

# Rules and Regulations

Federal Register

Vol. 69, No. 242

Friday, December 17, 2004

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 531

RIN 3206-AJ45

### General Schedule Locality Pay Areas

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is issuing final regulations on behalf of the President's Pay Agent to link the definitions of General Schedule locality pay area boundaries to the geographic scope of the new metropolitan statistical area definitions established by the Office of Management and Budget. This regulation also establishes new criteria for evaluating areas adjacent to locality pay areas for inclusion in the pay area. The regulations retain all of the existing locality pay areas, which are expanded to include a number of additional locations.

**DATES:** Effective date: December 17, 2004.

**FOR FURTHER INFORMATION CONTACT:** Allan Hearne, (202) 606-2838; FAX: (202) 606-4264; e-mail: [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov).

**SUPPLEMENTARY INFORMATION:** Section 5304 of title 5, United States Code, authorizes locality pay for General Schedule (GS) employees with duty stations in the contiguous United States and the District of Columbia. By law, locality pay is set by comparing GS pay rates with non-Federal pay rates for the same levels of work in each locality pay area. Non-Federal pay levels are estimated by means of salary surveys conducted by the Bureau of Labor Statistics (BLS). Currently, there are 32 locality pay areas: 31 separate metropolitan locality pay areas and a Rest of U.S. (RUS) locality pay area that

consists of all locations in the contiguous United States that are not part of one of the 31 separate metropolitan locality pay areas.

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 must be based on appropriate factors, which may include local labor market patterns, commuting patterns, and the practices of other employers. The Pay Agent must give thorough consideration to 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 Federal Salary Council, which submits annual recommendations to the President's Pay Agent about the locality pay program.

On October 28, 2003, the Council recommended that the Pay Agent adopt new metropolitan statistical areas established by OMB as the basis for defining locality pay areas and new criteria for evaluating adjacent areas for inclusion in the locality pay area. The planned changes in locality pay area boundaries based on the Council's recommendations were published in the **Federal Register** on September 22, 2004, and the Pay Agent reviewed comments received through November 8, 2004, the end of the comment period.

Based on the Council's recommendations, the Pay Agent is issuing final regulations that use county-based Metropolitan Statistical Area (MSA) and Combined Statistical Area (CSA) definitions established by OMB as the basis for defining GS locality pay areas. MSA and CSA definitions can be found at <http://www.whitehouse.gov/omb/bulletins/fy04/b04-03.html>.

The Council also recommended and the Pay Agent is adopting new criteria for evaluating adjacent areas for inclusion in a locality pay area. The criteria are:

1. *For adjacent MSAs and CSAs:* To be included in an adjacent locality pay area, an adjacent MSA or CSA currently in the RUS locality pay area must have at least 1,500 GS employees and an

employment interchange measure of at least 7.5 percent.

2. *For adjacent counties that are not part of a multi-county MSA or CSA:* To be included in an adjacent locality pay area, an adjacent county that is currently in the RUS locality pay area must have at least 400 GS employees and an employment interchange measure of at least 7.5 percent.

3. *For Federal facilities that cross locality pay area boundaries:* To be included in an adjacent locality pay area, 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.

The Council also recommended and the Pay Agent is adopting the rule that any county (or partial county in the case of portions of York County, ME) currently included in a metropolitan locality pay area will be retained in the locality pay area if the county or partial county has an employment interchange measure of 15 percent or more with the area covered by the new MSA or CSA definition. "Employment interchange measure" is defined by OMB as "the sum of the percentage of employed residents of the smaller entity who work in the larger entity and the percentage of the employment in the smaller entity that is accounted for by workers who reside in the larger entity."

