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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531, 550, and 575

RIN 3206-AE23

Special Pay Adjustments for Law Enforcement Officers in Selected Cities

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on the special pay adjustments for law enforcement officers authorized by section 404 of the Federal Employees Pay Comparability Act of 1990 (FEPCA). The final regulations establish rules for applying these special pay adjustments to law enforcement officers under the General Schedule, the Senior Executive Service, or the Senior Level pay system in the following designated Consolidated or Metropolitan Statistical Areas (CMSA's or MSA's): Boston-Lawrence-Salem, MA-NH; Chicago-Gary-Lake County, IL-IN-WI; Los Angeles-Anaheim-Riverside, CA; New York-Northern New Jersey-Long Island, NY-NJ-CT; Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD; San Francisco-Oakland-San Jose, CA; San Diego, CA; and Washington, DC-MD-VA.

EFFECTIVE DATES: These regulations are effective on the first day of the first pay period beginning on or after January 1, 1992, except 5 CFR 550.101(b)(9), which is effective on January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Belva MacDonald, (202) 606-2858 or (FTS) 266-2858.

SUPPLEMENTARY INFORMATION: On October 22, 1991, OPM published proposed regulations to implement section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509, November 5, 1990), which established special pay adjustments of 4, 8, or 16 percent of basic pay for a law enforcement officer whose official duty station is in one of eight designated areas (56 FR 54549). These adjustments will become effective on the first day of the first pay period beginning on or after January 1, 1992.

The 30-day comment period ended on November 21, 1991. Comments were received from three individuals, two Federal agencies, and one labor organization. These comments, as well as certain changes and clarifications of the proposed regulations, are summarized below.

Definition of Law Enforcement Officer

An agency commented that several employees have successfully appealed their retirement coverage and have retroactively received service credit as law enforcement officers for retirement purposes. The agency observed that in the future such a retroactive decision granting an employee in one of the designated areas law enforcement officer retirement coverage would mean that the employee's basic pay, premium pay, and employment benefits, such as retirement contributions and life insurance premiums, must be recalculated to reflect the special pay adjustment for law enforcement officers. OPM agrees. If employees retroactively are granted retirement system coverage, there is no basis for depriving such employees of their pay entitlements under the back pay law.

The definition of "law enforcement officer" used in these regulations is taken directly from title IV of FEPCA. OPM has no authority to modify this definition. However, it should be noted that the title IV provisions for law enforcement officers are intended as interim entitlements pending development of a separate pay and classification system for law enforcement officers. As required by FEPCA, OPM is conducting a study to develop a plan for such a system and is considering the use of definitional criteria other than those used in the retirement laws. In the meantime, agencies are bound by findings under the retirement laws.

Computation of Overtime Pay

A labor organization noted that the proposed regulations would revise 5 CFR 550.113(a) to incorporate special pay adjustments for law enforcement officers under section 404 into the computation of the GS-10, step 1, limitation on the hourly rate of overtime pay for an employee whose rate of basic pay does not exceed the minimum rate of pay for GS-10, but would not make a similar revision in 5 CFR 550.113(b) (concerning an employee whose rate of basic pay exceeds the minimum rate of pay for GS-10). On May 3, 1991, OPM amended § 550.113(b) to incorporate the rates of basic pay determined under § 550.113(a). (See 56 FR 20342.) Since the proposed regulations incorporated references to the special pay adjustments for law enforcement officers in § 550.113(a), modification of § 550.113(b) is unnecessary.

Limitations on Pay

An individual noted that the proposed regulations do not reflect statutory limitations on the total amount of basic pay plus special pay adjustments for law enforcement officers that may be paid. This individual pointed out that 5 U.S.C. 5304(g) limits the total of comparability payments under section 5304 of title 5, United States Code, plus basic pay, to a maximum of the rate for level IV (or, for certain employees, such as those in the Senior Executive Service, level III) of the Executive Schedule. Since the statute requires OPM, to the extent practicable, to administer special pay adjustments for law enforcement officers in the same manner as comparability payments, OPM is incorporating these limitations in the final regulations.

