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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206–AL37

Nonforeign Area Cost-of-Living Allowance Rates; Alaska

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is reducing the cost-of-living allowance (COLA) rates received by certain white-collar Federal and U.S. Postal Service employees in Anchorage, Fairbanks, and Juneau, Alaska. The rate reductions are the result of living-cost surveys conducted by OPM in Alaska and the Washington, DC area in 2006. Based on the survey results, OPM is reducing the COLA rates for Anchorage, Fairbanks, and Juneau from 24 percent to 23 percent. OPM is also issuing a minor clarification regarding the Alaska COLA area boundaries to make clear the 50-mile area radius is by the shortest route using paved roads.

DATES: *Effective date:* December 3, 2008. *Implementation date:* First day of the first pay period beginning on or after December 3, 2008.

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 and the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands (USVI). Executive Order 10000, as amended, delegates to the Office of Personnel Management the authority to administer nonforeign area COLAs and prescribes certain operational features of the program. OPM conducts 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 § 591.223 of title 5, Code of Federal Regulations, OPM conducts COLA surveys in the Alaska, Pacific, and Caribbean areas on a 3-year rotating basis, and in the Washington, DC area on an annual basis. OPM sets the COLA rate for each area based on the results of these surveys. For areas not surveyed during a particular year, OPM computes 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.)

OPM adopted the COLA survey methodology pursuant to the stipulation for settlement in *Caraballo et al.* v. *United States,* No. 1997–0027 (D.V.I.), August 17, 2000. *Caraballo* was a class-action lawsuit in which the plaintiffs contested the prior methodology OPM used to determine COLA rates. In the *Caraballo* settlement, the parties agreed that if the Government adopted and maintained certain changes in the COLA program, the plaintiffs would be barred from bringing suit over these issues. The stipulation for settlement is available on OPM's Web site at *http://www.opm.gov/oca/cola/settlement.asp*.

Before the settlement, the parties entered into a memorandum of understanding under which they engaged in a cooperative process to study living-cost and compensation issues. The research was exhaustive and covered essentially all aspects of the COLA program. A summary of that research is available on OPM's Web site at *http://www.opm.gov/oca/cola/research.asp*.

Exhibit A of the *Caraballo* settlement agreement lists 26 ''Safe Harbor Principles'' that outline the changes to which the parties agreed. These principles formed the basis for a new COLA methodology, which OPM incorporated into its regulations. In developing these regulations, OPM consulted with the Survey Implementation Committee, which was established under the *Caraballo* settlement and is composed of representatives of the parties in *Caraballo*. The Survey Implementation Committee in turn consulted with the Technical Advisory Committee, which was also established under the *Caraballo* settlement and comprises three economists with expertise in living-cost comparisons. OPM published proposed regulations detailing the new methodology for notice and comment in the **Federal Register** on November 9, 2001, at 66 FR 56741, and final regulations on May 3, 2002, at 67 FR 22339, to implement the new methodology. The Survey Implementation Committee and the Technical Advisory Committee worked closely with OPM in preparing for and implementing the first series of post-settlement COLA surveys.

2006 Alaska Survey

OPM conducted living-cost surveys in Anchorage, Fairbanks, Juneau, and the Washington, DC, area in the spring of 2006. On January 3, 2008, at 73 FR 774, we published the results of these surveys in the *2006 Nonforeign Area Cost-of-Living Allowance Survey Report: Alaska and Washington, DC, Areas*.

As described in the 2006 survey report, we compared the results of the COLA area surveys with the results of the DC area survey to compute a living-cost index for each of the Alaska COLA areas. Table 1 shows the final 2006 Alaska survey living-cost indexes. These indexes indicate reductions in the COLA rates for Anchorage, Fairbanks, and Juneau. OPM's regulations at 5 CFR 591.228(c) limit COLA rate reductions to 1 percentage point in a 12-month period; therefore, we are reducing the rates in Anchorage, Fairbanks, and Juneau from 24 percent to 23 percent.

