

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 531

RIN 3206-AJ62

#### Locality Pay Areas

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management is issuing proposed regulations to tie the metropolitan area portion of locality pay area boundaries to the geographic scope of Metropolitan Statistical Area and Consolidated Metropolitan Statistical Area definitions that are contained in the attachments to Office of Management and Budget Bulletin 99-04.

**DATES:** We must receive comments on or before November 12, 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; FAX: (202) 606-4264; or e-mail: [payleave@opm.gov](mailto:payleave@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** Allan Hearne, (202) 606-2838; FAX: (202) 606-4264; e-mail: [payleave@opm.gov](mailto:payleave@opm.gov).

**SUPPLEMENTARY INFORMATION:** Section 5304(f) of title 5, United States Code, authorizes the President's Pay Agent (the Secretary of Labor, the Director of the Office of Management and Budget (OMB), and the Director of the Office of Personnel Management (OPM)) to determine appropriate pay localities. The Pay Agent must give thorough consideration to the views and recommendations of the Federal Salary Council, a body composed of experts in the fields of labor relations and pay policy and representatives of Federal employee organizations. The President appoints the members of the Federal Salary Council, who submit annual

recommendations to the President's Pay Agent about the locality pay program for General Schedule employees. The establishment or modification of pay area boundaries must conform with the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553).

Based on the Council's recommendations in 1993, the Pay Agent approved using Metropolitan Statistical Area (MSA) and Consolidated Metropolitan Statistical Area (CMSA) definitions as the basis for defining locality pay areas. OMB defines MSAs and CMSAs based on population size, population density, and commuting patterns. The Council also recommended and the Pay Agent approved criteria for adding adjoining areas to locality pay areas that are not already part of the MSA and CMSA as defined by OMB. Under our current regulations, the metropolitan area portion of locality pay areas changes automatically when OMB revises its metropolitan area definitions.

In October 2000, the Federal Salary Council recommended that the Pay Agent revise the regulations to hold the current MSA or CMSA portion of locality pay areas constant until the Pay Agent and the Federal Salary Council have an opportunity to review new metropolitan area definitions and new commuting patterns and other data from the 2000 census. OMB plans to substantially revise its metropolitan area definitions in 2003 based on new census data and new criteria. The Council also recommended that the Pay Agent continue to monitor counties adjacent to locality pay areas during this period and make minor adjustments in pay area boundaries if a particularly egregious situation justifies such action.

Under the proposed rule, locality pay areas would no longer change automatically if OMB changes metropolitan area definitions. The new reference to the geographic scope of an MSA or CMSA is to make certain that locality pay area boundaries are not affected by county name changes or revisions to counties within the original geographic scope of the MSA. Dade County, FL, changed its name to Miami-Dade County, and the County of Broomfield, CO, was recently created out of portions of Adams, Boulder, Jefferson, and Weld Counties. All of these areas were already within the

geographic scope of the Miami or Denver CMSA, as listed in attachments to OMB Bulletin 99-04, and remain covered by the existing locality pay areas.

A full listing of locality pay areas is at <http://opm.gov/oca/02tables/locdef.htm>. The proposed change to hold constant the metropolitan area portion of locality pay areas would have no effect on current locality pay area boundaries or locality rates.

#### E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with E.O. 12866.

#### Regulatory Flexibility Act

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

#### List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

U.S. Office of Personnel Management.

**Kay Coles James,**  
*Director.*

Accordingly, OPM is proposing to amend 5 CFR part 531 as follows:

#### PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 continues to read as follows:

**Authority:** 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103-89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR 1991 Comp., p. 316;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101-509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102-378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336; Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682; and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224;

Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of FEPCA, Pub. L. 101-509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

## Subpart F—Locality-Based Comparability Payments

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2. In § 531.602, the definitions of *CMSA* and *MSA* are revised to read as follows:

### § 531.603 Definitions

\* \* \* \* \*

*CMSA* means the geographic scope of a Consolidated Metropolitan Statistical Area, as defined by the Office of Management and Budget (OMB) in List II of the attachments to OMB Bulletin 99-04.

\* \* \* \* \*

*MSA* means the geographic scope of a Metropolitan Statistical Area, as defined by the Office of Management and Budget (OMB) in List I of the attachments to OMB Bulletin 99-04.

\* \* \* \* \*

3. In § 531.606, paragraph (g) is revised to read as follows:

### § 531.606 Administration of locality rates of pay.

\* \* \* \* \*

(g) In the event of a change in the geographic coverage of a locality pay area, the effective date of the change in an employee's entitlement to a locality rate of pay under this subpart is the first day of the first applicable pay period beginning on or after the date on which the change in geographic coverage becomes effective.

\* \* \* \* \*

[FR Doc. 02-23061 Filed 9-10-02; 8:45 am]

BILLING CODE 6325-39-M

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 948

[Docket No. FV02-948-2 PR]

### Irish Potatoes Grown in Colorado; Reduction of Membership on the Area No. 3 Colorado Potato Administrative Committee

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on reducing the number of members on the Area No. 3 Colorado Potato Administrative Committee (Committee) established under the Colorado potato marketing order (order). The order regulates the handling of Irish potatoes grown in Colorado and is administered locally by the Committee. This rule would decrease the number of positions

on the Committee from five producer and four handler members to three producer and two handler members, respectively. The number of producers and handlers in Area No. 3 has decreased significantly in recent years and the industry has been unable to fill several positions on the Committee. Reducing Committee membership would allow the Committee to function more effectively while still providing equitable representation for producers and handlers.

**DATES:** Comments must be received by September 26, 2002.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at <http://www.ams.usda.gov/fv/moab.html>.

#### FOR FURTHER INFORMATION CONTACT:

Teresa Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the "order." The order 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 of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would decrease the number of positions on the Committee from five producer and four handler members to three producer and two handler members, respectively. Each position would continue to have an alternate. The Committee has been unable to fill several positions on the Committee and has been unable to conduct business at some meetings because of the lack of a quorum. Reducing Committee membership would allow the Committee to function more effectively while still providing equitable representation for producers and handlers.

Section 948.50 of the order establishes three areas within the State of Colorado and provides authority for the establishment of a committee to be the administrative agency for each area. This section further provides that each area committee shall be comprised of members and alternates as set forth in that section or as reestablished by § 948.53. Section 948.53 provides authority for the reestablishment of each area committee.

Section 948.150 of the order's administrative rules and regulations prescribes the current membership on each area committee. For Area No. 3, the Committee currently consists of five producers and four handlers. Three producers and two handlers are from