

# Proposed Rules

Federal Register

Vol. 73, No. 167

Wednesday, August 27, 2008

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 Parts 531 and 550

RIN 3206-AL61

#### Determining Rate of Basic Pay; Collection by Offset From Indebted Government Employees

**AGENCY:** U.S. Office of Personnel Management.

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

**SUMMARY:** The U.S. Office of Personnel Management is issuing proposed regulations to conform with provisions of the National Defense Authorization Act for Fiscal Year 2008. The proposed regulations revise the rules regarding setting pay for certain employees who move from nonappropriated fund instrumentality (NAFI) positions to General Schedule positions. Also, the proposed regulations allow certain NAFIs to collect debts owed to them by Federal employees via salary offset and allow Federal agencies to collect debts by offsetting salary payments of certain NAFI employees.

**DATES:** Comments must be received on or before October 27, 2008.

**ADDRESSES:** You may submit comments, identified by RIN "3206-AL61," using any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*E-mail:* [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov).

*Fax:* (202) 606-0824.

*Mail:* Jerome D. Mikowicz, Deputy Associate Director for Pay and Leave Administration, Room 7H31, 1900 E Street, NW., Washington, DC 20415-8200.

#### FOR FURTHER INFORMATION CONTACT:

David Barash by telephone at (202) 606-2858; by fax at (202) 606-0824; or by e-mail at [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov).

**SUPPLEMENTARY INFORMATION:** The U.S. Office of Personnel Management (OPM)

is issuing proposed regulations to revise the rules regarding setting pay for certain employees who move from nonappropriated fund instrumentality (NAFI) positions to General Schedule (GS) positions. Also, the proposed regulations allow certain NAFIs to collect debts owed to them by Federal employees via salary offset and allow Federal agencies to collect debts by offsetting salary payments of certain NAFI employees. The proposed regulations conform with sections 652 and 1114 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181, January 28, 2008), hereafter referred to as "the Act." These amendments became effective on January 28, 2008.

#### Pay Setting Upon Movement From a NAFI to a GS Position

Section 1114 of the Act amends 5 U.S.C. 5334(f) to provide that a NAFI employee in the Department of Defense (DOD) or the United States Coast Guard (USCG) (as described in 5 U.S.C. 2105(c)) who moves voluntarily to a GS position in DOD or USCG, respectively, without a break in service of more than 3 days may (at the employing agency's discretion) have the GS rate of basic pay set at the lowest step rate of the applicable GS grade that equals or exceeds the former NAFI rate. Under previous law, the employee's GS rate of basic pay could not exceed the formerly applicable NAFI rate in such voluntary movements; thus, setting the rate at a GS step for these former NAFI employees generally resulted in a reduction in pay. The amendment permits DOD and USCG to set pay at the next higher step rate, avoiding a pay reduction.

Therefore, we propose revising the regulations at 5 CFR 531.216 governing setting pay when a NAFI employee in DOD or USCG moves to a GS position in DOD or USCG, respectively, without a break in service of more than 3 days, to conform with changes made by the Act.

Paragraph (c)(1) in § 531.216 currently states that when an employee covered under this section moves voluntarily, the agency may set the employee's initial payable rate of basic pay at any step rate in the highest applicable rate range currently in effect for the employee's GS position of record and official worksite which does not exceed the employee's NAFI highest previous

rate of pay, except as provided in paragraph (c)(2) or (3) of § 531.216. We propose revising this provision to allow DOD and USCG to set the employee's initial payable rate of basic pay at the lowest step of the applicable GS grade that equals or exceeds the NAFI highest previous rate, or at a lower step. We also propose clarifying that pay may not be set above the maximum (step 10) rate of the rate range.

We propose similar revisions in paragraph (c)(2) of § 531.216, which provides the rules for setting pay when a covered NAFI employee moves voluntarily and the highest applicable rate range would be different if the official worksite for the employee's GS position of record were located at the place where the employee was stationed while earning the NAFI highest previous rate.

Paragraph (d) of § 531.216 provides the rules for when a covered NAFI employee is moved involuntarily. Under paragraph (d)(1) of § 531.216, a covered employee who is moved involuntarily is entitled to an initial payable rate of basic pay at the lowest step rate of the grade that is equal to or greater than the employee's rate of basic pay in the NAFI position immediately before the move. Paragraph (d)(2) of § 531.216 currently states that an agency may set the initial payable rate of basic pay at a step rate within the highest applicable rate range for the employee's GS position of record and official worksite that does not exceed the employee's NAFI highest previous rate (consistent with the method prescribed in paragraphs (c)(1) and (2)) if that provides a higher rate of basic pay than the employee's entitlement under paragraph (d)(1). We propose revising paragraph (d)(1) of § 531.216 to clarify that, if the employee's former NAFI rate exceeds the range maximum, the agency must identify the maximum step rate (step 10) as the employee's maximum payable rate. We also propose revising paragraph (d)(2)(i) in § 531.216 so an agency may set the initial payable rate of basic pay at the lowest step rate within the highest applicable rate range for the employee's GS position of record and official worksite that equals or exceeds the employee's NAFI highest previous rate, or any lower step rate (consistent with the proposed revisions to paragraphs (c)(1) and (2)) if that provides a higher

rate of basic pay than the employee's entitlement under paragraph (d)(1).

