

Proposed Rules

Federal Register

Vol. 60, No. 190

Monday, October 2, 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 251

RIN 3206-AG38

Agency Relationships With Organizations Representing Federal Employees and Other Organizations

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations governing agency relations with managerial, supervisory, professional, and other organizations that are not labor organizations. These regulations are being issued as part of the implementation of the Federal Personnel Manual (FPM) sunset. The regulations incorporate certain provisions that existed in former FPM chapters 251 and 252.

DATES: Comments on the proposed regulations must be received on or before December 1, 1995.

ADDRESSES: Send or deliver written comments to Phyllis Foley, Chief, Labor-Management Relations Division, Office of Personnel Management, Room 7412, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Hal Fibish at 202-606-1170.

SUPPLEMENTARY INFORMATION: One of the recommendations of the September 1993 Report of the National Performance Review (*From Red Tape to Results: Creating a Government that Works Better and Costs Less*) was that the FPM should be "sunset." Following consultation with agencies and other interested parties, the Director of the Office of Personnel Management (OPM) issued a memorandum abolishing the FPM as of December 31, 1993, except for certain provisionally retained materials.

The proposed regulations would continue, with some modifications, certain provisions that were in former

FPM chapters 251 (Intramangement Communications and Consultation) and 252 (Agency Relationships with Professional Associations and Other Organizations). These chapters were sunset as of December 31, 1993; but they contained material that does not exist elsewhere and that were of assistance to agencies in dealing with the affected associations and organizations. OPM, mindful of the need to keep regulations to a minimum, has nevertheless determined that it is necessary to issue regulations because of the significance of this matter.

Subpart A provides a general framework for dealing with organizations other than labor organizations that represent Federal employees and with other organizations. Criteria for establishing consultative relationships with organizations that are covered by this part are primarily derived from section 1-3a of former FPM chapter 251 and section 1-5 of former FPM chapter 252. In addition, section 251.101(f) reminds employees that 18 U.S.C. §§ 201-216, as interpreted by the Office of Government Ethics and the Department of Justice, places restrictions on a wide range of activities by Federal employees, including representational activities on behalf of organizations that are not labor organizations, and advises them to consult with their designated agency ethics official for guidance regarding any conflicts of interest which may arise.

Subpart B provides instructions on dealing with organizations representing Federal employees. Section 251.201, based on subchapter 1 of former FPM chapter 251, requires agencies to establish systems for intramangement communications and consultation with supervisors and managers and associations of supervisors and managers. Section 251.202, based on former FPM chapter 252, provides a framework for dealing with organizations that are not supervisory or managerial. Note that while agencies are required to communicate and consult with associations of supervisors and managers, such dealings with other organizations representing Federal employees are discretionary. Such dealings, however, can be mutually beneficial to the agency and the members of the organizations. Section

251.203 provides information on what support may be granted organizations.

Subpart C provides information on dues withholding. Section 251.301 references 5 CFR 550.331, which requires agencies to provide for dues withholding for supervisory and managerial associations. Section 251.302 indicates that agencies may, but are not required to, provide dues withholding for other organizations.

E.O. 12866, Regulatory Planning and Review

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

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 only affect Federal Government employees and non-labor organizations representing such employees.

List of Subjects in 5 CFR Part 251

Government employees.

U.S. Office of Personnel Management.
James B. King,
Director.

Accordingly, OPM is proposing to add 5 CFR Part 251 as follows:

1. Part 251 is added to read as follows:

PART 251—AGENCY RELATIONSHIPS WITH ORGANIZATIONS REPRESENTING FEDERAL EMPLOYEES AND OTHER ORGANIZATIONS

Subpart A—General Provisions

Sec.
251.101 Introduction.
251.102 Coverage.
251.103 Definitions.

Subpart B—Relationships With Organizations Representing Federal Employees and Other Organizations

251.201 Associations of supervisors and management officials.
251.202 Agency support to organizations representing Federal employees and other organizations.

Subpart C—Dues Withholding

251.301 Associations of supervisors and management officials.
251.302 All other organizations.

Authority: 5 U.S.C. § 1104; 5 U.S.C. chap. 71; 5 U.S.C. § 7135; 5 U.S.C. § 7301; and E.O. 11491

Subpart A—General Provisions**§ 251.101 Introduction.**

(a) These regulations apply to all Federal executive branch departments and agencies and their officers and employees.

(b) This part provides a framework for consulting and communicating with non-labor organizations representing Federal employees and with other organizations on matters related to agency operations and personnel management.

(c) The purposes of consultation and communication are: the improvement of agency operations, personnel management, and employee effectiveness; the exchange of information (e.g., ideals, opinions, and proposals); and the establishment of policies that best serve the public interest in accomplishing the mission of the agency.

