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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 (c) 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

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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.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

We are allowing, under certain conditions, the cold treatment of imported fruit upon arrival at the port of Wilmington, NC. As a result of this action, a number of different fruits could be imported into Wilmington, NC. Specifically, officials of the North Carolina State Ports Authority in Wilmington, NC, anticipate that apples, grapes, and pears from Argentina, Brazil, and South Africa will be imported and cold treated at the port of Wilmington, NC.

Approximately 20 million pounds of each fruit could be imported annually into Wilmington, NC, as a result of this action, though we anticipate the amount will be much smaller. While some of the fruit arriving at Wilmington, NC, will be imported in addition to the present volume of annual imports into the United States, some will be shipments diverted from other ports also approved to conduct cold treatment on arrival. In the following analysis of the potential impact of this action on domestic producers of apples, grapes and pears, in order to demonstrate the greatest possible economic impact, we have assumed that the maximum amount of fruit will be imported into Wilmington, NC, for cold treatment, and further, that those commodities will be imported in addition to the present volume of annual imports into the United States.

Also in the following analysis, we have used published price flexibilities to estimate the potential economic effects of allowing apples, grapes, and pears to be cold treated at Wilmington, NC; flexibilities are used to estimate relationships between changes in supply and subsequent changes in price.

Apples

In 1987, 36,718 farms in the United States, of which 1,186 were in North Carolina, harvested apples. Although it is not known how many of these farms could be classified as small entities (annual gross receipts of \$0.5 million or less, according to Small Business Administration (SBA) size standards), it is likely that most would. In 1992, domestic farms produced almost 5.78 billion pounds of apples for the fresh market, with an estimated value of \$1.13 billion.

If the volume of apples imported into Wilmington, NC, for cold treatment

were to reach 20 million pounds, it would constitute about 7.5 percent of current total imports into the United States, about 0.35 percent of current domestic production and about 0.33 percent of the current total apple supply in the United States (domestic and imports).

Assuming that a 0.33 percent increase in the supply of apples would lead to a decrease of about 0.20 percent in the domestic price of apples (using a price flexibility for apples of -0.590, based on all Eastern States' sales of North Carolina apples), we estimate that this increase in supply would result in a price decrease of about \$0.038 per hundredweight (cwt), or \$0.00038 per pound, from an original price of \$0.195 per pound. As a result of the price decrease, there could be a decrease in total revenue to U.S. apple producers of about \$2.20 million, which is roughly 0.20 percent of the original total revenue of \$1.13 billion. We anticipate, therefore, that allowing apples to be cold treated at Wilmington, NC, will not have a significant economic impact on domestic producers or other small entities.

Grapes

In 1987, 23,236 farms in the United States, of which 286 were in North Carolina, harvested grapes. In 1992 domestic farms produced about 1.54 billion pounds of grapes for the fresh market, with an estimated value of \$327 million. Although it is not known how many of these farms could be classified as small entities (annual gross receipts of \$0.5 million or less, according to SBA size standards), it is likely that most would.

If the volume of grapes to be imported were to reach 20 million pounds, it would constitute about 2.9 percent of current total imports to the United States, about 1.3 percent of current domestic production and about 0.89 percent of the current total grape supply in the United States (domestic and imports).

Assuming that a 0.89 percent increase in the supply of grapes would lead to a decrease of about 0.88 percent in the domestic price of grapes (using a price flexibility for California grapes of -0.981), we estimate that this increase in supply would result in a price decrease of about \$3.73 per ton, or \$0.0019 per pound, from an original price of \$425.62 per ton. As a result of the price decrease, there could be a decrease in total revenue to U.S. grape producers of about \$2.9 million, which is roughly 0.88 percent of the original total revenue of \$327 million. We anticipate, therefore, that allowing grapes to be

cold treated at Wilmington, NC, will not have a significant economic impact on domestic producers or other small entities.

Pears

In 1987, 10,092 farms in the United States, 88 of which were in North Carolina, harvested pears. In 1992, domestic farms produced about 890 million pounds of pears for the fresh market, with an estimated value of \$168 million. Although it is not known how many of these farms could be classified as small entities (annual gross receipts of \$0.5 million or less, according to SBA size standards), it is likely that most would.