We are also taking this opportunity to clarify certain provisions. Section 531.216 uses the phrases "without a change in employing agency" and "same agency" to refer to movements within DOD and within USCG. However, these phrases are inconsistent with the definition of *agency* in 5 CFR 531.203, which means (in part) an executive agency. For example, USCG is a component of the U.S. Department of Homeland Security (DHS) and is not an executive agency itself. The NAFI pay setting regulations at § 531.216 do not apply to a NAFI employee in the USCG who moves to a GS position within DHS, but outside of USCG. Therefore, we propose to clarify the regulations by replacing the phrases "without a change in employing agency", "different agency", and "same agency" in paragraphs (a), (c)(1) and (d)(1) of § 531.216 with more descriptive and accurate phrases such as, "from a NAFI position in the Department of Defense or the Coast Guard to a GS position in the Department of Defense or the Coast Guard, respectively".

#### Salary Offset

Section 652 of the Act provides that employees of a NAFI of DOD or USCG (as described in 5 U.S.C. 2105(c)) are covered by the salary offset law in 5 U.S.C. 5514. Section 5514 provides authority for collection of debts owed the Federal Government by offset of Federal employee salary payments. This amendment allows DOD and USCG NAIs to collect debts owed to them by Federal employees via salary offset. It also allows Federal agencies to collect debts by offsetting salary payments of DOD and USCG NAFI employees. Therefore, we are proposing to revise the regulations at 5 CFR 550.1103 to add "any nonappropriated fund instrumentality described in 5 U.S.C. 2105(c)" to the definition of *agency*.

In addition, we are proposing to revise the regulations at 5 CFR 550.1103 to change the name of the Postal Rate Commission to Postal Regulatory Commission in the definition of *agency* as a result of section 604 of the Postal Accountability and Enhancement Act (Pub. L. 109-435, December 20, 2006), which amended 5 U.S.C. 5514(a)(5)(B), to reflect the Commission's change in name. We also propose adding "If an agency under this definition is a component of an agency, the broader definition of *agency* may be used in applying the provisions of 5 U.S.C. 5514(b) (concerning the authority to prescribe regulations)." This provision makes clear, for example, that DOD may

issue salary offset regulations that cover the military departments and DOD NAIs (as described in 5 U.S.C. 2105(c)), even though each of those DOD components is itself an *agency* under the definition of *agency* in proposed § 550.1103. Since DOD is an executive department, it is a covered agency and can issue salary offset regulations that cover employees in every part of DOD, including employees in any DOD component that has separate status as an agency.

#### 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 will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

#### List of Subjects in 5 CFR Parts 531 and 550

Administrative practice and procedure; Claims; Government employees; Law enforcement officers; Wages.

Office of Personnel Management.

**Michael W. Hager,**

*Acting Director.*

Accordingly, OPM is proposing to amend 5 CFR parts 531 and 550 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), 5305, 5333, 5334(a) and (b), and 7701(b)(2); Subpart D also issued under 5 U.S.C. 5335 and 7701(b)(2); Subpart E also issued under 5 U.S.C. 5336; Subpart F also issued under 5 U.S.C. 5304 and 5305; and 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 B—Determining Rate of Basic Pay

2. In § 531.216, paragraphs (a), (c)(1), (c)(2)(i), (c)(2)(ii), (d)(1), and (d)(2)(i) are revised to read as follows:

#### § 531.216 Setting pay when an employee moves from a Department of Defense or Coast Guard nonappropriated fund instrumentality.

(a) *General.* This section governs the setting of pay for an employee who moves to a GS position in the

Department of Defense or the Coast Guard from a position in a nonappropriated fund instrumentality (NAFI) (as described in 5 U.S.C. 2105(c)) of the Department of Defense or the Coast Guard, respectively, without a break in service of more than 3 days. If an employee moves from a NAFI position to a GS position with a break of more than 3 days or moves from a NAFI position in the Department of Defense or the Coast Guard to a GS position outside of the Department of Defense or the Coast Guard, respectively, the employee has no special conversion rights and this section does not apply.

\* \* \* \* \*

(c) \* \* \* (1) For a Department of Defense or Coast Guard employee who moves voluntarily, without a break in service of more than 3 days, from a NAFI position in the Department of Defense or the Coast Guard to a GS position in the Department of Defense or the Coast Guard, respectively, the agency may set the employee's initial payable rate of basic pay at the lowest step rate in the highest applicable rate range currently in effect for the employee's GS position of record and official worksite which equals or exceeds the employee's NAFI highest previous rate of pay, or any lower step rate, except as provided in paragraph (c)(2) or (3) of this section. The employee's initial payable rate of basic pay may not exceed the maximum step rate (step 10).

