

Presidential Documents

Memorandum of January 20, 1980

Hiring Freeze

Memorandum for the Heads of Executive Departments and Agencies

I am ordering today a strict freeze on the hiring of Federal civilian employees to be applied across the board in the executive branch.

This action is necessary because the national budget is out of control. Estimates of Federal spending for fiscal years 1981 and 1982 have—in a single year—increased by \$100 billion.

Last July, during my campaign for the Presidency, I pledged that we would take this action as a first step towards controlling the growth and size of government and stopping the drain on the economy by the public sector.

Imposing a freeze now can eventually lead to a significant reduction in the size of the Federal work force. This begins the process of restoring our economic strength and returning the Nation to prosperity.

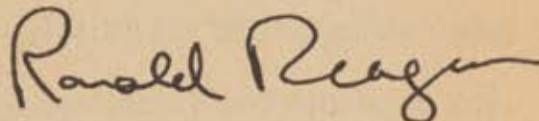
The Director of the Office of Management and Budget will issue detailed instructions concerning this freeze. I am delegating to him authority to grant exemptions in those rare and unusual circumstances where exemptions are necessary for the delivery of essential services.

I ask that in carrying out this directive you insure the smallest impact possible on those areas of your agencies' operations that vitally affect the public, such as the processing of social security claims and the payment of veterans and retirement benefits. You should seek efficient use of personnel and funds by making reallocations within your respective agencies to meet highest priority needs and to assure that essential services are not interrupted.

Obviously, contracting with firms and institutions outside the government to circumvent the intent of this directive must not be permitted.

This begins the process of revising and reducing the 1981 and 1982 budgets, a project that will occupy much of our time during the coming weeks and months.

This will be a demanding period for all of us; it is also a time of challenge and an unusual opportunity to serve our Nation well. I am relying upon you for strict implementation of this directive.



THE WHITE HOUSE,
Washington, January 20, 1981.

Editorial Note: The Office of the Federal Register was requested to print the memorandum in the Federal Register by the Acting Counsel to the President.

Presidential Documents

Executive Order 12287

Decontrol of Crude Oil and Refined Petroleum Products

By the authority vested in me as President by the Constitution and statutes of the United States of America, including the Emergency Petroleum Allocation Act of 1973, as amended (15 U.S.C. 751 *et seq.*), and notwithstanding the delegations to the Secretary of Energy in Executive Order No. 11790, as amended by Executive Order No. 12038, and in order to provide for an immediate and orderly decontrol of crude oil and refined petroleum products, it is hereby ordered as follows:

Section 1. All crude oil and refined petroleum products are exempted from the price and allocation controls adopted pursuant to the Emergency Petroleum Allocation Act of 1973, as amended. The Secretary of Energy shall promptly take such action as is necessary to revoke the price and allocation regulations made unnecessary by this Order.

Sec. 2. Notwithstanding Section 1 of this Order:

(a) All reporting and record-keeping requirements in effect under the Emergency Petroleum Allocation Act, as amended, shall continue in effect until eliminated or modified by the Secretary of Energy. The Secretary of Energy shall promptly review those requirements and shall eliminate them, except for those that are necessary for emergency planning and energy information gathering purposes required by law.

(b) The State set-aside for middle distillates (Special Rule 10, 10 CFR Part 211, Subpart A, Appendix A) shall remain in effect until March 31, 1981.

(c) The special allocation of middle distillates for surface passenger mass transportation (Special Rule 9, 10 CFR Part 211, Subpart A, Appendix A) shall remain in effect until March 31, 1981.

(d) The Buy-Sell lists and orders issued prior to this Order under the Buy-Sell Program and the Emergency Buy-Sell Program (10 CFR 211.65) shall remain in effect according to their terms and the Secretary of Energy may issue such further orders as may be necessary to give effect to lists and orders issued prior to this Order.

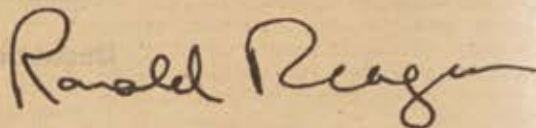
(e) The Canadian Allocation Program (10 CFR Part 214) shall remain in effect until March 31, 1981.

