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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206-AH56

Cost-of-Living Allowances (Nonforeign Areas); Partnership Pilot Project

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing regulations to establish a pilot project in which OPM will form partnerships with agencies and employees in administering the nonforeign area cost-of-living allowance (COLA) program. Under the project, COLA partnership committees will be established in Alaska, Hawaii, Puerto Rico, Guam, and the U.S. Virgin Islands, and possibly in the Washington, DC, area, to assist OPM in designing, conducting, and reviewing the results of COLA surveys as well as in reviewing and improving the COLA program. Involvement in the committees should help OPM, affected agencies, and their employees better understand issues relating to the compensation of Federal employees in these areas. The regulations also make a technical amendment to clarify the term "agency" as it applies to the COLA program.

EFFECTIVE DATE: These regulations become effective on November 21, 1996.

FOR FURTHER INFORMATION CONTACT: Donald L. Paquin, (202) 606-2838.

SUPPLEMENTARY INFORMATION: Under section 5941 of title 5, United States Code, and Executive Order 10000, as amended, certain Federal employees in nonforeign areas outside the 48 contiguous States are eligible for cost-of-living allowances when local living costs are substantially higher than those in the Washington, DC, area. Nonforeign area COLA's are paid in Alaska, Hawaii,

Puerto Rico, the U.S. Virgin Islands, and Guam and the Commonwealth of the Northern Mariana Islands.

OPM published proposed rules on August 12, 1996 (61 FR 41746), to initiate a COLA Partnership Pilot Project that would provide for greater agency and employee involvement in the COLA program through the use of COLA partnership committees composed of representatives of OPM, other agencies, and labor organizations in Alaska, Hawaii, Puerto Rico, Guam, and the U.S. Virgin Islands. OPM proposed that committees advise and assist OPM in planning COLA surveys, observe data collection during the surveys advise and assist OPM in the review of survey data, advise OPM on the COLA program and other compensation issues relating to the allowance areas, and assist OPM in dissemination of information to affected employees about the COLA surveys and the COLA program. In addition, OPM proposed a technical amendment to define "agency" under the definitions section of 5 CFR part 591, subpart B, and to remove a corresponding reference in § 591.203 to agencies covered by the subpart.

Earlier this year, OPM briefed agency and employee representatives in the Washington, DC, area and Anchorage, Honolulu, San Juan, Guam, and the U.S. Virgin Islands on the proposed pilot project. During and subsequent to these briefings, OPM received several comments on the project, and we took these into consideration in drafting the proposed regulations. In response to the publication of the proposed regulations, we received additional comments. Most of the comments OPM received endorsed the major elements of the proposed pilot project while making suggestions for change or identifying issues that need clarification. Four commenters objected to the pilot project overall. In the discussion that follows, we address all comments received.

Agency and Employee Representation on Partnership Committees

Two commenters suggested that one of the members of the committee represent the Federal Executives Association (FEA) or Federal Executive Board (FEB) in each area that has an FEA or FEB. Two other commenters made similar suggestions concerning the COLA Defense Committees, and a third commenter believed OPM should

include a representative from the Federal Managers Association (FMA). Other commenters expressed concerns that their agency or union would not be represented on the committees. One commenter suggested that all Federal labor unions be allowed to have a representative on the COLA partnership committees. These comments echoed several that OPM heard earlier this year when it briefed agency and employee representatives.

OPM tried to find a balance between effective representation and effective committee operation. The pilot project regulations provide for committees with five agency representatives, five employee representatives, and one or more OPM representatives, plus additional members as recommended by the committee and approved by OPM. These are large committees, and we are concerned that if they become much larger they will not function effectively. Therefore, OPM is not expanding the size of the basic committee.

To accommodate the FEA/FEB suggestion without expanding the committee, we modified the regulations so that FEA/FEBs will be offered the agency rotational position in areas where there is an FEA or FEB. In areas where there is no FEA or FEB or if the FEA or FEB declines, we will use the process originally proposed—i.e., sampling with probability proportional to the size of the agency.

