

# 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

[Docket ID: OPM–2023–0028]

RIN 3206–AO64

### Prevailing Rate Systems; North American Industry Classification System Based Federal Wage System Wage Surveys

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a proposed rule to update the 2017 North American Industry Classification System (NAICS) codes currently used in Federal Wage System (FWS) wage survey industry regulations with the 2022 NAICS revisions published by the Office of Management and Budget (OMB).

**DATES:** Send comments on or before October 27, 2023.

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

• *Federal Rulemaking Portal:* <https://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 <https://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

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

#### SUPPLEMENTARY INFORMATION:

Section 5343 of title 5, U.S. Code, provides OPM with the authority and

responsibility to prescribe practices and procedures for conducting wage surveys. Beginning in November 2006, based on recommendations of the Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, full scale surveys have been using NAICS codes as the method of determining if an industry is appropriate for survey. OMB updates the NAICS codes every five years, at which time OPM also updates the list of NAICS codes covered by OPM wage survey regulations. On July 30, 2019, OPM issued a final rule (84 FR 36813) to update the 2012 NAICS codes used in FWS wage survey industry regulations with the 2017 NAICS revisions published by OMB. OPM's current regulations use 2017 NAICS codes. OMB has now published the NAICS revisions for 2022, which result in certain changes in industry coverage for FWS wage surveys. This rulemaking proposes to update OPM's regulations with the 2022 NAICS codes revisions.

The following sections of 5 CFR part 532 list the industries included in the FWS wage surveys by 2017 NAICS codes:

- Section 532.213—Industries included in regular appropriated fund wage surveys.
- Section 532.221—Industries included in regular nonappropriated fund surveys.
- Section 532.223—Establishments included in regular nonappropriated fund surveys.
- Section 532.267—Special wage schedules for aircraft, electronic, and optical instrument overhaul and repair positions in Puerto Rico.
- Section 532.285—Special wage schedules for supervisors of negotiated rate Bureau of Reclamation employees.
- Section 532.313—Private sector industries.

OPM has reviewed these regulations in light of OMB's NAICS revisions for 2022 and is proposing the following changes:

- Delete NAICS code 515 (Broadcasting (except internet)) from the list of required NAICS codes in 5 CFR 532.213 and add NAICS code 516 (Broadcasting and content providers);
- Delete NAICS codes 44132 (Tire dealers), 443 (Electronics and appliance stores), 44611 (Pharmacies and drug

stores), 4471 (Gasoline stations), 44814 (Family clothing stores), 4522 (Department stores), 4523 (All other general merchandise stores), 45321 (Office supplies and stationery stores) and 4542 (Vending machine operators) from the list of required NAICS codes in 5 CFR 532.221 and add NAICS codes 44134 (Tire dealers), 449210 (Electronics and appliance retailers), 45611 (Pharmacies and drug stores), 4571 (Gasoline stations), 45811 (Clothing and clothing accessories retailers), 4551 (Department stores), 4552 (Warehouse clubs, supercenters, and other general merchandise retailers), and 45941 (Office supplies and stationery retailers);

- Delete NAICS codes 4471 (Gasoline stations) and 4542 (Vending machine operators) from the list of required NAICS codes in 5 CFR 532.223 and add NAICS code 4571 (Gasoline stations);
- Delete NAICS codes 333316

(Photographic and photocopying equipment manufacturing) and 334613 (Blank magnetic and optical recording media manufacturing) from the list of required NAICS codes in 5 CFR 532.267 and add NAICS codes 333310 (Commercial and service industry machinery manufacturing) and 334610 (Manufacturing and reproducing magnetic and optical media);

- Delete NAICS code 515 (Broadcasting (except internet)) from the list of required NAICS codes in 5 CFR 532.285 and add NAICS code 516 (Broadcasting and content providers);
- Delete NAICS code 441310

(Automotive parts and accessory stores) from the list of required NAICS codes in 5 CFR 532.287;

- Revise the title of NAICS code 4413 to read “Automotive parts, accessories, and tire retailers” in the list of required NAICS codes in the Artillery and combat vehicles specialized industry in 5 CFR 532.313;
- Delete NAICS codes 44421

(Outdoor power equipment stores), 5173 (Wired and wireless telecommunications carriers), and 517911 (Telecommunications resellers) from the list of required NAICS codes in the Artillery and combat vehicle specialized industry in 5 CFR 532.313 and add NAICS codes 44423 (Outdoor power equipment retailers), 5171 (Wired and wireless telecommunications carriers (except Satellite)) and 517121 (Telecommunications resellers);

