

fective date not to have such pay reduced or terminated and, unless section 5362 applies, employee is entitled to continuation of such pay, etc., see section 801(a)(4) of Pub. L. 95-454, set out as an Effective Date note under section 5361 of this title.

### § 5338. Regulations

The Office of Personnel Management may prescribe regulations necessary for the administration of this subchapter.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 470; Pub. L. 95-454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

#### HISTORICAL AND REVISION NOTES

The section is added on authority of former sections 1072 and 1072a, which are carried into section 5115.

#### AMENDMENTS

1978—Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission”.

#### 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.

### SUBCHAPTER IV—PREVAILING RATE SYSTEMS

### § 5341. Policy

It is the policy of Congress that rates of pay of prevailing rate employees be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and be based on principles that—

- (1) there will be equal pay for substantially equal work for all prevailing rate employees who are working under similar conditions of employment in all agencies within the same local wage area;
- (2) there will be relative differences in pay within a local wage area when there are substantial or recognizable differences in duties, responsibilities, and qualification requirements among positions;
- (3) the level of rates of pay will be maintained in line with prevailing levels for comparable work within a local wage area; and
- (4) the level of rates of pay will be maintained so as to attract and retain qualified prevailing rate employees.

(Added Pub. L. 92-392, §1(a), Aug. 19, 1972, 86 Stat. 564.)

#### PRIOR PROVISIONS

A prior section 5341, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 471; Pub. L. 90-83, §1(97), Sept. 11, 1967, 81 Stat. 220; Pub. L. 90-560, §4, Oct. 12, 1968, 82 Stat. 997, provided prevailing rate system for trades and crafts and is covered by sections 5343(c), (d) and 5349(a) of this title.

#### EFFECTIVE DATE

Section 15(a) of Pub. L. 92-392 provided that: “The provisions of this Act [enacting this subchapter and section 5550 of this title, amending sections 2105, 5337, 5541, 5544, 5548, 6101, 7154, and 8704 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 sections 60a-1 and 60a-2 of Title 2, The Congress] are effective on the first day of the first applicable pay period which begins on or after the ninetieth day after

the date of enactment of this Act [Aug. 19, 1972], except that, in the case of those employees referred to in section 5342(a)(2)(B) and (C) of title 5, United States Code (as amended by the first section of this Act), such provisions are effective on the first day of the first applicable pay period which begins on or after the one hundred and eightieth day after such date of enactment or on such earlier date (not earlier than the ninetieth day after such date of enactment) as the Civil Service Commission may prescribe. Notwithstanding the provisions of this subsection, section 5343(e)(1)(D) and (E) and (e)(2)(C), as enacted by the first section of this Act, shall not be effective until the first day of the first pay period commencing after (1) the date on which the President ceases to exercise his authority under the Economic Stabilization Act of 1970 [formerly set out as a note under section 1904 of Title 12, Banks and Banking] to stabilize wages and salaries, or (2) April 30, 1973, whichever occurs first.”

#### REPEALS

Section 13 of Pub. L. 92-392 provided that:

“(a) All laws or parts of laws inconsistent with this Act [see Effective Date note above] are hereby repealed to the extent of such inconsistency.

“(b) Subsection (a) of this section does not repeal or otherwise affect section 5102(d) of title 5, United States Code, section 305 of title 44 of such Code, or the provisions contained in section 180 of former title 31, United States Code.”

