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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206-AK29

Cost-of-Living Allowances (Nonforeign Areas); Methodology Changes

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is making technical changes in the methodology used to determine nonforeign area cost-of-living allowances (COLAs). The changes correct minor drafting errors; provide consistent treatment of sale prices; allow the use of non-housing price data collected on St. John, U.S. Virgin Islands; correct and clarify the definition of survey areas; and allow a one-time prospective index adjustment for the Caribbean and Alaska areas concurrent with the effective date of any COLA rate changes resulting from the 2004 Pacific COLA surveys. OPM is making these changes in large part as the result of experience gained in recent COLA surveys and upon the recommendation of several groups established to assist us in administering the COLA program.

DATES: Effective November 5, 2004.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: Section 5941 of title 5, United States Code, authorizes the payment of cost-of-living allowances (COLAs) to employees of the Federal Government stationed in certain nonforeign areas outside the contiguous 48 States whose rates of basic pay are fixed by statute. Executive Order 10000, as amended, delegates to the Office of Personnel Management (OPM) the

authority to administer nonforeign area COLAs and prescribes certain operational features of the program.

The Government pays nonforeign area COLAs to General Schedule, U.S. Postal Service, and certain other Federal employees in Alaska, Hawaii, Guam and the Commonwealth of the Northern Mariana Islands (CNMI), Puerto Rico, and the U.S. Virgin Islands. OPM conducts COLA surveys in each allowance area to determine whether, and to what extent, local living costs are higher than those in the Washington, DC, area. OPM sets the COLA rate for each area based on the results of these surveys.

On February 9, 2004, OPM published proposed regulatory changes in the **Federal Register** (69 FR 6020) which would (1) correct minor drafting errors; (2) provide consistent treatment of sale prices; (3) allow the use of non-housing price data collected on St. John, U.S. Virgin Islands; (4) correct and clarify the definition of the survey areas; and (5) allow a one-time prospective index adjustment for the Caribbean and Alaska areas concurrent with the effective date of any COLA rate changes resulting from the 2004 Pacific COLA surveys. We received six comments on these proposed changes.

One comment was from members of the Hilo COLA Advisory Committee (CAC). Prior to each survey, OPM establishes CACs in each survey area to advise OPM on the COLA surveys and other issues relating to the administration of the COLA program. The Hilo CAC noted that the definition of the Hilo, Hawaii, survey area (which was stated as the "City of Hilo") was incorrect because Hilo is not a municipality. Therefore, OPM is changing the survey area name to the "Hilo area."

Another comment was from members of the Kailua Kona CAC who recommend that the Kailua Kona survey area be expanded to include Waimea and Waikoloa areas. OPM agreed to survey these areas on a test basis in the 2004 survey to determine the feasibility of expanding the survey area. OPM found that it was feasible to do so and agrees with the recommendation to expand the survey area. To reflect this change, OPM is changing the name of the survey area to the "Kailua Kona/Waimea area," which includes Waikoloa.

A third comment was from a member of the Survey Implementation Committee, established pursuant to the settlement in *Caraballo, et al. v. United States*, No. 1997-0027 (D.V.I.), August 17, 2000. The commenter recommended that OPM no longer collect housing data in eastern Puerto Rico because of the closing of Roosevelt Roads Naval Station. The commenter suggested that OPM consider surveying other areas in Puerto Rico. We agree that OPM may need to revise the areas in which it collects housing data in Puerto Rico. Therefore, we have removed the reference to eastern Puerto Rico from the Survey Area table in 5 CFR 591.215, removed a similar reference from § 591.219(b), and allowed for the collection of housing data in other areas in Puerto Rico with significant Federal employment.

Another member of the Survey Implementation Committee recommended that we clarify the exception in § 591.219(b), which concerns the use of housing data collected in eastern Puerto Rico and in St. John. The commenter recommended that the exception state that OPM combines housing data collected for St. John with the data collected for St. Thomas to produce indexes for the St. Thomas/St. John survey area. We agree that the exception in § 591.219(b) may have been confusing and have concluded that it is no longer needed. OPM analyzes the data it collects in St. Thomas/St. John in the same manner as the data it collects in Fairbanks/North Pole, Kailua Kona/Waimea, and other survey areas with multiple locations. Therefore, there is no exception applicable to St. John.

A fifth commenter requested that OPM revise the proposed change in the definition of "Washington, DC, area or DC area" in § 591.201 to state exactly the situations the change will affect or cite the parts or subparts to which the revised definition applies. OPM proposed changing the definition of several survey areas to address the need to survey certain items on an exception basis in locations beyond the local jurisdiction. With one exception, the proposed definitional changes were limited to § 591.215(a), which lists the survey areas. The exception is the Washington, DC, area, which is defined in § 591.201 and listed again with the other survey areas in § 591.215(a).

