

# Rules and Regulations

Federal Register

Vol. 71, No. 35

Wednesday, February 22, 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 213

RIN 3206-AJ70

#### Excepted Service—Temporary Organizations

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a final regulation amending the Governmentwide excepted service Schedule A authority for temporary organizations. This regulation revises the definition of the term “temporary organization” to comply with legislation. It also establishes criteria with which temporary organizations must comply if they wish to extend an employee’s appointment.

**DATES:** Effective March 24, 2006.

**FOR FURTHER INFORMATION CONTACT:** Sharon K. Ginley at (202) 606-0960, FAX at (202) 606-2329, TDD at (202) 418-3134, or e-mail at [sharon.ginley@opm.gov](mailto:sharon.ginley@opm.gov).

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management issued an interim regulation (68 FR 24605, May 8, 2003) to implement changes to the current Governmentwide excepted service Schedule A authority for temporary organizations. The interim regulation reflected the addition of a new subchapter IV to chapter 31 of title 5, United States Code. The new subchapter defined the term “temporary organization”; permitted the head of a temporary organization to make excepted service appointments of up to 3 years to fill positions in these organizations; permitted appointment extensions for no more than 2 years; and gave return rights to those who transfer or convert (with agency head approval)

to these appointments from career or career-conditional appointments if certain conditions are met.

We received comments from two agencies supporting the change. One agency suggested adding information to 5 CFR part 352, to include reemployment rights for those in temporary organizations. Although we appreciate the value of making our regulations as comprehensive as possible, we note that the statutory provision regarding return rights at 5 U.S.C. 3161(g) is specific and clear, and we encourage individuals with questions about this topic to consult this provision for guidance. We are adopting the interim regulation as final with no change.

#### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

#### Executive Order 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 213

Government employees, Reporting and recordkeeping requirements.

Office of Personnel Management.

**Linda M. Springer,**

*Director.*

■ Accordingly, OPM is adopting the interim regulations (68 FR 24605) amending 5 CFR part 213, published on May 8, 2003 as final with no change.

[FR Doc. 06-1607 Filed 2-21-06; 8:45 am]

**BILLING CODE 6325-39-M**

## 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:** Final rule.

**SUMMARY:** The Office of Personnel Management is issuing a final rule to implement a statutory change 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:** The final rule is effective on February 22, 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 April 27, 2005, the Office of Personnel Management (OPM) published an interim rule (70 FR 21613) to incorporate the Occupational Safety and Health Administration (OSHA) permissible exposure limit (PEL) 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 (Pub. L. 108-136, November 24, 2003). The interim rule revised the asbestos category in appendix A to subpart E of 5 CFR part 532 to implement section 1122 for prevailing rate employees and required Federal agencies to apply occupational safety and health standards consistent with the OSHA PEL standard for asbestos. The 60-day comment period ended on June 27, 2005. OPM received comments from an agency, a labor organization, and an institute dedicated to occupational and environmental health research.

The labor organization and the institute objected to the use of the OSHA PEL standard to determine an employee’s pay entitlement under the FWS EDP asbestos category. The labor organization stated that it is a well-documented, scientific fact that no exposure to airborne asbestos fibers is safe. The institute asserted that there is a preponderance of data indicating that there is no threshold below which there is no risk of exposure to asbestos, and only the constraints of what OSHA considers feasible in terms of monitoring and abatement prevents OSHA from setting a lower PEL for asbestos exposure. The institute expressed the belief that exposure to asbestos at any level is hazardous.

OPM agrees that exposure to airborne concentrations of asbestos fibers is hazardous; consequently, OPM's paramount concern is the protection of employees from the hazards of exposure to airborne asbestos. Under OPM's Operating Manual for administering the FWS, Federal agencies must take positive action to eliminate danger and risks that contribute to or cause hazards for which EDP categories are established. The existence of EDP categories is not intended to condone work practices that circumvent Federal safety laws, rules, and regulations.

OSHA, the Federal agency responsible for establishing regulatory standards concerning hazards in the workplace, last reduced the PEL for airborne concentrations of asbestos fibers in 1994. The current OSHA PEL for asbestos is 0.1 fibers per cubic centimeter (0.1f/cc) of air, determined as an 8-hour time-weighted average. OPM's interim regulations amended the asbestos category in for EDP to comply with section 1122, which amended section 5 U.S.C. 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."