(d) An agency's consultation and communication with organizations representing Federal employees and with other organizations under this part may not take on the character of negotiations or consultations regarding conditions of employment of bargaining unit employees, which is reserved exclusively to labor organizations as provided for in Chapter 71 of title 5 of the U.S. Code.

(e) The head of a Federal agency may determine that it is in the interest of the agency to consult, from time to time, with organizations other than labor organizations and supervisory and managerial associations to the extent permitted by law. Under section 7(d)(2) and (3) of Executive Order 11491, as amended, recognition of a labor organization does not preclude an agency from consulting or dealing with a veterans organization, or with a religious, social, fraternal, professional, or other lawful association, not qualified as a labor organization, with respect to matters or policies which involve individual members of the organization or association or are of particular applicability to it or its members.

(f) Federal employees, including management officials and supervisors, may communicate with any Federal agency, officer, or other Federal entity on the employee's own behalf. However, Federal employees should be aware that 18 U.S.C. § 205, in pertinent part, restricts Federal employees from acting, other than in the proper discharge of their official duties, as agents for any organization other than a labor organization, before any Federal agency or other Federal entity in connection with any matter in which the United States is a party or has a direct and

substantial interest. Agency officials and employees are therefore advised to consult with their designated agency ethics official for guidance regarding any conflicts of interest that may arise.

§ 251.102 Coverage.

To be covered by this part, an association or organization:

(a) Must be a lawful, nonprofit organization whose constitution and bylaws indicate that it subscribes to minimum standards of fiscal responsibility and employs democratic principles in the nomination and election of officers.

(b) Must not discriminate in terms of membership or treatment because of race, color, religion, sex, national origin, age, or handicapping condition.

(c) Must not assist or participate in a strike, work stoppage, or slowdown against the Government of the United States or any agency thereof or impose a duty or obligation to conduct, assist, or participate in such strike.

(d) Must not advocate the overthrow of the constitutional form of Government of the United States.

§ 251.103 Definitions.

(a) *Organization representing Federal employees and other organizations* means an organization other than a labor organization that can provide information, views, and services which will contribute to improved agency operations, personnel management, and employee effectiveness. Such an organization may be an association of Federal management officials and/or supervisors, a professional association, civic and consumer groups, organizations concerned with special social interests (for instance, veterans' affairs, problems of the aged, personal preference or orientation, etc.), and the like.

(b) *Association of management officials and/or supervisors* means an association comprised primarily of management officials and/or supervisors, which is not eligible for recognition under Chapter 71 of title 5 of the U.S. Code, and which is not affiliated with a labor organization or federation of labor organizations.

(c) *Labor organization* means an organization as defined in 5 U.S.C. § 7103(a)(4), which is in compliance with 5 U.S.C. § 7120.

Subpart B—Relationships With Organizations Representing Federal Employees and Other Organizations**§ 251.201 Associations of supervisors and management officials.**

(a) As part of agency management, supervisors and managers should be

included in the decision-making process and notified of executive-level decisions on a timely basis. Each agency must establish and maintain a system for intra-management communication and consultation with its supervisors and managers. They must also establish consultative relationships with associations whose membership is primarily supervisory and/or managerial, provided that such associations are not affiliated with any labor organization and that they have sufficient agency membership to assure a worthwhile dialogue with executive management.

(b) Consultations should have as their objectives the improvement of managerial effectiveness and the working conditions of supervisors and managers, as well as the identification and resolution of problems affecting agency operations and employees, including supervisors and managers.

(c) The system of communication and consultation should be designed so that individual supervisors and managers are able to participate if they are not affiliated with an association of supervisors or managers. At the same time, the voluntary joining together of supervisory and management personnel in groups of associations shall not be precluded or discouraged.

§ 251.202 Agency support to organizations representing Federal employees and other organizations.

(a) Agencies may facilitate employee membership and participation in organizations representing Federal employees and in other organizations in ways such as:

(1) Permitting employees, in appropriate cases, to use agency equipment or administrative support services for preparing papers to be presented at conferences or symposia or published in journals.

(2) Using the authority under 5 CFR part 410 to pay expenses of employees to attend professional organization meetings when such attendance is for the purpose of employee development or directly concerned with agency functions or activities and the agency can derive benefits from employee attendance at such meetings.

(3) Following a liberal policy in authorizing excused absence for other employees who are willing to pay their own expenses to attend a meeting of a professional association or other organization from which an agency could derive some benefit.

(b) Agencies may provide Government resources support to organizations (such as space in Government facilities for meeting purposes and the use of agency

bulletin boards, internal agency mail distribution systems, electronic bulletin boards and other means of informing agency employees about meetings and activities) in accordance with appropriate General Services Administration regulations contained in title 41 of the Code of Federal Regulations. The mere provision of such support to any organization is not to be construed as Federal sponsorship, sanction, or endorsement of the organization or its activities.