Sec. 3. The Secretary of Energy may, pursuant to Executive Order No. 11790, as amended by Executive Order No. 12038, adopt such regulations and take such actions as he deems necessary to implement this Order, including the promulgation of entitlements notices for periods prior to this Order and the establishment of a mechanism for entitlements adjustments for periods prior to this Order.

Sec. 4. The Secretary of Energy is authorized to take such other actions as he deems necessary to ensure that the purposes of this Order are effectuated.

Sec. 5. Because advance notice of and public procedure on the decontrol provided by this Order would be likely to cause actions that could lead to economic distortions and dislocations, and would therefore be contrary to the public interest, this Order shall be effective immediately.

THE WHITE HOUSE,
January 28, 1981.



Editorial Note: The President's statement of January 28, 1981, on signing Executive Order 12287, is printed in the Weekly Compilation of Presidential documents (vol. 17, no. 4).

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Rules and Regulations

Federal Register

Vol. 46, No. 20

Friday, January 30, 1981

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 month.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 511

Classification Under the General Schedule

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: These regulations cover the adjudication of General Schedule position classification appeals by the Office of Personnel Management. In addition, the regulations provide for the implementation of agency position and personnel actions, actions directed by the Office, and implementation of agency and Office appellate decisions.

EFFECTIVE DATE: March 2, 1981.

FOR FURTHER INFORMATION CONTACT: Frank T. Catenaccio [202] 632-7744.

SUPPLEMENTARY INFORMATION:

Background

On May 23, 1980, OPM published proposed regulations in the Federal Register [45 FR 34895] on the adjudication of position classification appeals under the General Schedule (GS). The purposes of the proposed regulations were to: (a) Incorporate changes mandated by Presidential Reorganization Plan #2; (b) Incorporate changes mandated by the Civil Service Reform Act of 1978; (c) Streamline the appellate process; and (d) Increase the level of classification consistency within OPM Regions and Federal departments and agencies. The proposed regulations also incorporated procedural changes in the adjudication of classification appeals whereby the Classification Appeals Office now has responsibility for the adjudication of agency and employee appeals of evaluation certifications issued under OPM's

authority as stated in 5 U.S.C. 5103 and 5110.

Discussion of Comments

Nineteen written comments were received within the specified 60-day period concerning this regulation; fifteen were from agencies, and four were from labor organizations.

Five agencies commented on the proposed change in nomenclature, i.e., changing "position classification appeal" to "administrative classification review." These agencies argued that the proposed change would cause confusion among employees who would not be able to differentiate between a periodic agency classification review and an appellate review under 5 U.S.C. 5112(b). In addition, some agencies argued that additional expense would be incurred since changes in agency regulations would be required to insure consistency between OPM and local agency regulations. The agency comments were found to have merit and have been adopted in our final regulation. The appellate process is now called a "classification appeal."

Four agencies and two labor organizations commented on § 511.602, Notification of classification decision, which will result in a change to lower grade. Two agencies asked if a notice must be given to an employee who is eligible for retained grade under 5 U.S.C. 5362. Section 536.216 of the Office's regulations provides that an agency "shall give to the employee * * * a letter explaining the action and the nature of the grade retention entitlements." The information required by § 511.602 may be incorporated in that letter for employees who are eligible for retained grade benefits. Therefore, the requirement that a written notice be given to all employees when the agency proposes a change to lower grade has been retained.

On the same section, one labor organization commented that the letter to the employee should outline all appellate and grievance avenues available to the employee. Section 511.602(c) has been added incorporating this recommendation. Another labor organization commented that the term "prompt" should be made specific. Having reviewed this suggestion, OPM concluded additional amplification was not considered warranted.

Finally, on this same section, an agency asked if they need have an appellate system in order to comply with the intent of § 511.602. This aspect of the regulation has been clarified by adding that the notice to the employee must include classification appeal rights at the agency level "if the agency has an established appellate system."

Several agencies and labor organizations commented on § 511.604, filing an appeal. Two agencies asked if the agency must issue a written decision. This has been clarified by adding that if the agency has an established appellate system, a written decision is required. The purpose of this section is to give both employees and agencies an opportunity to review the classification of a position within the agency. OPM will provide, in revised FPM guidance, instructions on how agencies may forward appeals to OPM regions if they decide not to make a classification decision under the local appellate system.

