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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 591

RIN 3206-AG73

### Cost-of-Living Allowances (Nonforeign Areas)

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing two regulatory changes in the nonforeign area cost-of-living allowance (COLA) program. One change will clarify a reference in the regulations to examples of criteria we use for comparing housing between the allowance areas and Washington, DC. The second change will allow the payment of foreign area post differentials without any corresponding offset from the nonforeign area COLA. OPM is also changing the timing of living-cost surveys conducted in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands. These changes will improve administration of the nonforeign area COLA program.

**DATES:** These regulations are effective October 10, 1995. These regulations are applicable on the first day of the first pay period beginning on or after October 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Allan G. Hearne, (202) 606-2838.

**SUPPLEMENTARY INFORMATION:** Under section 5941 of title 5, United States Code, and Executive Order 10000, as amended, certain Federal employees in nonforeign areas outside the 48 contiguous States are eligible for cost-of-living allowances (COLA's) when local living costs are substantially higher than those in the Washington, DC, area. Nonforeign area COLA's are paid in Alaska, Hawaii, Puerto Rico, the U.S.

Virgin Islands, and Guam and the Commonwealth of the Northern Mariana Islands.

OPM published proposed rules on May 11, 1995 (60 FR 25150), to improve administration of the program by—

- (1) Permitting the survey and analysis of living costs at fewer income levels than the three levels currently used;
- (2) Clarifying the types of housing units to be surveyed; and
- (3) Allowing the payment of foreign area post differentials without any corresponding offset from the nonforeign area COLA.

OPM also announced for comment its intention to change the timing of living-cost surveys conducted in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands, although this change did not require a change in regulation.

There were five respondents to the proposed regulations. In the discussion that follows, we address the comments that we received on each issue and provide our response.

#### Number of Income Levels Surveyed

We received four comments on the proposal to use only one income level in the surveying of living costs. Each of the four commenters expressed concerns about the impact of the proposed change on COLA rates. One of the commenters favored continued use of the current three-level surveying methodology because of the possibility that the proposed change would not accurately reflect the actual costs of COLA area employees. The other three commenters presented arguments in favor of further study of the issue.

In light of these comments, we have decided not to make the change at this time. OPM will review the issue further in preparation for its report to Congress under the Treasury, Postal Service and General Government Appropriations Act, 1992 (Pub. L. 102-141), as amended. The comments received in response to the proposed regulation will be considered by OPM in its review.

#### Types of Housing Units Surveyed

We proposed to clarify a parenthetical phrase in current regulations concerning the types of housing units surveyed. We received four comments on this issue. Three commenters agreed with the change, although one said that if the cost index for any COLA area were unintentionally lowered, the change should be revoked. One commenter

objected to the change, stating that new homes with their modern architectural preferences, greater amenities, and lower maintenance needs are more valuable than old homes. The commenter added that a comparison of new homes in Washington, DC, with old homes in COLA areas would not be fair and reasonable.

The parenthetical phrase “(type, size, age)” in 5 CFR § 591.205(b)(3) was intended to list *examples* of the standard shelter specifications that could be used for comparing housing in the COLA areas with the Washington, DC, area. Because we were not always able to obtain age data on the housing units surveyed, we proposed to remove “age” from the listing so as not to give the impression that age was in fact being used in the calculations.

In response to the comments, we are instead prefacing “type, size, age” with “e.g.,” to make clear that these are examples of the specifications that could be used. We will continue to attempt to obtain age data and may apply age criteria for comparison of housing. If this proves feasible, we will provide a description of the exact procedures in a later **Federal Register** notice.

#### Nonforeign Area COLA and Foreign Post Differentials

We further proposed to eliminate the requirement in § 591.210(d) that an employee's *nonforeign* area COLA be reduced if the employee also receives a *foreign* area post differential and the two payments combined would otherwise exceed 25 percent of basic pay. This created a disincentive for employees in nonforeign allowance areas to accept long-term temporary assignments in foreign areas. The four comments we received on this proposal all agreed with the change.