### § 5342. Definitions; application

(a) For the purpose of this subchapter—

(1) “agency” means an Executive agency; but does not include—

- (A) a Government controlled corporation;
- (B) the Tennessee Valley Authority;
- (C) the Virgin Islands Corporation;
- (D) the Atomic Energy Commission;
- (E) the Central Intelligence Agency;
- (F) the National Security Agency, Department of Defense;

(G) the Bureau of Engraving and Printing, except for the purposes of section 5349 of this title;

(H) the Government Accountability Office; or<sup>1</sup>

(J)<sup>2</sup> the Defense Intelligence Agency, Department of Defense; or

(K) the National Geospatial-Intelligence Agency, Department of Defense;

(2) “prevailing rate employee” means—

(A) an individual employed in or under an agency in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation, and any other individual, including a foreman and a supervisor, in a position having trade, craft, or laboring experience and knowledge as the paramount requirement;

(B) an employee of a nonappropriated fund instrumentality described by section 2105(c) of this title who is employed in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation, and any other individual, including a foreman and a supervisor, in a position having trade, craft, or laboring experience and knowledge as the paramount requirement; and

<sup>1</sup> So in original. The word “or” probably should not appear.

<sup>2</sup> So in original. Subsec. (a)(1) does not contain a subpar. (I).

(C) an employee of the Veterans' Canteen Service, Department of Veterans Affairs, excepted from chapter 51 of this title by section 5102(c)(14) of this title who is employed in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation, and any other individual, including a foreman and a supervisor, in a position having trade, craft, or labor experience and knowledge as the paramount requirement; and

(3) "position" means the work, consisting of duties and responsibilities, assignable to a prevailing rate employee.

(b)(1) Except as provided by paragraphs (2) and (3) of this subsection, this subchapter applies to all prevailing rate employees and positions in or under an agency.

(2) This subchapter does not apply to employees and positions described by section 5102(c) of this title other than by—

(A) paragraph (7) of that section to the extent that such paragraph (7) applies to employees and positions other than employees and positions of the Bureau of Engraving and Printing; and

(B) paragraph (14) of that section.

(3) This subchapter, except section 5348, does not apply to officers and members of crews of vessels excepted from chapter 51 of this title by section 5102(c)(8) of this title.

(c) Each prevailing rate employee employed within any of the several States or the District of Columbia shall be a United States citizen or a bona fide resident of one of the several States or the District of Columbia unless the Secretary of Labor certifies that no United States citizen or bona fide resident of one of the several States or the District of Columbia is available to fill the particular position.

(Added Pub. L. 92-392, §1(a), Aug. 19, 1972, 86 Stat. 564; amended Pub. L. 96-70, title III, §3302(e)(1), Sept. 27, 1979, 93 Stat. 498; Pub. L. 96-191, §8(d), Feb. 15, 1980, 94 Stat. 33; Pub. L. 97-468, title VI, §615(b)(1)(D), Jan. 14, 1983, 96 Stat. 2578; Pub. L. 98-618, title V, §502(b), Nov. 8, 1984, 98 Stat. 3303; Pub. L. 102-54, §13(b)(1), June 13, 1991, 105 Stat. 274; Pub. L. 103-359, title V, §501(h), Oct. 14, 1994, 108 Stat. 3429; Pub. L. 104-201, div. A, title XI, §1122(a)(1), div. C, title XXXV, §3548(a)(3)(A), Sept. 23, 1996, 110 Stat. 2687, 2868; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110-417, [div. A], title IX, §931(a)(1), Oct. 14, 2008, 122 Stat. 4575.)

#### PRIOR PROVISIONS

A prior section 5342, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 471, provided for crews of vessels.

Provisions similar to those comprising subsec. (b) of this section were contained in Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 471 (formerly classified to section 5342 of this title) prior to the general amendment of this subchapter by section 1(a) of Pub. L. 92-392.

#### AMENDMENTS

2008—Subsec. (a)(1)(K). Pub. L. 110-417 substituted "National Geospatial-Intelligence Agency" for "National Imagery and Mapping Agency".

2004—Subsec. (a)(1)(H). Pub. L. 108-271 substituted "Government Accountability Office" for "General Accounting Office".