(2) \* \* \*  
(i) Compare the NAFI highest previous rate to the highest applicable rate range currently in effect in the location where the employee was stationed while earning that rate. The highest applicable rate range is determined based on the pay schedules that would be applicable to the employee's current GS position of record if the employee were stationed in that location. Identify the lowest step rate in the highest applicable rate range that was equal to or exceeded the NAFI highest previous rate. If the NAFI highest previous rate is less than the range minimum, identify the minimum step rate (step 1). If the NAFI highest previous rate exceeds the range maximum, identify the maximum step rate (step 10).

(ii) Identify the step rate in the highest applicable rate range for the employee's current official worksite and position of record that corresponds to the step rate derived under paragraph (c)(2)(i) of this section. That corresponding rate is the maximum payable rate at which the agency may set the employee's pay

under this section, except as provided by paragraph (c)(3) of this section. The agency may set the employee's rate of basic pay at any step rate that does not exceed that maximum payable rate.

\* \* \* \* \*

(d) \* \* \* (1) For a Department of Defense or Coast Guard employee who is moved involuntarily (as defined in paragraph (d)(3) of this section), without a break in service of more than 3 days, from a NAFI position in the Department of Defense or the Coast Guard to a GS position with substantially the same duties in the Department of Defense or the Coast Guard, respectively, the employee is entitled to an initial payable rate of basic pay at the lowest step rate of the grade that is equal to or greater than the employee's rate of basic pay in the NAFI position immediately before the move. If the employee's former NAFI rate exceeds the range maximum, identify the maximum step rate (step 10).

(2) \* \* \*

(i) The lowest step rate within the highest applicable rate range for the employee's GS position of record and official worksite that equals or exceeds the employee's NAFI highest previous rate, or any lower step rate (consistent with the method prescribed in paragraphs (c)(1) and (2) of this section);

\* \* \* \* \*

## PART 550—PAY ADMINISTRATION (GENERAL)

### Subpart K—Collection by Offset From Indebted Government Employees

3. The authority citation for subpart K of part 550 continues to read as follows:

**Authority:** 5 U.S.C. 5514; sec. 8(1) of E.O. 11609; redesignated in sec. 2–1 of E.O. 12107.

4. In § 550.1103, the definition of *agency* is revised to read as follows:

#### § 550.1103 Definitions.

\* \* \* \* \*

*Agency* means an executive department or agency; a military department; the United States Postal Service; the Postal Regulatory Commission; any nonappropriated fund instrumentality described in 5 U.S.C. 2105(c); the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government corporation. If an agency under this definition is a component of an agency, the broader definition of *agency* may be used in applying the provisions of 5 U.S.C.

5514(b) (concerning the authority to prescribe regulations).

\* \* \* \* \*

[FR Doc. E8–19819 Filed 8–26–08; 8:45 am]

BILLING CODE 6325–39–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS–2007–0152]

RIN 0579–AC82

### Importation of Grapes from Chile Under a Systems Approach

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the fruits and vegetables regulations to allow fresh table grapes from Chile to be imported into the continental United States under a systems approach. Currently, as a condition of entry, all table grapes from Chile must be fumigated with methyl bromide as a risk-mitigation measure for *Brevipalpus chilensis*. Under this proposal, we would allow a combination of risk-mitigation measures, or systems approach, to be employed in lieu of methyl bromide fumigation. The systems approach would provide an alternative to methyl bromide while continuing to provide protection against the introduction of quarantine pests into the United States.

**DATES:** We will consider all comments that we receive on or before October 27, 2008.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0152> to submit or view comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2007–0152, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0152.

*Reading Room:* You may read any comments that we receive on this docket 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.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alex Belano, Assistant Branch Chief, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–5333.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56 through 319.56–47, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

Currently, the importation of table grapes (*Vitis vinifera* L.) from Chile into the United States is authorized under § 319.56–4 of the regulations. Accordingly, Chilean table grapes are listed in the Plant Protection and Quarantine Fresh Fruits and Vegetables Import Manual, which may be viewed on the Internet at [http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/fv.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/fv.pdf), as a commodity approved for entry into the United States, subject to certain conditions.

The regulations in 7 CFR part 305, “Phytosanitary Treatments,” specify the treatment schedules that must be used on certain commodities prior to their importation or entry into the United States. Currently, in § 305.2 of these regulations, paragraph (i) identifies several different treatment schedules for use on table grapes from Chile as risk-mitigation measures for *Brevipalpus chilensis* mites and/or Mediterranean fruit fly (*Ceratitis capitata*, referred to below as Medfly), depending on the area of Chile from which the fruit originates. If the grapes originate from an area of Chile in which both pests are known to exist, the grapes must be treated with methyl bromide for *B. chilensis* followed by cold treatment for Medfly. If the table grapes originate from an area of Chile that the Animal and Plant Health Inspection Service (APHIS) has declared a pest-free area for Medfly in