Subpart C—Dues Withholding

§ 251.301 Associations of supervisors and management officials.

Dues withholding for associations of supervisors and/or management officials is covered in 5 CFR 550.331.

§ 251.302 All other organizations.

Under 5 CFR 550.311(b), an agency may permit an employee to make an allotment for any legal purpose deemed appropriate by the head of the agency. Agencies may provide for the allotment of dues for organizations representing Federal employees under that section.

[FR Doc. 95-24387 Filed 9-29-95; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 318

[Docket No. 95-028-1]

Sharwil Avocados From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow Sharwil avocados to be moved interstate from Hawaii after undergoing cold treatment for fruit flies under the supervision of an inspector of the Animal and Plant Health Inspection Service. Currently, the only authorized treatments for avocados to be moved interstate from Hawaii are methyl bromide fumigation and a combination of methyl bromide fumigation and refrigeration. This proposed action would facilitate the interstate movement of Sharwil avocados from Hawaii while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States.

DATES: Consideration will be given only to comments received on or before November 1, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95-028-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 95-028-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser or Mr. Frank E. Cooper, Senior Staff Officers, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737-1236, (301) 734-8295.

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian Fruits and Vegetables regulations, contained in 7 CFR 318.13 through 318.13-17 (referred to below as the regulations), govern, among other things, the interstate movement from Hawaii of avocados in a raw or unprocessed state. Regulation is necessary to prevent the spread of the Mediterranean fruit fly (*Ceratitidis capitata*), the melon fly (*Dacus cucurbitae*), and the Oriental fruit fly (*Bactrocera dorsalis*). These types of fruit flies are collectively referred to as Trifly.

The current regulations allow avocados to be moved interstate from Hawaii to any destination in the United States only if, among other things, they have been treated in accordance with a treatment specified in either § 318.13-4d or § 318.13-4e of the regulations. The regulations allow untreated avocados from Hawaii to be moved interstate to Alaska only, provided that they meet conditions specified in § 318.13-4g to ensure that avocados moved to Alaska are free from Trifly.

Section 318.13-4d provides for treatment of avocados by fumigation with methyl bromide. This treatment causes pitting and internal and external discoloration, and reduces the shelf life of the avocado by 2-4 days, all of which adversely affect the marketability of the avocados. Section 318.13-4e provides for treatment of mature green avocados by fumigation with methyl bromide followed by refrigeration for 7 days. This treatment is not commercially feasible, because after avocados are refrigerated for 7 days the remaining shelf life is not sufficient for marketing

purposes. For these reasons, avocados from Hawaii are not being treated and shipped interstate.

We are proposing to amend the regulations governing the interstate movement of Hawaiian fruits and vegetables to allow the interstate movement of Sharwil avocados from Hawaii provided they undergo cold treatment for Trifly. The authorized cold treatment would be as follows:

Treatment	Exposure period (days)
32 °F (0.00 °C) or below	10
33 °F (0.56 °C) or below	11
34 °F (1.11 °C) or below	12
35 °F (1.67 °C) or below	14

This treatment has been determined to be effective against the insects listed above, based on research evaluated and approved by the U.S. Department of Agriculture. Information on this research may be obtained from the Oxford Plant Protection Center, AQI Branch, Plant Protection and Quarantine, APHIS, USDA, 901 Hillsboro Street, Oxford, NC, 27575. Pest risk analyses conducted by the Animal and Plant Health Inspection Service (APHIS) have determined that any other injurious plant pests that might be carried by Sharwil avocados would be readily detectable upon examination by an inspector of Plant Protection and Quarantine (PPQ), APHIS.

Cold treatment of avocados generally causes discoloration and pitting. However, the Agricultural Research Service, U.S. Department of Agriculture, has tested a method of pretreatment conditioning for Sharwil avocados that induces tolerance to cold treatment, making cold treatment for the Sharwil variety commercially feasible (HortScience 29(10):1166-1168.1994.). Only the Sharwil variety of avocado would be approved for cold treatment, since the pretreatment conditioning has been tested only on the Sharwil variety. Pretreatment conditioning would be recommended but not required.

The cold treatment procedures for Sharwil avocado would be added to the Plant Protection and Quarantine (PPQ) Treatment Manual, which has been incorporated by reference into the Code of Federal Regulations at 7 CFR part 300.1.

Sharwil avocados moved interstate from Hawaii would continue to be subject to other applicable provisions of the regulations. These include, among other things, that a certificate issued in accordance with § 318.13-4(b) must be attached to the container of the