

§ 5343. Prevailing rate determinations; wage schedules; night differentials

(a) The pay of prevailing rate employees shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates. Subject to section 213(f) of title 29, the rates may not be less than the appropriate rates provided by section 206(a)(1) of title 29. To carry out this subsection—

(1) the Office of Personnel Management shall define, as appropriate—

(A) with respect to prevailing rate employees other than prevailing rate employees under paragraphs (B) and (C) of section 5342(a)(2) of this title, the boundaries of—

(i) individual local wage areas for prevailing rate employees having regular wage schedules and rates; and

(ii) wage areas for prevailing rate employees having special wage schedules and rates;

(B) with respect to prevailing rate employees under paragraphs (B) and (C) of section 5342(a)(2) of this title, the boundaries of—

(i) individual local wage areas for prevailing rate employees under such paragraphs having regular wage schedules and rates (but such boundaries shall not extend beyond the immediate locality in which the particular prevailing rate employees are employed); and

(ii) wage areas for prevailing rate employees under such paragraphs having special wage schedules and rates;

(2) the Office of Personnel Management shall designate a lead agency for each wage area;

(3) subject to paragraph (5) of this subsection, and subsections (c)(1)–(3) and (d) of this section, a lead agency shall conduct wage surveys, analyze wage survey data, and develop and establish appropriate wage schedules and rates for prevailing rate employees;

(4) the head of each agency having prevailing rate employees in a wage area shall apply, to the prevailing rate employees of that agency in that area, the wage schedules and rates established by the lead agency, or by the Office of Personnel Management, as appropriate, for prevailing rate employees in that area; and

(5) the Office of Personnel Management shall establish wage schedules and rates for prevailing rate employees who are United States citizens employed in any area which is outside the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

(b) The Office of Personnel Management shall schedule full-scale wage surveys every 2 years and shall schedule interim surveys to be conducted between each 2 consecutive full-scale wage surveys. The Office may schedule more frequent surveys when conditions so suggest.

(c) The Office of Personnel Management, by regulation, shall prescribe practices and procedures for conducting wage surveys, analyzing wage survey data, developing and establishing wage schedules and rates, and administering the

prevailing rate system. The regulations shall provide—

(1) that, subject to subsection (d) of this section, wages surveyed be those paid by private employers in the wage area for similar work performed by regular full-time employees, except that, for prevailing rate employees under paragraphs (B) and (C) of section 5342(a)(2) of this title, the wages surveyed shall be those paid by private employers to full-time employees in a representative number of retail, wholesale, service, and recreational establishments similar to those in which such prevailing rate employees are employed;

(2) for participation at all levels by representatives of organizations accorded recognition as the representatives of prevailing rate employees in every phase of providing an equitable system for fixing and adjusting the rates of pay for prevailing rate employees, including the planning of the surveys, the drafting of specifications, the selection of data collectors, the collection and the analysis of the data, and the submission of recommendations to the head of the lead agency for wage schedules and rates and for special wage schedules and rates where appropriate;

(3) for requirements for the accomplishment of wage surveys and for the development of wage schedules and rates for prevailing rate employees, including, but not limited to—

(A) nonsupervisory and supervisory prevailing rate employees paid under regular wage schedules and rates;

(B) nonsupervisory and supervisory prevailing rate employees paid under special wage schedules and rates; and

(C) nonsupervisory and supervisory prevailing rate employees described under paragraphs (B) and (C) of section 5342(a)(2) of this title;

(4) for proper differentials, as determined by the Office, for duty involving unusually severe working conditions or unusually severe hazards, and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970;

(5) rules governing the administration of pay for individual employees on appointment, transfer, promotion, demotion, and other similar changes in employment status; and

(6) for a continuing program of maintenance and improvement designed to keep the prevailing rate system fully abreast of changing conditions, practices, and techniques both in and out of the Government of the United States.

(d)(1) A lead agency, in making a wage survey, shall determine whether there exists in the local wage area a number of comparable positions in private industry sufficient to establish wage schedules and rates for the principal types of positions for which the survey is made. The determination shall be in writing and shall take into consideration all relevant evidence, including evidence submitted by employee organizations recognized as representative of prevailing rate employees in that area.