Both agencies and labor organizations commented on the proposed extension of time limits allowing agencies 45 days to process appeals directed to OPM through the agency. Two labor organizations recommended that the present 30-day requirement be maintained or shortened to 15 days, while agencies argued that a longer period is required due to shortages of staffs and other workload requirements. After careful consideration, it has been decided to allow agencies 60 days to process employee appeals forwarded to OPM through the agency. This additional time period will allow most agencies ample time to consider all of the employee's arguments without overburdening existing staff levels. This change does not preclude GS employees from appealing directly to OPM under § 511.604(a) if the employee believes 60 days is an inordinate period of time.

Several agency comments on § 511.605, Time limits, demonstrated a lack of understanding of OPM's classification authorities, i.e., 5 U.S.C. 5103, 5 U.S.C. 5110, and 5 U.S.C. 5112. Rather than provide clarification of these authorities in regulation, a new section will be added to Federal Personnel Manual Chapter 511, Subchapter 6, defining the classification authorities cited above.

In connection with this section, one labor organization recommended that

the 45-day time limit for requesting reconsideration of an appellate decision should begin when the decision is received and not from the date of the decision as provided in the proposed regulation. After careful review of this recommendation, it was decided that the proposed regulation was reasonable. Section 511.702 requires that a certificate be implemented not later than the beginning of the fourth pay period following the date of the certificate. This is generally 42 calendar days. The proposal that an appellant or agency must request reconsideration prior to the implementation date of the certificate is therefore reasonable.

Two agencies requested that the 45-calendar day time limit in § 511.605(c) be extended to either four pay periods or 60 calendar days. After careful consideration of these comments, it was decided that the 45-day requirement is reasonable and that this limit would remain in the final regulations. There is no significant difference between 45 calendar days and four pay periods, which is 42 calendar days; OPM internal policy now requires that copies of all appellate decisions be sent to agency headquarters. The 45-day time limit is reasonable for agencies to request reconsideration if this course of action is found to be necessary.

On the same paragraph i.e., § 511.605(c), one labor organization recommended that the 45-day time period begin with the appellant's receipt of the decision. OPM requires that each appellant provide in the initial appeal a mailing address for himself or his representative. Rarely will it require more than four days for the decision to be delivered, and the appellant would still have approximately 40 days to file the request for reconsideration. Since the proposed regulation is reasonable, the proposed time period and the method of computation have not been changed.

Several questions were raised concerning § 511.606, Form and content of an appeal. Comments were submitted by both agencies and labor organizations. One labor organization commented that material submitted by the agency should be made available to the appellant, upon request. This comment was found to have merit and this section has been rewritten to incorporate this recommendation. Specifically, § 511.606(c) has been rewritten to provide that agencies must make available to individual appellants all information forwarded by the agency to OPM concerning the appellant's appeal when requested by the appellant. This will reduce unnecessary

administrative costs since the information is available to the appellant under the Privacy Act. Other comments on this section requested clarification concerning the submission of additional material to OPM. § 511.606 has been revised to reflect OPM's current practice of allowing either the agency or the appellant to submit relevant information concerning the position at any time following the initial filing of a classification appeal.

A considerable number of comments were received from both agencies and labor organizations concerning § 511.607, Nonappealable issues. This section has been rewritten to clarify its intent. Most agencies that commented on this section recommended that an employee's appeal should not be accepted if the accuracy of the official position description was raised as an issue by the appellant. These agencies recommended that since it is management's right to assign duties, the appeal should be adjudicated on the basis of those duties formally assigned by management. Labor organizations, on the other hand, argued that the accuracy of the position description is a valid appeal issue. After careful consideration of all comments made on this section, the regulation has been rewritten to reflect current OPM practice, which is to direct appellants back to their agency if they disagree with the official position description and have them try to resolve the difference informally or formally through the agency's administrative or negotiated grievance procedure, as appropriate. OPM will decide the appeal on the basis of duties and responsibilities assigned by management and performed by the appellant. If OPM factfinding shows that the appellant is, in fact, performing grade-controlling duties which are not recorded in the official position description, the agency may, before the effective date of the certificate, remove the duty(s) or formally recognize them in the position description of record. This approach is fairest to both appellants and agencies and is consistent with OPM authority as provided in section 5112(a) of title 5, United States Code.