OPM remains committed to protecting the health and safety of the Federal workforce. OPM's regulation is a tool for determining EDP entitlement only and does not relieve agencies of their responsibility to create and maintain safe and healthful workplaces. Employees whose assigned work is not directly connected with the risk of

exposure, and who might be incidentally exposed to the hazard, should be removed from the area or circumstances presenting the hazard. Agencies must continue to aggressively eliminate asbestos and other potential health hazards from the workplace. Agencies must comply with the entire OSHA PEL standard for asbestos, not only because it provides an objective, measurable standard, but also because its purpose is the protection of employees from a significant risk of exposure to airborne concentrations of asbestos fibers. Based on the intent of the 2003 statute and the safeguards discussed above, we have not made any changes in the final regulations based on these two comments.

In the final comment, an agency requested that we delete the clause "and protective devices or safety measures have not practically eliminated the potential for such personal illness or injury" at the end of the first sentence in the asbestos category in appendix A. The agency suggested that this phrase is no longer necessary because, pursuant to the 2003 statute, the second and third sentences in the asbestos category have now established a clearly defined standard for payment of EDP. We agree that the term "practically eliminated" is redundant, and we have made the suggested change in the final regulations. The OSHA standard provides very detailed training requirements, engineering controls, work practices, health monitoring and housekeeping procedures, etc. These additional requirements, when applied by employers together with the PEL, reduce health and safety risks for employees below the level that would occur if the PEL alone were applicable.

**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.

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

Accordingly, the interim rule amending 5 CFR part 532 which was published at 70 FR 21613 on April 27, 2005, is adopted as a final rule with the following change:

**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. 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. 06-1606 Filed 2-21-06; 8:45 am]

BILLING CODE 6325-39-P

**DEPARTMENT OF AGRICULTURE****Federal Crop Insurance Corporation****7 CFR Part 457**

RIN 0563-AC07

**Common Crop Insurance Regulations, Basic Provisions****AGENCY:** Federal Crop Insurance Corporation, USDA.**ACTION:** Interim rule; reopening and extension of comment period.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) is reopening and extending the comment period for the interim rule that was published in the **Federal Register** on Wednesday, November 30, 2005 (70 FR 71749-71751). The interim rule amended the Common Crop Insurance Regulations, Basic Provisions to implement the requirements of section 780 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006 (2006 Appropriations Act) regarding written agreements and the use of similar agricultural commodities. This action will allow interested persons additional time to prepare and submit comments.

**DATES:** Written comments and opinions on this interim rule will be accepted until close of business March 24, 2006 and will be considered when the rule is to be made final.

**ADDRESSES:** Interested persons are invited to submit written comments to the Director, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133-4676. Comments titled "Basic Provisions Interim Rule" may also be sent via the Internet to [DirectorPDD@rma.usda.gov](mailto:DirectorPDD@rma.usda.gov), or the Federal eRulemaking Portal: <http://www.regulations.gov/>. Follow the online instructions for submitting comments. A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., c.s.t., Monday through Friday, except holidays, at the above address.

**FOR FURTHER INFORMATION CONTACT:** For further information contact Erin Reid, Risk Management Specialist, Research and Development, Product Development Division, Risk Management Agency, at

the Kansas City, MO, address listed above, telephone (816) 926-7730.

**SUPPLEMENTARY INFORMATION:****Background**

On Wednesday, November 30, 2005, FCIC published an interim rule with request for comments in the **Federal Register** proposing changes to the Common Crop Insurance Regulations, Basic Provisions to implement program changes mandated by the 2006 Appropriations Act.

Comments were required to be received on or before January 30, 2006. FCIC believes the email address listed on the interim rule and the Federal eRulemaking Portal address were not operational during that time period. Therefore, interested persons could not provide comment. Therefore, FCIC is reopening and extending the comment period until close of business March 24, 2006. This action will allow interested persons who were unable to submit comments additional time to submit comments.

Signed in Washington, DC on February 14, 2006.

**Eldon Gould,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 06-1581 Filed 2-21-06; 8:45 am]

BILLING CODE 3410-08-P

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 989**

[Docket No. FV06-989-1 IFR]

**Raisins Produced From Grapes Grown in California; Decreased Assessment Rate****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate established for the Raisin Administrative Committee (Committee) for the 2005-06 and subsequent crop years from \$11.00 to \$7.50 per ton of free tonnage raisins acquired by handlers, and reserve tonnage raisins released or sold to handlers for use in free tonnage outlets. The Committee locally administers the Federal marketing order which regulates the handling of raisins produced from grapes grown in California (order). Assessments upon raisin handlers are used by the Committee to fund reasonable and necessary expenses of the program. The crop year runs from

August 1 through July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** February 23, 2006. Comments received by April 24, 2006 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must 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; E-mail:

[moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); or Internet: <http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Rose Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; 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 and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The marketing agreement and order are 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