

Rules and Regulations

Federal Register

Vol. 59, No. 153

Wednesday, August 10, 1994

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 week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 293, 351, 430, 432, 451, 511, 530, 531, 536, 540, 575, 591, 595, and 771

RIN 3206-AF69

Termination of the Performance Management and Recognition System

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to implement the "Performance Management and Recognition System Termination Act of 1993" (Pub. L. 103-89), which provides for the temporary extension and orderly termination of the Performance Management and Recognition System (PMRS) and specifies how former PMRS employees will be paid.

EFFECTIVE DATE: September 9, 1994.

FOR FURTHER INFORMATION CONTACT: James Weddel, (202) 606-2858, concerning questions about the changes in 5 CFR parts 511, 530, 531, 536, 575, 591, and 595; and Barbara Colchao, (202) 606-2720, concerning questions about the changes in 5 CFR parts 293, 351, 430, 432, 451, 540, and 771.

SUPPLEMENTARY INFORMATION: On December 15, 1993, at 58 FR 65531, OPM published interim regulations to implement the "Performance Management and Recognition System Termination Act of 1993" (Pub. L. 103-89), with a 60-day comment period. These regulations were made effective retroactive to November 1, 1993.

On December 30, 1993, at 58 FR 69169, OPM published final regulations to implement locality-based comparability payments under the "Federal Employees Pay Comparability Act of 1990" (FEPACA) (Pub. L. 101-509).

The locality pay regulations revised the definitions of *scheduled annual rate of pay* in §§ 531.101 and 531.301 which were previously published in the interim regulations implementing the PMRS Termination Act. The final regulations on locality pay were made effective January 1, 1994, and were applicable on the first day of the first pay period beginning on or after January 1, 1994.

On February 3, 1994, at 59 FR 5223, OPM published corrections to fix three typographical errors in the interim regulations for PMRS termination.

During the comment period, which ended February 14, 1994, OPM received three comments, each from a different Federal agency. One agency suggested revising the regulations to clarify that employees cannot "become" GM employees after November 1, 1993, and to specify the personnel actions that would trigger loss of GM status. A second agency asked for clarification of whether an employee who loses coverage as a result of a temporary promotion regains coverage when the temporary promotion ends, and if so, how the employee's pay would be set. A third agency felt that the text of § 531.406(b)(2) (i)-(iii) specifying when time in a non-pay status is creditable service for a within-grade increase should be simplified. The agency also asserted that certain definitions in §§ 531.101 and 531.301 were superseded by revised definitions in the final locality pay regulations. Finally, it was called to our attention that the instructions for setting pay on loss of GM status should be revised to clarify that pay retention is not required if an employee requests a reduction in grade.

Following are the major issues raised, a summary of comments on each issue, and a discussion of changes made to the interim regulations.

1. The definition of GM employee and loss of status as a GM employee.

Summary of Comments: One agency suggested that the statutory basis (Pub. L. 103-89) for the definition of GM employee should be introduced in its regulatory definition in § 531.202. The agency also noted that the timing and basis for GM status could be clarified. Another agency specifically asked for clarification of whether an employee who loses GM status when temporarily promoted after October 31, 1993, regains

GM status when the temporary promotion ends.

Discussion and Changes: OPM is adopting the suggestion that section 4 of Pub. L. 103-89, the Performance Management and Recognition System Termination Act of 1993, be introduced in the definition of GM employee (see § 531.202(e)). Where possible, we are replacing references to coverage under section 4 of the Act with references to the amended definition of GM employee and, where appropriate, to a new paragraph, "status as a GM employee" (see § 531.203(g)), which specifies personnel actions under which an employee would retain or permanently lose GM status (see § 531.204 (d), (e) and (f), and § 536.308(b)(3)). Also, § 531.204(d) and the definition of GM employee have been amended to remove any suggestion that status as a GM employee can be acquired any time other than on November 1, 1993, the effective date of section 4 of the Act.

When a temporary promotion begins after October 31, 1993, coverage under section 4 of the PMRS Termination Act (GM status) ends because of the change in grade. Coverage cannot be regained once it is lost because it is linked to continuous service as a supervisor or management official in the same grade and in the same agency after October 31, 1993. Coverage is acquired only once, on November 1, 1993.

