

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 531

RIN 3206-AN64

General Schedule Locality Pay Areas

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: On behalf of the President's Pay Agent, the Office of Personnel Management is issuing proposed regulations to establish four new General Schedule locality pay areas, make certain changes to the definitions of existing locality pay areas, and make minor clarifying changes to the names of two locality pay areas. The proposed changes in locality pay area definitions would be applicable on the first day of the first applicable pay period beginning on or after January 1, 2019, subject to issuance of final regulations. Locality pay rates for the four new locality pay areas would be set by the President after the new locality pay areas would be established by regulation.

DATES: We must receive comments on or before August 8, 2018.

ADDRESSES: You may submit comments, identified by RIN 3206-AN64, by either of the following methods:

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

Email: pay-leave-policy@opm.gov. Include "RIN 3206-AN64" in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Joe Ratcliffe by email at pay-leave-policy@opm.gov or by telephone at (202) 606-2838.

SUPPLEMENTARY INFORMATION: Section 5304 of title 5, United States Code, authorizes locality pay for General Schedule (GS) employees with duty stations in the United States and its territories and possessions. Section 5304(f) of title 5, United States Code, authorizes the President's Pay Agent

(the Secretary of Labor, the Director of the Office of Management and Budget (OMB), and the Director of the Office of Personnel Management (OPM)) to determine locality pay areas. The boundaries of locality pay areas are based on appropriate factors, which may include local labor market patterns, commuting patterns, and the practices of other employers. The Pay Agent considers the views and recommendations of the Federal Salary Council, a body composed of experts in the fields of labor relations and pay policy and representatives of Federal employee organizations. The President appoints the members of the Council, which submits annual recommendations to the Pay Agent about the administration of the locality pay program, including the geographic boundaries of locality pay areas. (The Federal Salary Council's recommendations are posted on the OPM website at <https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/#url=Federal-Salary-Council>.) The establishment or modification of pay area boundaries conforms to the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553).

This proposal provides notice and requests comments on proposed regulations to implement the Pay Agent's plan to establish four new locality pay areas; to establish McKinley County, NM, as an area of application to the Albuquerque-Santa Fe-Las Vegas, NM, locality pay area; and to establish San Luis Obispo County, CA, as an area of application to the Los Angeles-Long Beach, CA, locality pay area. (Annual Pay Agent reports on locality pay are posted on the OPM website at <https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/#url=Pay-Agent-Reports>.) As further discussed below, those changes were tentatively approved, pending appropriate rulemaking, in recent annual reports of the President's Pay Agent. In addition, the proposed regulations would link locality pay area definitions to metropolitan statistical areas (MSAs) and combined statistical areas (CSAs) defined in OMB Bulletin 18-03 and would also make minor clarifying changes to the names of two locality pay areas, the geographic boundaries of which would not change.

Establishing Four New Locality Pay Areas

Locality pay is set by comparing GS and non-Federal pay rates for the same levels of work in each locality pay area. Non-Federal salary survey data used to set locality pay rates are collected by the Bureau of Labor Statistics (BLS). BLS uses a method that permits Occupational Employment Statistics (OES) data to be used for locality pay. OES data are available for MSAs and CSAs throughout the Country and permit evaluation of salary levels in many more locations than could be covered under the prior National Compensation Survey alone.

The Federal Salary Council has been monitoring pay comparisons of GS and non-Federal pay in "Rest of U.S." MSAs and CSAs with 2,500 or more GS employees. Based on its review, the Federal Salary Council has recommended new locality pay areas be established for four metropolitan areas with pay gaps averaging more than 10 percentage points above that for the "Rest of U.S." locality pay area over an extended period. The President's Pay Agent has agreed to issue proposed regulations that would establish the four new locality pay areas by modifying 5 CFR 531.603(b) accordingly. The four new locality pay areas proposed are Birmingham-Hoover-Talladega, AL; Burlington-South Burlington, VT; San Antonio-New Braunfels-Pearsall, TX; and Virginia Beach-Norfolk, VA-NC. (In its December 2016 annual report on locality pay, the Pay Agent announced its plan to establish Burlington, VT, and Virginia Beach, VA, as new locality pay areas. In its December 2017 annual report on locality pay, the Pay Agent announced its plan to establish Birmingham, AL, and San Antonio, TX, as new locality pay areas.) Locality pay rates for the four new locality pay areas would be set by the President at a later date after they would be established by regulation.

