

# Rules and Regulations

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## 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:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing this final 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:**

*Effective date:* This rule is effective February 23, 2024.

*Applicability date:* This rule applies for local wage surveys beginning on or after May 8, 2024.

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

**SUPPLEMENTARY INFORMATION:** On September 27, 2023, OPM issued a proposed rule (88 FR 66300) to update the 2017 NAICS codes used in FWS wage survey industry regulations with the 2022 NAICS revisions published by OMB. The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, 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.*

The 30-day comment period ended on October 27, 2023. OPM received one comment in reference to the impact of the NAICS revisions on the existing wage schedules and FWS wage areas. We note, however, that this final regulation will have no impact on the existing wage schedules and FWS wage areas because there will be no changes in the types of industrial establishments already included in FWS wage surveys. This final rule updates the wage survey industry regulations by adopting the 2022 NAICS codes published by OMB.

The commenter also stated that no guidance or criteria for selecting the NAICS codes were provided. In 1997, OMB developed NAICS and required its use for Federal statistical purposes. NAICS replaced the 1987 Standard Industrial Classification (SIC) industry classification system. On June 20, 2006, OPM published final regulations (71 FR 35373) replacing SIC codes with NAICS codes, following an FPRAC recommendation. This recommendation was based on FPRAC's Wage Survey Methodology Work Group (Work Group) study of the desirability and feasibility of replacing the SIC codes used in FWS regulations at the time with NAICS codes and the effect of this change on industry coverage for FWS wage surveys. The Work Group recommended to FPRAC that OPM replace all SIC codes in the FWS regulations with the most closely corresponding NAICS codes, while making as few changes as possible in the types of industrial establishments that were already included in FWS wage surveys under the SIC system.

We have not made any changes to the final regulations based on this comment. This final regulation is effective February 23, 2024. However, to provide the Department of Defense (DOD) with sufficient time for planning surveys and implementing changes required by OMB's 2022 NAICS revisions, the regulation is applicable for wage surveys ordered to begin on or after May 8, 2024.

As OMB continues to update NAICS codes periodically, OPM will update these regulations to correspond to the updated NAICS codes after consideration of any recommendations submitted by FPRAC.

### Expected Impact of This Rule

OPM is issuing this final rule so that its FWS wage survey industry regulations remain consistent and up to date with OMB's NAICS codes. OPM expects this rule to have no significant impact on whether companies are included or excluded from wage surveys. The expected costs would be de minimis since DOD, 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 rule will have a substantial impact on the local economies or a large impact in the local labor markets. 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

OPM has examined the impact of this rule as required by Executive Orders 13563, 12866, and 14094, which 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 rule is not considered a "significant regulatory action" under section 3(f) of Executive Order 12866.

### Regulatory Flexibility Act

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

### Federalism

OPM examined this rule 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 rule 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.

## Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act or CRA) (5 U.S.C. 801 *et seq.*) requires most final rules to be submitted to Congress before taking effect. OPM will submit to Congress and the Comptroller General of the United States a report regarding the issuance of this rule before its effective date. The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this rule is not a major rule as defined by the CRA (5 U.S.C. 804).

## Paperwork Reduction Act

This rule 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 amends 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 industry titles
516 .....	* Broadcasting and content providers.

\* \* \* \* \*

■ 3. In § 532.221, amend the table in paragraph (a) by:

- a. Revising the column headings;

■ b. Removing the entry for NAICS code 44132;

■ c. Adding in numerical order an entry for NAICS code 44134;

■ d. Removing the entries for NAICS codes 443, 44611, 4471, 44814, 4522, 4523, 45321, and 4542; and

■ e. Adding in numerical order entries for NAICS codes 449210, 4551, 4552, 45611, 4571, 45811, and 45941.

The revisions and additions read as follows:

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

(a) \* \* \*

2022 NAICS codes		2022 NAICS industry titles
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:

■ a. Revising the column headings;

■ b. Adding in numerical order an entry for NAICS code 333310;

■ c. Removing the entry for NAICS code 333316;

- d. Adding in numerical order an entry for NAICS code 334610; and

■ e. Removing the entry for NAICS code 334613.

The revisions and additions 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 industry titles
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 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 Vehicles Specialized Industry”:

■ i. Revising the entry for NAICS Code 4413;

■ ii. Removing the entry for NAICS Code 44421;

■ iii. Adding in numerical order entries for NAICS Codes 44423 and 5171;

■ iv. Removing the entries for NAICS Codes 5173 and 517911; and

■ v. Adding in numerical order an entry for NAICS Code 517121;

■ c. Under the heading “Communications Specialized Industry”:

■ i. Removing the entries for NAICS Codes 5151, 5152, and 5173;

■ ii. Adding in numerical order entries for NAICS Codes 5161, 5162, and 5171;

■ iii. Removing the entry for NAICS Code 517911; and

■ iv. Adding in numerical order an entry for NAICS code 517121;

