

# Proposed Rules

Federal Register

Vol. 65, No. 58

Friday, March 24, 2000

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 531

RIN 3206-AI81

### Locality-Based Comparability Payments

**AGENCY:** Office of Personnel Management.

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

**SUMMARY:** The Office of Personnel Management is issuing proposed regulations to clarify and redefine the limitations on locality rates of pay for categories of non-General Schedule employees approved by the President's Pay Agent to receive locality-based comparability payments. This proposed change was prompted by a recent Executive order that delegated the President's authority to establish such limitations to the President's Pay Agent. The proposed regulations would ensure that all employees receiving locality payments are treated consistently.

**DATES:** Comments must be received on or before May 23, 2000.

**ADDRESSES:** Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415-8200 (FAX: (202) 606-0824 or email: [payleave@opm.gov](mailto:payleave@opm.gov)).

**FOR FURTHER INFORMATION CONTACT:** Vincent Donahue, (202) 606-2858, FAX: (202) 606-0824, or email: [payleave@opm.gov](mailto:payleave@opm.gov).

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management (OPM) proposes to revise the locality pay regulations in subpart F of part 531 of title 5, Code of Federal Regulations, to clarify and redefine the limitations on locality rates of pay for categories of non-General Schedule employees approved by the President's Pay Agent to receive locality payments. Section 8

of Executive Order 13106 of December 7, 1998, delegated the President's authority under section 5304(g) of title 5, United States Code, to determine such limitations to the President's Pay Agent. To provide consistent treatment between General Schedule (GS) and non-GS employees receiving locality payments, OPM proposes to provide that (1) non-GS positions whose maximum scheduled annual rate of pay is less than or equal to the maximum payable scheduled annual rate of pay for GS-15 will be subject to a locality pay cap equal to the rate for level IV of the Executive Schedule, and (2) non-GS positions whose maximum scheduled annual rate of pay exceeds the maximum payable scheduled annual rate of pay for GS-15, but is not more than the rate for level IV of the Executive Schedule, will be subject to a locality pay cap equal to the rate for level III of the Executive Schedule. (See the definition of *scheduled annual rate of pay* in 5 CFR 531.602, as revised in these proposed regulations.)

### Background

Locality-based comparability payments are authorized under 5 U.S.C. 5304. By law, locality payments automatically apply to General Schedule employees. The maximum rate of basic pay (excluding locality payments) for GS employees is the rate for GS-15, step 10, subject to a cap linked to the rate of pay for level V of the Executive Schedule. (See 5 U.S.C. 5303(f).) GS rates of basic pay adjusted by locality payments are capped at the rate of pay for level IV of the Executive Schedule. (See 5 U.S.C. 5304(g)(1).)

The locality pay law provides that the President may extend locality payments to various groups outside the GS pay system, such as members of the Senior Executive Service (SES), administrative law judges (ALJs), and other groups for which basic pay is limited to no more than the rate of pay for level IV of the Executive Schedule. (See 5 U.S.C. 5304(h).) Executive Order 12883 of November 29, 1993, provided that the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget and the Office of Personnel Management) may act for the President in exercising the authority to extend locality payments to such non-GS groups.

Section 5304(g) of title 5, United States Code, provides that locality rates approved for certain categories of non-GS employees specified in 5 U.S.C. 5304(h)(1)(A)-(E), including members of the SES and ALJs, are capped at the rate for level III of the Executive Schedule. Section 5304(g) provides that a level III locality pay cap applies to "any positions under subsection (h)(1)(F) which the President may determine." Subsection (h)(1)(F) is a catch-all category of non-GS positions to which locality pay may be extended. This catch-all category includes Executive agency positions not otherwise listed in the law whose rates of basic pay are limited to not more than the rate for level IV of the Executive Schedule. If the President determines that a level III cap does not apply to a particular category of non-GS positions, the locality pay cap for those positions is automatically set at level IV of the Executive Schedule (*i.e.*, the locality pay cap for GS employees). (See 5 U.S.C. 5304(g)(1).)

Since the inception of locality pay in January 1994, the President's Pay Agent has approved locality pay for a number of non-GS categories of positions under its delegated authority. However, Executive Order 12883 did not delegate to the Pay Agent the President's authority to determine whether the level IV or level III locality pay cap should apply to any group of non-GS positions under 5 U.S.C. 5304(h)(1)(F) to whom locality pay is extended. Locality pay extension decisions for these positions were interpreted as automatically carrying a level III cap. (See 5 CFR 531.604(c).) Section 8 of Executive Order 13106 of December 7, 1998, has now delegated to the Pay Agent the President's authority to determine when the level III cap should apply to such non-GS employees.