Criteria for Areas of Application

Locality pay areas consist of (1) the MSA or CSA comprising the basic locality pay area and, where criteria recommended by the Federal Salary Council and approved by the Pay Agent are met, (2) areas of application. Areas of application are locations that are adjacent to the basic locality pay area

and meet approved criteria for inclusion in the locality pay area.

The Pay Agent's current criteria for evaluating locations adjacent to a basic locality pay area for possible inclusion in the locality pay area as areas of application are as follows: For adjacent CSAs and adjacent multi-county MSAs the criteria are 1,500 or more GS employees and an employment interchange rate of at least 7.5 percent. For adjacent single counties, the criteria are 400 or more GS employees and an employment interchange rate of at least 7.5 percent. The employment interchange rate is defined as the sum of the percentage of employed residents of the area under consideration who work in the basic locality pay area and the percentage of the employment in the area under consideration that is accounted for by workers who reside in the basic locality pay area. (The employment interchange rate is calculated by including all workers in assessed locations, not just Federal employees.)

The Pay Agent also has criteria for evaluating Federal facilities that cross county lines into a separate locality pay area. To be included in an adjacent locality pay area, the whole facility must have at least 500 GS employees, with the majority of those employees in the higher-paying locality pay area, or that portion of a Federal facility outside of a higher-paying locality pay area must have at least 750 GS employees, the duty stations of the majority of those employees must be within 10 miles of the separate locality pay area, and a significant number of those employees must commute to work from the higher-paying locality pay area.

New Commuting Patterns Data

In its December 2016 recommendations, the Federal Salary Council recommended using recently updated commuting patterns data in the locality pay program—*i.e.*, commuting patterns data collected as part of the American Community Survey from 2009 to 2013. In its December 2017 report, the Pay Agent agreed that it would consider using those commuting patterns data. The Pay Agent believes it would be appropriate to use the updated commuting patterns data for evaluating potential areas of application. Areas of application included in the locality pay area definitions in this proposed rule, at 5 CFR 531.603(b), reflect use of the updated commuting patterns data for evaluating potential areas of application.

Using the updated commuting patterns data and applying current criteria for evaluating “Rest of U.S.”

locations as potential areas of application result in the addition of one location to an existing locality pay area—McKinley County, NM, would be included in the Albuquerque-Santa Fe-Las Vegas, NM, locality pay area. Regarding the four new locality pay areas proposed, using the updated commuting patterns data and applying current criteria for evaluating “Rest of U.S.” locations as potential areas of application result in the addition of one location to a proposed new locality pay area—Calhoun County, AL, would be included in the proposed Birmingham-Hoover-Talladega, AL, locality pay area.

San Luis Obispo County, CA

In the Federal Salary Council's December 2016 recommendations, the Council made a special recommendation for San Luis Obispo County, CA. Because practically all of San Luis Obispo County's land boundary is bordered by the Los Angeles-Long Beach, CA, and San Jose-San Francisco-Oakland, CA, locality pay areas, the Council recommended that the county be treated as have other “Rest of U.S.” locations entirely bordered by separate locality pay areas—*i.e.*, added to the separate locality pay area with which it has the most commuting. Specifically, the Council recommended that San Luis Obispo County be added to the Los Angeles-Long Beach, CA, locality pay area.

As explained in its December 2017 report, the Pay Agent views the situation regarding San Luis Obispo County as a geographic anomaly. Only a very small amount of the geographic boundary of San Luis Obispo County, CA, in a remote corner of the county, is not adjacent to the Los Angeles-Long Beach, CA, or San Jose-San Francisco-Oakland, CA, locality pay areas. Because practically all of San Luis Obispo County's land boundary is bordered by the Los Angeles-Long Beach, CA, and San Jose-San Francisco-Oakland, CA, locality pay areas, the Pay Agent agrees with the Council that the county should be treated as “Rest of U.S.” locations entirely bordered by separate locality pay areas have been treated. Accordingly, the Pay Agent proposes adding San Luis Obispo County to the Los Angeles-Long Beach, CA, locality pay area as an area of application.

Linking Locality Pay Area Boundaries to OMB-Defined Metropolitan Areas

The Pay Agent has used statistical areas defined by OMB as a basis for locality pay area boundaries since locality pay began in 1994. Such OMB-

defined statistical areas are called “metropolitan statistical areas” (MSAs) and “combined statistical areas” (CSAs). On April 10, 2018, OMB issued a minor update to the definitions of MSAs and CSAs in OMB Bulletin 18–03. The proposed regulations would link the definitions of locality pay areas to the most current OMB definitions of MSAs and CSAs—*i.e.*, those in OMB Bulletin 18–03. The geographic boundaries of locality pay areas would not change automatically if OMB issues a new Bulletin to change the definitions of any MSAs or CSAs serving as the basis of the geographic boundaries of locality pay areas. The Pay Agent would instead assess what the impact of a future bulletin would be on locality pay areas before deciding whether to use the new statistical area definitions.

