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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-A197

Prevailing Rate Systems; Abolishment of the Washington, MD, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing an interim rule that will abolish the Washington, MD, nonappropriated fund (NAF) Federal Wage System (FWS) wage area, and establish a new Frederick, MD, NAF FWS wage area. The abolishment of the Washington, MD, wage area and the establishment of a new Frederick wage area is necessary because of the closure of the Washington, MD, wage area's host installation, Fort Ritchie. This closure has left the Department of Defense without an installation in the survey area capable of hosting annual local wage surveys. In addition, there are no longer any NAF FWS employees stationed in Washington County.

DATES: *Effective date:* This interim rule is effective on December 31, 1999. Comments must be received by January 26, 2000.

ADDRESSES: Send or deliver written comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415-8200, or FAX: (202) 606-4264.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins by phone at (202) 606-2848, by FAX at (202) 606-0824, or by email at jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: The Washington, MD, nonappropriated fund (NAF) Federal Wage System (FWS) wage area is presently composed of one survey county, Washington County, and two areas of application counties, Frederick County, MD, and Berkeley County, WV. The closure of the Washington, MD, wage area's host activity, Fort Ritchie, left the Department of Defense (DOD) without an activity in the survey area with the capability to conduct annual local NAF wage surveys. Fort Ritchie ceased operations on October 1, 1998. Since this closure, there are no longer any NAF FWS employees stationed in Washington County. However, the area of application counties, Frederick and Berkeley, continue to have NAF FWS employment. Under section 5343(a)(1)(B)(i) of title 5, United States Code, NAF wage areas "shall not extend beyond the immediate locality in which the particular prevailing rate employees are employed." Therefore, Washington County should not be defined as part of an NAF wage area. DOD recommended that the Office of Personnel Management (OPM) abolish the Washington, MD, NAF wage area and establish a new Frederick, MD, NAF wage area. The new Frederick, MD, NAF wage area will be composed of one survey county, Frederick County, MD, and one area of application county, Berkeley County, WV.

Under section 532.219(b) of title 5, Code of Federal Regulations, NAF wage areas are established 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 there are within the survey area a minimum of 1,800 private enterprise employees in establishments within survey specifications. Frederick County meets the regulatory requirements to be established as a separate NAF survey area. There are approximately 36 NAF FWS employees stationed in Frederick County, and a local Federal installation, Fort Detrick, has the capability to host annual local wage surveys. Furthermore, Frederick County has more than the required minimum number of private enterprise employees in establishments within survey specifications. There are approximately 10 NAF FWS employees stationed in Berkeley County, WV, which does not meet the criteria to be

established as a separate NAF wage area. Therefore, the county must be defined as an area of application.

When defining NAF wage areas, OPM evaluates several factors under section 532.219 of title 5, Code of Federal Regulations. OPM considers the following criteria when defining NAF wage area boundaries:

- (i) Proximity of largest 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.

The closest major Federal installation to Fort Ritchie is Fort Detrick. Fort Ritchie is approximately 42 km (26 miles) from Fort Detrick. Commuting patterns indicate that 9 percent of the Washington County resident workforce commutes to Frederick County. Transportation facilities consist of major interstate and State highways and do not favor one county more than another. Also, a review of the similarities of the counties in terms of overall population, employment, and kinds and sizes of industrial establishments does not favor one county more than another.

The closest major Federal installation to the Department of Veterans Affairs Medical Center, Martinsburg, located in Berkeley County, WV, is Fort Detrick. The VA Medical Center is approximately 70 km (42 miles) from Fort Detrick. Commuting patterns indicate that approximately 2 percent of the Berkeley County resident workforce commutes to Frederick County and approximately 2 percent of the Berkeley County resident workforce commutes to the Prince George—Montgomery County survey area. Transportation facilities consist of major interstate and State highways and do not favor one county more than another. Also, a review of the similarities of the counties in terms of overall population, employment, and kinds and sizes of industrial establishments does not favor one county more than another.

