by revising paragraphs (a) through (c) to read as follows:

**§ 532.207 Time schedule for wage surveys.**

(a) Wage surveys shall be conducted on a 2-year cycle at annual intervals.

(b) A full-scale survey shall be made in the first year of the 2-year cycle and shall include development of a current sample of establishments and the collection of wage data by visits to establishments. With the unanimous consent of the members of a Local Wage Survey Committee, data may also be obtained from a private sector establishment or establishments during a full-scale wage survey by telephone, mail, or electronic means.

(c) A wage-change survey shall be made every other year using only the same employers, occupations, survey jobs, and establishment weights used in the preceding full-scale survey. Data may be collected by telephone, mail, electronic means, or personal contact.

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4. Amend § 532.235 by revising paragraph (a) and paragraph (b) introductory text to read as follows:

**§ 532.235 Conduct of full-scale wage survey.**

(a) Wage survey data shall not be collected before the date the survey is ordered by the lead agency.

(b) Data collection for a full-scale wage survey shall be accomplished by personal visit to private sector establishments. With the unanimous consent of the members of a Local Wage Survey Committee, data may also be obtained from a private sector establishment or establishments during a full-scale wage survey by telephone, mail, or electronic means. The following required data shall be collected:

\* \* \* \* \*

5. Amend § 532.247 by revising paragraphs (a) through (c) to read as follows:

**§ 532.247 Wage change surveys.**

(a) Wage change surveys shall be conducted in each wage area in years during which full-scale wage surveys are not conducted.

(b) Data shall be collected in wage change surveys only from establishments which participated in the preceding full-scale survey. Information concerning pay adjustments of general application in effect for jobs matched in each establishment which participated in the preceding full-scale survey shall be obtained.

(c) Data may be obtained in wage change surveys by telephone, mail, electronic means, or personal visit. The chairperson of the local wage survey committee shall determine the manner in which establishments will be contacted for collection of data. Data may be collected by the local wage survey committee members or by data collectors appointed and assigned to two member teams in accordance with § 532.233(e) of this subpart.

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