Changing the Names of Two Locality Pay Areas for Clarification

The Pay Agent proposes changing the names of two locality pay areas for clarification. The State abbreviation “CT” would be removed from the name of the “Boston-Worcester-Providence, MA-RI-NH-CT-ME” locality pay area to clarify that no locations in Connecticut are included in that locality pay area, and the State abbreviation “MA” would be added to the name of the “Albany-Schenectady, NY” locality pay area to clarify that Berkshire County, MA, is included in that locality pay area. These proposed name changes would not change the geographic boundaries of the two locality pay areas affected.

Impact and Implementation

The proposal to establish 4 new locality pay areas would impact about 62,000 GS employees. Implementing that proposal would not automatically change locality pay rates now applicable in those areas. When locality pay percentages are adjusted, past practice has been to allocate a percent of the total GS payroll for locality pay raises and to have the overall dollar cost for such pay raises be the same, regardless of the number of locality pay areas. If a percent of the total GS payroll is allocated for locality pay increases, the addition of new areas results in a somewhat smaller amount to allocate for locality pay increases in existing areas. Implementing higher locality pay rates in the four new locality pay areas could thus result in relatively lower pay increases for employees in existing locality pay areas than they would otherwise receive.

Establishing McKinley County, NM, as an area of application to the Albuquerque-Santa Fe-Las Vegas, NM,

locality pay area would impact about 1,600 GS employees. Establishing San Luis Obispo County, CA, as an area of application to the Los Angeles-Long Beach, CA, locality pay area would impact about 100 GS employees.

Using the definitions of MSAs and CSAs in OMB Bulletin 18–03 as the basis for locality pay area boundaries would have no effect on the definitions of locality pay areas or on GS employees.

The changes proposed for the names of the Boston-Worcester-Providence, MA–RI–NH–CT–ME and Albany-Schenectady, NY, locality pay areas would have no impact on GS employees because the geographic boundaries of the two locality pay areas affected would remain the same.

Executive Order 13563 and Executive Order 12866

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and E.O. 12866.

Executive Order 13771

This proposed rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because it is expected to be related to agency organization, management, or personnel.

Due to the narrow scope of this proposed rule, affecting approximately 63,700 GS employees, OPM does not anticipate this proposed rule would substantially impact local economies or have a large ripple effect in local labor markets. However, studies do suggest increasing wages can raise the wages of other workers when employers need to compete for personnel. Future locality pay rulemaking may impact higher volumes of employees in geographical areas and could rise to the level of impacting markets. OPM will address the implications of such impacts in E.O. 13771 designations for future rules as needed.

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 apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

Jeff T.H. Pon,

Director.

Accordingly, OPM proposes to amend 5 CFR part 531 as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

■ 1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Public Law 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316; Subpart B also issued under 5 U.S.C. 5303(g), 5305, 5333, 5334(a) and (b), and 7701(b)(2); Subpart D also issued under 5 U.S.C. 5335 and 7701(b)(2); Subpart E also issued under 5 U.S.C. 5336; Subpart F also issued under 5 U.S.C. 5304, 5305, and 5941(a), E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682; and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224.

Subpart F—Locality-Based Comparability Payments

■ 2. In § 531.602, the definitions of CSA and MSA are revised to read as follows:

§ 531.602 Definitions.

* * * * *

CSA means the geographic scope of a Combined Statistical Area, as defined by the Office of Management and Budget (OMB) in OMB Bulletin No. 18–03.

* * * * *

MSA means the geographic scope of a Metropolitan Statistical Area, as defined by the Office of Management and Budget (OMB) in OMB Bulletin No. 18–03.

* * * * *

■ 3. In § 531.603, paragraph (b) is revised to read as follows:

§ 531.603 Locality pay areas.