- Delete NAICS codes 5151 (Radio and television broadcasting), 5152 (Cable and other subscription programming), 5173 (Wired and wireless telecommunications carriers) and 517911 (Telecommunications resellers) from the list of required NAICS codes in the Communications specialized industry in 5 CFR 532.313 and add NAICS codes 5161 (Radio and television broadcasting stations), 5162 (Media streaming distribution services, social networks, and other media networks and content providers), 5171 (Wired and wireless telecommunications carriers(except Satellite)), and 517121 (Telecommunications resellers);
- Delete NAICS codes 333316 (Photographic and photocopying equipment manufacturing) and 334613 (Blank magnetic and optical recording media manufacturing) from the list of required NAICS codes in the Electronics specialized industry and Guided missiles specialized industry in 5 CFR 532.313 and add NAICS codes 333310 (Commercial and service industry machinery manufacturing) and 334610 (Manufacturing and reproducing magnetic and optical media); and
- Delete NAICS codes 333314 (Optical instrument and lens manufacturing), 333316 (Photographic and photocopying equipment manufacturing) and 334613 (Blank magnetic and optical recording media manufacturing) from the list of required NAICS codes in the Sighting and fire control equipment specialized industry in 5 CFR 532.313 and add NAICS codes 333310 (Commercial and service industry machinery manufacturing) and 334610 (Manufacturing and reproducing magnetic and optical media).

No other sections are affected by 2022 changes in NAICS codes. OPM is also proposing to replace the year “2017” with “2022” in the table titles of all applicable sections.

FPRAC recommended these changes by consensus at its May 18, 2023, meeting. The transcript of this meeting can be found on the Federal Wage System website, available at <https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/federal-wage-system/#url=FPRAC>.

**Expected Impact of This Proposed Rule**

OPM is issuing this proposed rule so that its FWS wage survey industry regulations remain consistent and up-to-date with OMB’s NAICS codes. OPM expects this rulemaking to have no significant impact on whether

companies are included or excluded from wage surveys. The expected costs would be de minimis since the Department of Defense, the lead agency responsible for conducting FWS wage surveys, will only have to make some minor changes in their computer systems to follow the updated NAICS codes. OPM does not anticipate this rulemaking will have a substantial impact on the local economies or a large impact in the local labor markets. However, OPM is requesting comment on this proposed rule regarding the impact. OPM is particularly interested in receiving comments on its use of NAICS codes in FWS wage survey industry regulations. OPM will continue to study the implications of such impacts of this or future rules as needed, as this and future changes in OMB’s NAICS codes may have higher impact on wage survey methodology.

**Regulatory Review**

Executive Orders 13563, 12866, and 14094 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). This rulemaking is not a “significant regulatory action” under the provisions of Executive Order 12866 and, therefore, was not reviewed by OMB.

**Regulatory Flexibility Act**

The Director of OPM certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities because this rulemaking will affect only Federal agencies and employees.

**Federalism**

OPM examined this rulemaking in accordance with Executive Order 13132, Federalism, and determined that it 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 rulemaking 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.

**Paperwork Reduction Act**

This rulemaking does not impose any reporting or record-keeping requirements subject to the Paperwork Reduction Act.

**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. **Kayyonne Marston,** *Federal Register Liaison.*

Accordingly, OPM 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. In § 532.213, amend the table in paragraph (a) by revising the column headings, removing the entry for NAICS code 515, and adding in numerical order an entry for NAICS code 516 to read as follows.

**§ 532.213 Industries included in regular appropriated fund wage surveys.**

(a) \* \* \*

2022 NAICS codes	2022 NAICS codes
* * * * *	
516 .....	Broadcasting and content providers.
* * * * *	

■ 3. In § 532.221, amend the table in paragraph (a) by revising the column headings, removing the entries for NAICS codes 44132, 443, 44611, 4471, 44814, 4522, 4523, 45321, 4542, and adding in numerical order entries for NAICS codes 44134, 449210, 4551, 4552, 45611, 4571, 45811, 45941 to read as follows:

**§ 532.221 Industries included in regular nonappropriated fund surveys.**

(a) \* \* \*

2022 NAICS codes		2022 NAICS codes	
44134	Tire dealers.		
449210	Electronics and appliance retailers.		
4551	Department stores.		
4552	Warehouse clubs, supercenters, and other general merchandise retailers.		
45611	Pharmacies and drug stores.		
4571	Gasoline stations.		
45811	Clothing and clothing accessories retailers.		
45941	Office supplies and stationery retailers.		