TABLE 1—2006 ALASKA SURVEY INDEXES

Allowance area	Index
Anchorage	109.81
Fairbanks	118.90
Juneau	120.08
Rest of the State of Alaska	132.82

Area Boundary Clarification

We are also issuing a clarification to 5 CFR 591.207 regarding the Alaska COLA-area boundaries to make clear the 80-kilometer (50-mile) area radius is by the shortest route using paved roads when available, as measured from the

Federal courthouse to the official duty station. We believe the prior regulations should not have been interpreted differently, but issue this clarification to assist agencies when alternate interpretations are presented.

Discussion of Comments

We published a notice of proposed rulemaking regarding the planned reduction in the COLA rates for Anchorage, Fairbanks, and Juneau and the area-boundary clarification in the **Federal Register** on January 3, 2008, at 73 FR 772. We address the comments we received in response to the proposed rule in the discussion that follows.

Locality Pay

A number of commenters wrote in support of replacing the nonforeign-area COLA with locality pay. Three commenters believed OPM should not reduce Alaska COLA rates, while backing a legislative initiative to implement locality pay in the COLA areas. One commenter asked why a transition to locality pay has not already begun. Another commenter said OPM should consider the locality pay received by Federal employees in the Washington, DC, area in determining COLA rates for the nonforeign areas. Several commenters noted that, unlike the nonforeign-area COLA, locality pay is included in computations for retirement and the Thrift Savings Plan.

The Federal Employees Pay Comparability Act of 1990 (FEPCA) authorizes locality pay only for Federal employees in the contiguous 48 States and Washington, DC. We cannot consider DC-area locality pay in determining rates outside the 48 States because doing so would be equivalent to extending locality pay in these areas without authority. Additionally, we cannot credit COLAs in the retirement calculation because 5 U.S.C. 8331(3) and 8401(4) exclude allowances from base pay for Federal retirement purposes. Changes in law would be required to extend locality pay to Federal employees in the COLA areas or to include COLAs in base pay for Federal retirement purposes.

Congress is considering legislation that would replace the nonforeign-area COLA with locality pay. Because we are not able to forecast whether legislation on this issue will pass or how long the legislative process will take, we must proceed with COLA rate changes in accordance with section 5941 of title 5, U.S. Code, and the *Caraballo* settlement.

Living Costs

Most of the commenters believed the surveys did not fully consider the expenses incurred in the allowance areas. Many noted expenses in the Alaska COLA areas that they felt were either not accounted for in the surveys or that affected the accuracy of the results of the surveys. These expenses included—

—Goods and services typically found in the Washington, DC, area that are not available in the allowance areas, the cost to obtain these goods and services in the allowance areas (e.g., shipping fees), and the quality of the goods and services that are available;
—Goods and services typically purchased in the allowance areas that are not typically purchased in the Washington, DC, area;
—Variations in spending patterns between the Washington, DC, area and the allowance areas;
—Hardships encountered under adverse climate conditions;
—Climate influences on purchase of clothing, automobiles, automobile maintenance, insurance, and other goods and services;
—Housing and utility prices as affected by climate and availability;
—The frequency and cost of air travel in the allowance areas;
—The additional need for travel, lodging, and out-of-pocket expenses for quality medical care in the allowance areas; and
—Travel and other costs to send children to private schools.

As required by section 5941 of title 5, U.S. Code, we compare living costs in the COLA areas with living costs in the Washington, DC area to determine COLA rates. We measure costs using the methodology stipulated in the *Caraballo* settlement. We conduct on-site surveys in each survey area and collect more than 4,000 prices on over 300 items representing typical consumer purchases. We collect prices at over 900 outlets, including grocery, hardware, electronics, and department stores, as well as automobile dealers, doctors, dentists, insurance companies, and many other providers of goods and services. We collect these prices in both the COLA and DC areas to use in the price comparisons that determine each area's COLA rate.

The comparisons result in indexes that reflect how COLA area prices measure against DC area prices over a given period of time. These indexes do not necessarily correspond to rising (or falling) prices in the COLA areas. For instance, if living costs in a COLA area rise, but living costs in the DC area rise more sharply, the COLA rate for the area would decrease. Conversely, if COLA area living costs decrease, but DC area living costs decrease more sharply, the COLA rate for the area would increase.