1996—Subsec. (a)(1). Pub. L. 104-201, §3548(a)(3)(A), which directed amendment of subsec. (a)(1) by striking subpar. (G) and redesignating subpars. (H), (I), (J), (K), and (L) as (G), (H), (I), (J), and (K), respectively, was executed by striking subpar. (F), relating to the Panama Canal Commission, and redesignating subpars. (G), (H), (I), (K), and (L) as (F), (G), (H), (J), and (K), respectively, to reflect the probable intent of Congress, because subsec. (a)(1) does not contain a subpar. (J) and the amendments were included in a series of conforming amendments relating to the Panama Canal.

Subsec. (a)(1)(L). Pub. L. 104-201, §1122(a)(1), substituted "National Imagery and Mapping Agency" for "Central Imagery Office".

1994—Subsec. (a)(1)(J) to (L). Pub. L. 103-359 directed the amendment of subpar. (J) by striking out "or" at end which could not be executed because par. (1) does not contain a subpar. (J), added "or" at end of subpar. (K), and added subpar. (L).

1991—Subsec. (a)(2)(C). Pub. L. 102-54 substituted "Department of Veterans Affairs" for "Veterans' Administration".

1984—Subsec. (a)(1)(I) to (K). Pub. L. 98-618 struck out "or" at end of subpar. (I), inserted "or" at end of subpar. (J), and added subpar. (K).

1983—Subsec. (a)(1)(C) to (J). Pub. L. 97-468, eff. Jan. 5, 1985, struck out subpar. (C) which excluded the Alaska Railroad and redesignated subpars. (D) to (J) as (C) to (I), respectively. See Effective Date of 1983 Amendment note below.

1980—Subsec. (a)(1)(J). Pub. L. 96-191 added subpar. (J).

1979—Subsec. (a)(1)(G). Pub. L. 96-70 substituted "Commission" for "Company".

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1122(a)(1) of Pub. L. 104-201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104-201, set out as a note under section 193 of Title 10, Armed Forces.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-468 effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of Title 45, Railroads, see section 615(b) of Pub. L. 97-468.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-191 effective Oct. 1, 1980, see section 10(a) of Pub. L. 96-191.

#### 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

Section effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, except that in the case of employees referred to in subsec. (a)(2)(B) and (C) section effective on first day of first applicable pay period beginning on or after 180th day after Aug. 19, 1972, or on such earlier date (not earlier than 90th day after Aug. 19, 1972) as Civil Service Commission may prescribe, see section 15(a) of Pub. L. 92-392, set out as a note under section 5341 of this title.

#### ABOLITION OF ATOMIC ENERGY COMMISSION

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

#### DISSOLUTION OF VIRGIN ISLANDS CORPORATION

Virgin Islands Corporation established to have succession until June 30, 1969, unless sooner dissolved by Act of Congress, by act June 30, 1949, ch. 285, 63 Stat.

350, as amended (48 U.S.C. 1407 et seq.). Corporation terminated its program June 30, 1965, and dissolved July 1, 1966. Act June 30, 1949, was repealed by Pub. L. 97-357, title III, § 308(e), Oct. 19, 1982, 96 Stat. 1710.

**§ 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 proce-

dures 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.)

#### 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.

#### 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. 111–117, div. C, title VII, §710, Dec. 16, 2009, 123 Stat. 3206, provided that:

“(a) 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 2010, 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—

“(1) during the period from the date of expiration of the limitation imposed by the comparable section for previous fiscal years until the normal effective date of the applicable wage survey adjustment that is to take effect in fiscal year 2010, 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

“(2) during the period consisting of the remainder of fiscal year 2010, in an amount that exceeds, as a result of a wage survey adjustment, the rate payable under paragraph (1) by more than the sum of—

“(A) the percentage adjustment taking effect in fiscal year 2010 under section 5303 of title 5, United States Code, in the rates of pay under the General Schedule; and

“(B) the difference between the overall average percentage of the locality-based comparability payments taking effect in fiscal year 2010 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.

“(b) 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 subsection (a) is in effect at a rate that exceeds the rates that would be payable under subsection (a) were subsection (a) applicable to such employee.