Several agencies and labor organizations questioned the decision to restrict the issue of position-to-position comparisons from consideration under the appellate process as stated in § 511.607(b)(4) of the regulations. It is the position of OPM that 5 U.S.C. 5107 requires that positions be classified on the basis of a comparison with published OPM classification standards and not other positions. Since agencies are responsible for ensuring that all

positions under their administrative control are classified properly, the requirement stated in § 511.612, Finality of decision, which provides that agencies shall review their own classification decisions for identical, similar or related positions to ensure consistency with the Office's certificate, will fully satisfy employee concerns, i.e., other positions within the agency, doing identical work, be classified consistent with their position. A revised appendix to FPM chapter 511, subchapter 6, will outline the specific requirements to ensure that other positions within the agency are classified consistent with OPM certificates.

Several other minor grammatical corrections were made to this section.

Two of the four labor organizations who commented on the proposed regulations recommended that § 511.608, Employee representatives, be rewritten or clarified. In developing these criteria, OPM drew on the language contained in Part 771 of the Office's regulations which were adopted several years ago to deal with disallowance of representatives in agency administrative procedures. This language is therefore neither new nor untried. In the past, OPM has provided some additional clarification of the intent of these provisions. While the disallowance of an appellant's representative will have to be reviewed on a case-by-case basis, some of the examples already provided by OPM are:

"Conflict of interest or position." One example of conflict of interest, but not by any means the only one, would be representation of a supervisor or management official by an official of a labor organization that represents or has pending a petition to represent employees under (1) the supervisor's or management official's direction or control, or an employee of an association, federation, or council with whom such a labor organization is affiliated. Conflict of position refers to an incompatibility between the representative's functions and an employee's official duties. One, again not the only, example would be a supervisor or management official serving as a representative in a case concerning the assignment of duties and responsibilities to a subordinate employee who is appealing the classification of the position.

"Unreasonable cost to the Government." Such disallowance will have to be determined based on the case-by-case situation. Considerations here might be excessive transportation costs, if the agency pays these, or time away from the job if an employee's representative is not at the worksite.

"Priority work assignments." These are official assignments with high priority or a short deadline from which an employee cannot be spared.

These clarifications pertain to this subpart as well.

Finally, one labor organization recommended that if the employee's representative is disallowed by the agency that any time limits imposed on the appellant be suspended until the issue of the disallowance is resolved. The only time limits in the proposed regulation are filing dates. Since the appeal or request for reconsideration must be filed by a given date, the disallowance of a representative will have no bearing on the ability of the appellant to meet these time limits because additional material can be filed at a later date.

Section 511.612, Finality of decision, has been rewritten in order to clarify some misunderstanding concerning the finality of an appellate decision and OPM's discretionary authority to reopen and reconsider an appellate decision. Additional information has been placed in the FPM to also clarify the relationship between an appellate decision and a reconsideration of that decision. One agency recommended that the certificate should be suspended while the agency reviews the classifications of other similar, related and identical positions within the agency. OPM does not agree that a suspension is required or desirable. If the agency believes that the certificate is not proper, it may request reconsideration under § 511.613, Classification Appeals Office. Agencies may use temporary compliance authority, § 511.615, to give a temporary promotion, or the appellant may be temporarily reassigned to another position at the same grade level, while the reconsideration request is pending. If, however, there is no disagreement over the OPM classification determination the agency must move expeditiously to ensure consistency within the agency. More specific guidance on agency compliance actions can be found in a new revision to FPM chapter 511 and Appendix C of the chapter.

Most agency comments on § 511.614, Review by the Director, have been incorporated into the final regulations. While one agency suggested that the Director be given authority to reopen "For the good of the service," the omnibus nature of § 511.614(b) covers this situation. New and material information will be referred to the Classification Appeals Office for processing under § 511.613.

Section 511.615, Temporary compliance authority, has been totally rewritten. Briefly stated, temporary compliance is designed to give the appellant any immediate benefit of an appellate decision even if the agency is

requesting reconsideration. Conversely, if the decision requires a change to lower grade, the appellant could be removed temporarily from the position, if another vacant position is available, pending the issuance of the reconsideration decision. Use of this authority by agencies will prevent costly adverse actions if the appellate decision is reversed in reconsideration.

