

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-AM63

Prevailing Rate Systems; Special Wage Schedules for Nonappropriated Fund Automotive Mechanics

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management is issuing a proposed rule to establish special wage schedules for the Department of Defense's (DOD's) nonappropriated fund (NAF) automotive mechanics. These special wage schedules would replace the current commission pay practice covering DOD's NAF automotive mechanics with a flat rate pay system. Implementation of a flat rate pay system will better align the pay practice for compensating NAF automotive mechanics with current prevailing pay practices in the private sector.

DATES: We must receive comments on or before August 13, 2012.

ADDRESSES: Send or deliver comments to Jerome D. Mikowicz, Deputy Associate Director for Pay and Leave, Employee Services, U.S. Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415-8200; email pay-leave-policy@opm.gov; or FAX: (202) 606-4264.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606-2838; email pay-leave-policy@opm.gov; or Fax: (202) 606-4264.

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is issuing a proposed rule to establish special wage schedules for the Department of Defense's (DOD's) approximately 80 nonappropriated fund (NAF) automotive mechanics. These special wage schedules would replace the current commission pay practice

covering DOD's NAF automotive mechanics with a flat rate pay system. Implementation of a flat rate pay system will better align the pay practice for compensating NAF automotive mechanics with current prevailing pay practices in the private sector.

Background

Since 1972, OPM (and its predecessor, the Civil Service Commission) has been responsible for overseeing the administration of the Federal Wage System (FWS), the pay system for the Federal Government's craft, trade, and laboring employees. The FWS is designed to provide common policies, practices, and job-grading standards for uniform application by all Federal agencies. While most FWS employees are paid according to their grade level from the regular wage schedule for their wage area, certain agency policies and practices, including the NAF pay practice for compensating automotive mechanics on a commission rate basis, continued as "set-aside" pay practices under the FWS. The set-aside pay practices were to be frozen in place until they could be reviewed by the Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees. These NAF set-aside pay practices are documented in appendix V of the OPM Operating Manual Federal Wage System—Nonappropriated Fund. Appendix V provides the schedules, employee coverage, basis for rates, evaluation plan, and schedule areas applicable under the NAF set-aside schedules.

DOD has requested that the current commission pay practices covering DOD's NAF automotive mechanics be replaced with a flat rate pay system. FPRAC reviewed and recommended that we adopt these changes by majority vote. These changes would be effective on the first day of the first applicable pay period beginning on or after 30 days following publication of the final regulations.

Current Commission Pay Plan

The commission rate special schedules compensate automotive mechanics on the basis of a percentage of sales. Under the current commission pay plan, management controls the shop labor rate and determines the commission percentage. The automotive

mechanic's pay is directly linked to sales generated. Any fluctuation up or down in the shop labor rate impacts the automotive mechanic's earnings.

Proposed Flat Rate Pay Plan

The proposed flat rate pay plan would not be linked to shop labor rates, but would instead take into account local prevailing rates, the mechanic's skill level, and the standard number of hours required to complete a particular job. Since the change would de-link shop labor rates from employee pay rates, it would permit NAF automotive businesses to adjust retail rates as needed without having to adjust employee pay rates.

Under the flat rate pay plan, DOD would conduct a special flat rate survey of similar jobs in the local area annually. An hourly flat rate would be established for each of the covered grades. The flat rate would be de-linked from the sale. Fluctuations up or down in the shop labor rate would not impact the automotive mechanic's earnings.

Employees Covered

NAF automotive mechanics who would be changed to a flat rate pay system are employees in pay plans NA, NL, and NS, series 5823, grades 8 through 10, who are currently paid based on commission. Employees currently being paid hourly rates would not be moved to the flat rate pay system; they will continue to receive hourly rates. No current employee will have his or her pay rate reduced as a result of implementing these new special schedules.

Effect on Employee Benefits

The flat rate pay plan would not change how premium pay, paid leave, and holidays are paid nor would it change the employee's retirement calculation.

FPRAC Oversight

The automotive mechanics flat rate pay plan would be re-evaluated by FPRAC every 3 years, beginning 3 years after OPM issues final regulations to implement the special wage schedules for NAF automotive mechanics. In preparation for this evaluation, OPM staff would prepare a report on the impact of the plan on recruitment, retention, and workers' earnings.

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.

Executive Order 13563 and Executive Order 12866

This proposed rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 13563 and Executive Order 12866.

List of Subjects in 5 CFR Part 532

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

U.S. Office of Personnel Management.

John Berry,
Director.

Accordingly, the U.S. Office of Personnel Management is proposing 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.

2. Subpart B is amended by adding § 532.287 to read as follows:

§ 532.287 Special wage schedules for nonappropriated fund automotive mechanics.

(a) The Department of Defense (DOD) will establish a flat rate pay system for nonappropriated fund (NAF) automotive mechanics. This flat rate pay system will take into account local prevailing rates, the mechanic's skill level, and the standard number of hours required to complete a particular job.

(b) DOD will issue special wage schedules for NAF automotive mechanics who are covered by the flat rate pay system. These special schedules will provide rates of pay for nonsupervisory, leader, and supervisory employees. These special schedule positions will be identified by pay plan codes XW (nonsupervisory), XY (leader), and XZ (supervisory), grades 8–10, and will use the Federal Wage System occupational code 5823.

(c) DOD will issue special wage schedules for NAF automotive mechanics based on annual special flat rate surveys of similar jobs conducted in each special schedule wage area.

(1) The survey area for these special surveys will include the same counties as the regular NAF survey area.

(2) The survey jobs used will be Automotive Worker and Automotive Mechanic.

(3) The special surveys will include data on automotive mechanics that are paid under private industry flat rate pay plans as well as those paid by commission.

(3) In addition to all standard North American Industry Classification System (NAICS) codes currently used on the regular surveys, the industries surveyed will include—

2007 NAICS codes	2007 NAICS industry titles
441110	New Car Dealers.
441310	Automotive Parts and Accessory Stores.
811111	General Automotive Repair.
811191	Automotive Oil Change and Lubrication Shops.

(4) The surveys will cover establishments with a total employment of eight or more.

(5) The special schedules for NAF automotive mechanics will be effective on the same dates as the regular wage schedules in the NAF FWS wage area.

(d) New employees will be hired at step 1 of the position under the flat rate pay system. Current employees will be moved to these special wage schedules on a step-by-step basis. Pay retention will apply to any employee whose rate of basic pay would otherwise be reduced as a result of placement in these new special schedules.

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BILLING CODE 6325-39-P

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 1205**

[Doc. #AMS-CN-11-0091]

Cotton Board Rules and Regulations: Adjusting Supplemental Assessment on Imports (2011 Amendments)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to amend the Cotton Board Rules and Regulations by increasing the value assigned to imported cotton for calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. An amendment is required to adjust the assessments collected on imported cotton and the

cotton content of imported products to be the same as those paid on domestically produced cotton. In addition, AMS proposes to change the Harmonized Tariff Schedule (HTS) statistical reporting numbers that were amended since the last assessment adjustment.

DATES: Comments must be received on or before July 12, 2012.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406. Comments should be submitted in triplicate. Comments may also be submitted electronically through www.regulations.gov. All comments received will be made available for public inspection at Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406. A copy of this notice may be found at: www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406, telephone (540) 361-2726, facsimile (540) 361-1199, or email at Shethir.Riva@ams.usda.gov.

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Research and Promotion Act (7 U.S.C. 2101-2118) (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 12 of the Act, any person subject to an order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition.