

# Rules and Regulations

Federal Register

Vol. 71, No. 19

Monday, January 30, 2006

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.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

RIN 3206-AK96

#### Prevailing Rate Systems; Change in the Survey Cycle for the Harrison, MS, Nonappropriated Fund Federal Wage System Wage Area

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is issuing a final rule to change the timing of local wage surveys in the Harrison, Mississippi, nonappropriated fund Federal Wage System wage area. The purpose of this change is to avoid conducting future surveys in this area during the hurricane season.

**DATES:** This rule is effective on March 1, 2006.

**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:** On October 31, 2005, the Office of Personnel Management (OPM) issued an interim rule (70 FR 62229) to change the full-scale survey cycle for the Harrison, Mississippi, nonappropriated fund (NAF) Federal Wage System (FWS) wage area from October of each even-numbered fiscal year to March of each even-numbered fiscal year. The interim rule had a 30-day public comment period, during which OPM received no comments.

#### 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 affect only Federal agencies and employees.

#### 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.

**Linda M. Springer,**  
*Director.*

■ Accordingly, under the authority of 5 U.S.C. 5343, the interim rule published on October 31, 2005, amending 5 CFR part 532 (70 FR 62229) is adopted as final with no changes.

[FR Doc. 06-828 Filed 1-27-06; 8:45 am]

**BILLING CODE** 6325-39-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. FV05-989-610 REVIEW]

#### California Raisin Marketing Order; Section 610 Review

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

**ACTION:** Confirmation of regulations.

**SUMMARY:** This action summarizes the results under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA), of an Agricultural Marketing Service (AMS) review of Marketing Order No. 989, regulating the handling of raisins produced from grapes grown in California.

**ADDRESSES:** Interested persons may obtain a copy of the review. Requests for copies should be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov).

**FOR FURTHER INFORMATION CONTACT:** Kurt Kimmel or Maureen Pello, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Fresno, California; Telephone: (559) 487-5901; Fax: (559) 487-5906; E-mail: [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov) or [Maureen.Pello@usda.gov](mailto:Maureen.Pello@usda.gov); 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; E-mail:

[George.Kelhart@usda.gov](mailto:George.Kelhart@usda.gov).

**SUPPLEMENTARY INFORMATION:** Marketing Order No. 989, as amended (7 CFR part 989), regulates the handling of raisins produced from grapes grown in California (order). The marketing order is effective under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601-674).

AMS published in the **Federal Register** (64 FR 8014; February 18, 1999), its plan to review certain regulations, including Marketing Order No. 989, under criteria contained in section 610 of the RFA (5 U.S.C. 601-612). An updated plan was published in the **Federal Register** on January 4, 2002 (67 FR 525) and on August 14, 2003 (68 FR 48574). Accordingly, AMS published a notice of review and request for written comments on the California raisin marketing order in the May 25, 2004, issue of the **Federal Register** (69 FR 29672). The deadline for comments ended July 23, 2004.

The review was undertaken to determine whether the California raisin marketing order should be continued without change, amended, or rescinded to minimize the impacts on small entities. In conducting this review, AMS considered the following factors: (1) The continued need for the marketing order; (2) the nature of complaints or comments received from the public concerning the marketing order; (3) the complexity of the marketing order; (4) the extent to which the marketing order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the marketing order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the marketing order.

The order was initially promulgated in 1949. It has been amended twelve times to meet the changing needs of the industry. The most recent amendments occurred in 1989.

The order establishes the Raisin Administrative Committee (Committee or RAC) as the administrative body charged with overseeing program operations. Staff is hired to conduct the daily administration of the program. The Committee consists of 47 members

and 47 alternate members. Thirty-five members represent producers, ten represent handlers, one represents the cooperative bargaining association, and one represents the public. Membership is further allocated among producers representing the cooperative marketing association, the cooperative bargaining association, and those not affiliated with either cooperative (independents). The cooperative marketing association and the cooperative bargaining association nominate their representatives, while independent member representatives are nominated at meetings and elected through a mail balloting process.

The Committee recommends the implementation of regulatory actions and activities under the marketing order and changes to the marketing order when needed to further marketing order and industry objectives. AMS approves these recommendations undertaken by the Committee before they can be implemented.