Noting the disparity between Federal and non-Federal pay levels in the Kansas City, St. Louis, and Orlando locality pay areas as compared to the disparity in the RUS locality pay area, the Council recommended that the Pay Agent discontinue these three locality pay areas. The Pay Agent tentatively agreed to this change in its 2003 report to the President. Upon further review, however, the Pay Agent determined that it would be advisable to continue to monitor the disparity between Federal and non-Federal pay levels in the Kansas City, St. Louis, and Orlando areas before determining whether those areas should be discontinued. The Pay Agent asked the Federal Salary Council to review this matter. In its recommendation letter of October 21, 2004, the Council concluded that these three areas should be discontinued in

2006. OPM currently intends to publish a proposed rule on behalf of the Pay Agent next year to implement this recommendation of the Federal Salary Council.

### Impact and Implementation

Overall, the changes in locality pay area boundaries move about 17,000 GS employees to metropolitan locality pay areas from the RUS locality pay area and retain about 16,000 GS employees in metropolitan locality pay areas that would have been excluded if only the new MSA definitions were used.

### Comments on the Proposed Rule

OPM received 113 comments on the proposed regulations, including comments from Members of Congress from Massachusetts and Virginia and comments from three Federal agencies. The commenters generally supported the planned changes in locality pay areas.

Many of the commenters cited high living costs as the justification for higher locality pay. However, living costs are not directly considered in setting locality pay or defining locality pay areas. Locality pay is set by comparing General Schedule and non-Federal pay for the same levels of work to allow the Government to recruit and retain an adequate workforce. Locality pay is not designed to equalize living standards for GS employees across the country. Since living costs are just one of many factors that affect the supply of and demand for labor, they are not considered separately.

Some commenters suggested that other locations also should be added to a higher paying locality pay area. These locations include Beale Air Force Base in Yuba County, CA; Berks County, PA; Clinton County, OH; Cumberland County, ME; El Paso County, CO; Jefferson County, WA; Lancaster, PA; Mendocino County, CA; and Portland, ME. We have not adopted these suggestions because these locations do not meet the criteria established for being added to an adjacent locality pay area and because BLS is unable to conduct full-scale salary surveys in any of these locations.

The Pay Agent notes that employees in Mendocino County, CA, used census data to measure Federal employment. The Federal Salary Council's criterion for inclusion in a locality pay area is based on the number of GS employees in an area. Census data include other Federal employees, such as uniformed military, blue-collar employees, and U.S. Postal Service employees.

One commenter suggested that GS employment should not be used as a

criterion for evaluating areas or that provisions should be allowed for exceptions if a strong rationale exists. The Pay Agent agrees with the Federal Salary Council that the number of GS employees in the area under consideration is an important factor in assessing areas and defers to the Council's judgment on the matter. The Pay Agent also concludes that exceptions to established rules should be avoided.

Several commenters suggested that the boundaries of GS locality pay areas should coincide with the boundaries of certain Federal Wage System (FWS) local wage areas. There are 32 GS locality pay areas and more than 130 FWS areas. Salary surveys for the GS program are conducted by the Bureau of Labor Statistics, are expensive to conduct, and therefore cover fewer areas. Those for the FWS program are conducted by the Department of Defense, cover jobs that are more readily matched to non-Federal jobs, and include more areas. The Pay Agent concludes that there is no basis for requiring that the boundaries of the GS locality pay areas coincide with the boundaries of the FWS local wage areas.

One commenter expressed concern that delays in the Pay Agent's plans to merge the Kansas City, St. Louis, and Orlando locality pay areas with the Rest of U.S. locality pay area might delay plans to expand the existing small-scale salary survey of Austin, TX. The 1-year delay in discontinuing these three locality pay areas has not affected BLS' plans to expand its salary surveys.

One Federal agency sub-element commented that it is not experiencing recruitment and retention problems in Huntsville and that the Huntsville area should not be expanded. The same agency wished to retain the St. Louis locality pay area and expand the Chicago and Indianapolis areas in order to assist its recruitment efforts. While recruitment and retention issues are certainly important to the Government as an employer, they are not the basis for establishing or defining locality pay areas. The Pay Agent concludes that one agency sub-element's experience in a few areas should not affect the general methodology used to define the locality pay areas for all Federal agencies.