#### Survey Timing

We also announced our intention to change the timing of the summer COLA surveys to correspond with the winter COLA surveys. This does not involve a regulatory change.

We received three comments on this proposal, all of which supported the change, although one respondent reserved full comment pending an opportunity to review the information upon which we based our decision. Therefore, in view of the potential benefit to the public and the

Government of this change and in anticipation of its minimal impact on COLA rates, OPM plans to conduct its living-cost surveys in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands in the first quarter of the calendar year beginning with the next survey, which will be conducted in the first quarter of calendar year 1996.

**General Comments**

One commenter expressed concern that OPM issued the proposed regulations at a time when a broad examination of the COLA program is scheduled. The commenter felt that some of the changes could have a substantial impact on the program and that the 30-day comment period was not enough time to fully analyze their effect.

Except for the proposed technical clarification relating to standard shelter specifications, all of the changes we proposed were based on comments and recommendations we received on previously published living-cost survey reports. In fact, this particular commenter had proposed, on several previous occasions, analyzing living costs at only one income level, and we had addressed this issue specifically in several previous **Federal Register** notices. Therefore, because we were proposing to adopt recommendations that commenters had previously provided on issues that were not new, we believed that 30 days was sufficient time to review and comment on our proposals. In the future, however, OPM will continue to provide, whenever practical, at least 60 days for interested parties to review and comment on proposals relating to the COLA program.

One commenter responded generally to the cost of housing and grocery items in Alaska and expressed concern about any reduction in COLA rates. These final regulations will have no effect on the COLA rates payable in Alaska. Furthermore, Pub. L. 102-141, as amended, prohibits any reductions in COLA rates through December 31, 1996.

**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 591**

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management.

**James B. King,**  
Director.

Accordingly, OPM is amending 5 CFR part 591 as follows:

**PART 591—ALLOWANCES AND DIFFERENTIALS**

**Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas**

1. The authority citation for subpart B of part 591 continues to read as follows:

**Authority:** 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943-1948 Comp., p. 792; E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. In § 591.205, the second sentence in paragraph (b)(3) is revised to read as follows:

**§ 591.205 Comparative cost index.**

\* \* \* \* \*  
 (b) \* \* \*  
 (3) \* \* \* Standard shelter specifications (e.g., type, size, age) are selected for each income level. \* \* \*  
 \* \* \* \* \*

**§ 591.210 [Amended]**

3. In § 591.210, paragraph (d) is removed and paragraphs (e), (f), and (g) are redesignated as paragraphs (d), (e), and (f), respectively.

[FR Doc. 95-22316 Filed 9-7-95; 8:45 am]  
 BILLING CODE 6325-01-M

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 998**

[Docket No. FV95-998-2FIR]

**Amendment of Requirements Established Under Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts for 1995 and Subsequent Crop Years**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, with one minor correction, the provisions of an interim final rule that amends for the 1995 peanut crop and subsequent crop years several provisions of the incoming, outgoing, and indemnification regulations established under Marketing Agreement No. 146. The changes recognize industry operating practices and reduce the burden on handlers without compromising the agreement's objective. The objective of the agreement is to ensure that only wholesome peanuts enter edible market channels. This final rule was unanimously recommended by the

Peanut Administrative Committee (Committee), the administrative agency for this wholesomeness assurance program.

**EFFECTIVE DATE:** September 8, 1995.

**FOR FURTHER INFORMATION CONTACT:** William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883-2276; telephone: (941) 299-4770, or FAX: (941) 299-5169; or Jim Wendland, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, D.C. 20090-6456; telephone: (202) 720-2170, or FAX: (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement No. 146 (7 CFR part 998) regulating the quality of domestically produced peanuts, hereinafter referred to as the agreement. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are about 75 handlers of peanuts subject to regulation under the agreement, and about 47,000 peanut producers in the 16 States covered under the program. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers have been defined as those having annual receipts of less than \$500,000. Some of the handlers signatory to the agreement are small entities, and a majority of the