Section 511.701, Effective dates generally, has been rewritten to be consistent with the requirements for grade and pay retention. An agency may now extend the effective date of a position action to correspond with the date of the personnel action if the employee is entitled to grade or pay retention benefits.

Finally, three labor organizations submitted recommendations concerning § 511.703, Retroactive effective date. Two of the recommendations concerned grammatical errors which have been corrected. One recommendation concerned an oversight since the issue of "loss of pay" was omitted in the proposed regulation. This omission has been corrected. The final recommendation concerned the 15-day time limit within which the employee must file his or her appeal in order to preserve the possibility of retroactive adjustment. Since the benefits of this section stem from the Back Pay Act [5 U.S.C. 5596], the statutory provisions require a "timely appeal." Since these provisions apply to an employee who has been changed to lower grade or pay and who is not eligible for retained grade or pay, the provisions outlined in § 511.602 of the Office's regulations must also be complied with by the agency. This means that the employee has received a written notice of the agency's proposed change to lower grade. This proposal period along with the 15 days following the actual change to lower grade provides the employee with ample time to submit his or her appeal. The recommendation was therefore not adopted.

OPM has determined that this is a significant regulation for the purposes of E.O. 12044, Improving Government Regulations.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, the Office of Personnel Management is amending the Table of Sections and revising Subparts F and G of 5 CFR Part 511, to read as follows:

PART 511—CLASSIFICATION UNDER THE GENERAL SCHEDULE

Sec.

* * * * *

Subpart F—Classification Appeals

- 511.601 Applicability of regulations.
- 511.602 Notification of classification decision.
- 511.603 Right to appeal.
- 511.604 Filing an appeal.
- 511.605 Time limits.
- 511.606 Form and content of an appeal.
- 511.607 Nonappealable issues.
- 511.608 Employee representatives.
- 511.609 Ascertainment of facts.
- 511.610 Notification.
- 511.611 Cancellation of employee appeal.
- 511.612 Finality of decision.
- 511.613 Classification Appeals Office.
- 511.614 Review by the Director.
- 511.615 Temporary compliance authority.

Subpart G—Effective Dates of Position; Classification Actions or Decisions

- 511.701 Effective dates generally.
 - 511.702 Agency or Office classification appeal decisions.
 - 511.703 Retroactive effective date.
- Authority: 5 U.S.C. 5115, 5338, 5351.

Subpart F—Classification Appeals

§ 511.601 Applicability of regulations.

This subpart applies to a request from an employee or an agency for the Office to review the classification of a position subject to chapter 51 of title 5, United States Code, or for the Office to determine whether a position is subject to that chapter.

§ 511.602 Notification of classification decision.

An employee whose position is reclassified to a lower grade which is based in whole or in part on a classification decision is entitled to a prompt written notice from the agency. This includes employees who are eligible for retained grade or pay. If the reclassification is due to an Office classification certificate issued under the authority of 5 U.S.C. 5110, the agency will also explain the reasons for the reclassification action to the employee. This notice shall inform the employee:

(a) Of his or her right to appeal the classification decision to the agency (if the agency has an established appeal system and it has the authority to review the classification decision), or to the Office as provided in this subpart if such an appeal has not already been made;

(b) Of the time limits within which the employee's appeal must be filed in order to preserve any retroactive benefits under § 511.703; and

(c) Any other appeal or grievance rights available under applicable law, rule, regulation or negotiated agreement.

§ 511.603 Right to appeal.

(a) *Employee appeal.* An employee, or the employee's designated representative acting on behalf of an employee, may request an Office decision as to:

(1) The appropriate occupational series or grade of the employee's official position.

(2) The inclusion under or exclusion from chapter 51 of title 5, United States Code, of the official position by the employee's agency or the Office, except in the case of a position located in the Office of the Architect of the Capitol.

(b) *Agency appeal.* The head of an agency, or an authorized representative, may appeal any classification certificate issued by the Office under sections 5103 or 5110 of title 5, U.S.C., with respect to any position in the agency.

§ 511.604 Filing an appeal.

(a) *Employee.* An employee may appeal by writing to the Office directly, or by forwarding the appeal through the employing agency.