One agency commented that expanding locality pay area boundaries could result in changes in special rates entitlements. OPM will address that issue in guidance we plan to issue later this year regarding the January 2005 pay adjustment.

At its public meeting on September 27, 2004, and in its written recommendations of October 21, 2004,

the Federal Salary Council noted that the York-Hanover-Gettysburg, PA CSA now meets the MSA/CSA criteria to be included in the Washington-Baltimore locality pay area. The Council recommended that the Pay Agent add the York area to the Washington-Baltimore locality pay area as part of this regulatory review. We also received written comments, including comments from the Department of Defense (the largest Federal agency in the area), supporting this recommendation. The final rule incorporates the York-Hanover-Gettysburg, PA CSA into the Washington-Baltimore locality pay area.

### Waiver of Delay in Effective Date

In order to give practical effect to these regulations at the earliest possible moment, I find that good cause exists for making this rule effective immediately upon publication in the **Federal Register**. The delay in effective date is waived so that affected agencies and employees may benefit from the new locality pay area definitions on the effective date of the January 2005 GS pay adjustment.

### E.O. 12866, Regulatory Review

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

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will 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.

**Kay Coles James,**

*Director.*

■ Accordingly, OPM is amending 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 Pub. L. 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), 5333, 5334(a), and 7701(b)(2); Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356; Subpart D also issued under 5 U.S.C. 5335(g) 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(g)(1), and 5553; and E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682 and E.O. 1306, 63 FR 68151, 3 CFR, 1998 Comp., p. 224; Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the FEPCA, Pub. L. 101-509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

### Subpart F—Locality-Based Comparability Payments

■ 2. In § 531.602, the definition of *CMSA* is removed, a definition of *CSA* is added in alphabetical order, and the definition of *MSA* is 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. 04-03, plus any areas subsequently added to the *CSA* by OMB.

\* \* \* \* \*

*MSA* means the geographic scope of a Metropolitan Statistical Area, as defined by the Office of Management and Budget (OMB) in OMB Bulletin No. 04-03, plus any areas subsequently added to the *MSA* by OMB.

\* \* \* \* \*

■ 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 purposes of this subpart:

(1) Atlanta-Sandy Springs-Gainesville, GA-AL—consisting of the Atlanta-Sandy Springs-Gainesville, GA-AL CSA;

(2) Boston-Worcester-Manchester, MA-NH-ME-RI—consisting of the Boston-Worcester-Manchester, MA-NH CSA, plus the Providence-New Bedford-Fall River, RI-MA MSA, Barnstable County, MA, and Berwick, Eliot, Kittery, South Berwick, and York towns in York County, ME;

(3) Chicago-Naperville-Michigan City, IL-IN-WI—consisting of the Chicago-Naperville-Michigan City, IL-IN-WI CSA;

(4) Cincinnati-Middletown-Wilmington, OH-KY-IN—consisting of the Cincinnati-Middletown-Wilmington, OH-KY-IN CSA;

(5) Cleveland-Akron-Elyria, OH—consisting of the Cleveland-Akron-Elyria, OH CSA;

(6) Columbus-Marion-Chillicothe, OH—consisting of the Columbus-Marion-Chillicothe, OH CSA;

(7) Dallas-Fort Worth, TX—consisting of the Dallas-Fort Worth, TX CSA;

(8) Dayton-Springfield-Greenville, OH—consisting of the Dayton-Springfield-Greenville, OH CSA;

(9) Denver-Aurora-Boulder, CO—consisting of the Denver-Aurora-Boulder, CO CSA, plus the Ft. Collins-Loveland, CO MSA and Weld County, CO;

(10) Detroit-Warren-Flint, MI—consisting of the Detroit-Warren-Flint, MI CSA, plus Lenawee County, MI;

