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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

RIN 3206-AL74

#### Prevailing Rate Systems; Abolishment of Santa Clara, CA, as a Nonappropriated Fund Federal Wage System Wage Area

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The U.S. Office of Personnel Management is issuing an interim rule to abolish the Santa Clara, California, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine Santa Clara County, CA, to the Monterey, CA, NAF wage area and Alameda, Contra Costa, and San Francisco Counties, CA, to the Solano, CA, NAF wage area. San Mateo County, CA, will no longer be defined. These changes are necessary because the closure of the Moffett Federal Airfield Navy Exchange will leave the Santa Clara wage area without an activity having the capability to conduct a local wage survey.

**DATES:** *Effective Date:* This regulation is effective on November 4, 2008. We must receive comments on or before December 4, 2008. *Applicability date:* FWS employees remaining in the Santa Clara wage area will be transferred to the Monterey and Solano wage area schedules on the first day of the first applicable pay period beginning on or after November 15, 2008.

**ADDRESSES:** Send or deliver comments to Charles D. Grimes III, Deputy Associate Director for Performance and Pay Systems, Strategic Human Resources Policy Division, U.S. Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415-8200; e-mail *pay-performance-*

*policy@opm.gov*; or FAX: (202) 606-4264.

**FOR FURTHER INFORMATION CONTACT:**

Madeline Gonzalez, (202) 606-2838; e-mail *pay-performance-policy@opm.gov*; or FAX: (202) 606-4264.

**SUPPLEMENTARY INFORMATION:** The Santa Clara, California, nonappropriated fund (NAF) Federal Wage System (FWS) wage area is presently composed of one survey county, Santa Clara County, CA, and four area of application counties, Alameda, Contra Costa, San Francisco, and San Mateo Counties, CA. Under section 532.219 of title 5, Code of Federal Regulations, the U.S. Office of Personnel Management (OPM) may establish an NAF wage area when there are a minimum of 26 NAF wage employees in the survey area, the local activity has the capability to host annual local wage surveys, and the survey area has at least 1,800 private enterprise employees in establishments within survey specifications. The Department of Defense (DOD) notified OPM that the Moffett Federal Airfield Navy Exchange has closed, leaving the Santa Clara NAF wage area without an activity having the capability to conduct a local wage survey. The NAF FWS employment in Santa Clara County is currently 9 employees at the Moffett Navy Lodge and 17 employees at the VA Medical Center in Palo Alto. DOD recommended that OPM abolish the Santa Clara NAF FWS wage area and redefine Santa Clara County to the Monterey, CA, NAF wage area and Alameda, Contra Costa, and San Francisco Counties to the Solano, CA, NAF wage area.

Since Santa Clara, Alameda, Contra Costa, and San Francisco Counties will have continuing NAF employment and do not meet the regulatory criteria under 5 CFR 532.219 to be separate survey areas, they must be areas of application. In defining counties as area of application counties, OPM considers the following criteria:

- (i) Proximity of largest facilities activity in each county;
- (ii) Transportation facilities and commuting patterns; and
- (iii) Similarities of the counties in:
  - (A) Overall population;
  - (B) Private employment in major industry categories; and
  - (C) Kinds and sizes of private industrial establishments.

In selecting a wage area to which Santa Clara County should be redefined,

proximity favors the Monterey NAF wage area. All other criteria are inconclusive. Based on these findings, OPM is defining Santa Clara County as an area of application to the Monterey NAF wage area.

In selecting a wage area to which Alameda County should be redefined, proximity favors the San Joaquin wage area over the Solano wage area by approximately 1 mile. All other criteria are inconclusive. Based on the mixed nature of the regulatory analysis findings, we believe the fact that Alameda is geographically linked to Contra Costa, with both counties encompassing the greater Oakland area, provides strong evidence that Alameda and Contra Costa should remain together. Therefore, OPM is defining Alameda County as an area of application to the Solano wage area.

In selecting a wage area to which Contra Costa County should be redefined, proximity favors the Solano wage area. Commuting patterns very slightly favor the Solano wage area. All other criteria are inconclusive. Based on the mixed nature of the regulatory analysis findings, we believe the fact that Contra Costa is geographically linked to Alameda, with both counties encompassing the greater Oakland area, provides strong evidence that Alameda and Contra Costa should remain together. Therefore, OPM is defining Contra Costa County as an area of application to the Solano wage area.

In selecting a wage area to which San Francisco County should be redefined, proximity favors the Solano wage area. All other criteria are inconclusive. Based on these findings, OPM is defining San Francisco County as an area of application to the Solano wage area.

OPM is removing San Mateo County from the wage area definition. There are no longer NAF FWS employees working in San Mateo County. Under 5 U.S.C. 5343(a)(1)(B)(i), NAF wage areas "shall not extend beyond the immediate locality in which the particular prevailing rate employees are employed." Therefore, San Mateo County should not be defined as part of an NAF wage area.