“(c) For the purposes of this section, the rates payable to an employee who is covered by this section and who is paid from a schedule not in existence on September 30, 2009, shall be determined under regulations prescribed by the Office of Personnel Management.

“(d) Notwithstanding any other provision of law, rates of premium pay for employees subject to this section may not be changed from the rates in effect on September 30, 2009, except to the extent determined by the Office of Personnel Management to be consistent with the purpose of this section.

“(e) This section shall apply with respect to pay for service performed after September 30, 2009.

“(f) 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 section shall be treated as the rate of salary or basic pay.

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

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

Similar provisions were contained in the following prior acts:

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 EMPLOYEES

Pub. L. 110-114, title V, §5026, Nov. 8, 2007, 121 Stat. 1203, provided that: “Employees of the Corps of Engi-

neers 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

Section 704 of Pub. L. 95-454 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

Section 9(a) of Pub. L. 92-392 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

Section 9(b) of Pub. L. 92-392 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

Section 15(b) of Pub. L. 92-392 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 60a-1 and 60a-2 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 increase and ending on the date of issuance of the order granting the increase, and only for services performed during that period.

For the purpose of this subsection, service in the armed forces includes the period provided by statute for the mandatory restoration of the individual to a position in or under the Government of the United States or the government of the District of Columbia after he is relieved from training and service in the armed forces or discharged from hospitalization following that training and service.

(Added Pub. L. 92-392, §1(a), Aug. 19, 1972, 86 Stat. 568.)

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (a) of this section were contained in Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 471 (formerly classified to section 5343 of this title) prior to the general amendment of this subchapter by section 1(a) of Pub. L. 92-392.

**[§ 5345. Repealed. Pub. L. 95-454, title VIII, § 801(a)(2), Oct. 13, 1978, 92 Stat. 1221]**

Section, added Pub. L. 92-392, §1(a), Aug. 19, 1972, 86 Stat. 569, related to retained rate of pay on reduction in grade or reassignment.

A prior section 5345, added Pub. L. 90-206, title II, § 223(a), Dec. 16, 1967, 81 Stat. 641, which provided for position classification appeals, was omitted in the general amendment of this subchapter, and is covered by section 5346(c) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978,

and an employee receiving pay on day before such effective date not to have such pay reduced or terminated and, unless section 5362 applies, employee is entitled to continuation of such pay, etc., see section 801(a)(4) of Pub. L. 95-454, set out as an Effective Date note under section 5361 of this title.

#### § 5346. Job grading system

(a) The Office of Personnel Management, after consulting with the agencies and with employee organizations, shall establish and maintain a job grading system for positions to which this subchapter applies. In carrying out this subsection, the Office shall—

- (1) establish the basic occupational alignment and grade structure or structures for the job grading system;
- (2) establish and define individual occupations and the boundaries of each occupation;
- (3) establish job titles within occupations;
- (4) develop and publish job grading standards; and
- (5) provide a method to assure consistency in the application of job standards.

(b) The Office, from time to time, shall review such numbers of positions in each agency as will enable the Office to determine whether the agency is placing positions in occupations and grades in conformance with or consistently with published job standards. When the Office finds that a position is not placed in its proper occupation and grade in conformance with published standards or that a position for which there is no published standard is not placed in the occupation and grade consistently with published standards, it shall, after consultation with appropriate officials of the agency concerned, place the position in its appropriate occupation and grade and shall certify this action to the agency. The agency shall act in accordance with the certificate, and the certificate is binding on all administrative, certifying, payroll, disbursing, and accounting officials.

(c) On application, made in accordance with regulations prescribed by the Office, by a prevailing rate employee for the review of the action of an employing agency in placing his position in an occupation and grade for pay purposes, the Office shall—

- (1) ascertain currently the facts as to the duties, responsibilities, and qualification requirements of the position;
- (2) decide whether the position has been placed in the proper occupation and grade; and
- (3) approve, disapprove, or modify, in accordance with its decision, the action of the employing agency in placing the position in an occupation and grade.