Definitions of "Rate of Basic Pay"

An individual noted that the proposed regulations excluded the special rates of pay under section 403 of FEPCA from the definitions of "rates of basic pay" for purposes of computing recruitment and relocation bonuses, retention allowances, and supervisory differentials. Since special rates of pay, whether established under 5 U.S.C. 5305 or section 403 of FEPCA, are the employee's rates of basic pay, they must be used to compute recruitment and relocation bonuses, retention allowances, and supervisory differentials. References to special rates of pay for law enforcement officers established under section 403 of FEPCA as "additional pay" have been deleted from the appropriate sections of the final regulations.

FBI Demonstration Project

An individual questioned the reduction in the retention payment payable to an employee of the New York Field Division of the Federal Bureau of Investigation (FBI) under section 601(a)(2) of Public Law 100–453, as amended, by the full 16 percent special pay adjustment for law enforcement officers in the New York Consolidated Metropolitan Statistical Area (CMSA). The individual observed that under the interim regulations on interim geographic adjustments, the retention payment has already been reduced by the 8 percent interim geographic adjustment paid to all General Schedule employees, including employees of the New York Field Division of the FBI. (See 56 FR 773, January 9, 1991). OPM has clarified the regulations to avoid an implication that the retention payment will be reduced both by the 8 percent interim geographic adjustment and the 16 percent special pay adjustment for law enforcement officers.

Miscellaneous

An agency requested clarification of a statement in the Supplementary Information accompanying the proposed rule concerning rates of basic pay to be used for certain pay administration purposes. The agency observed that a special salary rate established under 5 U.S.C. 5305 may be used as an employee's highest previous rate under 5 CFR part 531 only in limited circumstances—i.e., in a reassignment within the agency where an appropriate official determines that the need for the employee's services will be greater in the position to which reassigned. The agency is correct. In circumstances other than the limited one described above, the highest previous rate is based on the law enforcement officer's scheduled rate of basic pay for the grade or pay level and step (or relative position in the rate range) and does not include any applicable special salary rate under section 403 of FEPCA.

Proposed changes in the interim regulations on the aggregate limitation on pay (5 CFR part 530, subpart B) are being made effective as part of a separate **Federal Register** notice. Also, the final regulations clarify the definition of "scheduled annual rate of pay" in 5 CFR 531.101 and 531.301.

Finally, OPM is publishing regulations to implement section 411 of FEPCA. Section 411 amends section 5541(2)(iv) of title 5, United States Code, to permit payment, effective January 1, 1992, of premium pay for night work under section 5545(a) and for Sunday and holiday work under section 5546 to members of the United States Park Police and members of the United States Secret Service Uniformed Division. Therefore, OPM is making a technical and conforming change in the regulations that previously prevented members of the United States Park Police and members of the United States Secret Service Uniformed Division from receiving these types of premium pay under title 5, United States Code.

E.O. 12291, Federal Regulations

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, since it applies only to Federal employees and agencies.

List of Subjects

5 CFR Parts 531 and 575

Government employees, Wages, Administrative practice and procedure.

5 CFR Part 550

Government employees, Wages Civil defense, Administrative practice and procedures.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending parts 531, 550, and 575 of Title 5 of the Code of Federal Regulations as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

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

Authority: 5 U.S.C. 5115, 5307, 5338, and Chapter 54; E.O. 12748; subpart A issued under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462, and E.O. 12736; subpart B also issued under 5 U.S.C. 5303(g), 5333, 5402, and 7701(b)(2); subpart C also issued under section 404 of Public Law 101–509, 104 Stat. 1466, and E.O. 12748; subpart D also issued under 5 U.S.C. 7701(b)(2); subpart E also issued under 5 U.S.C. 5336.

2. In § 531.101, paragraph (a) of the definition of "scheduled annual rate of pay" is revised to read as follows:

§ 531.101 Definitions.

* * * * *

Scheduled annual rate of pay means—

(a) The General Schedule rate of basic pay (or a nationwide or worldwide special salary rate under part 530 of this chapter or a special rate for law enforcement officers under section 403 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), if applicable) for the employee's grade and step (or relative position in the rate range), exclusive of additional pay of any kind, such as premium pay.