If the volume of pears to be imported were to reach 20 million pounds, it would constitute about 15.4 percent of current total imports to the United States, about 2.2 percent of current domestic production and about 2.0 percent of the current total pear supply in the United States (domestic and imports).

Assuming that a 2.0 percent increase in the supply of pears would lead to a decrease of about 1.2 percent in the domestic price of pears (using a price flexibility for California pears of -0.609), we estimate that this increase in supply would result in a price decrease of about \$4.51 per ton, or \$0.0023 per pound, from an original price of \$377.61 per ton. As a result of the price decrease, there could be a decrease in total revenue to U.S. pear producers of about \$2.0 million, which is roughly 1.19 percent of the original total revenue of \$168 million. We anticipate, therefore, that allowing pears to be cold treated at Wilmington, NC, will not have a significant economic impact on domestic producers or other small entities.

Therefore, in light of the preceding analyses (which estimate greatest possible, and thus highly unlikely, economic effects), as well as our expectation that most imports of fruit to Wilmington, NC, for cold treatment will occur during the off-season for domestic production, we anticipate that this action will not have a significant economic impact on domestic producers of apples, grapes, and pears, or other small entities.

Furthermore, we anticipate that allowing cold treatment at the port of Wilmington, NC, could have beneficial economic effects. Importers who routinely transport fruit to the Southeastern United States could benefit from this action due to lower transportation costs. Freight companies and shipping companies in North Carolina, as well as the local economy

might also benefit. Also, consumers are likely to gain from the increased selection of products and any price decreases, albeit small, that occur with increases in supply.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This final rule allows cold treatment of certain fruits to be conducted at the port of Wilmington, NC. State and local laws and regulations regarding the importation of fruits under this rule will be preempted while the fruits are in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, title 7, chapter III, of the Code of Federal Regulations is amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 is revised to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, 167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 300.1, paragraph (a) is revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was revised and reprinted November 30, 1992, and includes all revisions through July 1994, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

4. In § 319.56–2d, paragraph (a) is revised to read as follows:

§ 319.56–2d Administrative instructions for cold treatments of certain imported fruits.

(a) *Treatments authorized.* Fresh fruits imported in accordance with this subpart and required under this subpart to receive cold treatment as a condition of entry must be cold treated in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at § 300.1 of this chapter. The cold treatments listed in the PPQ Treatment Manual are authorized for any fruit required to be cold treated under this subpart.

§ 319.56–2d [Amended]

5. In § 319.56–2d, paragraph (b)(1), the second sentence is amended by removing the phrase “port of New York or such other northern ports as he may hereafter designate” and adding in its place the phrase “following ports: the port of Wilmington, NC; Atlantic ports north of, and including, Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; and, for air shipments, Washington, DC, at Baltimore-Washington International and Dulles International airports”.

6. In § 319.56–2d, headings are added at the beginning of paragraphs (b)(5)(i) through (b)(5)(iii), and a new paragraph (b)(5)(iv) is added to read as follows:

§ 319.56–2d Administrative instructions for cold treatments of certain imported fruits.

(b) ***

(5) Cold treatment after arrival. (i)

Delivery.***

(ii) Precooling and refrigeration.***

(iii) Customs.***

(iv) *Special requirements for the port of Wilmington, NC.* Shipments of fruit arriving at the port of Wilmington, NC, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

(A) Bulk shipments (those shipments which are stowed and unloaded by the case or bin) of fruit must arrive packaged in fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(B) Bulk and containerized shipments of fruits and vegetables must be cold-treated within the port of Wilmington, NC, that is, the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(C) Advance reservations for cold treatment space at the port of Wilmington, NC, must be made prior to the departure of a shipment from its port of origin.

§ 319.56–2u [Removed and Reserved]

7. Section 319.56–2u is removed and reserved.

§ 319.56–2v [Amended]

8. In § 319.56–2v, paragraph (b), the third sentence is amended by removing the phrase “North Atlantic ports north of and including Baltimore, MD” and adding in its place the phrase “ports listed in § 319.56–2d(b)(1) of this subpart”.

