

Rules and Regulations

Federal Register

Vol. 67, No. 137

Wednesday, July 17, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AJ61

Prevailing Rate Systems; Definition of Santa Clara, CA, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule.

SUMMARY: The Office of Personnel Management is issuing an interim rule that will abolish the Alameda-Contra Costa, CA, nonappropriated fund (NAF) Federal Wage System wage area and establish a new Santa Clara, CA, NAF wage area. This change is necessary because the closure of the Army and Air Force Exchange Service Distribution Center in Oakland will leave the Alameda-Contra Costa wage area without a host activity to conduct a local wage survey. A full-scale survey for the Santa Clara wage area will be conducted in September 2002.

DATES: This interim rule is effective on August 16, 2002. The Office of Personnel Management must receive comments by August 16, 2002.

ADDRESSES: Send or deliver 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: Chenty I. Carpenter, (202) 606-2848; FAX: (202) 606-0824; or e-mail cicarpen@opm.gov.

SUPPLEMENTARY INFORMATION: The Department of Defense (DOD) requests that the Office of Personnel Management (OPM) abolish the present

Alameda-Contra Costa, CA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and establish a new Santa Clara, CA, NAF wage area. This change is necessary because the closure of the Army and Air Force Exchange Service Distribution Center in Oakland will leave the Alameda-Contra Costa wage area without a host activity to conduct a local wage survey. The Santa Clara NAF wage area will consist of Santa Clara County as the survey area. The area of application for the Santa Clara, CA, wage area will include Alameda, Contra Costa, and San Mateo Counties. A full-scale survey for the Santa Clara wage area will be conducted in September 2002.

The Alameda-Contra Costa NAF wage area is presently composed of two survey area counties, Alameda and Contra Costa Counties, and two area of application counties, San Mateo and Santa Clara Counties. The Department of Defense recommended that Santa Clara County be redefined as the sole survey county and that Alameda, Contra Costa, and San Mateo Counties be defined as area of application counties. Santa Clara County meets the minimum regulatory requirements to be an NAF survey area. There are about 90 FWS NAF employees working in Santa Clara County, and Moffett Federal Airfield has the capability to conduct a local wage survey. Santa Clara also meets the regulatory requirement of having a minimum of 1,800 private enterprise employees in establishments within the survey specifications. Since Alameda, Contra Costa, and San Mateo 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 proximity of the largest activity in each county to the survey area; transportation facilities and commuting patterns; and similarities in overall population, private employment in the major industry categories, and the kinds and sizes of private industrial establishments.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by consensus the

abolishment of the present Alameda-Contra Costa wage area and the establishment of a new Santa Clara wage area.

Waiver of Notice of Proposed Rulemaking and Delayed Effective Date

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. The notice is being waived because it is necessary to abolish the present Alameda-Contra Costa wage area and establish the new Santa Clara wage area as soon as possible to allow DOD time to prepare for the Santa Clara full-scale survey that will be conducted in September 2002.

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.

U.S. Office of Personnel Management.

Kay Coles James,
Director.

Accordingly, the 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 [Amended]

2. Appendix B to subpart B is amended by removing, under the State of California, “Alameda-Contra Costa,” and adding, under the State of California, after Santa Barbara, “Santa Clara,” under the wage area listing with the beginning month as “September,” and the fiscal year of full-scale survey as “Even.”

Appendix D to Subpart B of Part 532 [Amended]

3. Appendix D to subpart B is amended for the State of California by removing the two occurrences of "Alameda-Contra Costa" from the area of application, and adding "Santa Clara" as a new nonappropriated fund wage area after "Santa Barbara" to read as follows:

* * * * *

SANTA CLARA

Survey area

California:
Santa Clara

Area of application. Survey area plus:

California:
Alameda
Contra Costa
San Mateo

* * * * *

[FR Doc. 02-17900 Filed 7-16-02; 8:45 am]

BILLING CODE 6325-39-P

DEPARTMENT OF THE TREASURY

5 CFR Part 3101

RIN 3209-AA15

Supplemental Standards for Ethical Conduct for Employees of the Department of Treasury

AGENCY: Department of the Treasury (Department).

ACTION: Final rule; amendment.

SUMMARY: The Department of the Treasury, with the concurrence of the Office of Government Ethics, is issuing this final rule to amend the Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury (Supplemental Regulations) that govern the use of national bank credit cards by employees of the Office of the Comptroller of the Currency (OCC). This final rule amends the Supplemental Regulations to follow more closely the statutory restrictions on the use of national bank credit cards by OCC employees and to increase OCC supervisors' flexibility in making work assignments.