(2) When the lead agency determines that there is a number of comparable positions in private industry insufficient to establish the wage schedules and rates, such agency shall establish the wage schedules and rates on the basis of—

(A) local private industry rates; and

(B) rates paid for comparable positions in private industry in the nearest wage area that such agency determines is most similar in the nature of its population, employment, manpower, and industry to the local wage area for which the wage survey is being made.

(e)(1) Each grade of a regular wage schedule for nonsupervisor prevailing rate employees shall have 5 steps with—

(A) the first step at 96 percent of the prevailing rate;

(B) the second step at 100 percent of the prevailing rate;

(C) the third step at 104 percent of the prevailing rate;

(D) the fourth step at 108 percent of the prevailing rate; and

(E) the fifth step at 112 percent of the prevailing rate.

(2) A prevailing rate employee under a regular wage schedule who has a work performance rating of satisfactory or better, as determined by the head of the agency, shall advance automatically to the next higher step within the grade at the beginning of the first applicable pay period following his completion of—

(A) 26 calendar weeks of service in step 1;

(B) 78 calendar weeks of service in step 2; and

(C) 104 calendar weeks of service in each of steps 3 and 4.

(3) Under regulations prescribed by the Office of Personnel Management, the benefits of successive step increases shall be preserved for prevailing rate employees under a regular wage schedule whose continuous service is interrupted in the public interest by service with the armed forces or by service in essential non-Government civilian employment during a period of war or national emergency.

(4) Supervisory wage schedules and special wage schedules authorized under subsection (c)(3) of this section may have single or multiple rates or steps according to prevailing practices in the industry on which the schedule is based.

(f) A prevailing rate employee is entitled to pay at his scheduled rate plus a night differential—

(1) amounting to 7½ percent of that scheduled rate for regularly scheduled nonovertime work a majority of the hours of which occur between 3 p.m. and midnight; and

(2) amounting to 10 percent of that scheduled rate for regularly scheduled nonovertime work a majority of the hours of which occur between 11 p.m. and 8 a.m.

A night differential under this subsection is a part of basic pay.

(Added Pub. L. 92-392, §1(a), Aug. 19, 1972, 86 Stat. 566; amended Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-70, title III, §3302(e)(10), Sept. 27, 1979, 93 Stat. 499; Pub. L. 99-145, title XII, §1242(a), Nov. 8,

1985, 99 Stat. 735; Pub. L. 104-201, div. C, title XXXV, §3548(a)(3)(B), Sept. 23, 1996, 110 Stat. 2868; Pub. L. 107-107, div. A, title XI, §1113(a), Dec. 28, 2001, 115 Stat. 1239; Pub. L. 108-136, div. A, title XI, §1122(a), Nov. 24, 2003, 117 Stat. 1636.)

Editorial Notes

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsec. (c)(4), is Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, which is classified principally to chapter 15 (§651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

PRIOR PROVISIONS

A prior section 5343, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 471, related to effective date of pay increases and is covered by section 5344(a) of this title.

Provisions similar to those comprising part of first sentence of subsec. (c) and subsec. (d) of this section were contained in Pub. L. 90-560, §4, Oct. 12, 1968, 82 Stat. 997 (formerly classified to section 5341(c) of this title) prior to the general amendment of this subchapter by section 1(a) of Pub. L. 92-392.

AMENDMENTS

2003—Subsec. (c)(4). Pub. L. 108-136 inserted before semicolon at end “, and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970”.

2001—Subsec. (d)(2). Pub. L. 107-107 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “When the lead agency determines that there is a number of comparable positions in private industry insufficient to establish the wage schedules and rates, such agency shall—

“(A) establish the wage schedules and rates to be applicable to prevailing rate employees other than prevailing rate employees of the Department of Defense on the basis of—

“(i) local private industry rates; and

“(ii) rates paid for comparable positions in private industry in the nearest wage area that such agency determines is most similar in the nature of its population, employment, manpower, and industry to the local wage area for which the wage survey is being made; and

“(B) establish the wage schedules and rates to be applicable to prevailing rate employees of the Department of Defense only on the basis of local private industry rates.”

1996—Subsec. (a)(5). Pub. L. 104-201 struck out “the areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979),” after “Puerto Rico,”.

