

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 591

RIN 3206-AL07

#### Allowances and Differentials

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is issuing final regulations to increase the maximum annual uniform allowance rate from \$400 to \$800. When civilian Federal employees are required to wear a uniform in the performance of their duties, agencies must pay a uniform allowance or furnish a uniform.

**DATES:** The regulations are effective on May 29, 2007.

**FOR FURTHER INFORMATION CONTACT:** Kevin Kitchelt, 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:** On June 30, 2006, the Office of Personnel Management (OPM) issued proposed regulations (71 FR 37507) to increase the maximum annual uniform allowance rate. Under 5 U.S.C. 5901, when civilian Federal employees are required to wear a uniform in the performance of their duties, agencies must pay a uniform allowance or furnish a uniform. OPM proposed to increase the maximum annual uniform allowance rate from \$400 to \$500. The 60-day comment period ended on August 29, 2006. During the comment period, OPM received comments from nine individuals, two labor organizations, one agency, and one professional association. The comments are addressed in this final rule.

#### Increasing the Maximum Annual Uniform Allowance Rate

Under 5 U.S.C. 5902, OPM may, from time to time, adjust the maximum annual uniform allowance granted to employees for the cost of their uniforms. The rate has not been increased since 1991. On June 30, 2006, OPM issued proposed regulations in 5 CFR 591.103 to increase the maximum annual uniform allowance rate from \$400 to \$500. OPM's proposed increase was based on the Bureau of Labor Statistics' Producer Price Index—Commodities (Seasonally Adjusted), which showed an increase of 24 percent between January 1991 and January 2005. Most of the commenters supported OPM's proposal to increase the maximum annual uniform allowance rate but suggested that the rate needed to be increased to an amount higher than \$500. Two individuals objected to the proposed increase in the maximum annual uniform allowance rate.

The commenters identified specific categories of employees in uniforms (e.g., firefighters) that require protective clothing which must meet certain professional standards. The commenters noted the protective clothing is expensive because the quality of such clothing is continuously improving due to technological advancements in the materials (i.e., Nomex) used to make it. The professional association recommended an increase to \$800.

We agree that expensive specialized clothing may be required for certain categories of employees and should be considered in determining a maximum annual uniform allowance rate. Therefore, we are amending 5 CFR 591.103 to provide a maximum annual uniform allowance rate of \$800. Although agencies will now be permitted to pay an annual uniform allowance rate up to a maximum rate of \$800 a year, it is not anticipated or expected that every employee who is required to wear a uniform will receive the maximum rate of \$800 per year. Agencies are in the best position to identify and manage the specific uniform allowance needs of their employees.

We note that although OPM has sole authority to adjust the maximum annual uniform allowance granted to employees for maintaining uniforms (5 U.S.C. 5902 and 5 CFR 591.103), agencies have discretionary authority to

establish a higher *initial* maximum uniform allowance rate under 5 CFR 591.104. An agency must publish a notice in the **Federal Register** with a description and justification for establishing a higher *initial* maximum uniform allowance rate.

One labor organization recommended that OPM require agencies to provide uniforms when the safety of the employee is involved. We have not adopted this recommendation because OPM does not have the authority to implement such a requirement. Under 5 U.S.C. 5901(a), an agency must determine whether to furnish a uniform or pay a uniform allowance to its employees who are required to wear a uniform.

#### Agency Uniform Allowance Policy

An individual recommended that agencies be required to establish a policy for paying uniform allowances to ensure that uniforms are maintained appropriately and the allowance is used solely to maintain uniforms. Although we believe agencies have already established such policies in writing or in practice, as we adopt a new annual uniform allowance rate that is twice the amount of the previous rate, we agree OPM's regulations should make this requirement explicit. We have added a new paragraph (c) to 5 CFR 591.103 to require that any agency which provides a uniform allowance must establish policies to administer the uniform allowance program and such policies must contain uniform standards acceptable to the agency but we defer to agencies to develop specific provisions of the policy. At a minimum, OPM expects such policies will (1) identify the category of employees required to wear uniforms, (2) establish requirements for determining the annual uniform allowance rate based on the specific uniform needs of each category of employees, (3) require employees to provide evidence acceptable to the agency of the employee's purchase of one or more uniforms (e.g., receipts), and (4) require employees to obtain uniforms that meet standards acceptable to the agency. Agencies may use any standards acceptable to them to determine uniform appearance, and any other specialized uniform requirements such as safety requirements, if appropriate.

**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 591**

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management.

Linda M. Springer,  
Director.

■ Accordingly, OPM is amending 5 CFR part 591 as follows:

**PART 591—ALLOWANCES AND DIFFERENTIALS****Subpart A—Uniform Allowances**

■ 1. The authority citation for subpart A of part 591 continues to read as follows:

**Authority:** 5 U.S.C. 5903; E.O. 12748, 3 CFR 1991 Comp., p. 316. Source: 59 FR 43705, Aug. 25, 1994, unless otherwise noted.