On the employee's return to the lower grade, the agency must set pay using GS pay setting rules. The agency may restore the employee's rate of basic pay to what it would have been had there never been a temporary promotion (including any within-grade or merit increases that would have been granted at the lower grade). Also, if permitted by its own policies, the agency may instead set pay at a higher rate using the highest previous rate under § 531.203(d). In either pay-setting procedure, if the recomputed rate of basic pay falls between steps of a GS grade or a special salary rate schedule, the rate of basic pay must be set at the next higher step within the lower grade. To clarify this policy, OPM has added a new paragraph entitled, "expiration or termination of temporary promotions" (see § 531.204(c)). This replaces OPM guidance that was previously published in Federal Personnel Manual (FPM) Supplement 990-2, Book 531, S4-5d.

That guidance has been abolished by the sunset of the FPM.

2. Setting pay on loss of GM status through voluntary reduction in grade.

Summary of Comments: It was called to our attention that the regulation on setting pay on loss of GM status implies that an employee retains pay if he or she is voluntarily reduced in grade (see redesignated 5 CFR 531.204(e)).

Discussion and Change: A new paragraph has been added to clarify that the provisions of § 531.204(e) (1) through (4) do not apply when an employee loses GM status as a result of a reduction in grade at the employee's request (see § 531.204(f)(3)). Rather, an agency may set pay at the lowest step of the lower grade or at a higher step in the lower grade under its policies for applying the maximum payable rate rules.

3. Creditable service in a waiting period for a within-grade-increase when an employee is in a non-pay status.

Summary of Comments: One agency proposed simplifying regulatory text by combining separate language for GS and GM employees.

Discussion and Change: OPM is removing unnecessary references to steps, *next higher rate within the grade*, and *GM employee* in § 531.406(b)(2) (i)-(iii) to be consistent with the language used to establish the length of waiting periods in § 531.405.

4. The impact of final locality pay regulations on PMRS termination regulations.

Summary of Comments: One agency commented that the revised definitions in §§ 531.101 and 531.301 of the interim regulations are no longer current since the definitions were subsequently revised again by the final regulations implementing locality pay adjustments.

Discussion and Change: This comment is partially correct. The current definition of *scheduled annual rate of pay* in §§ 531.101 and 531.301 is the definition as revised in the locality pay regulations published in the **Federal Register** on December 30, 1993 (58 FR 69169). However, the current definition of employee in § 531.101 is the definition as revised in the interim PMRS termination regulations. There is no change, except that a statutory reference in the employee definition in § 531.101 is clarified by inserting "of title 5."

Editorial Revisions to Regulations

References to the PMRS Termination Act in §§ 530.306(b)(2), 531.401(d), and 531.502 are clarified by replacing "Public Law 103-89" with "the Performance Management and Recognition System Termination Act of

1993 (Pub. L. 103-89)." References to GM employee in §§ 531.203(c)(2) and 531.205(a)(2)(i) are clarified by inserting the citation, "(as defined in § 531.202)." Also, minor editorial changes are being made to correct errors or clarify text at §§ 531.204(e)(1), 531.205(a)(2) (ii) through (iv), 531.403, 531.405(a) (1) and (2), and 536.308 (a) and (b).

Regulatory Flexibility Act

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

List of Subjects

5 CFR Part 293

Archives and records, Freedom of information, Government employees, Health records, Privacy.

5 CFR Parts 351 and 432

Administrative practice and procedure, Government employees.

5 CFR Parts 430 and 451

Awards, Government employees, Medals.

5 CFR Part 511

Administrative practice and procedure, Freedom of information, Government employees, Wages.

5 CFR Part 530

Government employees, Reporting and recordkeeping requirements, Wages.

5 CFR Part 531

Government employees, Law enforcement officers, Wages.

5 CFR Parts 540 and 575

Government employees, Wages.

5 CFR Part 536

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

5 CFR Part 595

Government employees, Health professions, Wages.

