

# Rules and Regulations

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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.

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 591

RIN 3206-AL65

### Nonforeign Area Cost-of-Living Allowance Rates; 2007 Interim Adjustments: Puerto Rico

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is increasing the cost-of-living allowance (COLA) rate received by certain white-collar Federal and U.S. Postal Service employees in Puerto Rico. The increase is the result of interim adjustments OPM calculated based on relative Consumer Price Index differences between Puerto Rico and the Washington, DC, area. This increase raises the COLA rate for Puerto Rico from 13 percent to 14 percent.

**DATES:** *Effective date:* March 23, 2009. *Implementation date:* First day of the first pay period beginning on or after March 23, 2009.

**FOR FURTHER INFORMATION CONTACT:** J. Stanley Austin, (202) 606-2838; fax: (202) 606-4264; or e-mail: COLA@opm.gov.

**SUPPLEMENTARY INFORMATION:** Section 5941 of title 5, United States Code, authorizes Federal agencies to pay cost-of-living allowances (COLAs) to white-collar Federal and U.S. Postal Service employees stationed in Alaska, Hawaii, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico,

and the U.S. Virgin Islands (USVI). Executive Order 10000, as amended, delegates to the U.S. Office of Personnel Management the authority to administer nonforeign area COLAs and prescribes certain operational features of the program.

We conduct living-cost surveys in each allowance area and in the Washington, DC, area to determine whether, and to what degree, COLA area living costs are higher than those in the DC area. As required by section 591.223 of title 5, Code of Federal Regulations, we survey the Alaska, Pacific, and Caribbean COLA areas on a 3-year rotating basis, and the Washington, DC, area on an annual basis. We set COLA rates based on the results of these surveys. For areas not surveyed during a particular year, we compute interim adjustments to COLA rates based on the relative change in the Consumer Price Index (CPI) for the COLA area compared with the Washington, DC, area. (See 5 CFR 591.224-226.)

On August 25, 2008, at 73 FR 50174, we published a proposed rule for notice and comment in the **Federal Register** on our intention to increase the COLA rate for Puerto Rico and reduce the COLA rates for Anchorage, Fairbanks, and Juneau, Alaska, based on the 2007 interim adjustment calculations. Because 5 CFR 591.228(c) limits COLA rate reductions to 1 percentage point in a 12-month period, and we have a prior rate reduction scheduled for Anchorage, Fairbanks, and Juneau, we are implementing only the Puerto Rico rate increase at this time. We will address the Alaska area rate reductions, and comments received on these reductions, in a future **Federal Register** publication.

We received three comments in response to our proposed rule on the rate increase for Puerto Rico. Two of the commenters supported the rate increase. The third commenter wrote regarding locality pay for Puerto Rico. This issue is beyond the scope of these regulations.

## Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

## Paperwork Reduction Act of 1995

This document does not provide for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

## Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will affect only Federal agencies and employees.

## List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management.

**Kathie Ann Whipple,**  
*Acting Director.*

■ Accordingly, OPM amends subpart B of 5 CFR part 591 as follows:

## PART 591—ALLOWANCES AND DIFFERENTIALS

### Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

■ 1. The authority citation for subpart B of 5 CFR part 591 continues to read as follows:

**Authority:** 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943-1948 Comp., p. 792; and E.O. 12510, 3 CFR, 1985 Comp., p. 338.

■ 2. Revise appendix A of subpart B to read as follows:

### Appendix A to Subpart B of Part 591— Places and Rates at Which Allowances Are Paid

This appendix lists the places approved for a cost-of-living allowance and shows the authorized allowance rate for each area. The allowance rate shown is paid as a percentage of an employee's rate of basic pay. The rates are subject to change based on the results of future surveys.

Geographic coverage	Allowance rate (percent)
State of Alaska:	
City of Anchorage and 80-kilometer (50-mile) radius by road .....	23
City of Fairbanks and 80-kilometer (50-mile) radius by road .....	23

Geographic coverage	Allowance rate (percent)
City of Juneau and 80-kilometer (50-mile) radius by road .....	23
Rest of the State .....	25
State of Hawaii:	
City and County of Honolulu .....	25
Hawaii County, Hawaii .....	18
County of Kauai .....	25
County of Maui and County of Kalawao .....	25
Territory of Guam and Commonwealth of the Northern Mariana Islands .....	25
Commonwealth of Puerto Rico .....	14
U.S. Virgin Islands .....	25

[FR Doc. E9-3676 Filed 2-19-09; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

[Doc. No. AMS-FV-08-0108; FV09-916/917-1 IFR]

#### Nectarines and Peaches Grown in California; Changes in Handling Requirements for Fresh Nectarines and Peaches

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule changes the handling requirements applicable to well matured fruit covered under the nectarine and peach marketing orders (orders). The orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). This rule updates the variety-specific size requirements to reflect changes in commercially significant varieties. This will enable handlers to continue to ship fresh nectarines and peaches in a manner that meets consumer needs, increases returns to producers and handlers, and reflects current industry practices.

**DATES:** Effective February 21, 2009; comments received by April 21, 2009 will be considered prior to issuance of any final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax:

(202) 720-8938, or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet the address provided above.

#### FOR FURTHER INFORMATION CONTACT:

Jennifer Garcia, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906; or E-mail: [Jennifer.Garcia@ams.usda.gov](mailto:Jennifer.Garcia@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.usda.gov).

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

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order Nos. 916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice

Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule changes the handling requirements applicable to well matured fruit covered under the nectarine and peach orders. This rule updates the variety-specific size requirements to reflect changes in commercially significant varieties. These changes will enable handlers to continue to ship fresh nectarines and peaches in a manner that meets consumer needs, increases returns to producers and handlers, and reflects current industry practices.

Sections 916.52 and 917.41 of the orders provide authority for handling regulations for fresh California nectarines and peaches. The regulations may include grade, size, maturity, quality, pack, and container requirements. The orders also provide that whenever such requirements are in effect, the fruit subject to such regulation must be inspected by the Federal or Federal-State Inspection Service (Inspection Service) and