

# Proposed Rules

Federal Register

Vol. 60, No. 200

Tuesday, October 17, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 591

RIN 3206-AH17

#### Separate Maintenance Allowance for Duty at Johnston Island

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Office of Personnel Management is issuing proposed regulations that would change the method for setting separate maintenance allowance (SMA) rates for duty at Johnston Island. Under the proposed method, SMA rates for Johnston Island would be set at the same amount and adjusted at the same time as SMA rates established by the Department of State for employees who receive an SMA in foreign areas.

**DATES:** Comments must be received on or before December 18, 1995.

**ADDRESSES:** Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Policy, Human Resources Systems Service, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415 or FAX: (202) 606-0824.

**FOR FURTHER INFORMATION CONTACT:** Roger M. Knadle, (202) 606-2858.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management (OPM) is issuing proposed regulations at the request of the Department of Defense to change the method for setting separate maintenance allowance (SMA) rates. An SMA is paid to employees assigned to Johnston Island to help meet the additional expense of maintaining family members elsewhere who would normally reside with the employee.

Johnston Island is a possession of the United States in the Pacific Ocean. It is a non-foreign post of duty located 717 nautical miles southwest of Honolulu, Hawaii. It is about 3 kilometers long and

0.8 kilometer wide. Much of the island is devoted to chemical weapon storage and disposal facilities. Because of hazardous conditions (toxic waste) and the lack of facilities, family members are not allowed on the island.

Civilian employees assigned to *foreign* areas who are precluded from establishing a residence because of local living conditions or Federal policy are authorized an SMA established by the Department of State that is periodically updated based on the Consumer Price Index (CPI) and budgetary considerations. The proposed regulations would abolish the current SMA rates established by OPM regulations and would provide that SMA rates for Johnston Island be set and adjusted at the same time and in the same amount as SMA rates established by the *Standardized Regulations (Government Civilians, Foreign Areas)* of the Department of State for employees in foreign areas. This would maintain equity between civilian employees assigned to foreign and non-foreign areas. The proposed regulations would apply only to Federal civilian employees assigned to Johnston Island.

The revised SMA rates would be adjusted on the first day of the first pay period beginning on or after the effective date of the final OPM regulations. Subsequently, the SMA rates would be adjusted on the first day of the first pay period beginning on or after the effective date of SMA rate adjustments under the Department of State's *Standardized Regulations (Government Civilians, Foreign Areas)*. The proposed change in methodology for setting SMA rates would not be retroactive.

#### Regulatory Flexibility Act

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

#### List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending part 591 of title 5 of the Code of Federal Regulations as follows:

## PART 591—ALLOWANCES AND DIFFERENTIALS

### Subpart D—Separate Maintenance Allowance for Duty at Johnston Island

1. The authority citation for subpart D of part 591 is revised to read as follows:

Authority: 5 U.S.C. 5942a(b), 5942a note; E.O. 12822, 57 FR 54289, 3 CFR, 1992 Comp., p. 325.

2. In § 591.401, paragraph (a) is revised to read as follows:

#### § 591.401 Purpose and applicability.

(a) *Purpose.* This subpart prescribes the regulations required by section 5942a of title 5, United States Code, to authorize payment of a separate maintenance allowance to assist an employee assigned to Johnston Island to meet the additional expenses of maintaining family members elsewhere who would normally reside with him or her because they cannot accompany the employee to Johnston Island. This subpart provides rules for determining which employees are eligible to receive the separate maintenance allowance, who qualifies as family members under the program, the method of payment, and payment amounts.

\* \* \* \* \*

3. Section 591.402 is revised to read as follows:

#### § 591.402 Definitions.

*Adult*, a term used in the Department of State *Standardized Regulations (Government Civilians, Foreign Areas)*, means a family member who is 21 years of age or older.

*Family member* means one or more of the following relatives of an employee who would normally reside with the employee except for circumstances warranting the granting of a separate maintenance allowance, but who does not receive from the Government an allowance similar to that granted to the employee and who is not deemed to be a family member of another employee for the purpose of determining the amount of a separate maintenance allowance or similar allowance:

(1) Children who are unmarried and under 21 years of age or, regardless of age, are incapable of self-support, including natural children, step and adopted children, and those under legal guardianship or custody of the employee or the spouse when they are

expected to be under such legal guardianship or custody at least until they reach 21 years of age and when dependent upon and normally residing with the guardian;

(2) Parents (including step and legally adoptive parents) of the employee or of the spouse when such parents are at least 51 percent dependent on the employee for support;

(3) Sisters and brothers (including step or adoptive sisters and brothers) of the employee or of the spouse, when such sisters and brothers are at least 51 percent dependent on the employee for support, unmarried and under 21 years of age, or regardless of age, are incapable of self-support; or

(4) Spouse, excluding a spouse independently entitled to and receiving a similar allowance.