Although OPM wants to prevent the committees from becoming so large that they will be unwieldy, OPM notes that the regulations allow each partnership committee to recommend additional members to OPM, including persons representing the FMA, COLA Defense Committees, and other organizations. OPM will try to accommodate such requests if it appears practical to do so.

In addition, OPM will make the meetings open to the public and establish systems of communication (e.g., via mail, telephone, facsimile, computer bulletin boards, and/or Internet) so that agencies and employee groups can attend these meetings, hear the discussions, and make their views known. We will also use the same systems of communication so that those not directly on the committee or in attendance at the meetings can have access to the information provided and the issues under discussion.

One commenter suggested that OPM choose all agency representatives at random and rotate the committee positions among agencies on a 6-month basis. The commenter noted that this could be cumbersome, since new members would be joining the committee every 6 months. OPM agrees that this procedure would be cumbersome and that it would not ensure that the views and interests of the major Federal employers in each area are represented on the committee. Therefore, OPM is not adopting this approach.

Another commenter recommended that OPM not use OPM staff from outside the allowance area. The commenter believed OPM's own representatives within the allowance areas could serve on the committee or as data collectors if their work and activities were reviewed properly. Under 5 CFR part 2635, Federal employees must avoid engaging in activities where there is the appearance of a conflict of interest. Thus, we believe it is preferable to use OPM staff from outside the allowance area for the pilot project.

Identifying Largest Federal Unions and Employers by Area

Two commenters stated that OPM did not have correct information regarding the number of employees in bargaining units in each area. OPM received similar comments earlier when it briefed agency and employee representatives on the proposal. For these briefings, OPM used materials that showed the number of employees by bargaining unit as reported in the Central Personnel Data File (CPDF)—a census of Government workers reported to OPM by Federal agencies. The CPDF is the best source of Governmentwide information on the number of employees in bargaining units; however, OPM will attempt to supplement CPDF data with other information provided by agencies and/or unions if the counts by agency/union are such that relatively small changes could make a difference in the composition of a committee.

Another commenter believed OPM had classified the Puerto Rico Federal Executives Association as an employee organization because, in its briefing materials, OPM had listed "FEA" among the major labor organizations in Puerto Rico. The "FEA" listed in the briefing materials refers to the Federal Educators Association, a major labor organization in Puerto Rico. OPM recognizes that Federal Executives Associations are not labor organizations, although we also agree with the commenter that Federal Executives Associations are concerned

with the interests of both the agencies and the employees.

A third commenter expressed concern that the civilian agencies would be under-represented on the partnership committees because the military departments (e.g., Army, Navy, and Air Force) would have three of the five seats in most areas. Although it was suggested during our earlier briefings that OPM consider the military departments as separate agencies for the purpose of committee membership, the proposed and final regulations use the term "Executive agency," as defined in 5 U.S.C. 105. Under section 105, the Department of Defense (DOD) is defined as an Executive agency and is considered to be a single agency. Therefore, DOD will have no more than one agency representative on any COLA partnership committee.

Release of Employee Representatives

Two commenters objected to and one commenter expressed serious concerns about the way employee representatives were to be selected for the committees. Under the proposed regulations, agencies would *select* agency committee representatives, but employee organizations would *nominate* representatives and OPM would select committee representatives from among the nominations in consultation with the employing agencies. The commenters noted that it is very important for employees to have as their representatives persons of their own choosing. OPM agrees, but it cannot require agencies to release specific employees for committee duties if the employees' work at their jobs is critical to the mission of the agency. One commenter suggested that OPM adopt language similar to that used in section 532.229(b)(6) of title 5, Code of Federal Regulations, which addresses the release of employee representatives for work on Federal Wage System surveys. These regulations state in part that "[e]mployers shall cooperate and release appointed employees for committee proceedings unless the employers can demonstrate that exceptional circumstances directly related to the accomplishment of the work units' missions require their presence on their regular jobs." OPM agrees that such a provision is appropriate and has included parallel language in the final pilot project regulations.

Another commenter stated that OPM failed to recognize Federal union representatives as full-time Federal employees while these employees are in a leave without pay status from their Federal jobs. The commenter said that by creating its own criteria, OPM was

prohibiting certain Federal union representatives from being on the COLA partnership committees.