1985—Subsec. (d)(2). Pub. L. 99-145 amended par. (2) generally, designating existing provisions as subpar. (A), inserting “to be applicable to prevailing rate employees other than prevailing rate employees of the Department of Defense”, redesignating as cls. (i) and (ii) provisions previously designated subpars. (A) and (B), and adding subpar. (B).

1979—Subsec. (a)(5). Pub. L. 96-70 substituted “areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979)” for “Canal Zone”.

1978—Subsecs. (a) to (c), (e)(3). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission” wherever appearing.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2003 AMENDMENT**

Pub. L. 108-136, div. A, title XI, § 1122(c), Nov. 24, 2003, 117 Stat. 1637, provided that: "Subject to any vested constitutional property rights, any administrative or judicial determination after the date of the enactment of this Act [Nov. 24, 2003] concerning backpay for a differential established under sections 5343(c)(4) or 5545(d) of such title [this title] shall be based on occupational safety and health standards described in the amendments made by subsections (a) and (b) [amending this section and section 5545 of this title]."

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-107, div. A, title XI, § 1113(b), Dec. 28, 2001, 115 Stat. 1239, provided that: "Wage adjustments made pursuant to the amendment made by this section [amending this section] shall take effect in each applicable wage area on the first normal effective date of the applicable wage survey adjustment that occurs after the date of the enactment of this Act [Dec. 28, 2001]."

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1242(b) of Pub. L. 99-145 provided that: "The rate of pay payable to a prevailing rate employee employed by the Department of Defense on the day before the date of enactment of this Act [Nov. 8, 1985] may not be reduced by reason of the amendment made by subsection (a) [amending this section]."

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96-70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE

Section other than subsec. (e)(1)(D), (E), (2)(C) of this section effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, and such subsec. (a)(1)(D), (E), (2)(C) not effective until first day of first pay period commencing after date on which President ceases to exercise his authority under Economic Stabilization Act of 1970 to stabilize wages and salaries, or Apr. 30, 1973, whichever occurs first, see section 15(a) of Pub. L. 92-392, set out as a note under section 5341 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

LIMITATION ON PAY ADJUSTMENTS FOR PREVAILING RATE EMPLOYEES AND CREWS OF VESSELS

Pub. L. 116-260, div. E, title VII, § 737, Dec. 27, 2020, 134 Stat. 1438, provided that:

"(a)(1) Notwithstanding any other provision of law, and except as otherwise provided in this section, no part of any of the funds appropriated for fiscal year 2021, by this or any other Act, may be used to pay any prevailing rate employee described in section 5342(a)(2)(A) of title 5, United States Code—

"(A) during the period from the date of expiration of the limitation imposed by the comparable section for the previous fiscal years until the normal effective date of the applicable wage survey adjustment that is to take effect in fiscal year 2021, in an amount that exceeds the rate payable for the applicable grade and step of the applicable wage schedule in accordance with such section; and

"(B) during the period consisting of the remainder of fiscal year 2021, in an amount that exceeds, as a result of a wage survey adjustment, the rate payable under subparagraph (A) by more than the sum of—

"(i) the percentage adjustment taking effect in fiscal year 2021 under section 5303 of title 5, United States Code, in the rates of pay under the General Schedule; and

"(ii) the difference between the overall average percentage of the locality-based comparability payments taking effect in fiscal year 2021 under section 5304 of such title (whether by adjustment or otherwise), and the overall average percentage of such payments which was effective in the previous fiscal year under such section.

"(2) Notwithstanding any other provision of law, no prevailing rate employee described in subparagraph (B) or (C) of section 5342(a)(2) of title 5, United States Code, and no employee covered by section 5348 of such title, may be paid during the periods for which paragraph (1) is in effect at a rate that exceeds the rates that would be payable under paragraph (1) were paragraph (1) applicable to such employee.

"(3) For the purposes of this subsection, the rates payable to an employee who is covered by this subsection and who is paid from a schedule not in existence on September 30, 2020, shall be determined under regulations prescribed by the Office of Personnel Management.

"(4) Notwithstanding any other provision of law, rates of premium pay for employees subject to this subsection may not be changed from the rates in effect on September 30, 2020, except to the extent determined by the Office of Personnel Management to be consistent with the purpose of this subsection.

"(5) This subsection shall apply with respect to pay for service performed after September 30, 2020.