* * * * *

(b) The following are locality pay areas for the purposes of this subpart:

(1) Alaska—consisting of the State of Alaska;

(2) Albany-Schenectady, NY-MA—consisting of the Albany-Schenectady, NY CSA and also including Berkshire County, MA;

(3) Albuquerque-Santa Fe-Las Vegas, NM—consisting of the Albuquerque-Santa Fe-Las Vegas, NM CSA and also including McKinley County, NM;

(4) Atlanta—Athens-Clarke County—Sandy Springs, GA-AL—consisting of the Atlanta—Athens-Clarke County—Sandy Springs, GA CSA and also including Chambers County, AL;

(5) Austin-Round Rock, TX—consisting of the Austin-Round Rock, TX MSA;

(6) Birmingham-Hoover-Talladega, AL—consisting of the Birmingham-Hoover-Talladega, AL CSA and also including Calhoun County, AL;

(7) Boston-Worcester-Providence, MA-RI-NH-ME—consisting of the Boston-Worcester-Providence, MA-RI-NH-CT CSA, except for Windham

County, CT, and also including Androscoggin County, ME, Cumberland County, ME, Sagadahoc County, ME, and York County, ME;

(8) Buffalo-Cheektowaga, NY—consisting of the Buffalo-Cheektowaga, NY CSA;

(9) Burlington-South Burlington, VT—consisting of the Burlington-South Burlington, VT MSA;

(10) Charlotte-Concord, NC-SC—consisting of the Charlotte-Concord, NC-SC CSA;

(11) Chicago-Naperville, IL-IN-WI—consisting of the Chicago-Naperville, IL-IN-WI CSA;

(12) Cincinnati-Wilmington-Maysville, OH-KY-IN—consisting of the Cincinnati-Wilmington-Maysville, OH-KY-IN CSA and also including Franklin County, IN;

(13) Cleveland-Akron-Canton, OH—consisting of the Cleveland-Akron-Canton, OH CSA and also including Harrison County, OH;

(14) Colorado Springs, CO—consisting of the Colorado Springs, CO MSA and also including Fremont County, CO, and Pueblo County, CO;

(15) Columbus-Marion-Zanesville, OH—consisting of the Columbus-Marion-Zanesville, OH CSA;

(16) Dallas-Fort Worth, TX-OK—consisting of the Dallas-Fort Worth, TX-OK CSA and also including Delta County, TX;

(17) Davenport-Moline, IA-IL—consisting of the Davenport-Moline, IA-IL CSA;

(18) Dayton-Springfield-Sidney, OH—consisting of the Dayton-Springfield-Sidney, OH CSA and also including Preble County, OH;

(19) Denver-Aurora, CO—consisting of the Denver-Aurora, CO CSA and also including Larimer County, CO;

(20) Detroit-Warren-Ann Arbor, MI—consisting of the Detroit-Warren-Ann Arbor, MI CSA;

(21) Harrisburg-Lebanon, PA—consisting of the Harrisburg-York-Lebanon, PA CSA, except for Adams County, PA, and York County, PA, and also including Lancaster County, PA;

(22) Hartford-West Hartford, CT-MA—consisting of the Hartford-West Hartford, CT CSA and also including Windham County, CT, Franklin County, MA, Hampden County, MA, and Hampshire County, MA;

(23) Hawaii—consisting of the State of Hawaii;

(24) Houston-The Woodlands, TX—consisting of the Houston-The Woodlands, TX CSA and also including San Jacinto County, TX;

(25) Huntsville-Decatur-Albertville, AL—consisting of the Huntsville-Decatur-Albertville, AL CSA;

(26) Indianapolis-Carmel-Muncie, IN—consisting of the Indianapolis-Carmel-Muncie, IN CSA and also including Grant County, IN;

(27) Kansas City-Overland Park-Kansas City, MO-KS—consisting of the Kansas City-Overland Park-Kansas City, MO-KS CSA and also including Jackson County, KS, Jefferson County, KS, Osage County, KS, Shawnee County, KS, and Wabaunsee County, KS;

(28) Laredo, TX—consisting of the Laredo, TX MSA;

(29) Las Vegas-Henderson, NV-AZ—consisting of the Las Vegas-Henderson, NV-AZ CSA;

(30) Los Angeles-Long Beach, CA—consisting of the Los Angeles-Long Beach, CA CSA and also including Kern County, CA, San Luis Obispo County, CA, and Santa Barbara County, CA;

(31) Miami-Fort Lauderdale-Port St. Lucie, FL—consisting of the Miami-Fort Lauderdale-Port St. Lucie, FL CSA and also including Monroe County, FL;

(32) Milwaukee-Racine-Waukesha, WI—consisting of the Milwaukee-Racine-Waukesha, WI CSA;

(33) Minneapolis-St. Paul, MN-WI—consisting of the Minneapolis-St. Paul, MN-WI CSA;