In consultation with representatives of Alaska-area employee organizations and agencies on the Anchorage, Fairbanks, and Juneau COLA Advisory Committees, we select representational items to be surveyed under nine categories of expenses: Food, Shelter and Utilities, Household Furnishings and Supplies, Apparel, Transportation, Medical, Recreation, Education and Communication, and Miscellaneous. We divide these categories into subcategories and select a sufficient number of items to represent each subcategory in the living-cost surveys.

Recognizing the difficulty in surveying all employee costs in the allowance areas, the *Caraballo* settlement prescribed adjustment factors to be added to the price indexes for each COLA area. These factors reflect differences in need, availability of and access to goods and services, and quality of life in each of the COLA areas. The settlement set the adjustment factor for Anchorage at 7.0, for Fairbanks at 9.0, for Juneau at 9.0, and for the Rest of Alaska at 9.0.

We believe the COLA methodology and surveys comply fully with the *Caraballo* settlement, include ample representational items, and provide sufficient adjustment factors to account for cost differences due to climate, remoteness, and geographical and cultural diversity. We worked closely with the Survey Implementation Committee, the Technical Advisory Committee, and the survey-area COLA Advisory Committees to develop the survey procedures, items and outlets to be surveyed, and analytic techniques for the price comparisons.

Rising Prices

A number of commenters noted that certain costs have increased since we conducted the 2006 Alaska survey. They cited the cost of gasoline, housing, utilities, shipping, airline tickets, grocery items, medical needs, automobile expenses, recreational costs, various fees and taxes, and other items. Several commenters believed we should survey more frequently. We recognize that prices for various items will increase in the COLA areas and/or the DC area between surveys. We collect prices in each survey area every 3 years on a rotating basis according to a schedule agreed upon by the parties in the *Caraballo* settlement. As noted previously, we adjust area price indexes in non-survey years based on the relative change in the CPI for the COLA area compared with the CPI for the Washington, DC area. These adjustments are designed to account for price fluctuations between surveys.

Energy Costs

Many commenters felt we should increase Alaska COLA rates to account for rising electric and heating oil costs. While DC area energy costs have also increased as a result of escalating fuel prices, we examined the effect recent Alaska energy rates would have on the area indexes. The results indicated slightly higher indexes in Alaska, but would not raise the indexes sufficiently to overcome the COLA rate reductions. The 2008 interim CPI adjustment indexes will reflect any increases in energy costs in Alaska compared to the DC area.

Several commenters noted that heating costs are higher in Alaska than the DC area because the Alaska climate is colder for longer periods of time. We discuss the energy utility model used to determine the price of utilities in section 4.2.4 of the Alaska survey report published at 73 FR 774. The utility model reflects the higher home energy costs in Alaska. As shown in Appendix 5 of the report, we determine energy utility indexes for the COLA areas based on energy usage over a 12-month period.

Geographic Coverage

One commenter said the cost of living in Girdwood, AK, which is 40 miles outside of Anchorage, is significantly higher than in Anchorage. The commenter felt the Girdwood cost of living is not adequately reflected in the Anchorage survey and that we should conduct a separate survey in Girdwood. We review outlets for surveying item prices in the Anchorage COLA area with the Anchorage COLA Advisory Committee prior to our surveys. We are open to recommendations from the Committee for surveying a selection of items in Girdwood. We cannot conduct a separate survey in Girdwood. Under 5 CFR 591.206(b), the head of a department or agency must submit a request to OPM to initiate any reconsideration of the definition of a COLA area. One of the criteria for defining a COLA area is the concentration of Federal employees in the area. OPM's Central Personnel Data File shows the Federal population in Girdwood to be small.

One commenter said the Juneau cost of living is higher than Anchorage and Fairbanks because of the lack of road access. Another commenter said Fairbanks cannot be compared to Juneau, Anchorage, or the DC area because of its colder winters. We conduct separate surveys in each allowance area and collect local prices reflecting actual costs to consumers in each area. We compare each COLA area's living costs to living costs in the DC area, as required by law. Based on this comparison, we produce a distinct index for each COLA area. The 2006 Alaska surveys indicated an index of 109.81 for Anchorage, 118.90 for Fairbanks, and 120.08 for Juneau.