"(6) For the purpose of administering any provision of law (including any rule or regulation that provides premium pay, retirement, life insurance, or any other employee benefit) that requires any deduction or contribution, or that imposes any requirement or limitation on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this subsection shall be treated as the rate of salary or basic pay.

"(7) Nothing in this subsection shall be considered to permit or require the payment to any employee covered by this subsection at a rate in excess of the rate that would be payable were this subsection not in effect.

"(8) The Office of Personnel Management may provide for exceptions to the limitations imposed by this subsection if the Office determines that such exceptions are necessary to ensure the recruitment or retention of qualified employees.

"(b) Notwithstanding subsection (a), the adjustment in rates of basic pay for the statutory pay systems that take place in fiscal year 2021 under sections 5344 and 5348 of title 5, United States Code, shall be—

"(1) not less than the percentage received by employees in the same location whose rates of basic pay are adjusted pursuant to the statutory pay systems under sections 5303 and 5304 of title 5, United States Code: *Provided*, That prevailing rate employees at locations where there are no employees whose pay is increased pursuant to sections 5303 and 5304 of title 5, United States Code, and prevailing rate employees described in section 5343(a)(5) of title 5, United States Code, shall be considered to be located in the pay locality designated as 'Rest of United States' pursuant to section 5304 of title 5, United States Code, for purposes of this subsection; and

"(2) effective as of the first day of the first applicable pay period beginning after September 30, 2020."

Similar provisions were contained in the following prior acts:

Pub. L. 116-93, div. C, title VII, § 737, Dec. 20, 2019, 133 Stat. 2492.

Pub. L. 116-6, div. D, title VII, § 737, Feb. 15, 2019, 133 Stat. 195.

Pub. L. 115-141, div. E, title VII, § 737, Mar. 23, 2018, 132 Stat. 595.

Pub. L. 115-31, div. E, title VII, § 737, May 5, 2017, 131 Stat. 385.

Pub. L. 114-113, div. E, title VII, § 737, Dec. 18, 2015, 129 Stat. 2481.

Pub. L. 113-235, div. E, title VII, § 737, Dec. 16, 2014, 128 Stat. 2387.

Pub. L. 113-76, div. E, title VII, § 740, Jan. 17, 2014, 128 Stat. 239.

Pub. L. 111-117, div. C, title VII, § 710, Dec. 16, 2009, 123 Stat. 3206.

Pub. L. 111-8, div. D, title VII, § 710, Mar. 11, 2009, 123 Stat. 682.

Pub. L. 110-161, div. D, title VII, § 712, Dec. 26, 2007, 121 Stat. 2021.

Pub. L. 109-115, div. A, title VIII, § 813, Nov. 30, 2005, 119 Stat. 2497.

Pub. L. 108-447, div. H, title VI, § 613, Dec. 8, 2004, 118 Stat. 3275.

Pub. L. 108-199, div. F, title VI, § 613, Jan. 23, 2004, 118 Stat. 352.

Pub. L. 108-7, div. J, title VI, § 613, Feb. 20, 2003, 117 Stat. 465.

Pub. L. 107-67, title VI, § 613, Nov. 12, 2001, 115 Stat. 547, as amended by Pub. L. 108-2, § 3, Jan. 10, 2003, 117 Stat. 5.

Pub. L. 106-554, § 1(a)(3) [title VI, § 613], Dec. 21, 2000, 114 Stat. 2763, 2763A-157.

Pub. L. 106-58, title VI, § 613, Sept. 29, 1999, 113 Stat. 468.

Pub. L. 105-277, div. A, § 101(h) [title VI, § 614], Oct. 21, 1998, 112 Stat. 2681-480, 2681-515.

Pub. L. 105-61, title VI, § 614, Oct. 10, 1997, 111 Stat. 1311.

Pub. L. 104-208, div. A, title I, § 101(f) [title VI, § 616], Sept. 30, 1996, 110 Stat. 3009-314, 3009-356.

Pub. L. 104-52, title VI, § 616, Nov. 19, 1995, 109 Stat. 500, as amended by Pub. L. 104-208, div. A, title I, § 101(f) [title VI, § 659 [title II, § 206(b)(3)]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 3009-378.