(11) Hartford-West Hartford-Willimantic, CT-MA—consisting of the Hartford-West Hartford-Willimantic, CT CSA, plus the Springfield, MA MSA and New London County, CT;

(12) Houston-Baytown-Huntsville, TX—consisting of the Houston-Baytown-Huntsville, TX CSA;

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

(14) Indianapolis-Anderson-Columbus, IN—consisting of the Indianapolis-Anderson-Columbus, IN CSA, plus Grant County, IN;

(15) Kansas City-Overland Park-Kansas City, MO-KS—consisting of the Kansas City-Overland Park-Kansas City, MO-KS CSA;

(16) Los Angeles-Long Beach-Riverside, CA—consisting of the Los Angeles-Long Beach-Riverside, CA CSA, plus the Santa Barbara-Santa Maria-Goleta, CA MSA and all of Edwards Air Force Base, CA;

(17) Miami-Fort Lauderdale-Miami Beach, FL—consisting of the Miami-Fort Lauderdale-Miami Beach, FL MSA, plus Monroe County, FL;

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

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

(20) New York-Newark-Bridgeport, NY-NJ-CT-PA—consisting of the New York-Newark-Bridgeport, NY-NJ-CT-PA CSA, plus Monroe County, PA, and Warren County, NJ;

(21) Orlando-The Villages, FL—consisting of the Orlando-The Villages, FL CSA;

(22) Philadelphia-Camden-Vineland, PA-NJ-DE-MD—consisting of the Philadelphia-Camden-Vineland, PA-NJ-DE-MD CSA, plus Kent County, DE, Atlantic County, NJ, and Cape May County, NJ;

(23) Pittsburgh-New Castle, PA—consisting of the Pittsburgh-New Castle, PA CSA;

(24) Portland-Vancouver-Beaverton, OR-WA—consisting of the Portland-Vancouver-Beaverton, OR-WA MSA, plus Marion County, OR, and Polk County, OR;

(25) Richmond, VA—consisting of the Richmond, VA MSA;

(26) Sacramento—Arden-Arcade—Truckee, CA-NV—consisting of the Sacramento—Arden-Arcade—Truckee, CA-NV CSA, plus Carson City, NV;

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

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

(29) San Jose-San Francisco-Oakland, CA—consisting of the San Jose-San Francisco-Oakland, CA CSA, plus the Salinas, CA MSA and San Joaquin County, CA;

(30) Seattle-Tacoma-Olympia, WA—consisting of the Seattle-Tacoma-Olympia, WA CSA;

(31) Washington-Baltimore-Northern Virginia, DC-MD-PA-VA-WV—consisting of the Washington-Baltimore-Northern Virginia, DC-MD-VA-WV CSA, plus the Hagerstown-Martinsburg, MD-WV MSA, the York-Hanover-Gettysburg, PA CSA, Culpeper County, VA, and King George County, VA; and

(32) Rest of U.S.—consisting of those portions of the continental United States not located within another locality pay area.

■ 4. In § 531.606, paragraph (g) is revised to read as follows:

#### § 531.606 Administration of locality rates of pay.

\* \* \* \* \*

(g) In the event of a change in the geographic coverage of a locality pay area as a result of the addition by OMB of a new area(s) to the definition of an MSA or CSA or as the result of any change made by the President's Pay Agent in the definition of a locality pay area, the effective date of any change in an employee's entitlement to a locality rate of pay under this subpart is the first day of the first pay period beginning on or after January 1 of the next calendar year. Any area removed by OMB from coverage within an MSA or CSA that serves as the basis for defining a locality pay area must be reviewed by the Federal Salary Council and the President's Pay Agent before a decision is made regarding the locality pay status of that area.

\* \* \* \* \*

[FR Doc. 04-27660 Filed 12-16-04; 8:45 am]

BILLING CODE 6325-39-P