* * * * *

3. In § 531.205, the section heading, paragraph (a) introductory text, and paragraph (b) are revised to read as follows:

§ 531.205 Pay schedule conversion rules at the time of an annual pay adjustment under 5 U.S.C. 5303.

(a) On the effective date of a pay adjustment under 5 U.S.C. 5303, the rate of basic pay of an employee subject to the General Schedule shall be initially adjusted, except as provided in paragraph (b) of this section, as follows:

* * * * *

(b) Rates of basic pay authorized under section 5305 of title 5, United States Code, paid to an employee subject to the General Schedule shall be adjusted by reason of a pay adjustment under 5 U.S.C. 5303 in accordance with § 530.307 of this part.

4. Subpart C is added to read as follows:

Subpart C—Special Pay Adjustments for Law Enforcement Officers

Sec.

Subpart C—Special Pay Adjustments for Law Enforcement Officers

§ 531.301 Definitions.

In this subpart:

Law enforcement officer means a law enforcement officer within the meaning of section 8331(20) or section 8401(17) of title 5, United States Code, with respect to whom the provisions of chapter 51 of such title apply, including members of the Senior Executive Service.

Official duty station means the duty station for a law enforcement officer's position of record as indicated on his or her most recent notification of personnel action.

Scheduled annual rate of pay means—

(a) The rate of basic pay for a law enforcement officer's grade or pay level and step (or relative position in the rate range), including special rates for law enforcement officers under section 403 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), but not including special salary rates established under 5 U.S.C. 5305, or additional pay of any kind, such as premium pay;

(b) For a law enforcement officer covered by the Performance Management and Recognition System who is receiving a special salary rate under 5 U.S.C. 5305 or similar provision of law (other than section 403 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509)), the rate of pay resulting from the following computation—

(1) Using the special salary rate schedule established under 5 U.S.C. 5305, subtract the dollar amount for step 1 of the law enforcement officer's grade from the dollar amount for the law enforcement officer's special salary rate; and

(2) Add the result of paragraph (b)(1) to the dollar amount for step 1 of the employee's grade on the General Schedule; or

(c) The retained rate of pay under Part 536 of this chapter or 5 CFR 359.705, where applicable, exclusive of additional pay of any kind.

Special law enforcement adjusted rate of pay means an employee's scheduled annual rate of pay multiplied by the factor listed in § 531.302(a) of this part for the special pay adjustment area in which the employee's official duty station is located, subject to the limitation described in § 531.302 (b) or (c) of this part, if applicable.

Special pay adjustment area means any of the following Consolidated Metropolitan Statistical Areas (CMSA's) or Metropolitan Statistical Areas (MSA's), as defined by the Office of Management and Budget (OMB):

(a) Boston-Lawrence-Salem, MA-NH;

(b) Chicago-Gary-Lake County, IL-IN-WI;

(c) Los Angeles-Anaheim-Riverside, CA;

(d) New York-Northern New Jersey-Long Island, NY-NJ-CT;

(e) Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD;

(f) San Francisco-Oakland-San Jose, CA;

(g) San Diego, CA;

(h) Washington, DC-MD-VA.

§ 531.302 Determining special law enforcement adjusted rates of pay.

(a) To determine the special law enforcement adjusted rate of pay, the scheduled annual rate of pay for a law enforcement officer whose official duty station is in one of the special pay adjustment areas listed below shall be multiplied by the factor shown for that area:

Special pay adjustment area	Factor
Boston-Lawrence-Salem, MA-NH	1.16
Chicago-Gary-Lake County, IL-IN-WI	1.04
Los Angeles-Anaheim-Riverside, CA	1.16
New York-Northern New Jersey-Long Island, NY-NJ-CT	1.16
Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD	1.04
San Francisco-Oakland-San Jose, CA	1.16
San Diego, CA	1.08
Washington, DC-MD-VA	1.04

(b) Except as provided in paragraph (c) of this section, the special law enforcement adjusted rate of pay may not exceed the rate of basic pay payable for level IV of the Executive Schedule.

(c) The special law enforcement adjusted rate of pay for an employee in a position described in 5 U.S.C. 5304(h)(1)(A)-(E), including members of the Senior Executive Service, may not exceed the rate of basic pay payable for level III of the Executive Schedule.