These activities include volume control to help stabilize raisin supplies and prices, and strengthen market conditions; various export programs to help packers remain price competitive with foreign producers and to maintain and expand these markets; quality control with mandatory incoming and outgoing inspection to assure the condition and quality of raisins delivered by producers to packers and sold by packers into commercial channels; imported raisin quality also is assured under a section 8e of the Act import regulation; research and promotion activities to maintain and expand exports financed with reserve pool proceeds; and reporting requirements used by the RAC to obtain production, shipment, and other marketing information used by the industry in making sound marketing decisions and in furthering marketing order goals. Funds to administer the marketing order are obtained from handler assessments and proceeds obtained from the sale of reserve pool raisins.

Currently, there are approximately 4,500 producers and 20 handlers of California raisins. The majority of these producers and seven handlers may be classified as small entities. The regulations implemented under the order are applied uniformly to small and large entities, and are designed to benefit all industry entities regardless of size.

#### **Notice of 610 Review for California Raisins**

A notice of review and request for comments regarding the California raisin marketing order was published in

the **Federal Register** on May 25, 2004. During the comment period that ended on July 23, 2004, five written comments were received. One comment was submitted by the then Committee President, and four were submitted by raisin growers and handlers. Two comments address the five factors under consideration by AMS. No comments from non-industry representatives were received. All comments were evaluated during the conduct of this review and are discussed, where appropriate, later in this document.

#### **The Continued Need for the Marketing Order**

The marketing order has been used over the years in the areas of volume control, quality control, research and promotion activities, and the collection and dissemination of statistical information.

Volume control has helped stabilize supplies and prices, and strengthen marketing conditions. Under the marketing order's volume control provisions, packer raisin acquisitions are segregated into free tonnage and reserve tonnage. Free tonnage raisins may be shipped to any market. Reserve raisins are production in excess of free tonnage needs (domestic markets) and must be pooled by handlers in a pool for later sale by the Committee to authorized outlets. The RAC generally needs several years to dispose of reserve pool raisins. Currently, the 2002–03 and 2003–04 reserve pools are still open. The entire crop in 2004–05 was free tonnage so a reserve pool was not established for that crop year.

Basically, there are two markets for California raisins, domestic and export. The marketing order has helped the industry expand domestic markets over the years. Moreover, it has promoted a dramatic expansion of raisin exports. When the marketing order was implemented in 1949, export markets were not viable outlets. Under the marketing order, the industry has been able to develop and maintain export markets, in spite of foreign competition. Export shipments have been an important source of growth for the industry and the marketing order has provided a foundation for this expansion. The Committee believes that it needs to maintain export shipments to foster stable marketing conditions and reasonable producer prices. The Committee further believes that the marketing order will continue to be an important tool in achieving these goals.

In the mid-1990s, domestic and export shipments began to drop. Total shipments have increased in the past two years and currently are in excess of

300,000 tons. The increase in shipments is mainly due to an increase in domestic shipments. In 2004–05, domestic shipments were in excess of 205,000 tons. This is the highest level of domestic shipments since 1993. These shipment levels are reminiscent of levels achieved during the early- and mid-1990's. Maintaining and continuing this level of domestic shipments together with exports near the 100,000 tons per crop year level will be important to the future welfare of the industry. The Committee believes that the marketing order can continue to be used to maintain and increase these shipment levels.

Since 1949, total grower returns per ton have increased five-fold, from less than \$200 per ton to well over \$1,000 per ton. Grower returns have fluctuated in response to supply and demand conditions, but in most seasons grower returns have been reasonable.

The field price for free tonnage reached a high of \$1,425 per ton for the 1999–2000 crop year. Average producer raisin prices as reported by the National Agricultural Statistics Service during the 2000–01 through 2003–04 crop years were below cost of production levels due to record high production. A 1998 cost of production study by the University of California Cooperative Extension for a 120 acre raisin vineyard using traditional growing and harvesting systems shows total costs per ton with a yield of 2.3 tons at about \$872 per ton. Lower bearing acres and yields have resulted in a lower production of raisin variety grapes and raisins, and producer prices began to improve in 2004–05.

In 2004–05, the free tonnage field price was set at \$1,210 per ton. This was the first time since 1999–2000, that the field price has been above \$1,000 per ton. For the 2005–06 crop year, a sliding scale for the field price has been set at a minimum price of \$1,210 per ton that can rise as the quantity of raisins produced drops by 20,000 ton increments below 400,000 tons. In addition, a similar sliding price for the 2006–07 and 2007–08 crop years recently has been announced where prices will range from \$960 to \$1,560 per ton. This future price commitment is expected to help the financial position of producers, help packers make marketing decisions and help the industry continue the positive shipment results experienced in 2004–05 under the marketing order.