(b) Referral of an employee appeal to the Office. An agency shall forward, within 60 calendar days of its receipt in the agency, and employee's appeal filed through the agency to the Office when:

(1) The employee has directed the appeal to the Office and the agency's written decision is not favorable; or

(2) The agency is not authorized to act on the employee's appeal; or

(3) The agency has not decided the appeal within the established time period.

§ 511.605 Time limits.

(a) *Employees.* (1) An employee may submit an appeal of his or her official position at any time. If the employee has suffered a loss in grade or pay, is not entitled to retained grade or pay, and desires retroactive adjustments, the time limits in § 511.703 must be observed.

(2) If the employee is appealing an agency decision or an Office classification certificate issued under 5 U.S.C. 5103 or 5110, the employee shall promptly appeal if he or she disagrees with the classification certificate. Employees must meet the time limits provided in § 511.703 in order to preserve the right to retroactive adjustment.

(b) *Agency.* An agency may appeal an Office classification certificate issued under authority of section 5103 or 5110 of title 5, United States Code, at any time. Heads of agencies should appeal prior to the implementation date of the

certificate if they disagree with the classification rationale.

(c) *Reconsideration.* An employee or agency may request reconsideration of an Office appellate decision. The request must be in writing, and filed not later than 45 calendar days after the decision is issued. This time limit may be waived under exceptional circumstances by either the Classification Appeals Office or the Director.

§ 511.606 Form and content of an appeal.

(a) *Employee appeal.* An employee's appeal shall be in writing, and shall contain the reasons why the employee believes his or her position is erroneously classified, or should be brought under or excluded from chapter 51 of title 5, United States Code. The agency, when forwarding the employee's appeal or when requested by the Office, shall furnish all relevant facts concerning the position and the agency's justification for its classification decision. The agency shall also comment on the information submitted by the employee if requested to do so by the Office. Either the employee or agency may submit relevant information to the Office at any time following the initial filing of an appeal.

(b) *Agency appeal.* An agency's appeal shall be in writing, and shall contain its reasons and justification for requesting a review of the Office's certificate.

(c) *Inspection of the Office's appellate record.* The employee, an employee's representative and the agency will be permitted to inspect the Office's appellate record on request. Agencies will make available to appellants copies of any and all information submitted by the agency to the Office with respect to the appellant's individual appeal.

§ 511.607 Nonappealable issues.

(a) The following issues are not appealable to the Office under this subpart. Such issues may be reviewed under administrative or negotiated grievance procedures if applicable:

(1) The accuracy of the official position description including the inclusion or exclusion of a major duty in the official position description. When the accuracy of the official position description is questioned by the employee, the employee will be directed to review this matter with his or her supervisor. If management and the employee cannot resolve their differences informally, the accuracy of the position description should be reviewed in accordance with administrative or negotiated grievance procedures. If the accuracy of the

position description cannot be resolved in this manner, the Office will decide the appeal on the basis of the actual duties and responsibilities assigned by management and performed by the employee;

(2) An assignment or detail out of the scope of normally performed duties as outlined in the official position description;

(3) The accuracy, consistency or use of agency supplemental classification guides; or,

(4) The title of the position unless a specific title is authorized in a published Office classification standard or guide, or the title reflects a qualification requirement or authorized area of specialization.

(b) The following issues are neither appealable nor reviewable:

(1) The class, grade, or pay system of a position to which the employee is not officially assigned by an official personnel action;

(2) An agency's proposed classification decision;

(3) The class, grade, or pay system of a position to which the employee is detailed or temporarily promoted; employees serving under term promotions in accordance with § 335.102(g) of this title may appeal the classification of their position to the Office under these procedures.

(4) The classification of the employee's position based on position-to-position comparisons and not standards;

(5) The accuracy of grade level criteria contained in an Office classification guide or standard; or

(6) A classification decision that has been issued by the Office under this subpart when there has been no change in the governing classification standard(s) or the major duties of the position.

§ 511.608 Employee representatives.

An employee may select a representative of his or her choice to assist in the preparation and presentation of an appeal. An agency may disallow an employee's representative when the individual's activities as a representative would cause a conflict of interest or position; an employee who cannot be released from his or her official duties because of the priority needs of the Government; or an employee whose release would give rise to unreasonable costs to the Government.

