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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 595

RIN 3206-AJ96

Physicians' Comparability Allowances

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations on the physicians' comparability allowance program. We have rewritten these regulations in a question-and-answer format to improve reader understanding and administration of this program.

EFFECTIVE DATE: June 16, 2004.

FOR FURTHER INFORMATION CONTACT: Vicki Draper by telephone at (202) 606-2858; by fax at (202) 606-0824; or by email at *pay-performance-policy@opm.gov*.

SUPPLEMENTARY INFORMATION: On July 29, 2003, the Office of Personnel Management (OPM) issued proposed regulations to revise 5 CFR part 595, Physicians' Comparability Allowances. (See 68 FR 44489.) The 60-day comment period for the proposed regulations ended on September 29, 2003. We received comments from one Federal agency. The agency suggested that we add the sentence "A physician who is employed on less than a half-time or intermittent basis is excluded from the physicians' comparability allowance program" to the regulation. We agree and have added this sentence to 5 CFR 595.105(d).

E.O. 12866, Regulatory 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 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 595

Government employees, Health professions, Wages.

Office of Personnel Management.

Kay Coles James,
Director.

■ Accordingly, OPM is amending part 595 of title 5 of the Code of Federal Regulations as follows:

PART 595—PHYSICIANS' COMPARABILITY ALLOWANCES

■ 1. The authority citation for part 595 continues to read as follows:

Authority: 5 U.S.C. 5948; E.O. 12109, 44 FR 1067, Jan. 3, 1979.

■ 2. Section 595.101 is revised to read as follows:

§ 595.101 Purpose.

Section 5948 of title 5, United States Code, authorizes the payment of allowances to certain eligible Federal physicians who enter into service agreements with their agencies. These allowances are paid only to categories of physicians for which the agency is experiencing recruitment and retention problems and are fixed at the minimum amounts necessary to deal with such problems. The President has delegated regulatory responsibility for this program to the Director of OPM, acting in consultation with the Office of Management and Budget. This part contains the regulations, criteria and conditions which the Director of OPM, in consultation with the Director of the Office of Management and Budget, has prescribed for the administration of the physicians' comparability allowance program. This part supplements and implements 5 U.S.C. 5948 and should be read together with that section of law.

■ 3. In § 595.102, the section heading and paragraphs (a) and (b) are revised to read as follows:

§ 595.102 Who is covered by this program?

(a) This program covers individuals employed as physicians under the

Federal pay systems listed in 5 U.S.C. 5948(g)(1), except as provided in 5 U.S.C. 5948(b). For the purposes of this part, an individual is *employed as a physician* only if he or she is serving in a position the duties and responsibilities of which could not be satisfactorily performed by an incumbent who is not a physician.

(b) Section 5948(b) of title 5, United States Code, prohibits the payment of physicians' comparability allowances to certain physicians, including physicians who are reemployed annuitants. For the purpose of applying this prohibition, *reemployed annuitant* means an individual who is receiving or has title to and has applied for an annuity under any retirement program of the Government of the United States, or the government of the District of Columbia, on the basis of service as a civilian employee.

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■ 4. In § 595.103, the section heading and paragraph (a) are revised to read as follows:

§ 595.103 What requirements must agencies establish for determining which physician positions are covered?

(a) The head of each agency must determine categories of physician positions for which there is a significant recruitment and retention problem, and physicians' comparability allowances may be paid only to physicians serving in positions in such categories.

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■ 5. In § 595.104, the section heading and the introductory text are revised to read as follows:

§ 595.104 What criteria are used to identify a recruitment and retention problem?

The head of each agency may determine that a significant recruitment and retention problem exists for each category of physician position established under § 595.103 only if the following conditions are met with respect to the category:

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■ 6. In § 595.105, the section heading and paragraphs (a), (b), (d), and (e) are revised to read as follows:

§ 595.105 What criteria must be used to determine the amount of a physicians' comparability allowance?

(a) The amount of the comparability allowance payable for each category of

physician positions established under § 595.103 must be the minimum amount necessary to deal with the recruitment and retention problem identified under § 595.104 for that category of positions. In determining this amount, the agency head must consider the relative earnings, responsibilities, expenses, workload, working conditions, conditions of employment, and personnel benefits for physicians in each category and for comparable physicians inside and outside the Federal Government.