The regulatory requirement that all members of the COLA partnership committees be Federal employees stems from the requirements of the Federal Advisory Committee Act (FACA) (Public Law 92-463) and Executive Order 12838. FACA applies to committees established by the Federal Government that have as their membership one or more persons who are *not* full-time Federal employees. Executive Order 12838 prohibits agencies from establishing committees subject to FACA unless required by law or "compelled by considerations of national security, health or safety, or similar national interests." Therefore, OPM cannot establish COLA partnership committees if they would be subject to FACA. Since FACA does not apply to committees composed solely of full-time Federal employees, OPM's final regulations require that all COLA partnership committee members be full-time Federal employees. A person who is on leave without pay is not considered a full-time Government employee during that period of time for the purpose of applying FACA and will not be able to serve on a COLA partnership committee while in a nonpay status.

U.S. Postal Service and Its Employee Representatives

In its comments, the U.S. Postal Service (USPS) stated that its collective bargaining agreements did not allow it to pay USPS union members for work performed on the partnership committees. USPS said, however, that it could grant union representatives leave without pay for committee work. As discussed above, COLA partnership committee members must be full-time Federal employees in the pay of the Federal Government during the time they are performing committee work. Therefore, unless USPS agrees to pay its union representatives for partnership committee work, the union representatives will not be eligible to serve on the committees because (as explained above) they would not be full-time Federal employees during such periods of work for the purpose of applying FACA. Since it would not be equitable to have USPS represented on the committee but not its employees, OPM has modified its regulations to make USPS participation in the pilot project conditional upon the involvement of both USPS and its unions.

Experience and Training

Several commenters noted the importance of having committee representatives and data collection observers with technical experience concerning COLA issues, and two commenters suggested that OPM select committee members and observers based on the nominees' qualifications. Although technical experience certainly could be an asset, we believe committee members and observers with broad ranges of experience can provide valuable insights and advice concerning COLA's, compensation, and recruitment and retention issues. Also, as noted above, we believe agencies and employees should be represented by persons of their own choosing, rather than by others selected through some other means. Therefore, we do not plan to adopt these suggestions.

Nevertheless, OPM agrees that training, experience, and support are important for effective committee participation, and we will work with the committees to provide the resources and information necessary. We note, however, that while some aspects of the COLA methodology are complex, the fundamental principles involved in survey design and execution (e.g., item and outlet selection and data collection) are based on common consumer behavior—experiences that we all have. Therefore, we believe the committee members and observers will be able to make valuable contributions toward improving the surveys while they acquire more technical expertise and background in the COLA program.

One commenter stated that unless all participants in the COLA partnership process had jointly received employee involvement training, the partnership committees could become dysfunctional. The commenter recommended that such training be provided in advance of the first committee meetings. OPM believes many of the representatives who will serve on the COLA partnership committees will have had employee involvement training, and timing and budget considerations make it difficult to provide such training in advance of the initial meetings. If the lack of employee involvement training threatens to undermine the pilot project, OPM will revisit this issue and determine how such training might be provided.

Data Collection Observers

One commenter questioned whether the proposed role of the data collection observer was an efficient use of manpower resources. The commenter

suggested expanding the role to include actual data collection or dropping the role entirely. OPM believes the role of the data collection observer is important because it will provide integrity to the data collection effort. This integrity cannot be achieved if either OPM or the COLA recipients were to collect the data alone. Furthermore, we do not expect the observer to stand by silently and offer no comments or suggestions during the surveys. We expect that observers will provide valuable insights both during and after the data collection process and that these insights will be very useful as the COLA partnership committees work to improve surveys from one year to the next.

COLA Committee in the DC Area

Two commenters suggested that OPM involve agency and employee representatives from the Washington, DC, area in the pilot project. OPM agrees that the integrity of the program could benefit from such involvement in the DC area survey, and we have modified the regulations to allow this. OPM will explore the issue further with agency and employee representatives in the DC area and will establish a DC area committee if it appears practical to do so.