§ 511.609 Ascertainment of facts.

The employee, a designated representative, and the agency shall furnish such facts as may be requested

by the Office within the time frames specified. The facts shall be in writing when so requested. The Office, in its discretion, may investigate or audit the position. A representative may not participate in OPM on-site audits unless specifically requested to do so by the Office.

§ 511.610 Notification.

The Office shall notify the employee, or a representative if one is designated, and the agency in writing of its decision.

§ 511.611 Cancellation of an employee appeal.

An employee's appeal shall be cancelled and the employee so notified in writing in the following circumstances:

(a) On receipt of the employee's written request for cancellation.

(b) On failure to prosecute, when the employee or the designated representative does not furnish requested information, or proceed with the advancement of the appeal.

The Office may at its discretion reopen a cancelled appeal on a showing that circumstances beyond the control of the employee prevented pursuing the appeal.

§ 511.612 Finality of decision.

An appellate decision made by the Office is final unless reconsidered by the Office. There is no further right of appeal. The Office may reconsider a decision at its discretion. The decision shall constitute a certificate which is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government. Agencies shall review their own classification decisions for identical, similar or related positions to insure consistency with the Office's certificate.

§ 511.613 Classification Appeals Office.

The Office's Classification Appeals Office may, at its discretion, reopen and reconsider a certificate issued under this subpart.

(a) The Classification Appeals Office may remand to the respective region of the Office any request for reconsideration which requires extensive factfinding or investigation. Requests which contain new and material information, or disagreements over the significance of information, will be remanded to the regional deciding official for a decision.

(b) The Classification Appeals Office may reopen and reconsider a decision only when written argument or evidence is presented which establishes a

reasonable doubt concerning the technical accuracy of the decision.

§ 511.614 Review by the Director.

The Director may, at his or her discretion, reopen and reconsider any decision when written argument or evidence is submitted which tends to establish that:

(a) The previous decision involves an erroneous interpretation of law or regulation, or a misapplication of established policy;

(b) The previous decision is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand, or is otherwise of such an exceptional nature as to merit the personal attention of the Director.

§ 511.615 Temporary compliance authority.

Agencies may use temporary or conditional compliance action, e.g., a temporary promotion or a temporary reassignment when available, if:

(a) A position has been certified by the Office under either section 5110 or 5112 of title 5, United States Code;

(b) The certificate has not been suspended; and,

(c) The agency or employee has requested reconsideration.

This authority will not be used if the position has been downgraded and the employee is entitled to retained grade under section 5362 of title 5, United States Code.

Subpart G—Effective Dates of Position Classification Actions or Decisions

§ 511.701 Effective dates generally.

(a) *Agency classification actions.* (1) A classification action is a determination to establish or change the title, series, grade or pay system of a position based on application of published position classification standards or guides. This is a position action.

(i) The effective date of a position action taken by an agency shall be the date an official with properly delegated authority approves (certifies) the proposed classification. This is accomplished when the authorized official(s) signs the allocation of the position.

(ii) The effective date of a position action may be extended to correspond with the effective date of the personnel action when:

(A) The position is being changed to lower grade or pay; and

(B) The employee occupying the position is eligible for retained grade or pay under 5 U.S.C. 5362-5363.

(iii) These provisions do not pertain to Merit Pay System determinations made under Part 540 of this title.

(2) A position action is implemented by a personnel action. The personnel action must occur within a reasonable period of time following the date of the position action.

(3) If the position action requires a personnel action which will result in a loss of grade or pay to the occupant of the position, the agency must advise the employee, in writing, of the position action and the proposed date of the personnel action. This notice shall be issued prior to taking a personnel action.

(4) Except as provided in § 511.703, classification actions may not be made retroactive.

(b) *Office of Personnel Management's classification decision.* (1) The effective date of a classification decision made by means of a certificate issued under the authority of section 5110, title 5, United States Code is not earlier than the date of the certificate, and not later than the beginning of the fourth pay period following the date of the certificate, unless a subsequent date is specifically stated in the certificate. Except as otherwise provided by this paragraph the filing of an appeal of such a certificate does not delay its effective date.