One commenter noted it was more expensive to live in Anchorage than Los Angeles, San Francisco, or New York, where the locality pay rates exceed the Anchorage COLA rate. The law that authorizes the payment of COLAs in Alaska and the other nonforeign areas requires that we compare living costs in the nonforeign areas with living costs in the DC area. The Federal Employees Pay Comparability Act of 1990 does not authorize locality pay for areas outside the contiguous States and Washington, DC. Locality pay is not a cost-of-living allowance, but is based on a comparison of Federal salaries with non-Federal salaries on a locality basis.

The same commenter said we should raise the COLA rate for the Rest of the State of Alaska allowance area and return Anchorage to its former 25 percent rate based on the high cost of living in each area. Another commenter questioned why we were reducing the Juneau COLA rate when Ketchikan, which the commenter said had less expensive housing and was closer to Seattle along shipping lines, was not being reduced. The current COLA rate for the Rest of the State of Alaska, which includes Ketchikan, is 25 percent. We cannot raise this rate because 5 U.S.C. 5941 limits COLAs to no more than 25 percent of basic pay. As permitted under the *Caraballo* settlement, we do not generally survey the Rest of the State of Alaska COLA area, but determine its COLA rate using alternative indicators (*e.g.*, cost information published by the University of Alaska). In the 2006 Alaska survey, we determined the COLA index for the Rest of the State of Alaska area to be 132.82 (converting to an uncapped COLA rate of 33 percent). In the 2003 Alaska survey, we had determined the index to be 134.80 (or 35 percent). While the index has decreased since 2003, it remains above 1.25 (25 percent) and therefore continues to support the maximum 25 percent COLA rate.

The index for Anchorage declined from 112.63 in 2003 to 109.81 in 2006. The index for Juneau increased from 118.34 in 2003 to 120.08 in 2006. The index for Fairbanks increased from 115.26 in 2003 to 118.90 in 2006. Actual COLA rates are currently higher in Alaska because the *Caraballo* settlement established rates based on historical levels in the areas. The COLA rates in Alaska remain higher than indicated by OPM's surveys because we reduce rates by no more than 1 percent in a 12-month period.

Military Raises

Four commenters questioned why we were reducing civilian COLAs in Alaska when military co-workers were receiving raises. The civilian and military COLAs are governed under separate laws and are computed under different methodologies. Two major differences are that the military COLA does not use the DC area as a base for comparison and does not include housing expenses. The methodology for the civilian nonforeign area COLA derives from 5 U.S.C. 5941, Executive Order 10000, and the *Caraballo* settlement.

Impact of Reductions

The same four commenters expressed concern about the impact the COLA reductions in Anchorage, Juneau, and Fairbanks would have on employees, their families, and the Alaska economy. A number of commenters expressed similar concerns regarding recruitment and retention of employees in the Alaska COLA areas. We set COLA rates in accordance with 5 U.S.C. 5941, which authorizes COLAs based on living costs in the nonforeign areas that are substantially higher than living costs in the DC area. We cannot adjust COLA rates for other reasons, such as for recruitment and/or retention purposes. However, we attempt to minimize the impact on employees and on the local economy by reducing COLA rates by no more than 1 percentage point in a 12-month period. To address recruitment and retention problems, agencies may offer recruitment, retention, and relocation incentives and/or special salary rates. OPM's Web site at *http://www.opm.gov/oca/pay/index.asp* provides information on various pay authorities to assist with agency recruitment and retention efforts.

Price Substitutes

One commenter disagreed with the use of prices from Anchorage or Fairbanks for Juneau. As provided by the *Caraballo* settlement (under Safe Harbor Principle 11), we use prices from adjacent areas in limited circumstances when local prices for individual items are unavailable. We minimize the necessity for doing this by substituting items in the local area survey and adding the substituted items to the DC survey. However, we are not always able to locate the substituted items in the DC area. We tested the effect on the Juneau

COLA index of dropping the prices we used from Anchorage and Fairbanks and found it slightly lowered the index.