Subcommittees

One commenter stated that subcommittees in the allowance areas in Alaska should be required by regulation rather than simply permitted at the discretion of OPM and the COLA partnership committees. We agree that subcommittees will be valuable assets to the partnership committees and to OPM in the conduct of the survey. Therefore, we certainly will encourage the committees to establish a subcommittee in each of the COLA survey areas. Although OPM could make these subcommittees mandatory, we did not adopt this change because we do not think it will be necessary. We also note that under the regulations OPM can establish additional partnership committees if necessary.

During our briefings of agency and employee representatives, it was suggested that OPM establish two types of COLA committees—a COLA policy committee and a COLA survey subcommittee. OPM agrees that it may well be valuable to have subcommittees that focus on specific issues, processes, and/or geographic interests, and the regulations allow for this at the recommendation of the COLA partnership committees as approved by OPM. We anticipate that subcommittees will be established for various purposes during the pilot project.

Review of Pilot Project

One commenter suggested that the pilot project be reviewed periodically to determine whether it represents an efficient use of resources, and another commenter asked how the effectiveness of the pilot project would be measured. OPM agrees that the effectiveness of the pilot project should be evaluated during and at the end of project. Certainly, if it becomes clear that the pilot project is not effective, OPM will discontinue it. However, based on the majority of the comments we have received to date, we believe this is an unlikely prospect.

Expenses Related to Committee Activities

One commenter noted that the commentary that preceded the proposed regulations suggested that agency committee representatives would have their travel costs paid by the Government, but that employee representatives would not. That is not what we intended. To clarify this, we have revised the regulations to state clearly that employees serving as committee or subcommittee members are considered to be on official assignment to an interagency function. Therefore, such employees, without regard to whether they are agency or employee representatives, will be entitled to reimbursement for travel expenses related to COLA partnership committee work. However, as we noted in the commentary on the proposed rule, we expect such expenses to be minimal because all non-OPM committee and subcommittee members will be residents of the immediate area, and non-local travel will therefore be unnecessary in most cases.

Another commenter believed OPM should provide the budgetary resources necessary for COLA partnership and not rely on agency support. In developing this pilot project, OPM tried to minimize its budget impact. We also consulted with the major Federal employers in the allowance areas and discussed the potential impact with them. Although they recognized that the pilot project would be a new resource requirement, most of the agencies found merit in the proposal and agreed to support the project in terms of the staff time and related expenses associated with the program.

Committee Charters

One commenter asked whether COLA partnership committees would be chartered. Although charters are not required for these committees, OPM believes that charters would be beneficial and plans to encourage

committees to develop charters. These charters could provide additional detail on and clarify committee objectives and scope, membership requirements, agency support, reports, OPM and other agency support, etc.

Issues Relating to COLA Surveys

One commenter believed prices in Puerto Rico were higher in the fall than in the January through March time frame during which OPM will conduct the COLA surveys. The commenter recommended changing the timing of the survey or using a factor to adjust for any price differences. On May 11, 1995, OPM published in the Federal Register (60 FR 25150) for comment a notice that said it planned to change the timing of the surveys of Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands to the first quarter of the calendar year. OPM received no comments opposing that change. Nevertheless, timing of the COLA surveys is one of the issues that COLA partnership committees could consider as they advise OPM on the COLA program.

One commenter suggested that OPM take into consideration other measures of relative living costs, such as those reported by certain private sector companies, and another commenter suggested that OPM consider varying COLA rates by income level. OPM believes these are valuable suggestions and are certainly topics that the COLA partnership committees could consider.

Opposition to Proposed Pilot Project

Four commenters objected to the proposed pilot project overall. Their comments and our analyses and responses are noted below.

Procedure for selecting employee representatives: As noted earlier, two commenters objected to the procedure for selecting employee representatives for the committees. In response to these concerns, OPM modified the regulations to ensure that employee organizations are represented by persons of their own choosing, except when the affected work unit's mission requires the employee's presence on his or her regular job.

One commenter criticized the proposal because it involved agencies in a technical process that could affect their budgets. The commenter said that the agencies' right to select their representatives and consult with OPM concerning the selection of employee representatives gives the agencies the ability to improperly influence the survey results. The COLA program was established to provide a compensation tool that helps agencies recruit and retain a well-qualified work force.