The Monterey NAF wage area would consist of one survey county, Monterey County, and one area of application county, Santa Clara County. The Solano NAF wage area would consist of one

survey county, Solano County, and six area of application counties: Alameda, Contra Costa, Marin, Napa, San Francisco, and Sonoma Counties. FWS employees remaining in the Santa Clara wage area will be transferred to the Monterey and Solano wage area schedules on the first day of the first applicable pay period beginning on or after November 15, 2008. The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has reviewed and recommended these changes by consensus.

**Waiver of Notice of Proposed Rulemaking and Delay in Effective Date**

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists to waive the general notice of proposed rulemaking. Also pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making this rule effective in less than 30 days. This notice is being waived and the regulation is being made effective in less than 30 days because the closure of the Moffett Federal Airfield Navy Exchange will leave the Santa Clara wage area without an activity having the capability to conduct a local wage survey and the remaining NAF FWS employees in Santa Clara, Alameda, Contra Costa, and San Francisco Counties must be transferred to a continuing wage area as soon as possible.

*Regulatory Flexibility Act*

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

**List of Subjects in 5 CFR Part 532**

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages. Office of Personnel Management. Michael W. Hager, Acting Director.

Accordingly, the U.S. Office of Personnel Management is amending 5 CFR part 532 as follows:

**PART 532—PREVAILING RATE SYSTEMS**

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

**Appendix B to Subpart B of Part 532— Nationwide Schedule of Nonappropriated Fund Regular Wage Surveys**

2. Appendix B to subpart B is amended by removing, under the State of California, “Santa Clara.”

**Appendix D to Subpart B of Part 532— Nonappropriated Fund Wage and Survey Areas**

3. Appendix D to subpart B is amended for the State of California by removing the wage area listing for Santa Clara, California, and revising the wage area listing for Monterey and Solano, California, to read as follows:

\* \* \* \* \*

**California**

\* \* \* \* \*

**Monterey**

*Survey Area*

California:

Monterey.

*Area of application. Survey area plus:*

California:

Santa Clara.

\* \* \* \* \*

**Solano**

*Survey Area*

California:

Solano.

*Area of application. Survey area plus:*

California:

Alameda.

Contra Costa.

Marin.

Napa.

San Francisco.

Sonoma.

[FR Doc. E8-26274 Filed 11-3-08; 8:45 am]

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**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Part 630**

RIN 3206-AL26

**Emergency Leave Transfer Program**

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is issuing final regulations on the Emergency Leave Transfer Program to provide alternative methods for agencies to assist their employees in the event of a pandemic health crisis or other major disaster or emergency as declared by the President. The final regulations allow donated annual leave

in a voluntary leave bank administered by one agency to be transferred to an emergency leave transfer program administered by another agency, revise the rules for returning unused donated annual leave to emergency leave donors (including leave banks), and incorporate the inclusion of Judicial branch employees as eligible participants in the emergency leave transfer program. In addition, the final regulations have been reorganized and renumbered to aid in accessibility and enhance reader understanding.

DATES: Effective Date: December 4, 2008.

FOR FURTHER INFORMATION CONTACT: Doris Rippey, by telephone at (202) 606-2858; by fax at (202) 606-0824; or by e-mail at *pay-performance-policy@opm.gov*.

SUPPLEMENTARY INFORMATION: On October 15, 2007, the U.S. Office of Personnel Management (OPM) published proposed regulations (72 FR 58263) to amend 5 CFR 630, subpart K, to allow donated annual leave in a voluntary leave bank administered by one agency to be transferred to an emergency leave transfer program administered by another agency, revise the rules for returning unused donated annual leave to emergency leave donors (including leave banks), and incorporate the inclusion of Judicial branch employees as eligible participants in the emergency leave transfer program, as provided by Public Law 109-229, now codified at 5 U.S.C. 6391(f).

The amendments made to OPM’s regulations are intended to support OPM’s continuing efforts to provide alternative methods for agencies to assist their employees in the event of a pandemic health crisis or other major disaster or emergency as declared by the President. In addition, the final regulations have been reorganized and renumbered to aid in accessibility and enhance reader understanding.

The 60-day comment period for the proposed regulations ended on December 14, 2007. During the comment period, we received comments from five agencies, three unions, one payroll provider, and two individuals. A summary of the comments received and the changes made in the regulations are presented below.

**Transfer of Leave From Leave Bank to Emergency Leave Transfer Program at Another Agency**

The proposed regulations added § 630.1104 to permit a leave bank at an agency to donate, with the concurrence of the leave bank board, donated annual leave to an emergency leave transfer program administered by another