With the marketing order as a support mechanism for the industry, the situation in the raisin industry has improved since 2002. Producer prices and revenues have increased, production and inventories have

decreased, and shipments have increased. Moreover, world production and inventories have moderated. Even so, the industry has numerous challenges. The most important of which may be developing demand for younger consumers. Although domestic shipments have increased over the last five crop years, this increase has not been sufficient to offset the increase in population. The Committee believes that the marketing order could be a significant tool in facilitating consumer interest and expanding shipments in both domestic and export markets.

Quality control is as important today as it was when these standards were initially established in 1955. The establishment of minimum incoming and outgoing quality standards over the years has helped improve the quality of product moving from the vineyard to commercial market channels. Quality control has helped ensure that only satisfactory product reaches the marketplace and has helped foster customer satisfaction. This has helped the industry increase and maintain demand for California raisins over the years in domestic and export markets. Quality control also has helped the industry remain competitive with foreign production in Turkey, Greece, The Republic of South Africa, Australia, Chile, Argentina, and Mexico.

Research and promotion export activities also have helped the industry remain competitive with foreign production in export markets and have helped foster market stability in commercial marketing channels.

In addition to the above, the Committee collects statistical information from handlers on a routine basis. This information is compiled by the Committee staff to produce statistical reports that are used by the industry to make planting, harvesting, and sales decisions. It is also used in short- and long-term planning by the Committee.

Based on the foregoing, AMS has determined that the order should be continued, without change, at this time. While the industry has considered changes to the order to improve volume control implementation and overall marketing order operations to lessen the chances of below cost of production producer returns, it has had difficulty reaching a consensus on the issues. As part of AMS's administrative responsibilities, AMS will continue its dialogue with the industry on these matters in an effort to improve the marketing order.

As mentioned earlier, AMS reviews industry recommendations and programs for consistency with the

regulatory authorities provided in the order, the prevailing and prospective market situation, and the impact upon small businesses. An assessment is also made as to whether regulatory recommendations or programs are practical for those who would be regulated, and whether the recommendations are consistent with USDA policy.

AMS also routinely monitors the operations of this order, as does the industry and Committee, to ensure that the regulations issued address market and industry conditions, and that the regulations and administrative procedures are appropriate for practices within the industry. As noted earlier, a dialogue with the Committee on program matters is continuing to help improve marketing order operations.

#### **The Nature of Complaints or Comments From the Public Concerning the Marketing Order**

In its written comment, the then President of the Committee provided background information about the industry and the marketing order, as well as rationale for continuing the marketing order. The comment addresses the AMS 610 review criteria, the various activities and programs administered under the order, describes the benefits of these activities, and expresses the belief that there is sound support within the industry for continuation of the marketing order. This comment also mentions that some factors in the industry believe that the marketing order could be improved to better serve producers and packers. The Committee has not yet finalized possible program improvements. The comment also summarizes the evolution of the order from its inception in 1949 to the present day. Some of the marketing order's successes have been mentioned earlier.

One producer comment expressed support for the marketing order, noting that the same fluctuations in supply exist today as when the order was promulgated in 1949. This commenter stated that the use of the order's volume control mechanism helps the industry maintain orderly marketing conditions. However, the comment also refers to compliance problems that the commenter believes have not been adequately addressed by the Committee and USDA under the marketing order. Another commenter also stated that volume control regulations were being circumvented by handlers. With regard to compliance problems, the Committee investigates and refers such matters to AMS. AMS then reviews and evaluates such matters and recommends

appropriate enforcement action as soon as possible. USDA has and will continue to take appropriate action on such compliance matters.

Another comment from a producer, a third-generation grower, felt that the high production costs in recent years and low producer prices in the early 2000's were attributable to the marketing order and raisin handlers in the industry. Another producer, who is also a handler, felt that the volume control provisions were inadequate to prevent the recent (early 2000's), unprecedented low grower prices. As stated earlier, the prices to growers over the next several years are expected to be above estimated production costs. Much of the improvement in industry conditions and producer prices is due to the reduced crops and reductions in bearing raisin grape acreage. However, although difficult to quantify, some of this improvement is due to the marketing order and the activities authorized.

A producer of organic raisins commented that the marketing order has not kept pace with the technological improvements in industry practices, especially with regard to organic raisins. The commenter also maintained that U.S. markets are flooded with imported raisins, and that the importers are not subject to as many marketing order obligations as the domestic handlers. Further, the comment asserted that RAC is controlled by packers (handlers) and that the marketing order does not benefit producers.