Based on an analysis of these regulatory criteria, OPM proposes to establish Frederick, MD, as a new NAF wage area and define Berkeley County, WV, as an area of application. Full-scale wage surveys will be ordered in the

Frederick, MD, NAF wage area in January of even fiscal years, with the first full-scale wage survey for the Frederick wage area beginning in January 2000. 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 concurred by consensus with these changes.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving 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. The notice is being waived and the regulation is being made effective in less than 30 days because the Washington, MD, NAF wage survey would have been ordered in January 2000.

By issuing the interim rule, the new Frederick, MD, NAF wage area will be ordered in January 2000, and preparations for the wage survey must begin immediately.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it 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.

Janice R. Lachance,
Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

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

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

2. Appendix B to subpart B of part 532 is amended for the State of Maryland by removing the entry for "Washington" and by adding alphabetically a new entry for "Frederick" with a beginning survey month of "January" and a fiscal year of full-scale survey of "Even".

3. Appendix D to subpart B is amended by removing the wage area

listing for Washington, Maryland, and by adding alphabetically a new entry for Frederick, Maryland, to read as follows:

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

* * * * *

Maryland

* * * * *

Frederick

Survey Area

Maryland:

Frederick

Area of Application. Survey area plus:

West Virginia:

Berkeley

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206-A103

Emergency Leave Transfer Program

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations governing the establishment of an emergency leave transfer program. These regulations permit Federal employees to transfer their unused annual leave to other Federal employees adversely affected by a major disaster or emergency, as declared by the President. This program provides Federal employees with a special opportunity to help their fellow workers in times of need.

EFFECTIVE DATE: The regulations are effective on December 27, 1999.

FOR FURTHER INFORMATION CONTACT: Kevin Kitchelt, (202) 606-2858, FAX: (202) 606-0824, or email to payleave@opm.gov.

SUPPLEMENTARY INFORMATION: Section 9004 of Public Law 105-18, June 12, 1997, added section 6391 to title 5, United States Code, to provide that in the event of a major disaster or emergency, as declared by the President, that results in severe adverse effects for a substantial number of employees, the President may direct the Office of Personnel Management (OPM) to establish an emergency leave transfer program under which an employee in any Executive agency may donate

annual leave for transfer to employees of his or her agency or to employees in other agencies who are adversely affected by such disaster or emergency. The Act also permits agency leave banks established under 5 U.S.C. 6362 to donate leave under an emergency leave transfer program established by OPM.

The emergency leave transfer program is in addition to the voluntary leave transfer and leave bank programs established under 5 U.S.C. 6332 and 6362. Under the current voluntary leave transfer program, an employee may donate unused annual leave for transfer to other Federal employees who have medical emergencies and who have exhausted their own leave. In contrast, the emergency leave transfer program will permit an employee to donate annual leave to employees who have been adversely affected by disasters or emergencies, such as a flood or an earthquake that has destroyed an employee's property, or by an emergency situation such as that created by the bombings of the Alfred P. Murrah Federal Building in Oklahoma City and the U.S. embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania. In addition, an employee approved as an emergency leave recipient may use donated annual leave without having to exhaust his or her own leave.

On November 3, 1997, OPM published proposed regulations (62 FR 59301) to establish the emergency leave transfer program. Under the proposed regulations, OPM would be responsible for establishing and administering an emergency leave bank for each disaster or emergency declared by the President. Each emergency leave bank would contain the aggregate amount of annual leave donated by emergency leave donors throughout the Government for a specific disaster or emergency. OPM would facilitate the transfer of donated annual leave from the emergency leave bank to agencies with employees affected by the disaster or emergency for distribution to their approved emergency leave recipients.

We received comments from 9 agencies, 1 labor organization, and 1 individual, for a total of 11 comments. A summary of the comments received and the changes made in the regulations is presented below.

OPM's Role

One agency recommended that individual agencies be responsible for administering an emergency leave transfer program. After the proposed regulations were published, the President directed OPM to establish an emergency leave transfer program to assist employees affected by the