Therefore, we believe agencies must be involved in any effort to improve the administration of the COLA program. Furthermore, as discussed earlier, OPM has modified its regulations to address issues relating to the selection of employee representatives. We believe this change will strengthen the composition of the committee and guarantee the free exchange of ideas and issues from all perspectives.

Another commenter believed the process of selecting only the largest unions in terms of the number of COLA recipients they represent would promote conflict and competition among labor organizations. OPM's experience working with labor organizations under the Federal Wage System for over 20 years has shown that Federal labor organizations work cooperatively in these situations. Therefore, we do not believe the COLA partnership process will be jeopardized by union conflict and competition.

Nature of the partnership committees: Two commenters believed the committees should not be called "partnerships" because the committees would be advisory in nature. One commenter was concerned that the committees might be expected to "rubber stamp" OPM's unilateral actions, and that if this were to happen, participating organizations might be "tainted." Another commenter believed committee members would be "turned off" if they did not have the ability to influence decisions that affect them.

No two partnerships look exactly alike, and OPM believes that establishment of these committees will result in a more collaborative relationship among affected agencies and employees with respect to this complex and often contentious program. By statute and Executive order, however, OPM has the final authority for conducting COLA surveys and administering the COLA program. If a consensus cannot be reached on an issue or if the views of one COLA committee differ from those of another on the same issue, OPM must still conduct surveys and set COLA rates. Nevertheless, this does not mean that we cannot use partnership to improve the COLA program.

OPM plans to accommodate suggestions whenever practical and consistent with the laws and regulations that govern the COLA program. We certainly do not expect the committees to "rubber stamp" our proposals. Instead, we plan to listen carefully to and seriously consider all of the information and advice that will be provided. We know there is much we can learn that will help us improve the

surveys and the way we administer the program, and we look forward to having frank and open discussions with the other committee members. It is our hope that we can reach a consensus on the vast majority of issues that will face us. As several commenters said, the partnership process will not work unless there is a sincere commitment from all parties, *including OPM*, to share ideas, listen to others, learn from what is said, and find areas of agreement. OPM is committed to this process.

Agency impact: Another commenter objected to the proposal on the basis that it seemed to set up a new bureaucracy to deal with COLA issues and that this was not an efficient use of resources in a time of downsizing. The commenter appeared to suggest that OPM consider using a different approach to compensation, such as the locality pay provisions of the Federal Employees Pay Comparability Act of 1990 (Public law 101-509). OPM recognizes that the pilot project will require staff time of a limited number of agencies and employee representatives in each area and that this comes at a time when many agencies have had staff-level reductions. Therefore, in developing the pilot project, OPM strived to limit the number and size of the committees while trying to ensure that there is adequate representation and a sufficient number of people to do the work. We do not believe we are creating a bureaucracy, but rather furthering National Performance Review objectives concerning management and employee partnership.

Memorandum of understanding and COLA partnership: Two commenters objected to the proposal because of perceived conflicts between COLA partnership work and the work to be performed under a memorandum of understanding (MOU) between the Government and the plaintiffs in *Alaniz v. Office of Personnel Management and Karamatsu v. United States*. The commenter felt that the pilot project would undermine the MOU and dilute the parties' resources to work on it. One commenter suggested that the pilot project be postponed and reconsidered at the end of the "Safe Harbor" process envisioned by the MOU. The same commenter also suggested that OPM delete or amend several of the functions of COLA partnership committees, as described in § 591.212(d) of the proposed regulations. The other commenter believed the pilot project duplicated and conflicted with the Safe Harbor process.