The Office shall certify to the agency concerned its action under paragraph (3) of this subsection. The agency shall act in accordance with the certificate, and the certificate is binding on all administrative, certifying, payroll, disbursing, and accounting officials.

(Added Pub. L. 90-206, title II, § 223(a), Dec. 16, 1967, 81 Stat. 641, § 5345; renumbered § 5346 and amended Pub. L. 92-392, § 1(a), Aug. 19, 1972, 86 Stat. 570; Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

#### AMENDMENTS

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

1972—Subsecs. (a), (b). Pub. L. 92-392 added subsecs. (a) and (b).

Subsec. (c). Pub. L. 92-392 designated existing provisions as subsec. (c) and substituted in introductory text “Commission”, “a prevailing rate of employee” and “in placing his position in an occupation and grade” for “Civil Service Commission”, “an employee subject to section 5341(a) of this title” and “in classifying his position”, respectively, in par. (2) “placed in the proper occupation and grade” for “properly classified”, in par. (3) “in placing the position in an occupation and grade” for “in classifying the position” and in last sentence “subsection” for “section”.

#### 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 OF 1972 AMENDMENT

Amendment by Pub. L. 92-392 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92-392, set out as an Effective Date note under section 5341 of this title.

#### § 5347. Federal Prevailing Rate Advisory Committee

(a) There is established a Federal Prevailing Rate Advisory Committee composed of—

(1) the Chairman, who shall not hold any other office or position in the Government of the United States or the government of the District of Columbia, and who shall be appointed by the Director of the Office of Personnel Management for a 4-year term;

(2) one member from the Office of the Secretary of Defense, designated by the Secretary of Defense;

(3) two members from the military departments, designated by the Director of the Office of Personnel Management;

(4) one member, designated by the Director of the Office of Personnel Management from time to time from an agency (other than the Department of Defense, a military department, and the Office of Personnel Management);

(5) an employee of the Office of Personnel Management, designated by the Director of the Office of Personnel Management; and

(6) five members, designated by the Director of the Office of Personnel Management, from among the employee organizations representing, under exclusive recognition of the Government of the United States, the largest numbers of prevailing rate employees.

(b) In designating members from among employee organizations under subsection (a)(6) of this section, the Director of the Office of Personnel Management shall designate, as nearly as practicable, a number of members from a particular employee organization in the same proportion to the total number of employee representatives appointed to the Committee under subsection (a)(6) of this section as the number of prevailing rate employees represented by such organization is to the total number of prevailing

rate employees. However, there shall not be more than two members from any one employee organization nor more than four members from a single council, federation, alliance, association, or affiliation of employee organizations.

(c) Every 2 years the Director of the Office of Personnel Management shall review employee organization representation to determine adequate or proportional representation under the guidelines of subsection (b) of this section.

(d) The members from the employee organizations serve at the pleasure of the Director of the Office of Personnel Management.

(e) The Committee shall study the prevailing rate system and other matters pertinent to the establishment of prevailing rates under this subchapter and, from time to time, advise the Office of Personnel Management thereon. Conclusions and recommendations of the Committee shall be formulated by majority vote. The Chairman of the Committee may vote only to break a tie vote of the Committee.

(f) The Committee shall meet at the call of the Chairman. However, a special meeting shall be called by the Chairman if 5 members make a written request to the Chairman to call a special meeting to consider matters within the purview of the Committee.

(g)(1) Except as provided in paragraph (2), members of the Committee described in paragraphs (2)–(5) of subsection (a) of this section serve without additional pay. Members who represent employee organizations are not entitled to pay from the Government of the United States for services rendered to the Committee.

(2) The position of Chairman shall be considered to be a Senior Executive Service position within the meaning of section 3132(a), and shall be subject to all provisions of this title relating to Senior Executive Service positions, including section 5383.

