

Aguadilla
 Bayamon
 Ceiba
 Isabela
 Ponce
 Salinas
 Toa Baja
 Vieques
 U.S. Virgin Islands
 St. Croix
 St. Thomas

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BILLING CODE 6325-39-P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AL44

Prevailing Rate Systems; Abolishment of Rock Island, IL, 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 Rock Island, Illinois, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine Rock Island County, IL, and Johnson County, Iowa, as areas of application to the Lake, IL, NAF FWS wage area. Carroll County, IL, will no longer be defined. These changes are necessary because employment has significantly declined in the Rock Island NAF wage area.

DATES: *Effective date:* This regulation is effective on November 14, 2007. We must receive comments on or before December 14, 2007. *Applicability date:* FWS employees remaining in Rock Island County, IL, and Johnson County, IA, will be transferred to the Lake, IL, NAF wage area schedule on the first day of the first applicable pay period beginning on or after December 15, 2007.

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 Rock Island, Illinois, nonappropriated fund (NAF) Federal Wage System (FWS) wage area is presently composed of one survey county, Rock Island County, IL, and two area of application counties, Carroll County, IL, and Johnson County, Iowa. 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 a reduction in NAF employment in the Rock Island wage area has left only 14 NAF FWS employees in Rock Island County and 9 NAF FWS employees in Johnson County. DOD recommended that OPM abolish the Rock Island NAF FWS wage area and redefine Rock Island and Johnson Counties as areas of application to the Lake, IL, NAF FWS wage area.

Since Rock Island and Johnson 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 Rock Island and Johnson Counties should be redefined, proximity favors the Lake NAF wage area. All other criteria are inconclusive. Based on the application of the regulatory criteria, OPM is defining Rock Island and Johnson Counties as areas of application to the Lake NAF wage area.

OPM is removing Carroll County from the wage area definition. There are no longer NAF FWS employees working in Carroll 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, Carroll County should not be defined as part of an NAF wage area.

The Lake NAF wage area will consist of one survey county, Lake County, and eight area of application counties: Cook, Rock Island, and Vermilion Counties, IL; Johnson County, IA; Dickinson and Marquette Counties, Michigan; and Dane and Milwaukee Counties, Wisconsin. FWS employees remaining in the Rock Island wage area will be transferred to the Lake wage area schedule on the first day of the first applicable pay period beginning on or after December 15, 2007. 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 this change 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 of the need to transfer the remaining NAF FWS employees in Rock Island and Johnson Counties 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.

U.S. Office of Personnel Management.

Linda M. Springer,

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 Illinois, “Rock Island.”

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 Illinois by removing the wage area listing for Rock Island, Illinois, and revising the wage area listing for Lake, Illinois, to read as follows:

* * * * *
ILLINOIS
* * * * *
Lake
<i>Survey Area</i>
Illinois:
Lake
<i>Area of application. Survey area plus:</i>
Illinois:
Cook
Rock Island
Vermilion
Iowa:
Johnson
Michigan:
Dickinson
Marquette
Wisconsin:
Dane
Milwaukee
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NUCLEAR REGULATORY COMMISSION

**10 CFR Parts 30, 40, 50, 52, 60, 61, 63,
70, 71, 72, and 76**

RIN 3150-AH59

Clarification of NRC Civil Penalty Authority Over Contractors and Subcontractors Who Discriminate Against Employees for Engaging in Protected Activities

AGENCY: Nuclear Regulatory
Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is amending its employee protection regulations to clarify the Commission's authority to impose a civil penalty upon a non-licensee contractor or subcontractor of a Commission licensee, or applicant for a Commission license who violates the NRC's regulations by

discriminating against employees for engaging in protected activity. The NRC is also amending its employee protection regulations related to the operation of Gaseous Diffusion Plants to conform with the NRC's other employee protection regulations and to allow the NRC to impose a civil penalty on the United States Enrichment Corporation (USEC or Corporation), as well as a contractor or subcontractor of USEC.