Because the purpose of § 591.201 is to define terms that OPM uses throughout subpart B, we believe it would be impractical to cite within the definition of the “Washington, DC, area or DC area” each section where the term is used. OPM also believes it would be impractical to state exactly which situations (*i.e.*, items and locations) the expanded definition addresses. Survey items change from one survey to the next, in large part based on CAC recommendations. From experience OPM has learned that it sometimes must survey items, such as golf, snow skiing, and air travel, in areas beyond the local jurisdictions listed in the table in § 591.215(a). Therefore, OPM proposed expanding several of those areas on an exception basis. The proposed change lists golf, snow skiing, and air travel as *examples* because setting in regulation exactly which items OPM can survey outside a jurisdiction would be overly restrictive and would weaken OPM’s ability to accommodate CAC suggestions. Therefore, we are not adopting the commenter’s suggestion, but we are making additional changes in the title and column headings in the table in § 591.215(a) to further clarify survey area definitions.

Before each survey, OPM consults with the local CACs concerning item selection, including any items we might survey outside local jurisdictions. We also include a list of the items surveyed in the survey reports we publish for comment in the **Federal Register**. The item descriptions identify which items OPM surveyed beyond local jurisdictions.

The sixth commenter stated that Federal employees should not receive COLA increases. The commenter noted the high cost of living in the Washington, DC, area and stated that she did not believe Federal employees in other areas needed to receive more than employees in the DC area. OPM notes that section 5941 of title 5, United

States Code, and Executive Order 10000 require the Federal Government to pay COLAs to Federal employees in areas outside the contiguous 48 States where living costs are substantially higher than in Washington, DC. Under this authority, OPM sets COLA rates after surveying and comparing living costs in the COLA areas and the DC area.

Executive Order 12866, Regulatory Review

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

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they 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.

Kay Coles James,
Director.

■ Accordingly, the Office of Personnel Management 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. In § 591.201, revise the definition of “Washington, DC, area or DC area” to read as follows:

§ 591.201 Definitions.

* * * * *

Washington, DC, area or DC area means the District of Columbia; Montgomery County, MD; Prince Georges County, MD; Arlington County, VA; Fairfax County, VA; Prince William County, VA; and the independent cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park, Virginia; and in the context of certain survey items, includes additional geographic locations beyond these jurisdictions.

■ 3. In § 591.213, revise paragraph (b)(1) to read as follows:

§ 591.213 What prices does OPM collect?

* * * * *

(b) * * *

(1) OPM does not collect coupon prices, clearance prices, going-out-of-business prices, or area-wide distress sale prices.

* * * * *

■ 4. In § 591.215, revise paragraph (a) to read as follows:

§ 591.215 Where does OPM collect prices in the COLA and DC areas?

(a) *Survey areas.* Each COLA area has one survey area, except Hawaii County, HI, and the U.S. Virgin Islands COLA areas. Hawaii County has two survey areas: the Hilo area and the Kailua Kona/Waimea area. The U.S. Virgin Islands also has two survey areas: the Island of St. Croix and the Islands of St. Thomas and St. John. The Washington, DC, area has three survey areas: the District of Columbia, the Maryland suburbs of the District of Columbia, and the Virginia suburbs of the District of Columbia. OPM collects non-housing data throughout the survey area, and for selected items such as golf, snow skiing, and air travel, OPM collects non-housing data in additional geographic locations. OPM may collect housing data throughout the survey area or in specific housing data collection areas. The following table shows the survey areas:

SURVEY AREAS

COLA and reference areas	Survey areas and geographic coverage
Anchorage	City of Anchorage. ¹
Fairbanks	Fairbanks/North Pole area. ¹
Juneau	Juneau/Mendenhall/Douglas area. ¹
Rest of Alaska	See paragraph (c) of this section.
Honolulu	City and County of Honolulu.
Hawaii County	Hilo area. ¹
	Kailua Kona/Waimea area.
Kauai	Kauai Island.
Maui	Maui Island.
Guam & CNMI	Guam.
Puerto Rico	San Juan/Caguas area. ²
U.S. Virgin Islands	St. Croix.
	St. Thomas/St. John area. ³
Washington, DC—DC	District of Columbia. ¹

SURVEY AREAS—Continued

COLA and reference areas	Survey areas and geographic coverage
Washington, DC—MD	Montgomery County and Prince Georges County. ¹
Washington, DC—VA	Arlington County, Fairfax County, Prince William County, City of Alexandria, City of Fairfax, City of Falls Church, City of Manassas, and City of Manassas Park. ¹

¹ For selected items, such as golf, snow skiing, and air travel, these survey areas may include additional geographic locations beyond these jurisdictions.