EFFECTIVE DATE: July 17, 2002.

FOR FURTHER INFORMATION CONTACT:

Virginia R. Canter, Senior Counsel (Ethics), Office of the Assistant General Counsel (General Law and Ethics), Department of the Treasury, (202) 622-0450, 1500 Pennsylvania Avenue, NW., Washington, DC 20220; Barrett Aldemeyer, OCC Ethics Counsel, (202) 874-4460, or MaryAnn Orr Nash,

Counsel, OCC Legislative and Regulatory Activities Division, (202) 874-5090, 250 E St., SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The Supplemental Standards of Ethical Conduct for Employees of the Department of Treasury, at 5 CFR 3101.108, set forth rules that apply to employees of the Office of the Comptroller of the Currency (OCC). This final rule amends § 3101.108(b), which prohibits OCC employees from borrowing, including borrowing through the use of a credit card, from a national bank except under very limited circumstances.

Under 18 U.S.C. 213, a bank examiner is prohibited from accepting loans from a bank that he or she examines; 18 U.S.C. 212 correspondingly prohibits a bank from making a loan to someone who examines or has authority to examine the bank.¹ Current Supplemental Regulations implementing section 213 and expanding upon it generally prohibit examiners and the other "covered" OCC employees from seeking or obtaining any loan or other extension of credit from a national bank, including through the use of a credit card. 5 CFR 3101.108(b).

The existing Supplemental Regulations do contain an exception to this prohibition. A covered OCC employee² generally is permitted to obtain a credit card from a national bank if: (1) The credit card is obtained on terms and conditions no more favorable than those offered to the general public; (2) the employee is not assigned to examine the bank offering the credit card at the time the credit card is obtained; and (3) the employee recuses himself or herself from examining or otherwise participating in the supervision of the bank. Two issues concerning the scope of the exception have arisen since the issuance of the current rules in 1995. *See* 60 FR 22249-22255.

¹ Under the OCC Ethics Policy, Rules, Policies and Procedures for Employees (October 1999) (OCC Ethics Policy) the term "examiner" does not include supervisory personnel who are not assigned to the examination of banks. The OCC Ethics Policy will be revised to reflect the changes made by this final rule and to clarify that, under 18 U.S.C. 212, "authority to examine" also does not include OCC supervisory personnel. A summary of the OCC Ethics Policy is available on the OCC's website at <http://www.occ.treas.gov/ethics.htm>.

² "Covered" OCC employees include bank examiners and all other employees designated by the Comptroller under OCC ethics policies. *See* 5 CFR 3101.108(b)(3). Under these policies, "covered employee" means any employee, except an administrative employee, who is required to file financial disclosure reports.

The first issue under the current credit card rules is that employees' credit card-related recusals have limited the flexibility of OCC supervisors to make assignments. The exception to the general prohibition on obtaining credit generally permits covered OCC employees to hold and use national bank credit cards if they recuse themselves from any work involving those banks. *See* 5 CFR 3101.108(b)(4), as adopted in 1995. In instances where covered OCC employees holding national bank credit cards are involved in OCC licensing, policy and legal staff matters directly involving the bank issuer, the OCC has found that there is little likelihood of a conflict of interest or a loss of impartiality and that the breadth of the restriction unnecessarily hinders the administration of the OCC's programs. Therefore, this final rule refines the application of the credit card rules to covered OCC employees and more closely follows the statutory prohibition.

The second issue is that the current credit card rules have significantly limited the credit card options available to employees who work in district offices and on large bank supervision teams. Under the Supplemental Regulations and the OCC ethics policies (which set forth the procedures that implement the OCC's portion of the Supplemental Regulations), covered district employees may not obtain credit cards from banks headquartered in their district. In addition, large bank team (formerly known as the "Multinational Division") employees³ may not have credit cards from banks supervised by their large bank team or from banks in the district where they are located. *See* 5 CFR 3101.108(b)(4)(i), as adopted in 1995; *see also* OCC Ethics Policy at 14.

The Department originally adopted the Supplemental Regulations' credit card restrictions on covered OCC district and large bank team employees, in part, to permit the supervisors of those employees to make work assignments free from the constraints that would have otherwise arisen from employees' credit card recusals. At the time they were adopted by the Department, these restrictions did not present a serious obstacle to covered district and large bank team employees obtaining credit cards. Since the issuance of the Supplemental Regulations, industry consolidation and

³ Because they were adopted prior to the recent changes to OCC's management structure, the Supplemental Regulations refer to large bank team employees as employees of the "Multinational Division." This final rule includes a technical correction to make appropriate changes to terminology.