The RAC has considered the views of the organic sector of the industry, and has implemented reporting requirements with USDA approval for the purpose of obtaining statistical information on the organic segment of the industry. In addition, organic handlers also have the opportunity to utilize an exemption from promotion assessments under marketing orders pursuant to 7 CFR 900.700. While the organic sector wants to be removed from the marketing order regulation, the traditional raisin sector believes that both organic and traditionally produced raisins compete with each other in marketing channels, and both types of raisins should be subject to marketing order requirements. This matter continues to be under discussion with the industry.

Regarding the comment concerning the flood of imports on the U.S. market, statistics from the U.S. Customs and Border Protection indicate that imports make up a relatively small portion of the U.S. raisin market. During the period 1999/2000 through 2003/2004 (August

1–July 31), U.S. imports averaged about 4 percent of U.S. production.

Finally, in response to the comments regarding the marketing order benefiting handlers rather than producers, the goal of the program is to improve the marketing conditions for both producers and handlers. The marketing order is intended to allow the industry to solve marketing and other problems that producers and handlers could not handle individually. It helps the industry as a whole. The marketing order is not geared toward meeting the needs of individual producers and handlers.

### The Complexity of the Marketing Order

The raisin marketing order is somewhat complex, reflecting the complexity of the industry itself. AMS has attempted to ensure that the regulations are no more complex than necessary to achieve desired objectives consistent with industry operations. Implementing rules and regulations under the order also reflect the marketing order provisions. The Committee and its various subcommittees review the regulations periodically and make recommendations for change. The recommendations reflect and address the concerns of the raisin industry and its complex nature. AMS has a continuing dialogue with the industry and reviews Committee recommendations taking into account marketing order complexity. Finally, Committee staff provides materials to handlers explaining the programs and regulations, and makes every effort to assist handlers when necessary.

### The Extent to Which the Marketing Order Overlaps, Duplicates, or Conflicts With Other Federal Rules, and to the Extent Feasible, With State and Local Regulations

USDA has not identified any relevant Federal rules, or State and local regulations that duplicate, overlap, or conflict with this order's requirements. There is a companion State program that regulates the raisin industry, but it does not duplicate, overlap, or conflict with the Federal program. The State program, the California Raisin Marketing Board, engages in marketing and promotion activities not undertaken under the Federal order. Both programs work in concert to assist the California raisin industry.

### The Length of Time Since the Marketing Order Has Been Evaluated or the Degree to Which Technology, Economic Conditions, or Other Factors Have Changed in the Area Affected By the Marketing Order

AMS and the California raisin industry monitor the production and marketing of raisins on a continuing basis. Changes in regulations are implemented to reflect industry operating practices, and to solve marketing problems. The goal of these evaluations is to ensure that the order and the regulations issued under it fit the needs of the industry, while remaining consistent with the Act and USDA policies.

Since its inception in 1949, the order has gone through numerous changes. These changes were made, in part, because of changing economic conditions affecting the production and handling of raisins. As noted in the Committee's comment, it meets often each year and discussions about the order and the various activities and regulations issued thereunder are frequent and sometimes extensive. The Committee or its subcommittees deliberate whether changes would improve the activities, order, and regulations to reflect current industry operating practices, and resolve current industry problems to the extent possible. In addition to reviewing its regulations, the Committee reviews and evaluates its programs on a continuing basis.

The numerous formal order amendments, the many changes to the rules and regulations over the years, and the Committee's and AMS's continuing review and adjustments to its programs, show that the order is a dynamic, not static, program.

AMS will continue to work with and maintain a dialogue with the California raisin industry in improving the program and in addressing the concerns expressed by the industry.

Dated: January 23, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 06–821 Filed 1–27–06; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 77

[Docket No. APHIS–2006–0004]

### Tuberculosis in Cattle and Bison; State and Zone Designations; Minnesota

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

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

**SUMMARY:** We are amending the bovine tuberculosis regulations regarding State and zone classifications by removing Minnesota from the list of accredited-free States and adding it to the list of modified accredited advanced States. This action is necessary to help prevent the spread of tuberculosis because Minnesota no longer meets the requirements for accredited-free State status.

**DATES:** This interim rule was effective January 24, 2006. We will consider all comments that we receive on or before March 31, 2006.

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the "Search for Open Regulations" box, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select APHIS–2006–0004 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the "Advanced Search" function in Regulations.gov.

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0004, 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–2006–0004.

**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.