### Proposed Regulations

The proposed regulations provide a rule for determining the locality pay cap for non-GS positions for which the President's Pay Agent approves the extension of locality payments. We propose to amend 5 CFR 531.604 to clarify that a locality rate of pay may not exceed the rate for level III of the Executive Schedule for categories of positions specified in 5 U.S.C. 5304(h)(1)(A)-(E) (*e.g.*, members of the SES and ALJs). The proposed revision of

§ 531.604 also provides that, for categories of non-GS employees under 5 U.S.C. 5304(h)(1)(F), locality rates of pay may not exceed (1) the rate for level IV of the Executive Schedule, if the maximum scheduled annual rate of pay for such positions is less than or equal to the maximum payable scheduled annual rate of pay for GS-15, or (2) the rate for level III of the Executive Schedule, if the maximum scheduled annual rate of pay for such positions exceeds the maximum payable scheduled annual rate of pay for GS-15, but is not more than the rate for level IV of the Executive Schedule. (See the definition of *scheduled annual rate of pay* in 5 CFR 531.602, as revised in these proposed regulations.)

This proposed rule would fulfill the original intent of the locality pay law by not automatically providing a level III cap on locality payments for all groups of non-GS employees. This change would also provide for more consistent and equitable treatment of GS and non-GS employees receiving locality payments. For example, non-GS employees with a maximum scheduled annual rate of pay that is no higher than the rate of basic pay for GS-15, step 10, would have the same locality pay cap as GS employees.

The proposed regulations include pay protection for any employee who otherwise would suffer a reduction in his or her locality rate of pay under the proposed locality pay cap provisions. Although no employee would suffer an immediate reduction in pay, it is possible that the locality pay cap for a group of non-GS employees could be reduced from level III to level IV of the Executive Schedule as GS rates of basic pay increase. This could occur if the rate of basic pay for GS-15, step 10, becomes equal to or exceeds the maximum scheduled annual rate of pay for a non-GS group. To prevent reductions in pay that would otherwise occur, the regulations cap an affected employee's locality rate at the higher of (1) his or her locality rate on the day before the scheduled annual rate of pay for GS-15, step 10, becomes equal to or exceeds the maximum scheduled annual rate of pay for the group of non-GS employees or (2) the rate for level IV of the Executive Schedule. This means that the employee's locality rate would be frozen until it is exceeded by the rate for level IV of the Executive Schedule.

The proposed regulations exclude experts and consultants appointed under 5 U.S.C. 3109 from the locality pay limitations. Unless otherwise authorized by law, the aggregate pay (including basic pay, locality pay, and premium pay) for experts and

consultants appointed under 5 U.S.C. 3109 may not exceed the daily rate for GS-15, step 10 (excluding locality pay or any other additional pay). (See 5 CFR 304.105.)

The proposed regulations also clarify the definition of *employee* in § 531.602 to include positions in the Federal Bureau of Investigation (FBI) and Drug Enforcement Administration (DEA) SES under 5 U.S.C. 5304(h)(1)(C) and other non-GS employee categories under § 5304(h)(1)(F) for which the President's Pay Agent has authorized locality payments. The regulations also amend paragraph (4) in the definition of *scheduled annual rate of pay* in § 531.602 to include the rates of basic pay for employees in the FBI and DEA SES and other categories of non-GS positions for which the Pay Agent has authorized locality pay. The proposed regulations clarify that the scheduled annual rate of pay for such employees must exclude any locality-based pay adjustments, special basic pay adjustments analogous to special salary rates established under 5 U.S.C. 5305, or other additional pay of any kind.

This rule has been reviewed and approved by the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget and the Office of Personnel Management).

#### E.O. 12866, Regulatory Review

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

#### Regulatory Flexibility Act

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

#### List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages, Office of Personnel Management.

**Janice R. Lachance,**  
*Director.*

Accordingly, OPM is proposing to amend part 531 of title 5 of the Code of Federal Regulations as follows:

#### PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 is revised to read as follows:

**Authority:** 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103-89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101-509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102-378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336; Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682; and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224.

Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101-509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

#### Subpart F—Locality-Based Comparability Payments

2. In § 531.602, paragraph (2) of the definition of *employee* and paragraph (4) of the definition of *scheduled annual rate of pay* are revised to read as follows:

#### § 531.602 Definitions

\* \* \* \* \*

*Employee* \* \* \*

(2) An employee in a category of positions described in 5 U.S.C. 5304(h)(1)(A)–(F) for which the President (or designee) has authorized locality-based comparability payments under 5 U.S.C. 5304(h)(2) and whose official duty station is located in a locality pay area.

\* \* \* \* \*

*Scheduled annual rate of pay* \* \* \*

(4) For an employee in a category of positions described in 5 U.S.C. 5304(h)(1)(A)–(F) for which the President (or designee) has authorized locality-based comparability payments under 5 U.S.C. 5304(h)(2), the rate of basic pay fixed by law or administrative action, exclusive of any locality-based adjustments (including adjustments equivalent to local special rate adjustments under 5 U.S.C. 5305) or other additional pay of any kind.

3. In § 531.604, paragraph (c) is revised and a new paragraph (d) is added to read as follows:

#### § 531.604 Determining locality rates of pay.

\* \* \* \* \*

(c)(1) Locality rates of pay approved by the President (or designee) for employees in a category of positions described in 5 U.S.C. 5304(h)(1)(A)–(E) may not exceed the rate for level III of the Executive Schedule.