§ 531.303 Computation of hourly, daily, weekly, and biweekly adjusted rates of pay.

When it is necessary to convert the special law enforcement adjusted rate of pay to an hourly, daily, weekly, or biweekly rate, the following methods apply:

(a) To derive an hourly rate, divide the adjusted annual rate of pay by 2,087 and round to the nearest cent, counting one-half cent and over as a whole cent;

(b) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required by the employee's basic daily tour of duty;

(c) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, as the case may be.

§ 531.304 Administration of special law enforcement adjusted rates of pay.

(a) A law enforcement officer shall receive the greater of—

(1) The special law enforcement adjusted rate of pay;

(2) The "adjusted annual rate of pay" under subpart A of this part (Interim Geographic Adjustments) for the employee's grade or pay level and step (or relative position in the rate range), if applicable; or

(3) Any applicable special salary rate established under 5 U.S.C. 5305 for the employee's grade and step (or relative position in the rate range).

(b) A special law enforcement adjusted rate of pay is considered basic pay for purposes of computing—

(1) Retirement deductions and benefits under parts 831, 841, 842, 843, and 844 of this chapter;

(2) Life insurance premiums and benefits under parts 870, 871, 872, and 873 of this chapter;

(3) Premium pay under subparts A and I of part 550 of this chapter (including the computation of limitations on premium pay under 5 U.S.C. 5547, overtime pay under 5 U.S.C. 5542(a), and compensatory time off under 5 U.S.C. 5543);

(4) Severance pay under subpart G of part 550 of this chapter; and

(5) Advances in pay under subpart B of part 550 of this chapter.

(c) When an employee's official duty station is changed form a location not in a special pay adjustment area to a location in a special pay adjustment area, payment of the special law enforcement adjusted rate of pay begins on the effective date of the change in official duty station.

(d) A special law enforcement adjusted rate of pay is paid only for those hours for which a law enforcement officer is in a pay status.

(e) A special law enforcement adjusted rate of pay shall be adjusted as of the effective date of any change in the applicable scheduled annual rate of pay.

(f) Except as provided in paragraph (g) of this section, entitlement to a special law enforcement adjusted rate of pay under this subpart terminates on the date—

(1) An employee's official duty station is no longer located in a special pay adjustment area;

(2) An employee moves to a position not covered by this subpart;

(3) An employee separates from Federal service;

(4) An employee's "adjusted annual rate of pay" under Subpart A of this part exceeds his or her special law enforcement adjusted rate of pay; or

(5) An employee's special salary rate under 5 U.S.C. 5305 exceeds his or her special law enforcement adjusted rate of pay.

(g) In the event of a change in the geographic area covered by a CMSA or MSA described in § 531.301 of this chapter, the effective date of a change in an employee's entitlement to a special law enforcement adjusted rate of pay under this subpart shall be the first day of the first pay period beginning on or after the date on which a change in the definition of the CMSA or MSA is made effective.

(h) Payment of, or an increase in, a special law enforcement adjusted rate of pay is not an equivalent increase in pay within the meaning of 5 U.S.C. 5335.

(i) A special law enforcement adjusted rate of pay is included in an employee's "total remuneration," as defined in § 551.511(b) of this chapter, and "straight time rate of pay," as defined in § 551.512(b) of this chapter, for the purpose of computations under the Fair Labor Standards Act of 1938, as amended.

(j) Termination of a special law enforcement adjusted rate of pay under paragraph (f) of this section is not an adverse action for the purpose of subpart D of part 752 of this chapter.

§ 531.305 Reports.

The Office of Personnel Management may require agencies to report pertinent information concerning the administration of payments under this subpart.

§ 531.306 Effect of special pay adjustments for law enforcement officers on retention payments under FBI demonstration project.

As required by section 406 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), a retention payment payable to an employee of the New York Field Division of the Federal Bureau of Investigation under section 601(a)(2) of Public Law 100–453, as amended, shall be reduced by the amount of any special pay adjustment for law enforcement officers payable to that employee under this subpart. For the purpose of applying this section, the amount of the special pay adjustment for law enforcement officers shall be determined by subtracting the employee's scheduled annual rate of pay, plus the amount of any interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), as determined under § 531.105 of this part, from his or her special law enforcement adjusted rate of pay.