■ 2. In § 591.103, paragraphs (a) and (b) are revised and a new paragraph (c) is added to read as follows:

**§ 591.103 Governmentwide maximum uniform allowance rate.**

\* \* \* \* \*

(a) Pay an allowance for a uniform not to exceed \$800 a year; or

(b) Furnish a uniform at a cost not to exceed \$800 a year.

(c) Any agency which provides a uniform allowance under paragraph (a) of this section must establish policies to administer the uniform allowance program, including uniform standards acceptable to the agency.

[FR Doc. E7-7959 Filed 4-25-07; 8:45 am]

BILLING CODE 6325-39-P

**DEPARTMENT OF AGRICULTURE****Cooperative State Research, Education, and Extension Service****7 CFR Part 3403**

RIN 0524-AA31

**Small Business Innovation Research Grants Program**

**AGENCY:** Cooperative State Research, Education, and Extension Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Cooperative State Research, Education, and Extension Service (CSREES) is revising the Small Business Innovation Research (SBIR) Grants Program Administrative Regulations to implement changes and be compliant with the Small Business Innovation Research Policy Directive (67 FR 60072, September 24, 2002).

**DATES:** This rule is effective April 26, 2007.

**FOR FURTHER INFORMATION CONTACT:** Dr. Deborah Sheely, Director, Integrated Programs, Competitive Programs Unit, Cooperative State Research, Education, and Extension Service, USDA, STOP 2241, 1400 Independence Avenue, SW., Washington, DC 20250-2241; Telephone: (202) 401-1924; E-mail: [dsheely@csrees.usda.gov](mailto:dsheely@csrees.usda.gov).

**SUPPLEMENTARY INFORMATION:****Background and Purpose**

On May 18, 2006, CSREES published a Proposed Rule (71 FR 28780, May 18, 2006) to revise the Small Business Innovation Research Grants Program Administrative Regulations. In the Proposed Rule, CSREES invited comments which were due to the Agency contact by June 19, 2006. We did not receive any comments. In section 3403.8, we have deleted reference to “the project period normally should not exceed six months” in anticipation of potential changes of a similar requirement in the SBA Policy Directive. Changes were made to sections 3403.7 and 3403.8 in accordance with the new application forms. In section 3404.11, “resubmission” has been added as one of the factors in the final decisions that will be made by USDA.

In 1982, Congress enacted the Small Business Innovation Development Act of 1982, Public Law 97-219 (15 U.S.C. 638), which established the Small Business Innovation Research (SBIR) Program. The statutory purpose of the SBIR Program is to strengthen the role of innovative small business concerns in Federally-funded research and research and development (R/R&D). The SBIR Program is a phased process, uniform throughout the Federal Government, of soliciting proposals and awarding funding agreements for R/R&D to meet stated agency needs or missions. To stimulate and foster scientific and technological innovation, including increasing commercialization of Federal R/R&D, the program must follow a uniform competitive process.

In December of 2000, Congress enacted the Small Business Innovation Research Program Reauthorization Act of 2000, Public Law 106-554. The

Reauthorization Act extends the SBIR Program through September 30, 2008, and requires the Small Business Administration (SBA) to clarify that rights to data generated during the performance of an SBIR award apply to all SBIR awards. In addition, the Act requires that each application for a Phase II award contain a succinct commercialization plan.

On September 24, 2002, the SBA revised the SBIR Program Policy Directive to reflect statutory amendments to the SBIR Program, and provided guidance to Federal agencies for the general conduct of the program.

The U.S. Department of Agriculture participates in the SBIR Program through the issuance of competitive research grants by CSREES. The Agency proposed revising the existing rule, at 7 CFR Part 3403, to comply with recent statutory revisions and changes to the SBA Policy Directive.

The following definitions have been added to clarify the provisions and in compliance with the Policy Directive: Intellectual Property; Innovation; Joint Venture; Outcomes and Outputs; Authorized Departmental Officer; Authorized Organizational Representative; Essentially Equivalent Work; SBIR Technical Data Rights; SBIR Technical Data; SBIR Participants; Prototype; Research Project Grant; Small Business Concern; and Socially and Economically Disadvantaged Small Business Concern. In addition, in Part 3403.4, language was added to clarify the eligibility of Phase I recipients, specifically allowing those organizations receiving Phase I rights via successor-in-interest or novation agreements to be eligible to receive Phase II awards. In addition, language clarifying the timing of the submission of Phase II proposals during the funding cycle was added. In Part 3403.5 the mention of specific forms was deleted in anticipation of electronic submission of proposals. The requirement was inserted into Part 3403.7 that a small business concern that is submitting a proposal for a Phase I award must document the extent to which it was able to secure Phase III funding if it has received more than 15 Phase II awards during the preceding five years.

**Classification**

This rule has been reviewed under Executive Order 12866, and it has been determined that it is not a “significant regulatory action” rule because it will not have an annual effect on the economy of \$100 million or more or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or