(2) Locality rates of pay approved by the President (or designee) for employees in a category of positions described in 5 U.S.C. 5304(h)(1)(F) may not exceed—

(i) The rate for level IV of the Executive Schedule, when the maximum scheduled annual rate of pay (excluding any retained rate) for such positions is less than or equal to the maximum payable scheduled annual rate of pay for GS-15; or

(ii) The rate for level III of the Executive Schedule, when the maximum scheduled annual rate of pay (excluding any retained rate) for such positions exceeds the maximum payable scheduled annual rate of pay for GS-15, but is not more than the rate for level IV of the Executive Schedule.

(3) If application of paragraph (c)(2) of this section would otherwise reduce an employee's existing locality rate of pay, the employee's locality rate of pay will be capped at the higher of—

(i) The amount of his or her locality rate of pay on the day before paragraph (c)(2) of this section is applied, or

(ii) The rate for level IV of the Executive Schedule.

(d) Paragraph (c) of this section does not apply to experts and consultants appointed under 5 U.S.C. 3109 if the pay for those experts and consultants is limited to the highest rate payable under 5 U.S.C. 5332 (*i.e.*, the unadjusted maximum GS-15 rate). Pay limitations for such experts and consultants must be determined in accordance with § 304.105 of this chapter.

[FR Doc. 00-7256 Filed 3-23-00; 8:45 am]

BILLING CODE 6325-01-U

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 77

[Docket No. 99-038-2]

#### Tuberculosis in Cattle, Bison, Goats, and Captive Cervids; State and Zone Designations; Correction

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule; correction.

**SUMMARY:** We are correcting an error in a proposed rule that would amend the bovine tuberculosis regulations. This proposed rule was published in the *Federal Register* on March 7, 2000 (65 FR 11912-11940, Docket No. 99-038-1).

**DATES:** We invite you to comment on the proposed rule (Docket No. 99-038-1), as corrected by this document. We will consider all comments that we receive by April 21, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 99-038-

1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 99-038-1.

You may read any comments that we receive on Docket No. 99-038-1 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the *Federal Register*, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Joseph Van Tiem, Senior Staff Veterinarian, VS, APHIS, USDA, 4700 River Road Unit 43, Riverdale, MD 20737-1231; (301) 734-7716.

**SUPPLEMENTARY INFORMATION:** We published in the *Federal Register* on March 7, 2000, (65 FR 11912-11940, Docket No. 99-038-1), a proposed rule to amend the bovine tuberculosis regulations (9 CFR part 77).

There are several errors in that document. The first is in proposed § 77.10(b), which sets forth the requirements for the interstate movement of certain cattle and bison from States and zones listed as modified accredited advanced with regard to tuberculosis. It provides that if cattle or bison to be moved interstate from a modified accredited advanced State or zone are steers or spayed heifers, or are officially identified sexually intact heifers to be moved to an approved feedlot, the animals may be moved interstate without restriction.

However, as explained in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, any such animals moved interstate, *if they are not individually identified by a registration name and number, would be required to be officially identified.*

The other errors are in subpart C, "Captive Cervids," in the lists of States and zones with regard to tuberculosis risk classifications for captive cervids. These classifications appear in § 77.22(a) and (b) for accredited free States and zones, § 77.24(a) and (b) for modified accredited advanced States and zones, § 77.26(a) and (b) for

modified accredited States and zones, § 77.28(a) and (b) for accreditation preparatory States and zones, and § 77.30(a) and (b) for nonaccredited States and zones. As set forth in the proposed rule, all States and zones are classified as either modified accredited or accreditation preparatory, and that is not correct. As explained in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, only some States and zones should be classified as modified accredited or accreditation preparatory for captive cervids. The remainder should be classified as accredited-free or modified accredited advanced.

This document corrects proposed §§ 77.10(b), 77.22(a) and (b), 77.24(a), 77.26(a) and (b), and 77.28(a) as follows so that they are consistent with the explanations in the **SUPPLEMENTARY INFORMATION** section of the proposed rule.

#### PART 77—[CORRECTED]

1. On page 11928, column 1, § 77.10(b) is corrected to read as follows:

##### § 77.10 Interstate movement from modified accredited advanced States and zones.

\* \* \* \* \*

(b) Cattle or bison may be moved interstate if they are steers or spayed heifers, or are officially identified sexually intact heifers moved to an approved feedlot. All cattle and bison so moved that are not individually identified by a registration name and number must be officially identified.

\* \* \* \* \*

2. On page 11931, column 3, § 77.22(a) and (b) are corrected to read as follows:

##### § 77.22 Accredited-free States or zones.

(a) The following are accredited-free States: Alaska, Colorado, Hawaii, Idaho, Indiana, Louisiana, Maine, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New York, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, and Wyoming.

(b) The following are accredited-free zones: That part of Michigan other than the zone described in § 77.26(b).

\* \* \* \* \*

3. On page 11932, column 1, § 77.24(a) is corrected to read as follows:

##### § 77.24 Modified accredited advanced States or zones.

(a) The following are modified accredited advanced States: Arizona, California, Florida, Georgia, Kansas, Kentucky, Mississippi, Missouri, New