Private Education

The same commenter noted that there were no private K–12 schools in Juneau and suggested we include the cost to send a child to a residential private school outside Juneau in the private education price. We surveyed K–12 private education in the Alaska COLA areas and the DC area and computed an average tuition price that reflected all grade levels. Because a large majority of children in the Alaska survey areas attend public schools, we apply ''use factors'' to reflect the relative extent to which Federal employees make use of private education in the COLA and DC areas. We described the process used for K–12 private education in the Alaska areas in the Alaska survey report at 73 FR 777. The adjustment factor for an area covers any additional costs involved with sending children to private schools.

Catalog Pricing

The commenter also suggested we survey more items by catalog and include shipping fees. The commenter also believed we should include shipping for items that have to be returned. The commenter believed these costs to be measurable and did not feel they should be included in the adjustment factor for the area. We currently survey a select number of items in each area by catalog and include shipping in the total price of the items. We review outlets for surveying item prices with the local area COLA Advisory Committees prior to data collection. We are open to surveying more items by catalog at the recommendation of the COLA Advisory Committees. Regarding the inclusion of shipping costs for returned items, we do not believe the frequency of returns can be measured accurately, either in the allowance areas or the DC area. The *Caraballo* settlement specifically provided for the adjustment factor, which reflects ''differences in need, availability of and access to goods and services, and quality of life,'' to cover costs such as these.

Insurance

The same commenter asked if mudslide and avalanche coverage is included under the catastrophic coverage we specify for renter insurance. We use a rental equivalence approach to determine shelter costs. The rental equivalence approach compares the rental values of homes. Home insurance is a cost to the owner and therefore is implicit in these values. However, we do survey renter insurance and include the price of any special riders necessary to cover earthquake and hurricane damage. We do not specify mudslide or avalanche coverage as we have had no indications that this coverage is commonly purchased, even in Juneau. We would be open to including this coverage based on reliable data showing residents in a particular COLA area often purchase renters insurance with mudslide and/or avalanche riders.

Medical Services

A number of commenters noted that doctor, dental, and vision care are more expensive in the COLA areas. Several commenters said it was necessary to travel outside the area to obtain some medical services. These commenters felt the survey should include travel costs in these circumstances. We survey the prices of several medical services (including dental services) and items in each COLA area and in the DC area. The medical services index reflects any higher prices in the Alaska COLA areas. We do not attempt to price or quantify the availability of medical services. We consider this to be part of the adjustment factor we add to the price index to reflect differences in need, access to, and availability of goods and services, and quality of life in the COLA areas relative to the Washington, DC, area.

One commenter noted that there were no Health Maintenance Organizations (HMOs) in Anchorage. As described at 73 FR 778, OPM compared average health insurance premium costs in the COLA area with average health insurance premium costs in the DC area. Therefore, the health insurance premium index reflects higher local costs to the extent that an area has only higher cost plans available (i.e., to the extent HMOs are not available).

Automobile Costs

Several commenters said we should survey two sets of automobile tires in Alaska because snow tires are necessary during winter months. We survey both studded snow tires and all-season radial tires in Alaska to compute an average price for tires. As described at 73 FR 778, we compare this price with the average price for all-season radial tires in the DC area. We average tire prices in Alaska because each set of tires is not in use year round. We include mounting, balancing, new stems, stud fee (in Alaska), tire disposal fee, and taxes in the price for each set of tires. We consider other possible tire-related costs, such as wear and rotation frequency, to be covered by the adjustment factor for the area.

One commenter felt we should account for the need for head bolt heaters in Fairbanks. We included the cold-weather package in the price for the Chevrolet Silverado we surveyed. We include engine block heaters and other cold weather equipment or accessories to the extent they are standard additions at COLA area dealerships.

Housing Costs

Two commenters said housing prices are higher in Alaska than in the lower 48 States. Two other commenters said increased military deployments and pipeline and other non-Federal activities were reducing the available housing in Fairbanks and Anchorage and raising housing costs. As noted previously, the *Caraballo* settlement prescribed the methodology we use to conduct COLA surveys and set COLA rates. The settlement stipulates that we use a rental equivalence approach to estimate shelter costs and a hedonic regression approach to compare housing of similar quality. We worked closely with the Technical Advisory Committee economists and the Survey Implementation Committee to develop methodologies for the rental equivalence and hedonic regression processes.

