

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

RIN 3206-AG83

### Prevailing Rate Systems; Technical Corrections and Clarifications

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing proposed regulations to correct and clarify certain matters relating primarily to pay administration under the Federal Wage System (FWS). The proposed regulations would correct errors and eliminate ambiguities in the administration of the system.

**DATES:** Comments must be received by August 14, 1995.

**ADDRESSES:** Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Policy, Human Resources Systems Service, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Paul Shields, (202) 606-2848.

**SUPPLEMENTARY INFORMATION:** Federal agencies have been instrumental in helping OPM to identify the need for several corrections and clarifications in FWS regulations. In some cases, errors were noted. In other instances, regulatory provisions were found to be ambiguous. Accordingly, the proposed changes include the following: (1) Clarification of provisions governing the analysis of usable wage survey data in § 532.241; (2) clarification of the definitions of two terms in § 532.401; (3) a description of limitations on the use of a rate of pay earned on temporary promotion as a "highest previous rate" in § 532.405; (4) correction for conformance with 5 CFR part 536 of provisions on the application of pay retention when a wage schedule is reduced in § 532.415; (5) and insertion

of a mistakenly deleted Standard Industrial Classification code in § 532.267(c)(1).

The Federal Prevailing Rate Advisory Committee reviewed this recommendation and by consensus recommended approval.

### Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

### 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.

**Lorraine A. Green,**

*Deputy Director.*

Accordingly, OPM proposes to amend 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.

### Subpart B—Prevailing Rate Determinations

2. Section 532.241 is amended by revising paragraph (a)(1) to read as follows:

#### § 532.241 Analysis of usable wage survey data.

(a)(1) The lead agency shall compute a weighted average rate for each appropriated fund survey job having at least 10 unweighted matches and for each nonappropriated fund job having at least 5 unweighted matches. The weighted average rates shall be computed using the survey job data collected in accordance with §§ 532.235 and 532.247 and the establishment weight.

3. In § 532.267, paragraph (c)(1) is revised to read as follows:

#### § 532.267 Special wage schedules for aircraft, electronic, and optical instrument overhaul and repair positions in Puerto Rico.

(c) \* \* \*

(1) Surveys shall, at a minimum, include the air transportation and electronics industries in SIC's 3571, 3572, 3575, 3577, 3663, 3669, 3672, 3674, 3679, 3695, 3812, 4512, 4513, 4522, 4581, 5044, and 5045.

\* \* \* \* \*

### Subpart D—Pay Administration

4. In § 532.401, the definitions of *change to lower grade* and *promotion* are revised to read as follows:

#### § 532.401 Definitions.

\* \* \* \* \*

*Change to lower grade* means to change in the position of an employee who, while continuously employed—

(1) Move from a position in one grade of a prevailing rate schedule established under this part to a position in a lower grade of the same type prevailing rate schedule, whether in the same or different wage area;

(2) Moves from a position under a prevailing rate schedule established under this part to a position under a different prevailing rate schedule (e.g., WL to WG) with a lower representative rate; or

(3) Moves from a position not under a prevailing rate schedule to a position with a lower representative rate under a prevailing rate schedule.

\* \* \* \* \*

*Promotion* means a change in the position of an employee who, while continuously employed—

(1) Moves from a position in one grade of a prevailing rate schedule established under this part to a position in a higher grade of the same type prevailing rate schedule, whether in the same or different wage area;

(2) Moves from a position under a prevailing rate schedule established under this part to a position under a different prevailing rate schedule (e.g., WG to WL) with a higher representative rate; or

(3) Moves from a position not under a prevailing rate schedule to a position with a higher representative rate under a prevailing rate schedule.

\* \* \* \* \*

5. In § 532.405, paragraph (d) is added to read as follows:

#### § 532.405 Use of highest previous rate.

\* \* \* \* \*

(d) The highest previous rate may be based upon a rate of pay received during a temporary promotion, so long as the temporary promotion is for a period of not less than 1 year. This limitation does not apply upon permanent placement in a position at the same or higher grade.

6. In § 532.415, paragraph (c) is revised to read as follows:

**§ 532.415 Application of new or revised wage schedules.**

\* \* \* \* \*

(c) In applying a new or revised wage schedule, the scheduled rate of pay of an employee paid at one of the steps of the employee's grade on an old wage schedule shall be adjusted upward to the newly adjusted rate for the same numerical step of the grade whenever there is an increase in rates. Except when there is a decrease in wage rates because of a statutory reduction in scheduled rates, the employee is entitled to pay retention as provided in 5 CFR 536.104(a)(3).

[FR Doc. 95-17278 Filed 7-13-95; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1004

[Docket No. AO-160-A71; DA-93-30]

#### Milk in the Middle Atlantic Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This document recommends changes in some provisions of the Middle Atlantic milk marketing order based on industry proposals considered at a public hearing. The changes would reduce the standards for regulating distributing plants and cooperative reserve processing plants and increase the amount of producer milk that can be diverted to nonpool plants. Additional changes would authorize the market administrator to adjust pool plant qualification standards and producer milk diversion limits to reflect changes in marketing conditions. Also, the decision provides that a pool distributing plant that meets the pooling standards of more than one Federal order should continue to be regulated under this order for two months before regulation can shift to the other order.

A decision on a proposal that would utilize only a route disposition standard to determine under which Federal order a plant should be regulated cannot be made on the basis of the hearing record.

**DATES:** Comments are due on or before August 14, 1995.

**ADDRESSES:** Comments (six copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1366.

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The amendments would promote more orderly marketing of milk by producers and regulated handlers.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the

Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Prior document in this proceeding: Notice of Hearing: Issued February 25, 1994; published March 4, 1994 (59 FR 10326).

#### Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Middle Atlantic marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 30th day after publication of this decision in the **Federal Register**. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at the Holiday Inn-Independence Mall, 400 Arch Street, Philadelphia, Pennsylvania, on May 3, 1994, pursuant to a notice of hearing issued February 25, 1994, and published in the **Federal Register**, March 4, 1994 (59 FR 10326).

The material issues on the record of the hearing relate to:

1. Pool plant definitions and qualifications;
2. Diversions of milk to nonpool plants;
3. Regulation of distributing plants that meet the pooling standards of more than one Federal order.
4. Discretionary authority to revise pooling standards and producer milk diversion limits.

#### Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

##### 1. Pool Plant Definitions and Qualifications

Two proposals that would modify the pool plant definition of the order should be adopted. One proposal would exclude diversions of producer milk