Pub. L. 103-329, title VI, § 617, Sept. 30, 1994, 108 Stat. 2419.

Pub. L. 103-123, title VI, § 615, Oct. 28, 1993, 107 Stat. 1261.

Pub. L. 102-393, title VI, § 616, Oct. 6, 1992, 106 Stat. 1768.

Pub. L. 102-141, title VI, § 616, Oct. 28, 1991, 105 Stat. 870.

Pub. L. 101-509, title VI, § 612, Nov. 5, 1990, 104 Stat. 1473.

Pub. L. 101-136, title VI, § 612, Nov. 3, 1989, 103 Stat. 818.

Pub. L. 100-440, title VI, § 612, Sept. 22, 1988, 102 Stat. 1753.

Pub. L. 100-202, § 101(m) [title VI, § 613], Dec. 22, 1987, 101 Stat. 1329-390, 1329-421.

Pub. L. 99-500, § 101(m) [title VI, § 613], Oct. 18, 1986, 100 Stat. 1783-308, 1783-330, and Pub. L. 99-591, § 101(m) [title VI, § 613], Oct. 30, 1986, 100 Stat. 3341-308, 3341-330.

Pub. L. 99-272, title XV, § 15201(b), Apr. 7, 1986, 100 Stat. 332.

Pub. L. 99-190, § 101(h) [H.R. 3036, title VI, § 613], Dec. 19, 1985, 99 Stat. 1291.

Pub. L. 98-473, § 101(j) [H.R. 5798, title VI, § 616], Oct. 12, 1984, 98 Stat. 1963.

Pub. L. 98-369, div. B, title II, § 2202, July 18, 1984, 98 Stat. 1058.

Pub. L. 98-270, title II, § 202(b), Apr. 18, 1984, 98 Stat. 158.

Pub. L. 98-151, § 101(f) [H.R. 4139, title VI, § 616], Nov. 14, 1983, 97 Stat. 973.

Pub. L. 98-107, § 110, Oct. 1, 1983, 97 Stat. 741.

Pub. L. 97-377, title I, § 107, Dec. 21, 1982, 96 Stat. 1909.

Pub. L. 97-276, § 109, Oct. 2, 1982, 96 Stat. 1191.

Pub. L. 97-35, title XVII, § 1701(b), Aug. 13, 1981, 95 Stat. 754.

Pub. L. 96-536, § 101(a) [incorporating Pub. L. 96-74, title VI, § 613], Dec. 16, 1980, 94 Stat. 3166.

Pub. L. 96-369, § 114, Oct. 1, 1980, 94 Stat. 1356.

Pub. L. 96-74, title VI, § 613, Sept. 29, 1979, 93 Stat. 576.

Pub. L. 95-429, title VI, § 614, Oct. 10, 1978, 92 Stat. 1018.

WAGE RATE FOR CERTAIN CORPS OF ENGINEERS EMPLOYEES

Pub. L. 99-661, div. A, title XIII, § 1358, Nov. 14, 1986, 100 Stat. 3999, provided that:

“(a) WAGE DETERMINATIONS.—Notwithstanding any other provision of law, in the administration of the last undesignated paragraph preceding chapter 6 of title I of Public Law 97-257 (96 Stat. 832) [set out below], the individuals described in subsection (b) shall be paid wages determined in the same manner as that established in such undesignated paragraph with respect to United States Army Corps of Engineers employees paid from Corps of Engineers Special Power Rate Schedules.

“(b) COVERED INDIVIDUALS.—The individuals described in subsection (a) are electric powerplant controllers and powerplant shift operators (as defined under regulations prescribed by the Secretary of Defense) assigned to the Soo Locks Power Plant in the Detroit District in the North Central Region of the United States Army Corps of Engineers.

“(c) EFFECTIVE DATE.—Subsection (a) applies with respect to pay periods commencing on or after the date of the enactment of this Act [Nov. 14, 1986].”