(h) The Office of Personnel Management shall provide such clerical and professional personnel as the Chairman of the Committee considers appropriate and necessary to carry out its functions under this subchapter. Such personnel shall be responsible to the Chairman of the Committee.

(Added Pub. L. 92–392, §1(a), Aug. 19, 1972, 86 Stat. 571; amended Pub. L. 95–454, title IX, §906(a)(1), (2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–54, §2(a)(15), Aug. 14, 1979, 93 Stat. 382; Pub. L. 102–378, §2(30), Oct. 2, 1992, 106 Stat. 1350; Pub. L. 104–66, title II, §2181(d), Dec. 21, 1995, 109 Stat. 732.)

#### AMENDMENTS

1995—Subsec. (e). Pub. L. 104–66 struck out at end “The Committee shall make an annual report to the Office and the President for transmittal to Congress, including recommendations and other matters considered appropriate. Any member of the Committee may include in the annual report recommendations and other matters he considers appropriate.”

1992—Subsec. (g). Pub. L. 102–378 designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), members” for “Members”, struck out second sentence which read as follows: “The Chairman is entitled to a rate of pay equal to the maximum rate currently paid, from time to time, under the General Schedule.”, and added par. (2).

1979—Subsec. (e). Pub. L. 96–54 substituted “Office” for “Commission”.

1978—Subsecs. (a) to (e), (h). Pub. L. 95–454 substituted “Director of the Office of Personnel Management” for “Chairman of the Civil Service Commission” and “Office of Personnel Management” for “Civil Service Commission”, wherever appearing.

#### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–54 effective July 12, 1979, see section 2(b) of Pub. L. 96–54, set out as a note under section 305 of this title.

#### 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 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92–392, set out as a note under section 5341 of this title.

### § 5348. Crews of vessels

(a) Except as provided by subsection (b) of this section, the pay of officers and members of crews of vessels excepted from chapter 51 of this title by section 5102(c)(8) of this title shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry.

(b) Vessel employees in an area where inadequate maritime industry practice exists and vessel employees of the Corps of Engineers shall have their pay fixed and adjusted under the provisions of this subchapter other than this section, as appropriate.

(Pub. L. 89–544, Sept. 6, 1966, 80 Stat. 471, §5348, formerly §5342; renumbered and amended Pub. L. 92–392, §1(a), Aug. 19, 1972, 86 Stat. 572; Pub. L. 96–70, title III, §3302(e)(1), Sept. 27, 1979, 93 Stat. 498; Pub. L. 104–201, div. C, title XXXV, §3548(a)(3)(C), Sept. 23, 1996, 110 Stat. 2868.)

#### AMENDMENTS

1996—Subsec. (a). Pub. L. 104–201, §3548(a)(3)(C)(iii), substituted “subsection (b)” for “subsections (b) and (c)”.

Subsecs. (b), (c). Pub. L. 104–201, §3548(a)(3)(C)(i), (ii), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: “Vessel employees of the Panama Canal Commission may be paid in accordance with the wage practices of the maritime industry.”

1979—Subsec. (b). Pub. L. 96–70 substituted “Commission” for “Company”.

1972—Subsec. (a). Pub. L. 92–392 inserted reference to subsection (c) of this section.

Subsec. (c). Pub. L. 92–392 added subsec. (c).

#### 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 1972 AMENDMENT

Amendment by Pub. L. 92–392 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92–392, set out as an Effective Date note under section 5341 of this title.

#### LIMITATION ON PAY ADJUSTMENTS

For provisions limiting the adjustment of salary or basic pay of employees covered by this section, see provisions set out as notes under section 5343 of this title.