■ d. Under the heading “Electronics Specialized Industry”:

■ i. Adding in numerical order an entry for NAICS Code 333310;

■ ii. Removing the entry for NAICS Code 333316;

■ iii. Adding in numerical order an entry for NAICS Code 334610; and

■ iv. Removing the entry for NAICS Code 334613;

■ e. Under the heading “Guided Missiles Specialized Industry”:

■ i. Adding in numerical order an entry for NAICS Code 333310;

■ ii. Removing the entry for NAICS Code 333316;

■ iii. Adding in numerical order an entry for NAICS Code 334610; and

■ iv. Removing the entry for NAICS Code 334613; and

■ f. Under the heading “Sighting and Fire Control Equipment Specialized Industry”:

■ i. Adding in numerical order an entry for NAICS Code 333310;

■ ii. Removing the entries for NAICS Codes 333314 and 333316;

■ iii. Adding in numerical order an entry for NAICS Code 334610; and

■ iv. Removing the entry for NAICS Code 334613.

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.
*	*	*

**Communications Specialized Industry**

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.

2022 NAICS codes			2022 NAICS industry titles		
*	*	*	*	*	*
Electronics Specialized Industry					
333310	.....	Commercial and service industry machinery manufacturing.			
*	*	*	*	*	*
334610	.....	Manufacturing and reproducing magnetic and optical media.			
*	*	*	*	*	*
Guided Missiles Specialized Industry					
333310	.....	Commercial and service industry machinery manufacturing.			
*	*	*	*	*	*
334610	.....	Manufacturing and reproducing magnetic and optical media.			
*	*	*	*	*	*
Sighting and Fire Control Equipment Specialized Industry					
333310	.....	Commercial and service industry machinery manufacturing.			
*	*	*	*	*	*
334610	.....	Manufacturing and reproducing magnetic and optical media.			
*	*	*	*	*	*
*	*	*	*	*	*

\* \* \* \* \*

[FR Doc. 2024-01086 Filed 1-23-24; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 143

RIN 3038-AF32

Annual Adjustment of Civil Monetary Penalties To Reflect Inflation—2024

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending its rule that governs the maximum amount of civil monetary penalties imposed under the Commodity Exchange Act (CEA), to adjust for inflation. This rule sets forth the maximum, inflation-adjusted dollar amount for civil monetary penalties (CMPs) assessable for violations of the CEA and Commission rules, regulations and orders thereunder. The rule, as amended, implements the Federal Civil

Penalties Inflation Adjustment Act of 1990, as amended.

DATES: This rule is effective on January 24, 2024 and is applicable to penalties assessed after January 15, 2024.

FOR FURTHER INFORMATION CONTACT: Edward J. Riccobene, Associate Chief Counsel, Division of Enforcement, at (202) 418-5327 or [ericcobene@cftc.gov](mailto:ericcobene@cftc.gov), Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA) <sup>1</sup> requires the head of each Federal agency to periodically adjust for inflation the minimum and maximum amount of CMPs provided by law within the jurisdiction of that agency.<sup>2</sup> A 2015

<sup>1</sup> The FCPIAA, Public Law 101-410 (1990), as amended, is codified at 28 U.S.C. 2461 note. The FCPIAA states that the purpose of the FCPIAA is to establish a mechanism that shall (1) allow for regular adjustment for inflation of civil monetary penalties; (2) maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and (3) improve the collection by the Federal Government of civil monetary penalties.

<sup>2</sup> For the relevant CMPs within the Commission's jurisdiction, the Act provides only for maximum

amendment to the FCPIAA <sup>3</sup> required agencies to make an initial “catch-up” adjustment to its civil monetary penalties effective no later than August 1, 2016.<sup>4</sup> For every year thereafter effective not later than January 15th, the FCPIAA, as amended, requires agencies to make annual adjustments for inflation, with guidance from the Director of the Office of Management and Budget.<sup>5</sup>

II. Commodity Exchange Act Civil Monetary Penalties

The following sections of the CEA provide for CMPs that meet the FCPIAA

amounts that can be assessed for each violation of the Act or the rules, regulations and orders promulgated thereunder; the Act does not set forth any minimum penalties. Therefore, the remainder of this release will refer only to CMP maximums.

<sup>3</sup> Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114-74, 129 Stat. 584 (2015) (2015 Act), title VII, Section 701.

<sup>4</sup> FCPIAA Sections 4 and 5. See also, Adjustment of Civil Monetary Penalties for Inflation, 81 FR 41435 (June 27, 2016).

<sup>5</sup> FCPIAA Sections 4 and 5. See also, Executive Office of the President, Office of Management and Budget Memorandum, M-24-07, Implementation of Penalty Inflation Adjustments for 2024 (Dec. 19, 2023) (2023 OMB Guidance) (<https://www.whitehouse.gov/wp-content/uploads/2023/12/M-24-07-Implementation-of-Penalty-Inflation-Adjustments-for-2024.pdf>).