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

5. The authority citation for subpart A of part 550 is revised to read as follows:

Authority: 5 U.S.C. 5548 and 6101(c); sec. 302, 404, and 411 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462, 1466, and 1469, respectively; E.O. 12748.

6. In § 550.101, paragraph (b)(9) is revised to read as follows:

§ 550.101 Coverage and exemptions.

* * * * *

(b) *Employees to whom this subpart does not apply.*

* * * * *

(9) A member of the United States Park Police or the United States Secret Service Uniformed Division, except for the purpose of night pay under §§ 550.121 and 550.122, pay for holiday work under §§ 550.131 and 550.132, and pay for Sunday work under §§ 550.171 and 550.172 of this subpart;

* * * * *

7. In § 550.103, paragraph (j) is revised to read as follows:

§ 550.103 Definitions.

* * * * *

(j) *Rate of basic pay* means the rate of pay fixed by law or administrative action for the position held by an employee, including any applicable interim geographic adjustment or special pay adjustment for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively, or locality-based comparability payment under 5 U.S.C. 5304, before any deductions and exclusive of additional pay of any other kind.

* * * * *

8. In § 550.107, paragraph (a) is revised to read as follows:

§ 550.107 Special maximum earnings limitation for law enforcement officers.

* * * * *

(a) 150 percent of the minimum rate for GS–15, including a locality-based comparability payment under 5 U.S.C. 5304 or an interim geographic adjustment or special law enforcement adjustment under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively, and any special salary rate established under 5 U.S.C. 5305, rounded to the nearest whole cent, counting one-half cent and over as a whole cent; or

* * * * *

9. In § 550.111, paragraph (d)(2) is revised to read as follows:

§ 550.111 Authorization of overtime pay.

* * * * *

(d) * * *

(2) Performed by an employee, when the employee's basic pay exceeds the minimum rate for GS–10 (including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; a locality-based comparability payment under 5 U.S.C. 5304; and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law) or when the employee is engaged in professional or technical, engineering or scientific activities. For purposes of this section and section 5542(a) of title 5, United States Code, an employee is engaged in professional or technical engineering or scientific activities when he or she is assigned to perform the duties of a professional or support technician position in the physical, mathematical, natural, medical, or social sciences or engineering or architecture.

* * * * *

10. In § 550.113, paragraph (a) is revised to read as follows:

§ 550.113 Computation of overtime pay.

(a) For each employee whose rate of basic pay does not exceed the minimum rate for GS–10 (including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; a locality-based comparability payment under 5 U.S.C. 5304; and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law), the overtime hourly rate is 1½ times his or her hourly rate of basic pay.

* * * * *

11. In § 550.114, paragraph (c) is revised to read as follows:

§ 550.114 Compensatory time off.

* * * * *

(c) The head of an agency may provide that an employee whose rate of basic pay exceeds the maximum rate for GS–10 (including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; a locality-based comparability payment under 5 U.S.C. 5304; and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law) shall be compensated for irregular or occasional overtime work with an equivalent amount of compensatory time off from the employee's tour of duty instead of payment under § 550.113 of this part.

* * * * *

12. § 550.151 is revised to read as follows:

§ 550.151 Authorization of premium pay on an annual basis.

An agency may pay premium pay on an annual basis, instead of other premium pay prescribed in this subpart (except premium pay for regular overtime work, and work at night, on Sundays, and on holidays), to an employee in a position in which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular or occasional overtime work, with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty. Premium pay under this section is determined as an appropriate percentage, not less than 10 percent nor more than 25 percent, of the employee's rate of basic pay (including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; a locality-based comparability payment under 5 U.S.C. 5304; and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law).

13. In § 550.154, paragraph (a) introductory text is revised to read as follows:

§ 550.154 Rates of premium pay payable under § 550.151.