² OPM may collect housing data in other areas in Puerto Rico that have a significant concentration of Federal employees stationed in those areas.

³ OPM collects housing data in St. John. OPM also may collect non-housing data from selected outlets in St. John.

* * * * *

■ 5. In § 591.216, revise paragraph (b) to read as follows:

§ 591.216 How does OPM combine survey data for the DC area and for COLA areas with multiple survey areas?

* * * * *

(b) *COLA areas with multiple survey areas.* OPM computes weighted average indexes at the item, PEG, MEG, and/or overall level by using the corresponding indexes and Federal employment weights from each survey area within the COLA area.

■ 6. In § 591.219, revise paragraph (b) to read as follows:

§ 591.219 How does OPM compute shelter price indexes?

* * * * *

(b) OPM then uses these characteristics and rental prices and/or estimates in hedonic regressions (a type of multiple regression) to compute for each COLA survey area the price index for rental and/or rental equivalent units of comparable quality and size between the COLA survey area and the Washington, DC, area.

■ 7. In § 591.222, revise paragraph (c) to read as follows:

§ 591.222 How does OPM use the expenditure weights to combine price indexes?

* * * * *

(c) *Step 3.* OPM repeats the process described in Step 2 at each level of aggregation within the PEG to produce a price index for the PEG, at the PEG level to produce an index for the MEG, and at the MEG level to produce the overall price index for the COLA area.

■ 8. In § 591.224, revise paragraph (b) and add paragraph (c) to read as follows:

§ 591.224 How does OPM adjust price indexes between surveys?

* * * * *

(b) Paragraph (a) of this section applies beginning with the effective date of the results of the 2005 survey conducted in Puerto Rico and the U.S. Virgin Islands.

(c) Based on additional housing data that may be collected before the 2005 survey conducted in Puerto Rico and the U.S. Virgin Islands, OPM will adjust as warranted the price indexes and COLA rates for Puerto Rico, the U.S. Virgin Islands, and the COLA areas in the State of Alaska. OPM will implement any such adjustments on a one-time basis on the effective date of the results of the 2004 surveys conducted in Hawaii and Guam/CNMI, and subject to § 591.228. OPM will publish such adjustments as provided in § 591.229.

[FR Doc. 04-22531 Filed 10-5-04; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Dairy Tariff-Rate Import Quota Licensing; Final Rule

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule; technical corrections.

SUMMARY: This document amends the Dairy Tariff-Rate Import Quota Licensing regulation to provide for applications to be submitted using the internet, while continuing to permit applicants to use the existing certified mail provision for applications. The requirement that applications be notarized is eliminated. Additionally, an incorrect section reference is corrected.

DATES: Effective on September 1, 2004.

FOR FURTHER INFORMATION CONTACT: Bettyann Gonzales, Dairy Import Specialist, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, SW, STOP 1021, by e-mail at: gonzalesb@fas.usda.gov, telephone 202-720-1344, or fax at 202-720-6556.

SUPPLEMENTARY INFORMATION: The Dairy Tariff-Rate Import Quota Licensing program regulation which is codified at

7 CFR part 6, implements the licensing system for certain dairy products which are eligible for in-quota tariff rates proclaimed in the Harmonized Tariff Schedule of the United States.

Currently, § 6.36(b) requires all submissions to be made by registered or certified mail, return receipt requested, with a postmarked receipt. The Dairy Import Licensing Authority will soon be implementing a software program to permit applications for dairy import licenses to be submitted electronically over the internet. Therefore, the regulation is amended in various sections to permit applications to be submitted over the Internet, or by mail.

A final rule published on January 10, 2000, (65 FR 1297-1298) redesignated § 6.35 as § 6.36 and inserted a new § 6.35, but did not change references to the original § 6.35 throughout the regulation. This rule corrects the references.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy Products, Imports, Reporting and record keeping requirements.

■ Accordingly, 7 CFR part 6 is amended as follows:

PART 6—IMPORT QUOTAS AND FEES

Subpart—Dairy Tariff-Rate Import Quota Licensing

■ 1. The authority citation for Part 6, Subpart—Dairy Tariff-Rate Import Quota Licensing continues to read as follows:

Authority: Additional U.S. Notes 6, 7, 8, 12, 14, 16-23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97-258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103-465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

■ 2. Amend § 6.24 by revising paragraphs (a) and (b)(1), and the introductory text of paragraph (c) to read as follows:

§ 6.24 Application for a license.

(a) Application for license shall be made on either paper or electronic