While we agree that both the MOU and the COLA partnership pilot project are major undertakings, we do not

believe they will deplete the resources necessary to participate effectively in both processes. Furthermore, we see the MOU and pilot project as two distinctly different processes that, while having similar overall goals, will not conflict with one another. The MOU is designed to engage the parties in *Alaniz* and *Karamatsu* in a collaborative process through which the parties will attempt to reach agreement on issues that have long been contested in the COLA program and to help OPM in connection with its report to Congress, which is required by Public Law 102-141, as amended. The COLA pilot project is designed to use partnerships of agency and employee representatives to assist OPM in designing, conducting, and reviewing results of annual COLA surveys; to improve the COLA program and OPM's administration of the program; and to explore issues relating to the compensation of Federal employees in the allowance areas. As with the MOU, the information and experience that OPM will gain through the pilot project will also be helpful in preparing our report to Congress. OPM believes the MOU and COLA

partnership will complement each other as they provide information on different aspects of the COLA program. This information will be very beneficial to Congress as it reviews and considers the COLA program. Therefore, we believe it would be undesirable to postpone the pilot project until the MOU process is complete or to modify the functions of the COLA partnership committees.

Training, expertise, and resources: One of the commenters also believed the partnership committees would have insufficient resources, experience, and training to participate effectively. The commenter felt that the COLA Defense Committees would be able to participate more effectively and criticized OPM for not explicitly including representatives from the COLA Defense Committees on the COLA partnership committees.

As discussed above, the regulations allow for the COLA partnership committees to expand their membership in consultation with OPM, and OPM intends to be open to such requests. Therefore, if any COLA partnership committee believes it would be appropriate to include representatives from a COLA Defense Committee, OPM will try to support such a request, provided that the size of the committee does not threaten its effectiveness.

As also discussed above, OPM agrees that training, experience, and support are important, and we plan to provide the resources and information necessary for effective involvement. Although there may be individuals in each area

who have more experience with COLA issues, we believe there is much to be gained from the involvement of a wide range of views and interests, and we also believe effective experience concerning COLA issues can be gained quickly through participation in the COLA partnership pilot project.

Waiver of 30-Day Delay in Effective Date

Pursuant to section 553(d)(3) of title 5, United States Code, OPM finds that good cause exists to make these regulations effective in less than 30 days. The regulations are being made effective immediately in order to provide sufficient time for the COLA partnership committees to organize and prepare for the surveys to be conducted during the first quarter of calendar year 1997.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will 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 amends 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 part 591 continues to read as follows:

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

2. Section 591.201 is amended by adding a definition of "agency" in alphabetical order to read as follows:

§ 591.201 Definitions.

* * * * *

Agency means an Executive agency as defined in section 105 of title 5, United States Code, but does not include Government-controlled corporations. For the purposes of § 591.212, "agency" also includes the United States Postal Service.

* * * * *

3. Section 591.203 is amended by revising the section heading and the introductory text to paragraph (a) to read as follows:

§ 591.203 Employees covered.

(a) This subpart applies to civilian employees whose rates of basic pay are fixed by statute and who are employed by an agency. The following pay plans are covered by this subpart:

* * * * *

4. Section 591.212 is added to read as follows:

§ 591.212 COLA Partnership Pilot Project.

(a) *Purpose and duration of COLA Partnership Pilot Project.* The COLA Partnership Pilot Project is designed to assess the efficacy of a plan to increase agency and employee involvement in the allowance program. The pilot project shall be in effect for a period not to exceed 2 years from November 21, 1996.

(b) *Purpose and establishment of committees.* To assist OPM in reviewing and improving the allowance program and to help OPM, affected agencies, and their employees better understand issues relating to the compensation of Federal employees in the allowance areas, OPM may establish one or more COLA partnership committees in the allowance areas and in the Washington, DC, area. Committees established under this section function at the discretion of OPM and may be disestablished at any time. A committee may represent agencies and employees in more than one allowance area and will meet from time to time as requested by OPM.

(c) *Composition of committees.* Each committee shall be composed of one or more representatives of Federal agencies and labor organizations. All committee members shall be current full-time Federal employees performing official business of the Federal Government and will serve at their agencies' and OPM's discretion. All non-OPM committee members shall be from the area represented by the committee. The representatives shall be selected as follows:

(1) *Agency representatives.* (i) OPM will identify the largest agencies (in terms of allowance recipients) in the area represented by the committee. For the Washington, DC, area committee, if established, OPM will identify the largest agencies in terms of allowance recipients in all of the allowance areas. OPM will invite up to four agencies each to designate a representative to serve on the committee. In areas where a Federal Executive Association (FEA) or Federal Executive Board (FEB) is located, OPM will invite the FEA or FEB to nominate an FEA or FEB member employed by an agency not otherwise represented on the committee, and OPM will select the nominee in consultation with the nominee's employing agency.