DATES: *Effective Date:* The effective date of this final rule is December 14, 2007.

FOR FURTHER INFORMATION CONTACT:

Doug Starkey, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; Telephone (301) 415-3456; e-mail drs@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Commission's employee protection regulations in 10 CFR 30.7, 40.7, 50.7, 52.5,¹ 60.9, 61.9, 63.9, 70.7, 71.9, 72.10, and 76.7 prohibit discrimination by a Commission licensee, applicant for a Commission license, a holder of or applicant for a certificate of compliance (CoC) or the Corporation, or contractor or subcontractor of these entities, against employees for engaging in certain protected activities. These regulations identify certain enforcement actions for violations of the requirements. The enforcement actions are denial, revocation, or suspension of the license or certificate; imposition of a civil penalty on the licensee or applicant; or other enforcement action. While the employee protection regulations prohibit discrimination by a contractor or subcontractor, they do not explicitly provide for imposition of a civil penalty on a contractor or subcontractor.

On January 16, 1998, the NRC issued an enforcement action against Five Star Products, Inc., and Construction Products Research, Inc., contractors to the nuclear industry, for discriminating against one of its employees. Following this enforcement action, the NRC considered modifications to the NRC's employee protection regulations that would clearly allow the NRC, within the limits of its jurisdiction, to impose civil penalties on non-licensees for discriminating against employees who

have engaged in protected activities. At the time that NRC took the enforcement action against Five Star Products, Inc., and Construction Products Research, Inc., the NRC was engaged in litigation with another non-licensee, Thermal Science, Inc., that included an issue concerning the scope of the Commission's civil penalty authority over non-licensees. Consequently, the NRC deferred modifying the NRC's employee protection regulations pending resolution of action in *Thermal Science, Inc., v. NRC* (Case No. 4:96CV02281-CAS). That case was subsequently settled.

On April 14, 2000, the NRC Executive Director for Operations (EDO) approved the establishment of a Discrimination Task Group (DTG) to, among other things, evaluate the NRC's handling of matters covered by its employee protection regulations. During this review, the DTG held 12 public meetings and provided the public with an opportunity to comment on its draft report. Among other recommendations, the DTG recommended in its report, “Policy Options and Recommendations for Revising the NRC's Process for Handling Discrimination Issues,” dated April 2002, that rulemaking be initiated to allow the NRC to impose civil penalties on contractors working for NRC licensees. The DTG received public comments both in favor of, and opposed to, the recommendation that NRC conduct a rulemaking to allow the imposition of civil penalties against contractors for violating the NRC's employee protection requirements.

The DTG's report was forwarded to the Commission as an attachment to SECY-02-0166, “Policy Options and Recommendations for Revising the NRC's Process for Handling Discrimination Issues,” dated September 12, 2002. On March 26, 2003, the Commission issued a Staff Requirements Memorandum (SRM) on SECY-02-0166, approving the recommendations of the DTG as revised by the Senior Management Review Team, subject to certain comments. The Senior Management Review Team was appointed by the EDO to review the final recommendations of the DTG and provide any additional perspectives that could enhance the potential options. The Commission approved, without comment, the DTG rulemaking recommendation regarding civil penalties against contractors.

The NRC staff submitted a proposed rule to amend the employee protection regulations to exercise NRC's authority to impose civil penalties against contractors and subcontractors to the Commission on November 17, 2005

¹ This final rule amends 10 CFR 52.5(c) to conform with the other employee protection regulations regarding civil penalties to contractors and subcontractors. 10 CFR 52.5(c) was not included in the proposed rule submitted to the Commission in SECY-05-0212 because, at that time, 10 CFR Part 52 did not contain employee protection provisions. 10 CFR Part 52 has since been amended (72 FR 49352, in part, to include a new section, 10 CFR 52.5, Employee protection.