

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

RIN 3206-AK64

#### Prevailing Rate Systems; Environmental Differential Pay for Asbestos Exposure

**AGENCY:** Office of Personnel Management.

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

**SUMMARY:** The Office of Personnel Management is issuing an interim regulation to implement a change in law that requires the use of the Occupational Safety and Health Administration permissible exposure limit standard for concentrations of airborne asbestos fibers for an environmental differential pay category that covers Federal prevailing rate (wage) employees.

**DATES:** This interim regulation is effective on April 27, 2005. The Office of Personnel Management must receive comments by June 27, 2005.

**ADDRESSES:** Send or deliver comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415-8200; e-mail [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov); or fax: (202) 606-4264.

**FOR FURTHER INFORMATION CONTACT:** Madeline Gonzalez, (202) 606-2838; e-mail [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov); or fax: (202) 606-4264.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management (OPM) is issuing an interim regulation to incorporate the Occupational Safety and

Health Administration (OSHA) permissible exposure limits (PELs) standard for concentrations of airborne asbestos in the Federal Wage System (FWS) environmental differential pay (EDP) category for asbestos, as required by section 1122 of the National Defense Authorization Act for 2004 (Public Law 108-136, November 24, 2003).

OPM establishes EDP categories under section 5343(c)(4) of title 5, United States Code, which provides that EDP may be paid for "duty involving unusually severe working conditions or unusually severe hazards." Section 1122 of Public Law 108-136 amended section 5343(c)(4) by adding "and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970." This change in law became effective on November 24, 2003.

The FWS EDP categories are contained in appendix A to subpart E of part 532 of title 5, Code of Federal Regulations. The current rule covering asbestos exposure for FWS employees provides that Federal agencies may pay their prevailing rate employees a differential for "[w]orking in an area where airborne concentrations of asbestos fibers may expose employees to potential illness or injury and protective devices or safety measures have not practically eliminated the potential for such personal illness or injury." This interim regulation would revise part 532 to implement section 1122 for prevailing rate employees and require Federal agencies to apply occupational safety and health standards consistent with the permissible exposure limit (PEL) promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 as published in title 29, Code of Federal Regulations, §§ 1910.1001 or 1926.1101 (construction work only). Any OSHA regulatory change in the PELs for asbestos will be applied automatically to OPM's regulations effective on the first day of the first pay period beginning on or after the effective date of the change in the PELs.

#### Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists to waive the general notice of proposed rulemaking to comply with the change in law required by Public Law 108-136, which was enacted on November 24, 2003. The waiver of the requirements for proposed rulemaking and of the delay in the effective date are necessary to comply with the change in law in a timely manner.

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal agencies and employees.

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

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

#### List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

**Dan G. Blair,**  
*Acting Director.*

■ Accordingly, the Office of Personnel Management amends 5 CFR part 532 as follows:

#### PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. In appendix A to subpart E of part 532, category 16 in the table titled "Part II—Payment on Basis of Hours in Pay Status" is revised to read as follows:

**Appendix A to Subpart E of Part 532—  
Schedule of Environmental  
Differentials Paid for Exposure to  
Various Degrees of Hazards, Physical  
Hardships, and Working Conditions of  
an Unusual Nature**

PART II—PAYMENT ON BASIS OF HOURS IN PAY STATUS

Differential rate (percent)	Category for which payable	Effective date
8	16. <i>Asbestos</i> . Working in an area where airborne concentrations of asbestos fibers may expose employees to potential illness or injury and protective devices or safety measures have not practically eliminated the potential for such personal illness or injury. This differential will be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 as published in title 29, Code of Federal Regulations, §§ 1910.1001 or 1926.1101. Regulatory changes in §§ 1910.1001 or 1926.1101 are hereby incorporated in and made a part of this category, effective on the first day of the first pay period beginning on or after the effective date of the changes.	Nov. 24, 2003.

\* \* \* \* \*  
 [FR Doc. 05-8331 Filed 4-26-05; 8:45 am]  
 BILLING CODE 6325-39-P

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 932**

[Docket No. FV05-932-1 FR]

**Olives Grown in California; Increased Assessment Rate**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the California Olive Committee (committee) for the 2005 and subsequent fiscal years from \$12.18 to \$15.68 per ton of olives handled. The committee locally administers the marketing order regulating the handling of olives grown in California. Authorization to assess olive handlers enables the committee to incur expenses that are reasonable and necessary to administer the program. The current fiscal year began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective April 28, 2005.

**FOR FURTHER INFORMATION CONTACT:** Laurel May, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; Telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237;

Telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. The assessment rate issued herein will be effective beginning on January 1, 2005, apply to all first handled assessable olives from the current crop year, and will continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order

or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the committee for the 2005 and subsequent fiscal years from \$12.18 per ton to \$15.68 per ton of olives first handled from the applicable crop years.

The California olive marketing order provides authority for the committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The fiscal year, which is the 12-month period between January 1 and December 31, begins after the corresponding crop year, which is the 12-month period beginning August 1 and ending July 31 of the subsequent year. Fiscal year budget and assessment recommendations are made after the corresponding crop year olive tonnage is reported. The members of the committee are producers and handlers of California olives. They are familiar with the committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2004 and subsequent fiscal years, the committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.