5 CFR Part 771

Administrative practice and procedure, Government employees, Office of Personnel Management
Lorraine A. Green,
Deputy Director.

Accordingly, the interim rule amending 5 CFR parts 293, 351, 430,

432, 451, 511, 530, 531, 536, 540, 575, 591, 595, and 771 published at 58 FR 65531 on December 15, 1993, amended by the final rule amending 5 CFR part 531 published at 58 FR 69169 on December 30, 1993, and corrected at 59 FR 5223 on February 3, 1994, is adopted as final with the following changes:

PART 530—PAY RATES AND SYSTEMS (GENERAL)

1. The authority citation for part 530 continues to read as follows:

Authority: 5 U.S.C. 5305 and 5307; E.O. 12748;

Subpart B also issued under sec. 302(c) and 404(c) of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), 104 Stat. 1462 and 1466, respectively;

Subpart C also issued under sec. 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103-89), 107 Stat. 981.

2. In § 530.306, paragraph (b)(2) is revised to read as follows:

§ 530.306 Determining employee rates.

* * * * *

(b) * * *

(2) If the employee is receiving a rate of basic pay applicable to a GM employee (as defined in § 531.202 of this chapter), the employee shall receive his or her existing rate. This rate may be lower than the minimum rate for the regular schedule, as permitted by section 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103-89). If the employee's existing rate exceeds the maximum rate for the regular or decreased special salary rate schedule, the employee shall be entitled to the existing rate, as provided in § 536.104(a)(3) of this chapter.

* * * * *

PART 531—PAY UNDER THE GENERAL SCHEDULE

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

Authority: 5 U.S.C. 5115, 5307, 5338; sec. 4 of the Performance Management and Recognition System Termination Act of 1993, 107 Stat. 981; E.O. 12748, 56 FR 4521, February 4, 1991, 3 CFR 1991 Comp., p. 316;

Subpart A also issued under section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), 104 Stat. 1462, 5 U.S.C. 5304, 5305, and 5553, and E.O. 12786, 56 FR 67453, December 30, 1991, 3 CFR 1991 Comp., p. 376;

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

Subpart C also issued under section 404 of FEPCA, 104 Stat. 1466, section 3(7) of Pub. L. 102-378 (October 2, 1992), section 302 of FEPCA, 104 Stat. 1462, and 5 U.S.C. 5304, 5305, and 5553;

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

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553, and E.O. 12883, 58 FR 63281, November 29, 1993, 3 CFR 1993 Comp., p. 682.

4. In § 531.101, the definition of *employee* is revised to read as follows:

§ 531.101 Definitions.

* * * * *

Employee means an employee in a position to which subchapter III of chapter 53 of title 5, United States Code, applies, whose official duty station is located in an interim geographic adjustment area, including an employee in a position authorized by § 213.3102(w) of this chapter whose rate of basic pay is established under the General Schedule.

* * * * *

5. In § 531.202, the first sentence of paragraph (e) is revised to read as follows:

§ 531.202 Definitions.

* * * * *

(e) *GM employee* means an employee who was covered by the Performance Management and Recognition System under chapter 54 of title 5, United States Code, on October 31, 1993 (and therefore became covered on November 1, 1993, by section 4 of Pub. L. 103-89, the Performance Management and Recognition System Termination Act of 1993), and who continues thereafter to occupy a position as a supervisor or management official (as defined in paragraphs (10) and (11) of section 7103(a) of title 5, United States Code) in the same grade of the General Schedule and in the same agency without a break in service of more than 3 calendar days. * * *

6. In § 531.203, the first sentence of paragraph (c)(2) introductory text is revised, and a new paragraph (g) is added to read as follows:

§ 531.203 General provisions.

* * * * *

(c) * * *

(2) The maximum rate of basic pay that may be paid a GM employee (as defined in § 531.202) shall be determined as follows: * * *

* * * * *

(g) *Status as a GM employee.* (1) An employee retains status as a GM employee (as defined in § 531.202) when detailed to any position or when reassigned to another General Schedule position in which the employee continues to be a supervisor or management official (as defined in

paragraphs (10) and (11) of section 7103(a) of title 5, United States Code).