*Johnston Island*, also called Johnston Atoll, is a possession of the United States located 717 nautical miles southwest of Honolulu, Hawaii.

*Separate maintenance allowance* means an allowance to assist an employee assigned to Johnston Island who is compelled by reason of dangerous, notably unhealthful, or excessively adverse living conditions at Johnston Island, or for the convenience of the Government, to meet the additional expense of maintaining family members at a location other than Johnston Island.

4. Section 591.403 is revised to read as follows:

**§ 591.403 Amount of payment.**

(a) The annual rate of the separate maintenance allowance paid to an employee shall be determined by the number of individuals, including a spouse and/or one or more other family members, that are maintained at a location other than Johnston Island.

(b) The annual rates for the separate maintenance allowance paid to employees assigned to Johnston Island shall be the same as the annual rates for the separate maintenance allowance established by the Department of State in its *Standardized Regulations (Government Civilians, Foreign Areas)*. The annual rates shall not vary by location of the separate household.

(c) The annual rates of the separate maintenance allowance shall be adjusted on the first day of the first pay period beginning on or after [*insert effective date of final regulations*] and, subsequently, on the first day of the first pay period beginning on or after the effective date established for adjustment of annual rates for the separate maintenance allowance in the *Standardized Regulations (Government Civilians, Foreign Areas)*.

5. Section 591.405 is revised to read as follows:

**§ 591.405 Responsibilities of agencies.**

Agencies with employees stationed at Johnston Island may require reasonable verification of relationship and dependency.

[FR Doc. 95-25647 Filed 10-16-95; 8:45 am]

BILLING CODE 6325-01-M

**DEPARTMENT OF AGRICULTURE**

**Office of Finance and Management**

**7 CFR Parts 3015, 3016, and 3050**

**Audit Requirements for OMB Circular A-128**

**AGENCY:** Office of Finance and Management, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule simplifies USDA audit requirements for State, local, and Indian Tribal governments that receive USDA financial assistance or cost-type contracts and defines USDA responsibilities for implementing and monitoring those requirements.

**DATES:** Comments must be submitted on or before December 18, 1995.

**ADDRESSES:** Comments may be mailed to Lenetta Elias, Audit Liaison Team, Federal Assistance and Fiscal Policy Division, Office of Finance and Management, Room 3031 South Building, 14th and Independence Ave., SW., Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Lenetta Elias on (202) 720-0979.

**SUPPLEMENTARY INFORMATION:**

Executive Order 12866

This proposed rule was reviewed under Executive Order 12866 and it was determined that it is not a significant regulatory action. This proposed rule will not have an annual effect on the national economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Executive Order 12612

USDA evaluated this proposed rule under Executive Order 12612, pertaining to Federalism. This proposed rule will affect State, local, and Indian Tribal governments receiving financial assistance. This proposed rule will increase their administrative discretion with regard to the conduct of audits. For this reason, USDA has determined that this proposed rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12778

The following information is given in compliance with Executive Order 12778. All State and local laws and regulations that are in conflict with this proposed rule are preempted. No retroactive effect is to be given to this. This rule does not require administrative proceedings before parties may file suit in court.

Regulatory Flexibility Act

This proposed rule was reviewed with regard to the requirements of Public Law (Public Law 96-354. The Department of Agriculture (USDA) certifies that this proposed rule will not, under the criteria of the Regulatory Flexibility Act, have a significant economic impact on a substantial number of small entities because it does not affect the amount of funds provided in the covered programs, but rather simplifies and consolidates administrative and procedural requirements.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), any applicable reporting and recordkeeping provisions required by this proposed rule must be submitted to the Office of Management and Budget (OMB) and will not be effective until OMB approves them. USDA certifies that this proposed rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980.

Background

This proposed rule amends title 7, Code of Federal Regulations (CFR), parts 3015 and 3016. The single audit requirements found in §§ 3015.70 through 3015.76 of subpart I, part 3015, are moved to 7 CFR part 3050, Audits of State, local, and Indian Tribal governments. Sections 3015.70 through 3015.76 of Subpart I are reserved for future use. Section 3015.1 is revised to delete the audit provisions. As identified in OMB Circular A-133