(a) An agency may pay the premium pay on an annual basis referred to in § 550.151 to an employee who meets the requirements of that section, at one of the following percentages of the employee's rate of basic pay (including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; a locality-based comparability payment under 5 U.S.C. 5304; and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law):

* * * * *

Subpart B—Advances in Pay

14. The authority citation for Subpart B is revised to read as follows:

Authority: 5 U.S.C. 5524a; secs. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462 and 1466, respectively; E.O. 12748.

15. In § 550.202, the definition of "rate of basic pay" is revised to read as follows:

§ 550.202 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, including annual premium pay for standby duty under 5 U.S.C. 5545(1); night differential for prevailing rate employees under 5 U.S.C. 5343(f); a special rate established under 5 U.S.C. 5305, § 532.231 of this subchapter, or other legal authority; and locality-based comparability payments under 5 U.S.C. 5304; or any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; but not including additional pay of any other kind.

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

16. The authority citation for part 575 is revised to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, and 5755; sec. 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1466; E.O. 12748.

17. In § 575.103, the definition of "rate of basic pay" is revised to read as follows:

§ 575.103 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which the employee is or will be newly appointed, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304; or interim geographic adjustments or special pay adjustments for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively.

* * * * *

18. In § 575.203, the definition of "rate of basic pay" is revised to read as follows:

§ 575.203 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which the employee is being relocated, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304; or interim geographic adjustments or special pay adjustments for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively.

* * * * *

19. In § 575.303, the definition of "rate of basic pay" is revised to read as follows:

§ 575.303 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304; or interim geographic adjustments or special pay adjustments for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively.

20. In § 575.403, the definition of "rate of basic pay" is revised to read as follows:

§ 575.403 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304; or interim geographic adjustments or special pay adjustments for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively.

* * * * *

21. In § 575.405, paragraph (c)(2) is revised to read as follows:

§ 575.405 Calculation and payment of supervisory differentials.

* * * * *

(c) * * *

(2) A locality-based comparability payment under 5 U.S.C. 5304; or interim geographic adjustment or special pay adjustment for law enforcement officers under section 302 or 404 of the Federal

Employees Pay Comparability Act of 1990 (Pub. L. 101-509), respectively;

* * * * *

[FR Doc. 92-1476 Filed 1-21-92; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 729]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from January 17 through January 23, 1992. Consistent with program objectives, such action is needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges for the specified week. Regulation was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

EFFECTIVE DATE: Regulation 729 (7 CFR Part 907) is effective for the period from January 17 through January 23, 1992.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act."

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

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. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,000 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number a growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented about 79 percent of the total production in 1990-91. District 2 is located in the southern coastal area of California and represented almost 18 percent of 1990-91 production; District 3 is the desert area of California and Arizona, and it represented slightly less than 3 percent; and District 4, which represented slightly less than 1 percent, is northern California. The Committee's revised estimate of 1991-92 production is 64,600 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 32,895 cars during the 1990-91 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic fresh (regulated) market is a preferred market for California-Arizona navel oranges while the export market continues to grow. The Committee has estimated that about 68 percent of the 1991-92 crop of 64,600 cars will be utilized in fresh domestic channels (43,650 cars), with the remainder being exported fresh (14 percent), processed (16 percent), or designated for other uses (2 percent). This compares with the 1990-91 total of 16,675 cars shipped to fresh domestic markets, about 51 percent of that year's crop. In comparison to other seasons, 1990-91 production was low because of a devastating freeze that occurred during December 1990.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to producers. Producers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual producers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance producer revenue. Prices for navel oranges tend to be relatively inelastic at the producer level. Thus, even a small variation in shipments can have a great impact on prices and producer revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to producers, particularly smaller producers.

The Committee adopted its marketing policy for the 1991-92 season on June 25, 1991. The Committee reviewed its marketing policy at district meetings as follows: Districts 1 and 4 on September 24, 1991, in Visalia, California; and District 2 and 3 on October 1, 1991, in Ontario, California. The Committee subsequently revised its marketing policy at a meeting on October 15, 1991. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season.