9. Section 319.56–2x is amended as follows:

a. In paragraph (a), the table is amended for the Israel entry by adding, in alphabetical order, a new commodity to read as set forth below.

b. In paragraph (b), the first sentence is amended by adding the phrase “or the port of Wilmington, NC,” immediately before the word “if”.

§ 319.56–2x Administrative instructions: conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) ***

Country/ locality	Common name	Botanical name	Plant part(s)
Israel			
	Pummelo	<i>Citrus grandis</i>	Fruit

Done in Washington, DC, this 2nd day of August 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-19511 Filed 8-9-94; 8:45 am]

BILLING CODE 3410-34-P

9 CFR Part 160

[Docket No. 93-033-2]

Veterinary Accreditation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning Federal accreditation of veterinarians to add a definition of "sign." Adding this definition will clarify that accredited veterinarians are prohibited from authorizing other persons to sign certain official documents. We have determined that this change is necessary to maintain the integrity of our veterinary accreditation program.

EFFECTIVE DATE: September 9, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. J. A. Heamon, Staff Veterinarian, Sheep, Goat, Equine, and Poultry Diseases Staff, Veterinary Services, APHIS, USDA, room 700, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6954.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 160, 161, and 162 pertain to the Animal and Plant Health Inspection Service's (APHIS) veterinary accreditation program. Through this program, APHIS authorizes veterinarians in private practice to perform certain official services and duties on behalf of APHIS Veterinary Services officials. These responsibilities include such activities as examining livestock for clinical signs of disease, vaccinating animals for brucellosis, drawing and shipping blood for testing, and preparing health certificates required for domestic or international movement.

Section 161.3 (hereafter referred to as the regulations) sets forth the standards for accredited veterinarian duties. The regulations cover several requirements and prohibitions regarding the preparation of official forms, certificates, records and reports. The regulations use the term "sign." As used in the regulations, "sign" means that an accredited veterinarian signs a document, in his or her own hand. However, "sign" is not defined in the regulations. This has led to some confusion concerning the signature requirements.

Therefore, to clarify the regulations, we published in the **Federal Register** on March 18, 1994 (58 FR 12863-12864, Docket No. 93-033-1), a proposal to amend the regulations to add a definition of "sign."

We solicited comments concerning our proposal for a 60-day comment period ending May 17, 1994. We received two comments by that date. They were from a state department of agriculture and from a veterinary medical association. One commenter supported the proposed rule. The other commenter objected to the proposed rule, saying it is the prerogative of business owners, including veterinarians, to authorize other individuals to sign documents using the business owner's name.

We are not making any changes in the rule based on this comment. A business owner's right to authorize others to sign documents is not unlimited. Accredited veterinarians are authorized by the Federal Government to perform certain functions on behalf of the Federal Government. These include signing documents. Veterinarians are accredited only if they meet certain standards. Other persons, to whom veterinarians might delegate their responsibilities under the accreditation program, might not meet the Federal Government's accreditation standards. This could lead to foreign animal health officials losing confidence in the integrity of the veterinary accreditation program. This, in turn, could result in the loss of export markets for U.S. livestock.

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.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not

been reviewed by the Office of Management and Budget.

This final rule will merely clarify that accredited veterinarians must sign official documents in their own hand. We do not anticipate that this final rule will have any economic effect whatsoever.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 160

Veterinarians.

Accordingly 9 CFR part 160 is amended as follows:

PART 160—DEFINITION OF TERMS

1. The authority citation for part 160 continues to read as follows:

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111-114, 114a, 114a-1, 115, 116, 120, 121, 125, 134b, 134f, 612, and 613; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 160.1 is amended by adding a definition of *Sign*, in alphabetical order to read as follows:

§ 160.1 Definitions.

* * * * *

Sign. For an accredited veterinarian, to put his or her signature in his or her own hand on a certificate, form, record or report. No certificate, form, record or report is signed if:

(1) Someone other than the accredited veterinarian has signed it on behalf of or in the name of the accredited