§ 5349. Prevailing rate employees; legislative, judicial, Bureau of Engraving and Printing, and government of the District of Columbia

(a) The pay of employees, described under section 5102(c)(7) of this title, in the Library of Congress, the Botanic Garden, the Government Printing Office, the Government Accountability Office, the Office of the Architect of the Capitol, the Bureau of Engraving and Printing, and the government of the District of Columbia, shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and in accordance with such provisions of this subchapter, including the provisions of section 5344, relating to retroactive pay, and subchapter VI of this chapter, relating to grade and pay retention, as the pay-fixing authority of each such agency may determine. Subject to section 213(f) of title 29, the rates may not be less than the appropriate rates provided for by section 206(a)(1) of title 29. If the pay-fixing authority concerned determines that the provisions of subchapter VI of this chapter should apply to any employee under his jurisdiction, then the employee concerned shall be deemed to have satisfied the requirements of section 5361(1) of this title if the tenure of his appointment is substantially equivalent to the tenure of any appointment referred to in such paragraph.

(b) Subsection (a) of this section does not modify or otherwise affect section 5102(d) of this title, section 305 of title 44, and section 5141 of title 31.

(Added Pub. L. 92-392, §1(a), Aug. 19, 1972, 86 Stat. 572; amended Pub. L. 95-454, title VIII, §801(a)(3)(H), Oct. 13, 1978, 92 Stat. 1222; Pub. L. 97-258, §3(a)(11), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 100-426, title III, §301, Sept. 9, 1988, 102 Stat. 1602; Pub. L. 101-474, §5(j), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (a) of this section were contained in Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 471; Pub. L. 90-83, §1(97), Sept. 11, 1967, 81 Stat. 220 (formerly classified to section 5341(a) of this title) prior to the general amendment of this subchapter by section 1(a) of Pub. L. 92-392.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-271 substituted "Government Accountability Office" for "General Accounting Office".

1990—Subsec. (a). Pub. L. 101-474 struck out "the Administrative Office of the United States Courts," before "the Library of Congress".

1988—Subsec. (a). Pub. L. 100-426 inserted reference to General Accounting Office.

1982—Subsec. (b). Pub. L. 97-258 substituted "section 5141" for "section 180".

1978—Subsec. (a). Pub. L. 95-454 substituted "subchapter VI of this chapter, relating to grade and pay retention," for "section 5345, relating to retention of pay.," "subchapter VI of this chapter" for "section 5345 of this title", and "section 5361(1)" for "paragraph (2) of section 5345(a)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L.

95-454, set out as an Effective Date note under section 5361 of this title.

EFFECTIVE DATE

Section effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92-392, set out as a note under section 5341 of this title.

SUBCHAPTER V—STUDENT-EMPLOYEES

§ 5351. Definitions

For the purpose of this subchapter—

(1) "agency" means an Executive agency, a military department, and the government of the District of Columbia; and

(2) "student-employee" means—

(A) a student nurse, medical or dental intern, resident-in-training, student dietitian, student physical therapist, and student occupational therapist, assigned or attached to a hospital, clinic, or medical or dental laboratory operated by an agency; and

(B) any other student-employee, assigned or attached primarily for training purposes to a hospital, clinic, or medical or dental laboratory operated by an agency, who is designated by the head of the agency with the approval of the Office of Personnel Management.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 472; Pub. L. 95-454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 1052, Aug. 4, 1947, ch. 452, §2, 61 Stat. 727.

The section is restated in definition form. In paragraph (1), the words "an Executive agency, a military department" are coextensive with and substituted for "department, agency, or instrumentality of the Federal Government" in view of the definitions in sections 105 and 102.

The exception from the Classification Act of 1923, as amended, is omitted as obsolete and superseded by the Classification Act of 1949, as amended, which is carried into this title. The present exception from the Classification Act of 1949, as amended, is carried into section 5102(c)(16).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Par. (2)(B). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

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.

§ 5352. Stipends

The head of each agency, and the District of Columbia Council with respect to the government of the District of Columbia, shall fix the stipends of its student-employees. The stipend may not exceed the applicable maximum prescribed by the Office of Personnel Management.