(2) An employee permanently loses status as a GM employee if the employee is promoted (including a temporary or term promotion), transferred, reduced in grade, reassigned to a position in which the employee will no longer be a supervisor or management official, or has a break in service of more than 3 calendar days.

7. In § 531.204, paragraphs (c) through (f), respectively; a new paragraph (g) is added; and newly redesignated paragraph (d), the introductory text of newly redesignated paragraph (e), newly redesignated paragraph (e)(1), and newly redesignated paragraph (f) are revised to read as follows:

§ 531.204 Special provisions.

* * * * *

(c) *Expiration or termination of temporary promotions.* (1) On expiration or termination of a temporary promotion when an employee is returned to the lower grade, an agency must recompute the employee's rate of basic pay for the lower grade as if the employee had not been temporarily promoted unless the agency sets pay at a higher rate under § 531.203(d).

(2) In the case of an employee whose rate of basic pay would otherwise fall between two steps of General Schedule grade or applicable special rate range, the rate of basic pay of the employee must be increased to the rate for the next higher step of the grade or special rate range.

(d) *Rate of basic pay on acquiring status as a GM employee.* On acquiring status as a GM employee (as defined in § 531.202) on November 1, 1993, an employee shall continue to receive the rate of basic pay that was payable on October 31, 1993.

(e) *Rate of basic pay on loss of status as a GM employee.* On loss of status as a GM employee (as defined in § 531.202) under § 531.203(g)(2), an employee shall receive (except as provided in paragraph (f) of this section) his or her existing rate of basic pay, plus any of the following adjustments that may be applicable, in the order specified:

(1) The amount of any annual adjustment under section 5303 of title 5, United States Code, to which the employee would otherwise be entitled on that date or, for an employee subject to special pay rates, the amount of any pay adjustment made on that date under section 5305 of title 5, United States Code, and part 530 of this chapter;

* * * * *

(f) *Special exceptions.* Paragraphs (e) (1) through (4) of this section do not apply to any employee who loses status as a GM employee (as defined in § 531.202) under § 531.203(g)(2) as a result of—

(1) An action taken for disciplinary or performance related reasons;

(2) The expiration or termination of a temporary promotion; or

(3) A reduction in grade at the employee's request.

8. In § 531.205, paragraph (a)(2)(i) introductory text and paragraphs (a)(2)(ii) through (iv) 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) * * *

(2)(i) Except as provided in paragraphs (a)(2)(ii) through (iv) of this section, an agency shall determine the annual pay adjustment under 5 U.S.C. 5303 for a GM employee (as defined in § 531.202) as follows:

* * * * *

(ii) The rate of basic pay of an employee which is at the minimum or maximum of the rate range in effect on the day preceding the pay adjustment shall be adjusted to the minimum or maximum of the new rate range, respectively.

(iii) The rate of basic pay of an employee which is less than the minimum rate of the rate range of the employee's position shall be increased by the full amount of the annual pay adjustment under 5 U.S.C. 5303 applicable to the rate range of the grade of the employee's position.

(iv) An employee who is receiving retained pay shall receive one-half of the annual pay adjustment under 5 U.S.C. 5303, as required by 5 U.S.C. 5363(a).

* * * * *

9. In § 531.401, paragraph (d) is revised to read as follows:

§ 531.401 Principal authorities.

* * * * *

(d) Section 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103-89) provides that "the Office of Personnel Management shall prescribe regulations necessary for the administration of this section."

10. In § 531.403, the introductory text of the definition of *within-grade increase* is revised to read as follows:

§ 531.403 Definitions.

Within-grade increase is synonymous with the term "step increase" used in

section 5335 of title 5, United States Code, and means—

11. In § 531.405, the introductory paragraphs of (a)(1) and (a)(2) are revised to read as follows:

§ 531.405 Waiting periods for within-grade increase.