This marketing policy is available from the Committee or Mr. Nissen. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on January 14, 1992, in Newhall, California, to consider the current and prospective conditions of supply and demand and recommended, with 7 members voting in favor, 2 opposing, and 2 abstaining, that 1,600,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations were compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions and weather and transportation conditions.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1991–92 marketing policy. The recommended amount of 1,600,000 cartons compares to the 1,500,000 cartons specified in the Committee's shipping schedule. Of the 1,600,000 cartons, 81.6 percent or 1,305,600 cartons are allotted for District 1, 15.5 percent or 248,000 cartons are allotted for District 2, and 2.9 percent or 46,400 cartons are allotted for District 4. Handlers in District 3 will not be regulated as they are not shipping a sufficient quantity of navel oranges to warrant volume regulation at this point in the season.

During the week ending on January 9, 1992, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,097,000 cartons compared with 409,000 cartons shipped during the week ending on January 10, 1991. Export shipments totaled 163,000 cartons compared with 134,000 cartons shipped during the week ending on January 10, 1991. Processing and other uses accounted for 161,000 cartons compared with 821,000 cartons shipped during the week ending on January 10, 1991.

Fresh domestic shipments to date this season total 10,808,000 cartons compared with 13,506,000 cartons shipped by this time last season. Export shipments total 1,623,000 cartons compared with 1,698,000 cartons shipped by this time last season. Processing and other use shipments total 2,221,000 cartons compared with 4,138,000 cartons shipped by this time last season.

For the week ending January 9, 1992, regulated shipments of navel oranges to the fresh domestic market were 1,031,000 cartons on an adjusted allotment of 954,000 cartons which resulted in net overshipments of 77,000 cartons. Regulated general maturity shipments for the current week (January 10 through January 16, 1992) are estimated at 1,210,000 cartons on an adjusted allotment of 1,233,000 cartons. Thus, undershipments of 23,000 cartons could be carried forward into the week ending on January 23, 1992.

The average f.o.b. shipping point price for the week ending on January 9, 1992, was $9.47 per carton based on a reported sales volume of 800,000 cartons. The season average f.o.b. shipping point price to date is $10.21 per carton. The average f.o.b. shipping point prices for the week ending on January 10, 1991, was $15.62 per carton; the season average f.o.b. shipping point price at this time last year was $9.94.

Committee members discussed implementing volume regulation at this time, as well as different levels of allotment. It was reported that poor weather conditions have hampered harvesting. Two Committee members commented that the weather has had a positive effect on prices. Several Committee members commented that they believe demand is improving. Two Committee members favored open movement at this time, while the majority of Committee members favored the issuance of general maturity allotment.

According to the National Agricultural Statistics Service, the 1990–91 season average fresh equivalent on-tree price for California-Arizona navel oranges was $7.75 per carton, 119 percent of the season average parity equivalent price of $6.52 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1991–92 season average fresh on-tree price is estimated at $6.33 per carton, about 85 percent of the estimated fresh on-tree parity equivalent price of $7.44 per carton.

Limiting the quantity of navel oranges that may be shipped during the period from January 17 through January 23, 1992, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to affectuate the declared policy of the Act.

A proposed rule regarding the implementation of volume regulation and a proposed shipping schedule for California-Arizona navel oranges for the 1991–92 season was published in the September 30, 1991, issue of the **Federal Register** (56 FR 49432). The Department is currently in the process of analyzing comments received in response to this proposal and, if warranted, may finalize that action this season. However, issuance of this final rule implementing volume regulation for the regulatory week ending on January 23, 1992, does not constitute a final decision on that proposal.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until January 15, 1992, and this action needs to be effective for the regulatory week which begins on January 17, 1992. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

1. The authority citation 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.1029 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

907.1029 Navel orange regulation 729.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from January 17 through January 23, 1992, is established as follows:

(a) District 1: 1,305,600 cartons;
(b) District 2: 248,000 cartons;
(c) District 3: unlimited cartons;
(d) District 4: 46,400 cartons.

Dated: January 16, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-1548 Filed 1-17-92; 8:45 am]

BILLING CODE 3410-02-M

Federal Grain Inspection Service

7 CFR Part 800

Aflatoxin Testing Service

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is revising the regulations under the United States Grain Standards Act (USGSA) as amended (7 U.S.C. 71 *et seq.*), to require, prior to shipment, all corn exported from the United States be tested for aflatoxin unless the contract stipulates that testing is not required. FGIS is also amending the regulations to provide aflatoxin testing service for all grains, including corn, under the authority of the USGSA.