(2) The implementation of the certificate may be suspended when it is determined before its effective date that a review of the classification decision is warranted and suspension is desirable. The determination to suspend implementation may be made by:

(i) A regional director, or a designee, when the decision is made by the regional office; or,

(ii) The Assistant Director, Agency Compliance and Evaluation, or a designee, when the decision is made within the central office or by a region, or

(iii) The Director with respect to any classification decision.

Suspending the implementation of a certificate does not automatically change the effective date except when the certificate requires that the grade or pay of the position be reduced and the employee is not entitled to retained grade or pay.

(3) When the original decision requires that the grade or pay of the position be reduced and the employee is not entitled to retained grade or pay the reviewing authority shall issue a new certificate if it sustains the original decision. Since demotions cannot be made retroactive, the effective date of the new certificate shall be not earlier than the date of the certificate, and not

later than the beginning of the fourth pay period after the date of the certificate unless a subsequent date is specifically stated in the certificate.

§ 511.702 Agency or Office classification appeal decisions.

(a) Subject to § 511.703, the effective date of a change in the classification of a position resulting from a classification appeal decision by either an agency or the Office is not earlier than the date of the decision and not later than the beginning of the fourth pay period following the date of the decision, except when a subsequent date is specifically provided in the decision.

(b) The implementation of the decision may be suspended by the Office when it determines before the effective date that a review of the decision is warranted. The determination to suspend implementation may be made by:

(1) The regional director, or a designee, when the appellate decision is made by an agency under the jurisdiction of the region; or

(2) The Assistant Director, Agency Compliance and Evaluation, or the Chief, Classification Appeals Office when the appellate decision is made within the central office, by a region or by an agency; or

(3) The Director with respect to any appellate decision.

Suspending the implementation does not change the effective date of the decision except when the original decision requires that the grade or pay of the position be reduced and the employee is not entitled to grade or pay retention.

(c) When the original decision requires that the grade or pay position be reduced and the employee is not entitled to grade or pay retention, the reviewing authority, if sustaining the original decision, shall issue a new certificate and the effective date of the new certificate shall be not earlier than the date of the new decision and not later than the beginning of the fourth pay period following the date of the new decision, unless a subsequent date is specifically stated in the new decision.

§ 511.703 Retroactive effective date.

(a) *Applicability.* A retroactive effective date may be required only if the employee is wrongfully demoted.

(b) *Downgrading.* (1) The effective date of a classification appellate certificate or agency appellate decision can be retroactive only if it corrects a classification action which resulted in a loss of grade or pay. In order for the decision to be made retroactive, the employee must file the initial request for review with either the agency or the

Office not later than 15 calendar days after the effective date of the reclassification action.

(2) However, if the appellate decision raises the grade of the position above the original grade, retroactivity will apply only to the extent of restoration to the original grade.

(3) The right to a retroactive effective date provided by this section is preserved on subsequent appeals from an agency or Office classification decision when the subsequent appeal is filed not later than 15 calendar days following receipt of written notification of a final agency administrative decision or 15 calendar days after the effective date of the action taken as a result of the classification decision, whichever is later.

(c) *Grade change based on new duties and responsibilities.* Retroactivity may be based only on duties and responsibilities existing at the time of demotion and cannot be based on duties and responsibilities assigned later.

(d) *Retroactivity when time limits are extended.* The right to a retroactive effective date provided by this section may be preserved at the discretion of the Office, on a showing by the employee that he or she was not notified of the applicable time limit and was not otherwise aware of it, or that circumstances beyond his or her control prevented filing an appeal within the prescribed time limit.

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DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 730

[Amdt. 3]

Rice Program for Crop Years 1978-81

Correction

In FR Doc. 80-37295 appearing on page 79745 in the issue of Tuesday, December 2, 1980, make the following correction:

On page 79746, second column, paragraph (3) of § 730.25(c), in the third line, "... is planted shall reestablish ..." should have read "... is planted shall not reestablish ...".

BILLING CODE 1505-01-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 290]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period February 1-7, 1981. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: February 1, 1981.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202-447-5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1980-81 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on July 8, 1980. A final impact analysis on the marketing policy is available from William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

The committee met again publicly on January 27, 1981, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is easier.

It is further found that there is insufficient time between the date when information became available upon which this regulation is based and when the action must be taken to warrant a 60 day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to