(b) Agencies may not pay a physicians' comparability allowance in excess of \$14,000 annually to a physician with 24 months or less of service as a Government physician. Agencies may not pay a physicians' comparability allowance in excess of \$30,000 annually to a physician with more than 24 months of service as a Government physician.

* * * * *

(d) A physician who is employed on a regularly scheduled part-time basis of half-time or more is eligible to receive a physicians' comparability allowance, but any such allowance must be prorated according to the proportion of the physicians' work schedule to full-time employment. A physician who is employed on less than a half-time or intermittent basis is excluded from the physicians' comparability allowance program.

(e) A physician who is serving with the Government under a loan repayment program must have the amount of any loan being repaid deducted from any physicians' comparability allowance for which he or she is eligible and may receive only that portion of such allowance which exceeds the amount of the loan being repaid during the period of employment required by the service agreement under the student loan repayment program.

■ 7. Section 595.106 is revised to read as follows:

§ 595.106 What termination and refund provisions are required?

Each service agreement entered into by an agency and a physician under the comparability allowance program must prescribe the terms under which the agreement may be terminated and the amount of allowance, if any, required to be refunded by the physician for each reason for termination. In the case of each service agreement covering a period of service of more than 1 year, the service agreement must include a provision that, if the physician completes more than 1 year of service pursuant to the agreement, but fails to complete the full period of service

specified in the agreement either voluntarily or because of misconduct by the physician, the physician must refund the amount of allowance he or she has received under the agreement for the 26 weeks of service immediately preceding the termination (or for a longer period, if specified in the agreement).

■ 8. In § 595.107, the section heading and paragraphs (b) and (c) are revised to read as follows:

§ 595.107 What are the requirements for implementing a physicians' comparability allowance program?

* * * * *

(b) The agency must submit to the Office of Management and Budget a complete description of its plan for implementing the physicians' comparability allowance program, including the following:

(1) An identification of the categories of physician positions the agency has established under § 595.103, and of the basis for such categories;

(2) An explanation of the determination that a recruitment and retention problem exists for each such category, in accordance with the criteria in § 595.104; and

(3) An explanation of the basis for the amount of comparability allowance determined necessary for each category of physician position under § 595.105.

(c) The Office of Management and Budget (OMB) will review each agency's plan for implementing the physicians' comparability allowance program and determine whether the plan is consistent with 5 U.S.C. 5948 and the requirements of this part. The Office of Management and Budget will advise the agency within 45 calendar days after receipt of the plan as to whether the plan is consistent with 5 U.S.C. 5948 and this part or what changes need to be made.

§ 595.108 [Removed]

■ 9. Section 595.108 is removed.

[FR Doc. 04-11015 Filed 5-14-04; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Adjustment of Appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 2004 Tariff-Rate Quota Year

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document sets forth the revised appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 2004 quota year reflecting the cumulative annual transfers from Appendix 1 to Appendix 2 for certain dairy product import licenses permanently surrendered by licensees or revoked by the Licensing Authority.

EFFECTIVE DATE: May 17, 2004.

FOR FURTHER INFORMATION CONTACT:

Michael I. Hankin, Dairy Import Quota Manager, Import Policies and Programs Division, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250-1021 or telephone at (202) 720-9439.

SUPPLEMENTARY INFORMATION:

The Foreign Agricultural Service, under a delegation of authority from the Secretary of Agriculture, administers the Dairy Tariff-Rate Import Quota Licensing Regulation codified at 7 CFR 6.20-6.37 that provides for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQs) as set forth in the Harmonized Tariff Schedule of the United States. These dairy articles may only be entered into the United States at the low-tier tariff by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, issues these licenses and, in conjunction with the U.S. Customs Service, monitors their use.

The regulation at 7 CFR 6.34(a) states: "Whenever a historical license (Appendix 1) is not issued to an applicant pursuant to the provisions of § 6.23, is permanently surrendered or is revoked by the Licensing Authority, the amount of such license will be transferred to Appendix 2." Section 6.34(b) provides that the cumulative annual transfers will be published in the **Federal Register**. Accordingly, this document sets forth the revised Appendices for the 2004 tariff-rate quota year.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy products, Imports, Reporting and record keeping requirements.