EFFECTIVE DATE: February 21, 1992.

FOR FURTHER INFORMATION CONTACT: George Wollam, Federal Grain Inspection Service, USDA, room 0623 South Building, P.O. Box 96454, Washington, DC, 20090-96454, telephone (202) 720-0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this rule will not have a significant economic impact on substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform those services do not meet the requirement for small entities. Aflatoxin text services will be applied equally to all entities.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements contained in this rule have been approved by the Office of Management and Budget (OMB) and assigned OMB number 0580-0013.

Background

The Grain Quality Incentives Act of 1990 (Pub. L. No. 101-624; (section 2007), GQIA) amended section 5 of the USGSA (7 U.S.C. 77) to require that all corn exported from the United States be tested for aflatoxin, unless the contract for export stipulates that such testing is not required. Specifically, the amendment states,

> The Administrator is authorized and directed to require that all corn exported from the United States be tested to ascertain whether it exceeds acceptable levels of aflatoxin contamination, unless the contract for export between the buyer and seller stipulates that aflatoxin testing shall not be conducted.

The Conference Report covering the GQIA (H.R. Conf. Rep. No. 916, 101st Cong., 2nd Sess. 595(1990)) states,

> * * * buyer and seller may agree not to have corn tested for aflatoxin. However, if a buyer and seller desire an official USDA test and certification for aflatoxin, such test must be conducted by USDA. This does not preclude buyer and seller from utilizing private (unofficial) testing laboratories in lieu of USDA official testing.

On August 6, 1991, FGIS proposed in the **Federal Register** (56 FR 37302) to revise the regulations under the USGSA to implement the new aflatoxin testing requirements in section 5 of the USGSA. Specifically, FGIS proposed to revise sections 800.15, 800.16, and 800.162 to require aflatoxin testing service for all corn exported from the United States. In addition, FGIS proposed to begin providing aflatoxin testing services on all grains, including corn, under the authority of the USGSA in conjunction with implementing the required testing of export corn. Testing of grains, other than corn, for aflatoxin contamination will be provided upon the request of an applicant.

On August 16, 1991, FGIS published a correction docket in the **Federal Register** (56 FR 40812) correcting errors in proposed § 800.15(b)(1)(ii).

Providing aflatoxin testing service under the authority of the USGSA would increase the availability of official aflatoxin testing service to the grain industry and facilitate the implementation of the required testing of export corn.

During the 30 day comment period ending September 5, 1991, FGIS received a total of 14 comments from various segments of the grain industry including producer associations, grain trade associations, handlers, foreign organizations, and corn processors. In general, six commentors supported the proposed action, five opposed the proposed action, and three did not specifically address the changes proposed.

Aflatoxin Testing of Corn by FGIS

The six commentors supporting the proposal indicated that the proposed action would promote the use of standard aflatoxin testing methods and expand the availability of official aflatoxin testing service.

The five commentors opposing the proposal expressed concern that the proposed actions were not consistent with the law, as passed, nor with the intent of the law, as discussed by the conference committee. These commentors agreed that all corn exported from the United States must be tested for aflatoxin unless the buyer and seller agree not to have the corn tested. However, they disagree that buyer and seller must agree on unofficial testing in lieu of USDA testing.

FGIS believes that such action is necessary to fulfill its responsibilities as mandated by Congress. The GQIA of 1990 amended the USGSA to authorize and direct the FGIS Administrator to establish aflatoxin testing services for export corn. The amendment also establishes FGIS as the primary testing agency, since unofficial testing is permitted "in lieu of USDA official testing."

Currently, there are many export contracts which permit independent laboratory testing as an alternative to FGIS testing. Since it is already common practice to permit independent laboratory testing, FGIS does not believe the proposal to require agreement between the buyer and seller is unreasonable or impractical. In fact, such action assures that the buyer and the seller are aware of the requirements for testing. Consequently, FGIS shall provide aflatoxin testing services for export corn unless the buyer and seller agree to have it tested by an entity other than FGIS.