(34) New York-Newark, NY-NJ-CT-PA—consisting of the New York-Newark, NY-NJ-CT-PA CSA and also including all of Joint Base McGuire-Dix-Lakehurst;

(35) Palm Bay-Melbourne-Titusville, FL—consisting of the Palm Bay-Melbourne-Titusville, FL MSA;

(36) Philadelphia-Reading-Camden, PA-NJ-DE-MD—consisting of the Philadelphia-Reading-Camden, PA-NJ-DE-MD CSA, except for Joint Base McGuire-Dix-Lakehurst;

(37) Phoenix-Mesa-Scottsdale, AZ—consisting of the Phoenix-Mesa-Scottsdale, AZ MSA;

(38) Pittsburgh-New Castle-Weirton, PA-OH-WV—consisting of the Pittsburgh-New Castle-Weirton, PA-OH-WV CSA;

(39) Portland-Vancouver-Salem, OR-WA—consisting of the Portland-Vancouver-Salem, OR-WA CSA;

(40) Raleigh-Durham-Chapel Hill, NC—consisting of the Raleigh-Durham-Chapel Hill, NC CSA and also including Cumberland County, NC, Hoke County, NC, Robeson County, NC, Scotland County, NC, and Wayne County, NC;

(41) Richmond, VA—consisting of the Richmond, VA MSA and also including Cumberland County, VA, King and Queen County, VA, and Louisa County, VA;

(42) Sacramento-Roseville, CA-NV—consisting of the Sacramento-Roseville, CA CSA and also including Carson City, NV, and Douglas County, NV;

(43) San Antonio-New Braunfels-Pearsall, TX—consisting of the San Antonio-New Braunfels-Pearsall, TX CSA;

(44) San Diego-Carlsbad, CA—consisting of the San Diego-Carlsbad, CA MSA;

(45) San Jose-San Francisco-Oakland, CA—consisting of the San Jose-San Francisco-Oakland, CA CSA and also including Monterey County, CA;

(46) Seattle-Tacoma, WA—consisting of the Seattle-Tacoma, WA CSA and also including Whatcom County, WA;

(47) St. Louis-St. Charles-Farmington, MO-IL—consisting of the St. Louis-St. Charles-Farmington, MO-IL CSA;

(48) Tucson-Nogales, AZ—consisting of the Tucson-Nogales, AZ CSA and also including Cochise County, AZ;

(49) Virginia Beach-Norfolk, VA-NC—consisting of the Virginia Beach-Norfolk, VA-NC CSA;

(50) Washington-Baltimore-Arlington, DC-MD-VA-WV-PA—consisting of the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA CSA and also including Kent County, MD, Adams County, PA, York County, PA, King George County, VA, and Morgan County, WV; and

(51) Rest of U.S.—consisting of those portions of the United States and its territories and possessions as listed in 5 CFR 591.205 not located within another locality pay area.

[FR Doc. 2018-14542 Filed 7-6-18; 8:45 am]

BILLING CODE 6325-39-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 357

[Docket No. APHIS-2013-0055]

RIN 0579-AD44

Lacey Act Implementation Plan: De Minimis Exception

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food, Conservation, and Energy Act of 2008 amended the Lacey Act to provide, among other things, that importers submit a declaration at the time of importation for certain plants and plant products. The declaration requirement of the Lacey Act became effective on December 15, 2008, and enforcement of that requirement is being phased in. We are proposing to establish an exception to the declaration requirement for products containing a minimal amount of plant materials. This

action would relieve the burden on importers while continuing to ensure that the declaration requirement fulfills the purposes of the Lacey Act. We are also proposing that all Lacey Act declarations be submitted within 3 business days of importation.

DATES: We will consider all comments that we receive on or before September 7, 2018.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov#!docketDetail;D=APHIS-2013-0055>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2013-0055, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov#!docketDetail;D=APHIS-2013-0055> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Parul Patel, Senior Agriculturalist, Permitting and Compliance Coordination, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737-1231; (301) 851-2351.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Need for the Regulatory Action

Section 3 of the Lacey Act makes it unlawful to import certain plants, including plant products, without an import declaration. The import declaration serves as a tool for combatting the illegal trade in timber and timber products by ensuring importers provide required information. Through the declaration requirement, the importer maintains accountability for exercising reasonable care regarding the content of the shipment before it arrives in the United States. Information from the declaration is also used to monitor implementation of Lacey Act requirements. The declaration must contain the scientific name of the plant, value of the importation, quantity of the plant, and name of the country from which the plant was harvested. However, the Act does not explicitly address whether the declaration