We contracted for the services of a company with experience in rental data collection to survey rental properties in the Alaska and DC areas in 2006. We employed hedonic regression analysis to the rental data to compare rents in Anchorage, Fairbanks, and Juneau with rents in the Washington, DC, area. Section 5941 of title 5, U.S. Code, requires that we use the DC area as the basis for comparison; therefore, we cannot consider costs in other areas of the country.

As with other expenses, we recognize that shelter costs may increase in the COLA areas and/or the DC area between surveys. We conduct rental surveys with our price surveys in each COLA area every 3 years on a rotating basis according to the schedule agreed upon in the *Caraballo* settlement. As noted previously, we adjust area price indexes in non-survey years based on the relative change in the CPI for the COLA area compared with the CPI for the Washington, DC area. To the extent housing prices change as a result of reduced availability or for other reasons, these adjustments will account for any such price fluctuations between surveys.

One commenter asked how we applied the data element ''exceptional view'' in the survey of rental units in Alaska, where good views are typical. Appendix 4 of the Alaska Survey Report describes the ''exceptional view'' data element as a ''view of a park, ocean, mountain, valley, golf course, etc., that is unusually beautiful for the area and may increase the rental value of the property.'' The description notes that properties with direct access to these features are not surveyed. In the 2006 survey comparisons, we used six rental properties in Alaska that were considered to have an ''exceptional view'' relative to the area.

Air Travel

Several commenters noted the high cost of air travel from the Alaska COLA areas to areas in the continental United States. The commenters requested that we consider excessive travel expenses arising from the lack of airline competition, increasing airfare rates, and area remoteness. The COLA methodology takes travel expenses into account in two ways. First, we compare the cost of air travel from the various COLA areas to common destinations in the contiguous States with the cost of air travel from the DC area to those same destinations. Second, as noted previously, we add to the overall price index for the COLA area an adjustment factor that reflects differences in need, access to and availability of goods and services, and quality of life in the COLA area relative to the DC area. This adjustment factor is designed to address considerations such as air travel that arise as a result of limited access and limited availability in the COLA areas.

Taxes

Two commenters expressed concern over high property-tax rates. Another commenter said we were reducing COLA rates at the time when taxes are increasing in Anchorage. Property taxes are an expense owners consider in setting rent; therefore, the rental equivalence methodology captures differences in property tax rates. Because of the complexity involved, we do not attempt to determine the aggregate tax liability for employees in the COLA areas and the DC area for comparison purposes. Employees in all areas have varying tax obligations depending on income, dependents, deductions, and other factors. In the DC area, employees pay a State income tax (Virginia and Maryland), city income tax (DC), local income tax (Maryland counties), personal property tax (Virginia counties), sales tax, and meals (restaurant) tax, among others. The extent to which the total tax burden may be higher in a COLA area than in the DC area is covered by the adjustment factor we add to the price index for each COLA area pursuant to the *Caraballo* settlement agreement.

Rate Preservation

Two commenters believed it to be a breach of contract for the COLA rate to be reduced from the 25 percent rate in effect when they accepted positions in Alaska. As noted previously, 5 U.S.C. 5941 requires that nonforeign area COLAs be based on differences in living costs between the allowance areas and the DC area. These differences vary over time, and we must adjust rates accordingly. We have not represented the COLAs as being non-changing, although litigation and legislation have barred reductions in the past. With the settlement of the *Caraballo* litigation, there is no longer a bar on reducing COLA rates. Because our surveys indicate that living costs in the Alaska survey areas no longer support a COLA rate of 25 percent, we must reduce the COLAs for Anchorage, Fairbanks, and Juneau in accordance with law.

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 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.

Michael W. Hager,

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. In § 591.207, revise paragraphs (a), (b), and (c) to read as follows:

§ 591.207 Which areas are COLA areas?