In areas where there is no FEA or FEB, or where an FEA or EB declines to participate, OPM will invite one additional agency selected from among the other agencies in each committee area to designate a representative to serve on the committee on a 1-year rotational basis. To select this agency, OPM will use sampling with probability proportional to the size of the agency. If mutually agreeable among the agencies, they may select representatives using other means and may rotate committee positions among agencies on other than a 1-year rotational basis.

(ii) OPM will appoint one or more of its employees to serve on each COLA partnership committee.

(2) *Employee representatives.* OPM will identify the largest labor organizations (in terms of allowance recipients) in the area represented by the committee. For the Washington, DC, area committee, if established, OPM will identify the largest labor organizations in terms of allowance recipients in all of the allowance areas. OPM will invite up to four labor organizations each to nominate a representative to serve on the committee. OPM will further invite one additional labor organization selected from among the other labor organizations in each committee area to nominate a representative to serve on the committee on a 1-year rotational basis. To select this labor organization, OPM will use sampling with probability proportional to the size of the labor organization. If mutually agreeable among the labor organizations, they may nominate representatives using other means and may rotate committee positions among labor organizations on other than a 1-year rotational basis. OPM will select committee members from among the nominees in consultation with the nominees' employing agencies.

(3) *Postal Service.* No committee shall have a representative from the United States Postal Service (USPS) unless USPS labor organizations have the opportunity to participate as provided by paragraph (g) of this section. No committee shall have more than one employee representative from USPS labor organizations.

(4) *Other members.* In consultation with the committee members, OPM may invite other current full-time Federal employees to serve on the committees. OPM will coordinate such invitations with the employing agencies.

(d) *Functions of committees.* COLA partnership committees may—

(1) Advise and assist OPM in planning living-cost surveys;

(2) Provide or arrange for observers for data collection during living-cost surveys;

(3) Advise and assist OPM in the review of survey data;

(4) Advise OPM on its administration of the COLA program, including survey methodology and other issues relating to the compensation of Federal employees in the allowance areas; and

(5) Assist OPM in the dissemination of information to affected employees about the living-cost surveys and the COLA program.

(e) *Data collection observers.* In consultation with the committees, OPM will determine the number of observers required to accompany OPM officials during the collection of living-cost data. All observers shall be from the local area and shall be full-time Federal employees performing official business of the Federal Government. The committees will nominate observers, and OPM will select from among these nominations in consultation with the nominees' employing agencies.

(f) *Subcommittees.* In consultation with the committees, OPM may establish one or more subcommittees to advise the committee on issues relating to the allowance areas and survey areas within the geographic area represented by the committee. If such subcommittees are established, they shall be composed of up to two agency representatives and two employee representatives from the local area, as well as one or more OPM representatives. OPM may, in consultation with the committee and subcommittee, invite additional Federal employees to serve on the subcommittee. Subcommittee agency and employee representatives shall be nominated and appointed in the same manner as committee members. All subcommittee members shall be current full-time Federal employees performing official business of the Federal Government.

(g) *Agency release of employees for committee/subcommittee activities.* Employers shall cooperate and release nominated employees for committee/subcommittee proceedings and activities unless the employers can demonstrate that exceptional circumstances directly related to the accomplishment of the work units' missions require their presence on their regular jobs. Employees serving as committee or subcommittee members are considered to be on official assignment to an interagency function, rather than on leave.

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BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. FV96-987-1 FIR]

Domestic Dates Produced or Packed in Riverside County, CA; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule establishing an assessment rate for the California Date Administrative Committee (Committee) under Marketing Order No. 987 for the 1996-97 and subsequent crop years. The Committee is responsible for local administration of the marketing order which regulates the handling of domestic dates produced or packed in Riverside County, California. Authorization to assess date handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-720-9918, FAX 202-720-5698, or Maureen Pello, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, California 93721, telephone 209-487-5901, FAX 209-487-5906. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-720-2491; FAX 202-720-5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."