\* \* \* \* \*

■ 4. In § 532.223, revise paragraph (a) to read as follows:

**§ 532.223 Establishments included in regular nonappropriated fund surveys.**

(a) All establishments having 20 or more employees in the prescribed industries within a survey area must be included in the survey universe.

Establishments in NAICS codes 4571, 71391, and 71395 must be included in the survey universe if they have eight or more employees.

\* \* \* \* \*

■ 5. In § 532.267, amend the table in paragraph (c)(1) by revising the column headings, removing the entries for NAICS codes 333316 and 334613, and adding in numerical order entries for

NAICS codes 333310 and 334610 to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

2022 NAICS codes		2022 NAICS codes	
333310	Commercial and service industry machinery manufacturing.		
334610	Manufacturing and reproducing magnetic and optical media.		

\* \* \* \* \*

■ 6. In § 532.285, amend the table in paragraph (c)(1) by revising the column headings, removing the entry for NAICS code 515, and adding in numerical

order an entry for NAICS code 516 to read as read as follows:

**§ 532.285 Special wage schedules for supervisors of negotiated rate Bureau of Reclamation employees.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

2022 NAICS codes		2022 NAICS industry titles	
516	Broadcasting and content providers.		

\* \* \* \* \*

**§ 532.287 [Amended]**

■ 7. In § 532.287, amend the table in paragraph (c)(4) by:

■ a. Removing the column heading “2017 NAICS codes” and adding in its place “2022 NAICS codes”;

■ b. Removing the column heading “2017 NAICS industry titles” and adding in its place “2022 NAICS industry titles”; and

■ c. Removing the entry for NAICS code 441310.

■ 8. In § 532.313, amend the table in paragraph (a) by:

- a. Revising the column headings;
- b. Under the heading “Artillery and Combat Vehicle Specialized Industry”:
- i. Revising the entry for NAICS Code 4413;
- ii. Removing the entries for NAICS Codes 44421, 5173, and 517911; and
- iii. Adding in numerical order entries for NAICS Codes 44423, 5171, and 517121;
- c. Under the heading “Communications Specialized Industry”:

- i. Removing the entries for NAICS Codes 5151, 5152, 5173, and 517911; and
- ii. Adding in numerical order entries for NAICS Codes 5161, 5162, 5171, and 517121;
- d. Under the heading “Electronics Specialized Industry”:
- i. Removing the entries for NAICS Codes 333316 and 334613; and
- ii. Adding in numerical order entries for NAICS Codes 333310 and 334610
- e. Under the heading “Guided Missiles Specialized Industry”:

■ i. Removing the entries for NAICS Codes 333316 and 334613; and  
 ■ ii. Adding in numerical order entries for NAICS Codes 333310 and 334610;  
 ■ f. Under the heading “Sighting and Fire Control Equipment Specialized Industry”:

■ i. Removing the entries for NAICS Codes 333314, 333316, and 334613; and  
 ■ ii. Adding in numerical order entries for NAICS Codes 333310 and 334610.  
 The revisions and additions read as follows:

§ 532.313 Private sector industries.  
 (a) \* \* \*

2022 NAICS codes		2022 NAICS industry titles				
<b>Artillery and Combat Vehicles Specialized Industry</b>						
4413	.....	Automotive parts, accessories, and tire retailers.				
44423	.....	Outdoor power equipment retailers.				
5171	.....	Wired and wireless telecommunications carriers (except Satellite).				
517121	.....	Telecommunications resellers.				
<b>Communications Specialized Industry</b>						
5161	.....	Radio and television broadcasting stations.				
5162	.....	Media streaming distribution services, social networks, and other media networks and content providers.				
5171	.....	Wired and wireless telecommunications carriers (except Satellite).				
517121	.....	Telecommunications resellers.				
<b>Electronics Specialized Industry</b>						
333310	.....	Commercial and service industry machinery manufacturing.				
334610	.....	Manufacturing and reproducing magnetic and optical media.				
<b>Guided Missiles Specialized Industry</b>						
333310	.....	Commercial and service industry machinery manufacturing.				
334610	.....	Manufacturing and reproducing magnetic and optical media.				
<b>Sighting and Fire Control Equipment Specialized Industry</b>						
333310	.....	Commercial and service industry machinery manufacturing.				
334610	.....	Manufacturing and reproducing magnetic and optical media.				

\* \* \* \* \*

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