EMPLOYEES OF UNITED STATES CORPS OF ENGINEERS PAID FROM CORPS OF ENGINEERS SPECIAL POWER RATE SCHEDULES; CONSISTENCY OF WAGES WITH WAGES OF ENERGY AND INTERIOR DEPARTMENT EM- PLOYEES

Pub. L. 110-114, title V, § 5026, Nov. 8, 2007, 121 Stat. 1203, provided that: “Employees of the Corps of Engineers who are paid wages determined under the last undesignated paragraph under the heading ‘Administrative Provisions’ of chapter V of the Supplemental Appropriations Act, 1982 (5 U.S.C. 5343 note; 96 Stat. 832) shall be allowed, through appropriate employee organization representatives, to participate in wage surveys under such paragraph to the same extent as are prevailing rate employees under subsection (c)(2) of section 5343 of title 5, United States Code. Nothing in such section 5343 shall be construed to affect which agencies are to be surveyed under such paragraph.”

Pub. L. 97-257, title I, § 100, Sept. 10, 1982, 96 Stat. 832, provided in part that: “Without regard to any other provision of law limiting the amounts payable to prevailing wage rate employees, United States Army Corps of Engineers employees paid from Corps of Engineers Special Power Rate Schedules shall be paid, beginning the effective date of each annual wage survey in the region after the date of enactment of this Act [Sept. 10, 1982], wages as determined by the Department of Defense Wage Fixing Authority to be consistent with wages of the Department of Energy and the Department of the Interior employees performing similar work in the corresponding area whose wage rates are established in accordance with section 9(b) of Public Law 92-392 or section 704 of Public Law 95-454 [set out as notes under this section].”

NEGOTIATING REQUIREMENTS FOR LABOR CONTRACTS, ETC., ON AND AFTER OCTOBER 13, 1978, AND NEGOTIATED UNDER PREVAILING RATES AND PRACTICES PRIOR TO AUGUST 19, 1972

Pub. L. 95-454, title VII, § 704, Oct. 13, 1978, 92 Stat. 1218, provided that:

“(a) Those terms and conditions of employment and other employment benefits with respect to Government prevailing rate employees to whom section 9(b) of Public Law 92-392 [set out as a note under this section] applies which were the subject of negotiation in accordance with prevailing rates and practices prior to August 19, 1972, shall be negotiated on and after the date of the enactment of this Act [Oct. 13, 1978] in accordance with the provisions of section 9(b) of Public Law 92-392 without regard to any provision of chapter 71 of

title 5, United States Code (as amended by this title [title VII of Pub. L. 95-454]), to the extent that any such provision is inconsistent with this paragraph.

“(b) The pay and pay practices relating to employees referred to in paragraph (1) of this subsection shall be negotiated in accordance with prevailing rates and pay practices without regard to any provision of—

“(A) chapter 71 of title 5, United States Code (as amended by this title), to the extent that any such provision is inconsistent with this paragraph;

“(B) subchapter IV of chapter 53 and subchapter V of chapter 55 of title 5, United States Code; or

“(C) any rule, regulation, decision, or order relating to rates of pay or pay practices under subchapter IV of chapter 53 or subchapter V of chapter 55 of title 5, United States Code.”

CONVERSION RULES FOR WAGE SCHEDULE; SERVICE FOR ONE STEP INCREASE; PROHIBITION OF DECREASE IN BASIC PAY RATE; RETAINED PAY CONTINUED

Pub. L. 92-392, §9(a), Aug. 19, 1972, 86 Stat. 573, provided that:

“(1) Except as provided by this subsection, an employee's initial rate of pay on conversion to a wage schedule established pursuant to the amendments made by this Act [see Effective Date note under section 5341 of this title] shall be determined under conversion rules prescribed by the Civil Service Commission. Service by an employee in a grade of a wage schedule performed before the effective date of the conversion of the employee to a wage schedule established pursuant to the amendments made by this Act shall be counted toward not to exceed one step increase under the time in step provisions of section 5343(e)(2) of title 5, United States Code, as amended by the first section of this Act [subsec. (e)(2) of this section].

“(2) In the case of any employee described in section 2105(c), 5102(c)(7), (8), or (14) of title 5, United States Code, who is in the service as such an employee immediately before the effective date, with respect to him, of the amendments made by this Act [see Effective Date note under section 5341 of this title], such amendments shall not be construed to decrease his rate of basic pay in effect immediately before the date [see Effective Date note under section 5341 of this title] on which such amendments become effective with respect to him. In addition, if an employee is receiving retained pay by virtue of law or agency policy immediately before the date on which the first wage schedule applicable to him under this Act is effective, he shall continue to retain that pay in accordance with the specific instructions under which the retained pay was granted until he leaves his position or until he becomes entitled to a higher rate.”