* * * * *

(a) City of Anchorage, AK, and 80-kilometer (50-mile) radius by shortest route using paved roads when available, as measured from the Federal courthouse to the official duty station;

(b) City of Fairbanks, AK, and 80-kilometer (50-mile) radius by shortest route using paved roads when available, as measured from the Federal courthouse to the official duty station;

(c) City of Juneau, AK, and 80-kilometer (50-mile) radius by shortest route using paved roads when available, as measured from the Federal courthouse to the official duty station;

* * * * *

■ 3. 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
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

Geographic coverage	Allowance rate (percent)
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	13
U.S. Virgin Islands	25

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 248

[FDMS 2007–0008]

RIN 0584–AD74

WIC Farmers' Market Nutrition Program (FMNP): Nondiscretionary Provisions of Public Law 108–265, the Child Nutrition and WIC Reauthorization Act of 2004

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends the WIC Farmers' Market Nutrition Program (FMNP) regulations to codify three FMNP nondiscretionary provisions mandated in the Child Nutrition and WIC Reauthorization Act of 2004. The three nondiscretionary provisions include the option to authorize roadside stands, a reduction in the required amount of State matching funds, and an increase in the maximum Federal benefit level. These changes are intended to increase State agency flexibility in managing the Program. The first two provisions became effective on October 1, 2004, while the increased maximum Federal FMNP benefit level was effective as of June 30, 2004.

The provisions set forth in this rulemaking are nondiscretionary, i.e., the Department has not exercised any authority to interpret the statutory provisions beyond the language that is specifically provided in the legislation. However, the Department believes that at least one of the provisions in this rulemaking may generate additional questions or comments concerning its implementation. Therefore, the rule is being issued as an interim final rule, to afford the public the opportunity to comment on the possible implications of the provisions contained herein.

DATES: This rule will become effective on December 3, 2008.

Comment Date: To be considered, comments on this interim rule must be postmarked on or before January 2, 2009.

ADDRESSES: The Food and Nutrition Service (FNS) invites interested persons to submit comments on this interim final rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link under ''How to Use This Site''. Go to ''More Search Options'' for alternative search methods, including searching by agency, viewing documents with an open comment period, or searching by document type. To make comments on this interim final rule, enter ''WIC Farmers' Market Nutrition Program (FMNP): Nondiscretionary Provisions of Public Law 108–265, the Child Nutrition and WIC Reauthorization Act of 2004'' or ''FDMS 2007–0008'' under ''Search documents''; click ''go'' and then use the features available on the left side of the results page to narrow your results. Under the document listing, click on ''Send a comment or submission.''
- *Mail:* Send comments to Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305–2746.

Comments submitted in response to this interim rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identities of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via *http://www.regulations.gov*. Information regarding the interim rule will be available on the FNS Web site at *http://www.fns.usda.gov/wic*.

FOR FURTHER INFORMATION CONTACT: Debra R. Whitford, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, USDA/FNS 3101 Park Center Drive, Room 529, Alexandria, VA 22302 or at (703) 305–2746 during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Procedural Matters

A. Executive Order 12866

This interim final rule has been determined to be significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

B. Regulatory Impact Analysis

A Regulatory Impact Analysis (RIA) was developed for this interim final rule. It follows this regulation as an Appendix. The conclusions of this analysis are summarized below.

Need for Action. The interim final rule amends the FMNP regulations to implement three nondiscretionary provisions mandated in Public Law 108–265, the Child Nutrition and WIC Reauthorization Act of 2004. The three provisions, which give State agencies the option to authorize roadside stands, reduce the required amount of State matching funds, and increase the maximum Federal benefit level. These provisions became effective in fiscal year 2005.

Benefits. The benefit of this interim final rule is to provide State agencies with added flexibility in operating the FMNP.

Costs. The provisions in this interim final rule are not expected to increase significantly the administrative burden to the Department or to State agencies, nor will they affect overall program costs since the FMNP is funded by an annual appropriation.

C. Regulatory Flexibility Act

This interim final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Nancy Montanez Johner, Under Secretary, Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant impact on a substantial number of small entities. In addition, this interim final rule provides State and local agencies with greater flexibility in operating the