(a) *Length of waiting period.* (1) For an employee with a scheduled tour of duty, the waiting periods for advancement to the next higher step in all General Schedule grades (or the next higher rate within the grade, as defined in § 531.403) are:

(2) For an employee without a scheduled tour of duty, the waiting periods for advancement to the next higher step of all General Schedule grades (or the next higher rate within the grade, as defined in § 531.403) are:

12. In § 531.406, paragraphs (b)(2)(i) through (iii) are revised to read as follows:

§ 531.406 Creditable service.

- (b) * * *
- (2) * * *
- (i) Two workweeks in the waiting period for an employee whose rate of basic pay is less than the rate of basic pay for step 4 of the applicable grade;
- (ii) Four workweeks in the waiting period for an employee whose rate of basic pay is equal to or greater than the rate of basic pay for step 4 of the applicable grade and less than the rate of basic pay for step 7 of the applicable grade; and
- (iii) Six workweeks in the waiting period for an employee whose rate of basic pay is equal to or greater than the rate of basic pay for step 7 of the applicable grade.

13. In § 531.502, the definition of *quality step increase* is revised to read as follows:

§ 531.502 Definitions.

Quality step increase is synonymous with the term "step increase" used in section 5336 of title 5, United States Code, and means an increase in an employee's rate of basic pay from one step or rate of the grade of his or her position to the next higher step of that grade or next higher rate within the grade (as defined in § 531.403) in accordance with section 5336 of title 5, United States Code, section 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103-89), and this subpart.

PART 536—GRADE AND PAY RETENTION

14. The authority citation for part 536 continues to read as follows:

Authority: 5 U.S.C. 5361-5366; sec. 7202(f) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), 104 Stat. 1338-336; sec. 4 of the Performance Management and Recognition System Termination Act of 1993, 107 Stat. 981; § 536.307 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502.

Subpart A—Definitions; Coverage and Applicability

15. In § 536.308, paragraph (a), the introductory text of paragraph (b), and paragraph (b)(3) are revised to read as follows:

§ 536.308 Applicability of retained grade.

(a) Except as provided in paragraph (b) of this section, when an employee is entitled to grade retention, the retained grade shall be treated as the employee's grade for all purposes, including pay and pay administration, retirement, life insurance, and eligibility for training.

(b) The retained grade may not be used—

(3) To determine whether an employee retains status as a GM employee (as defined in § 531.202 of this chapter); or

[FR Doc. 94-19261 Filed 8-9-94; 8:45 am]
BILLING CODE 5325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 93-121-3]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing, under certain conditions, the cold treatment of imported fruits upon arrival at the port of Wilmington, NC. We have determined that in the Wilmington, NC, area, there are climatic and biological barriers that are adequate to prevent the introduction of certain plant pests into the United States in the event they escape from shipments of fruit before undergoing cold treatment. Also, we are deleting the listings of cold treatments in the regulations and replacing them with a reference to the cold treatments

in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference.

EFFECTIVE DATE: September 9, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Victor Harabin, Head, Permit Unit, Port Operations, Plant Protection and Quarantine, APHIS, USDA, room 631, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436-8645.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations, contained in 7 CFR 319.56 through 319.56-8 (referred to below as "the regulations"), prohibit or restrict the importation of fruits and vegetables to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or not widely distributed in the United States. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture administers these regulations.

Under § 319.56-2d of the regulations, APHIS allows certain fruits to be imported into the United States if they undergo sustained refrigeration (cold treatment) sufficient to kill certain insect pests. Cold treatment temperature and refrigeration period requirements vary according to the type of fruit and the pests involved.

On May 13, 1994, we published in the *Federal Register* (59 FR 24968-24971, Docket No. 93-121-2) a proposal to amend the regulations to allow the cold treatment of imported fruits upon arrival at the port of Wilmington, NC. We also proposed to delete the listings of cold treatments in the regulations and replace them with a reference to the cold treatments in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference. We also proposed to make a nonsubstantive editorial change.

We solicited comments concerning our proposal for a 30-day comment period ending June 13, 1994. We received two comments by that date. One, from a State agency, supports the rule. The other comment, from a port authority, asked that we continue to consider allowing cold treatment to be conducted at Gulfport, MS. We are still considering whether to allow cold treatment to be conducted at Gulfport. Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule without change.