LABOR CONTRACTS PERTAINING TO WAGES, TERMS AND CONDITIONS OF EMPLOYMENT, AND OTHER EMPLOYMENT BENEFITS

Pub. L. 92-392, §9(b), Aug. 19, 1972, 86 Stat. 574, provided that: “The amendments made by this Act [enacting this subchapter and section 5550 of this title, amending sections 2105(c)(1), 5337, 5541(2)(xi), 5544(a), 5548, 6101(a)(1), 7154(b), and 8704(d)(2) of this title, repealing section 6102 of this title, and enacting provisions set out as notes under sections 5341 and 5343 of this title and section 60a of Title 2, The Congress] shall not be construed to—

“(1) abrogate, modify, or otherwise affect in any way the provisions of any contract in effect on the date of enactment of this Act [Aug. 19, 1972] pertaining to the wages, the terms and conditions of employment, and other employment benefits, or any of the foregoing matters, for Government prevailing rate employees and resulting from negotiations between Government agencies and organizations of Government employees;

“(2) nullify, curtail, or otherwise impair in any way the right of any party to such contract to enter into negotiations after the date of enactment of this Act

[Aug. 19, 1972] for the renewal, extension, modification, or improvement of the provisions of such contract or for the replacement of such contract with a new contract; or

“(3) nullify, change, or otherwise affect in any way after such date of enactment [Aug. 19, 1972] any agreement, arrangement, or understanding in effect on such date [Aug. 19, 1972] with respect to the various items of subject matter of the negotiations on which any such contract in effect on such date [Aug. 19, 1972] is based or prevent the inclusion of such items of subject matter in connection with the renegotiation of any such contract, or the replacement of such contract with a new contract, after such date [Aug. 19, 1972].”

WAGE SURVEY

Pub. L. 92-392, §15(b), Aug. 19, 1972, 86 Stat. 575, provided that: “A wage survey conducted by an agency before the effective date (with respect to employees covered by that wage survey) of this Act [see note under section 5341 of this title], for a wage schedule which becomes effective after that effective date [Aug. 19, 1972], is deemed to meet the requirement in this Act for a survey by a lead agency.”

EQUITABLE WAGE ADJUSTMENTS FOR CERTAIN PREVAILING RATE EMPLOYEES

Pub. L. 92-298, §§1, 2, May 17, 1972, 86 Stat. 146, provided: “That this Act [enacting this note and amending sections 4531 and 4571 of Title 2, The Congress] may be cited as the ‘Prevailing Rate Equalization Adjustment Act of 1972’.

“SEC. 2. (a) Notwithstanding any other provision of law or any provision of an Executive order or regulation, a wage schedule adjustment for employees of the Government of the United States whose pay is fixed and adjusted from time to time in accordance with prevailing rates—

“(1) if based on a wage survey ordered to be made on or after August 15, 1971, but not placed into effect before November 14, 1971, by reason of the provisions of Executive Order 11615 or Executive Order 11627 [formerly set out as notes under section 1904 of Title 12]; or

“(2) if based on a wage survey which had been scheduled to be made during the period beginning on September 1, 1971, and ending on January 12, 1972, and which was ordered to be made on or after January 23, 1972;

shall be effective on the date on which such wage schedule adjustment would have been effective under section 5343 of title 5, United States Code, had the fiscal year 1972 schedule for wage surveys for such employees been followed.

“(b) Retroactive pay made under the provisions of this section will be made in accordance with section 5344 of title 5, United States Code.”

§ 5344. Effective date of wage increase; retroactive pay

(a) Each increase in rates of basic pay granted, pursuant to a wage survey, to prevailing rate employees is effective not later than the first day of the first pay period which begins on or after the 45th day, excluding Saturdays and Sundays, following the date the wage survey is ordered to be made.

(b) Retroactive pay is payable by reason of an increase in rates of basic pay referred to in subsection (a) of this section only when—

(1) the individual is in the service of the Government of the United States, including service in the armed forces, or the government of the District of Columbia on the date of the issuance of the order granting the increase; or

(2) the individual retired or died during the period beginning on the effective date of the